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**FIRST AMENDED AND RESTATED DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
OLD MILL VILLAGE HOMEOWNERS ASSOCIATION, INC.**

THIS First Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions for Old Mill Village Homeowners Association is effective as of the date of the recording in the Davis County Recorder's Office by the Old Mill Village Homeowners Association, Inc., a Utah Nonprofit Corporation ("Association").

**RECITALS**

WHEREAS, the Old Mill Village Homeowners Association, made up of two hundred seventy-six (276) lots, streets, and common areas as detailed on the Official Plat or Plats recorded in the Davis County Recorder's Office and as described in the attached "Exhibit A" ("Property" or "Project"), is a common interest community made subject to the certain covenants, conditions, and restrictions described in the Declaration of Protective Covenants, Conditions, and Restrictions for Old Mill Village Homeowners Association that was recorded in the Office of the County Recorder of Davis County on April 1, 2005 as Entry No. 2063106, Book 3758, beginning at Page 319 ("Original Declaration").

WHEREAS, the Association is subject to the Community Association Act adopted by the Utah legislature and located at U.C.A. §57-8a.

WHEREAS, U.C.A. §57-8a-104 provides that the governing documents for an association can be amended by a 67% vote of the voting interests for the association.

WHEREAS, the Association and the Lot Owners deem it in their best interests to adopt this First Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions for Old Mill Village Homeowners Association ("Declaration").

NOW THEREFORE, the Association, in order to better preserve and maintain the integrity, design, and standards of the Property, and to ensure a more effective and efficient governance and operation, hereby declares that the Property shall be held, transferred, conveyed, and occupied subject to the following covenants, conditions, and restrictions, which shall run with such Property and shall be binding upon all parties having or acquiring any right, title, or interest in such Property or any part thereof and shall inure to the benefit of each owner thereof.

THIS Declaration has been approved by at least 67% of the Association's voting interests, and is intended to supersede and replace the Original Declaration and any amendment(s) thereto made prior to the execution of this Declaration, **with the exception of** 1) the *Corrected First Addendum to Declaration of Protective Covenants for Old Mill Village Subdivision*, Entry Number 2064237 in the Davis County Recorder's Office, and 2) the *Second Addendum to Declaration of Protective Covenants for Old Mill Village Subdivision*, Entry Number 2104528 in the Davis County Recorder's Office, both of which are intended to remain in full force and effect.

**DEFINITIONS**

The following words, phrases, or terms used in this Declaration shall have the following meanings:

- (a) “Additional Land” shall mean and refer to any land located in Davis County, Utah, whether or not owned by the Association or individual owners within the Association.
- (b) “Annual Assessment” shall mean the charge levied and assessed each year against each Lot, pursuant to Article 7 herein.
- (c) “Association” shall mean the Old Mill Village Homeowners Association, Inc., a Utah nonprofit corporation, organized to administer and enforce the covenants herein and to exercise the rights, powers, and duties set forth in this Declaration.
- (d) “Board” shall mean the Board of Trustees of the Association.
- (e) “Bylaws” shall mean and refer to the Bylaws of the Association, as amended from time to time.
- (f) “Common Expense” shall mean all expenses for maintenance, utilities, and taxes incurred on or in connection with HOA Real Property within or adjacent to the Project, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws.
- (g) “HOA Real Property” shall mean all land within or adjacent to the Project that is from time to time owned by the Association.
- (h) “Lot” shall mean any separately numbered and individually described parcel of land shown as a Lot on the Plat and intended for private use and ownership.
- (i) “Maintenance Charges” shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Association for work done pursuant to Article 7, along with fines, penalties, and collection costs incurred in connection with delinquent Annual or Special Assessments pursuant to Article 7 herein.
- (j) “Member” shall mean any person holding membership in the Association pursuant to the provisions of Article 5 herein.
- (k) “Owner” shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot. If there is more than one record holder of legal title to a Lot, each record holder shall be an “Owner.”
- (l) “Plat” shall mean and refer to the following duly-approved and recorded plats:
- (i) The plat filed within the office of the Davis County Recorder, entitled Old Mill Village Subdivision, Phase 1, and
  - (ii) Any plat(s) respecting and Additional Land, but only after the recordation of such plat(s) and only if and after the recordation of supplements to the Declaration adding to the Project the real property covered by such plat(s) and subjecting such real property to the Declaration.
- (m) “Project” shall mean the Old Mill Village Subdivision, as shown on the Plat and governed by this Declaration.
- (n) “Property” shall mean and refer to that certain real property located in Davis County, State of Utah, and more particularly described on Exhibit A hereof, together with each and every portion of the

