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ERNEST D. ROWLEY, WEBER COUNTY RECORDER
14-Jun-12 12:05 PM FEE \$155.00 DEP T
REC FOR: HELGESEN WATERFALL & JONES
ELECTRONICALLY RECORDED

AMENDMENT
TO THE
COVENANTS, CONDITIONS & RESTRICTIONS
OF
BRIARWOOD CONDOMINIUM

This Amendment to the Covenants, Conditions & Restrictions of Briarwood Condominium ("Amendment") is made and approved by the unit owners of Briarwood Condominium on the date shown below after being voted on and approved by the unit owners in accordance with the Governing Documents of Briarwood Condominium.

RECITALS

WHEREAS, Briarwood Condominium was created by the Declaration of Covenants, Conditions and Restrictions ("Enabling Declaration") dated January 21, 1973, and recorded January 26, 1973, in the Weber County Recorders Office as entry number 586369, in Book 1015, beginning on Page 150; and

WHEREAS, Briarwood Condominium Homeowners Association, Inc. ("Association") is responsible for the enforcement of the provisions of the Enabling Declaration, amendments to the Enabling Declaration, and the Association's Bylaws (collectively referred to as the "Governing Documents"); and

WHEREAS, it is the desire of the unit owners within Briarwood Condominium to live in a condominium community that is orderly, peaceful and desirable, and that will allow for and protect the comfortable enjoyment of all residents of Briarwood Condominium.

WHEREAS, the unit owners of Briarwood Condominium desire to amend the Governing Documents to (1) preserve and enhance the quality of life at Briarwood Condominium, (2) prevent disregard for the welfare and consideration of others, (3) prevent nuisances and inconvenience to the residents of Briarwood Condominium, and (4) restrict and limit the use of tobacco and other smoking products within Briarwood Condominium; and

WHEREAS, the Utah Legislature enacted legislation in Utah Code Ann. §§78B-6-1101 *et.*

seq., to prevent and restrict the creation of nuisances, including defining tobacco smoke drifting between residential units as a nuisance, and

WHEREAS, the Utah Legislature amended the Utah Condominium Ownership Act, Utah Code Ann. §§57-8-16, to authorize unit owners to amend its Governing Documents to restrict the use of tobacco products in condominiums; and

WHEREAS, the Briarwood Board of Directors has received numerous complaints about tobacco smoke drifting into units from the common area, between the various levels and units, and between the walls of units at Briarwood Condominium; and

WHEREAS, the members of the Association desire to take affirmative steps to address the nuisance created by smoking within Briarwood Condominiums and to improve the quality of life for all residents at Briarwood Condominium.

NOW THEREFORE, the unit owners of Briarwood Condominium hereby amend the Governing Documents recorded against the real property located in Weber County, Utah, known as Briarwood Condominium and more fully described on Exhibit "A" attached hereto. If there is any conflict between this Amendment and the Governing Documents, this Amendment shall control.

This Amendment shall become effective upon recording. The Briarwood Condominium Governing Documents are hereby amended as follows:

AMENDMENT

ARTICLE I

SMOKING PROHIBITED IN UNITS OR IN COMMON AREA NEAR BUILDINGS

- 1.1 No unit owner, family member of a unit owner, tenant, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to as "resident") shall smoke cigarettes, cigars, or any other tobacco product, marijuana, illegal substance, or any other substance that emits smoke, inside any unit or building at Briarwood Condominium, or in any entrance or entry way into a unit, or under any carport.
- 1.2 If a resident smokes on a unit's patio, the resident must do so with the patio door closed to prevent tobacco smoke from drifting from the patio back inside the unit. If any tobacco smoke infiltrates into another unit from a patio or from another unit, any resident affected by the tobacco smoke shall inform the offending resident creating the tobacco smoke, who shall take whatever action is needed to prevent smoke from drifting into the complaining owner's unit.
- 1.3 Any owner who sells his unit shall specifically disclose to all potential buyers and real estate agents that smoking is prohibited within Briarwood Condominium, including within the units. Any owner who rents or otherwise allows someone other than the owner to reside within or

occupy the unit shall disclose to all persons who reside within his unit, prior to their residency or occupancy, that smoking is prohibited within common areas and the unit.

