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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
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DEP RTT REC'D FOR NEWPORT HEIGHTS
CONDO HOA

Amendment

to

Declaration of Condominium

of the

Newport Heights Condominiums

February 2017

Amendment to Declaration of Condominium of the Newport Heights Condominiums

This Amendment to Declaration of Condominium of the Newport Heights Condominiums ("2017 Amendment") is made and executed on the date shown below after being voted on and approved by the Owners in accordance with the governing documents of the Newport Heights Homeowners Association, a Utah nonprofit corporation (hereinafter "Association" or "Newport Heights").

RECITALS

- A. **Amendment to Previously Recorded Original Document.** This document modifies, relates to and refers to the previously recorded Declaration of Condominium of the Newport Heights Condominium Project ("Enabling Declaration") recorded July 18, 1986, at the Davis County Recorder's Office as Instrument No. 0744643, Book No. 1100, p. 725. In the event of a conflict of terms, this 2017 Amendment shall supersede the prior Enabling Declaration and shall be the controlling document.
- B. **Amendment Supersedes and Has Priority Over Previous Amendments.** This 2017 Amendment supersedes the previous Amendments to Declaration of Condominium, previously recorded as follows:
- i. Amendment to Declaration of Condominium recorded February 2, 1987, at the Davis County Recorder's Office as Instrument No. 0771265, in Book No. 1141, p. 977;
 - ii. Amendment to Declaration of Condominium recorded April 16, 1987, at the Davis County Recorder's Office as Instrument No. 0781774, Book No. 1159, p. 929;
 - iii. Third Amendment to Declaration of Condominium recorded August 21, 1987 at the Davis County Recorder's Office as Instrument No. 0799010, Book No. 1189, p. 611;
 - iv. Fourth Amendment to Declaration of Condominium recorded August 31, 1987, at the Davis County Recorder's Office as Instrument No. 0799900, Book No. 1190, p. 1066;
 - v. Fifth Amendment to Declaration of Condominium recorded October 19, 1988, at the Davis County Recorder's Office as Instrument No. 839710, Book No. 1261, p. 377, 378 & 379;
 - vi. Sixth Amendment to Declaration of Condominium recorded August 18, 1989, at the Davis County Recorder's Office as Instrument No. 866741, Book No. 1308, p. 381; and

- vii. Seventh Amendment to Declaration of Condominium recorded August 6, 1990, at the Davis County Recorder's Office as Instrument No. 898491, Book No. 1364, p. 496.

WHEREAS, the Property that is the subject of this Restated Declaration is situated in and upon that certain real property located in Davis County, State of Utah, as specifically described in Exhibit "A," attached hereto and incorporated herein by this reference, and including the common area that is appurtenant to each Lot as shown on the plat maps for Newport Heights, as recorded in the office of the County Recorder for Davis County, State of Utah. There are 22 Lots at Newport Heights; and

WHEREAS, Newport Heights Homeowners desire to amend the Enabling Declaration and all subsequent amendments to the Enabling Declaration for the purpose of adding additional provisions to govern the affairs of the Association:

NOW, THEREFORE, to accomplish the Owners' objectives, this 2017 Declaration is hereby adopted and the Newport Heights Enabling Declaration and Governing Documents are hereby amended and restated as follows. When used in this 2017 Amendment (including that portion hereof headed "Recitals"), the terms used shall have the meaning set forth in Article I of the Enabling Declaration unless the context clearly indicates otherwise.