Additional Land that may be added to the Project in accordance with Utah law and the provisions of this Declaration.

- (o) "Special Assessment" shall mean any assessment levied and assessed pursuant to Article 7.

**ARTICLE 1  
PROPERTY RIGHTS IN COMMON AREAS**

**1.1 DESCRIPTION OF COMMON AREAS.** The Common Areas shall include those areas designated as such on the Plats, including, but not limited to, all common landscaped areas, sidewalks and all repairs and replacements of any of the foregoing ("Common Areas").

**1.2 TITLE TO COMMON AREAS.** The Common Areas are owned in common by all Owners. No Owner may bring an action for partition thereof except upon termination of this Declaration. Provided, however, that no Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas, except as to the appurtenant undivided interest therein of the Owner's Lot.

**1.3 OWNER'S EASEMENTS OF ENJOYMENT.** Subject to the provisions of this article, every owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and pass with the title to every lot.

**1.4 EXTENT OF OWNERS' RIGHTS.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) **EASEMENTS.** The Association holds the following easements over, under, and upon the Common Areas and Property:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water, and other utility and communication lines and services and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair, and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any existing structures on Common Areas. The Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Property.

(b) **USE OF THE COMMON AREAS.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved, for the use and enjoyment of all Owners and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying the subdivision or identifying items of interest, provided such signs are approved by the Board and comply with any applicable local ordinances. The Board of Trustees of the Association shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings.

(c) **ALIENATION OF THE COMMON AREAS.** The Association may not by act or omission seek to abandon, partition, subdivide, or encumber the Common Areas owned directly or indirectly

by the Association for the benefit of the Lots unless the holders of at least seventy-five percent (75%) of the Association voting members have given their prior written approval. This provision shall not apply to the easements described in Section 1.4(a) above.

(d) **LIMITATIONS ON USE.** Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 8 below.

(ii) The right of the Association to adopt, amend, and repeal rules and regulations in accordance with this Declaration.

**1.6 DELEGATION OF USE.** Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment of the Common Areas to the members of his family and to tenants or contract purchasers who reside on the Property.

## **ARTICLE 2 PROPERTY RIGHTS IN LOTS**

**2.1 USE AND OCCUPANCY.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions contained in Article 4 below, and all other provisions of this Declaration for the mutual benefit of all Owners.

**2.2 UTILITY EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on the recorded plats. Within the easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water, through drainage channels in the easement. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

## **ARTICLE 3 RESTRICTIONS ON USE OF RESIDENTIAL LOTS AND COMMON AREAS**

**3.1 STRUCTURES PERMITTED.** No permanent structures shall be erected or permitted to remain on a Lot, except structures containing homes and structures normally accessory thereto. The foregoing provision shall not exclude construction of a private garage, guesthouse, private swimming pool, or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable local city/county regulations. If any structure requires a building or re-zoning permit, or any other permit from the State of Utah, Davis County or Kaysville City, the Owner shall not construct / install such structure without obtaining the written approval of the Association Board. All permanent structures shall be constructed on site; no manufactured homes or structures shall be allowed.

**3.2 RESIDENTIAL USE.** Lots shall only be used for residential purposes. Except with the consent of the Board of Trustees of the Association, no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of a Residence, (b) the right of

any contractor or home builder to construct a home on any Lot, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his home. The Board of Trustees shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Trustees determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local ordinances.

