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Leann H. Kilts, WEBER COUNTY RECORDER  
19-Oct-18 0204 PM FEE \$89.00 DEP DA  
REC FOR: HELGESEN HOUTZ & JONES  
ELECTRONICALLY RECORDED

AMENDED

DECLARATION

THREE FOUNTAINS

NORTH OGDEN

CONDOMINIUMS

**OCTOBER 2018**

**AMENDED DECLARATION**  
**THREE FOUNTAINS**  
**NORTH OGDEN CONDOMINIUMS**  
(Smoke Free Community)

This Amended Declaration For Three Fountains North Ogden Condominiums (“Amended Declaration”) is made and executed by the Three Fountains North Ogden Condominiums (“Three Fountains”) management committee on behalf of the Three Fountain unit owners on the date shown below after being voted on and approved by the unit owners in accordance with the Governing Documents of Three Fountains.

**RECITALS**

- A. Three Fountains was created upon the recording of the “Declaration of Condominium of Three Fountains North Ogden” (“Enabling Declaration”) on or about July 19, 1973, as Entry No. 597546, in Book 1030, beginning on page 249, in the Office of the Weber County Recorder, along with the accompanying Record of Survey Maps.
- B. The Enabling Declaration has been amended by subsequent amendments voted on, adopted and recorded, which Enabling Declaration and subsequent amendments shall collectively be referred to herein as the “Governing Documents.”
- C. Three Fountains consists of 64 units and Common Areas created in accordance with plans and drawings set forth in the Record of Survey Maps.
- D. This Amended Declaration shall be binding against the real property described in Exhibit “A” attached hereto.
- E. This Amended Declaration shall replace, modify and/or add to certain provisions contained in the Governing Documents as set forth more fully below, having received the necessary votes of the Association's membership pursuant to the requirements of the Governing Documents.
- F. The intent of this Amended Declaration is to make Three Fountains a “smoke free” community by prohibiting smoking within the units and common area at Three Fountains.

NOW, THEREFORE, to accomplish the unit owners' objectives, this Amended Declaration is hereby adopted. It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Amended Declaration and its covenants, restrictions,

limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of Three Fountains and all unit owners, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above Recitals are hereby approved and accepted as being accurate and shall constitute part of this Amended Declaration.

**ARTICLE I  
SMOKE FREE COMMUNITY**

1.1 Three Fountains hereby adopts the following provisions setting forth the basis upon which Three Fountains shall be a smoke free community:

- a. The Utah Legislature has adopted findings by the federal Environmental Protection Agency (EPA) determining that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos; that there is no acceptable level of exposure to Class A carcinogens; and that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons; and furthermore, the Utah Legislature has found that environmental tobacco smoke generated in a rental or condominium Unit may drift into other units, exposing the occupants of those units to tobacco smoke, and that standard construction practices are not effective in preventing this drift of tobacco smoke (see Utah Code Ann. §78b-6-1105); and
- b. The Utah Legislature has defined as a public nuisance “tobacco smoke that drifts into any Residential unit a person rents, leases, or owns, from another Residential or commercial Unit,” which “is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property”( see Utah Code Ann. §78b-6-1101); and
- c. The Utah Legislature amended the Utah Condominium Association Act, Utah Code Ann. §57-8-16, granting the power to condominium associations to amend their rules or covenants to restrict the use of tobacco products within condominium associations; and
- d. The members of the Association desire to take affirmative steps to prevent tobacco smoke problems and to improve the quality of life for all Residents at Three Fountains; and
- e. Residents at Three Fountains who fall asleep while smoking creates a danger of fire within the smoker’s unit and adjoining units; and
- f. Allowing smoking in units, common area and near buildings increases the risk of fire, which risk may increase the cost of insurance; and

