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**DECLARATION**

**OF**

**BRIARCLIFF TOWNHOMES**

AFTER RECORDATION IN THE ANCHORAGE  
RECORDING DISTRICT, PLEASE RETURN TO:

John Andrew Leman  
Kempel, Huffman & Ellis, P.C.  
255 East Fireweed Lane, Suite 200  
Anchorage, Alaska 99503

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**PREAMBLE.**

Condominiums, Inc., owns property in Anchorage, Alaska, described as:

Lots 1-3 of Block 1, and Lots 9-14 of Block 2, Tract B, Briarcliff Subdivision, according to the official plat thereof, filed under Plat Number 83-394, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

Condominiums, Inc., referred to herein as "Declarant," hereby submits the above-described property, to the provisions of AS 34.08, the Uniform Common Interest Ownership Act, for the purpose of creating the BRIARCLIFF TOWNHOMES. Condominiums, Inc., declares that the Units created by this Declaration and shown on the unit survey map filed under Plat No. 2007-31 shall be held and conveyed subject to the following terms, covenants, conditions, and restrictions. Briarcliff Townhomes is a conversion site condominium development, within the Units of which houses may be built, therefore, no floor plans for condominium units are being filed with the unit survey map.

**ARTICLE I.        Definitions.**

In the Documents, the following words and phrases shall have the following meanings:

Section 1.1. Act. The Uniform Common Interest Ownership Act, AS 34.08, as it may be amended from time to time.

Section 1.2. Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community. The Allocated Interests are described in Article IX of this Declaration and shown on Exhibit 1.

Section 1.3. Association. Briarcliff Townhomes Association, Inc., is a non-profit corporation organized under Chapter 10.20 of the statutes of the State of Alaska. It is the Association of the Unit Owners pursuant to Section 34.08.310 of the Act.

Section 1.4. Bylaws. The Bylaws of the Association, as they may be amended from time to time. Neither such Bylaws nor any amendments to such Bylaws need to be recorded in the property records.

Section 1.5. Common Elements. Each portion of the Common Interest Community other than a Unit.



Section 1.6. Common Expenses. The expenses or financial liabilities for the operation of the Common Interest Community. These include:

- (a) Expenses of administration, maintenance, repair, or replacement of the Common Elements;
- (b) Expenses declared to be Common Expenses by the Documents or by the Act;
- (c) Expenses agreed upon to be Common Expenses by the Association; and
- (d) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

Section 1.7. Common Interest Community. The real property described in the Preamble, subject to the Declaration for Briarcliff Townhomes.

Section 1.8. Condominium. A Common Interest Community in which portions of the real estate are designated for separate ownership, the remainder of the real estate is designated for common ownership solely by the owners of those portions, and the undivided interests in the Common Elements are vested in the Unit Owners.

Section 1.9. Declarant. A person or a group of persons acting in concert who, as part of a common promotional plan, offer to dispose of its interest in a unit not previously disposed of, or who reserves or succeeds to a special declarant right; in this case, Condominiums, Inc.

Section 1.10. Declaration. This document, including any amendments.

Section 1.11. Development Rights. The rights reserved by the Declarant under Article VIII of this Declaration to create Units, Common Elements, and Limited Common Elements within the Common Interest Community, and to withdraw property from the Common Interest Community.

Section 1.12. Director. A member of the Executive Board.

Section 1.13. Documents. The Declaration, Plat and Plans which have been recorded and filed pursuant to the provisions of the Act, the Bylaws, and the Rules, if any, as they may be amended from time to time. Any exhibit or certification accompanying a Document is a part of that Document.

Section 1.14. Eligible Insurer. An insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XVI hereof.



Section 1.15. Eligible Mortgagee. The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI hereof.

Section 1.16. Executive Board. The Board of Directors of the Association.

Section 1.17. Floor Plans. INTENTIONALLY LEFT BLANK

Section 1.18. Improvements. Any construction, structure, fixture or facility existing or to be constructed on the land included in the Common Interest Community including, but not limited to, buildings, trees and shrubbery planted by the Declarant, a Unit Owner, or the Association, paving, utility wires, pipes, and light poles.

Section 1.19. Limited Common Elements. The portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Subsections (2) and (4) of Section 34.08.100 of the Act. The Limited Common Elements in the Common Interest Community, if any, are described in Article V of this Declaration.

Section 1.20. Majority or Majority of Unit Owners. The Owners of more than fifty percent 50% of the votes in the Association.

Section 1.21. Manager. A person, firm, or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.22. Notice and Comment. The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice, Comment, and Hearing are set forth in Article XXII of this Declaration.

Section 1.23. Notice and Hearing. The right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice, Comment, and Hearing are set forth in Article XXII of this Declaration.

Section 1.24. Party Wall. The wall or walls separating two homes abutting each other on the side of the Unit where there is no side yard setback required. The rights and duties pertaining to party walls are contained in Article XXVII.

Section 1.25. Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 1.26. Plans. The survey map filed under Plat No. 2007-31, records of the Anchorage Recording District, Third Judicial District, State of Alaska, as they may be amended from time to time.

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Section 1.27. Plat. Plat No. 83-394, Anchorage Recording District, Third Judicial District, State of Alaska, as it may be amended.

Section 1.28. Property. The land and all Improvements, easements, rights, and appurtenances which have been submitted to the provisions of the Act by this Declaration.

Section 1.29. Public Offering Statement. The current document prepared pursuant to Section 34.08.530 of the Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a purchase agreement.

Section 1.30. Rules. Regulations for occupancy of the Units and use of the Common Elements and for the conduct of persons within the Common Interest Community, adopted by the Executive Board pursuant to this Declaration.

Section 1.31. Security Interest. An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.32. Special Declarant Rights. The rights, as defined in AS 34.08.990(30), reserved for the benefit of a Declarant to (a) complete improvements indicated on plats and plans filed with the Declaration; (b) exercise a Development Right; (c) maintain sales offices, management offices, models and signs advertising the Common Interest Community; (d) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community; (e) make the Common Interest Community subject to a master association; (f) merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership; or (g) appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control. Special Declarant Rights are described in Article VIII.

Section 1.33. Trustee. The entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the President and attested by the Secretary.

Section 1.34. Unit. A physical portion of the Common Interest Community designated for separate ownership or occupancy, as shown on the development plan attached hereto as Exhibit 2, and the boundaries of which are described in Article IV of this Declaration.

Section 1.35. Unit Owner. A Person, including the Declarant, who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation.

**ARTICLE II. Name and Type of Common Interest Community and Association.**

Section 2.1. Common Interest Community. The name of the Common Interest Community is Briarcliff Townhomes.

Section 2.2. Association. The name of the Association is Briarcliff Townhomes Association, Inc., a non-profit corporation organized under the laws of the State of Alaska.

**ARTICLE III. Description of Land.**

The entire Common Interest Community consists of 4.2110 acres and is situated in Anchorage, Alaska. The land is zoned as R2M by the Municipality of Anchorage and officially described as:

Lots 1-3 of Block 1, and Lots 9-14 of Block 2, Tract B, Briarcliff Subdivision, according to the official plat thereof, filed under Plat Number 83-394, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

**ARTICLE IV. Maximum Number of Units, Description, and Boundaries.**

Section 4.1. Maximum Number of Units. The Common Interest Community contains sixty-eight (68) Units in on the development plan and unit survey filed under **Plat No. 2007-31** and attached as Exhibit 2. This is the maximum number of Units that may be created in the Common Interest Community.

Section 4.2. Boundaries. Boundaries of each Unit created by the Declaration are shown graphically on Exhibit 2 and on the unit survey filed under **Plat No. 2007-\_\_\_\_\_**. Each Unit at the time of sale will contain a building. The boundaries of the Unit do not create a tract or parcel of land described as a "subdivision." The boundaries of the Units are described as follows:

(a) Upper Boundary: The horizontal plane fifty-five (55) feet above and parallel to the lower boundary and extending to the vertical perimeter boundaries.

(b) Lower Boundary: The horizontal plane extending to the vertical perimeter boundaries at an elevation twenty (20) feet below the average elevation of the street fronting the Unit at the boundary between the Unit and the street.

(c) Vertical Perimeter Boundaries: The vertical planes extending between the upper and lower boundaries and located by reference to the measurements to the property line shown on the survey map filed under **Plat No. 2007-31**.

(d) Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described in Section 4.2 (a), (b), and (c) above, and any man-made improvements serving only the Unit.

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(e) Exclusions: The land lying directly beneath the lower boundary of the Unit, and man-made improvements, if any, below the lower boundary of the Unit that serve more than one Unit.

(f) Inconsistency with Plans: If this definition is inconsistent with the plans, then this definition will control.

Section 4.3. Unit Areas. Unit areas are listed in Exhibit 2.

Section 4.4. Unit Numbers. The Unit numbers are listed in Exhibits 1 and 2.

#### **ARTICLE V. Common Elements and Limited Common Elements.**

Section 5.1. Common Elements. The Common Elements include all of the land area within the Common Interest Community and any man-made Improvements not included in a Unit. In Briarcliff Townhomes, the Common Elements include, among other things (but are not limited to):

(a) Blackburn Ct., Bridgestone Ct., Briar Loop, and any other common access drives within the boundaries of the Common Interest Community;

(b) all water and sewer lines serving Units in the Common Interest Community from the point of connection to government facilities;

(c) any fencing or berms constructed by Declarant or the Association at the perimeter of the Common Interest Community;

(d) any space for community mailboxes in the Common Interest Community;

and

(e) any designated guest parking areas; and

(f) the sewage lift station.

