

**RETURNED**

**JUN 01 2012**

Upon recording return to:

**Richard E. Danley, Jr**

**53 S. Swift Creek Drive**

**Layton, Utah 84041**

E 2665104 B 5534 P 18-22  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
06/01/2012 08:52 AM  
FEE \$95.00 Pgs: 5  
DEP RT REC'D FOR COLD WATER CREEK  
HOA

10-264-010/Thru 138  
10-272-0801 Thru 240

**THIRD AMENDMENT AND SUPPLEMENT TO THE DECLARATION OF PROTECTIVE COVENANTS  
FOR COLD WATER CREEK FOR PHASE 1 AND PHASE 2**

This Third Amendment and Supplement To The Declaration Of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 ("**Third Amendment**"), is made and executed by the President and Secretary of the Board of Trustees for the Cold Water Creek Homeowners Association, Inc., a Utah Non-Profit Corporation (the "**Association**"). The Board of Trustees, pursuant to the 2/3rds or more votes cast by the Owners of the Association, hereby amend and revise the Declaration Of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 of said subdivision (the "**Subdivision**") and all existing prior supplements and amendments to said Declaration as defined and set forth herein together with the Bylaws of the Association. The Board of Trustees for the Association is hereinafter referred to as the "**Board**".

**RECITALS**

- A. The Declaration of the Protective Covenants for Cold Water Creek Estates was recorded in the office of the County Recorder of Davis County, Utah on December 14, 2005 as Entry 2130499 in Book 3931 at Page 2155 of the Official Records of said County (the "**Initial Declaration**").
- B. The related Plat Map for Phase 1 of the Subdivision was also recorded at the same time as the Initial Declaration in the Office of the County Recorder for Davis County, Utah.
- C. The Initial Declaration has been amended twice by a First Supplement to the Declaration of Protective Covenants for Cold Water Creek Phase 2 as entry number 2225802 in Book 4174 at Page 955 of the Official Records of the Davis County Recorder, Davis County, Utah on December 07, 2006. ("**Supplement 1**"). The Initial Declaration was further amended by the First Supplement to the Declaration of Covenants, Conditions and Restrictions for Coldwater Creek Phase 2 Subdivision as entry number 2256884 on March 29, 2007 in the Official Records of the Davis County Recorder, Davis County, Utah ("**Supplement 2**"). Supplement 1 and Supplement 2 were filed to add Phase 2 to the Subdivision and to be governed by the Initial Declaration and to clarify the covenants conditions and restrictions pursuant to the

Initial Declaration. The Initial Declaration, together with Supplement 1 and Supplement 2 are hereinafter collectively referred to as the **"Ivory Declaration"**.

- D. The Ivory Declaration was amended pursuant to the laws of the State of Utah by the owners of the Lots in the Subdivision, Phase 1 and Phase 2 (**"Owners"**), by a vote of more than 2/3rds of all the Owners (67%) based on one vote for each Lot in the Subdivision. The individual Owners voted during the month of August 2011 and approved the amendments and changes to the Declaration as set forth in the Second Supplement And Amendment To The Declaration Of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 (**"Second Amendment"**) dated November 11, 2011 and recorded on November 15, 2011 as Instrument Number 2627351 in Book 5399 at Page 969 to 980 Public Records, Davis County, Utah.
- E. The Second Amendment in Paragraph 17 added a new Article XVI to the Declaration which permits the Declaration and all amendments and supplements thereto to be amended by the Owners in the Subdivision by a vote of more than fifty percent (50%) of all the Owners in the Subdivision when the amendment has been approved by the Board. This Third Amendment was proposed and approved by the Board and approved by the Owners, by a vote of more than 2/3rds of the Owners (67%), at an election duly called and scheduled by the Board and based on one vote for each Lot in the Subdivision. Pursuant to the vote taken the Owners approved changes to the tree plan for the Subdivision as set forth in Paragraph 12 of the Second Amendment and to further amend the Declaration and all amendments and supplements to the same as set forth in this Third Amendment. The Initial Declaration, Supplement 1, Supplement 2, and the the Second Amendment together with all supplements and amendments to the same are hereinafter collectively referred to as the **"Declaration"** and are hereby amended by this Third Amendment.

**NOW, THEREFORE**, pursuant to the vote of the Owners of the Subdivision as counted and approved by the Board, the Declaration and Bylaws are hereby amended in all respects to be consistent with this Third Amendment. In the event of any conflict between this Third Amendment and the Declaration or Bylaws as the same currently exist, this Third Amendment shall control for all purposes. Any defined term or capitalized term not defined in this Third Amendment shall have the meaning set forth in the Declaration or the Initial Declaration as the case may be.

1. **Supplement 2.** The Second Amendment revoked Supplement 2 recorded as entry 2256884 in the Official Records of the Recorder's Office, Davis County, Utah in its entirety. The reference to Supplement 2 in the Recitals is not intended to reinstate Supplement 2 in any manner and the reference in the Recitals is merely intended to give a complete record of all prior amendments and supplements to the Declaration as amended by this Third Amendment. Supplement 2 is affirmed as being void and terminated for all purposes.

