

WHITEHORSE CONDOHINIUM CORPORATION NO.2

CONDOMINIUM DECLARATION

THIS DECLARATION of covenants, conditions and restrictions (hereinafter called "the Declaration"), is made and executed pursuant to the provisions of the Condominium Ordinance, being Chapter 12 of the Revised Ordinances of the Yukon Territory, 1971 as amended and the regulations enacted pursuant thereto (all of which are hereinafter referred to as "the Ordinance") in the City of Whitehorse, in the Yukon Territory, the 10th day of July, A.D., 1982, by MALAMUTE SALOON LIMITED, a corporation, having its head office at 200 - 204 Lambert Street in the City of Whitehorse, in the Yukon Territory (hereinafter called "the Declarant").

WHEREAS:

- 1) The Declarant is the owner in fee simple of certain real property situate in the City of Whitehorse, and legally described as:

The whole of Block Two Hundred and Forty-Five (245) in the City of Whitehorse, in the Yukon Territory, as shown on a Plan of Record in the Land Titles Office for the Yukon Land Registration District under number 35055;

(hereinafter called "the said land").

- 2) The Declarant intends that the said land, together with the Ninety-Six (96) housing units located thereon, shall be governed by the Ordinance.
- 3) Morguard Trust Company holds two registered mortgages on the said land, which land and the buildings situate thereon, are hereinafter referred to as "the property".
- 4) The consent of Morguard Trust Company is hereto annexed as Schedule "A" and there are no other registered encumbrances of any kind the title to the property.

- 5) The Declarant is desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the property or any part hereof, certain easements and rights, over and upon the property, and certain mutually beneficial restrictions and obligations with respect to the property, and the use, conduct and maintenance thereof.
- 6) The Declarant desires and intends that the several owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the property, shall at all times enjoy the benefits of and shall hold their interest, together with and subject to the rights, easements, privileges and restrictions hereinafter set forth and as provided by the Ordinance, By-laws and the common element rules hereinafter referred to, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of the property and are established for the purpose of enhancing and protecting the valued desirability and attractiveness thereof.

NOW, THEREFORE, THE DECLARANT hereby declares as follows:

- 1) It is the intent of this declaration and the Declarant and is hereby declared that the property and all appurtenance and interest thereto and therein, as described in the plan which accompanies this Declaration and is marked Schedule "B" hereto, shall be governed by the Ordinance.
- 2) Each owner shall have an equal undivided interest in the common elements as a tenant in common with all other owners and each owner shall contribute equally to the common expenses.

The proportion of the undivided interest in the common elements and the contribution to common expenses that is to be allocated to each unit is 1.042. The total of the proportions of the common interests shall be One Hundred (100%) per cent.

- 3) The address for service upon this Condominium shall be 200 – 204 Lambert Street, Whitehorse, Yukon Territory.
- 4) In this Declaration, all definitions contained in the Ordinance shall apply, and the following expressions shall have the meanings set opposite:

"Common elements" shall mean and include all areas not within any unit described in the plan and all main power lines, water lines, sewer lines, situate thereon or there under.

"Common Expenses" are all the costs resulting from the co-ownership and the operation of the immovable, and particularly from the costs of conservation, maintenance and administration of the common portions, and from the expenses caused by the operation of the common services, and, without limiting the generality of the foregoing, shall include:

- a) the maintenance, cleaning, repair, replacement and the operation of the common portions, save and except those parts of the common portions which the individual co-owners are bound to maintain, the whole as more fully described in these presents;
- b) the cost of electricity, water, heating, fuel and all other utilities and services purchased by the administrators for use in the common portions;
- c) the remuneration payable to any employees deemed necessary for the operation and maintenance of the property, and, without limiting the generality of the foregoing, the salary of any manager for the said project;
- d) the cost of furnishings and equipment for use in and about the common portions, including the repair, cleaning, maintenance and replacement thereof;
- e) the cost of legal, accounting and auditing services, as deemed necessary by the administrators, premiums for insurance as set forth in these presents, fidelity bonds and the cost of any of the objects and duties imposed by law, this declaration and any decisions of the co-proprietors;
- f) fees of the administrators;
- g) the cost of borrowing money to carry out the objects and duties of the administrators and the repayment, including principal and interest, of debts incurred for the objects and duties of the administrators, provided each borrowing of such money shall be individually approved by a majority of the unit owners at meetings duly called for the purpose of obtaining such approval.

"Common interest" means the interest in the common elements appurtenant to a unit.