**3.3 OFFENSIVE OR UNLAWFUL ACTIVITIES.** No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**3.4 ANIMALS.** No animals, livestock, or poultry of any kind shall be raised, bred or kept, or permitted within any Lot for commercial purposes. Lot Owners shall be strictly liable for the behavior and actions of their pets. All dogs must be supervised when off the owner's Lot. The Board of Trustees may adopt rules governing the behavior of pets. All animals kept on any Lot shall be maintained in accordance with the rules and regulations imposed by Kaysville City ordinances applicable to residential zoning. No large animals, horses, wild or dangerous animals shall be kept within the Project. No more than four (4) dogs and/or cats may be kept on any Lot.

**3.5 MAINTENANCE OF STRUCTURES AND GROUNDS.** Each Owner shall maintain his Lot and Improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard.

**3.6 PARKING.** The following vehicles **shall not** be parked or stored on any streets or driveways within the Association: trailers, mobile homes, trucks with over one ton capacity, travel trailers, boats, campers, motor homes, buses, tractors, and maintenance or commercial equipment.

(a) Licensed, regularly-used passenger vehicles (i.e. visitor vehicles) **may be** parked on streets within the Project for brief periods of time (i.e. less than 24 hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited.

(b) No major mechanic work or repairs are to be conducted in streets or front yards of houses. Pursuant to Kaysville city ordinances, no inoperative automobile or vehicle shall be placed or remain on any Lot or adjacent street for more than 48 hours. The following vehicles **must be** parked or stored behind the front yard setback: travel trailers, motor homes, trucks over one ton capacity, boats, campers not on a truck bed, buses, tractors and maintenance or commercial equipment of any kind shall be parked or stored behind the front yard setback.

**3.7 VEHICLES IN DISREPAIR.** No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or street for more than seventy-two (72) hours without written approval of the Board of Trustees. The Board of Trustees shall have discretion to determine whether any vehicle is in an extreme state of disrepair.

**3.8 SIGNS.** No signs are permitted in the Association Common Areas. Commercial advertisement signs are not allowed. One sign per Lot is allowed to advertize the property for sale or rent, subject to the rental restrictions enumerated in this Declaration. Political election signs are permitted four (4) weeks before an election, and must be removed within one (1) week after the political election. School / student support signs are permitted, but must be removed immediately upon termination of the school year. For sale signs are

permitted. Temporary signs advertizing blood drives and birthdays are permitted for not more than a two (2) day period. Lawn treatment signs are permitted up to one (1) week after treatment. All permitted signs shall not exceed five square feet.

**3.9 PAVING.** Driveways and other flat paved areas may be concrete, stamped concrete, quarry tile or paving blocks. Gravel areas are not permitted in any driveways, side yards or park strips.

**3.10 RUBBISH AND TRASH.** No Lot or part of the Common Areas shall be used as a dumping ground for trash or rubbish of any kind.

**3.11 COMMENCEMENT AND COMPLETION OF CONSTRUCTION.** The construction of any Improvement (including but not limited to a residence) on any Lot, including painting and all exterior finish, shall be completed within eighteen (18) months from the beginning of construction so as to present a finished appearance when viewed from any angle. This provision may be extended for a reasonable length of time upon written approval from the Board of Trustees. The building area shall be kept reasonably clean and in a workmanlike order.

**3.12 TEMPORARY STRUCTURES.** No structure of a temporary character, including a trailer, basement, tent, shack, garage, barn, or other outbuildings shall be used on any Lot at any time as a permanent residence.

**3.13 FENCES.** No front yard fences shall be permitted on any owners' Lot in excess of three feet (3'). Fencing and walls must be constructed of white vinyl fencing. Front yard fences, tan fences and ornamental fences in existence as of the date of the execution of this document shall be grandfathered in.