Section 5.2. Limited Common Elements Depicted on Plans. There are no Limited Common Elements in Briarcliff Townhomes.

#### **ARTICLE VI. Conveyance or Encumbrance of Common Elements.**

Section 6.1. Homeowner Approval. Portions of the Common Elements, except Limited Common Elements, may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant, agree to this action. Each owner of a Unit to which a Limited Common Element is allocated must agree in order for the Limited Common Element allocated to that Unit to be conveyed or subjected to a Security Interest by the Association.



Section 6.2. Proceeds of Sale or Loan. The proceeds of a sale and proceeds of a loan secured by encumbering a Common Element are an asset of the Association.

Section 6.3. Form of Conveyance and Ratification. An agreement to convey Common Elements or to subject the Common Elements to a security interest must be evidenced by the execution of an agreement, or ratification of the agreement, in the same manner as a deed by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement is effective only upon recording.

Section 6.4. Association Contract to Convey. The Association on behalf of the Unit Owners may contract to convey an interest in Common Elements as provided in this Article, but the contract is not enforceable against the Association until approved as required herein. After approval, the Association has the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute a deed or other instrument.

## **ARTICLE VII. Maintenance, Repair, and Replacement.**

Section 7.1. Common Elements and Limited Common Elements. The Association shall maintain, repair and replace all of the Common Elements of the Property, including asphalt maintenance on and snow removal from streets within the Common Interest Community, as well as maintenance and repair of the water and sewer system within the Property.

Section 7.2. Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, which includes any structure built within the Unit, driveways within the Unit and fences along Unit boundaries. Rights and responsibilities pertaining to maintenance and repair of Party Walls, roofs and fences are contained in Article XXVII. If the Unit Owner fails to maintain and repair his or her Unit, including the yard, fences, pavement, and any structures therein, to a standard established by rules of the Association, the Association may, after Notice and Hearing, repair or maintain the Unit as needed to bring it up to Association standards and assess the Unit Owner therefore as a Common Expense.

Section 7.3. Access. Any person authorized by the Executive Board has the right to access all portions of the Property for the purpose of correcting any condition threatening a Unit, the Limited Common Elements or the Common Elements and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, and replacing utility meters and related pipes, valves, wires, and equipment, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 7.4. Allocation of Costs of Repairs and Maintenance. Each Unit Owner will reimburse the Association for any costs, including insurance deductibles, incurred by the Association due to damage to any Unit or its appurtenant Limited Common Elements, or to the Common Elements to the extent that such damages or costs were caused intentionally, negligently, or by the Unit Owner's failure to properly maintain, repair, or make replacements to



his or her Unit or appurtenant Limited Common Elements. Such expense will be assessed following Notice and Hearing. The Association will be responsible for damage to Units caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Elements, not including the Limited Common Elements which are the responsibility of the Unit Owners.

Section 7.5 Association's Right to Maintain Yards. In order to help maintain resale values, the Association may provide for the watering and trimming of Unit lawns as a Common Expense. Such maintenance may be limited to Unit lawns that have not been fenced in. Whether to provide such service and the level of service shall be determined by the Executive Board. Unless otherwise determined by the Executive Board, yard maintenance expenses shall be shared by all Unit Owners as a Common Expense.

#### ARTICLE VIII. Development Rights and Special Declarant Rights.

Section 8.1. Reservation of Development Rights. The Declarant has not reserved any Development Rights in the Common Interest Community.

Section 8.2. Limitations on Development Rights. [THIS SECTION INTENTIONALLY LEFT BLANK.]

Section 8.3. Phasing of Development Rights. [THIS SECTION INTENTIONALLY LEFT BLANK.]

Section 8.4. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights to the maximum extent permitted by law which may be exercised, where applicable, anywhere within the Common Interest Community:

- (a) To complete Improvements indicated on Plats and Plans filed with this Declaration;
- (b) [THIS SECTION INTENTIONALLY LEFT BLANK.]
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community, and models;
- (d) To use easements through the Common Elements for the purpose of making Improvements within the Common Interest Community; and
- (e) To appoint or remove an officer of the Association or an Executive Board member during a period of Declarant control subject to the provisions of Section 8.9 of this Declaration.

Section 8.5. Models, Sales Offices, and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives, and employees may maintain any Units owned by the Declarant or any portion of the Common Elements as a



model Unit, sales office, or management office. Declarant may have no more than three (3) model Units and one (1) sales/management office within the Common Interest Community at any time, although the specific location may change from time to time as Units are developed and sold. A model home within a Unit or sales/management office may be no larger than a typical home within a Unit constructed for sale to the public. Declarant may delegate this authority to dealers who purchase Units for resale.

Section 8.6. Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, repair and construction work, and to store materials in secure areas in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, government, the State, or upland owners to fulfill the plan of development.

Section 8.7. Signs and Marketing. The Declarant reserves the right to post signs and displays in the Units or Common Elements to promote sales of Units, and to conduct general sales activities, in a manner that will not unreasonably disturb the rights of Unit Owners.

Section 8.8. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property, promptly after the sale of the last Unit, any and all goods and Improvements used in development, marketing, and construction, whether or not they have become fixtures.

Section 8.9. Declarant Control of the Association.

(a) Subject to Subsection 8.9(b): There shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of:

(i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Unit Owners other than the Declarant; or

(ii) Two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or

(iii) Two (2) years after any right to add new Units was last exercised;  
or



(iv) Five (5) years after the first Unit is conveyed to a Unit Owner other than the Declarant.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

(c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) members, all of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers take office upon election.

(d) Notwithstanding any provision of this Declaration or the Bylaws of the Association to the contrary, following notice under Section 34.08.390 of the Act, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at a meeting of Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 8.10. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed and recorded by the Declarant, any Special Declarant Right (except for Development Rights) may be exercised by the Declarant so long as:

(a) Declarant is obligated under any warranty or obligation; or

(b) Declarant holds a Development Right to create additional Units or Common Elements; or

(c) Declarant owns any Unit or any Security Interest in any Units.

Declarant's Special Declarant Rights expire upon the earliest date on which one of the conditions described in (a)-(c) is no longer operative, or for ten (10) years after recording the original Declaration, whichever is sooner. Earlier termination of certain rights may occur by statute.

Section 8.11. Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.



## ARTICLE IX. Allocated Interests.

Section 9.1. Allocation of Interests. The table showing Unit numbers, addresses, and their Allocated Interests is attached as Exhibit 1. These interests have been allocated in accordance with the formulas set out in this Article IX. These formulas are to be used in reallocating interests if Units are added to or deleted from the Common Interest Community. The percentage of undivided interest in the Common Elements assigned to each Unit for all purposes voting and the assessment of liability for Common Expenses shall be in accordance with Exhibit 1.

Section 9.2. Formulas for the Allocation of Interests. The Interests allocated to each Unit have been calculated on the following formulas:

(a) Undivided Interest in the Common Elements. Each Unit in the Common Interest Community shall have an equal percentage of the undivided interest in the Common Elements.

(b) Liability for the Common Expenses. Each Unit in the Common Interest Community shall have an equal percentage of liability for Common Expenses. As a result, the percentage of liability for Common Expenses for each unit is determined by dividing the total number of Units into 100. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article XVII of this Declaration.

(c) Votes. Each Unit in the Common Interest Community shall have one equal Vote. Any specified percentage, portion, or fraction of Unit Owners, unless otherwise stated in the Documents, means the specified percentage, portion, or fraction of all of the votes as allocated in Exhibit 1.

Section 9.3. Assignment of Allocated Interests Upon Creation of Units Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Section 9.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the records of the Anchorage Recording District.

## ARTICLE X. Restrictions on Use, Alienation, and Occupancy.

Section 10.1. Use Restrictions. Subject to the Special Declarant Rights reserved under Article VIII of this Declaration, each Unit is restricted to a single residential structure and residential use for a single family including, therein, home professional pursuits not requiring regular visits from the public or unreasonable levels of mail, shipping, trash or storage. No sign indicating commercial or professional uses may be displayed outside a Unit. Residential use for a single family is defined as a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area, with no more than two (2) overnight occupants per bedroom.



Section 10.2. Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article VIII of this Declaration, the following occupancy restrictions apply to the Units and the Common Elements:

(a) All Unit Owners shall maintain their Units in a clean and well-maintained condition. No outdoor storage of trash will be permitted on any Unit. Trash must be regularly placed in the trash bins designated for that purpose. The Executive Board may regulate or prohibit the storage of any type of material on the balconies in order to preserve the overall appearance of the Property.

(b) No nuisances shall be allowed on the Property, nor shall any use be made or practice be maintained by any Unit Owner or tenant of a Unit Owner that shall interfere with the quiet enjoyment of the Property by other Unit Owners and residents. The Executive Board, after Hearing and Comment, may further define the definition of "nuisance" in the rules of the Association.

(c) Vehicles, including campers, boats, RV's, snow machines, and the like, may not be parked on the access drives or on other Common Elements. Campers, motor homes and other recreational vehicles parked on the Units shall not be used for living space. Unit Owners or tenants of Unit Owners may not park in the guest parking spaces, and no vehicle shall remain for more than 24 hours in a guest parking space. The Association has the right to adopt restrictions and limitations on the use of unit parking and of guest area parking. There shall be no automotive repair conducted in the open anywhere on Briarcliff Townhomes. Recreational vehicles may not be parked or stored anywhere on Briarcliff Townhomes.

