

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

POTTER CREEK

ANCHORAGE, ALASKA

Dated November 20, 2003

THIS AMENDED AND RESTATED DECLARATION is made this 20th day of November 2003, by POTTER CREEK HOMEOWNER ASSOCIATION, an Alaska non-profit corporation ("Association"). VIEWPOINT VENTURES, its successors and assigns shall hereafter be referred to as "Declarant".

RECITALS

A. VIEWPOINT VENTURES, as Declarant, made and executed a Declaration of Covenants, Conditions and Restrictions ("Declaration") on July 25, 1985, for Potter Creek, Alaska, which was recorded in Book 1301 at Pages 923, et seq., of the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

B. The Declaration has been amended and supplemented on several occasions by Declarant or the Association.

C. A portion of the Covered Property, Potter Bluff Subdivision ("Potter Bluff Property") has been purchased by Potter Creek Development, LLC, an Alaska limited liability company.

D. Declarant has assigned Declarant's rights as Declarant and Developer for the Potter Bluff Property to Potter Creek Development, LLC.

E. The Association and Potter Creek Development, LLC, amended the Declaration to authorize the creation of a sub-association within the Association to provide for the management of Potter Bluff Property or other portions of the Covered Property, as approved by the Association, which amendment was recorded in Book 3199 at Pages 820 through 834 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

F. The Association amended the Declaration to reflect certain actions taken by the Anchorage Assembly when it approved an ordinance amending the zoning map and providing for rezoning from R-3SL to R-3SL with new special limitations for certain property covered by the Declaration and to set forth the new special limitations and guidelines for future development, which

amendment was recorded in Book 3235 at Pages 540 through 546 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

G. The Association amended the Declaration to remove the requirement for a permanent sign at the entrance of Potter Bluff Property and to remove the requirement for a 4-foot decorative apron for each driveway with respect to Potter Bluff Property, which amendment was recorded as document 2002-003773-0 of the Records of the Anchorage Recording District, Third Judicial District, State of Alaska.

H. The Association desires to set forth and record an Amended and Restated Declaration that incorporates all amendments to date in one document.

I. The real property described in Exhibit A to this Declaration was the initial Covered Property under this Declaration, and includes the real property which has been annexed pursuant to this Declaration to become a part of the Covered Property. This Declaration is being imposed by Declarant or the Association upon the Covered Property.

J. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life within the Covered Property.

K. It is desirable for the efficient management of the Covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a corporation to which should be delegated and assigned the powers of managing the Covered Property, maintaining and administering the Community Facilities and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Covered Property.

L. The Potter Creek Homeowner Association, a nonprofit corporation, has been incorporated under the laws of the State of Alaska for the purpose of exercising the powers and functions aforesaid.

M. Declarant will hereafter hold and convey title to all of the covered Property subject to certain protective covenants, conditions and restrictions hereafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said

interests in the Covered Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in the Declaration are defined as follows:

Section 1. "Design Review Committee" shall mean and refer to the committee or committees provided for in the Article hereof entitled "Design Review Control."

Section 2. "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 3. "Assessments." The following meanings shall be given to the Assessments hereinafter defined:

"Regular Assessment" shall mean the amount which is to be paid by each Member to the Association for Common Expenses. "Regular Assessment" for each Member, excluding Potter Bluff Subassociation Members, shall mean the amount which is to be paid by each Member to the Association, for Association Common Expenses and Potter Creek Common Expenses. "Regular Assessment" for Potter Bluff Subassociation Members shall mean the amount which is to be paid by each Potter Bluff Subassociation Member for Association Common Expenses and Potter Bluff Common Expenses.

"Special Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

"Reconstruction Assessment" shall mean, for each Member, except Potter Bluff Subassociation Members, a charge against each Member and his Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Association Community Facilities and Potter Creek Community Facilities pursuant to the provisions of this Declaration. "Reconstruction Assessment" shall mean for each Potter Bluff Subassociation Member a charge against each Potter Bluff

Subassociation Member and his Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Association Community Facilities and the Potter Bluff Community Facilities pursuant to the provisions of this Declaration.

