

DECLARATION AND ESTABLISHMENT

OF

CONDITIONS, RESTRICTIONS AND COVENANTS

THIS DECLARATION of covenants, conditions, restrictions, and charges is made this 25th day of July, 1985, by THOMAS B. SCHMIDT and JACQUE L. SCHMIDT, husband and wife, and JAMES C. BENSON and SANDRA K. BENSON, husband and wife, herein-after referred to for the purposes of convenience as "DECLARANT".

WHEREAS, Declarant is the owner of the real property situated in the State of Alaska described as follows:

- Lots One (1), Two (2), Ten (10) through Fifteen (15), inclusive, Block Four (4), Lots One (1) through Six (6), inclusive, Block Five (5), Lots One (1) through Six (6), inclusive, Block Six, Lots One (1) through Twelve (12), inclusive, Block Seven (7), and Lots One (1) through Eight (8), inclusive, Block Eleven (11), WINDRIDGE ESTATES SUBDIVISION, according to Plat No. 5722, filed in the Kenai Recording District, Third Judicial District, State of Alaska.

and

WHEREAS, Declarant has established a general plan for the improvement and development of the above-described real property and desires to create covenants, conditions, and restrictions upon which and subject to which the above-described real property shall be improved, sold or conveyed by it, as owner thereof.

NOW THEREFORE, Declarant does hereby establish and impose upon the above-described real property the following provisions, conditions, restrictions, covenants, easements and reservations upon and subject to which all of the property shall be held, occupied, leased, sold, and conveyed by Declarant or Declarant's successors in interest. Said covenants shall run with the land for the benefit of the property and each and every lot developed therein, and for the benefit of each owner of one or more lots therein, and the assigns and successors in interest of Declarant and the owners of each and every future lot on said property from and after the recordation of these declarations. Said provisions, conditions, restrictions, covenants, easements and reservations now made applicable to the said property and any future lots developed therein are as follows:

1. LAND USE AND BUILDING TYPE

No lot or other portion of the real property described above shall be used for any purpose other than one single family dwelling or duplex. No buildings shall be erected, altered, placed or permitted to remain on the property other than one single family dwelling or duplex. No structure shall exceed two and one-half (2 1/2) stories in height with a maximum elevation above the lowest ground elevation being that of thirty (30) feet (30').

2. ARCHITECTURAL CONTROL

No building shall be erected, placed, or altered on any lot until the construction plans and specifications plus a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade, elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be secured as provided in paragraph 3 hereunder. In no event shall any building be erected, placed or altered on any lot in violation of any building or zoning law or code of the Kenai Peninsula Borough.

3. ARCHITECTURAL CONTROL COMMITTEES

(a) Membership. The Architectural Control Committee shall be composed of: Three (3) members to be selected by the Declarant. A majority of such committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services rendered pursuant to this instrument. At any time after the 1st day of January, 1986, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee, or to withdraw from or restore to such committee, any of its powers and duties.

(b) Procedure. The committee's approval or disapproval as required in these conditions, restrictions and covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin has been commenced prior to the completion of construction, approval will not be required and the relevant covenants, conditions and restrictions shall be deemed to have been fully complied with.

(c) Grading. No grading shall be done or changed on any lot until all the plans and specifications thereof have been submitted to the Architectural Committee for the required approval in the same manner as for building any lot as set forth above.

(d) Disapproval of Plans. In the event said Committee disapproves said plans and specifications, and sufficient changes or alterations therein have not been submitted which meet the approval of the Architectural Committee, in its sole discretion, said Committee shall notify the applicant of the disapproval thereof, and in that event applicant shall have no rights whatsoever to construct or install said proposed improvement upon any lot in said subdivision. Said Architectural Committee shall have the right to inspect any construction during progress in order to ascertain that the same is being constructed in accordance with the plans on file with said Committee which therefore have been approved in writing by it. In the event any owner attempts to construct or maintain any improvement, structure, landscaping, fencing or any other type of planting in any area of said Project which has not been approved in writing by said Architectural

Committee, said Architectural Committee, the Declarant, or any other owner of any lot in said Subdivision shall have the right to enforce the conditions of this document and may proceed with legal action as deemed necessary to stop and remove the proposed construction or change in construction or erection of the matters not approved in writing as provided for herein. In the event of any such legal action taken against any such owner, such owner agrees to pay all court costs plus reasonable attorney's fees to the party enforcing any part of this Declaration.