(d) No animals, livestock, or poultry shall be kept in any Unit, except that domestic dogs, cats, fish, and birds may be kept as household pets within the Unit, provided they are not kept, bred, or raised for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall be deemed to limit the total number of pets to two (2) cats or dogs. The Executive Board may, after Notice and Hearing, further limit the sizes and types of dogs, if sizes and types of dogs become a problem for the Association and may make exceptions as to the types and numbers of pets permitted on a case-by-case basis. Furthermore, the Executive Board may prohibit the maintenance of any animal that constitutes a nuisance to any other Unit Owner. Dogs and cats belonging to Unit Owners, occupants of Units, or their licensees or invitees, must be kept within the Unit except that they may be taken out of the Unit on a leash held by a person capable of controlling the animal. Should any dog or cat be found outside of the Unit, other than on a leash being held by a person capable of controlling the animal, the animal may be removed by Declarant or any person authorized by the Executive Board to remove the dog or cat from the Property. The dog or cat removed shall be taken to the Municipality of Anchorage animal shelter and, if its owner is known, the Association shall notify the owner of the animal's location. The owner of any pet visiting or residing on the Property shall be absolutely liable to all other Unit Owners, their families, guests, and invitees for any damage to persons or property caused by the pet. Owners of pets are responsible for removing their pets' waste from the Common Elements of Briarcliff Townhomes.



(e) The use of Units and Common Elements is further subject to the Bylaws and the Rules of the Association.

Section 10.3. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan. A Unit may not be leased or rented for a term of less than thirty (30) days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association. A copy of all leases or rental agreements must be given to the Association. All leases and rental agreements must contain a provision that gives the Association the power to enforce a violation of the Documents against tenant so long as the Association first gives notice to the Unit Owner of its intent to do so and gives Unit Owner a reasonable opportunity to remedy the violation. The Association's right to enforce violations of the Documents against a tenant does not limit the Association's right to take action against the Unit Owner for the tenant's violations of provisions of the Documents. This Declaration does not impose any right of first refusal or similar restriction on a Unit Owner's right to sell or convey a Unit.

Section 10.4. Fences in Backyards. No fence may be constructed within the front setback of a Unit. Fences behind the front setback must be of wood and may not exceed six (6) feet in height. At a minimum, the Executive Board must require Unit Owners prior to constructing fences to:

- (a) prove to the satisfaction of the Executive Board that the fence will not encroach on neighboring units or Common Elements;
- (b) obtain utility locations to avoid damaging utilities during construction;
- (c) obtain any permission necessary from utilities; and
- (d) submit drawings, photographs, plans, or other descriptions that will allow the Executive Board to determine that the fence will be an attractive addition to the Unit

Section 10.5. Structure Setbacks from Unit Vertical Perimeter Boundaries. Homes constructed within the Units may be attached to each other on one side, i.e., along one Unit boundary. No structure, except a fence, shall be constructed within a setback area defined as nineteen (19) feet from the Unit boundary adjoining the access drive. With the exception of the side of a structure abutting a common wall, the structure setbacks from the side and rear Unit boundaries shall be as follows: four (4) feet along each side Unit boundary, and nine (9) feet from the rear unit boundary, defined as the boundary opposite the access drive fronting boundary, with the exception that ground level decks may be located in the rear setback area, except that Units along the east boundary of the Common Interest Community have a twenty (20) foot rear yard structure setback and no structure may encroach into the drainage easement shown on Exhibit 2 and the unit survey. Second story balconies on houses built within the Units may extend into the front yard setback area no more than three feet. In the case of Units having a frontage on two or more streets, the side of the Unit from which access to the street is taken is the front yard; the side of the Unit opposite the side from which access to the street is taken is the rear yard; and the two remaining sides of the Unit are the side yards. If a





conflict arises in determining the setback area, the provisions of Title 21 of the Municipal Land Use Code pertaining to "yards" shall be used as a guide.

Section 10.5. House Colors. Houses built within the Units may be painted or stained but the colors are limited to earth tones and pastels. Trim colors may be of a slightly darker contrasting color. All colors must be approved by the Executive Board as provided in Article XIII. Both sides of a duplex structure must be painted the same color.

## **ARTICLE XI. Easements and Licenses.**

Section 11.1. Easement for Ingress and Egress through Common Elements. Each Unit Owner has an easement in common with each other Unit Owner for ingress and egress through all Common Elements, subject to such reasonable rules, regulations, and restrictions as may be imposed by the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same.

Section 11.2. Easements for Support. Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element.

Section 11.3. Easements for Encroachments. In the event any portion of the Common Elements encroaches on any Unit or any Unit encroaches on the Common Elements or another Unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 11.4. Recorded Easements and Licenses. All recorded easements or licenses to which the Common Interest Community is presently subject are recited in Exhibit 3 to this Declaration or are shown on the Plat and Plans.

## **ARTICLE XII. Additions, Alterations, and Improvements.**

### Section 12.1. Additions, Alterations, and Improvements by Unit Owners.

(a) No Unit Owner may make any structural addition, structural alteration, or structural improvement in or to the Common Interest Community without the prior written consent thereto of the Executive Board in accordance with Subsection 12.1(c).

(b) Subject to Subsection 12.1(a), a Unit Owner:

(i) May make any other Improvements or alterations to the interior of a structure on his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community;



(ii) May not change the appearance of the Common Elements, or the exterior appearance of a structure on his or her Unit or any other portion of the Common Interest Community without permission of the Association; and/or

(c) A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 12.1(a) or 12.1(b). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute consent by the Executive Board to the proposed action. The approval of a written request may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by reason of reasonable dissatisfaction of the Board with the location of the proposed structure, the elevation, color scheme, finish, design, proportions, architecture, shape, height, style and appropriateness of the proposed structure or alteration, the material used therein, or because of its reasonable dissatisfaction with any or all other matters or things which in the reasonable judgment of the Board will render the proposed alteration or improvement inharmonious or out of keeping with the general plan of improvement of the Common Interest Community. Improvements erected or maintained, otherwise than as approved by the Board, shall be deemed to have been undertaken without the approval of the Board as required by the Declaration. The approval of the Board of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the Board of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied. The Executive Board shall review requests in accordance with the provisions of its rules.

(d) Any applications to any department or to any governmental authority for a permit to make any addition, alteration, or Improvement in or to any Unit must be approved in writing by the Association before the application is submitted to the relevant department or authority. Such approval will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor, or materialman on account of such addition, alteration, or Improvement or to any person having any claim for injury to person or damage to property arising therefrom. Upon approval of the Board, it shall be conclusively presumed that the location and height of any improvement does not violate the provisions of this Declaration.

(e) All additions, alterations, and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

(f) The provisions of this Article shall not apply to the Declarant in the exercise of any Special Declarant Right.

Section 12.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Sections 17.4 and 17.5 of this Declaration, the Executive Board may make any additions, alterations, or Improvements to the Common Elements that, in its judgment, it deems necessary.



### ARTICLE XIII. Amendments to Declaration.

Section 13.1. General. Except as otherwise provided by law or elsewhere in this Declaration, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 13.2. When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Act and this Declaration, an amendment may not create or increase Special Declarant Rights, create or increase the number of Units, change the number of Units, change the boundaries of a Unit, change the Allocated Interests of a Unit, or change the uses to which a Unit is restricted, in the absence of unanimous (100%) consent of the votes in the Association.

Section 13.3. Execution of Amendments. An amendment to the Declaration required by AS 34.08.250 of the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and AS 34.08.250 of the Act, must be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such designation, by the President of the Association.

Section 13.4. Recordation of Amendments. Each amendment to the Declaration must be recorded in the Anchorage Recording District, Third Judicial District, Anchorage, Alaska in which Briarcliff Townhomes is located. The amendment is effective only upon recording.

Section 13.5. Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article XVI.

Section 13.6. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is recorded.

Section 13.8. Amendments to Create Units. [THIS SECTION INTENTIONALLY LEFT BLANK.]

### ARTICLE XIV. Amendments to Bylaws of the Association.

The Bylaws may be amended only by vote of two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.



## ARTICLE XV. Termination.

Termination of the Common Interest Community may be accomplished only in accordance with Section 34.08.260 of the Act.

## ARTICLE XVI. Mortgagee Protection.

Section 16.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 16.2. Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 16.3. Notice of Action. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) Any condemnation loss or casualty loss which affects the Common Elements, if such loss exceeds \$10,000, or any damage to an Improvement or a Unit on which there is a first Security Interest held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable, if such damage exceeds \$10,000;

(b) Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, which remains uncured for a period of sixty (60) days;

(c) Any default in performance by the individual Unit borrower of any obligation under the condominium constituent documents which is not cured within sixty (60) days;

(d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association and/or the property manager;

(e) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and

(f) Any judgment rendered against the Association.



Section 16.4. Consent Required.

(a) Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 16.4(a) may be effective without approval in writing by at least fifty-one percent (51%) of the Eligible Mortgagees. The foregoing approval requirements do not apply to amendments effected by the exercise of Special Declarant Rights. "Material" includes, but is not limited to, any provision affecting:

- liens; (i) Assessments, assessment liens, or subordination of assessment
- (ii) Voting rights;
- Elements; (iii) Reserves for maintenance, repair, and replacement of Common
- (iv) Responsibility for maintenance and repairs;
- Limited Common Elements; (v) Reallocation of interests in the Common Elements, including
- (vi) Rights to use Common Elements and Limited Common Elements;
- (vii) Boundaries of Units after conveyance of those Units by Declarant or a dealer to a purchaser;
- Elements into Units; (viii) Convertibility of Units into Common Elements or Common
- (ix) Expansion or contraction of the Common Interest Community or the addition, annexation or withdrawal of property to or from the Common Interest Community;
- (x) Insurance or fidelity bonds;
- (xi) Leasing of Units;
- his or her Unit; (xii) Imposition of restrictions on a Unit Owner's right to sell or transfer
- (xiii) Establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (xiv) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;



(xv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and

(xvi) The benefits of mortgage holders, insurers, or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

(i) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(ii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;

(iii) The merger of this Common Interest Community with any other common interest community;

(iv) The granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses, or concessions for no more than one (1) year);

(v) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

(vi) Any action taken not to repair or replace the Property.