"Capital Improvement Assessment" shall mean, for Association Members, except Potter Bluff Subassociation Members, a charge against each Member and his Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Association Community Facilities and the Potter Creek Community Facilities which the Association may from time to time authorize pursuant to the provisions of this Declaration. "Capital Improvement Assessment" shall mean, for Potter Bluff Subassociation Members, a charge against each Potter Bluff Subassociation Member and his Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Association Community Facilities and the Potter Bluff Community Facilities which the Association may from time to time authorize pursuant to the provisions of this Declaration.

Section 4. "Association" shall mean and refer to the Potter Creek Homeowner Association, a nonprofit corporation, incorporated under the laws of the State of Alaska, its successors and assigns.

Section 5. "Association Rules" shall mean rules adopted by the Association pursuant to Article hereof entitled "Duties and Powers of the Association".

Section 6. "Board" shall mean the Board of Directors of the Association.

Section 7. "City" shall mean and refer to the Municipality of Anchorage, Alaska, a municipal corporation of the State of Alaska.

Section 8. "Commercial Property" shall mean any lot or tract on a final plat filed for record containing a building and other appropriate structures, the use of which is limited by appropriate recorded supplementary declarations covering said property which limits the usage of the lots, tracts and improvements thereon to commercial usage, including office, retail, professional and other service businesses and other like usage as may be permitted by such supplementary declaration.

Section 9. "Common Expenses." There are three categories of Common Expenses: "Association Common Expenses," "Potter Creek Common Expenses," and "Potter Bluff Common Expenses."

"Association Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation, repairs and replacement of the Association Community Facilities which are maintained by the Association;

(b) unpaid Association Assessments;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid the Association to managers, accountants, attorneys, and employees, except attorneys' fees related to Potter Creek Community Facilities or Potter Bluff Community Facilities;

(d) the costs of security services, utilities, gardening and other services which generally benefit and enhance the value and desirability of the Covered Property except for services provided to Potter Creek Community Facilities or Potter Bluff Community Facilities;

(e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering all types of Community Facilities;

(f) the costs of any other insurance obtained by the Association;

(g) reasonable reserves related to Association Community Facilities as deemed appropriate by the Board;

(h) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(i) taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Association Community facilities or portions thereof;

(k) costs incurred by the Design Review Committee or other committees established by the Board; and

(l) other expenses incurred by the Associates for any reason whatsoever in connection with the Association Community Facilities, or the costs of any other item or items designated by this Declaration, the Articles, Bylaws or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association, unless such expense constitutes a Potter Creek Common Expense or a Potter Bluff Common Expense.

"Potter Creek Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, operation, repair and replacement of the Potter Creek Community Facilities;

(b) unpaid Potter Creek Assessments;

(c) compensation paid by the Association to accountants and attorneys related to Potter Creek Community Facilities;

(d) reasonable reserves related to Potter Creek Community Facilities;

(e) amounts paid by the Association for discharge of any lien or encumbrance levied against the Potter Creek Community Facilities or portions thereof;

(f) other expenses incurred by the Association for any reason whatsoever in connection with the Potter Creek Community Facilities.

"Potter Bluff Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, operation, repair and replacement of the Potter Bluff Community Facilities;

(b) unpaid Potter Bluff Regular Assessments;

(c) compensation paid by the Association to accountants and attorneys related to Potter Bluff Community Facilities;

(d) reasonable reserves related to Potter Bluff Community Facilities;

(e) amounts paid by the Association for discharge of any lien or encumbrance levied against the Potter Bluff Community Facilities or portions thereof;

(f) other expenses incurred by the Association for any reason whatsoever in connection with the Potter Bluff Community Facilities.

Section 10. "Community Facilities." There shall be four categories of Community Facilities: "Association Community Facilities," "Potter Creek Community Facilities," "Potter Bluff Community Facilities," and "Special Community Facilities."

"Association Community Facilities" shall mean all real property, and the improvements thereon, owned or leased from time to time by the Association for the common use and enjoyment of all Members, including without limitation, open spaces, trails along Potter Valley Road, the sign and landscaped area located at the entrance to Potter Creek, slopes and the cable television system, which all Association Members are responsible to maintain, but not including Potter Creek Community Facilities and Potter Bluff Community Facilities.

