

## **AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR FOX HILL SUBDIVISION**

The undersigned record owners of lots in the subdivision known as Fox Hill, County of Boulder, State of Colorado, constituting a majority of the record owners of the 97 lots located in Fox Hill, excluding Outlot "A", and as permitted by paragraph 4 of the Declaration of Protective Covenants for Fox Hill, recorded with the Boulder County Clerk and Recorded on November 2, 1973, at Reception No. 085487 on Film No. 836, hereby agree to amend and restate said Protective Covenants, stating as follows:

### **RECITALS:**

A. On November 2, 1973, Paul G. Skrbina, as the owner of the lots situated in Fox Hill Subdivision (herein, "Subdivision"), adopted and charged all lots in said subdivision, excluding Outlot "A", with certain protective covenants, recorded at Reception No. 085487 on Film No. 836 (herein, "Original Protective Covenants").

B. The Subdivision is legally described as follows:

FOX HILL, excluding Outlot "A", a Subdivision of a part of the West ½ of Section 1, Township 2 North, Range 69 West of the 6<sup>th</sup> P.M., City of Longmont, County of Boulder, State of Colorado.

C. On November 18, 1983, the Longmont Fox Hill Homeowners' Association, Inc., was incorporated (herein, "Association"). The Association is governed by an elected Board of Directors (herein, "Board").

D. On May 11, 1984, a majority of the lot owners amended paragraph 16 of the Original Protective Covenants, recorded at Reception No. 00620299.

E. On April 4, 1994, a majority of the lot owners amended paragraph 2 of the Original Protective Covenants, recorded at Reception No. 01411759.

F. These amended and restated covenants are intended to ensure the attractiveness of the individual lots and facilities developed, installed and constructed within the Subdivision; to preserve, protect and enhance the values and amenities of the properties within the Subdivision; and to recognize, encourage and promote improvements and additions of advanced technological, architectural and engineering design.

### **I. THE ASSOCIATION**

1.0 Membership. Every person who is a record owner of a fee interest of any lot within the Subdivision is a member of the Association. Membership in the Association is appurtenant to and may not be separated from ownership of a lot. Ownership of a lot shall be the sole

qualification for such membership. Each lot shall be entitled to cast one vote. Fractional and cumulative voting are prohibited.

1.1 Authority of Association. The Association shall have all powers and rights necessary or desirable to effectuate the purposes of these Protective Covenants, including powers and rights conferred by the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101 *et seq.*, and the Colorado Revised Nonprofit Corporation Act, C.R.S. Sections 7-121-101, *et seq.*, as the same may be amended from time to time.

## II. COVENANTS CONCERNING STRUCTURES AND USE

2.0 Owner and Occupant Responsible. Each owner of a lot is responsible for the maintenance and repair of the lot and, if necessary, replacement of improvements on the lot. Each occupant (including lessees and renters) of a lot is responsible for the maintenance and repair of the lot. The Association, its Board and its agents, shall have the right and authority (but not the obligation), after giving the owner or occupant 30 days written notice, to enter, replace, maintain, repair and clean up lots and improvements which do not conform to the provisions of these Protective Covenants, and to charge and collect all reasonable costs, including attorney fees, related thereto from the owners thereof and/or against the concerned lot. No such entry by the Association or its agents shall be deemed a trespass. Notice may be given by electronic or digital means.

2.1 Building Type and Building Use. No building shall be erected, constructed, placed, altered or retained on any lot within said subdivision other than a single family residence and such accessory buildings as may be required for incidental use by the occupants or employees of said single family residence, or required for the maintenance of such animals as may be permitted by these covenants.

All residences built on any lot shall be of quality workmanship and materials substantially the same or better than that which can be produced on the date these amended and restated covenants are recorded. Any buildings placed or maintained upon any lot in the Subdivision shall be entirely constructed thereon and same shall not nor shall any part thereof be moved or placed thereon from elsewhere. All residences must contain at least 1400 square feet of living area and at least 60% exterior masonry.

2.2 Parking. Each residence shall provide for off street parking for at least four cars including the space in garage or carport. In no case shall there be off street parking except in the driveway. All residences shall have a minimum of an attached two-car garage.

2.3 Structures and Facilities Other Than Residences. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. No clothesline poles shall be allowed. Any tanks for use in connection with any residences constructed upon said property, including tanks for the storage of gas or oil must be below ground.