(c) Actions Requiring Other Than 51% Mortgagee Approval. The following actions by the Association require the consent of First Mortgagees as specified below:

(i) An eighty percent (80%) Eligible Mortgagee approval is required to convey or encumber the Common Elements or any portion thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause).

(ii) A sixty-seven percent (67%) Eligible Mortgagee approval is required for the termination of the Common Interest Community for reasons other than substantial destruction or condemnation.

(iii) When Unit boundaries are not otherwise being affected, only the Owners of Units affected and Eligible Mortgagees of those Units need approve the alteration of any partition or creation of any aperture between adjoining Units.



(iv) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the unanimous (100%) consent of Eligible Mortgagees.

(d) Failure to Respond. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment to the Declaration shall constitute an implied approval of the addition or amendment, provided that notice was delivered by certified or registered mail with a return receipt requested.

Section 16.5. Inspection of Books. The Association shall maintain current copies of the Declaration, Bylaws, Rules, books, records, and financial statements. The Association shall permit any Eligible Mortgagee or Eligible Insurer, or other first mortgagee of units, to inspect the books and records of the Association during normal business hours.

Section 16.6. Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

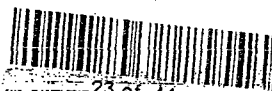
Section 16.7. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law or in equity.

Section 16.8. Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

Section 16.9. Appointment of Trustee. In the event of damage or destruction under Article XXI or condemnation of all or a portion of the community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee. Such Trustee may be required to be a corporate trustee licensed by the State of Alaska. Proceeds will thereafter be distributed pursuant to Article XXI or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the President may act as Trustee.

Section 16.10. Priority on Insurance and Condemnation Proceeds. No provision of the Documents of the Association shall be deemed to give priority to an Owner or any other party over any rights of an Eligible Mortgagee pursuant to the terms of its Security Interest in the case of distribution of insurance proceeds or condemnation proceeds, whether such proceeds pertain to a Unit or Common Elements.

Section 16.11. Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination. No Development Rights may be exercised later than five (5) years after the date of recording of this



Declaration unless fifty-one percent (51%) of the Eligible Mortgagees consent to the exercise of the Development Right.

Section 16.12. Exception to Consent Requirements for Pre-Sale Boundary Relocations. In the event that Declarant or a Dealer changes the boundaries between two or more Units, no consent is required from any Eligible Mortgagee so long as none of the Units having their boundaries changed have been conveyed to a purchaser. If a Unit having its boundaries changed has been conveyed to a purchaser, then the Eligible Mortgagee consent provisions of Section 16.4 apply.

## ARTICLE XVII. Assessment and Collection of Common Expenses.

Section 17.1. Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit 1 to this Declaration.

### Section 17.2. Common Expenses Attributable to Fewer Than All Units.

(a) If any Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit, either required by the Declaration or provided at the request of the Unit Owner, shall be assessed against the Unit that benefits from such service.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(e) If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

(f) Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

### Section 17.3. Lien.

(a) The Association has a lien on a Unit for an assessment levied against the Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, collection costs, including actual attorneys' fees, fines, and interest charged pursuant to AS 34.08, as it may be amended from time to time, and any of the

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Association's Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (i) a lien and encumbrances recorded before the recordation of the original Declaration described above in the introductory paragraph of this Document; (ii) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments charged against the Unit. A lien under this Section is also prior to all Security Interests described in Subsection (ii) of this Subsection if the Common Expense assessments based on the periodic budget adopted by the Association, pursuant to Section 17.4 of this Article, would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce either the Association's lien. This Subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provisions of AS 09.38.010, as it may be amended from time to time.

(c) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section is required.

(d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's liens shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the United States Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection 17.3(c) creates a lien, foreclosure, or prohibit an Association from taking a deed in lieu of foreclosure.

(f) When the Association acquires a judgment or decree in any action brought under this Section, such judgment or decree shall include an award to the Association for actual collection costs and reasonable attorneys' fees.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under AS 09.35.010, as it may be amended from time to time.

(h) The Association's lien must be foreclosed under AS 34.35.005, as it may be amended from time to time.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The

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court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments based on a periodic budget adopted by the Association pursuant to Section 17.4.

(j) The purchaser at a foreclosure sale initiated by the holder of a Security Interest in a Unit is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 17.3(b) above. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses for which all the Unit Owners, including the purchaser, may be assessed. For the purposes of this paragraph, "the purchaser" shall include, but not be limited to, any holder of a Security Interest in a Unit which obtains title to a Unit.

(k) Any payments received by the Association to discharge of a Unit Owner's obligation may be applied to the oldest balance due.

(l) The Association may acquire, hold, lease, mortgage, and convey a Unit foreclosed upon pursuant to this Section for unpaid assessments.

(m) A lien under this Section shall not be affected by any sale or transfer of a Unit except as provided in Subsection (j) above.

Section 17.4. Budget Adoption and Ratification. The Executive Board shall adopt a proposed budget for the Common Interest Community, and shall, within thirty (30) days after adoption, provide a summary of the budget to each Unit Owner. The Executive Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5. Non-budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for their consideration and comment in the same manner as a budget under Section 17.4 above; provided, however, that such assessment can be considered at a special meeting as long as the notice required for annual meetings is provided to the Unit Owners.

Section 17.6. Certification of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement in recordable form setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board, and each Unit Owner.

Section 17.7. Monthly Payment of Common Expenses. All Common Expenses assessed under this Article XVII shall be due and payable monthly.



Section 17.8. Acceleration of Common Expense Assessments. In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable. The holder of a first Security Interest in a Unit which has acquired title to any Unit as a result of a foreclosure of its Security Interest shall be exempt from the application of this Subsection.

Section 17.9. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 17.10. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Areas or by abandonment of the Unit against which the assessments are made.

Section 17.11. Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

Section 17.12. Reserves. Declarant will establish a working capital fund in an amount at least equal to two (2) months' installments of the Annual Assessment for each Unit in the Project. Upon the first conveyance of record title to a Unit from Declarant, the Owner shall contribute to the working capital of the Association an amount equal to two (2) months' installments of the Annual Assessment at the rate in effect at the time of the sale, and upon the sale of each Unit from the Declarant to an Owner, Declarant will receive a refund of the contribution to the working capital fund made by Declarant for such Unit. The Association shall maintain the working capital funds in segregated accounts to meet unforeseen expenditures. Such payments to this fund shall not be considered advance payments of Annual Assessments and except for refunds to Declarant, shall not be refundable. Declarant may not use any working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits. As part of the adoption of the regular budget pursuant to Sections 17.4 and 17.5, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Elements.

#### ARTICLE XVIII. Right to Assign Future Income.

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.



**ARTICLE XIX. Persons and Units Subject to Documents.**

Section 19.1. Compliance with Documents. All Unit Owners, tenants, mortgagees, and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee, or occupant, and all such provisions recorded in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

Section 19.2. Adoption of Rules. After Notice and Comment, the Executive Board may adopt Rules regarding the use of Common Elements, and the use and occupancy of Units, Limited Common Elements, and the activities of occupants as they affect the Common Elements.

**ARTICLE XX. Insurance.**

Section 20.1. Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2. Property Insurance.

(a) Property insurance shall be maintained covering all common property of the Association. The Units, Structures within the Units and any personal property on the Units ARE NOT common property of the Association and must be insured by the individual Unit Owners.

(b) Amounts. The common property for an amount (after application of any deductions) equal to one hundred percent (100%) of their replacement cost at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value. The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the project facilities and the actual cash value of the personal property, and the cost of such appraisal shall be a Common Expense. The maximum deductible for insurance policies shall be the lesser of \$10,000.00 or one percent (1%) of the policy face amount. Allocation of responsibility for payment of the deductible shall be according to the policy established by the Executive Board.

(c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.



(d) Other Provisions. Insurance policies required by this Section shall provide that:

(i) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.

(ii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.

(iii) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(iv) Loss must be adjusted with the Association.

(v) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and, in the absence of such designation, to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee.

(vi) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(vii) The name of the insured shall be substantially as follows:

"Briarcliff Townhomes Association, Inc., for the use and benefit of the individual Owners."

Section 20.3. Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of interest of the Unit Owner in the Common Elements or membership in the Association.

(b) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.



(c) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(e) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4. Fidelity Bonds. A blanket fidelity bond shall be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force and in no event less than the sum of three months' assessments plus reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the Association, to each holder of a Security Interest in a Unit, to each Eligible Mortgagee, and Eligible Insurer that serves an AHFC-owned, FNMA-owned, or FHLMC-owned mortgage on a Unit, and to the insurance trustee, if any, before the bond can be cancelled or substantially modified for any reason.

Section 20.5. Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit. Units, Structures and personal property of Unit Owners ARE NOT common property of the Association and must be insured by the Unit Owner.

Section 20.6. Workers' Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Alaska.

Section 20.7. Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain Directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.8. Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9. Premiums. Insurance premiums shall be a Common Expense.



## ARTICLE XXI. Damage to or Destruction of Property.

Section 21.1. Duty to Restore. A portion of the Common Interest Community for which insurance is required under Section 34.08.440 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Common Interest Community is terminated;
- (b) Repair or replacement would be illegal under a state statute or government ordinance governing health or safety; or
- (c) Eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners, and fifty-one percent (51%) of Eligible Mortgagees. Said plans and specifications must meet all existing federal, state, and borough code requirements.

