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200807230003
Skagit County Auditor

7/23/2008 Page 1 of 16 8:58AM

**DECLARATION SUBMITTING 1115 37TH STREET CONDOMINIUMS
TO CONDOMINIUM OWNERSHIP**

GRANTORS: DONALD M. BERG and ETHEL M. BERG, husband and wife

GRANTEE: 1115 37TH STREET CONDOMINIUMS

LEGAL DESCRIPTION:

**Lot 2 of the "Brooks View Addition" to the City of Anacortes, Skagit County,
Washington as per plat recorded in Volume 11 of Plats, pages 48 and 49, records of
Skagit County, Washington**

PARCEL NO. P79609

DECLARATION

FOR

1115 37TH STREET CONDOMINIUMS

ANACORTES, SKAGIT COUNTY, WASHINGTON



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**DECLARATION
FOR
1115 37TH STREET CONDOMINIUMS**

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THIS DECLARATION, pursuant to the provisions of the Washington Condominium Act, is made and executed this 21st day of JULY, 2008, by DONALD M. BERG and ETHEL M. BERG, husband and wife, hereinafter collectively "Declarant".

Declarant proposes to create a condominium to be known as "1115 37TH STREET CONDOMINIUMS" which will be located in Skagit County, Washington. The purpose of this Declaration is to submit the subject property to the condominium form of ownership and use in the manner provided by the Washington Condominium Act. Declarant certifies that all structural components and mechanical systems of the building containing the condominium units are substantially completed.

NOW THEREFORE, Declarant does hereby further declare and provide as follows:

ARTICLE 1

DEFINITIONS

When used in this declaration the following terms shall have the following meanings:

1.1 "Association" means the association of Unit Owners established pursuant to Article 14 below.

1.2 "Board of Directors" means the Board of Directors of the Unit Owners Association.

1.3 "Bylaws" means the Bylaws of the Association of Unit Owners of "1115 37TH STREET CONDOMINIUMS" adopted pursuant to Section 14.4 below as the same may be amended from time to time.

1.4 "Condominium" means all of that property submitted to the condominium for of ownership by this Declaration.



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1.5 "Declarant" means DONALD M. BERG and ETHEL M. BERG and their successors and assigns.

1.6 "Eligible Mortgage Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage on a Unit who has requested notice of certain matters from the Association in accordance with Section 13.1 below.

1.7 "Eligible Mortgage Holder" means a holder of a first Mortgage on a Unit who has requested notice of certain matters from the Association in accordance with Section 13.1 below.

1.8 "Mortgage" and "Mortgagee" mean, respectively, a recorded mortgage, deed of trust, or contract of sale which creates a lien against a Unit, and the holder, beneficiary or vendor of such a mortgage, deed of trust or contract of sale.

1.9 "Owner" means the Declarant or other person who owns a Unit, but does not include a person who has an interest in a Unit solely as security for an obligation. "Owner" means the vendee, not the vendor, of a Unit under a real estate contract.

1.10 "Plat" means the survey map and plans of "1115 37TH STREET CONDOMINIUMS", recorded simultaneously with the recording of this Declaration, bearing recording number 200807230002, in the records of Skagit County, Washington.

1.11 "Unit Number" means the number assigned to the unit which is also the address of the units in the condominium.

1.12 Incorporation by Reference. Except as otherwise provided in this Declaration, each of the terms defined in RCW 64.34.020, a part of the Washington Condominium Act, shall have the meanings as set forth in such section.

ARTICLE 2

SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE

The property submitted to the Washington Condominium Act by this Declaration is held by Declarant and conveyed by Declarant in fee simple estate. The land submitted is located in Skagit County, Washington, and legally described as follows:

Lot 2 of the "Brooks View Addition" to the City of Anacortes, Skagit County, Washington as per plat recorded in Volume 11 of Plats, pages 48 and 49, records of Skagit County, Washington.

The property submitted includes the land so described, all buildings, improvements and structures, all easements, and rights and appurtenances located on, belonging to or used in connection with such land.



ARTICLE 3

NAME OF CONDOMINIUM

The name by which the Condominium shall be known is "1115 37th STREET CONDOMINIUMS".