2.4 Heating and Cooling Equipment. No types of exterior refrigerating, cooling or heating equipment that may be visible from the street shall be permitted unless with prior written approval of the Board.

2.5 Trash Containers. Refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an enclosed structure. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.

2.6 Roofs. All roofs shall be constructed of cedar shakes or of alternative roofing materials which, in the discretion of the Board, are of at least comparable quality, and are substantially similar in color, dimensions and appearance to cedar shakes. Cedar shakes will not be approved for any new roofing project. Alternative roofing materials shall not be installed until the advance written approval of the Board has been granted pursuant to procedures and guidelines established by the Board.

2.7 Minerals. No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derricks or other structures for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

2.8 Animals. The owner or occupant of any lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, as defined by controlling local ordinances and regulations, so long as such pet(s) is/are: (i) not kept for any commercial purpose; (ii) kept under control at all times; and (iii) not kept in such number or in such manner as to constitute a nuisance; and (iv) allowed by Longmont City ordinance.

2.9 Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet, advertising the property for sale or rent, or signs used by the builder to advertise the property during the construction and sales period; except that political signs during election seasons may be displayed in accordance with local and state law.

2.10 Exterior Antennas, Television or Internet Appliances and Alternative Energy Devices. No antennas, television or internet appliances or alternative energy devices shall be installed outside the residence or other structure without the prior written approval of the Board and unless it is installed in such a manner as to create no eyesore either from the street or neighboring residences.

2.11 Property Maintenance and Appearance. Each lot shall at all times be kept in a clean, sightly and wholesome condition. No trash, litter, junk boxes, containers, bottles, cans, motor vehicle bodies and/or parts, lumber or other building materials shall be permitted to remain exposed upon any lot, except as necessary during the period of construction. Each lot shall at all times be kept clear of weeds and other unsightly growth.

2.12 Landscaping and Fencing. The landscaping of each lot shall be maintained by the owner in a neat, attractive, sightly and well-kept condition, which shall include lawns mowed, hedges, shrubs and trees pruned and trimmed, adequate watering, replacement or removal of dead, diseased or unsightly materials, and removal of weeds and debris.

No owner or occupant shall install, modify, repair, paint or otherwise alter any border bushes, fence or fencing material without the prior written approval of the Board. Fence height and material must comply with Longmont City ordinance. The design, location and material of all fences shall be subject to the prior written approval of the Board. Owners and occupants shall be responsible for the maintenance of their border bushes and/or fences. Lots that border the golf course shall maintain their border bushes/fences so that they do not impinge on golf course property and do not unreasonably obstruct open sight lines.

2.13 Sight Line Limitations. No fence, wall, hedge or shrub planting which obstructs sight lines or elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangle areas formed by the street property lines and a line connecting them at points twenty-five feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten feet from the intersection of a street property line within the edge of a driveway or alley. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

2.14 Vehicles and Large Objects. No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the subdivision or on the driveways or areas of any lot. No repairs, other than routine maintenance, shall be performed on any automobile, boat, trailer or other vehicle on the street, driveways and exterior areas of any lot. Large objects such as boats, truck mounted campers, trailers or trucks shall not be maintained, stored or parked on said lots unless enclosed or screened from view of streets or neighboring lots. No such enclosure or screening shall be installed without the prior written approval of the Board.

2.15 Structural Damage. In the event any residence or appurtenant structure is destroyed partially or wholly by fire or any other casualty, said structure shall be promptly rebuilt or remodeled to conform with this declaration, or all remaining portions of the structure including foundations and all debris shall be promptly removed from said lot.

### **III. NUISANCES**

3.0 Offensive Activities. No noxious or offensive activities shall be carried on upon any lot which may become an annoyance or a nuisance to the neighborhood.

3.1 Unsafe and Hazardous Use. No activity, practice or other use shall be permitted on any lot which is or might be unsafe or hazardous to any person or property, or which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any owner or which may unreasonably interfere with the peaceful enjoyment or possession or the

proper use of a lot by its owner. No improper, offensive or unlawful use shall be permitted within the subdivision.

3.2 Light, Sound and Odor. No light shall be emitted from any portion of the Subdivision which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Subdivision which would reasonably be found by others to be noxious or offensive.

3.3 Unightly Conditions. All unsightly structures, facilities, equipment, objects and other conditions shall be enclosed within an approved structure.