"Owner" means the owner or owners of the free-hold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession.

"Property" means the land and interest appurtenant to the land described above and includes any land and interests appurtenant to lands that are added to common elements.

"Unit" means a part or parts of the land included in the plan and designated as a unit by the plan, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and plan are registered.

- 5) The monuments controlling the extent of the units are the physical surfaces mentioned in the boundaries of units in Schedule "B" attached hereto.
- 6) Each owner, including the Declarant, shall pay to the corporation his proportionate share of the common expenses, as may be provided for by the by-laws of the corporation, and the assessment and collection of contributions toward the common expenses may be regulated by the board pursuant to the by-laws of the corporation.
- 7) Subject to the provisions of the Ordinance, this declaration and the bylaws, and any rules and regulations passed pursuant thereto, each owner has the full use, occupancy and enjoyment of the whole or any part of the common elements, except as herein otherwise provided.
- 8) Subject to the provisions of the Ordinance, this declaration, the by-laws and the rules and regulations passed pursuant thereto, the owner of each unit shall have the exclusive use of those parts of the common elements as may be determined by the board, subject to ratification by a by-law of the corporation.
- 9) without the consent in writing of the board, no owner shall have any right of access to those parts of the common elements used from time to time as a dwelling for any building superintendent, utilities areas, building maintenance storage areas, managers offices, operating machinery, or any other parts of the common elements used for the care, maintenance or operation of the property. Provided however that this paragraph shall

not apply to any first mortgagee holding mortgages on at least ten per cent (10%) of the units who shall have a right of access for inspection upon forty-eight (48) hours notice to the building manager.

- 10) (a) The corporation may by a vote of members, who own eighty (80) per cent of the common elements, make any substantial additions, alterations or improvements to, or renovation of the common elements, or make any substantial change in the assets of the corporation.
(b) The corporation may by a vote of the majority of the members make any other addition, alteration, or improvement to, or renovation of the common elements, or may make any other change in the assets of the corporation.
(c) For the purposes of this clause, the board shall decide whether any addition, alteration, or improvement to, or renovation of the common elements, or any change in the assets of the corporation is substantial.
- 11) The occupation and use of the units shall be in accordance with the following restrictions and stipulations:
 - (a) Each unit shall be occupied and used only as a private single family residence and for no other purpose; provided, however, that the foregoing shall not prevent the Declarant from completing the building and all improvements to the property, maintaining units as models for display and sale purposes, and otherwise maintaining construction offices, displays and signs until all units have been sold by the Declarant.
 - (b) No unit shall be occupied or used by any one in such a manner as to result in the cancellation, or threat of cancellation, of any policy of insurance referred to in this declaration.
 - (c) The owner of each unit shall comply and shall require all residents and visitors to his unit to comply with the Act, this declaration, and the by-laws, and the rules and regulations passed pursuant thereto.
 - (d) No owner shall make any structural change or alteration in or to his unit or make any change to an installation upon the common elements, or maintain, decorate, alter or repair any part of the common elements, except for maintenance of those parts of the common elements which he has the duty to maintain, without the consent of the board.

12) (a) No owner shall lease his unit unless he causes the tenant to deliver to the corporation an agreement signed by the tenant, to the following effect:

"I " covenant and agree that I, the members of my household and my guests from time to time, will, in using the unit rented by me and the common elements, comply with the Condominium Act, the Declaration and the By-laws, and all rules and regulations of the Condominium Corporation, during the term of my tenancy."

(b) No tenant shall be liable for the payment of common expenses unless notified by the corporation that the owner is in default of payment of common expenses, in which case the tenant shall deduct, from the rent payable to the owner, the owner's share of the common expenses, and shall pay the same to the corporation.

(c) Any owner leasing his unit shall not be relieved hereby from any of his obligations with respect to the unit, which shall be joint and several with his tenant.

13) The corporation may, by a vote of members who own sixty-six and two thirds (66-2/3%) percent of the common elements, make by-laws:

- (a) governing the management of the property;
- (b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
- (c) governing the use of the common elements;
- (d) regulating the maintenance of the units and common elements;
- (e) governing the use and management of the assets of the corporation;
- (f) respecting the board;
- (g) specifying duties of the corporation;
- (h) regulating the assessment and collection of contributions towards the common expenses;
- (i) respecting the conduct generally of the affairs of the corporation.

- 14) Each owner shall maintain his unit, and, subject to the provisions of this declaration, each Owner shall repair his unit after damage, all at his own expense.