ARTICLE 4

UNITS

4.1 General Description of Building.

The condominium consists of one two-story building with two apartment units located therein. Each of the units is essentially on two and one-half levels with the garage area being approximately one-half level below the first floor of the unit with a stairway leading to the second floor. The building is of wood frame construction with both shingle and metal siding with cedar shingle decorative accents and the building has a torch down roof.

4.2 General Description, Location and Designation of Units. The dimensions, designation and location of each Unit are shown in the Plat, which is made a part of this Declaration as if fully set forth herein. The approximate area of each Unit is shown on the attached Exhibit A which is attached hereto and incorporated herein. Exhibit A contains the identifying number, number of bathrooms (whole or partial), number of bedrooms, type of heat and heat service. No parking spaces are assigned except as is provided in Article 6.2

4.3 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows, and window frames, doors and door frames, and trim. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces. Contained within Unit 1115-A is a storage area which extends beyond the wall in which is accessed only from inside the unit. All other portions of the walls, floors, or ceilings shall be a part of the common elements.

4.4 Monuments as Boundaries. The physical boundaries of a Unit constructed in substantial accordance with the Plat become its boundaries rather than the metes and bounds expressed in the Plat, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the Plat and those of the building.

ARTICLE 5

COMMON ELEMENTS

The common elements consist of everything except the Units.



ARTICLE 6

LIMITED COMMON ELEMENTS

The limited common elements and facilities are reserved for the exclusive use of the unit to which they are adjacent or assigned as is more particularly shown on the survey map and plans being filed coincident herewith (also referred to as the "plat"). Said limited common elements and facilities consist of:

6.1 Each unit has a deck on the second floor which faces to the north towards the street.

6.2 Each unit shall have an uncovered parking area immediately in front of that unit's garage which shall extend directly to the north from the exterior walls of each of the units to the street.

ARTICLE 7

ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS

Each Unit shall have an undivided fifty percent (50%) interest in the common elements as indicated on Exhibit A. In view of the fact that the two units are essentially identical with the exception that Unit 1115A has a storage area off the garage which has some additional square footage, Declarant has deemed this to be the appropriate allocation of the undivided ownership interests.

ARTICLE 8

ALLOCATION OF PROFITS AND EXPENSES; VOTING

8.1 Allocation of Common Profits and Expenses. Except as provided in Article 8.2 below, the common profits and common expenses of the Condominium shall be allocated to the Owner of each Unit according to the allocation of undivided interest of such Unit in the common elements. Except upon termination of the Condominium or as otherwise provided in the Bylaws with respect to damage, destruction, or condemnation, any such common profits shall be used solely for the purpose of maintaining, repairing and replacing the common elements or for other expenses or reserves of the Association. There is one water meter for the building and the expenses connected with water, sewer, and garbage, shall be allocated to each unit in accord with the percentage interest as set forth on Exhibit A.

8.2 Special Assessments. The cost connected with the maintenance, repair, or replacement of the limited common elements assigned to the units shall be the sole responsibility of the owner of that unit.



8.3 Allocation of Voting Rights. Each Unit Owner shall be entitled to one vote in the affairs of the Association and for the purposes of this Declaration for each Unit owned. The method of voting shall be as specified in the Bylaws.

ARTICLE 9

SPECIAL DECLARANT RIGHTS

9.1 Control of Association.

9.1.1 Subject to the other provisions of this article 9.1 below Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the board of directors of the association which is referred to in article 14 below or veto or approve a proposed action of the board of directors of said association. The Declarant's failure to veto or approve such proposed action in writing within 30 days after receipt of written notice of the proposed action shall be deemed approval by the Declarant.

9.1.2 Said Declarant control terminates no later than the earlier of:

(a) Sixty days after the conveyance of both of the units to unit owners other than the Declarant;

(b) Two years after the last conveyance or transfer of record of a unit except as security for a debt; or

(c) The date on which the Declarant records an amendment to the declaration pursuant to which the Declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors; provided however, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

9.1.3 Not later than sixty days after the conveyance of one of the units, at least one member and not less than fifty percent of the members of the board of directors must be elected by unit owners other than the Declarant. Not later than sixty days after the conveyance of both of the units to unit owners other than the Declarant all of the directors shall be elected by owners other than the Declarant.

