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DECLARATION SUBMITTING  
REAL PROPERTY TO HORIZONTAL REGIME  
ACT FOR ELDERBERRY PARK CONDOMINIUM

A. 694

The undersigned, ELDERBERRY PARK CONDOMINIUMS, LTD., hereinafter the "Declarant", the owner of the real property more particularly described below, hereby submits said property to the provisions of the Horizontal Property Regimes Act (Title 34, Chapter 07, Alaska Statutes) as now existing, or as hereafter amended, and hereby establishes a "Horizontal Property Regime" with respect to said property, for the "Project", to be known as ELDERBERRY PARK CONDOMINIUMS.

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At the time of recording this Declaration, there has been filed in the Anchorage Recording District, Third Judicial District, State of Alaska, survey maps and floor plans for the Project under File No. 79-3424, which survey maps and floor plans are incorporated herein by reference as if fully set forth.

ARTICLE I

DESCRIPTION OF LAND

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The land on which the buildings and improvements of the Project are located, or are to be located, is more particularly described as follows:

PARCEL 1: Lot Seven "C" (7C), Block Thirty-two (32), of the L STREET SLIDE REPLAT OF THE ORIGINAL TOWNSITE OF ANCHORAGE, according to Plat No. 78-77, filed in the Anchorage Recording District, Third Judicial District, State of Alaska.

PARCEL 2: Lot Eleven "A" (11A), Block Thirty-six (36), of the L STREET SLIDE REPLAT OF THE ORIGINAL TOWNSITE OF ANCHORAGE, according to Plat No. 67-30, filed in the Anchorage Recording District, Third Judicial District, State of Alaska.

ARTICLE II

DEFINITIONS

The following terms shall have the following meanings when used herein:

Section 1. Unit. "Unit" means an individual airspace, and, as used herein, is identical to "Apartment", as defined in Title 34, Chapter 07, Alaska Statutes, except as herein otherwise defined. The boundary lines of each unit are (except as elsewhere herein defined) the interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel or other furnishings) of its perimeter walls, floors, ceilings, windows and doors thereof, as shown on the survey maps and floor plans referred to above; and a unit

This document is being re-recorded to reflect the interest on Exhibit "p"

includes both the portions of a building so described and the air-space so encompassed, and includes all fixtures, improvements and partitions therein contained. The foregoing notwithstanding, the following are not a part of a "Unit": bearing and party walls, roofs, foundations, pipes, flues, conduits, wires and other utility installations to the exterior perimeters of a "Unit", all regardless of location.

Section 2. Condominium Unit. "Condominium Unit" means a "Unit", together with an undivided interest in the Common Area and facilities as set forth in Articles V and VII hereof, and the Limited Common Areas and Facilities appurtenant to and reserved to the use of a Unit to the exclusion of other Units.

Section 3. Condominium Building. "Condominium Building" means the building constructed, or to be constructed, on the property described in Article I above.

Section 4. Owner. "Owner" means any person or entity at any time having fee title to a "Condominium Unit".

Section 5. Project. "Project" means the "Property", as defined in A.S. 34.07.450(13).

Section 6. Common Area. "Common Area" means the "Common Area" as set forth in Article V hereof.

Section 7. Limited Common Areas and Facilities. "Limited Common Area and Facilities" means a part of the Common Area, an easement for the exclusive use of which is appurtenant to a particular Unit, as more particularly set forth in Article VI below. The term "Limited Common Area" is sometimes used herein in place of "Limited Common Areas and Facilities" and means the same thing.

Section 8. Mortgage, Mortgagee, Mortgagor. Reference in this Declaration to a "Mortgage" shall be deemed to include a deed of trust; reference to a "Mortgagee" shall be deemed to include the beneficiary of a deed of trust; reference to a "Mortgagor" shall be deemed to include the trustor of a deed of trust.

Section 9. Institutional Holder. The term "Institutional Holder" means a mortgagee which is a bank or savings and loan association; corporation, insurance company, or other entity chartered under federal or state law; or any federal or state agency.

Section 10. Association. "Association" means ELDERBERRY PARK Condominiums Association, Inc., an Alaska nonprofit corporation.

Section 11. Board. "Board" means the Board of Directors of the Association.

Section 12. Bylaws. "Bylaws" means the bylaws of the Association.

Section 13. Declarant. "Declarant" means ELDERBERRY PARK CONDOMINIUMS, LTD. and his assigns and legal representatives.

ARTICLE III

DESCRIPTION OF CONDOMINIUM BUILDING

Section 1. The condominium building will be three stories, wood frame construction on a poured concrete foundation, with a daylight basement over a parking garage, cement plaster (stucco) and wood accent siding, and an aluminum pitched roof.

Section 2. The condominium units are designated numerically as 101, 201 through 211, 301, 302, and 401 through 411.

ARTICLE IV

DESCRIPTION OF UNITS AND ACCESS

Section 1. All units are delineated on the above-referenced survey maps and floor plans. The units are more particularly described on Exhibit "A" attached hereto and made a part hereof.

Section 2. The portions of the Common Area to which the units have immediate access is set forth in Exhibit "B" attached hereto and made a part hereof.