(e) Non-Responsibility of Committee. Neither the Architectural Committee, nor any member thereof shall be responsible for any damages for approval or disapproval of any plan, or for structural or other defects of any kind or nature whatsoever in said plans or specifications erected in accordance therewith. Any person filing suit against said Committee must pay all court costs and all reasonable attorneys' fees for said Committee for each proceeding regardless of the outcome of said proceeding.

#### 4. DWELLING QUALITY AND SIZE.

The ground floor area of the main structure, exclusive of one (1) story open porches and garages, shall not be less than 1,400 square feet for a one (1) story building, nor less than 1,000 square feet for a building of more than one (1) story. A special variance may be made by members of the Architectural Control Committee to allow the construction of homes with less than a total of 1,400 square feet of living area, but, in no event, shall the total living area of any house be less than 1,000 square feet, exclusive of open porches and garages. All homes shall be of a frame and masonry construction. Specifically, no log homes shall be erected on the above-described property. All driveways shall have culverts. All efforts shall be made by the owners of any lot on the above-described property to make certain that the dwelling shall be of quality workmanship. All homes shall have a wood or masonry foundation.

#### 5. BUILDING LOCATION.

- (a) No building shall be located on any lot nearer to the front line or nearer to the side street than the minimum setback line shown on the recorded plat. In any event, no building shall be located on any lot nearer than thirty feet (30') to the front line, or nearer than twenty feet (20') to any side street line.
- (b) No building shall be located nearer than fifteen feet (15') to an interior lot line.
- (c) No dwelling shall be located on any lot nearer than fifteen (15) feet to the rear lot line.
- (d) For the purposes of these conditions, restrictions and covenants, eaves, steps, and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

#### 6. TIME FOR CONSTRUCTION

Any and all improvements, including landscaping,

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erected upon any lot in said Subdivision shall be completed with reasonable diligence. Any dwelling and landscaping shall be completed within twelve (12) months of the date of excavation or other commencement of construction. A landscaped design shall be completed in the immediate area surrounding the dwelling within one (1) year of the completion of the structure. All burns, dead timber, brush, roots and stumps resulting from excavation of any kind shall be removed from the premises within the one (1) year construction period.

#### 7. EASEMENTS--UTILITY AND DRAINAGE.

Easements for installation and maintenance of utilities, drainage facilities, and natural vegetation screening, are reserved as shown on a recorded plat. Within these easements, no structure, plants or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public utility or utility company is responsible.

#### 8. NUISANCES.

No noxious or offensive activity may be carried on upon any lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to adjacent owners or the neighborhood. Specifically, no junkyards or gravel pits are permitted on the property described above. No gravel shall be removed from the above-described property at any time for any purpose other than removal for the placement of a basement. No abandoned or unlicensed motor vehicles will be allowed to be kept on the above-described property. No businesses shall be allowed to be operated upon the above-described property. ABSOLUTELY NO FIRES SHALL BE ALLOWED UPON ANY LOT. Specifically, prohibited are parking of junk cars, partially dismantled vehicles, the storage of vehicles or parts of vehicles where they may be viewed from public or private property, except for a maximum of three passenger or recreational vehicles which are regularly used and maintained. The storage of materials, in excess of the amount needed for construction in progress of buildings on the premises, is prohibited, including materials such as scrap metal, building supplies, wood other than for heating. Uses creating noises, smells, smoke, vibrations, or excessive light off the property which interfere with the use or reasonable expectations of peace and quiet enjoyment of other property owners are prohibited.

