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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
TEN-MAR RANCH
PLAT 00-2000-51

This Declaration made by WHISPER ENTERPRISES, LLC, this 3rd day of October, 2000, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain property situated in the Kenai Recording District, Third Judicial District, State of Alaska, located within Section 18, Township 5 North, Range 9 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska and containing 311.895 acres more or less.

WHEREAS, the property has been subdivided and named TEN-MAR RANCH according to the laws of the State of Alaska, the rules and regulations of the Kenai Peninsula Borough and the official plat thereof, filed under Plat No. 00-2000-51 which is being filed simultaneously herewith in the records of the Kenai Recording District, Third Judicial District, State of Alaska, with certain restrictions appearing upon the plat (and to which the covenants, conditions and restrictions herein made shall be in addition); and

WHEREAS, it is the desire and intention of Declarant to use and sell the property described above and to impose on it mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all the lands in the property designated above, and the future owners of those lands;

NOW, THEREFORE, Declarant hereby declares that all the property of TEN-MAR RANCH shall be held, sold and conveyed subject to the following restrictive covenants, which are for the purpose of protecting the value and character of the property, which shall bind and run with the property, for the benefit of the property, the individual lots therein, and the owners thereof, and which shall be binding on all parties having or asserting any right, title or interest in any or all of the property or lots or any part thereof, their respective devisees, executors, administrators, legal representatives, assigns and successors in interest, from and after the recording of this Declaration in the records of the Kenai Recording District, Third Judicial District, State of Alaska.

1. **Definitions.** For purposes of this Declaration the following definitions shall be applicable:

a. "Owner" and "Property Owner" Defined. "Owner" and "property owner" referred to herein shall be defined to be the record owner, or purchaser under a real estate purchase contract, or person with ownership rights and possession in and to

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the fee simple title to any lot, tract or portion of TEN-MAR RANCH, excluding those persons having an interest therein merely as security for the performance of an obligation.

b. "Property" Defined. "Property" shall mean and refer to that certain real property described above comprising TEN-MAR RANCH, and such additions thereto as may (but are not required to be) hereafter expressly brought within the jurisdiction of this Declaration by filing of record in the Kenai Recording District, Third Judicial District, State of Alaska, a supplementary Declaration of covenants and restrictions with respect to the additional property.

c. "Lot" Defined. "Lot" shall mean and refer to each of the parcels of land referred to as "lots" and referred to as "tracts" on the recorded subdivision plat of the property.

d. "Declarant" Defined. "Declarant" shall mean and refer to WHISPER ENTERPRISES, LLC, its successors or assigns.

e. "Accessory Building" Defined. "Accessory building" shall mean any type of building customarily incidental and accessory to and located on the same lot as a single-family dwelling.

f. "Permanent Foundation" Defined. "Permanent foundation" shall mean a building erected upon pilings, footings or on slab, as those terms are understood in the construction industry.

g. "Structure of A Temporary Character" Defined. "Structure of a temporary character" shall mean any temporary structure and shall include but not be limited to accessory buildings, tents, sheds, barns, quonset huts, stables and single-family dwellings prior to their completion as described in Section 5(h) hereof.

Z. Land Use Restrictions.

a. All lots within the subdivision shall be deemed residential, and shall accommodate only one detached single-family dwelling, plus accessory buildings.

b. No owner, mortgagee, beneficiary under a deed of trust, lessee or occupant of a lot shall at any time conduct or permit to be conducted on any lot any trade or business of any description, either commercial or non-commercial, religious or otherwise, including day schools, nurseries or church schools, except that a bed and

breakfast business may be operated, maintained or conducted in the principle structure only and not in an accessory building.

c. The area of the lots herein described as Lots 1 through 14, 16 and 17 shall not be reduced in size by resubdivision; provided, however, that owners of three contiguous lots may divide the inner or middle lot in such a way as to increase the size of the two remaining outside lots, which resultant lots shall then be treated for all purposes pertinent to this Declaration as enlarged single lots. All other lots may be reduced in size by resubdivision; provided, however, that no such resubdivision may result in the creation of a lot smaller than two acres in size, that all such resubdivisions shall be accomplished strictly in conformance with the applicable laws rules and regulations of the Kenai Peninsula Borough then in force and applicable to this subdivision, and that all resultant lots shall then be treated for all purposes as part of the property which shall be held, sold and conveyed subject to this Declaration.

3. Water Wells And Sewage Systems. All water wells and sewage disposal systems shall be designed, located, constructed and improved in accordance with the requirements, standards and recommendations of the Department of Environmental Conservation of the State of Alaska, or of such other governmental agency as may have control over such design, location and construction. No dwelling shall be occupied prior to construction of a sewage disposal system. No part of a sewage disposal system may be located closer than 20 feet to any lot line. No outside toilet facilities shall be constructed or maintained at any time, except that portable toilets for the exclusive use of construction workers may be maintained during construction of a dwelling.