### Section 21.4. Replacement of Less Than Entire Property.

(a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community;

(b) Except to the extent that other persons will be distributees:

(i) The insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the owner of the Unit to which the Limited Common Elements were allocated, or to lien holders, as their interests may appear; and

(ii) The remainder of the proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the Common Element interests of all the Units.

(c) If the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Subsection 34.08.740(a) of the Act, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.



Section 21.5. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Executive Board of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners, and lien holders as their interests may appear. Subject to the provisions of Subsection 21.1(a) through Subsection 21.1(c), the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Common Interest Community is terminated.

Section 21.6. Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) Whether or not damaged or destroyed, Property is to be repaired or restored; and

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.7. Title Reports and Certificates by Attorneys. Title insurance companies or, if payments are to be made to Unit Owners or Mortgagees, the Executive Board and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the records of the District Recorder's Office, Anchorage Recording District, Third Judicial District, State of Alaska, from the date of the recording of the original above-described Declaration stating the names of the Unit Owners and the Mortgagees.

## **ARTICLE XXII. Rights to Notice and Comment; Notice and Hearing.**

Section 22.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than ten (10) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2. Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing.





At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 22.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

#### ARTICLE XXIII. Executive Board.

Section 23.1. Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws, or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees, independent contractors, and agents, other than managing agents;
- (f) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws, or rules in the Association's name on behalf of the Association or two (2) or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;



(h) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;

(i) Cause additional Improvements to be made as a part of the Common Elements;

(j) Acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 34.08.430 of the Act;

(k) Grant easements for any period of time including permanent easements, and leases, licenses, and concessions for no more than one (1) year, through or over the Common Elements;

(l) Impose and receive a payment, fee, or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of Section 34.08.100 of the Act, and for services provided to Unit Owners;

(m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine for violations of this Declaration, Bylaws, rules, and regulations of the Association;

(n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, the filing and recording of a plat or plan that accompanies an amendment, resale certificates required by Section 34.08.590 of the Act, or a statement of unpaid assessments;

(o) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense assessments;

(q) Exercise any other powers conferred by this Declaration or the Bylaws;

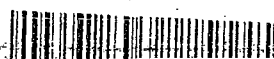
(r) Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

(s) Exercise any other power necessary and proper for the governance and operation of the Association; and

(t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken

DECLARATION FOR

BRIARCLIFF TOWNHOMES



by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

Section 23.3. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

#### **ARTICLE XXIV. Open Meetings.**

Section 24.1. Access. All meetings of the Executive Board at which action is to be taken by vote at such meeting will be open to the Unit Owners, except as hereafter provided.

Section 24.2. Notice. Notice of every such meeting will be given not less than twenty-four (24) hours prior to the time set for such meeting, by hand delivering a notice or posting such notice in a conspicuous location in the Common Interest Community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 24.3. Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners where the action taken at the executive session involves personnel, pending litigation, contract negotiations, or enforcement actions, or where no action is taken at the executive session requiring the affirmative vote of Directors.

#### **ARTICLE XXV. Condemnation.**

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 34.08.740 of the Act.

#### **ARTICLE XXVI. Working Capital Fund.**

Initial purchasers of Units in Briarcliff Townhomes shall pay at closing the equivalent of two months' assessment payments to establish a working capital fund for the Association. Payments to the working capital fund are not advance payment of regular assessments. Within sixty (60) days after closing of the first Unit, Declarant must pay each unsold Unit's share of the working capital fund to the Association, which shall keep all working capital funds in a segregated account. Declarant shall be reimbursed for its working capital fund payments from funds collected at closing when the unsold units are sold. The working capital fund may be terminated at such time as that is permitted by the Eligible Mortgagees.



## ARTICLE XXVII. Party Walls.

Section 27.1. Party Wall. A wall constructed on a Unit boundary between adjoining Units is a Party Wall. The portion of a roof or fence common to adjoining Units shall be treated as analogous to a Party Wall and is governed by these provisions.

Section 27.2. General Rules of Law. General rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions apply to Party Walls in this Common Interest Community.

Section 27.3. Party Wall Ownership. The Unit Owner owns that portion of a Party Wall that is located on the owner's Unit.

Section 27.4. Repair and Maintenance; Rebuilding; Access; Extension.

(a) The lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and other materials constituting a part of the finished surfaces of a Party Wall are part of the Unit and shall be maintained and repaired by the Unit Owner within whose Unit they are located. In addition, chutes, flues, ducts, wires, conduit, bearing walls, bearing columns, or other fixtures lying within a Party Wall and servicing only one Unit, are a part of said Unit to be maintained and repaired by the Owner of that Unit. Any portion of a Party Wall used by both adjacent Unit Owners shall be repaired and maintained by both Unit Owners, and the cost of repair and maintenance shall be shared equally by the two Unit Owners.

(b) If rebuilding of a Party Wall is necessary, the Party Wall shall be rebuilt on the same location and to the same width as the Party Wall being replaced.

(c) A Unit Owner making repairs to or rebuilding a Party Wall, upon reasonable notice to the other Unit Owner, shall be given access to the other Unit, as reasonably necessary to make the repairs to or conduct the rebuilding of the Party Wall but shall take all due precaution not to damage the property of the other Unit Owner.

(d) As permitted by the Association and local law, a Party Wall may be extended by a Unit Owner and the other Unit Owner shall have the right to use the extended Party Wall by paying the Unit Owner one-half the cost of such part of the Party Wall as the other Unit Owner shall use. The other Unit Owner shall be responsible for one-half of the maintenance cost of only that portion of the extended Party Wall that the other Unit Owner uses.

Section 27.5. Destruction by Fire or Other Casualty. A Party Wall that has been damaged or destroyed by fire or other casualty may be restored by either Unit Owner. If the other Unit Owner thereafter makes use of the Party Wall, the other Unit Owner shall contribute to the cost of restoration thereof in proportion to such use subject, however, to the Unit Owner's right to call for a larger contribution from the other Unit Owner under the applicable rule of law regarding liability for negligent or willful acts or omissions.



Section 27.6. Insurance. Both Unit Owners sharing a Party Wall shall maintain property insurance sufficient to fully fund the repair or replacement of the Party Wall if damaged by fire or other insured casualty.

Section 27.7. Exterior Appearance. The exterior colors and materials, including the roofs, of dwellings on adjacent Units joined by a Party Wall must be identical and may not be changed without the written permission of the Association and the written consent of the other Unit Owner. Each Unit Owner shall be responsible for the cost of paint and/or other materials applied to its dwelling.

Section 27.8. Weather Protection. Notwithstanding any other provision of this Article, a Unit Owner who by its negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of repair and furnishing the necessary protection against such elements.

Section 27.9. Disputes. Any controversy that may arise between adjacent Unit Owners over the necessity for or cost of repairs and maintenance of the Party Wall shall be submitted to the Association which shall make a final, binding determination.

#### **ARTICLE XXVIII. Miscellaneous.**

Section 28.1. Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of the Documents nor the intent of any provision thereof.

Section 28.2. Gender. The use of the masculine gender refers to the feminine and neuter genders, and use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 28.3. Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 28.4. Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 28.5. Conflict. The Documents are intended to comply with the requirements of the Act and Chapter 10.20 of the Alaska Statutes (Non-Profit Corporation Law). In the event of any conflict between the Documents and the provisions of the statutes, the provision of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 28.6. Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of the Documents or with decisions of the Association which are made pursuant to the Documents. Unit Owners shall also have such rights of action against the Association.



In Witness Whereof, the Declarant has caused this Declaration to be executed this 12 day of April, 2007.

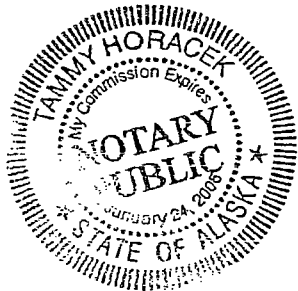
DECLARANT:  
CONDOMINIUMS, INC.

By: [Signature]  
Lynn Lythgoe, President

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 12 day of April, 2007, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared LYNN LYTHGOE, to me known and known to me to be the President of CONDOMINIUMS, INC., and known to me to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of CONDOMINIUMS, INC., for the uses and purposes therein set forth pursuant to the operating agreement or a resolution of the membership.

WITNESS my hand and official seal on the day and year in this certificate first above written.



[Signature]  
Notary Public in and for Alaska  
My Commission Expires: 1-24-08

MORTGAGEE CONSENT:

By: [Signature]  
Its: SUP.

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

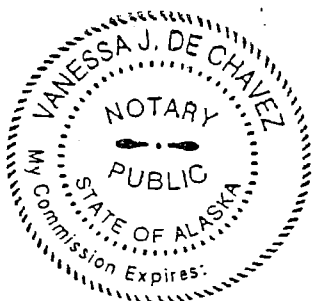
THIS IS TO CERTIFY that on this 12 day of April, 2007, before me, the undersigned Notary Public in and for the State of Alaska, personally appeared VILNY Mellozzi, known to me and to me known to be the SPARCO Credit Officer of Northern Bank, and known to me to be the individual named in and who executed the foregoing document, and she/he acknowledged to me that she/he was authorized to

DECLARATION FOR  
BRIARCLIFF TOWNHOMES



execute the foregoing document on behalf of NORTHVIEW BANK, for the uses and purposes therein set forth.

WITNESS my hand and official seal on the day and year in this certificate first above written.



