

After recording please return to:

Olde Moyle Mound  
Homeowners Association, Inc.  
913 Quail Ridge  
Alpine, UT 84004

ENT 86831:2024 PG 1 of 12  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2024 Dec 10 02:38 PM FEE 40.00 BY AS  
RECORDED FOR Bennett Tueller Johnson and  
ELECTRONICALLY RECORDED

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FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
(with Homeowner's Association Bylaws)

affecting the real property known as

OLDE MOYLE MOUND SUBDIVISION

Alpine, Utah County, Utah

This First Amendment (this "**Amendment**") to Declaration of Covenants, Conditions, Restrictions and Reservation of Easements is made this 5TH day of December 2024 by Olde Moyle Mound Homeowners Association, Inc., a Utah nonprofit corporation (the "**Association**"), with reference to that certain Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Olde Moyle Mound Subdivision (the "**Declaration**"), dated December 22, 2014, and recorded in the Utah County Recorder's Office on January 5, 2015, as Entry No. 518:2015, which Declaration is applicable to the Olde Moyle Mound subdivision located in Utah County, Utah, the legal description of which is set forth on Exhibit A attached hereto (the "**Subdivision**"). Unless the context clearly indicates a different meaning or unless otherwise defined herein, capitalized terms used herein shall have the respective meanings given them in the Declaration.

RECITALS

A. The Change of Control Date has occurred and the Declarant Control Period under the Declaration has ended. As such, the Declarant no longer has unilateral power to amend the Declaration.

B. Pursuant to Section 14.06(b) of the Declaration, the Declaration may be amended upon receiving the affirmative vote or written consent of Members holding not less than sixty percent (60%) of all outstanding Member votes (unless the proposed amendment constitutes a Material Amendment, which would require a higher Member vote threshold and the consent of certain eligible Mortgagees).

C. The Board has determined that the contents of this Amendment do not meet the criteria of a Material Amendment.

D. Effective as of December 5, 2024, not less sixty percent (60%) of

Members within the Subdivision approved the adoption of this Amendment in the manner required under the Declaration, and the Association now desires to execute this Amendment and cause this Amendment to be recorded in the office of the Utah County Recorder to cause the Amendment to become effective.

#### AMENDMENT

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Section 3.03 of the Declaration is hereby amended and restated in its entirety to read as follows:

**3.03 Operation and Maintenance.** The Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Elements. Without limiting the foregoing, the Association shall as needed operate, manage, regulate, maintain, repair and replace any surface, subsurface, or above-surface Common Elements, including trails or other Common Elements situated on or crossing any portion of the Project or which is the subject of an easement or license in favor of Declarant and/or the Association over property that is not a part of the underlying Property within the Project but for such easement or license. Furthermore, to the extent not performed by the City, the Association shall maintain in an attractive condition the island within the roundabout in the central area of the Project (such island being identified on the Plat as Lot 105) and the fences and planter strips located between the Lots and adjacent roadways regardless of whether such areas are part of the Property or are comprised of real property that has been dedicated to the City. Owners of Lots adjacent to Common Elements may request the Association's permission to modify the landscaping on Common Elements adjacent to the Owner's Lot. If the Association approves an Owner's request to modify the landscaping as provided for in this Section 3.03, then thereafter it shall be that Owner's obligation to maintain such landscaping in good and sightly condition. For owners of Lots adjacent to Common Elements, the HOA permits the Owner to have fencing that borders the pathway adjacent to their lot.

2. Section 3.13 of the Declaration is hereby amended to add the following as Section 3.13(c):

(c) Each Owner shall be liable to the Association for any damage to any portion of the Common Elements caused by the negligence or willful misconduct of the Owner or such Owner's Guest. Nothing in this paragraph shall be interpreted or construed to limit the Association's right to levy a Specific Assessment against any Lot under Section 13.05 of the Declaration or the obligation of the Owner of such Lot to pay any such Specific Assessment.

3. Section 4.02(a) of the Declaration is hereby amended and restated in its entirety as follows:

(a) **Easements for Benefit of Association.** Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a

nonexclusive, perpetual easement over, upon, across, above, under and through the Property and each portion thereof to exercise any right held by or obligation imposed upon the Association under this Declaration or any other Association documents. Notwithstanding the foregoing, the Association shall not enter upon any Lot without reasonable prior notice to the Owner of the Lot, except in cases of emergency.