ARTICLE V

DESCRIPTION OF COMMON AREAS AND FACILITIES

The Common Areas and Facilities shall consist of:

- (1) The land described in Article I above, the airspace above same, except the airspace occupied by each of the units, and all improvements situate upon such land, except those improvements actually within the airspace occupied by each unit. The common areas shall include private drive, parking area, walkways, courtyard and yard.
- (2) The foundation, beams, studding, supports, main walls and roof of the condominium building.
- (3) Installations of common utility services to the exterior of the perimeter walls, floors or ceilings of each unit. In the case of utility services metered to and for each individual unit, such as electricity, the common area or facility extends only to (and not including) such meter; and the meters and wires, conduits or pipes from same are improvements belonging exclusively to each particular unit. The utility pipes, conduits and wires from the interior surface of the perimeter walls (or partitions between units) of the unit are the exclusive property and responsibility of the owner of each such unit. Costs and assessments of common utilities (utilities not individually metered to and for each unit) shall be borne equally by the Owners or pro rata according

to their percentage of ownership of common area, whichever method, at the discretion of the Board, is determined to be the most equitable.

(4) All other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use, such as the alarm and video systems.

(5) The lobbies, lavatory, corridors, garage, stairwells, storage room, and exercise room, game room, mail room, mechanical room, elevator, cabana, and chimneys.

The Board may require that Owners maintain certain portions of the Common Areas, such as window screens, awnings, storm windows, planter boxes, antennae, and the like, according to standards and requirements set by the Board.

ARTICLE VI

DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

The Limited Common Areas and Facilities reserved for the use of each unit, to the exclusion of the other units, are the following: parking and storage spaces, patios, and decks. The limited common areas as designated for each unit are shown on the above-referenced survey maps and described on Exhibit "C" attached hereto and made a part hereof.

The parking spaces P-1 through P-37 will be assigned to units by the Declarant; the exclusive right to the use thereof shall be reserved to the units to which such parking spaces are assigned as hereinafter provided. Until parking spaces P-1 through P-37 have been specifically assigned to units the exclusive right to the use of such parking is retained by Declarant as appurtenant to, as limited common area for, the units remaining in Declarant's control or ownership, and such parking spaces and the exclusive right to the use thereof may subsequently be transferred by deed, by Declarant, his successor or assigns to a specific unit, or if not so assigned or transferred, designated as common parking by Declarant, and after any designation as common parking such parking spaces shall be for the uses determined by the Board of Directors of the Association and shall be maintained at the Association's expense and for the Association's benefit. Unassigned parking spaces (P-1 through P-37) conveyed by deeds shall not correspond with unit numbers.

ARTICLE VII

UNDIVIDED INTEREST IN COMMON AREAS AND FACILITIES

The percentage of undivided interest in the Common Area and facilities appertaining to each Condominium Unit and its Owner for all purposes, including voting, is in accordance with Exhibit "D", attached hereto and made a part hereof.

ARTICLE VIII

VALUE OF LAND AND IMPROVEMENTS

Section 1. The value of the Project is \$3,952,500.00.

Section 2. The value of each Condominium Unit and the percentage of undivided interest in the Common Area and facilities appertaining to such Unit for all purposes, including voting, is as set forth on Exhibit "D", attached hereto. Such values are established as required by A.S. 34.07 and do not necessarily reflect the amount for which a Condominium Unit will be sold by Declarant or others.

ARTICLE IX

STATEMENT OF PURPOSES FOR THE CONDOMINIUM BUILDING AND CONDOMINIUM UNITS - USE RESTRICTIONS

Section 1. Residential. The Condominium Units are hereby restricted to single family residential uses and uses related to the convenience and enjoyment of such residential use.

Section 2. Sales and Construction Facilities of Declarant and Commercial Activity. Notwithstanding Section 1, Declarant shall be permitted to maintain during the period of construction and sale of Condominium Units upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Condominium Units and Declarant or a person designated by the Association as agent of the Association for purposes of managing the property may maintain a management office and facilities in a residence. Furthermore, professional and administrative occupations may be carried on within the Units so long as there exists no external evidence thereof.

Section 3. Compliance with Law. No immoral, improper, offensive or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project shall be observed.

Section 4. Rules. Rules may be adopted by the Board concerning and governing the use of the Common Area and Limited Common Area, provided such rules shall be furnished to Owners prior to the time they become effective and that such rules shall be uniform and nondiscriminatory.

Section 5. No Unauthorized Additions, Alterations or Decorations. No additions, alterations or decorations to the Common Area, including the Limited Common Area, shall be commenced, erected or maintained without the prior written approval of the Board.

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Section 6. Animals. The Board may by rule prohibit or limit the raising, breeding or keeping of animals in any unit or on the Common Area or any part thereof.

Section 7. Temporary Structure. No Owner, nor occupant, shall store or permit the storage of any trailer, snowmobile, or other recreational vehicle on any part of the Project even if such storage is meant to be temporary; however, trailers or temporary structures for use incidental to the initial construction of the improvements on the property may be maintained thereon, but shall be removed within a reasonable time, upon completion of construction of the Project.

Section 8. No First Right of Refusal. The right of an Owner to sell, transfer, or otherwise convey the Owner's Condominium Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association.

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Section 9. Renting, Leasing. With the exception of a lender in possession of a Condominium Unit following a default on a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to rent or lease a Condominium Unit for transient or hotel purposes. No Owner may lease or rent less than the entire Condominium Unit. Any lease or rental agreement shall provide that the terms thereof shall be subject in all respects to the provisions of the Declaration and the Bylaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease or rental agreement. All leases and rental agreements shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent a Condominium Unit.