9.1.4 Within thirty days after the termination of any period of Declarant control, the unit owners shall elect a board of directors of two members, both of which must be unit owners. The board of directors shall elect the officers. Each member of the board of directors and each officer shall take office upon election. The Declarant may not remove any member of the board of directors elected by the unit owners.



9.2 Declarant Obligations. Declarant, their agents, employees and contractors shall have the right to complete improvements and otherwise perform work provided for under any Purchase and Sale Agreement between Declarant and a Unit Purchaser; or necessary to satisfy any express or implied warranty under which Declarant is obligated; or otherwise authorized or required by law.

ARTICLE 10

USE OF PROPERTY

Each Unit is to be used for residential purposes. Additional limitations on use are set forth in article 11 below and as may be contained in the Bylaws and the rules and regulations adopted pursuant to the Bylaws of the Association of unit owners. Each Unit Owner shall be bound by each of said documents.

ARTICLE 11

MAINTENANCE

11.1 Common Elements. The necessary work to maintain, repair or replace the common elements shall be the responsibility of the Board of Directors of the Association and shall be carried out as provided in the Bylaws.

11.2 Mortgagee's Rights Upon Failure to Maintain. If the Mortgagee of any Unit determines that the Board of Directors is not providing an adequate maintenance, repair, and replacement program for the common elements, such Mortgagee, at its options, may give a notice to the Board of Directors by delivering same to the registered agent, setting forth the particular defect which it believes exists in the maintenance, repair, and replacement program. If the specified defects are not corrected within 90 days subsequent to receipt of such notice, then the Mortgagee, upon written notice to the registered agent that it is exercising its proxy rights, shall have the right to attend succeeding annual or special meetings of the Association and to cast a vote for each Unit on which it holds a Mortgage on all business coming before such meeting. Such proxy rights shall continue until the defects listed on the notice are corrected.

11.3 Units. Each owner shall, at the owner's sole expense, keep the interior of their Unit in good repair and in a clean and sanitary condition and shall do all painting, staining or other repairs necessary to maintain the good appearance and condition of their Unit. Each owner shall be responsible for the maintenance, repair, and replacement of any plumbing fixtures, water heaters, fans, heating equipment, electrical fixtures or appliances which are in the Unit that serve that Unit only, and shall replace any glass in the windows of the Unit that become cracked or broken.

11.4 Limited Common Elements. Each owner shall maintain the limited common elements assigned to it in a clean and sanitary condition and shall not permit waste thereon. The parking spaces are restricted for the parking of operative vehicles.



11.5 Exterior Appearance. In order to preserve a uniform exterior appearance to the building, and the limited common elements visible to the public, the Board may require and provide for the painting and other decorative finish of the building or other common or limited common elements, and prescribe the type and color of such decorative finishes, and may prohibit, require or regulate any modification or decoration of the building or other common and limited common elements undertaken or proposed by any owner. This power of the Board extends to screens, doors, awnings, or other visible portions of each unit. The board may also require use of a uniform color of draperies, under draperies or drapery lining for all units.

11.6 Signs. No signs of any kind shall be displayed to the public view on or from any unit or common element or limited common element without the prior consent of the Board; provided that this section shall not apply to Declarant or Declarant's agents.

11.7 Pets. Domestic pets such as dogs, cats, or small birds shall be allowed for so long as they do not constitute a nuisance to the owner of the other unit but the unit shall not be used for breeding or training purposes. No other animals, such as livestock, poultry or reptiles shall be raised, bred or kept in any unit or in the common or limited common elements, whether as pets or otherwise. The Board may at any time require the removal of any animal which it finds is disturbing other owners unreasonably, in the Board's determination, and may exercise this authority for specific animals even though other animals are permitted to remain.

