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RICHARDS LAW, PC  
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Salt Lake City, UT 84124

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Book - 10982 Pg - 5880-5883  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
RICHARDS LAW PC  
BY: eCASH, DEPUTY - EF 4 P.

**AMENDMENT TO THE  
SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OF  
AZTEC CONDOMINIUM PROJECT**

A. Certain real property in Salt Lake County, Utah, known as Aztec Condominium was subjected to certain covenants, conditions, and restrictions pursuant to a Second Amended and Restated Declaration of Condominium of Aztec Condominium Project recorded on June 20, 2014, as Entry Number 11869266, in the Recorder's Office for Salt Lake County, Utah ("Declaration"), and this Amendment shall be binding against all of the property described in the Declaration and any amendment, annexation or supplement thereto.

B. This Amendment shall be binding against the property described in the Declaration and as contained in **Exhibit A** attached hereto.

C. The Board of Trustees ("Board") of the Aztec Condominium Homeowners Association, Inc. (the "Association") is charged with protecting the livability, property values, and integrity of the development and the interests of the property owners;

D. Article III, Section 41 of the Declaration prohibits smoking or the use of tobacco products in the Common Areas and Facilities;

E. Due to second-hand smoke becoming a nuisance between Units, the Board of Trustees deems adopting an amendment restricting smoking or the use of tobacco products in the Units, as well as the Common Area and Facilities in the best interest of the Association;

F. Utah Code Ann. §57-8-8 provides that each unit owner shall reasonably comply with the covenants, conditions and restrictions as set forth in the declaration, the bylaws, rules and regulations;

G. Utah Code Ann. §57-8-16(7)(b) provides that that the Association may impose restrictions on and requirements respecting the use and maintenance of the units and the use of the common area to prevent unreasonable interferences with the use of their respective units and of the common areas and facilities by the several unit owners, which may include "prohibitions on ... smoking tobacco products ...."

H. Utah Code Ann. §78B-6-1 establishes that any tobacco smoke that drifts into a residential unit is a nuisance under the law;

I. Pursuant to Utah Code Ann. §78B-6-1105, the Utah Legislature has found that: “(a) the federal Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos; (b) the EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and (c) the EPA has determined that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons;”

J. Pursuant to Utah Code Ann. §78B-6-1105(2), the Utah Legislature finds that “environmental tobacco smoke generated in a ... condominium unit may drift into other units, exposing the occupants of this units to tobacco smoke, and that standard construction practices are not effective in preventing the drift of tobacco smoke;”

K. Accordingly, the owners find it in the best interests of the Association that smoking tobacco products, as well as any other combustible, smoked, inhaled or similar products be prohibited consistent with the terms of this Amendment;

L. Pursuant to Article VII of the Bylaws, the undersigned Chair hereby certifies that the vote of Owners of Units to which at least sixty five percent (65%) of the Ownership Interest has been obtained and have approved this Amendment to the Bylaws.

**NOW THEREFORE**, the Association hereby amends Article III, Section 41 is hereby deleted in its entirety and replaced as follows:

#### **41. Smoking Restrictions.**

Smoking is strictly prohibited within any Unit of the Aztec Condominiums, in any interior building, in any Limited Common Area or Common Area, or within twenty-five (25) feet of any building.

Without limiting the generality of the foregoing, this prohibition applies to the all the interior of all Units, including, without limitation, patios, balconies, garages, lobbies, hallways, walkways, landscaped areas, or twenty-five (25) feet of any building. The Board may, but is not required, to designate certain areas within the Property as smoking areas.

Smoking is defined to include carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco or nicotine, including, but not limited to, cigarettes, e-cigarettes, cigars, hookahs, or pipes and other legal or illegal substances. Each Owner is responsible for the compliance with this rule by the Owner and all residents within the Owner's Unit, and for all guests and invitees of such Owner.

Violation of this section by an Owner or any guest, resident, tenant, or occupant of a Unit shall subject the Owner of such Unit to a fine or injunctive relief (or both), which may be imposed at the discretion of the Board according to any existing schedule of fines, or in an amount commensurate to the violation or pursuant to any other legal remedies available under the law.

To the extent a lease is permitted, any Owner who leases his or her Unit shall expressly prohibit smoking in the lease agreement itself and shall inform their tenants of the Association's no smoking rule. Any Unit Owner who is currently leasing their Unit shall incorporate a no smoking provision into its lease agreement at the expiration of the current term of the existing agreement. If, as of the date of this Amendment, no agreement exists, the tenants are on a month-to-month tenancy, or the tenants are hold-over tenants, the Owner shall enter into an agreement with his/her tenants prohibiting smoking in the Unit effective immediately. Any Owner who leases his or her Unit shall be responsible to pay any and all fines levied against his or her Unit for violations of this section by the tenants in the Unit and shall be responsible for immediate abatement of any such nuisance(s).

Violators of this Amendment may be held responsible for any cost or fees of action taken to compel compliance, including, but not limited to attorney fees, should they be incurred.

This section does not abrogate or otherwise alter an Owner or occupant's rights under Utah Code Ann. §78B-6-1, including the right, if any, to bring a private civil action for nuisance against another owner or occupant.

IN WITNESS WHEREOF, AZTEC CONDOMINIUM HOMEOWNERS ASSOCIATION, INC. has executed this Amendment to the Declaration as of the 20<sup>th</sup> day of July, 2020, in accordance with Article VII of the Declaration.

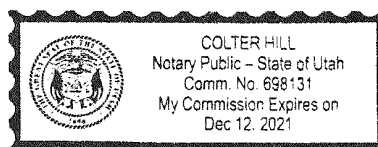
**AZTEC CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.**

Sign: [Signature]  
Print: RICHARD MAXFIELD  
Its: Chair

STATE OF UTAH )  
COUNTY OF Salt Lake ) :SS

On the 20<sup>th</sup> day of July, 2020, personally appeared before me Richard Maxfield, who being by me duly sworn did that say that they are the Chair of the Association and that said instrument was signed in behalf of said Association by authority of its Board of Trustees, and acknowledged said instrument to be their voluntary act and deed.

[Signature]  
Notary Public



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**EXHIBIT A**

Legal Description

All Units and Common Area, AZTEC CONDO AMD, according to the official plat thereof recorded in the records of the Salt Lake County Recorder.

Parcel Numbers: 16054510010000 through 16054510830000