Section 10. Parking and Vehicular Restrictions. No vehicle which shall not be in an operating condition shall be parked or left on the property subject to this Declaration other than in the parking space in the garage. The parking space in the garage shall be used for parking vehicles only and shall not be converted for living, recreational or business purposes. There shall be no exposed storage of any nature on any portion of the Project.

ARTICLE X

AGENT FOR RECEIPT OF PROCESS

Pending amendment hereto, the person to receive service of process in the cases provided for under the Horizontal Property Regimes Act (Title 34, Chapter 07) shall be WILFORD R. LOMAX, whose address for such purposes shall be 1317 West Northern Lights, Anchorage, Alaska 99503, such location being within the recording district in which the project is located. At the first meeting of the Board of Directors of the Association of Owners, as provided for in the Bylaws of the Association, a new registered agent may, with such agent's consent, be appointed, and an appropriate amendment of these Declarations shall be filed in the District Recorder's Office.

ARTICLE XI

EASEMENTS FOR ENCROACHMENTS AND UTILITIES

Section 1. Easements. If any portion of the Common Area now encroaches upon any Condominium Unit or if any Condominium Unit now encroaches upon any other Condominium Unit or upon any portion of the Common Area, as a result of the construction of the Condominium Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Condominium Building or for any other reason, a valid easement for the encroachment and for the maintenance of the same so long as the Condominium Building stands shall exist. In the event the Condominium Building, or any adjoining Common Area, shall be partially or totally destroyed as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Area upon any Condominium Unit or upon any other portion of the Common Area due to this rebuilding, shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the Condominium Building shall stand. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Condominium unit.

Section 2. Reservation to Grant Easements. Declarant reserves the right to grant, convey, transfer, cancel, relocate and otherwise deal with any and all utility easements now or hereafter located on or about the project; provided, however, no such action shall be taken that would substantially affect the appearance or structure of a Condominium Unit; and provided further that as and when one hundred percent (100%) of the Condominium Units have been sold the rights reserved under this Article shall be exercisable solely by and only by the Association.

ARTICLE XII

INCIDENTS OF CONDOMINIUM OWNERSHIP

Section 1. Limited Common Areas. Limited common areas described in Article VI and identified on the condominium map, shall be used exclusively by the owner or owners of said condominium unit or units and not by others except by invitation.

Section 2. Title. Title to a Condominium Unit may be held or owned by any person or entity and in any manner in which title to real property may be held or owned in the State of Alaska.

Section 3. Inseparability. Each Unit shall be inseparable from the undivided interest in and to the common elements appurtenant thereto and no such Unit shall be conveyed, leased, devised, mortgaged or otherwise transferred except as a complete Condominium Unit as defined herein in Article II. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium Unit or any part thereof shall be presumed to be a gift,

devise, bequest, transfer, encumbrance, or conveyance respectively of the entire Condominium Unit, together with all appurtenant rights created by law or by this Declaration.

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Section 4. Partition not Permitted. The Common Area shall be owned in common by the Owners of Condominium Units, and no Owner may bring any action for partition thereof. There shall be no subdivision of a Condominium Unit, and no part of a Condominium Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein without written agreement of one hundred percent (100%) of the Owners of the Condominium Units in the Project and the holders of first mortgages on one hundred percent (100%) of the Condominium Units in the Project in order that each Condominium Unit and the undivided interest in the Common Area appurtenant to such Unit shall always be conveyed, demised, encumbered, or otherwise affected only as to a complete Condominium Unit.

There shall be no combination of the area or space of one Condominium Unit with that of another without written agreement of one hundred percent (100%) of the Owners of the Condominium Units in the Project and the holders of first mortgages on one hundred percent (100%) of the Condominium Units in the Project.

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Section 5. Assessments and Taxation. Each Condominium Unit shall be assessed and taxed separately for all taxes, assessments, and other charges of the State of Alaska, or any political subdivision, or any special improvement district, or any other taxing assessing authority, including without limitation, special ad valorem levies and special assessments. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

Section 6. Owner's Right to Ingress and Egress. Each owner shall have the right to ingress and egress over, upon and across the common areas necessary for access to his Condominium Unit, and shall have the right to the horizontal and lateral support of his Condominium Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.

Section 7. Easements Deemed Created. Each Owner has a non-exclusive easement for and may use the Common Area. All conveyances of Condominium Units hereafter made, whether by the Declarant, or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to the provisions hereof and of the Bylaws of the Association, even though no specific reference to such easements appear in any such conveyance.

Section 8. Association's Right to Use of Common Areas. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to



construct and maintain in the general common areas maintenance and storage facilities for use by the Association.

Section 9. Labor and Material Liens. No labor performed or materials furnished for use in connection with any Condominium Unit with the consent of, or at the request of, an Owner, or his agent, or subcontractor thereof, shall create any rights against any other Condominium Unit or against any interest in the common areas, except as to the undivided interest therein appurtenant to the Condominium Unit of the Owner for which such labor shall have been furnished. Each Owner shall indemnify and hold harmless the other Owners from and against liability or loss arising from the claim of any lien against the Project, or any part thereof, for labor performed, or for materials furnished on or for such Owner's Condominium Unit.

ARTICLE XIII

ADMINISTRATION

Section 1. The Association. The administration of the Project shall be by the ELDERBERRY PARK Condominiums Association, Inc., an Alaska non-profit corporation, in accordance with this Declaration and its Articles of Incorporation and Bylaws.