Amendments

ARTICLE 1

BUSINESS ACTIVITY

Article 6.09 of the Enabling Declaration is hereby repealed and replaced in its entirety by the following Article, which shall be referred to as Article 6.09:

- 1.1 **No Businesses.** Inasmuch as Newport Heights Condominium is a residential community where neighbors live in close proximity to each other, no business of any kind whatsoever shall be established, conducted, permitted, operated, or maintained at or within Newport Heights unless it complies with all federal, state and municipal laws, ordinances and licensing requirements, as well as complying with the Newport Heights Declaration, Bylaws, rules and regulations. The following general requirements for home occupation businesses in Newport Heights must be met:

(a) Customers, patrons, guests, clients or individuals may come to Units for business activity on a very limited scale.;

(b) No items or products may be sold or picked up by customers at the Unit or delivered from the Unit directly to customer;

(c) Only services that are done mostly on the telephone and computer, such as

consulting, tax preparation, computer or Internet businesses, may be engaged in at the Unit as limited by city ordinance;

(d) Any vehicles used in the business must comply with the Association parking rules;

(e) No business activities may be conducted outside a Unit, including but not limited to home deliveries or customer visits, between the hours of 8:00 p.m. and 8:00 a.m.; and

(f) There shall be no garage or estate sales allowed in the community without prior approval from the Board.

ARTICLE 2

NO SMOKING PERMITTED WITHIN ASSOCIATION

The following Article shall be added as an amendment to the Enabling Declaration and shall be referred to as Article 6.12.

WHEREAS, 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);

WHEREAS, 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 and the smoke 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);

WHEREAS, the Utah Legislature amended the Utah Condominium Association Act, Utah Code Ann. §57-8-16, granting the power to condominium association Unit owners to amend their rules or covenants to restrict the use of tobacco products in condominium associations;

WHEREAS, 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 Newport Heights;

WHEREAS, a resident at Newport Heights who might fall asleep while smoking creates a danger of fire within the smoker's Unit and adjoining Units;

WHEREAS, allowing smoking in Units, common areas and near buildings increases the risk of fire, which risk may increase the cost of insurance; and

WHEREAS, tobacco smoke spreads through walls to other Units and can cause SIDS in babies while exacerbating allergies and other respiratory problems in the Residents of Newport Heights:

NOW, THEREFORE, the Association does hereby adopt this prohibition preventing smoking within the Association property.

- 2.1 **Smoking Defined.** The term "smoke," "smoking" or "tobacco smoke" as used herein includes the inhaling, exhaling, burning or carrying of any lighted cigarette, cigar or other tobacco product, electronic cigarette, marijuana, illegal substance or any other substance or item that emits smoke or a smoke-like substance.
- 2.2 **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 the Association, a Unit Owner, tenant or Resident to provide a service or product to the Association, Unit Owner, tenant or Resident.
- 2.3 **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 as "Resident") shall smoke cigarettes, cigars or any other tobacco product, electronic cigarette, marijuana, illegal substance or any other substance that emits smoke, inside any Unit or anywhere within the boundaries of the Newport Heights Condominium Association Project or complex. This prohibition shall include but not be limited to common areas, enclosed common areas, and Units within the project and all porches, patios, decks and parking areas at Newport Heights Condominium Association.
- 2.4 **Enforcement.** In the event a Unit Owner, Resident, occupant or guest occupying a Unit violates the provisions of this Rule, any Unit Owner or Resident at Newport Heights may bring an action to enforce this Rule. The Board of Directors may bring an action to enforce this Rule, 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 nonsmoking restriction. If any Resident, or if the Association, is required to hire legal counsel to enforce this non-smoking restriction, the Resident or the Association shall be entitled to recover all attorney fees and costs incurred in connection with such enforcement, whether or not litigation has been commenced. The Association may collect the 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 through a lien.