**3.14 MAXIMUM HEIGHT AND SETBACK REQUIREMENTS.** Each Lot shall be subject to the setback requirements and residence height requirements established by local city/county ordinances.

**3.15 WEED CONTROL.** Owners shall control noxious weeds on their Lots.

**3.16 LANDSCAPING.** All rocks are prohibited in park strips and side yards, including but not limited to: a) gravel – defined as a loose aggregation of small water-worn or pounded stones, where the size of each rock is less than 1 inch in diameter (includes “pea” gravel); b) landscaping rock – defined as natural or manufactured rock or stone whose size is less than 8 inches but more than 1 inch in diameter, and c) decorative rock – defined as natural or manufactured rock or stone whose size is greater than 8 inches in diameter. Concrete, whether stamped or otherwise, is also prohibited in the park strips. All Lots that have installed concrete in park strips prior to the recording of this Declaration shall be grandfathered in, but such grandfathered Lots are prohibited from installing any concrete in their respective park strips or side yards where such did not exist prior to the recording of this Declaration. Any homeowner that desires to install concrete in their side yard(s) must first obtain approval from the Board of Directors in writing. Specific details, including size, type and placement of landscape elements shall be determined by the homeowner. Street trees shall meet applicable Kaysville City standards for street trees. All front yard landscaping shall be completed within one year of the occupancy date of the dwelling, including the installation of an outdoor automatic sprinkler system for irrigation in the front yard of each Lot. Any Owner who does not commence construction within two (2) years of its purchase of the applicable Lot shall install a park strip pursuant to City ordinances. All Owners shall keep their Lots free of debris and weeds and shall cause the same to be mowed on a monthly basis, as necessary.

**3.17 EXTERIOR ANTENNAS, DISHES, LIGHTS AND POWER LINES.** The following shall not be restricted on any Lot:

(a) A “dish” antenna one meter (39.37 inches) or less in diameter, designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite.

(b) An antenna that is one meter or less in diameter and is designed to receive video programming services via broadband radio service (wireless cable), or to receive or transmit fixed wireless signals other than via satellite.

(c) An antenna that is designed to receive local television broadcast signals.

All exterior antennas used for AM / FM radio, amateur (“ham”) radio, CB radio, Digital Audio Radio Services (“DARS”), or antennas used as part of a hub to relay signals among multiple locations are prohibited. TV satellite dishes will be allowed, provided they are: 1) not in excess of 39 inches in diameter, and 2) are placed or screened in such a way so they are not readily visible from the street in front of the dwelling without obstructing radio / satellite reception.

**3.18 GRADES, SLOPES AND DRAINAGE.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes, and courses related thereto over any Lot or Common Area without the express written permission of the Board of Trustees.

**3.19 ASSOCIATION RULES AND REGULATIONS.** In addition, the Association, through the Board of Trustees, from time to time, may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Project.

**3.20 DIVISION OF LOTS.** The division of any Lot is prohibited.

**3.21 FUEL STORAGE.** No tank(s) for storage of fuel may be maintained above or below the surface of the ground on any Lot.

**3.22 ACCESSORY STRUCTURES.** Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures, and materials approved for the dwelling and shall be integral to the architecture. If any accessory structure requires a building or re-zoning permit, or any other permit from the State of Utah, Davis County or Kaysville City, the Owner shall not construct / install such structure without obtaining the written approval of the Association Board. It is understood that outbuildings such as sheds and swimming pool dressing facilities may be constructed on any Lot as long as they are in conformity with the requirements of this Declaration. All pools must be fenced in strict compliance with local ordinances and with this Declaration.

**3.23 SOLAR EQUIPMENT.** Solar panels are to be integrated into roof design. Panels and frames must be compatible with roof colors, and all equipment must be reasonably screened from view. Written approval must be obtained from the Board of Trustees prior to the installation of any solar equipment.