3.4 Covenant Violation as Nuisance. Any violation of any provision, covenant, condition or restriction in these Protective Covenants, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any person entitled to enforce the provisions of these Protective Covenants.

3.5 Fires. No open fires shall be lighted or permitted on any lot within the subdivision except in a contained unit while attended or in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances.

#### **IV. COVENANTS CONCERNING LEASING AND OCCUPANCY**

4.0 Any owner shall have the right to lease or allow occupancy of an improved lot upon such terms and conditions as the owner may deem advisable, subject to the restrictions of these Protective Covenants, restrictions of record and the following:

- a. Short term occupancies and rentals of 72 hours or less do not require prior written permission from the Board. Occupancies and rentals in excess of 72 hours require prior written permission from the Board.
- b. All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of these Protective Covenants. Owners are required to provide tenants with copies of the current Protective Covenants. However, the owner's failure to so provide the Protective Covenants shall not impair or restrict the ability of the Association to enforce these Protective Covenants against any renter or occupant of the concerned lot.
- c. Each owner who leases a lot shall provide the Association, upon request, a copy of the current lease and tenant contact information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.
- d. All occupancies, leases and rental agreements of lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of these Protective Covenants shall constitute a default of the occupancy, lease or rental agreement and of these Protective Covenants and such default shall be enforceable by either the Association or landlord, or by both of them.

- e. All occupancies, leases and rentals of lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of these Protective Covenants, and other rules or regulations issued pursuant to these Protective Covenants. If the Association requests that the owner evict the owner's tenant based on the terms of these Protective Covenants, and the owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings as attorney-in-fact on behalf of and for the benefit of the owner. If the Association evicts the occupant, lessee or renter, any costs, including but not limited to reasonable attorney fees and court costs associated with the eviction shall be the personal obligation of the owner of the lot and an assessment and lien against the lot.
- f. All owners who reside at a place other than the lot shall provide to the Association an address, including email address, and other contact information where the owner can be reached in the case of emergency or other Association business.

## V. GENERAL PROVISIONS

5.0 Prior Approval. All plans for remodeling or changing an existing structure which would alter the exterior appearance of such structure in any way and all plans for the construction or installation of any residence or appurtenant structure, shall be approved in writing by the Board prior to the commencement of work. The Association may issue procedures and guidelines concerning any such structures.

5.1 Appurtenant Structures. Appurtenant structures consist generally of any installation, addition or other change for which these Protective Covenants require prior Board approval, including but not limited to, alternative energy devices of any kind, outbuildings, animal structures, storage buildings, fences and walls.

5.2 Enforcement. In addition to methods set forth in these covenants, enforcement may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant in order to restrain violation, compel compliance or recover damages. The Board shall have the power to make exceptions to the enforcement of any covenant under special circumstances, but always keeping in mind the spirit and intent of these covenants.

5.3 Non-Waiver. Failure of the Association or 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. The Board may post and record notices of any covenant violation by owners or occupants.

5.4 Association Made Whole. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on the owner of the concerned lot and the violator. The Association may record and foreclose upon a lien against the concerned lot as a means of enforcing the payment obligation. The Board may assess members for special projects or other activities of the Association for purposes consistent with these Protective Covenants.

5.5 Violation of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any improvements and lots

within the subdivision is declared to be a violation of these Protective Covenants and shall be subject to any and all of the enforcement provisions of these Protective Covenants.

5.6 Prevailing Party. In any legal or equitable proceeding for the enforcement of these Protective Covenants, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorney fees.

5.7 Available Remedies. The Association may invoke any one or more of the following remedies: (i) impose a fine upon the owner for each violation; (ii) cause the violation to be cured and charge the cost thereof to the owner; and (iii) obtain injunctive or other legal relief against the continuance of such violation.

5.8 Scope, Term and Amendment of Protective Covenants. These Protective Covenants are to run with the land perpetually, and shall be binding upon all purchasers, assignees or successors of lots in said Subdivision and all persons claiming under them. These Protective Covenants may be changed or amended in whole or in part only by an instrument in writing signed by record owners of a majority of the Subdivision lots and recorded with the Boulder County Clerk and Recorder.

5.9 Indemnification. Each officer and director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

5.10 Severability. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other covenants which shall remain in full force and effect.

Dated this 24<sup>th</sup> day of August, 2015.

Submitted for signatures by:

Board of Directors  
LONGMONT FOX HILL  
HOMEOWNERS' ASSOCIATION, INC.