4. The Association acknowledges that Declarant reserved the right under Section 4.06 of the Declaration (as originally recorded) to build, use, and exclusively control a tennis court in the area of the northwest corner of Lot 104 of the Subdivision (the "***Tennis Court***"). By separate instrument, Declarant has assigned all rights of Declarant under Section 4.06 and the Tennis Court to the Association. Section 4.06 is hereby deleted from the Declaration and shall have no further force or effect, and the Tennis Court and all Improvements created or existing for the purpose of accessing the Tennis Court shall hereafter be managed and maintained by the Association as part of the Common Elements.
5. Also in connection with the Tennis Court, under Section 4.01(a)(v) of the Declaration Declarant reserved an easement to construct, maintain, repair, access, and use the Tennis Court, which easement rights have been assigned to the Association by separate instrument. Subsection (v) is hereby deleted from Section 4.01(a) and shall have no further force or effect. Hereafter, the Association's easement rights set forth in Section 4.02(b) of the Declaration shall include the rights to maintain, repair, replace, access, and use (by the Association and the Members and their Guests) the walkway accessing the Tennis Court. The Association acknowledges that such walkway encroaches upon the northeast corner of Lot 7. The Association shall indemnify the Owner of Lot 7 for and shall hold such Owner harmless from any claims, damages, and liabilities suffered or incurred by such Owner as the result of such walkway encroaching upon Lot 7.
6. Section 5.03 of the Declaration is hereby amended and restated in its entirety as follows:

5.03        **Maintenance Obligations of Owners.** It shall be the duty of each Owner to abide by the provisions of the Declaration regarding Design Review Committee approval and the maintenance, repair and upkeep of the Owner's Lot and Unit in a neat, sanitary and attractive condition, including all landscaping.

7. Section 7.10 of the Declaration is hereby amended and restated in its entirety to read as follows:

7.10        **No Unsightliness.** No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing: (a) any unsightly structures, facilities, equipment, tools, boats and vehicles other than operating automobiles shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs; (b) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on the Property; (c) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall

be kept within a garage or other enclosed structure or appropriately screened from view, except for a reasonable amount of time (not to exceed 24 hours) that such container is placed at the edge of the road for pickup; (d) hanging, drying or airing of clothing or household fabrics shall not be permitted on Lots or Units if visible from buildings, Lots, Units, or areas surrounding the Property; (e) no basketball backboard or other fixed or portable sports or recreational apparatus, including without limitation swings, trampolines, slides, and other play apparatus, shall be constructed without prior Association approval, and then only if such apparatus is located on the Owner's Lot and shielded from view.

8. The following paragraph is hereby added to Article 7 of the Declaration as Section 7.22:

7.22        **Short-Term Rentals.** No Owner shall use a Unit, other Improvement, or any other portion of a Lot for purposes of Short-Term Rentals. For purposes of this section, the term "**Short-Term Rentals**" means temporary lodging or place of stay that is rented for a period of thirty (30) consecutive days or less.

9. Section 12.01(e) of the Declaration is hereby deleted from the Declaration and shall have no further force or effect.
10. The Association acknowledges that page 38 of the Declaration, containing a portion of Article 14 of the Declaration, is missing from the copy of the Declaration that was recorded in the Utah County Recorder's Office. To correct such omission, the entirety of Article 14 of the Declaration is set forth as follows:

## ARTICLE 14

### GENERAL PROVISIONS

14.01        **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, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association, including any service of process related to the Project, may be given by delivering or mailing the same to any officer or Director of the Association or to the Association's Registered Agent as reflected in the Association's records at the Utah Department of Commerce, Division of Corporations and Commercial Code. Any notice required or permitted to be given to the Design Review Committee may be given by delivering or mailing the same to the Association or any member of the Design Review Committee.

14.02        **Successors and Assigns.** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, each Owner, and their respective heirs, personal representatives, successors and assigns.

14.03 **Limited Liability.** Neither Declarant, the Association, the Board, the Design Review Committee nor any member, agent or employee of any of the same shall be liable to any party for any injury, damage, loss, cost or expense suffered by reason of any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without notice.

14.04 **Duration of Declaration.** All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until January 1, 2050, provided, however, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by the Owners of not less than seventy-five percent (75%) of the Lots and by first Mortgagees then holding Mortgages on not less than sixty-seven percent (67%) of the Lots subject to Mortgages, said provisions, covenants, conditions and restrictions shall continue automatically for an additional five (5) years and thereafter for successive periods of five (5) years each unless, at least one year prior to expiration of any such extended period of duration, this Declaration is terminated by an instrument recorded in the Public Records directing termination signed by the Owners of not less than seventy-five percent (75%) of the Lots and by first Mortgagees then holding Mortgages on not less than sixty-seven percent (67%) of the Lots subject to Mortgages.

14.05 **Use of Funds Collected by the Association.** All funds collected by the Association, including assessments and reserves paid by Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for not-for-profit purposes of the Association in managing, maintaining, caring for, preserving and architecturally controlling the Property and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Member (other than as a result of the Association's managing, maintaining, caring for, preserving and architecturally controlling the Property and other than as a result of expenditures made for other permitted purposes set forth in this Declaration).