- 2.5 **Violation by Nonowners.** In the event any Resident, tenant, occupant or a guest occupying or visiting Newport Heights violates the prohibition against smoking at Newport Heights, the Board or any Resident at Newport Heights may notify the Unit Owner of the offending Unit and the Unit Owner shall take prompt action to see that all 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 Rule after receiving one warning. If the Unit Owner fails to 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 Resident's violation of this Rule, 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: (a) an order requiring the tenant to vacate the premises, (b) damages, and (c) recovery of its costs and attorney fees from the Unit Owner.
- 2.6 **Fines.** The Board of Directors shall have the authority to assess a fine against any owner and/or Resident who violates this Rule. 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 a third violation within one year.
- 2.7 **Recovery.** The Board or any Resident who brings legal action against a Resident that violates this Rule shall be entitled to recover costs and attorney fees from the offending Unit Owner and/or Resident.
- 2.8 **Damages.** In the event that a Resident suffers any damage to personal property due to a violation of any provision of this Rule, or should a Unit Owner's Unit or the Association's common area suffer damage due to a violation of any provision of this Rule, 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 in any way associated with the violator, shall be responsible for any and all damages caused by the violation of this Restated Declaration, except to the extent covered by the Association's insurance. Damages may include but shall not be limited to smoke damage to clothing, carpet, walls, paint or other items of personal property affected by the smoke.
- 2.9 **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 (a) the Resident accused of smoking has been observed smoking in or about the premises, or (b) 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.
- 2.10 **Nuisance.** Nothing herein shall be construed to prevent any Resident of Newport Heights 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 Newport Heights, 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.

- 2.11 **Disclosure.** Any owner who sells his or her Unit shall specifically disclose to all potential buyers and real estate agents that smoking is prohibited everywhere 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.

ARTICLE 3

ANNUAL MEETING OF OWNERS

Paragraph 3.01 of the Newport Heights Bylaws is hereby repealed and replaced in its entirety by the following paragraph, which shall be referred to as paragraph 3.01 of the Bylaws:

- 3.1 **Annual Meeting.** The regular annual meeting of the Members shall be held during the last quarter of each year (October, November or December), or on such date as determined by the Board. The time of the annual meeting shall be set by the Board. The purpose of the meeting will be to elect Members to the Board of Directors of the corporation and to conduct other Association business, including, but not limited to, presenting the annual budget to the membership and informing Members of any Annual Assessment for the coming year. (This provision replaces the requirement set forth in paragraph 9.02 (d) of the Enabling Declaration.)

ARTICLE 4

ELECTRONIC NOTIFICATION

This paragraph is added to the Newport Heights Bylaws as a supplement to the existing provisions.

- 4.1 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered to the Owners by the Board or by the Association may be delivered either personally, by U.S. mail, or by electronic means.

(a) **U.S. Mail.** If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Lot of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board of Directors.

(b) **Electronic.** If notice is by electronic means, any notice delivered to Owners by the Association under the provisions of the Declaration or these Bylaws may be sent by

electronic means, including text message, email or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well-known electronic forms, such as Facebook), and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A Member may, by written demand, require the Association to provide notice to the Unit owner by mail.

(c) **Personal.** If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Unit, or by securely attaching a copy of the notice to the front entry door of the Owner's Unit.

[Signatures on Following Page]

Effective Date This Amended Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.

CERTIFICATION

It is hereby certified that Owners holding at least two-thirds (67%) of the total votes of the Association have consented, agreed and voted to approve this 2017 Amendment.

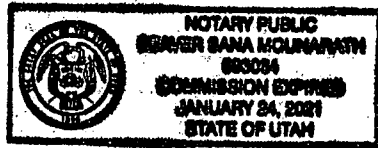
IN WITNESS WHEREOF, this 16 day of February, 2017.

NEWPORT HEIGHTS HOMEOWNERS ASSOCIATION

By Jason E Burger
(President)

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On this 16 day of February, 2017, personally appeared before me Jason Burger who, being by me duly sworn, did say that (s)he is President of the Newport Heights Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association and (s)he duly acknowledged to me (s)he executed the same.