**3.24 POOLS, SPAS, FOUNTAINS AND GAME COURTS.** Pools, spas, fountains and game courts must be located in such a way as to avoid excessive impact of light or sound to adjacent properties. No game courts shall be located in front yards. No more than one (1) commercially manufactured basketball hoop may be installed on a front driveway. Pool heaters and pumps must be reasonably screened from view and sound insulated from neighboring houses.

**3.25 EXTERIOR PAINT.** All subsequent additions, or changes to exterior color schemes, excluding color changes to the front entry doors, shall be subject to the prior written approval of the Board of Trustees.

**ARTICLE 4**  
**ARCHITECTURAL REVIEW**

**OBJECTIVE**

**THE ESSENCE OF THIS SECTION SHALL BE TO CREATE AND MAINTAIN A HIGH STANDARD OF CONSTRUCTION AND AESTHETICS FOR THE PROTECTION OF ALL THE LOT OWNERS.**

**4.1 ARCHITECTURAL REVIEW.** No building, improvement, or addition shall be commenced, erected, placed, installed, or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the Board of Trustees. It is the intent and purpose of this Declaration to assure quality of workmanship and materials.

**4.2 BOARD DECISION.** The Board of Trustees shall render its decision with respect to the construction proposal within forty-five (45) days. Any proposal application is not deemed submitted until: (1) all documents and plans pertaining to the proposal have been given to the Board of Trustees, and (2) the applicant has received written acknowledgement of receipt by a member of the Board of Trustees. The date stated on the Board's written acknowledgment shall begin the timeframe for the review and decision. In the event the Board fails to render its approval or disapproval within the sixty (60) day period, or if no suit to enforce this Declaration has been commenced within one (1) year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

**4.3 DESIGN REVIEW CRITERIA.** No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling and private garage sufficiently sized for not less than two (2) vehicles. Carports may not be built. On all Lots: (a) Rambler-style houses shall have a minimum of 1,500 finished square feet of main floor area above finished grade; (b) houses with two or more stories shall have a minimum of 1,000 finished square feet of main floor area above finished grade; (c) multi-level houses shall have a minimum of 1,000 finished square feet of main floor area above finished grade (only two levels may be used to determine the 1,000 finished square feet and not all levels); and (d) one-half story houses shall have a minimum of 1,300 finished square feet of main floor area above finished grade. Square footage of any style is excluding garages, porches, verandas, patios, basements, eaves, overhangs, and steps. Any square footage with any portion thereof beneath the top grade of the foundations will not qualify to offset the minimum square footage requirement. Any deviations from this requirement must be approved in writing by the Board of Trustees. The building exteriors of residential structures shall be constructed of brick, rock, stucco, or a combination thereof. Hardyboard may be used as an accent material where appropriate. No vinyl siding or aluminum siding shall be permitted.

**4.4 LIABILITY.** Neither the Board of Trustees nor any member thereof shall be liable to any Owner, occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Board or a member thereof, provided only that the Board or member has, in accordance with the actual knowledge possessed by it or him, acted in good faith.

**4.5 NONWAIVER.** Consent by the Board of Trustees to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**4.6 EFFECTIVE PERIOD OF CONSENT.** The Board of Trustees' consent to any proposed work shall automatically be revoked one (1) year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Board.



## ARTICLE 5 ASSOCIATION

An association of all of the Lot Owners within the Property was lawfully organized under the name "Old Mill Village Homeowners Association, Inc." The Association has such property, powers, and obligations as are set forth in this Declaration and its Bylaws for the benefit of the Property and all Lot Owners. As more fully described in this Declaration and the Bylaws, the Association shall be governed by a Board of Trustees, each member of which shall be a Lot owner and member of the Association.

**5.1 ORGANIZATION.** The Association was organized and created as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers, and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association. The management and maintenance of the Property and the administration of the affairs of the Association shall be conducted by a Board of Trustees.

**5.2 MEMBERSHIP.** Every Owner of one or more Lots within the Property shall, during the entire period of such Owner's ownership of one (1) or more Lots within the Property, be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

**5.3 LISTS OF OWNERS, ELIGIBLE MORTGAGEES, AND ELIGIBLE INSURERS OR GUARANTORS.** The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Lot that is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Davis County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the Davis County Recorder. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Association is otherwise advised.