- 1.2 **Smoking Defined.** The term “smoke,” “smoking,” or “tobacco smoke” as used herein includes (i) the inhaling, exhaling, burning, handling, or carrying of any lighted cigarette, cigar or other tobacco product, marijuana, illegal substance, (ii) vaping, or (iii) any other substance or item that emits smoke or a smoke-like substance.
- 1.3 **Business Invitee Defined.** The term “business invitee” as used herein includes but is not limited to, any contractor, agent, household worker, or other person hired by Three Fountains, a unit owner, tenant or Resident to provide a service or product to Three Fountains, a unit owner, tenant, or Resident.
- 1.4 **No Smoking.** No unit owner, family member of a unit owner, tenant, lessee, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to herein as “Resident”) shall smoke inside any unit or the Three Fountains clubhouse, or within 25 feet of any unit, building or clubhouse within Three Fountains. This prohibition includes but is not limited to common area, enclosed common area, and units within the project and all porches, patios, decks and parking areas within Three Fountains.
- 1.5 **Enforcement.** In the event a unit owner, Resident, occupant, visitor or guest violates any provision of this Amended Declaration, any unit owner or Resident at Three Fountains may bring an action to enforce this Amended Declaration. The Board of Directors may bring an action to enforce this Amended Declaration, but shall not be required to do so unless it determines it is in the best interest of the Association to bring such an action. Each owner is responsible for the actions of all other persons residing within or visiting his/her unit and shall be subject to disciplinary action, fines, court action for an injunction, or any remedies available for the violation of this non-smoking restriction. If any Resident or if the Three Fountains Board of Directors hires legal counsel to enforce this non-smoking restriction, the Resident or Three Fountains shall be entitled to recover all attorney fees and costs incurred in connection with such enforcement, whether or not litigation has been commenced. Three Fountains may collect attorney fees and costs it incurs by any lawful means, including through the use of a special assessment levied against the owner of the unit or by placing a lien for the amount owed against the violating unit owner’s unit.
- 1.6 **Violation by Non Owners.** In the event any Resident, tenant, occupant, or a guest occupying or visiting Three Fountains violates the prohibition against smoking at Three Fountains, the Board or any Resident at Three Fountains may notify the owner of the offending Unit and the unit owner shall take prompt action to see that all immediately smoking ceases. If the Resident who violates this Amendment is not a unit owner, the unit owner shall evict the tenant if the tenant violates the provisions of this Amended Declaration after receiving one warning. If the unit owner fails to immediately and permanently cure the smoking violation within fifteen (15) days of receiving notice, the Board of Directors may, in behalf of the offended unit owner, file eviction proceeding against the violating Resident based on unlawful detainer resulting from the Residents’s violation of this Amended Declaration, which is deemed to be incorporated into each rental agreement. Both the tenant and the unit owner shall be named as defendants in the action and the Board shall be entitled to receive: i) an order requiring the tenant to vacate the premises, ii) damages, and iii)

recovery of its costs and attorney fees from the unit owner.