Each owner shall be responsible for all damages to any and all other units and to the common elements, which are caused by the failure of the owner to so maintain and repair his unit, save and except for any such damages to the common elements for which the cost of repairing same may be recovered under any policy or policies of insurance held by the corporation.

The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time; and in such an event, an owner shall be deemed to have consented to having repairs done to his unit by the corporation; and an owner shall reimburse the corporation in full for the cost of such repairs, including any legal or collection costs incurred by the corporation in order to collect the costs of such repairs, and all such sums of money shall bear interest at the rate of Eighteen per cent (18%) per annum or such rate as may be approved by By-law from time to time. The corporation may collect all such sums of money in such installments as the board may decide upon, which installments shall be added to the monthly contributions towards the common expenses of such owner, after receipt of a notice from the corporation thereof. All such payments are deemed to be additional contributions towards the common expenses and recoverable as such.

15) The corporation shall repair and maintain the common elements which includes repair and maintenance to all doors which provide the means of ingress to and egress from a unit and to all windows, save and except maintenance of interior surfaces of windows, all at its own expense.

16) Where the board has determined that there has been substantial damage to twenty-five per cent (25%) of the buildings, notice of such determination shall be given with ten (10) days thereof to all owners and mortgagees, with such notice to the mortgagees to be sent by registered mail. Such notice shall be combined with notice to the owners of a meeting called for the purpose of voting for repair.

17) A complete set of all the original architectural and structural plans and specifications for the buildings, including plans and specifications for any additions, alterations or improvements from time to time made to the common elements or to any unit with the prior consent in writing of the board, shall be maintained in the office of the corporation at all times, for

the use of the corporation in rebuilding or repairing any damage to the building, and for the use of any owner and mortgagee.

18) The corporation shall enter into an agreement with an Insurance Trustee which shall be a Trust Company registered duly registered in the Yukon Territory, or shall be a Chartered Bank, which agreement shall, without limiting its generality, provide the following:

- (a) the receipt by the Insurance Trustee of any proceeds of insurance payable to the corporation.
- (b) the holding of such proceeds in trust for those entitled thereto pursuant to the provisions of this declaration.
- (c) the disbursement of such proceeds in accordance with the provisions of the Insurance Trust Agreement.
- (d) the notification by the Insurance Trustee to the mortgagees of any insurance monies received by it.

In the event that the corporation is unable to enter into such agreement with such Trust Company, or such Chartered Bank, by reason of their refusal to act, the corporation may enter into such Agreement with such other corporation authorized to act as a Trustee, as the owners may approve by by-law at a meeting called for that purpose. The corporation shall pay the fees and disbursements of any Insurance Trustee and any fees and disbursements shall constitute a common expense.

19) In the event that:

- (a) the corporation is obligated to repair any unit insured under paragraph 20(b), in accordance with the provisions of Section 19(b) or Section 20(2) of the Ordinance, the Insurance Trustee shall disburse same in accordance with the provisions of the Insurance Trust Agreement, in order to satisfy the obligation of the corporation to make such repairs.
- (b) there is no obligation by the corporation to repair any unit in accordance with the provisions of Section 20(2) of the Ordinance and there is termination in accordance with the provisions of Section 21 of the Ordinance or otherwise, the Insurance Trustee shall hold all proceeds for the owners in the proportion of their respective interests in the common elements and shall pay such proceeds to the owners in such

proportions, upon registration of a notice of termination by the corporation.

- (c) The board, in accordance with the provisions of Section 20 (1) of the Ordinance, determines that there has not been substantial damage to twenty-five per cent (25%) of the buildings, the Insurance Trustee shall hold all proceeds for the corporation and owners whose units have been damaged, as their respective interests may appear, in accordance with the provisions of the Insurance Trust Agreement in order to satisfy their respective obligations to make repairs pursuant to the provisions of paragraph 14 of this declaration, and Section 19 (b) of the Ordinance.

Notwithstanding anything to the contrary herein contained, any proceeds payable by the Insurance Trustee to an owner, in accordance with the provisions of paragraph 19 (b) of this declaration shall be subject to payment in favour of any mortgagee or mortgagees to whom such loss be payable in such policy or policies of insurance and in satisfaction of the amount due under any liens registered by the corporation against such unit.