Section 2. Membership. An Owner of a Condominium Unit shall automatically become a member of the Association and shall remain a member for the period of his ownership.

Section 3. Amendment of Bylaws. The Bylaws of the Association may be amended by a vote of the members of the Association whose aggregate interest in the common elements constitute sixty percent (60%) at a meeting of the Association duly called for such purpose.

Section 4. Managing Agent. The Board may employ for the Association a responsible manager at a compensation established by the Board, to perform such duties and services as the Board shall authorize. Any management agreement for the project will be terminable by the Association for cause upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

Section 5. Receipt of Bylaws. Each Owner shall receive a true and correct copy of the Bylaws of the Association upon becoming an Owner, and shall acknowledge the receipt of same at closing.

ARTICLE XIV

LIABILITY OF DIRECTORS AND OFFICERS

Section 1. Exculpation. No director or officer of the Association shall be liable for acts or defaults of any other

officer or member or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or negligence.

Section 2. Indemnification. The Association shall indemnify every director or officer, and his or her heirs, executors and administrators against all loss, costs and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such director or officer may be entitled. In the event the Association is required to pay any such costs, the Association shall be entitled to assess all Owners for the amount so expended, but such assessment need not be approved by fifty-one percent (51%) of the Owners or any other proportion of said Owners.

ARTICLE XV

ASSESSMENTS

Section 1. Obligation. All Owners shall be obligated to pay the assessments imposed by the Board to meet the common expenses of maintenance, operation and management of the Project. Declarant shall be obligated to pay Association assessments for all Condominium Units as long as Declarant owns same, and in the same manner as though it were a purchaser of same. The Board may establish any reasonable system for collection periodically of common expenses, in advance or arrears as deemed desirable.

Section 2. Annual Assessments. Assessments for the estimated common expenses computed on an annual basis shall be made by the Board and shall be payable in equal monthly installments in advance on the first day of each calendar month. Assessments made shall be based upon the estimated Project expenses including the cost of maintenance and operation of the Common Area, expenses of management, taxes and special assessments unless separately assessed, insurance premiums for insurance coverage as deemed desirable or necessary by the Board, repairs and renovations, utility charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Board or Managing Agent under or by reason of this Declaration, payment of any deficit remaining from a previous assessment period, a reserve fund for replacement of Common Area components, and other costs incurred for the benefit of the Project. The omission or failure of the Board to fix the assessments for any assessment period shall not

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be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Board shall have the right, but not the obligation, to make pro rata refunds of any assessments in excess of the actual expenses incurred prior to the end of the calendar year or credit such excess against the following year's annual assessment.

Section 3. Apportionments. The percentage of any assessment imposed by the Board to be paid by an Owner shall be equal to such Owner's appurtenant interest in and to the Common Area as set forth in Exhibit "D" to this Declaration.

Section 4. Time for Payment of Assessments. Assessments will be levied annually by the Board of Directors and payable monthly on the first day of each month. Each monthly installment or other assessment shall bear interest at the highest legal rate per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Association to give timely notice of any assessment shall not affect the liability of the Owner for such assessment. There shall accrue with each delinquent assessment a late charge of Five Dollars (\$5.00), together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the due date to and including the date full payment is received by the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this Article, the Association may levy in any assessment year a special assessment, payable over such a period as the Association may determine, for the purpose of deferring, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof or for any other expense or purchase incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Area. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty (30) days after such notice shall have been given. There shall accrue with each delinquent special assessment a late charge of Five Dollars (\$5.00), together with interest at the highest legal rate per annum from the date it becomes due and payable if not paid within thirty (30) days after such date of delinquency to and including the date full payment is received by the Association.

Section 6. Assessment Lien. All sums assessed, but unpaid, for the share of common expenses or special assessments chargeable to any Condominium Unit shall constitute a lien on such Condominium Unit superior to all other liens and encumbrances except (a) tax and special assessment liens on the Condominium Unit in favor of a taxing authority and (b) all sums unpaid on any Mortgage of record on the date the monthly installment or other assessment became due. To evidence the lien as herein permitted, the Board

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of Directors may, but shall not be required to prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of accrued penalty thereon, the name of the Owner of the Condominium Unit and a description of the Condominium Unit and record the same in the office of the Clerk of the Anchorage Recording District, State of Alaska. Such lien for assessment shall attach from the due date of the assessment. The lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association in the manner for foreclosing a mortgage on real property upon recording of a notice for claim thereof. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid assessments, any penalties thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien and all reasonable attorneys' fees in connection therewith.

Section 7. Personal Obligation. The amount of any assessment chargeable against any Condominium Unit shall be a personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for the assessment by abandonment or waiver of the use or enjoyment of any of the common elements. Suit to recover a money judgment for unpaid monthly installments or other assessments plus interest and expenses, including attorneys' fees, shall be maintainable without foreclosing or waiving the assessment lien provided herein.

Section 8. Notice to Mortgagee. The Association shall report to any Mortgagee of a Condominium Unit any unpaid assessments pertaining to the mortgaged Unit remaining unpaid for longer than thirty (30) days after the same shall have become due.

Section 9. Annual Audit Furnished Holder of Mortgage. Any Institutional Holder of a Mortgage on a Condominium Unit in the Project will, upon request, be entitled to receive an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the project.