**5.4 VOTING RIGHTS.** Each Lot Owner is entitled to one (1) vote for each Lot that member owns. When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractional or split votes shall be disregarded, except for the purposes of determining a quorum.

**5.5 GENERAL POWERS AND OBLIGATIONS.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;

(c) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;

(d) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the property;

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

**5.6 SPECIFIC POWERS AND DUTIES.** The powers and duties of the Association shall include, without limitation, the following:

(a) **MAINTENANCE AND SERVICES.** The Association shall provide maintenance and services for the Project as provided in Article 6 and other provisions of this Declaration.

(b) **INSURANCE.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

(c) **RULEMAKING.** The Association shall make, establish, promulgate, amend, and repeal Rules and Regulations as provided in Section 3.19 of this Declaration.

(d) **ASSESSMENTS.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 7 of this Declaration.

(e) **ENFORCEMENT.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Board of Trustees.

(f) **EMPLOYMENT OF AGENTS, ADVISERS, AND CONTRACTORS.** The Association, through its Board of Trustees, may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, accountants, recreational experts, architects, planners, lawyers, or what is convenient for the management, maintenance, and operation of the Property.

**5.7 LIABILITY.** A member of the Board of Trustees or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of gross negligence. In the event any member of the Board of Trustees or any officer of the Association is made a party to any proceeding because the individual is or was a Trustee or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

## ARTICLE 6 MAINTENANCE

**6.1 MAINTENANCE OF COMMON AREAS.** The Association shall perform all maintenance upon the Common Areas, including but not limited to grass, trees, walks, private roads, walkways, and the common water system unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a safe condition to at least applicable county ordinance standards and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

**6.2 SERVICES.** The Association shall provide or contract for such services as the Board of Trustees may reasonably deem to be of benefit to the Property, including, but not limited to, garbage and trash removal for Common Areas and security services.

## **ARTICLE 7 ASSESSMENTS**

**7.1 PURPOSE OF ASSESSMENTS.** The Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation, and maintenance of the Common Areas.

**7.2 TYPES OF ASSESSMENTS.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Individual Assessments, and an Initial Setup Assessment, as more particularly described below.

**7.3 APPORTIONMENT OF ASSESSMENTS.** All Lots shall pay a pro rata share of the Annual Assessments, Special Assessments, and Emergency Assessments. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Lots subject to Assessment. Where an Owner owns more than one (1) Lot, the apportioned assessments shall be paid on each Lot owned.

**7.4 ANNUAL ASSESSMENTS.** The Board of Trustees of the Association shall from time to time, and at least annually, prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over-assessments and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 7.9 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned equally among the Lots. The Annual Assessment may be increased each year by not more than twenty-five percent (25%) above the Annual Assessment for the previous year without a vote of the Members. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as adopted by the Board of Trustees by rule, resolution or guideline.

**7.5 SPECIAL ASSESSMENTS.** In addition to the Annual Assessment authorized above, the Board of Trustees may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments ("Special Assessment"). Special Assessments which in the aggregate in any fiscal year exceed \$250 may be levied only if approved by a majority of the votes of the Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose. Special Assessments shall be apportioned as provided in Section 7.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Trustees.

**7.6 EMERGENCY ASSESSMENTS.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Trustees of the Association shall

immediately determine the approximate amount of such inadequacy and issue a supplemental budget, notes as to the reason therefore, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed \$250 may be levied only if approved by a majority of the votes of the Lot owners who are voting in person or by proxy at a meeting duly called for this purpose. Emergency Assessments shall be apportioned as set forth in Section 7.3 above and payable as determined by the Board of Trustees.

**7.7 INDIVIDUAL ASSESSMENTS.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("Individual Assessment"). Individual Assessments may include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lots or its Owner into compliance with the provisions of this Declaration or the rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Trustees, Individual Assessments shall be due 30 days after the Board of Trustees has given written notice thereof to the Owners subject to the Individual Assessments.