"Potter Creek Community Facilities" shall mean all real property, and the improvements thereon, owned or leased from time to time by the Association for the common use and enjoyment of all Members, including without limitation, private storm drains, private streets, and private utilities located in existing Phases

1, 2, 3 and 4 of Southcreek Subdivision, not located in Potter Bluff Subdivision, for which Potter Bluff Property Owners are not responsible to maintain.

"Potter Bluff Community Facilities" shall mean all real property and the improvements thereon owned or leased from time to time by the Association which are located in the Potter Bluff Property for the common use and enjoyment of all Members, including without limitation, the area at the entry to Potter Bluff Property and lighted fence and the greenbelt area surrounding Potter Bluff Property, for which only Potter Bluff Property Owners are responsible to maintain.

Any real property denominated as "Community Facilities" in a Supplementary Declaration shall be conveyed to the Association prior to or concurrently with the first conveyance of a Residence located within the real property which is annexed to the coverage hereof by such Supplementary Declaration. Declarant shall convey the Community Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instruments which conveys the Community Facilities to the Association.

"Special Community Facilities" shall mean all land and improvements and other properties heretofore or hereafter owned or in the possession of maintenance Associations available only for the use of members of such maintenance associations.

Section 11. "Covered Property" shall mean and refer to all the real property described on Exhibit A hereto and, subsequent to the annexation thereof pursuant to the Article of this Declaration entitled "Integrated Nature of the Covered Property," any real property which shall become subject to this Declaration.

Section 12. "Developer" shall mean and refer to any person or entity to whom Declarant has assigned its rights and obligations hereunder for the purpose of development of the Covered Property. Alaska Diversified Properties, Inc. is hereby designated as developer and shall remain so until recordation of a supplementary declaration by Declarant changing the designated developer.

Section 13. "Development" shall mean and refer to the real property described on Exhibit A.

Section 14. "Exhibit" shall mean and refer to those documents so designated herein and attached hereto and each of such exhibits is by this reference incorporated in this Declaration. As addition property is annexed pursuant to the Article of this Declaration, entitled "Integrated Nature of the Covered Property", exhibits similar to the exhibits attached to this Declaration may be attached to such Supplementary

Declarations pertaining to the annexed property, and each of such exhibits shall thereby be incorporated in this Declaration.

Section 15. "Governmental Agencies" shall mean and refer to collectively one or more of the following agencies and the following letter designation for such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association), VA (Veterans Administration), AHFC (Alaska Housing Finance Corporation).

Section 16. "Institutional Mortgagee" shall mean and refer to a First Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law.

Section 17. "Lot" shall refer to a platted Lot on which there shall be constructed only a single family detached or attached dwelling unit including condominiums and town houses. Any such dwelling shall be considered as part of the Lot as the word is used herein unless otherwise specified. "Lot" shall include a Lot on any final plat filed for recording including any commercial building located thereon on property added to the development for commercial usage.

Section 18. "Maintenance Association" shall mean and refer to any incorporated or unincorporated association which is formed, among other things, to facilitate the maintenance and operation of any portion of the Covered Property which is either owned in common by the Owners who are members of such association or which is owned by such association for the benefit of the Owners who are its members, or to enforce or administer any declaration of covenants, conditions and restrictions (hereinafter "Maintenance Declaration"), recorded by Declarant, other than those contained herein or in a Supplementary Declaration, which may be applicable to a particular portion of the Covered Property.

Section 19. "Member" shall mean and refer to every person or entity who qualified for membership pursuant to the Article of this Declaration, entitled "Membership," including Declarant so long as Declarant qualifies for membership pursuant to said Article.

Section 20. "Mortgage" shall mean and refer to any duly recorded Deed of Trust encumbering a Lot. A "First Mortgage" shall refer to a Deed of Trust which has priority over any other Mortgage encumbering a specific Lot.

Section 21. "Mortgagee" shall mean and refer to the beneficiary under any Deed of Trust. A "First Mortgagee" shall mean the holder of a Deed of Trust that has priority over any other Deed of Trust encumbering a Lot.