14.06 **Amendment.**

(a) Except for any amendment that constitutes a Material Amendment, Declarant may unilaterally amend this Declaration at any time until the Change of Control Date. Consent of the Members of the Association shall not be required for any amendment that does not constitute a Material Amendment until after the Change of Control Date.

(b) Subsequent to the Change of Control Date, this Declaration and amendments thereto may be amended by the affirmative vote or written consent of not less than sixty percent (60%) of all outstanding Member votes; provided that any amendment to this Declaration that constitutes a Material Amendment must be adopted pursuant to Section 14.06(c).

(c) Any amendment to the Articles or this Declaration that constitutes a Material Amendment must be approved by the affirmative vote or written consent of Members holding not less than sixty-seven percent (67%) of all outstanding Member votes and by eligible Mortgagees then holding Mortgages on not less than fifty-one percent (51%) of the Lots subject to Mortgages held by eligible Mortgagees.

(d) An amendment or revocation that only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded in the Public Records. An amendment that requires the affirmative vote or written consent of the Members and/or Mortgagees shall be effective when executed by the President and Secretary of the Association (who shall certify that the amendment has been so approved) and recorded in the Public Records.

(e) Notwithstanding the foregoing, any provision of the Articles, the Bylaws, or this Declaration, which expressly requires the approval of a specified percentage or specified percentages of the voting power of the Association or first Mortgagees for action to be taken under said provision, can be amended only with the affirmative vote or written consent of not less than the same percentage or percentages of the voting power of the Association and/or first Mortgagees. Any amendment subject to this provision shall be effective after the specified approval has been given and that fact has been certified in a writing executed by the President and the Secretary of the Association.

(f) In the event of any proposed amendment that must receive a certain vote of Mortgagees (including without limitation eligible Mortgagees and first Mortgagees), a Mortgagee shall be deemed to have consented to such proposed amendment if such Mortgagee fails to submit a response to any written proposal for such amendment within thirty (30) days after such Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, "return receipt" requested.

**14.07 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 outstanding in the Association or 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 then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.07:

(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; and

(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.

No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant, (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.08 **No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project or the Property to the public, or for any public use.

14.09 **Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in any Lot in the Project shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained, referred to or incorporated herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Lot.

14.10 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project and the proper maintenance of the Common Elements. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation and construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. The term "person" shall refer to a person or entity. The terms "recorded and recordation" shall refer to recording in the Public Records. The word "shall" is deemed to be imperative and the word "may" is deemed to be permissive. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

14.11 **Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Declaration.

14.12 **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.

14.13 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Elements or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Elements. In the event of any other taking, condemnation, destruction, liquidation, or termination of the Project, the interests of the Association, the Owners and Mortgagees shall be as they may appear. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs shall receive the affirmative vote or written consent by Members who represent at least sixty-seven percent (67%) of all outstanding Member votes and by eligible Mortgagees then holding Mortgages on not less than fifty-one percent (51%) of the Lots subject to Mortgages held by eligible Mortgagees. All proceeds from a settlement related to a condemnation of all or part of the Project shall be payable to the Association for the benefit of the Members and the Mortgagees. Distributions of such settlement funds shall be allocated among the Members whose Lots are affected by such condemnation in accordance with the relative values of such Lots and shall take into account the Owners' respective beneficial interest in the Common Elements.

14.14 **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 shall comply with, and all interests in all Lots or in the Common Elements shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration.

14.15 **Effective Date.** This Declaration and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

14.16 **Appointment of Trustee.** Barry N. Johnson shall be appointed as trustee pursuant to Utah Code Ann. § 57-8a-212(1)(j). Declarant hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-402 to Barry N. Johnson, with power of sale, the Property and all Improvements to the Property for the purpose of security payment of assessments under the terms of this Declaration.

14.17 **Successor Trustee.** Upon a vote of a majority of the Owners, the Association, as beneficiary, may remove Barry N. Johnson as trustee. In the event of removal, resignation or death of Barry N. Johnson, the Association, by vote of a majority of the Owners, may appoint a substitute trustee that qualifies as a trustee under Utah Code Ann. 57-1-21(1)(a)(i) or (iv). Upon such substitution, the Association shall record a substitution of trustee that complies with the requirements of Utah Code Ann. 57-1-22, as

amended, and any other needed documents to effectuate such substitution in the Salt Lake County Recorder's Office. Upon the making of any such appointment and designation, all of the estate and title of trustee in the Property pursuant to Section 14.16 shall vest in the named successor or substitute trustee and such successor or substitute trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the trustee.