- 20) The corporation shall be required to obtain and maintain, to the extent obtainable from the insurance industry, the following insurance, in one or more policies:

- (a) Insurance against damage by fire with extended coverage and such other perils as the board may from time to time deem advisable, insuring:

- (i) the property, excluding the units;
 - (ii) personal property owned by the corporation but not including furnishing, furniture, or other personal property supplied or installed by the owners;
 - in an amount equal to the full replacement cost of such real and personal property, without deduction for depreciation, which policy may be subject to a loss deductible clause.

- (b) Insurance against damage by fire with extended coverage and such other perils as the board may from time to time deem advisable, insuring the units, but excluding any improvements made by the owners thereof, in an amount equal to the full replacement cost of such units without deduction for depreciation.

Such policy or policies of insurance shall insure the interests of the corporation and the owners from time to time, as their respective interests may appear, with mortgagee endorsements, which shall be subject to the provisions of this declaration and Insurance Trust Agreement; and shall contain the following provisions:

- (i) that loss shall be payable to the Insurance Trustee;
- (ii) waivers of subrogation against the corporation, its manager, agents, employees and servants and owners, and others, and any member of the household, or guests of any owner or occupant of a unit, except for arson and fraud;
- (iii) that such policy or policies of insurance shall not be cancelled or substantially modified without at least sixty (60) days prior written notice to all parties whose interests appear thereon, and to the Insurance Trustee;
- (iv) waivers of any defense based on co-insurance or of invalidity arising from the conduct or any act or omission or breach of a statutory condition of any insured;
- (v) all policies of insurance shall provide that the same shall be primary insurance in respect of any other insurance carried by any owner;
- (vi) a waiver of the manager's option to repair, rebuild, or replace in the event that after damage the government of the property by the Act is terminated.

(c) Public liability and property damage insurance insuring the liability of the corporation and the owner from time to time, with limits to be determined by the board, and without right of subrogation as against the corporation, its manager, agents, servants and employees, and as against the owners, and any member of the household or guests or any owner or occupant of a unit;

(d) Boiler and machinery insurance to the extent required as the board may from time to time deem advisable.

21) (a) Prior to obtaining any policy or policies of insurance under Paragraph 20, or any renewal or renewals thereof, or at such other time as the board may deem advisable, the board shall obtain an appraisal from an independent qualified appraiser, of the full replacement cost of the property, for the purpose of determining the amount of insurance to be affected pursuant to Paragraph 20 and the cost of such appraisal shall be a common expense.

(b) The corporation, its board, and its officers, shall have the exclusive right, on behalf of itself and as agents for the owners, to adjust any loss and settle any claims with respect to all insurance placed by the corporation, and to give such releases as are required, and any claimant, including the owner of a damaged unit, shall be bound by such adjustment. Provided, however, that the board may, in writing, authorize an owner to adjust any loss to his unit.

(c) Every mortgagee shall be deemed to have agreed to waive any right to have proceeds on any insurance applied or account of the mortgage where such application would prevent application of the insurance proceeds in satisfaction of an obligation to repair. This paragraph (c) shall be read without prejudice to the right of any mortgagee to exercise the right of an owner to vote or to consent, if the mortgage itself contains a provision giving the mortgagee that right, and also to the right of any mortgagee to receive the proceeds of any insurance policy, if the property is not repaired.

(d) A certificate or memorandum of all insurance policies, and endorsements thereto shall be issued as soon as possible to each owner and a duplicate original or certified copy of the policy to each mortgagee. Renewal certificates or certificates or new insurance policies shall be furnished to each owner and renewal certificates or certified copies of new insurance policies to each mortgagee not later than ten (10) days before the expiry of any current insurance policy. The master policy for any insurance coverage shall be kept by the corporation in its offices, available for inspection by an owner or mortgagee on reasonable notice to the corporation.

(e) No insured, other than the corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the corporation, or to direct that loss shall be payable in any manner other than as provided in this declaration.

(f) The corporation shall be required to obtain and maintain liability insurance in such amount as may be agreed upon from time to time by the By-law to ensure that every director or officer of the corporation shall be indemnified and saved harmless from all costs, charges and expenses sustained or incurred in or about any action, suit or proceeding which is brought commenced or prosecuted against him for or in respect of any act,

deed, matter or thing whatsoever made, done or permitted by him in or about the execution of the duties of his office except for fraudulent or dishonest act of acts.