Section 22. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record Owner of a fee simple title to a Lot, including Declarant, or the vendee having any such interest merely as security for the performance of an obligation. If a Lot is leased by Declarant for a term in excess of twenty (20) years and the lease or memorandum thereof is recorded, the lessee or transferee of the household interest and not the Declarant shall be deemed to be the Owner. If fee title to a Lot is owned other than by such Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner regardless of the term of the lease. The terms "Owner" and "Member" are used interchangeably herein as the context requires.

Section 23. "Potter Bluff Developer" or "Potter Bluff Declarant" shall mean Potter Creek Development, LLC, or any person or entity to whom Potter Creek Development, LLC has assigned its rights and obligations hereunder for the purpose of development of the Potter Bluff Property. Potter Bluff Developer shall mean "Declarant" in the declaration solely for all purposes related to Potter Bluff Property.

Section 24. "Potter Bluff Property" shall mean the Potter Bluff Subdivision as described on Exhibit B.

Section 25. "Potter Bluff Subassociation Member" shall mean and refer to every person or entity who qualifies for membership pursuant to the article of the Declaration entitled "Membership" and owns a Lot in Potter Bluff Property. Potter Bluff Subassociation Members shall be included in the definition of "Member(s)" for all purposes in this Declaration except as specified otherwise in the Declaration.

Section 26. "Potter Bluff Subassociation Owner" shall mean and refer to owners of Potter Bluff Property Lots. Potter Bluff Subassociation Owners shall be "Owners" as defined in the Declaration for all purposes in this Declaration except as specified otherwise.

Section 27. "Residence" shall mean and refer to a residential dwelling unit on a lot shown on any final plat filed for record or a tract shown on any plat filed for record to the extent such lots or parcels are part of the Covered Property; provided, however, "Residence" shall not include any Community Facilities; "Residence" shall include the residential dwelling unit together with garages, structures and other improvements on the same lot or parcel.

Section 28. "Subassociation" shall mean and refer to any subassociation created in conformance with an Amendment to the Declaration.

Section 29. "Supplementary Declaration" shall mean those certain declarations of covenants, conditions and restrictions or similar instruments, annexing additional property extending the plan of this Declaration to such additional property as provided in the Article of this Declaration entitled "Integrated Nature of the Covered Property."

ARTICLE II

MEMBERSHIP

Section 1. Membership. Every Owner shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws and Association Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights and privileges in the Community Facilities, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Lot.

Section 2. Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the interest of an Owner required for membership. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. Members who sell their Lot or any interest therein and transferees shall immediately notify the Association in writing of the transfer and provide to the Association a copy of the deed used to transfer ownership which copy shall reflect recording information.

Section 3. Voting Rights. An Owner's right to vote shall vest immediately upon the date Regular Assessments commence upon such Owner's Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws, and Association Rules.

Section 4. Classes of Voting Membership. The Association shall have three (3) classes of voting membership.

a. Class A. Class A members shall be all Owners with the exception of the Declarant and Potter Bluff Subassociation Members. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person owns a portion of the interest in a Lot required for membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall not be required to recognize the vote or written assent of any such co-owner except the vote or written assent of the co-owner designated in a writing executed by all of such co-owners and delivered to the Association. In the case of any commercial lot or tract which is added to the development by virtue of a supplementary declaration,

the owner of said commercial lot or tract shall be entitled to a reasonable number of votes approximating the number of separate commercial tenants on said property, which number shall be established at the time of the filing of the supplementary declaration and which shall not be subject to change thereafter regardless of any change in the usage of the commercial tract or changes in the number of tenants.

b. Class B. The Class B Member shall be Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A membership equals the total outstanding votes held by the Class B membership; or

(2) November 1, 1991.

c. Class C. "Potter Bluff Subassociation Members." Potter Bluff Subassociation Members shall be all Potter Bluff Property Lot Owners. Potter Bluff Subassociation Members shall be entitled to one vote per each Lot for which they hold the interest required for membership. If more than one person owns a portion of the interest in a Lot required for membership, each such person shall be a Member, and 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. The Association shall not be required to recognize the vote or written assent of any such co-owner, except the vote or written consent of the co-owner designated in a writing executed by all of such co-owners and delivered to the Association.

Section 5. Special Class A Voting Rights.