Section 10. Personal Liability of Purchaser for Assessments. If the holder of a first mortgage or other purchaser of a Condominium Unit obtains possession of the Condominium Unit as a result of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, the possessor, his successors and assigns are not liable for the share of common expenses, or assessments by the Association chargeable to the Condominium Unit which became due before his possession. This unpaid share of common expenses or assessments is a common expense collectable from all of the Owners, including the possessor, his successors and assigns, pro rata.

Section 11. Initial Obligation of Purchaser of a Unit. A first purchaser of a Condominium Unit from the Declarant shall be required at the closing of the purchase of such Condominium Unit to deposit with the Association an amount equal to one-sixth (1/6) or two (2) months of the particular Unit's allocation of the annual

budget which sum shall be placed in the working capital fund to be used for the initial operation of the Project.

ARTICLE XVI

AMENDMENT

This Declaration may be amended by affirmative vote of not less than sixty percent (60%) of the Owners; provided, however, the percentage of undivided interest of each Owner in the Common Area may be changed, and alterations to the Project may be authorized, only by an amendment approved by one hundred percent (100%) of the Owners; and provided, further, that the written approval of the Institutional Holders of first mortgages on one hundred percent (100%) of the Condominium Units shall be a prerequisite to the effectiveness of any action which amends any material provision of this Declaration, including but not limited to, any amendment which would change the percentage interests of the Owners in the Project.

While any Unit in the Project is encumbered by a Federal Veterans Administration loan, prior written approval of the Veterans Administration shall be a condition precedent to the effectiveness of any amendment to this Declaration.

ARTICLE XVII

DAMAGE AND DESTRUCTION

Within sixty (60) days of any damage or destruction to all or part of the property, a determination as to whether to repair or reconstruct the same in accordance with the original plan shall be made by a majority vote of all condominium unit owners. If at least a majority of the Owners vote to rebuild, repair, or reconstruct, and the insurance proceeds are insufficient to repair and reconstruct, the Owners shall be liable for any deficiency as a common expense. If all or part of the property is destroyed or substantially destroyed and a vote of a majority of the Owners to rebuild, repair, or reconstruct is not obtained, the Association shall be authorized to have prepared, and to file as promptly as practical, a corrected subdivision map converting the project into an unimproved parcel of land, which shall be offered for sale at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale, and the proceeds, if any, of insurance carried by the Association, shall be divided proportionately among the owners, such proportions to be based upon the percentage of undivided interest in the common area, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose condominium is so encumbered.

In the event of substantial damage to or destruction of any Unit or any part of the Common Area, the Institutional Holder of

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any first mortgage on a Unit will be entitled to timely written notice of any such damage or destruction.

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ARTICLE XVIII

ALTERATION OF THE PROJECT

Restoration or replacement of the Project or the Condominium Building or construction of any additional building or structural alteration or addition to the Condominium Building, different in any material respect from the condominium file plan of the Project, shall be undertaken only upon the prior approval by a one hundred percent (100%) vote of the Condominium Unit Owners. Promptly upon completion of such restoration, replacement or construction, the Association shall duly record a complete set of floor plans of the Project so altered in a form which meets all then existing statutory requirements.

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ARTICLE XIX

REPAIR AND MAINTENANCE

Section 1. Obligation of Owner.

(a) Every Owner shall at all times repair, maintain and keep his Unit and Limited Common Area subject to his exclusive control in good order and condition, except the parking spaces which shall be maintained by the Association and as otherwise provided by law or the Declaration, and without limitation shall perform promptly all such work within his Condominium Unit the omission of which would affect any part of the Common Area or other Units and shall be responsible for all loss and damage occasioned by his failure to do so.

(b) All repairs of internal installations within each Unit and its appurtenant Limited Common Area such as water, light, power, sewage, telephones, paving, doors, windows, lamps and all other fixtures and accessories to such Unit, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors and ceilings of such Unit, shall be made at the Owner's expense.

(c) Every Owner shall reimburse the Association for any expenditure incurred in repairing or replacing any part of the Common Area damaged or lost through the fault of such Owner or any person using the Project under him and shall give prompt notice to the managing agent of any such damage, loss or other defects when discovered.

(d) In order to preserve a uniform exterior appearance to the building, the Board may require the painting of the building, and prescribe the type and color of paint, and may prohibit, require, or regulate any modification or decoration of the building, undertaken or proposed by any Owner. This power of the Board

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extends to screens, doors, awnings, rails or other visible portions of each Condominium Unit and Condominium Building. The Board may also require use of a uniform color of draperies or drapery lining for all Units.

Section 2. Right of Entry.

(a) Any person authorized by the Board shall have the right to enter each Condominium Unit in case of any emergency originating in or threatening such Condominium Unit, or any part of the Project, whether or not the Owner or occupant is present at the time.

(b) Every Owner and occupant shall permit other Owners or their representatives to enter his Condominium Unit at reasonable times for the purpose of performing authorized installations, alterations or repairs to the Common Area, provided that requests for entry are made in advance. In case of emergency, such right of entry shall be immediate.

Section 3. Repair and Maintenance Duties of Association.

The Association shall maintain, repair and make necessary improvements to, and pay for out of the maintenance fund to be provided, all common areas and the building thereon; all corrective architectural, landscaping and repair work within residences, if the Owner fails to repair the areas subject to his control and duty to maintain; all metered utilities in common areas; and all parking areas, ramps, walks and other means of ingress and egress within the project.