2. **Tree Plan.**

The Tree-Planting Plan for the Subdivision as set forth in Paragraph 12 (Landscaping) of the Second Amendment or elsewhere in the Declaration or Bylaws is hereby amended as follows. Any conflict with the following Tree-Planting Plan for the Subdivision shall be resolved in favor of the following plan.

The date for full compliance by all Lots and Owners with the Tree-Planting Plan in the Subdivision is July 1, 2012. The Tree-Planting Plan for the Subdivision means that for every Lot which is not a corner Lot, the Lot must have not less than two (2) full-sized trees approved by the Board as to location or which were planted prior to July 01, 2011, located either in the parkway along the street or anywhere in the front yard forward of the front setback for the residence. For all corner Lots, no less than four (4) full-size trees must be planted on each corner Lot located (1) anywhere in the parkway in front of the residence, (2) in the front yard forward of the front setback for the residence or (3) in the side yard or side-yard parkway, at the discretion of the Owner, so long as the all trees in compliance with this plan are forward of the side yard or front yard setback and are not shielded from view by a fence or other structures. The Board has interpreted "full-size tree" to mean a tree that when fully grown is expected to exceed 15 feet in total height for compliance with this tree plan. Each Owner is responsible for the planting of trees on the Owner's Lot. All trees, lawns, shrubs or other planting placed on a Lot shall be properly nurtured, maintained and replaced as needed by the Owner. All dead plant material must be replaced by the Owner with healthy, living plants consistent with the landscape plan for the residence. All weeds, diseased or dead lawn, diseased or dead trees, diseased or dead ground cover, bushes or shrubs shall be removed and properly replaced. Trees planted in the parkway next to any street shall be deep rooted, not more than twenty (20) feet in height and of a flowering variety to prevent street damage and to provide a flowering streetscape in the spring of the year. If there is a reason that the trees required by this plan cannot be planted in the required locations (such as potential interference with utilities or other improvements) the Owner may apply to the Board for approval of an alternate location to plant and meet the tree-planting requirements of this plan.

[SIGNATURE PAGE TO FOLLOW; THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

This Third Amendment is executed this \_\_\_\_ day of November, 2011 by the President and Secretary of the Association. By the execution hereof, the President and Secretary authorize, affirm and certify on behalf of the Board for the Association that the amendment set forth herein received the necessary approval in excess of 50% from the Owners of the Subdivision and that the Declaration and Bylaws are amended as set forth herein.

**Cold Water Creek Homeowners Association, Inc.**

By Richard E. Danley Jr.  
Richard E. Danley, Jr.  
President

**ATTEST: CORPORATE SECRETARY**

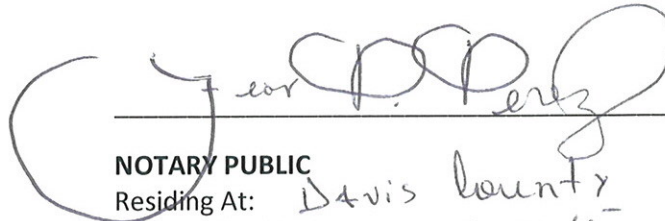
**Cold Water Creek Homeowners Association, Inc.**

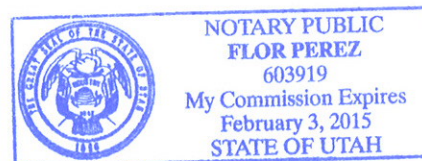
By Alison Ecker  
Alison Ecker  
Secretary

[SEAL]

STATE OF UTAH )  
 )ss:  
COUNTY OF DAVIS )

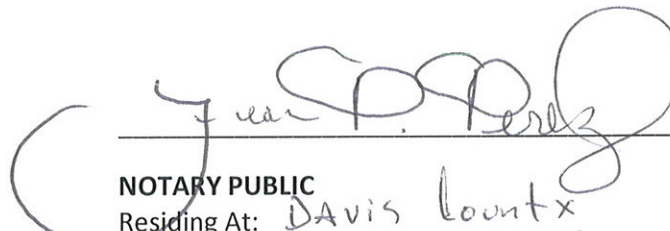
On the 25<sup>th</sup> day November, 2011, personally appeared before me **Richard E Danley, Jr**, who by me duly sworn, did say that he is the **President of the Cold Water Creek Homeowners Associate, Inc.**, a Utah non-profit corporation, and that the within and forgoing instrument was signed in behalf of said corporation by the authority of its Board of Trustees, and said Richard E Danley, Jr. duly acknowledged to me that said Corporation executed the same.

  
\_\_\_\_\_  
**NOTARY PUBLIC**  
Residing At: Davis County  
Commission Expires: 2-3-2015



STATE OF UTAH )  
 )ss:  
COUNTY OF DAVIS )

On the 25<sup>th</sup> day November, 2011, personally appeared before me **Alison Ecker**, who by me duly sworn, did say that she is the **Secretary of the Cold Water Creek Homeowners Associate, Inc.**, a Utah non-profit corporation, and that the within and forgoing instrument was signed in behalf of said corporation by the authority of its Board of Trustees, and said Alison Eckert duly acknowledged to me that she attested the execution of the foregoing instrument for said Corporation on behalf of the same.

  
\_\_\_\_\_  
**NOTARY PUBLIC**  
Residing At: Davis County  
Commission Expires: 2-3-2015