Notwithstanding the provisions of this Article, if the Class A members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of directors on the Board, at any meeting of Members at which directors are to be elected, then such Class A members shall, by majority vote, among themselves, elect the number of directors required to equal twenty percent (20%) of the number of directors on the Board. In the event twenty percent (20%) of the total number of directors is equal to any fractional number, the number of directors to be elected pursuant to the special Class A voting right shall be rounded to the next higher whole number. In no event shall the Class A members be entitled to elect more than twenty percent (20%) of the total number of directors, adjusted for any fractional number as hereinabove provided, pursuant to the provisions of this special Class A voting right. The remaining vacancies on the Board shall be elected by the Class B member.

Section 6. Approval of Members.

Unless elsewhere otherwise specifically provided in this Declaration or the Bylaws, any provisions of this Declaration of the Bylaws which requires

the vote or written assent of a specified percentage of the voting power of the Association of any class or classes of membership shall be deemed satisfied by the following:

a. The vote of the specified percentage at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members. Such percentage must include the specified number of all Members entitled to vote at such meeting and not such a percentage of those Members present;

b. Written consents signed by the specified percentage of Members as provided in the Bylaws.

Section 7. Approval of Each Class of Members. As long as there is a Class B membership, any provisions of the Articles, Bylaws, this Declaration, or the Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association before being undertaken, shall require the approval of said specified percentage of each of the Class A and Class B membership.

Section 8. Voting Rights. Potter Bluff Subassociation Members shall have the same voting rights as other Association Members except that Potter Bluff Subassociation Members shall not be entitled to vote on those issues related to Potter Creek Community Facilities or Potter Creek Regular Assessments. Association Members, other than Potter Bluff Subassociation Members, shall have the same voting rights as Potter Bluff Subassociation Members except that such Members shall not be entitled to vote on those issues related to Potter Bluff Community Facilities or Potter Bluff Regular Assessments.

Section 9. Representation on Board of Directors. The Association shall encourage representation on the Board of Directors of both Potter Creek Property Lot Owners and Potter Bluff Subassociation Owners to ensure consideration by the Board of Directors of concerns of Owners from each phase of development within the Association.

ARTICLE III

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each Owner including the Declarant to the extent Declarant is an Owner as defined herein, of any Lot by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a

continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation shall not pass to the successors in title or an Owner unless expressly assumed by such successors.

Potter Bluff Declarant has no obligation to pay to the Association any Assessments for Potter Creek Common Expenses or Association Common Expenses, unless specifically agreed to by Potter Bluff Declarant, e.g., Potter Creek common entry landscaping expenses. Potter Bluff Declarant, as the Developer of Potter Bluff Property, shall develop the Potter Bluff Community Facilities and maintain the Potter Bluff Community Facilities until Potter Bluff Property Lot Owners' Assessments commence as set forth in Article III, Section 9.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, and welfare of the Members, the management of the Covered Property, enhancing the quality of life in the Covered Property, and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Community Facilities, or in furtherance of any other duty or power of the Association.

Section 3. Regular Assessments. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board shall distribute to each Member a pro forma operating statement or budget for the upcoming fiscal year which shall among other things, estimate the total Association Common Expenses, Potter Creek Common expenses and Potter Bluff Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Member. Each Member shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. Each such installment shall be due and payable on a date established by the Board in the written notice sent to Members. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due. After the Association's first full fiscal year of operation, it shall not impose a Regular Assessment which is increased more than twenty percent (20%) over the amount of the Regular Assessment in the immediately preceding fiscal year, without the approval of a majority of the voting power of the Association.

Section 4. Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that

year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Community Facilities to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements," including the necessary fixtures and personal property related thereto. The Association shall not impose a Capital Improvement Assessment, the total amount of which exceeds five percent (5%) of the estimated Common Expenses, as set forth in the Section of this Article entitled "Regular Assessments," without the approval of a majority of the voting power of the Association. Any reserves collected by the Association for the future maintenance and repair of the Community Facilities, or any portion thereof, shall not be included in determining said annual capital improvement limitation. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

Approval of the majority of the voting power of the Association as used in this section shall mean (1) the majority of the voting power of all Association Members for capital improvements to Association Community Facilities, (2) the majority of the voting power of Association Members, except for Potter Bluff Subassociation Members, for capital improvements to Potter Creek Community Facilities, and (3) the majority of the voting power of Potter Bluff Subassociation Members for capital improvements to Potter Bluff Community Facilities.