ARTICLE XX

INSURANCE

Section 1. The Board shall obtain and continue in effect adequate blanket public liability insurance for the common areas and fire insurance with extended coverage for the full replacement value of the project. Such insurance shall be maintained by the Association for the benefit of the Association, the unit owners, and the encumbrancers upon the property, or any part thereof, as their interests may appear, with underlying coverage on the individual units. The Board may purchase such other insurance as it may deem necessary, including, but not limited to, plate glass insurance, fidelity bonds and workmen's compensation. Each Owner shall provide insurance on his personal property. Nothing herein shall preclude any individual Owner from carrying any public liability insurance as he may deem advisable to cover his individual liability for damages to person or property occurring inside his individual unit or elsewhere upon the premises. Each Owner is required to and agrees to notify the Board of all improvements by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000.00).

Notwithstanding any other provisions herein, so long as the Federal National Mortgage Association, its successors or assigns;

or Government National Mortgage Association, its successors or assigns; or Federal Home Loan Mortgage Corporation, its successors or assigns, holds a Mortgage on a Condominium Unit, the Association will carry as a common expense, a master policy of casualty and liability insurance (in an amount not less than One Million Dollars (\$1,000,000.00)) and a fidelity bond with such coverages and endorsements and in such amounts as shall be required by FNMA, GNMA, or FHLMC regardless of other or different requirements of the Association, the Owner, other mortgagees or other interested parties.

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ARTICLE XXI

ADDITIONAL PROTECTION OF MORTGAGEES

Section 1. The prior written approval of each Institutional Holder of a first mortgage lien and the Federal Veterans Administration if there are any Veterans Administration loans on a Condominium Unit in the Project will be required for at least the following:

- (1) The abandonment or termination of the Project, or its status as a horizontal property regime, except for abandonment or termination provided by Section 34.07.330 of the Alaska Statutes.
- (2) Any material amendment to the Declaration, Articles of Incorporation of the Association or the Bylaws, including, but not limited to, any amendment which would change the percentage interests of any Owner in the Project.
- (3) The effectuation of any decision by the Association to terminate professional management and assume self-management of the Project.
- (4) A change in the pro-rata interest or obligation of any Condominium Unit for purposes of levying assessments or charges.
- (5) The use of hazard insurance proceeds for losses to any part of the Project, whether to a Unit or to the Common Area, for other than the repair, replacement, reconstruction of such improvements except as provided in the Horizontal Property Regimes Act in the case of substantial destruction of the Project.

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Section 2. Any lien which the Association may have on any Condominium Unit in the Project for the payment of common expense assessments attributable to such Condominium Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Condominium Unit recorded prior to the date any such common expense assessments become due.

Section 3. Any Institutional Holder of a first mortgage on a Condominium Unit in the Project will, upon request, be entitled to:



(1) inspect the books and records of the Project during normal business hours; and

(2) written notice of all meetings of the Association of Condominium Owners and be permitted to designate a representative to attend all such meetings.

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ARTICLE XXII

CONDEMNATION

Section 1. Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken by any public authority or sold or otherwise disposed of in lieu of taking or in avoidance thereof, the provisions of this Article shall apply.

Section 2. Proceeds. All sums received as the award of condemnation damages and all sums received as consideration in any sale of, or other disposal in lieu of taking, the sum of which is hereinafter called the "Condemnation Award", shall be payable to such Bank or Trust Company authorized to do business in the State of Alaska as the Board shall designate as Trustee for all Owners and Mortgagees according to the loss or damage to their respective units and common interests.

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Section 3. Complete Taking. In the event that the entire Project is taken, or sold or otherwise disposed of in lieu of taking or in avoidance thereof, the Condemnation Award shall be apportioned by the designated Bank or Trust Company among the Mortgagees and Owners in proportion to the Owners' respective undivided interests in the Common Area; provided that if a standard different from the value of the Project as a whole is employed to establish the size of the Condemnation Award, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. Taking of, or sale of, or other disposal of the entire Project in lieu of taking shall terminate the Project's status under the Horizontal Property Regime Act as soon as the Compensation Award has been distributed by the designated Bank or Trust Company.

Section 4. Partial Taking. In the event that less than the entire Project is taken, or sold or otherwise disposed of in lieu of taking or in avoidance thereof, the Condominium Ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner:

(a) As soon as practicable, the Board shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the Common Area and shall apportion among Owners in proportion to their respective undivided interests in the Common Area;

(b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken;

(c) the compensation shall be apportioned to the Condominium Units taken or injured and to the Common Area actually taken or injured; and

(d) the amount allocated to consequential damages and any other taking or injuries shall be apportioned as the Board determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in apportioning the Condemnation Award the Board shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by check payable jointly to the respective Owners and their respective Mortgagees.

Section 5. Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter, the Board shall reallocate the ownership, voting rights, and assessments ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Condominium Units for amendment of this Declaration as provided in Article XVI hereof.

Section 6. Notice to Mortgagee. The Institutional Holder of a first mortgage on any Unit shall be given written notice of any condemnation proceeding described herein and no provision of any documents establishing the Project will entitle the Owner of a Condominium Unit or other part to a priority over such Institutional Holder with respect to the distribution to such Condominium Unit of the proceeds of any Condemnation or other award or settlement relating to a taking by eminent domain.

Section 7. Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XVII and XVIII above.