Vanessa J. De Chavez  
Notary Public in and for Alaska  
My Commission Expires: 03/31/2011



# BRIARCLIFF TOWNHOMES

## DECLARATION EXHIBIT 1

### Table of Allocated Interests

<u>Unit Number</u>	<u>Street Address</u>	<u>% Liability for Common Expenses</u>	<u>Votes</u>
1	701 Blackburn Ct.	1.4706%	1
2	703 Blackburn Ct.	1.4706%	1
3	709 Blackburn Ct.	1.4706%	1
4	711 Blackburn Ct.	1.4706%	1
5	717 Blackburn Ct.	1.4706%	1
6	719 Blackburn Ct.	1.4706%	1
7	718 Blackburn Ct.	1.4706%	1
8	716 Blackburn Ct.	1.4706%	1
9	710 Blackburn Ct.	1.4706%	1
10	708 Blackburn Ct.	1.4706%	1
11	713 Bridgestone Ct.	1.4706%	1
12	715 Bridgestone Ct.	1.4706%	1
13	721 Bridgestone Ct.	1.4706%	1
14	723 Bridgestone Ct.	1.4706%	1
15	722 Bridgestone Ct.	1.4706%	1
16	720 Bridgestone Ct.	1.4706%	1
17	714 Bridgestone Ct.	1.4706%	1
18	712 Bridgestone Ct.	1.4706%	1
19	706 Bridgestone Ct.	1.4706%	1
20	704 Bridgestone Ct.	1.4706%	1
21	6980 Briar Loop	1.4706%	1
22	6978 Briar Loop	1.4706%	1
23	6974 Briar Loop	1.4706%	1
24	6972 Briar Loop	1.4706%	1
25	6968 Briar Loop	1.4706%	1
26	6966 Briar Loop	1.4706%	1
27	6962 Briar Loop	1.4706%	1
28	6960 Briar Loop	1.4706%	1
29	6956 Briar Loop	1.4706%	1
30	6954 Briar Loop	1.4706%	1
31	6950 Briar Loop	1.4706%	1
32	6948 Briar Loop	1.4706%	1
33	6944 Briar Loop	1.4706%	1
34	6942 Briar Loop	1.4706%	1
35	6947 Briar Loop	1.4706%	1





BRIARCLIFF TOWNHOMES  
DECLARATION EXHIBIT 1  
Table of Allocated Interests  
(Continued)

<u>Unit Number</u>	<u>Street Address</u>	<u>% Liability for Common Expenses</u>	<u>Votes</u>
36	6949 Briar Loop	1.4706%	1
37	6953 Briar Loop	1.4706%	1
38	6955 Briar Loop	1.4706%	1
39	6959 Briar Loop	1.4706%	1
40	6961 Briar Loop	1.4706%	1
41	6965 Briar Loop	1.4706%	1
42	6967 Briar Loop	1.4706%	1
43	6971 Briar Loop	1.4706%	1
44	6973 Briar Loop	1.4706%	1
45	6977 Briar Loop	1.4706%	1
46	6979 Briar Loop	1.4706%	1
47	6901 Briar Loop	1.4706%	1
48	6903 Briar Loop	1.4706%	1
49	6907 Briar Loop	1.4706%	1
50	6909 Briar Loop	1.4706%	1
51	6913 Briar Loop	1.4706%	1
52	6915 Briar Loop	1.4706%	1
53	6919 Briar Loop	1.4706%	1
54	6921 Briar Loop	1.4706%	1
55	6925 Briar Loop	1.4706%	1
56	6927 Briar Loop	1.4706%	1
57	6931 Briar Loop	1.4706%	1
58	6933 Briar Loop	1.4706%	1
59	6938 Briar Loop	1.4706%	1
60	6936 Briar Loop	1.4706%	1
61	6932 Briar Loop	1.4706%	1
62	6930 Briar Loop	1.4706%	1
63	6926 Briar Loop	1.4706%	1
64	6924 Briar Loop	1.4706%	1
65	6920 Briar Loop	1.4706%	1
66	6918 Briar Loop	1.4706%	1
67	6914 Briar Loop	1.4706%	1
68	6912 Briar Loop	1.4706%	1
TOTAL		100%	68



BRIARCLIFF TOWNHOMES

DECLARATION EXHIBIT 2

Plans

PLAT NO. 2007-31



Section 34.08.170 of the Common Interest Ownership Act requires that a certification of the accuracy of the unit survey (represent a true and correct layout of units and common areas) and that the information required by Alaska Statute 34.08.170 is provided for on this plan and the plans filed herewith.

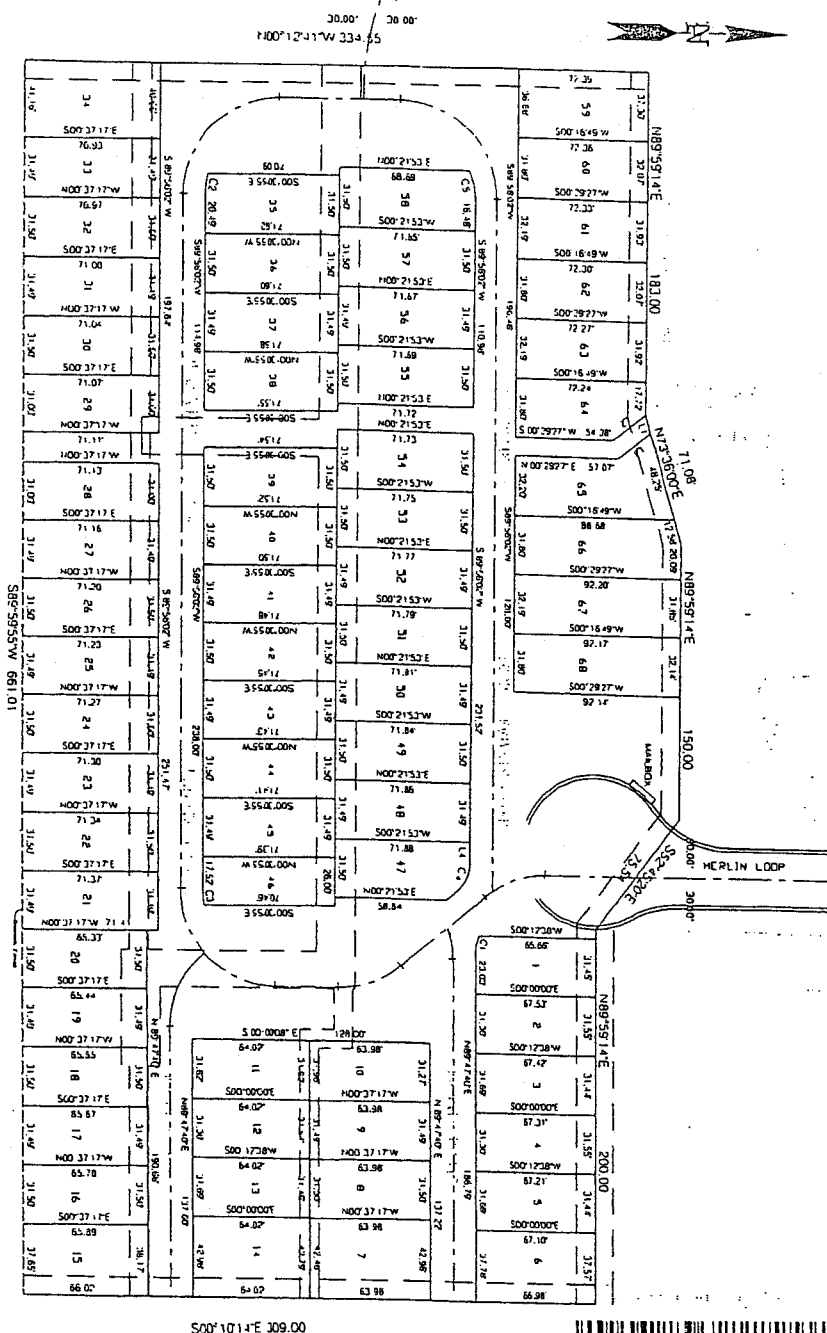
Condominiums, Inc., the declarant of the declaration for Bluebell Townhomes, does hereby file this unit survey to reflect creation of the units and common elements shown hereon.

**NOTARY ACKNOWLEDGMENT**  
**STATE OF ALASKA**

This is to CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned NOTARY PUBLIC in and for the State of Alaska, personally appeared LYNN ULTHOFF, known to me and to me known to be the President of the Conventions, Inc., and known to me the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of the Conventions, Inc., for the past and purposes therein set forth pursuant to the bylaws of the Conventions, Inc., a resolution of the Board of Directors.