#### 9. TEMPORARY STRUCTURES.

No structures of a temporary character, including, but not limited to, trailers, basements, tents, sheds, garages, barns, or other out-buildings shall be used on any lot at any time as a residence either temporarily or permanently. Trailers and mobile homes are specifically not allowed on this property. No detached structure of a permanent nature shall be allowed on the above-described property with the exception of a greenhouse or out-building approved by the Architectural Control Committee.

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Only two (2) out-buildings, including greenhouses and detached garages, may be placed upon any lot. IN ANY EVENT, THE FIRST STRUCTURE PLACED UPON ANY LOT SHALL BE THE FAMILY DWELLING WITH THE LIMITATIONS DESCRIBED IN PARAGRAPH 4.

10. UNSIGHTLY EQUIPMENT.

No horse trailers, pick-up campers, vacation trailers, boat trailers, airplanes, or parts thereof, or other unsightly equipment may be stored on the above-described property except within a building or otherwise out of plain view.

11. SIGNS.

No sign of any kind shall be displayed to the public view on any of the above-described property, except for one (1) sign not more than four square foot advertising the property for sale or rent, or signs used by an owner or builder to advertise the property during the construction and/or sales period for marketing of the subdivision lot.

12. OIL AND MINERAL OPERATIONS.

No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot which may be developed on the above-described property, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any of the above-described property unless it shall be at least two hundred feet (200') below the surface. No derrick or other structure designed for use in boring for oil or other natural gas shall be erected, maintained or permitted upon any of the above-described property.

13. LIVESTOCK AND POULTRY.

No animals, livestock or poultry, including, but not limited to horses, cows, sheep, goats, pigs, chickens or ducks, of any kind shall be raised, bred or kept on any lot except as follows: one (1) dog and one (1) cat, or two (2) dogs or two (2) cats, or other strictly household pets may be kept on the property, provided they are not kept, bred or maintained for any commercial purpose. No animal may be kept or housed closer than twenty-five feet (25') to any lot line unless within the principal residence. No vicious animal may be kept on the premises. All animals must be confined to the premises at all times except when under the direct physical control of the owner. No animal may be kept unless the reasonable expectation of other occupants and owners to peace, quiet and a sanitary environment is maintained, so that no other occupants or owners of properties within the subdivision are subjected to unsightly premises or to noises or odors.

14. FENCES.

No fence may be constructed upon any lot except with the permission of the Architectural Control Committee.

15. GARBAGE AND REUSE DISPOSAL.

No lot shall be used or maintained as a dumping ground for rubbish. Trash or other waste shall not be kept except in

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sanitary containers. All incinerators or other equipment for the disposal or storage of such material shall be kept in a clean and sanitary condition.

16. WATER SUPPLY.

No individual water supply system shall be permitted on any of the above-described property unless such system is located, constructed, and equipped in accordance with the requirements, standards, and recommendations of the Alaska Department of Health. All water supply systems must conform to the State of Alaska and Kenai Peninsula Borough standards.

17. SEWAGE DISPOSAL.

No individual sewage disposal systems shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards, and recommendations of the Alaska Department of Health. All sewage disposal systems shall conform to State of Alaska and Kenai Peninsula Borough standards.

18. SANITARY FACILITIES.

All dwellings shall have indoor sanitary facilities and underground disposal systems. No outhouse or above-ground disposal systems shall be permitted on the above-described property.

19. GRADING.

Declarant reserves the right to make such cuts and fills as it or its engineering department may deem necessary to grade the streets or private ways, whether dedicated or not within the boundaries thereof, in accordance with such grades as may be established to conform to the general plans and grade to the entire property, including the right so far as is reasonable, and proper for the necessary support and protection of streets so graded to slope up on abutting lots.

20. UTILITIES.

Installation of all utilities shall be the sole responsibility of the individual lot owner. The utilities to be provided by the individual lot owner shall include, but not be limited to, natural gas, electricity, and telephone. All utilities shall be underground and the installation of said utilities shall comply with all State of Alaska and Kenai Peninsula Borough standards.