**7.8 OPERATIONS FUND.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 7.9, separate and apart from its other funds, in an account to be known as the "Operations Fund." The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities, and services as described in Article 6.
- (b) Payment of the cost of insurance as described herein or in the Bylaws of the Association.
- (c) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal, and secretarial services.

**7.9 RESERVE FUND.** The Association shall establish a reserve fund for replacement of those items to be maintained by the Association all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of Common Areas as determined by the Board of Trustees and shall be kept separate from the Operations Fund. The Board of Trustees may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments or Emergency Assessments with the approval of a majority of the Lot Owners. Nothing in this section shall prohibit prudent investment of the reserve account. Assessments for the Reserve Fund may be reduced, eliminated, or decreased by an affirmative vote of not less than sixty-seven percent (67%) of the voting interests of the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to individual sellers or Owners of Lots.

**7.10 CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses, or attorneys' fees imposed pursuant to Article 8, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner, of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 8 below.

## **ARTICLE 8 ENFORCEMENT**

**8.1 USE OF COMMON AREAS.** In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association, or other rules adopted by the Association governing the use of the Common Areas, then the Association, acting through its Board of Trustees, shall notify the Owner in writing that the violations exist and that he/she is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend his voting rights and rights to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the Operations Fund, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner access to and from his Lot.

**8.2 NONQUALIFYING IMPROVEMENTS AND VIOLATION OF GENERAL PROTECTIVE COVENANTS.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition, or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on his Lot, then the Association acting through its Board of Trustees shall notify the Owner(s) in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and his use thereof, into conformance with this Declaration at the Owner's sole expense. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within thirty (30) days of written notice to the Owner, then the Association acting through its Board of Trustees, shall have the right to do any or all of the following:

- (a) Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;
- (b) Bring suit of action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**8.3 DEFAULT IN PAYMENT OF ASSESSMENTS; ENFORCEMENT OF LIEN.** If an assessment or other charge levied under this Declaration is not paid within sixty (60) days of its due date, such assessment or charge shall become delinquent and shall bear interest, from the due date at the rate set forth in Section 8.5 below. In such event the Association may exercise any or all of the following remedies:

- (a) The Association may suspend such Owners voting rights.
- (b) The Association shall have a lien against each Lot for any assessment levied against

the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine, or charge is due. At any time any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Davis County, Utah against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded previously to the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender which is recorded previously to the Association's notice of lien. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid assessments, fines, and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board of Trustees may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board of Trustees shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

(e) The Association shall have any other remedy available to it by law or in equity.

**8.4 SUBORDINATION OF LIEN TO MORTGAGES.** The Lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first or second mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed, or assignment in lieu of foreclosure shall extinguish any lien of an assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

**8.5 INTEREST, EXPENSES, AND ATTORNEY'S FEES.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the date the assessment becomes delinquent until paid at the rate of eighteen percent (18%) per annum. In addition, a late fee may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Trustees of the Association. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Trustees of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report and any and all attorney fees.

**8.6 NONEXCLUSIVENESS AND ACCUMULATION OF REMEDIES.** An election by the Association to pursue any remedy provided for in violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for

injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

**ARTICLE 9  
MORTGAGEES**

**9.1 REIMBURSEMENT OF FIRST MORTGAGEES.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

**ARTICLE 10  
INSURANCE**

**10.1 TYPES OF INSURANCE.** For the benefit of the Association and its members, the Board of Trustees shall obtain and maintain at all times, and shall pay for out of the Operations Fund, such insurance as the Board of Trustees may determine to be advisable for the Association, including but not limited to: Common Area property insurance, liability insurance, fidelity insurance, and workmen's compensation.

**10.2 TRUSTEES AND OFFICERS LIABILITY INSURANCE.** The Association shall maintain a policy of Trustees' and Officers' liability insurance with coverage in the amount of not less than One Million Dollars (\$1,000,000), subject to a reasonable deductible.