11. The Association and Members acknowledge and agree that, with respect to the requirements in Section 1 of Exhibit D to the Declaration, the second-story window located on the structure on Lot 3, as such window exists as of the date of this Amendment, has been approved by the Committee and shall not be deemed a breach of the Declaration.
12. Section 2(b) of Exhibit D to the Declaration is hereby amended and restated in its entirety to read as follows:

(b) **Roofing.** The roof of each Unit shall be covered with high-grade architectural-type asphalt roofing shingles or cedar shake shingles (in each case with a minimum 30-year guarantee); provided that metal roofing may be used on limited portions of the roof as approved by the Committee.

13. The Association and Members acknowledge and agree that, with respect to the roof pitch requirements in Section 3(b) of Exhibit D to the Declaration, the exception for the roof of the Unit located on Lot 1 as of the date of this Amendment has been approved by the Committee and shall not be deemed a breach of the Declaration.
14. Section 8(b) of Exhibit D to the Declaration is hereby amended and restated in its entirety to read as follows:

(b) **Maintenance and Weed Control.** All Owners shall endeavor to maintain landscaped portions of their Lots in a reasonable state of upkeep and orderliness so as not to detract from the appearance of the subdivision. Also, portions of any Lot not yet landscaped shall be maintained so as to avoid unsightly infestation with weeds; such weed growths shall also be controlled as they may constitute a fire hazard during certain seasons of the year.

15. The Association and Members acknowledge and agree that, with respect to the fencing requirements in Section 9 of Exhibit D to the Declaration, the fences located on Lot 1, Lot 4, Lot 6, Lot 7, Lot 8, and Lot 9 as such fences exist as of the date of this Amendment, have been approved by the Committee and shall not be deemed a breach of the Declaration.
16. The Association and Members acknowledge that the driveway connecting the Unit on Lot 1 to Quail Hollow Drive crosses land held by the Association. The existence and location of such driveway over such area of the Common Elements is approved, and the Owner of Lot 1 and such Owner's Guests shall have the perpetual right to use, maintain, repair, and replace such driveway. The materials requirements applicable to driveways in Section 10 of Exhibit D shall apply to such driveway in the same manner as they apply to all other driveways in the Subdivision.

17. Except as modified by this Amendment, the Declaration shall remain in full force and effect and shall be interpreted in a manner consistent with this Amendment. In the event of any conflict between the provisions of the Declaration and the provisions of this Amendment, the provisions of this Amendment shall control.
18. The President and Secretary of the Association each hereby certifies that this Amendment has been approved by not less than sixty percent (60%) of Members.

***[Remainder of page intentionally left blank. Signature page follows immediately.]***

IN WITNESS WHEREOF, the Association has caused this Amendment to be executed as of the date first set forth above.

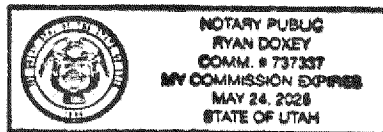
OLDE MOYLE MOUND  
HOMEOWNERS ASSOCIATION, INC.

By: R. Dauter  
Name: ROBERT DAUTER, LLC  
Title: President

By: Sigurd Espetun  
Name: Børge P. Espetun  
Title: Secretary

STATE OF UTAH       )  
                                  )ss.  
COUNTY OF UTAH )

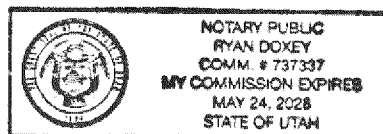
The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2024 by Robert Darren Lee, the President of Olde Moyle Mound Homeowners Association, Inc., a Utah non-profit corporation.



Notary Public

STATE OF UTAH       )  
                                  )ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2024 by Bryan Pulliam Carpenter, the Secretary of Olde Moyle Mound Homeowners Association, Inc., a Utah non-profit corporation.



Notary Public

**EXHIBIT A****LEGAL DESCRIPTION OF THE PROPERTY**

Commencing at the southwest corner of Lot 2, Plat E, McNiel Subdivision (said point being located S 0°15'16" E 575.503' along the section line and West 1573.058' from the Northeast Corner of Section 19, T4S, R2E SLB&M); thence S 20°27'52" E 91.475' thence along the east boundary of Quail Hollow Drive as follows:

Along the arc of a 150.00' radius curve to the left 182.044' (chord bears S 34°46'04" W 171.076'), South 171.78', along the arc of a 300.00' radius curve to the right 45.821' (chord bears S 4°22'32" W 45.776'), S 8°45'04" W 15.134' to the boundary of Moyle Estates Subdivision; thence along said Moyle Estates Subdivision as follows: West 54.636', S 8°54'04" W 138.75' along the west boundary of Quail Hollow Drive; thence along Oak Knoll Subdivision boundaries as follows: N 86°41'35" W 547.486', N 84°51'09" W 126.622', N 22°28'21" E 639.40' to the subdivision boundary of Plat A, Shadow Mountain Estates; thence along said Shadow Mountain Estates subdivision as follows: S 85°25'38" E 238.036', S 86°46'15" E 338.66' to the point of beginning.

Area = 8.8145 acres