21. STREET MAINTENANCE AND SNOW REMOVAL.

Road maintenance and snow plowing shall be accomplished by a Property Owners Association until the appropriate governmental body assumes responsibility. All property owners of the above-described property shall be members of the Property Owners Association and may be subject to assessment for the cost of maintenance and snow removal to the above-described property. Costs of road maintenance, including the snow removal, shall be shared equally by each lot owner who may occupy the above-described property.

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22. TERMS.

No owner shall be permitted to completely clear a lot on which standing trees of size and beauty exist. Space may be cleared for construction, and trees may be thinned so long as maximum natural beauty and aesthetic values of such trees located on the property are retained. In any event, no more than fifty percent (50%) of the trees may ever be cut from any lot.

23. TERMS.

These conditions, restrictions and covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of ten (10) years from the date these conditions, restrictions and covenants are recorded, after which time said conditions, restrictions and covenants shall be automatically extended for successive period of ten (10) years unless an instrument signed by a majority of the then owners of the lots have been recorded, agreeing to change said conditions, restrictions and covenants in whole or in part.

24. REMEDIES FOR VIOLATIONS AND INVALIDATIONS.

(a) Declarant may abate violations. For a violation or breach of any of these conditions, restrictions or covenants by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceedings, Declarant, and any lot owner, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. Failure to promptly enforce any of these conditions, restrictions or covenants shall not bar the enforcement. Whenever the Declarant, or any person entitled to enforce any rights, hereunder, engages in legal proceedings to enforce the same, and prevails in said proceedings, the person violating said restrictions by acceptance of the title to any of the above-described property does hereby agree to pay to the prevailing party such reasonable attorney's fees and court costs as are awarded by any court.

25. RESERVATIONS.

Declarant, its successors and assigns, for the purpose of further insuring the development of the real property which is the subject of these conditions, restrictions and covenants, as an area of high standards, reserves the right until the 15<sup>th</sup> day of August, 1976: 1) To change, lay out a new, or discontinue any street, avenue or way shown on a filed plat which is not necessary for ingress or egress to or from an owner's premises, subject to the approval of the Miami Peninsula Borough and Zoning Commission, or the platting authority, or both, if required. 2) To make such further exceptions, amendments or additions to these conditions, restrictions and covenants as it and the Architectural Control Committee shall deem reasonably necessary and proper.

26. WALVER.

Any delay or omission on the part of the Declarant, or its successors or assigns, or the owners of any of the above-

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described property in exercising any rights, powers, or remedies provided by law or herein, in the event of any breach of the conditions, restrictions and covenants herein contained, shall not be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever, against the declarant for or on account of its failure to bring any action on account of the breach of these conditions, restrictions and covenants, or for imposing restrictions herein which may be unenforceable.

27. SEVERABILITY.

Invalidation of any one of these covenants by judgment or court order shall in no light affect any of the other provisions which shall remain in full force and effect.

28. ARCHITECTURAL CONTROL COMMITTEE.

The Architectural Control Committee is composed of:

THOMAS B. SCHIAFFUSA

JAMES C. BENSON

SANDRA K. BENSON

A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the member of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

ATTEST:

Know all men by these present that we, the undersigned in witness thereof have hereunto set our hands and seals this 15<sup>th</sup> day of July, 1985.

THOMAS B. SCHIAFFUSA

JAMES C. BENSON

JACQUE L. SCHIAFFUSA

SANDRA K. BENSON

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100-0267-283

STATE OF WASHINGTON  
COUNTY OF \_\_\_\_\_

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me the undersigned Notary Public in and for Washington, personally appeared THOMAS E. SCHAAPFEMA and JACQUE L. SCHAAPFEMA known to me to be the persons named in the foregoing instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first hereinabove written.

*[Signature]*  
NOTARY PUBLIC, State of Washington  
My commission expires: Nov 1 1986

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 1985, before me the undersigned Notary Public in and for Alaska, personally appeared JAMES C. BENSON and SANDRA K. BENSON known to me to be the persons named in the foregoing instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first hereinabove written.

*[Signature]*  
NOTARY PUBLIC, State of Alaska  
My commission expires: 10-3-85

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