- 1.4 Each owner is responsible for the actions of all other persons residing within or visiting his/her unit and shall be subject to disciplinary action, fines, court action for an injunction, or any remedies available for the violation of this non-smoking restriction. This non-smoking restriction may be enforced in a court of law by any resident or by the Association. If any resident or if the Association is required to hire legal counsel to enforce this non-smoking restriction, the resident or the Association shall be entitled to recover all attorney fees and costs incurred in connection with such enforcement, whether or not litigation has been commenced. The Association may collect the attorney fees and costs it incurs by any lawful means, including through the use of a special assessment levied against the owner of the unit or through a lien.
- 1.5 In the event a unit owner, resident, occupant, or a guest occupying or visiting a unit violates the prohibition on smoking at Briarwood Condominium as set forth herein, the Association may, but is not required, notify the unit owner and the unit owner shall take all necessary steps to see that the smoking ceases. If the resident who violates the smoking restrictions set forth herein is a non unit owner, the unit owner shall evict the tenant if the tenant violates the provisions herein after receiving one warning. If the unit owner fails to permanently cure the smoking violation within fifteen (15) days after receiving notice, the Association may, in behalf of the unit owner, file eviction proceeding against the violating tenant based on unlawful detainer resulting from the tenant's violation of this Article, which is deemed to be incorporated into the tenant's rental agreement. Both the tenant and the unit owner shall be named as defendants in the action and the Association shall be entitled to receive: i) an order requiring the tenant to vacate the premises, ii) damages, and iii) recovery of its costs and attorney fees from the unit owner.
- 1.6 Nothing contained herein shall be construed to prevent an owner or a resident of Briarwood from bringing an action hereunder or under the laws of the State of Utah seeking an injunction or damages against any owner or resident who creates a nuisance through smoking or using tobacco in a unit or in the common area at Briarwood, nor shall any provision hereof be construed as authorization from the Board or the Association for an owner or resident to smoke in a unit or in the common area in such a manner so as to create a nuisance for other residents, owners or guests.
- 1.7 The Board of Directors shall have all powers necessary to enforce this non-smoking restriction, including the authority to enact rules and regulations which it deems necessary to enforce this restriction, and adopting a schedule of fines for violation of this non-smoking provision.
- 1.8 The term "smoke", "smoking" or "tobacco smoke" as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.

1.9 The term "business invitee" as used herein includes but is not limited to, any contractor, agent, household worker, or other person hired by the Association, a unit owner, tenant or resident to provide a service or product to the Association, unit owner, tenant, or resident.

**ARTICLE 2
SEVERABILITY**

2.1 If any of the provisions of this Amendment, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Amendment and the application of any such provision, paragraph, sentence, phrase or word in any other circumstances shall not be affected thereby.

CERTIFICATION

It is hereby certified that a majority of the unit owners present and voting at a meeting of the Association at which a quorum was present voted in favor of this amendment as set forth in the Amendment to Bylaws and Declaration of Covenants, Conditions and Restrictions of Briarwood Condominium Project, recorded on September 15, 1980, as entry number 819669, in Book 1366, Page 217, at the Weber County Recorders Office .

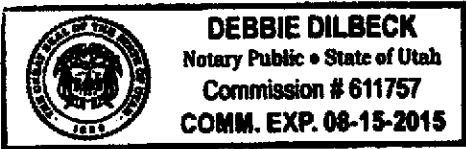
IN WITNESS WHEREOF, this 13th day of June, 2012.

Briarwood Condominium Homeowners Association, Inc.

By *[Signature]*
President

STATE OF UTAH)
)ss.
COUNTY OF WEBER)

On this 13 day of June, 2012, personally appeared before me *Theron L. Palmer* who, being by me duly sworn, did say that (s)he is President of Briarwood Condominium Homeowners Association, Inc. Board of Directors and that the within and foregoing instrument was signed in behalf of said Association and (s)he duly acknowledged to me (s)he executed the same.



[Signature]
Notary Public

EXHIBIT "A"**Legal Description of Units at Briarwood Condominium**

The following units are located in the buildings indicated

Building	Units	Tax I.D. #
A	1 through 8	13-142-0001 through 0008
B	9 through 12	13-142-0009 through 0012
C	13 through 16	13-142-0013 through 0016
D	17 through 24	13-142-0017 through 0024
E	25 through 28	13-142-0025 through 0028
F	29 through 36	13-142-0029 through 0036
G	37 through 44	13-142-0037 through 0044
H	45 through 52	13-142-0045 through 0046 13-143-0001 through 0006
I	53 through 60	13-143-0007 through 0014
J	61 through 64	13-143-0015 through 0018
K	65 through 72	13-143-0019 through 0026
L	73 through 80	13-143-0027 through 0034
M	81 through 88	13-143-0035 through 0042
N	89 through 96	13-143-0043 through 0046 13-144-0001 through 0004
O	97 through 102	13-144-0005 through 0010
P	103 through 108	13-144-0011 through 0016
Q	109 through 112	13-144-0017 through 0020
R	113 through 116	13-144-0021 through 0024
S	117 through 120	13-144-0025 through 0028
T	121 through 126	13-144-0029 through 0034
U	127 through 132	13-144-0035 through 0040
V	133 through 138	13-144-0041 through 0046