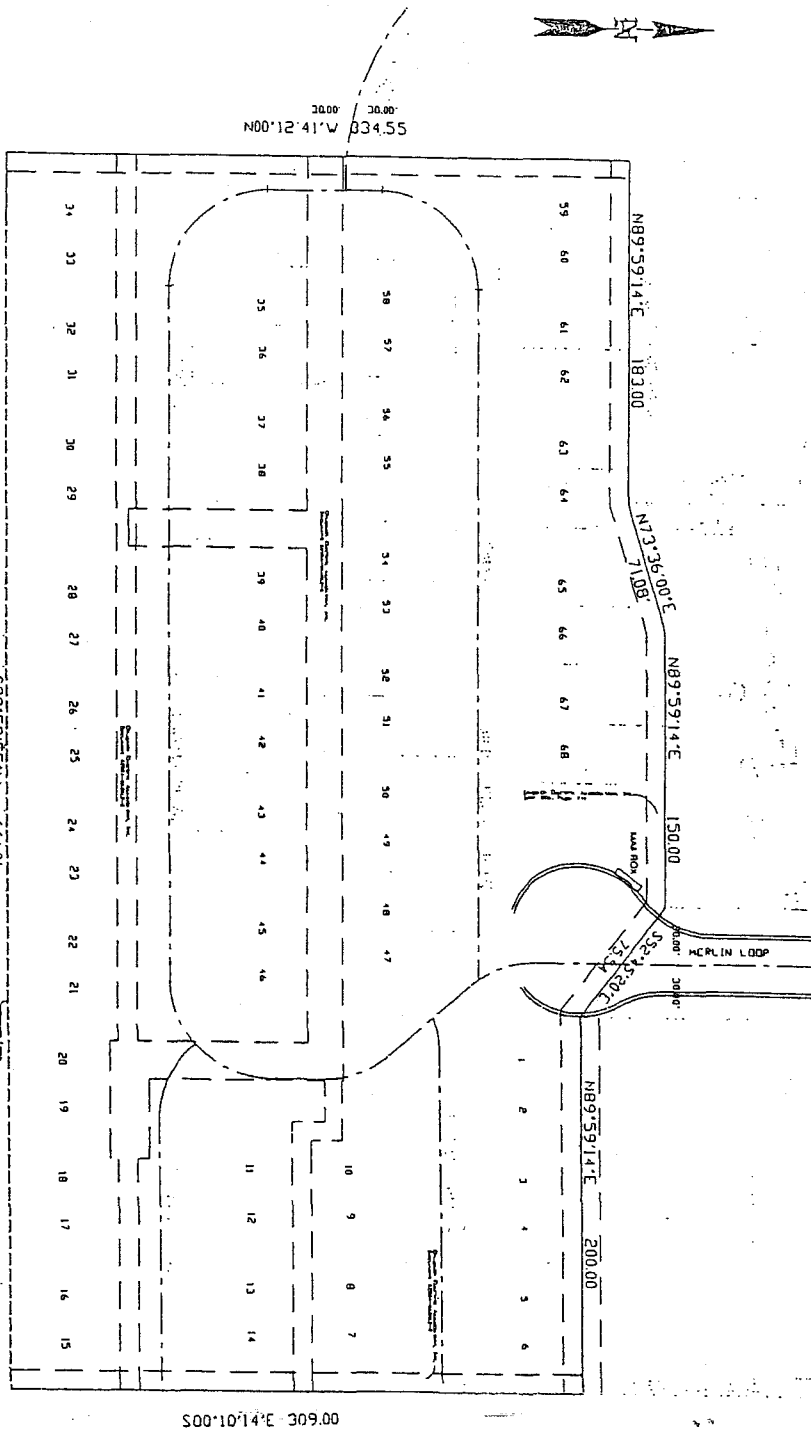
\_\_\_\_\_

WITNESSE my hand and notarial seal this day and year first herein above written.

NOTARY PUBLIC in and for Alaska  
My Commission expires \_\_\_\_\_

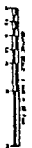
2007-022406-0

[illegible]



- Notes:
1. Blument Easement granted to Envia Natural Gas Company, recorded November 28, 2004, at document # 2004-068592-0.
  2. Survey conducted on October 1 and recorded on the day of said purchase. Due to the topography of this property the slope easement as required by MNC 21.15.120, do not apply to this survey.
  3. Chugach Electric Association Right of Way Easement, Recorded in Book 1006, Page 741.
  4. Flood Zone Designation - None.
  5. Flood Zone Designation - None.
  6. Flood Zone Designation - None.
  7. Flood Zone Designation - None.
  8. Flood Zone Designation - None.
  9. Flood Zone Designation - None.
  10. All easements noted on recorded plat(s) 3541.

### EASEMENT DETAIL



### CURVE TABLE

CURVE	LENGTH	RADIUS
C1	8.35	20.00
C2	11.17	40.00
C3	8.51	40.00
C4	17.31	20.00
C5	15.42	40.00

### LINE TABLE

LINE	LENGTH	BEARING
L1	10.24	N73°36'00\"/>

RECORDING - FILE
DATE
RECORDING OFFICE
BOOK
PAGE

UNIT	ELEVATION
1	118.0'
2	118.0'
3	119.0'
4	119.0'
5	120.0'
6	120.0'
7	120.0'
8	120.0'
9	119.0'
10	119.0'
11	122.5'
12	122.5'
13	123.5'
14	123.5'
15	123.5'
16	123.5'
17	123.5'
18	121.5'
19	121.5'
20	121.5'
21	120.0'
22	119.0'
23	118.0'
24	117.0'
25	116.0'
26	115.0'
27	114.0'
28	113.0'
29	110.0'
30	109.0'
31	106.5'
32	105.5'
33	103.0'
34	102.0'
35	104.5'
36	105.5'
37	106.0'
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39	112.5'
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57	104.0'
58	103.0'
59	100.0'
60	101.5'
61	101.5'
62	104.5'
63	107.0'
64	108.0'
65	110.0'
66	111.0'
67	112.0'
68	113.0'

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Recording Dist: 301 - Anchorage  
4/18/2007 12:11 PM Pages: 1 of 4



**AMENDMENT NO. 1 TO**

**DECLARATION**

**OF**

**BRIARCLIFF TOWNHOMES**

**PROVIDING OMITTED**

**TEXT AND EXHIBIT 3**

AFTER RECORDING IN THE  
ANCHORAGE RECORDING DISTRICT,  
PLEASE RETURN TO:

John Andrew Leman  
Kempel, Huffman & Ellis, P.C.  
255 E. Fireweed Lane, Suite 200  
Anchorage, AK 99503  
(907) 277-1604

WHEREAS, Discovery Construction, Inc., d/b/a Discovery Homes, is an Alaska corporation with offices at 7926 Old Seward Highway, and a mailing address of P.O. Box 11-1411, Anchorage, Alaska 99511-1411 (hereinafter "Declarant"); and

WHEREAS, the Declaration for Briarcliff Townhomes was recorded on April 13, 2007, Serial Number 2007-022406-0, which created Units 1-68; and

WHEREAS, Plat No. 2007-31, recorded in the Anchorage Recording District, Third Judicial District, on April 13, 2007, shows the location of the property and units in Briarcliff Townhomes; and

WHEREAS, Article IV, Section 4.2, of the Declaration inadvertently was left blank as to the Plat Number;

WHEREAS, Exhibit 3, Recorded Easements and Licenses, was referenced in the Declaration, but was inadvertently omitted prior to its recordation;

NOW THEREFORE, Article IV, Section 4.2, of the Declaration is amended to insert the number "31" into the blank in that section.

NOW THEREFORE, the Declaration is hereby amended to include Exhibit 3, Recorded Easements and Licenses, as attached hereto.

IN WITNESS WHEREOF, Declarant has caused this Amendment No. 1 to the Declaration of Briarcliff Townhomes to be executed this 18 day of April, 2007.

DECLARANT:  
CONDOMINIUMS, INC.

By: [Signature]  
Lynn Lythgoe, President

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

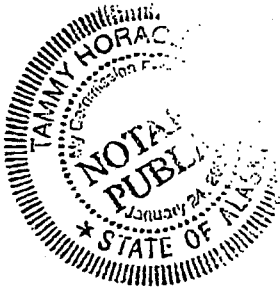
THIS IS TO CERTIFY that on this 18 day of April, 2007, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared LYNN LYTHGOE, to me known and known to me to be the President of CONDOMINIUMS, INC., and known to me to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of CONDOMINIUMS, INC., for the uses and purposes therein set forth pursuant to the operating agreement or a resolution of the membership.

AMENDMENT NO. 1 TO DECLARATION OF  
BRIARCLIFF TOWNHOMES  
PROVIDING OMITTED TEXT AND EXHIBIT 3  
Page 2 of 3  
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2007-023587-0

WITNESS my hand and official seal on the day and year in this certificate first above written.



*Tammy Horack*  
Notary Public in and for Alaska  
My Commission Expires: 1-24-08



**BRIARCLIFF TOWNHOMES****DECLARATION EXHIBIT 3****Recorded Easements and Licenses**

1. Right-of-Way Easement for electric transmission and/or telecommunications and incidental purposes, including the terms and provisions thereof, granted to Chugach Electric Association, Inc., its assigns and/or successor's in interest. Recorded on October 19, 1978, in Book 346 at Page 58, and affecting North 25 feet of the West 15 feet.
2. Right-of-Way Easement for electric transmission and/or telecommunications and incidental purposes, including the terms and provisions thereof, granted to Chugach Electric Association, Inc., its assigns and/or successor's in interest. Recorded on November 23, 1983, in Book 1006 at Page 741.
3. Right-of-Way Easement for electric transmission and/or telecommunications and incidental purposes, including the terms and provisions thereof, granted to Chugach Electric Association, Inc., its assigns and/or successor's in interest. Recorded on September 9, 2004, Serial Number 2004-068012-0.
4. Right-of-Way (Blanket) Easement for gas lines and appurtenances thereto, including the terms and provisions thereof, granted to Enstar Natural Gas Company, a division of SEMCO Energy, Inc. Recorded on November 29, 2004, Serial Number 2004-88552-0.