Section 5. Assessment Allocation. Each Lot Owner shall pay an equal Regular Assessment for Association Common Expenses. Each Lot Owner, except for Potter Bluff Property Lot Owners, shall pay an equal Regular Assessment for Potter Creek Common Expenses. Each Potter Bluff Property Lot Owner shall pay an equal Regular Assessment for Potter Bluff Common Expenses.

As additional property is submitted to these covenants pursuant to Article XIV herein the Lots shall each have an equal assessment with all Lots then covered by these covenants. In the case of any commercial lot or tract added to this development by supplementary declaration, the assessments attributable to such development shall be equal to the number of votes multiplied times the assessment established pursuant to this Article for residential lots. In the event that any property described in Exhibit A hereto is subdivided and platted together with a dedication of the streets located within said Plat to the Municipality of Anchorage and by virtue of said dedication the Association is not require to maintain, repair, and replace said streets then the Board of Directors shall make an equitable adjustment in the allocation of assessments for the owners of lots located within said platted area to account for the fact that the Association is not require to maintain reserves or not required to collect reserves or to charge for the maintenance and repair of such dedicated streets. Notwithstanding the foregoing the

Declarant shall pay only twenty percent (20%) of the regular assessment for Lots owned by Declarant for 120 days after conveyance of the first Lot in such addition. Notwithstanding the foregoing, the Declarant shall be obligated to pay to the Association any difference between the amount assessed during such 120-day period and the actual operating expenses for budgeted expense items during the 120-day period.

Section 6. Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Residence have been paid and the amount of delinquency if any. A reasonable charge as determined by the Board may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 7. Exempt Property. All property dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

Section 8. Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for:

a. costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws, or Association Rules;

b. any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, or Association Rules; and

c. attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by individual Owners, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

Section 9. Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lots by Declarant to an individual Owner; provided, however, the Regular Assessment, as to Lots in annexed areas, if any, shall commence with respect to all Lots within each such annexed area on the first day of the month following the conveyance of the first Lot therein by Declarant to an individual Owner. In the event the amount budgeted to meet Common Expenses for the then current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, in no event

shall a reduction in the amount or the abatement in the collection of Regular Assessment pursuant to this Section result in a quantity or quality of services diminished from those upon which the Common Expense budget for the year in question is based.

Assessments for Association Common Expenses for a Potter Bluff Property Lot Owner, other than the Potter Bluff Declarant, shall commence on the first day of the month following the date upon which both of the two following conditions have been met: (1) title to a Potter Bluff Property Lot has been conveyed to an individual or individuals who plan to occupy a Potter Bluff Property Lot, not a builder or developer, and (2) a Residence has been constructed on a Potter Bluff Property Lot. Only those Potter Bluff Property Lots that meet these two conditions will be considered in determining the total number of Lots responsible for Association Common Expenses.

Assessments for Potter Bluff Common Expenses for a Potter Bluff Property Lot Owner, other than the Potter Bluff Declarant, shall commence upon a date to be determined by Potter Bluff Declarant. Upon commencement of Assessment for Potter Bluff Common Expenses, each Potter Bluff Lot shall be assessed an equal amount for Potter Bluff Common Expenses.

Section 10. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Community Facilities; or (iii) any construction or maintenance performed pursuant to the Section entitled "Assumption of Maintenance Obligations" of the Article entitled "Repair and Maintenance" of this Declaration shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

Section 11. Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Alaska now in effect, or in effect from time to time hereafter.

Section 12. Reserves. The Regular Assessment shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair, or replacement of all or a portion of the Community Facilities, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE IV

NONPAYMENT OF ASSESSMENTS

Section 1. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge to be determined by the Board shall be levied and the Assessment shall bear interest from the delinquency date at a rate established by the Board of Directors not to exceed usury rates in effect. The Association may, at its option, and without waiving the right to judicially foreclose its lien against the Lot, pursue any available remedies, including, without limitation, bringing an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in the Section entitled "Claim of Lien" of this Article to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of such action, and attorneys' fees incurred in connection with such action; and in the event a judgment is obtained, such judgment shall include said late charge, interest, and a reasonable attorneys' fee, together with the costs of action. Each member vests in the Association or its assigns, the right and power to bring all actions at law of lien foreclosure against such Member or other Members for the collection of such delinquent Assessments.

