

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
BEACHSIDE ESTATES SUBDIVISION

THIS DECLARATION made on the date hereinafter set forth, by Edwin R. Lowry, having a principal place of business at Route 2 Box 829, Soldotna, Alaska; hereinafter referred to as "Declarant".

WITNESSETH:

Whereas, Declarant is the owner of certain property in the Kenai Recording District, Third Judicial District, State of Alaska, which is more particularly described as:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Beachside Estates, according to Plat no. 83-134, as filed in the Kenai Recording District, Third Judicial District, State of Alaska.

NOW, THEREFORE, Owner hereby declares that the property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following conditions, covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of the conditions, covenants and restrictions shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in or to the Property made subject hereto or any part thereof, and shall inure to the benefit of and be binding upon, each owner thereof and their respective successors in interest and assigns, and are imposed upon the Property, and each and every portion thereof, as a servitude in favor of the Property and each and every portion thereof as the dominant tenement, or tenements, all as follows:

ARTICLE I  
DEFINITIONS

- (1.) "Association" shall mean and refer to Beachside Estates Owners Association, Inc., its successors and assigns.
- (2.) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which

is a part of Beachside Estates Subdivision as aforementioned and described.

(3.) "Declarant" shall mean and refer to the individual set forth above, his successors and assigns.

(4.) "Lot" shall mean one of the seven lots previously described as Beachside Estates.

(5.) "Member" shall mean an owner in his capacity as a member of the Association.

ARTICLE II  
PROPERTY RIGHTS

(1.) Every owner shall have sole property rights and right to enjoyment in and to that owners lot except:

(a) The utility easement for water line maintenance shall be left unobstructed and

(b) The right of the association to suspend the voting rights and right to use of community water facilities by an owner for any period during which any assessment against his lot remains unpaid.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

(1.) Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from, ownership of any lot which is subject to assessment.

(2.) Members shall be all owners and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

(3.) Each owner shall receive a true and correct copy of the Bylaws of the Association upon becoming an Owner, and shall acknowledge receipt of same.

(4.) Before election of the first Board, as provided for in the Bylaws of the Association of Owners, the Declarant, or the Declarant's successors or assigns shall have all the rights, powers, and obligations of the Board herein provided for, and provided for in the Bylaws. Declarant shall act as the Board until September 1, 1984.

ARTICLE IV  
COVENANT FOR ASSESSMENTS

(1.) Creation of the Lien and Personal Obligation of Assessments. The Declarant, except as herein below provided, for each lot owned within the subdivision, hereby covenants, and each Owner of any lot by acceptance of a deed therefor is deemed to covenant and

agrees to pay to the Association: Assessments and charges, such assessments to be established and collected as hereinafter provided. The assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, late charges, if any, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time that the assessment fell due.

Declarant shall be obligated to pay Association assessments for all lots as long as Declarant owns same. The obligations of each owner to pay the assessments imposed by the Board of Directors as provided herein shall commence upon acceptance of a deed conveying a Lot to such Owner.

(2.) Purpose of Assessments. (a) The assessments levied by the Association shall be used exclusively for the cost of operation (utilities and sampling) and for the repair and maintenance of the community water system. Further, the Association will be responsible for breaks, plug-ups, and freeze-ups, and related problems of the common water service lines, wells and related facilities. The responsibility of the Association for such common service lines shall be up through the lines providing individual service to the individual lot owner and including the secondary water treatment. Maintenance and repair of the individual service lines are the responsibility of each lot owner. The Association shall charge back to the owners of lots served by the common line, pro-rata costs incurred by it in connection with the operation, sampling, repairs and maintenance of the community water system.

(b) No owner shall have or make any claim against the association except for negligence in connection with the responsibilities herein set forth, and each owner agrees to save, protect and hold harmless the Association from any liability, claim, demand or suit in connection with water line problems pertaining to each owners lot.

(3.) Basis of Assessment. (a) The Board of Directors of the Association shall fix the monthly assessment.

(b) The amount of the monthly assessment shall be based upon the anticipated costs of maintenance, repair, and operation of the community water system.

(c) The monthly assessments shall be payable monthly in advance, with the first such payment due upon conveyance of a lot to an owner.

(4.) Uniform Rate of Assessment. All assessments shall be fixed at a uniform rate for all lots and shall be collected on a monthly basis.

(5.) Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within fifteen days after the due date shall accrue a late charge of ten dollars. The due date shall be in accordance with paragraph 3 of this article. The Association may, in addition to other sanctions available to it bring an action at law against the Owner

personally obligated to pay the same, or foreclose the lien against the property (lot). No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment or non-use of the community water system EXCEPT: When an owner is disconnected from the water system he shall be obligated only for a pro-rata share of the repairs and maintenance and not for the operating cost of the system. All assessments are due without demand.