ARTICLE 12

EASEMENTS

12.1 In General. Each Unit has an easement in and through each other Unit and the common elements for all support elements and utility, wiring, heat, and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. In addition, each Unit and all the common elements are specifically subject to easements as required for the electrical wiring and plumbing for each Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common elements reserved by law.

12.2 Encroachments. Except as provided in Article 4.4, each Unit and all common elements shall have an easement over all adjoining Units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang, or projection. There shall be valid easements for the maintenance of the encroaching Units and common elements so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment. This provision does not relieve a Unit Owner of liability in the case of willful misconduct or the Unit Owner, or relieve Declarant or any contractor, sub contractor or materialman from any liability as a result of failure to adhere



to the Plat. The encroachments described in this Section 12.2 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

12.3 Granting of Easements by Association. The Association, upon prior approval of 100 percent of the voting power of the Unit Owners, may execute, acknowledge, deliver, and record on behalf of the Unit Owners leases in excess of two years, easements, rights-of-way, licenses, and similar interests affecting the common elements and consent to vacation of roadways within and adjacent to the Condominium. Any such instrument shall be executed by the chairman and secretary of the Association. No such interest may be granted with regard to a limited common element unless the Owners and Mortgagees of the Units having the right to use such limited common element join in the instrument granting the interest.

12.4 Right of Entry. The Board of Directors of the Association, managing agent, manager or any other person authorized by the Board of Directors shall have the right to enter any Unit in the case of an emergency originating in or threatening such Unit or other condominium property, whether or not the Owner is present at the time. Such persons shall also have the right to enter any Unit for the purpose of performing installations, alterations or repairs to any common element and for the purpose of inspection to verify that the Unit Owner is complying with the restrictions and requirements described in this Declaration and the Bylaws, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner.

ARTICLE 13

APPROVAL BY MORTGAGEES

13.1 Notice of Action. Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor and the Unit Number of the Unit on which it has (or insures or guarantees) the Mortgage, any such Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor shall be entitled to timely written notice of the following:

13.1.1 Any condemnation or casualty loss which affects a material portion of the Condominium or affects the Unit securing its Mortgage.

13.1.2 Any 60-day delinquency in the payment of assessments or charges owed by an Owner of any Unit on which it holds the Mortgage.

13.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

13.1.4 Any proposed action which would require consent of a specified percentage of Eligible Mortgage Holders as required by this article.

13.2 Termination and Amendment to Documents.



13.2.1 The approval of Eligible Mortgage Holders holding Mortgages on Units which have at least one hundred percent (100%) of the voting rights of Units subject to Eligible Mortgage Holder Mortgages shall be required to terminate the legal status of the project as a condominium for reasons other than substantial destruction or condemnation of the property.

13.2.2 Except when a greater percent is required by the Declaration, Bylaws or the Washington Condominium Act, the consent of the Owners of the Units holding at least One Hundred percent (100%) of the voting rights and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least one hundred percent (100%) of the voting rights of the Units subject to Eligible Mortgage Holder Mortgages shall be required for any amendments of a material nature to the Declaration or Bylaws. Any amendment to the Declaration or Bylaws which changes any of the following shall constitute a material change:

- (a) Voting rights;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Responsibility for maintenance and repairs;
- (d) Reallocation of interests in the general or limited common elements, or rights to their use, except as otherwise provided in Section 6;
- (e) The boundaries of any Unit;
- (f) Conversion of Units into common elements or of common elements into Units;
- (g) Expansion or contraction of the Condominium or the addition, annexation, or withdrawal of property to or from the Condominium, except as provided in Article 15;
- (i) Insurance or fidelity bonds;
- (j) The leasing of Units;
- (k) Imposition of any restriction on the right of a Unit Owner to sell or transfer his or her Unit;
- (l) A decision by the Association to establish self-management when professional management had been required previously by this Declaration, the Bylaws or an Eligible Mortgage Holder;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than specified in this Declaration or the Bylaws;
- (n) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

13.2.3 An addition or amendment to the Declaration or Bylaws shall not be considered material for purposes of Section 13.2.2 if it is for the purpose of correcting technical errors, or for clarification only. Any Eligible Mortgage Holder who receives a written request to approve additions or amendments and who does not deliver or post to the requesting party a negative response within 30 days shall, after it receives proper notice of the proposal and provided the notice was delivered by certified or registered mail, return receipt requested, be deemed to have approved such request.