- 1.7 **Recovery.** The Board or any Resident who brings legal action against a Resident that violates this Amended Declaration shall be entitled to recover costs and attorney fees from the offending unit owner and/or Resident.
- 1.8 **Damages.** In the event a Resident suffers any damage to personal property due to a violation of any provision of this Amended Declaration, or should an owner's unit or the Three Fountains common area suffer damage due to a violation of any provision of this Amended Declaration, then the owner of the unit from which the violation originated, or if the violation did not originate from within a unit, the owner of the unit associated with the violator, shall be responsible for any and all damages caused by the violation of this Amended Declaration, except to the extent covered by the Association's insurance. Damages may include but shall not be limited to smoke damages to clothing, carpet, walls, paint, or other items of personal property affected by the smoke.
- 1.9 **Presumptions.** A Resident shall be presumed to be smoking in a unit if residents in adjoining units do not smoke and can smell smoke in their unit and (i) the Resident accused of smoking has been observed smoking in or about the premises, or (ii) the Resident has admitted to being a smoker. The burden of proof shall be on the Resident accused of smoking to prove that they have not smoked in their unit and that the smoke has come from another unit or source.
- 1.10 **Nuisance.** Nothing herein shall be construed to prevent any Resident of Three Fountains from bringing an action hereunder or under the laws of the State of Utah to seek an injunction or damages against any Resident who creates a nuisance through smoking or using tobacco in a unit or in the common area at Three Fountains, nor shall any provision hereof be construed as authorization from the Board or the Association for a Resident to smoke in a unit or in the common area in such a manner so as to create a nuisance.
- 1.11 **Disclosure.** Any owner who sells his unit shall specifically disclose to all potential buyers and real estate agents that smoking is prohibited within the project, including within the units. Any owner who rents or otherwise allows someone other than the owner to reside within or occupy the unit shall disclose to all persons who reside within his or her unit that smoking is prohibited within all units and common areas prior to their residency or occupancy.
- 1.12 **Fines.** The Board of Directors shall have the authority to assess a fine against any owner and/or Resident who violates this Amended Declaration. A fine shall be in the amount of \$50.00 for the first violation; \$100.00 for a second violation within one year; and \$250.00 for each and every violation thereafter within one year of the initial violation.
- 1.13 **Existing Units.** There are currently four (4) units within Three Fountains wherein Residents smoke. This Amended Declaration shall not restrict the Residents who are currently living in the four (4) units from smoking in their unit. However, if a complaint is received by the

Board from any unit owner complaining of a nuisance created by smoke from any unit, the Board or any unit owner may bring an action to prevent continued smoking in that unit. Nothing herein shall prevent the Board or the residents at Three Fountains from bringing an action under the provisions of the Utah Code abating or enjoining the nuisance created by the smoke. At such time as a unit wherein a smoker currently resides is sold or the resident moves from the unit, no smoking shall be allowed in that unit thereafter and this Amended Declaration shall be strictly adhered to by all unit owners. Those units who desire to be grandfathered under the provisions of this paragraph of this Amended Declaration must notify the Board in writing within 30 days of the date this Amended Declaration becomes effective, and the Board shall enter the address of all units exempted herein on the association's records.

- 1.14 **Severability.** If any provision of this Amended Declaration is determined to be invalid, the remaining provisions hereof shall remain in full force and effect and shall not be affected thereby.

This Amended Declaration shall take effect upon recordation in the office of the Weber County Recorder.

[Signatures on Next Page]

**CERTIFICATION**

It is hereby certified that the unit owners representing at least a two-thirds (2/3) vote of those in attendance at a duly called and constituted meeting of the unit owners have approved and consented to the amendments stated herein.

IN WITNESS WHEREOF this 19 day of October, 2018.

**THREE FOUNTAINS NORTH OGDEN CONDOMINIUMS**

By Sharon L. Eva  
President

STATE OF UTAH                    )  
  : ss.  
COUNTY OF WEBER            )

On the 19 day of October, 2018, personally appeared before me Sharon Eva, who being duly sworn, did say that she is the President of Three Fountains North Ogden Condominiums and that the within and foregoing instrument was signed on behalf of said entity, and acknowledged to me that she is the signer of the above instrument and the information contained therein is true and correct to the best of her knowledge.



Cindi Lamph  
Notary Public

COMM. EXP. 07/10/2021  
COMMISSION NO. 682883  
NOTARY PUBLIC - STATE OF UTAH  
CINDI LAMPH





**EXHIBIT "A"****Three Fountains North Ogden**  
Legal Description

Three Fountains North Ogden Condominium, Amended,  
North Ogden City, Weber County, Utah.

<b><u>Building</u></b>	<b><u>Unit</u></b>	<b><u>Tax I.D. #</u></b>
E-4	1-8	18-116-0001 thru 0008
E-5	9-16	18-116-0009 thru 0016
P-2	17-24	18-116-0017 thru 0024
E-8	81-88	18-116-0025 thru 0032
P-1	89-96	18-116-0033 thru 0040
E-1	97-104	18-116-0041 thru 0048
E-2	105-112	18-116-0049 thru 0055
E-3	113-120	18-116-0056 thru 0063