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2007-023587-0



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**2007-026161-0**

Recording Dist: 301 - Anchorage  
4/30/2007 9:51 AM Pages: 1 of 3



*CC*

**AMENDMENT NO. 2 TO**

**DECLARATION**

**OF**

**BRIARCLIFF TOWNHOMES**

**CORRECTING LEGAL DESCRIPTION**

AFTER RECORDING IN THE  
ANCHORAGE RECORDING DISTRICT,  
PLEASE RETURN TO:

John Andrew Leman  
Kempel, Huffman & Ellis, P.C.  
255 E. Fireweed Lane, Suite 200  
Anchorage, AK 99503  
(907) 277-1604

WHEREAS, Discovery Construction, Inc., d/b/a Discovery Homes, is an Alaska corporation with offices at 7926 Old Seward Highway, and a mailing address of P.O. Box 11-1411, Anchorage, Alaska 99511-1411 (hereinafter "Declarant"); and

WHEREAS, the Declaration for Briarcliff Townhomes was recorded on April 13, 2007, Serial Number 2007-022406-0, which created Units 1-68; and

WHEREAS, Plat No. 2007-31, recorded in the Anchorage Recording District, Third Judicial District, on April 13, 2007, shows the location of the property and units in Briarcliff Townhomes; and

WHEREAS, Amendment No. 1, recorded on April 18, 2007, Serial No. 2007-023587-0, inserted the number "31" into a blank in Article IV, Section 4.2, and also provided the omitted Exhibit 3; and

WHEREAS, the legal description incorrectly listed Lots 1-3 of Block 1 and Lots 9-14 of Block 2 in the Preamble and in Article III, Description of Land Section as being subject to the Declaration.

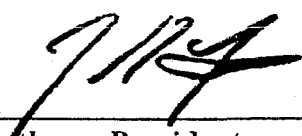
NOW THEREFORE, the Preamble and Article III of the Declaration are amended to provide the correct legal description:

Tract B, Briarcliff Subdivision, according to the official plat thereof filed under Plat No. 83-394, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

Declarant disclaims any interest in Lots 1-3 of Block 1 and Lots 9-14 of Block 2, Plat No. 83-394, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska. They are not subject to the Declaration and are not a part of Briarcliff Townhomes.

IN WITNESS WHEREOF, Declarant has caused this Amendment No. 2 to the Declaration of Briarcliff Townhomes to be executed this 27 day of April, 2007.

DECLARANT:  
CONDOMINIUMS, INC.

By:   
Lynn Lythgoe, President

AMENDMENT NO. 2 TO DECLARATION OF  
BRIARCLIFF TOWNHOMES  
CORRECTING LEGAL DESCRIPTION

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2007-026161-0

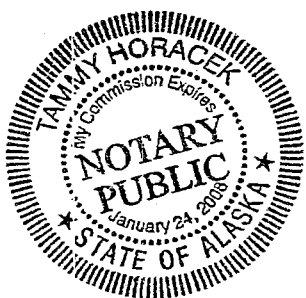
STATE OF ALASKA )

) ss.

THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 27 day of April, 2007, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **LYNN LYTHGOE**, to me known and known to me to be the President of CONDOMINIUMS, INC., and known to me to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of CONDOMINIUMS, INC., for the uses and purposes therein set forth pursuant to the operating agreement or a resolution of the membership.

WITNESS my hand and official seal on the day and year in this certificate first above written.



Tammy Horacek  
Notary Public in and for Alaska

My Commission Expires: 1-24-08

MORTGAGEE CONSENT:

By: [Signature]

Its: SENIOR VICE PRESIDENT

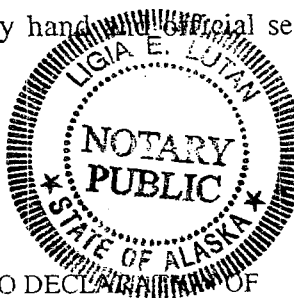
STATE OF ALASKA )

) ss.

THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 27<sup>th</sup> day of April, 2007, before me, the undersigned Notary Public in and for the State of Alaska, personally appeared Tara Tetzel, known to me and to me known to be the Senior Vice President, and known to me to be the individual named in and who executed the foregoing document, and she/he acknowledged to me that she/he was authorized to execute the foregoing document on behalf of Electron Bank, for the uses and purposes therein set forth.

WITNESS my hand and official seal on the day and year in this certificate first above written.



Ligia E. Lutan  
Notary Public in and for Alaska

My Commission Expires: 03/14/2009

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**2007-035930-0**

Recording Dist: 301 - Anchorage  
6/6/2007 1:25 PM Pages: 1 of 5



**AMENDMENT NO. 3 TO  
DECLARATION  
OF  
BRIARCLIFF TOWNHOMES**

*CC*

ANCHORAGE RECORDING DISTRICT  
AFTER RECORDING RETURN TO:

John Andrew Leman  
Kemppel, Huffman & Ellis, P.C.  
255 E. Fireweed Lane, Suite 200  
Anchorage, AK 99503  
(907) 277-1604

WHEREAS, Condominiums, Inc., is an Alaska corporation with offices at 7926 Old Seward Highway, and a mailing address of P.O. Box 11-1411, Anchorage, Alaska 99511-1411 (hereinafter "Declarant"); and

WHEREAS, the Declaration for Briarcliff Townhomes was recorded on April 13, 2007, Serial Number 2007-022406-0, which created Units 1-68; and

WHEREAS, Plat No. 2007-31, recorded in the Anchorage Recording District, Third Judicial District, on April 13, 2007, shows the location of the property and units in Briarcliff Townhomes; and

WHEREAS, Amendment No. 1, recorded on April 18, 2007, Serial No. 2007-023587-0, inserted the number "31" into a blank in Article IV, Section 4.2, and also provided the omitted Exhibit 3; and

WHEREAS, Amendment No. 2, recorded on April 30, 2007, Serial No. 2007-026161-0, corrected the legal description; and

WHEREAS, the Declarant wishes to make certain changes to the Declaration to bring it into compliance with Veterans Administration loan program requirements; and

WHEREAS, the Declarant has not yet conveyed any units and is the owner of all sixty-eight (68) units in Briarcliff Townhomes;

NOW THEREFORE, CONDOMINIUMS, INC., LLC, as Declarant and owner of all Units in Briarcliff Townhomes, amends the Declaration by adding the following:

- I. The following actions constitute extraordinary actions that require the approval of 67% of the votes of unit owners present in person or by proxy at a duly noticed meeting of the Association:
  - (a) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);
  - (b) Determining not to require professional management if that management has been required by the Association documents, a majority of eligible mortgagees or a majority vote of the unit owners;
  - (c) Expanding the Association to include land not previously described as additional land that increases the overall land area of the project or number of units by more than 10 percent;

- (d) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended Common Elements' use; (ii) dedicating Common Elements as required by a public authority; (iii) limited boundary-line adjustments made in accordance with the provisions of the Declaration; or (iv) transferring Common Elements pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association);
  - (e) Using insurance proceeds for purposes other than construction or repair of the insured improvements; or
  - (f) Making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20 percent of the annual operating budget.)
3. Notwithstanding any contrary provision of the Articles, Bylaws or this Declaration, for any meeting at which a Declaration amendment or an extraordinary action will be considered, the following notice requirement applies: (i) at least 25 days advance notice to all unit owners is required; (ii) the notice must state the purpose of the meeting and contain a summary of any Declaration amendments or extraordinary actions proposed; (iii) the notice must contain a copy of a proxy that can be cast in lieu of attendance at the meeting.
4. In addition to any other requirement under the Declaration, the following actions must be approved by at least a majority of the votes entitled to be cast by Unit Owners other than the Declarant:
- (a) Termination of the Declaration or other termination of the Common Interest Community;
  - (b) Dissolution of the Association except pursuant to a consolidation or merger; and
  - (c) Conveyance of all Common Elements.
5. In addition to any other requirement under the Declaration, during the Declarant control period all Declaration amendments and extraordinary actions must have the approval of Veterans Administration, if the Veteran's Administration has guaranteed any loans secured by Units in the project.



6. The right of access for necessary ingress and egress to the unit and any utility services cannot be suspended by the Executive Board for violations of the Declaration or nonpayment of assessments.
7. As to interest on past due assessments, the rate of interest shall be no greater than the lesser of either the rate charged by the Internal Revenue Service on delinquent taxes, or the rate provided in AS 34.08.460(b).

IN WITNESS WHEREOF, Declarant has caused this Amendment No. 3 to the Declaration of Briarcliff Townhomes to be executed this 1 day of June, 2007.

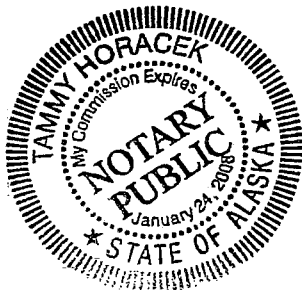
DECLARANT:  
CONDOMINIUMS, INC.

By: [Signature]  
Lynn Lythgoe, President

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 1 day of June, 2007, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **LYNN LYTHGOE**, to me known and known to me to be the President of CONDOMINIUMS, INC., and known to me to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of CONDOMINIUMS, INC., for the uses and purposes therein set forth pursuant to the operating agreement or a resolution of the membership.

WITNESS my hand and official seal on the day and year in this certificate first above written.



[Signature]  
Notary Public in and for Alaska  
My Commission Expires: 1-24-08

MORTGAGEE CONSENT:

By: [Signature]

Its: SENIOR VICE PRESIDENT

STATE OF ALASKA )

) ss.

THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 6<sup>th</sup> day of June, 2007, before me, the undersigned Notary Public in and for the State of Alaska, personally appeared Tara Tetzlaff, known to me and to me known to be the SR. VICE PRESIDENT of NORTHRIM BANK, and known to me to be the individual named in and who executed the foregoing document, and she/he acknowledged to me that she/he was authorized to execute the foregoing document on behalf of NORTHRIM BANK, for the uses and purposes therein set forth.

WITNESS my hand and official seal on the day and year in this certificate first above written.



[Signature]

Notary Public in and for Alaska

My Commission Expires: 03/14/2009