Debra Sana Mounarath
Notary Public

EXHIBIT "A"

Legal Description of Lots

All Lots within Newport Heights Condominium, Bountiful City, Davis County, Utah

| Unit No. | Tax ID | Phase |
|----------|------------------------|-----------|
| 1 | 01-155-0001 | 1 |
| 2 | 01-155-0002 | 1 |
| 3 | 01-155-0003 | 1 |
| 4 | 01-155-0004 | 1 |
| 5 | 01-155-0005 | 1 |
| 6 | 01-155-0006 | 1 |
| 7 | 01-155-0007 | 1 |
| 8 | 01-155-0008 | 1 |
| 9 | 01-159-0009 | 2 Amended |
| 10 | 01-159-0010 | 2 Amended |
| 11 | 01-159-0011 | 2 Amended |
| 12 | 01-159-0012 | 2 Amended |
| 15 | 01-159-0015 | 2 Amended |
| 16 | 01-159-0016 | 2 Amended |
| 17 | 01-159-0017 | 2 Amended |
| 18 | 01-159-0018 | 2 Amended |
| 19 | 01-166-0019 | 3 |
| 20 | 01-166-0020 | 3 |
| 21 | 01-169-0021 | 4 |
| 22 | 01-169-0022 | 4 |
| 23 | 01-171-0023 | 5 |
| 24 | 01-171-0024 | 5 |
| 25 | 01-217-0025 | 6 |
| 26 | 01-217-0026 | 6 |
| 27 | 01-217-0027 | 6 |

01-021-0077

Parcel Vesting Information

08/28/1995 to Present

3008918

Serial Number: 01-021-0077

BK 6724 PG 1738-A

Mailing Address: 3773 CARDIFF WY

BOUNTIFUL, UT 84010

Tax District

1

Location

Location: 1 N 1 E 6 SE

Vested Owners

CARROLL, MELVIN L -- TR

CARROLL, BARBARA M -- TR

CARROLL FAMILY TRUST 01/19/2006

Vesting Documents

| Entry Number | Recorded Date & Time | KOI | Party | Execution Date | Fee |
|--------------|-------------------------|-----------------|---|-------------------|---------|
| 2140043 | 01/25/2006 08:35 | QUIT CLAIM DEED | Grantee CARROLL, MELVIN L TR CARROLL FAMILY TRUST 01/19/2006 CARROLL, BARBARA M TR | 01/19/2006 | \$12.00 |
| 2092241 | 07/28/2005 15:34 | WARRANTY DEED | Grantee CARROLL, BARBARA M CARROLL, MELVIN L | 07/27/2005 | \$12.00 |

Legal Description

BEG AT THE NE COR OF NEWPORT HEIGHTS CONDO PH 3, WH PT IS S 0°08'42" E 249.72 FT & W 1,223.82 FT FROM THE E 1/4 COR OF SEC 6-T1N-R1E, SLM; & RUN TH S 89°34'23" W 87.97 FT ALG THE N LINE OF SD NEWPORT HEIGHTS CONDO PH 3 TO NW COR OF SD NEWPORT HEIGHTS CONDO PH 3; TH N 0°25'37" W 117.23 FT ALG THE E BNDRY OF LOT 3 HALE OAKS SUB TO THE W COR OF AMD NEWPORT HEIGHTS CONDO PH 2; TH ALG THE BNDRY OF SD AMD NEWPORT HEIGHTS CONDO PH 2 IN THE FOLLOWING 5 COURSES TO THE POB: S 85°34'40" E 5.00 FT, SE'LY 62.57 FT ALG THE ARC OF A 30.00 FT RADIUS CURVE TO THE LEFT THRU A CENTRAL ANGLE OF 119°30'08" (RAD PT BEARS S 85°34'40" E FROM THE BEG OF THE CURVE), E'LY 13.70 FT ALG THE ARC OF A 15.00 FT RAD CURVE TO THE RIGHT THRU A CENTRAL ANGLE OF 52°19'48" (RAD PT BEARS S 25°04'48" E FROM THE BEG OF THE CURVE), SE'LY 33.55 FT ALG THE ARC OF 8°58'21" RAD CURVE TO THE LEFT THRU A CENTRAL ANGLE OF 8°58'21" (RAD PT BEARS N 27°15'00" E FROM THE BEG OF THE CURVE), S 2°15'58" W 73.55 FT. CONT. 0.17 ACRES