Section 2. Claim of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the Recorder for the recording district in which the properties are located; said claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed which shall include interest on the unpaid Assessment at the rate of ten and one-half percent (10.5%) per annum, a late charge of Ten Dollars (\$10), plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien, and the name and address of the claimant.

Section 3. Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney, or any other person authorized by the Board to make the sale after failure of the Owner to make payments specified in the claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of Sections 34.20.070, *et seq.*, or 09.45.680, *et seq.*, of the Alaska Statutes as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold,

lease, mortgage, and convey same. The Association may select any other party or entity to act in the role of Trustee to perform duties of a Trustee for a power of sale foreclosure pursuant to AS 34.20.070, *et seq.*

Section 4. Curing of Default. Upon the timely payment or other satisfaction of: (a) all delinquent Assessments specified in the claim of lien, (b) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim was recorded, and (c) interest, late charges, attorneys' fees, and other costs of collection pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Board, to cover the costs of preparing and filing or recording such release.

ARTICLE V

DESIGN CONTROL AND CONSTRUCTION TIME LIMITS

Section 1. Appointment of Design Review Committee. The Design Review Committee shall consist of not less than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. The Declarant shall initially appoint the Design Review Committee. The Declarant shall retain the right to appoint, augment, or replace all Members of the Design Review Committee until two (2) years after the recording of this Declaration. The Declarant shall retain the right to appoint, augment, or replace a majority of the Members of the Design Review committee until ten (10) years after the date of the recordation of this Declaration, or until ninety percent (90%) of the total square footage of property described in Exhibit A, together with the property acquired by Declarant or Developer contiguous to property described in Exhibit A has been conveyed by the Declarant, whichever occurs earliest. Persons appointed by the Board to the Design Review Committee must be Members; however, persons appointed by Declarant to the Design Review committee need not be Members, in Declarant's sole discretion.

Section 2. General Provisions.

a. The Design Review Committee may assess reasonable fees for review of plans and specifications and establish reasonable rules for including, without limitation, the number of sets of plans to be submitted; however, the Design Review committee may delegate its plan review responsibilities to one or more Members of such Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Design Review Committee. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted. The Design Review Committee may retain professional assistance from architects and engineers to assist it to review plans and any fees incurred shall be the obligation of the Owner of the Lot for which the plans are submitted.

b. The address of the Design Review Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current Design Review Standards shall be kept.

c. The establishment of the Design Review committee and the systems herein for design approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify, or otherwise have control over the Residences as may otherwise be specified in this Declaration, in the Bylaws, or in any Association Rules.

d. In the event the Design Review committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Design Review Committee, such plans and specifications will be deemed approved.

Section 3. Approval and Conformity of Plans. No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Covered Property, nor shall there be any addition to, or change, in the exterior of any Residence, structure, or other improvement including, without limitation, the painting of exterior walls and fences, unless plans and specifications therefor have been submitted to and approved by the Design Review Committee. The Board shall, from time to time, adopt and promulgate Design Review Standards to be administered through the Design Review Committee. The Design Review Standards shall include among other things those restrictions and limitations upon the Owners set forth below:

a. Time limitations for the completion of the design improvements for which approval is required pursuant to the Design Review Standards and daily penalties for failure to complete the design improvements within the time limits;

b. Conformity of completed design improvements to plans and specifications approved by the Design Review Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Residence and its Owner and specifying the reason for the notice executed by the Design Review Committee, shall be filed of record in the Office of the Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, and given to such Owner within thirty (30) days of the expiration of the time limitation described in subsection (a) above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said thirty (30) days period, the completed design improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review committee and in compliance with the Design Review Standards of the Association, but only with respect to purchasers and encumbrancers in good faith and for value;

c. Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the following: construction, reconstruction, landscaping, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface, and location of such dwelling or structure; and

d. Without limiting the generality of the foregoing, the Board may adopt a landscape maintenance plan which ensures that tree trimming and topping procedures shall be utilized to prevent the impairment of views enjoyed by the Residences.