(6.) Conveyance - Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance the Grantee of a lot shall be jointly and severally liable with the Grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the Grantor's conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. Any such Grantee shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the Grantor, and such Grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments against the Grantor in excess of the amount therein set forth.

(7.) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust, but sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such event. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due, or from the lien thereof.

(8.) The Association is obligated: to operate and maintain the community water system in conformance with Alaska Department of Environmental Conservation regulations.

ARTICLE V  
EVIDENCE OF OWNERSHIP AND  
REGISTRATION OF MAILING ADDRESS

(1.) Proof of Ownership. Except for those Owners who initially purchase a Lot from Declarant, any person or entity on becoming an Owner shall furnish to the Secretary of the Association and any Managing Agent a machine or a certified copy of the recorded instrument vesting that person or entity with an interest or ownership in the Lot, which copy shall remain in the files of the Association.

(2.) Registration of Mailing Address. The Owners or several Owners of an individual Lot shall have one and the same registered mailing address to be used by the Association for mailing of statements, notices, demands and all other communications, and such registered address shall be the only mailing address of a person or persons, firm, corporation, partnership, association or other legal entity, or any combination thereof, to be used by the Association. Such registered address shall be furnished

by such Owners to the Secretary of the Association and any Managing Agent within fifteen days after transfer of title, or after a change of address, and such registration shall be in written form and signed by all of the Owners of the Lot, or by such persons as are authorized by law to represent the interest of (all of) the Owners thereof.

ARTICLE VI  
USE RESTRICTIONS

- (1.) Architectural Control. No fence, wall, hedge or other structure shall be erected, placed or altered on any lot nearer to the street than the minimum building setback line.
- (2.) Building Location. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat provided; however, no building shall be located on any lot nearer than forty feet to the front lot line, or nearer than twenty five feet to any side street line. No building shall be located nearer than ten feet to any interior lot line. For the purpose of this covenant, 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.
- (3.) Clearing. To insure natural growth screening and esthetics between dwelling structures, no lot shall be clear-cut of mature trees more than eighty-five percent (85%) of the total lot area except that trees may be thinned and undergrowth cleared.
- (4.) Sanitary Facilities. All dwellings shall have indoor sanitary facilities and underground disposal systems. No outhouse or above ground disposal systems shall be permitted on any lot.
- (5.) Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done there on which may be or may become an annoyance or nuisance to the neighborhood.
- (6.) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot, at any time, as a residence either temporary or permanent. The exterior of all homes shall be completed prior to occupancy.
- (7.) Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted on any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or on any lot. No derrick or other structure designed for use in boring for oil or natural gas be erected, placed, maintained, or permitted on any lot, not within one hundred square feet of the tract of land owned or controlled by the developer or sponsor.
- (8.) Livestock. No animals, livestock or poultry of any kind shall be

raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Not more than two dogs may be kept on any one lot.

(9.) Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storages or disposal of such material shall be kept in a clean and sanitary condition.

(10.) Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstruct sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty five feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines.

(11.) Connection to Water System. Each owner must submit plans and receive prior approval from the Association for any connection to the water System.

ARTICLE VII  
GENERAL PROVISIONS

(1.) Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(2.) Amendments. This Declaration may be amended by an "Amendment to Conditions, Covenants, and Restrictions" signed by three-fourths (3/4ths) of the owners of the Property, and recorded in the Kenai Recording District.

(3.) Term. This Declaration shall run with the Property in perpetuity or earlier terminated by the written consent of all of the owners of the Property and Declarant, so long as Declarant holds any note secured by a deed of trust encumbering any portion of the Property. This Declaration may be amended only by the written consent of three-fourths (3/4ths) of the owners of the Property and Declarant, so long as Declarant holds any note secured by a deed of trust encumbering any portion of the Property.

ARTICLE VIII  
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, to administer the Community Water System. The first meeting of the owners shall commence before September 1, 1984 for the purpose of electing a Board of Directors of the Association. On September 1, 1984 the Association will become vested in the owners of the lots EXCEPT: If the Declarant should form a private corporation which becomes approved as a utility company regulated by the Alaska Public Utilities Commission and the Alaska Department of Environmental Conservation then the water system shall be vested with that corporation and this Declaration shall be modified to reflect only the use restrictions and covenants perfecting and enhancing the desirability of the subdivision as herein protected.

Dated at Kenai, Alaska, the day and year below written.

*Edwin R. Lowry*  
Edwin R. Lowry, Declarant

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss:

The foregoing instrument was acknowledged before me this  
20th day of October, 1983 by Edwin R.  
Lowry of Route 2 Box 829; Soldotna, Alaska 99669.



*Beverly Jean Parto*  
Notary Public for Alaska  
My commission expires: *Jan 28, 1985*

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KENAI REC.  
DISTRICT

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REQUESTED BY *Ed Lowry*  
ADDRESS *Rt. 2, Box 829, Soldotna*  
*234391*