4. Clear Vision Areas. No fence, wall, hedge or shrub planting which obstructs site lines at elevations between two and one-half and eight feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting them at points 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property line extended. The same site line limitations shall apply to any lot within ten feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such site lines.

5. Building Restrictions.

a. Each lot shall be occupied and used by the respective owners only in

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accordance with the permitted principal use of the single-family residential district (R-1) rules, regulations and ordinances of the Kenai Peninsula Borough as currently in force or as amended from time to time.

b. Permitted secondary uses normally permitted in the R-1 zoning district of the Kenai Peninsula Borough, as amended from time to time, shall not be permitted on any lot.

c. Development standards pertaining to single-family residential districts of the Kenai Peninsula Borough as now in force or hereafter amended shall apply to all lots, except that in the event any development standard or restriction described in this Declaration is more restrictive or imposes a greater burden on the owner of a lot than that established by the Kenai Peninsula Borough for single-family residential districts as now existing or hereafter amended, and the provisions of this Declaration shall apply.

d. Mobile homes are not allowed for temporary or permanent residence, or while constructing a permanent residence.

e. No lot may have more than three accessory buildings, of which one may be built on a temporary foundation; provided, however, that it may not exceed 200 square feet in size. All other accessory buildings and dwellings shall have permanent foundations.

f. No structure of a temporary character shall be used on any lot at any time as a residence, either temporarily or permanently.

g. All buildings shall meet or exceed all applicable government building restrictions in force at the time of construction, including the Uniform Building Code, as applicable.

h. All exterior surfaces of any building shall be completed within one year of the date of excavation or other commencement of construction. The intent of this provision is that all siding, painting or other exterior finish will be completed in that period, so that there will be no visible uncompleted construction on the outside of the building.

i. The minimum ground floor area of the dwelling exclusive of one-story open porches and any garage, shall contain no less than 1,300 square feet of livable area for a one-story dwelling, or less than 750 square feet of livable area, per

floor, for a dwelling of more than one storey. In the event a dwelling is partially a one-storey and partially a multi-storey structure, the minimum ground floor area of the dwelling exclusive of one-storey open porches and any garage, shall contain no less than 1,050 square feet of livable area.

J. For purposes of this Declaration eaves, steps and open porches shall not be considered as part of any building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon any required setbacks or upon another lot.

K. Prior to the beginning of any construction of a dwelling, the owner of the lot must build driveways and install culverts in accordance with the requirements of the Kenai Peninsula Borough; absent such requirements each owner shall, at the time of driveway construction, provide a culvert at the ditch crossing which culvert must be at a minimum a 12-inch corrugated metal 10 gage or equivalent pipe.

L. Installation of utilities shall be the sole responsibility of an owner. All utilities shall be underground, and the installation thereof shall comply with all requirements of the Kenai Peninsula Borough or other governmental agency responsible therefore.

6. Road Utility And Drainage Easements. Easements for installation and maintenance of roads and utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities or drainage facilities, which may change the direction or 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 the public authority or utility company is responsible.

7. Street Maintenance And Snow Removal. Road maintenance and snow plowing shall be accomplished by lot owners until the appropriate governmental body assumes responsibility therefor.

8. Signs. No signs of any kind shall be displayed to the public view on any lot except one sign of not more than one square foot showing the name of the occupant of the lot, one sign of not more than four square feet advertising the lot for sale or rent, or signs used by a builder or the Declarant to advertise the properties during the construction or sales period.

9. Animals

a. **Lots 1-14.** No animals, sled dogs, livestock or poultry of any kind shall be raised, bred or kept on any lot for any purpose, except that two dogs, two cats and two of any other kind of household pet may be kept, bred or maintained. A maximum of two horses may be raised, bred or kept on each lot, provided that no horse stable or corral may be closer than 125 feet to any street.

b. **All Other Lots And Tracts.** No animals, sled dogs, livestock or poultry of any kind shall be raised, bred or kept on any lot for any purpose, except that two dogs, two cats, two cows, two sheep, two goats, two pigs, two ducks and two of any other kind of household pet may be kept, bred or maintained and except that on lots larger than four acres two horses plus an additional one horse for every three acres of land is permitted (for example on a five acre lot three horses are permitted, and on a ten acre lot five horses are permitted).

c. The provision of a. and b. above notwithstanding, no vicious animals may be kept on any lot; all animals must be confined to their owner's lot at all times, except when under the direct physical control of their owner; no animals may be kept on any lot unless the reasonable expectation of occupants and owners of other lots to peace, quiet and sanitary environment is maintained, so that no occupant or owner of a lot is subjected to unsightly premises, noises or odors.