**10.3 INSURANCE BY LOT OWNERS.** Each Lot Owner shall be responsible for obtaining, at such Lot Owner's expense, insurance against his or her liability, and property insurance covering his or her Lot and its Improvements.

**ARTICLE 11  
MISCELLANEOUS PROVISIONS**

**11.1 AMENDMENT AND REPEAL.** This Declaration or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners holding not less than sixty-seven percent (67%) of the voting rights in the Association. Any such amendment or repeal shall become effective only upon the recordation, in the Davis County Recorder's Office, of a certificate of the President or Secretary of the Association setting forth in full the amendment, amendments, or repeal so approved and certifying that said amendment, amendments, or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section change the boundaries of any Lot unless the Owners of the affected Lots unanimously consent to the amendment.

**11.2 JOINT OWNERS.** In any case in which two (2) or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one (1) or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

**11.3 LESSEES AND OTHER INVITEES.** Lessees, invitees, contractors, family members, and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvements, or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner him/herself.

**11.4 NONWAIVER.** Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**11.5 GOVERNING DOCUMENT CONFLICTS.** If this Declaration conflicts in any way with the Association's Bylaws, Articles of Incorporation, or any rules and regulations, this Declaration shall govern.

**11.6 CONSTRUCTION; SEVERABILITY; NUMBER; CAPTIONS.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**IN WITNESS WHEREOF,** the Association adopted this Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions for Old Mill Village Homeowners Association with the necessary approval of the Lot owners as required herein, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, to be recorded against all Lots and Open Spaces as stated in Exhibit "A" hereto.

**OLD MILL VILLAGE HOMEOWNERS ASSOCIATION, INC.**

BY: *Tanner Tyson*  
TITLE: *President*

STATE OF UTAH                    )  
  ) SS:  
COUNTY OF DAVIS            )

On the 16 day of Aug, 2014, who by me being duly sworn, did say that he/she is the President of the Old Mill Village Homeowners Association, Inc. and that the foregoing instrument was properly ratified by at least 67% of the voting interests of the Association.

*Michelle Braithwaite*  
Notary Public





**EXHIBIT A**  
to  
**First Amended and Restated**  
**Declaration of Protective Covenants, Conditions and Restrictions for**  
**Old Mill Village Homeowners Association, Inc.**

Legal Descriptions and Tax ID Numbers for the Lots and Open Spaces within the Old Mill Village Subdivision, Phases 1A, 1B, 2A, and 2B:

**Phase 1A**

All of Lots 1—39, 103—123, Old Mill Village Phase 1A, Cluster Subdivision,  
Tax ID # 08-358-0001 – 0039; 08-358-0103 – 0123.

All of Open Spaces A, B and G, Old Mill Village Phase 1A, Cluster Subdivision,  
Tax ID # 08-358-0124 – 0126.

**Phase 1B**

All of Lots 40—102, 124—174, Old Mill Village Phase 1A, Cluster Subdivision,  
Tax ID # 08-367-0040 – 0102; 08-367-0124 – 0174.

All of Open Spaces B, C, D, E, F, H, I, J, K, Old Mill Village Phase 1B, Cluster Subdivision,  
Tax ID # 08-367-0175 – 0183.

**Phase 2A**

All of Lots 201—244, Old Mill Village Phase 2A, Cluster Subdivision,  
Tax ID # 08-409-0201 – 0244.

All of Open Spaces A and H, Old Mill Village Phase 2A, Cluster Subdivision,  
Tax ID # 08-409-0246 – 0247.

**Phase 2B**

All of Lots 245—289, Old Mill Village Phase 2B, Cluster Subdivision,  
Tax ID # 08-406-0245 – 0289.

All of Open Spaces C, D, E, F, G and H, Old Mill Village Phase 2B, Cluster Subdivision,  
Tax ID # 08-406-0290 – 0295.