ARTICLE XXIII

CONTROL BY DECLARANT

Before the election of the first Board, as provided for in the Bylaws of the Association of Owners, the Declarant, or its successors or assigns, shall have all the rights, powers and obligations of the Board herein provided for, and in the Bylaws provided for, to administer the Project; provided, however, that Declarant shall be subject to all limitations of such power on the Declarant or Board provided for in this Declaration and in the Bylaws, and provided, further, that control of the Association will become vested in the purchasers of the Condominium Units

within not more than one hundred twenty (120) days after completion of transfer to purchasers of title to Condominium Units representing seventy percent (70%) of the votes of all Owners. In addition, the Declarant shall have the right to change or modify any or all of the terms, restrictions and covenants herein contained, which change or modification shall be effective upon the recording thereof; provided, no change or modification of this Declaration shall be made without the prior written approval of the holder of the first mortgage on the entire condominium project, and/or the holder of the first mortgage on any Unit or part of the Common Area and the Federal Veterans Administration if there are any Veterans Administration loans against any Unit in the Project.

ARTICLE XXIV

BINDING EFFECT OF DECLARATIONS, BYLAWS, AND  
ARTICLES OF INCORPORATION OF ASSOCIATION; POWER  
TO BRING ACTION AGAINST OWNER

All provisions of this Declaration, the Bylaws, and the Articles of Incorporation of the Association shall bind and be effective upon the Owners of this Project, their tenants, employees, contractors, and any and all other persons that may use or be on or about the Project, or any part of it, in any manner.

The failure of any Owner to comply with the provisions of this Declaration, the Bylaws, or the Articles of Incorporation of the Association shall constitute a breach of contract, and shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages or injunctive relief or both. Any such action may be brought by the Board in behalf of the Association.

ARTICLE XXV

SEVERABILITY

If any provisions of this Declaration or the application thereof to any person or circumstance is held invalid by judgment or court order, the remaining provisions and their application to other persons, or to other circumstances shall not be affected thereby, and shall remain in full force and effect.

DATED at Anchorage, Alaska, this 9 day of JANUARY, 1979.

*Walter R. ...*  
 \_\_\_\_\_  
 Walter R. ...

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EXHIBIT "A"

DESCRIPTION OF UNITS

A. There are six (6) basic floor plans for the units identified and described as follows:

"A" Model: The "A" model consists of two (2) bedrooms, a dining area, kitchen, living room, utility area, entry area, two (2) bathrooms, and a fireplace, all on one level.

"B" Model: The "B" model contains two levels. The upper level consists of a living room, dining area, kitchen, entry area, one-half bathroom, staircase, and fireplace. The lower level consists of two (2) bedrooms, two (2) bathrooms, and a utility area.

"C" Model: The "C" model contains two levels. The upper level consists of a living room, dining area, kitchen, one-half bathroom, staircase, and fireplace. The lower level consists of two (2) bedrooms, two (2) bathrooms, and a utility area.

"D" Model: The "D" model consists of two (2) bedrooms, two (2) bathrooms, a dining area, kitchen, living room, utility area, entry area, and a fireplace, all on one level.

"E" Model: The "E" model contains two levels. The upper level consists of a living room, dining area, kitchen, one-half bathroom, staircase, and fireplace. The lower level consists of one (1) bedroom, one (1) bathroom, and a utility area.

"F" Model: The "F" model contains two levels. The upper level consists of a living room, dining area, kitchen, entry area, one-half bathroom, staircase, and fireplace. The lower level consists of two (2) bedrooms, two (2) bathrooms, and a utility area.

B. Unit Models and Location

<u>UNIT NUMBER</u>	<u>MODEL</u>	<u>SQ. FT.</u>	<u>LOCATION IN BUILDING</u>
101	A	1399	This Unit is in the southwest corner of the daylight basement floor.
201	A	1401	This Unit is in the southwest corner of the first floor.
202	F	1464	This Unit is the first Unit from and north of the southwest corner Unit of the first floor and daylight basement floor.
203	F	1452	This Unit is the second Unit from and north of the southwest corner Unit of the first floor and daylight basement floor.

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UNIT NUMBER	MODEL	SQ. FT.	LOCATION IN BUILDING
204	F	1460	This Unit is the third Unit from and north of the southwest corner Unit of the first floor and daylight basement floor.
205	B	1832	This Unit is in the northwest corner of the first floor and daylight basement floor.
206	F	1457	This Unit is the first Unit from and east of the northwest corner Unit of the first floor and daylight basement floor.
207	F	1460	This Unit is the second Unit from and east of the northwest corner Unit of the first floor and daylight basement floor.
208	F	1459	This Unit is the third Unit from and east of the northwest corner Unit of the first floor and daylight basement floor.
209	F	1454	This Unit is in the northeast corner of the first floor and daylight basement floor.
210	C	2087	This Unit is the first Unit from and south of the northeast corner Unit of the first floor and daylight basement floor.
211	E	1218	This Unit is in the southeast corner of the first floor and daylight basement floor.
301	A	1401	This Unit is in the southwest corner of the second floor.
302	D	1714	This Unit is in the southeast corner of the second floor.
401	A	1393	This Unit is in the southwest corner of the third floor.
402	F	1463	This Unit is the first Unit from and north of the southwest corner Unit of the third and second floors.
403	F	1461	This Unit is the second Unit from and north of the southwest corner Unit of the third and second floors.