10. Oil And Mining Operations. No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

11. Garbage And Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and all such matters shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No dumpsters may be used, except during the construction, modification or alteration of a dwelling or accessory building, and all garbage containers shall be enclosed from view. Garbage cans or refuse containers may be placed at the entrance to a lot only within 24 hours prior to the collection time by a refuse company, if such service is available.

12. Automobiles And Equipment

a. No automobiles or other vehicles or equipment may be abandoned on any lot, and any situated on any lot or street must be in operating condition and currently licensed. No heavy equipment may be parked on any lot or street except during the time it is working on the lot, and a reasonable time before and after such use. There shall be no operation of any noise-producing machinery, engine or equipment between 10:00 p.m. and 6:00 a.m. No lot or street may be used for the storage of any equipment, material or merchandise used or to be used in a trade or business.

b. Neither snowmobiles, three wheelers or other all-terrain or off-road vehicles shall be operated on any lot, street or utility easement of the subdivision except for ingress and egress to the nearest opening space or to the nearest area not disapproved for such operation.

12. Nuisances

a. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance or danger to the neighborhood.

b. No trash or debris shall be permitted to remain on any lot for any period of time in excess of that normally required for regular garbage disposal.

c. No trade or business of any nature shall be permitted upon any lot.

d. Storage of excess building materials, spare parts or accessories or accumulation of items in open view that can reasonably be considered an "eyesore" is prohibited.

13. Grading. Declarant reserves the right to make such cuts and fills as it 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 grades of the entire subdivision, including the right so far as is reasonable and proper for the necessary support and protection of streets so graded to slope upon the abutting lots.

14. Term And Amendment. This Declaration shall run with the land and shall be binding on all parties, owners and persons claiming under them for a period of 20 years from the date of this Declaration is recorded, after which time the Declaration shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty years by the owners of 90 percent of the lots

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within the subdivision, and thereafter, by an instrument signed by the owners of 75 percent of the lots. Any amendment must be recorded.

15. **Enforcement.** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein, either to restrain the violation thereof or to recover damages. Each owner of a lot shall pay a pro-rata amount of all legal costs and attorney fees reasonably incurred by the party who succeeds in enforcing any part of this Declaration. Declarant, any lot owner, or any of them severally, shall have the right to proceed at law or in equity to compel the compliance with the terms hereof or to prevent the violation or breach of any of them.

16. **Waiver.** Any delay or omission on the part of the Declarant, or the owner or owners of any lot in the subdivision, their devisees, assignees, executors, administrators, legal representatives or successors in interest in exercising any rights, powers or remedies provided by law or herein for the breach of any covenants set forth herein, shall not be construed as a waiver thereof or acquiescence thereto, and no right of action shall accrue, be brought or maintained by anyone whatsoever against any such person on account of his failure to bring any action or assert any remedy for the breach of any such covenants.

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

In witness whereof, Declarant has signed this Declaration at Anchorage, Alaska this 27th day of October, 2000.

DECLARANT:

WHISPER ENTERPRISES, LLC

By: 
M. J. Hankson

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STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing was acknowledged before me by Jeff Henrikson as
Member Manager of Whisper Enterprises, LLC this 24 day of October, 2000.



Tara E. Thomas
Notary Public in and for Alaska
My Commission Expires: 12-12-01

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RECORDING DISTRICT

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REQUESTED BY

Integrity

Return to:
Whisper Enterprises
6071 Rosend St.
Anchorage, AK 99518

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Notice of Kenai Peninsula Borough
Local Option Zoning District
KPB 21.44.220

NOTICE IS HEREBY GIVEN of the formation of a Local Option Zoning District known as Ten Mar by act of the Kenai Peninsula Borough Assembly through adoption of ordinance number 2000-47 on October 24, 2000 and codified at KPB 21.46.040(A)(1). The following real property located in the Kenai Recording District, Third Judicial District, State of Alaska, is subject to the standards and requirements of KPB 21.44 and the specific requirements of KPB 21.44.160, Single-family residential district (R-1).

The Ten Mar Single-family district includes:

All the lots and Tracts in Ten-Mar Subdivision, Plat Number 2000-5, Kenai Recording District, Third Judicial District, State of Alaska.

Information regarding the formation and requirements of this Local Option Zoning District may be found in the ordinances cited within this notice and by contacting the Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna Alaska, 99669.

Dale Bagley
Dale Bagley, Mayor

ATTEST:

Jenny Biggs, Deputy
Linda S. Murphy, Borough Clerk

DATE: August 30, 2001

Return original document to:

Lani Eggertson Goff
Kenai Peninsula Borough, Planning Department
144 N. Binkley
Soldotna, AK 99669

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