22) It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the corporation and that the following insurance, or any other insurance, if deemed necessary or desirable by any owner, may be obtained and maintained by such owner:

- a) Insurance on any additions or improvements made by the owner to his unit and for furnishings, fixtures, equipment, decorating and personal property and chattels of the owner contained within his unit, and his personal property and chattels stored elsewhere on the property, including his automobile or automobiles, and for loss of use and occupancy of his unit in the event of damage, which policy or policies of insurance shall contain waiver of subrogation against the corporation, its manager, agents, employees and servants, and against the other owners and any members of their household, except for vehicle impact, arson and fraud.
- b) Public liability insurance covering any liability of any owner to the extent not covered by any public liability and property damage insurance obtained and maintained by the corporation.

23) Each owner shall indemnify and save harmless the corporation from and against any loss, costs, damage, injury or liability whatsoever which the corporation may suffer or incur resulting from or caused by an act or omission of such owner, his family or all)' member thereof, any other resident of his unit or any guests, invitees or licencees of such owner or resident to or with respect to the common elements and/or all other units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the corporation.

All payments pursuant to this clause Are deemed to be additional contributions toward the common expenses and recoverable as such.

24) Within three months after the registration of this declaration the members shall, on ten (10) days' notice in writing, hold their first meeting for the purposes of electing directors. The board so elected may, without

notice, hold its first meeting, provided a quorum of directors is present. Any by-law may be passed by the corporation, without a meeting, provided the consent to the by-law, by members who own one hundred per cent (100%) of the common elements and by all registered mortgagees, is endorsed thereon.

25) (a) The corporation, or any insurer of the property or any part thereof, their respective agents, or any other person authorized by the board, shall be entitled to enter any unit or any part of the common elements over which any owner has the exclusive use, at all reasonable times and upon giving reasonable notice for the purposes of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy or policies, remedying any condition which might result in damage to the property, or carrying out any duty imposed upon the corporation.

(b) In case of an emergency, an agent of the corporation may enter a unit at any time and without notice, for the purpose of repairing the unit, common elements or part of the common elements over which any owner has the exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the property. The corporation or any one authorized by it may determine whether an emergency exists.

(c) If an owner shall not be personally present to grant entry to his unit, the corporation, or its agents, may enter upon such unit without rendering it, or them, liable to any claim or cause of action for damages by reason thereof; provided that they exercise reasonable care.

(d) The rights and authority hereby reserved to the corporation, its agents, or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any unit except as specifically provided in this declaration or the by-laws.

26) All present and future owners, tenants and residents of units, their families, guests, invitees or licensees, shall be subject to and shall comply with the provision of this declaration, the by-laws, and any other rules and regulations of the corporation.

The acceptance of a deed or transfer, or the entering into a lease, or the entering into occupancy of any unit, shall constitute an agreement that the provisions of this declaration, the by-laws, and any other rules and regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant or resident, and all of such provisions shall be deemed and taken to be covenants running with the unit and shall bind any person having, at any time, any interest or estate in such unit as though such provisions were recited and stipulated in full in each and every such deed or transfer or lease or occupancy agreement.

- 27) Each of the provisions of this declaration shall be deemed independent and severable, and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this declaration, and in such event all the other provisions of this declaration shall continue in full force and effect as if such invalid provision had never been included herein.
- 28) The failure to take action to enforce any provision contained in the Ordinance, this declaration, the by-laws, or any other rules and regulations of the corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor be deemed to abrogate or waive any such provision.
- 29) Except as hereinbefore set forth, any notice, direction or other instrument required or permitted may be given if served personally by delivering same to the party to be served, or to any officer of the party to be served, or any be given by ordinary mail, postage prepaid, addressed to the corporation at its address for service herein, to each owner at his respective unit or at such other address as is given by the owner to the corporation for the purpose of notice, and to each mortgagee who has notified his interest to the corporation at such address as is given by each mortgagee to the corporation for the purpose of notice; and if mailed as aforesaid the same shall be deemed to have been received and to be effective on the first business day following the day on which it was mailed. Any Officer or mortgagee may change his address for service by notice given to the corporation in the manner aforesaid.

30) This declaration shall be read with all changes of number and gender required by the context.

DATED at the City of Whitehorse, in the Yukon Territory, this 10th day of July, A.D., 1982.

IN WITNESS WHEREOF the Declarant has hereunto affixed its corporate seal under the hands of its proper Officers duly authorized in that behalf .

THE CORPORATE SEAL OF
MALAHUTE SALOON LTD.
was hereunto affixed in the
presence of:

A handwritten signature in dark ink, appearing to be "M. H. H. H. H.", written over a horizontal line. The signature is stylized and cursive.