13.3 Additional Approvals. In addition to any other approvals required by the Washington Condominium Act, this Declaration or the Bylaws, the prior written approval of one hundred percent (100%) of the holders of first Mortgages on Units in the Condominium (based upon one vote for each first Mortgage owned) and of the Unit Owners (other than Declarant) must be obtained for the following:

13.3.1 Abandonment or termination of the Condominium regime.

13.3.2 Any change in the pro rata interest or obligations of any individual Unit for (a) purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each Unit in the common elements.

13.3.3 The partition or subdivision of any Unit.

13.3.4 Abandonment, partition, subdivision, encumbrance, sale or transfer or the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Association pursuant to Article 12.3 shall not be deemed a transfer within the meaning of this clause.

13.3.5 Use of hazard insurance proceeds for losses to any condominium property, whether to Units or to common elements, for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or common elements of the condominium project.

13.4 Notice to First Mortgagees of Defaults. Any eligible Mortgage Holder, upon request, will be entitled to written notification from the Association of any default in the performance by the Owner of the Mortgaged Unit of any obligation under this Declaration, the rules and regulations or the Bylaws which is not cured within 60 days.

ARTICLE 14

ASSOCIATION OF UNIT OWNERS

14.1 Organization. Upon the recording of this Declaration an association of Unit Owners shall be organized to serve as a means through which the Unit Owners may take action with regard to the administration, management and operation of the Condominium. The name of this



Association shall be "1115 37th STREET CONDOMINIUMS ASSOCIATION", and the Association shall be a Washington nonprofit corporation.

14.2 Membership; Board of Directors. Each Unit Owner shall be a member of the Association. The affairs of the Association shall be governed by a two member Board of Directors as provided in the Bylaws. Membership of the board is subject to the provisions of article 9.1 above concerning Declarant control.

14.3 Powers and Duties. The Association shall have such powers and duties as may be granted to it by the Washington Condominium Act, including each of the powers set forth in RCW 64.34.304, together with such additional powers and duties afforded it by this Declaration or the Bylaws.

14.4 Adoption of Bylaws, Declarant Control of Association. Upon the execution and the recording of this Declaration, Declarant shall adopt Bylaws for the Association. At the same time, Declarant will appoint an interim Board of Directors of the Association, which directors shall serve until their successors have been elected as provided for in Article 9.1 above and in the Bylaws.

ARTICLE 15

AMENDMENT

15.1 How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Unit Owners holding fifty percent (50%) of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

15.2 Approval Required. Except as may otherwise be provided in this Declaration or by the Washington Condominium Act, this Declaration may be amended if such amendment is approved by Unit Owners holding one hundred percent (100%) of the voting rights of the Condominium and by Mortgagees to the extent required by Article 13. No amendment may change the size, location, allocation of undivided interest in the common elements, method of determining liability for common expenses, right to common profits, or voting rights of any Unit unless such amendment has been approved by the Owners and Mortgagees of the affected Unit. Any amendment which would limit or diminish any special Declarant rights established in the Declaration shall require the written consent of the Declarant.

15.3 Recordation. The amendment shall be effective upon recordation in the Records of Skagit County, Washington, certified to by the chairman and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Washington Condominium Act.



EXHIBIT A

EXHIBIT A TO 1115 37th STREET CONDOMINIUMS DECLARATION

The primary reference to this Exhibit is set forth in Article 4.2 of the Declaration. The type of heat and heat service for all units is electric wallboard. Each unit has its own separate electric meter. There is one water meter for the building and none of the units has a fireplace and none of the units shall have moorage slips assigned to them. Set forth below is more detailed information concerning the individual Units of the condominium:

<u>Unit Number</u>	<u>Number of Bdrms</u>	<u>Number of Baths</u>	<u>Approx. Area Square Feet</u>	<u>Alloc. Interest Common Elements</u>
1115-A	3	1.5	1,376	50%
1115-B	3	1.5	1,345	50%