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<u>UNIT NUMBER</u>	<u>MODEL</u>	<u>SQ. FT.</u>	<u>LOCATION IN BUILDING.</u>
404	F	1458	This Unit is the third Unit from and north of the southwest corner Unit of the third and second floors.
405	B	1832	This Unit is in the northwest corner of the third and second floors.
406	F	1463	This Unit is the first Unit from and east of the northwest corner Unit of the third and second floors.
407	F	1460	This Unit is the second Unit from and east of the northwest corner Unit of the third and second floors.
408	F	1461	This Unit is the third Unit from and east of the northwest corner Unit of the third and second floors.
409	F	1453	This Unit is in the northeast corner of the third and second floors.
410	C	2005	This Unit is the first Unit from and south of the northeast corner Unit of the third and second floors.
411	D	1722	This Unit is in the southeast corner of the third floor.

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The address of each Unit described in this exhibit shall be:

John Doe  
Elderberry Park Condominium  
Unit No. \_\_\_\_\_  
333 "M" Street  
Anchorage, Alaska 99501

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EXHIBIT "B"

All Units described herein have the following common access:

Access to all Units is from a common corridor running in an east-west and north-south direction on all levels of the Condominium Building. There is a common stairwell at the east end of the corridor that allows access to all Units of the Condominium Building. There is a common elevator next to the common stairwell that allows access to all Units of the Condominium Building. There is a common stairwell on the northeast corner of the Condominium Building that allows access to all the Units of the Condominium Building.

The main entrance is located on the south side of the Condominium Building and the rear entrance is located on the east side of the Condominium Building.

The main entrance and rear entrance lead to common sidewalks allowing access to "M" Street, a public street, or to a private driveway and then onto "M" Street.

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~~0221~~

~~0394~~

EXHIBIT "C"

DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

<u>UNIT NUMBER</u>	<u>PARKING SPACE</u>	<u>STORAGE</u>	<u>DECK</u>	<u>PATIO</u>
101	P-1 through P-37	S-101	D-101	
201		S-201	D-201	
202	Parking space numbers do not correspond with unit numbers.	S-202		
203	Parking spaces will be assigned by Declarant.	S-203		
204		S-204		
205		S-205	D-205 D-205A	PT-205
206		S-206		
207		S-207		
208		S-208		
209		S-209		
210		S-210	D-210	
211		S-211		
301		S-301	D-301	
302		S-302	D-302	
401		S-401	D-401	
402		S-402		
403		S-403		
404		S-404		
405		S-405	D-405, D-405A D-405B, D-405C	
406		S-406		
407		S-407		
408		S-408		
409		S-409		
410		S-410	D-410	
411		S-411	D-411	

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EXHIBIT "D"

VALUE OF UNITS AND UNDIVIDED  
INTEREST IN COMMON AREAS AND FACILITIES

<u>UNIT NUMBER</u>	<u>VALUE</u>	<u>UNDIVIDED INTEREST IN COMMON AREAS</u>
101	\$147,500.00	3.73%
201	150,000.00	3.80%
202	155,000.00	3.92%
203	155,000.00	3.92%
204	155,000.00	3.92%
205	175,000.00	4.42%
206	155,000.00	3.92%
207	152,500.00	3.86%
208	150,000.00	3.80%
209	147,500.00	3.73%
210	150,000.00	3.80%
211	147,500.00	3.73%
301	152,500.00	3.73%
302	180,000.00	4.55%
401	155,000.00	3.92%
402	160,000.00	4.05%
403	160,000.00	4.05%
404	160,000.00	4.05%
405	185,000.00	4.68%
406	157,500.00	3.98%
407	155,000.00	3.92%
408	152,500.00	3.86%
409	150,000.00	3.80%
410	160,000.00	4.05%
411	<u>185,000.00</u>	<u>4.68%</u>
	<u>\$3,952,500.00</u>	<u>100%</u>

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79-03958 U

57-  
RECORDED  
ANCHORAGE DISTRICT

AUG 16 8 56 AM '79

REQUESTED BY LAWYERS TITLE INSURANCE AGENCY, INC.  
ADDRESS \_\_\_\_\_

79-01908 U  
58-

RECORDED  
ANCHORAGE DISTRICT

APR 26 8 41 AM '79

REQUESTED BY LAWYERS TITLE INSURANCE AGENCY, INC.  
ADDRESS \_\_\_\_\_

## EXHIBIT "D"

VALUE OF UNITS AND UNDIVIDED  
INTEREST IN COMMON AREAS AND FACILITIES

<u>UNIT NUMBER</u>	<u>VALUE</u>	<u>UNDIVIDED INTEREST IN COMMON AREAS</u>
101	\$147,500.00	3.73%
201	150,000.00	3.80%
202	155,000.00	3.92%
203	155,000.00	3.92%
204	155,000.00	3.92%
205	175,000.00	4.42%
206	155,000.00	3.92%
207	152,500.00	3.86%
208	150,000.00	3.80%
209	147,500.00	3.73%
210	150,000.00	3.80%
211	147,500.00	3.73%
301	152,500.00	3.86%
302	180,000.00	4.55%
401	155,000.00	3.92%
402	160,000.00	4.05%
403	160,000.00	4.05%
404	160,000.00	4.05%
405	185,000.00	4.68%
406	157,500.00	3.98%
407	155,000.00	3.92%
408	152,500.00	3.86%
409	150,000.00	3.80%
410	160,000.00	4.05%
411	<u>185,000.00</u>	<u>4.68%</u>
	\$3,952,500.00	100%