Section 4. Nonliability for Approval of Plans. Plans and specifications are not approved for engineering design, and by approving such plans and specifications the Design Review Committee, the Members thereof, the Association, the Members, the Board, the Declarant, and the Developers do not assume liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Section 5. Appeal. In the event plans and specifications submitted to the Design Review committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request shall be received by the Board not more than thirty (30) days following the final decision of the Design Review Committee. The Board shall submit such request to the Design Review Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

Section 6. Easements. With respect to private and greenbelt easements located in the Covered Property described in Exhibit D, Paragraph 1 attached hereto, the Design Review Committee may approve a landscaping plan for the private and/or greenbelt easement which includes trees, shrubs and ground cover suitable to provide visual buffers and erosion control similar to native vegetation. The Design Review Committee may also approve permitted accessory structures to be located within the private and/or greenbelt easements which consists of the following:

- a. decks;
- b. saunas and hot tubs;
- c. fences (if approved as part of a landscaping plan); and/or
- d. swing sets and children play equipment or other similar accessory structures.

ARTICLE V-A

DESIGN CONTROL

Section 1. Obligation of Potter Bluff Declarant. The provisions of Article V shall apply to Potter Bluff Property and Potter Bluff Declarant as modified by this Article.

Section 2. Potter Bluff Property Design Control. During development of Potter Bluff Subdivision, Potter Bluff Declarant shall appoint a Design Review Committee for Potter Bluff Property. The Potter Bluff Design Review Committee shall operate in accordance with Article V and the Potter Bluff Property shall comply with the Design Standards and Procedures except as set forth on Exhibit C attached to this Amendment and incorporated into this Amendment. The Association shall incorporate Exhibit C into the Design Standards and Procedures of the Association for the Potter Bluff Property. The Potter Creek Design Review Standards, as amended and supplemented by this section, shall continue to apply to Potter Bluff Property, after Construction and Sales.

Section 3. Discontinuance of Potter Bluff Design Review Committee. Upon the completion of the construction of a Residence on a Potter Bluff Property Lot and the occupancy of that Residence by a Potter Bluff Property Lot Owner, said Potter Bluff Property Lot shall be governed by the Design Review Committee of the Association in accordance with Article V of this Declaration, except that the Design Review Standards, as modified and supplemented for Potter Bluff, shall continue to be applicable to the Potter Bluff Property Lots.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws,, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

Section 2. General Duties of the Association. The Association, through the Board, shall have the duty and obligation to:

- a. enforce the provisions of this Declaration, the Articles, Bylaws, and Association Rules, by appropriate means and carry out the obligations of the Association hereunder;
- b. maintain and otherwise manage the following:
 - (1) all easements and real property and all facilities, improvements, and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(2) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(3) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, the Article of this Declaration entitled "Repair and Maintenance",

c. pay any real and personal property taxes and other charges assessed to or payable by the Association; and

d. obtain, for the benefit of the Community Facilities, water, gas electric, refuse collections, and other services.

Section 3. General Powers of the Association. The Association, through the Board, shall have the power, but not the obligation to:

a. employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Covered Property, to perform all or any part of the duties and responsibilities of the Association, provided that any contract not approved by all governmental agencies with a person or firm appointed as a manager or managing agent shall be terminable for cause on not more than thirty (30) days' written notice by the Association, and shall have a term of not more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties;

b. acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit of the Members;

c. borrow money as may be needed in connection with the discharge by the Association of its powers and duties;

d. negotiate and enter into contracts with Institutional Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Covered Property.

Section 4. General Limitations and Restrictions on the Powers of the Board. In addition to the limitations and restrictions enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following actions without the approval of the majority of the voting power of the Association:

a. enter contracts for materials or services which have a term in excess of one (1) year, with the following exceptions:

(1) a management contract, the terms of which have been approved by the governmental agencies; and

(2) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the applicable policy permits short rate cancellation by the insured;

b. incur aggregate expenditures for capital improvements to the Covered Property in any fiscal year in excess of five percent (5%) of the estimated Common Expenses for the fiscal year as set forth in the Sections entitled "Regular Assessments" and "Capital Improvement Assessments" of the Article hereof entitled "Covenant for Assessments";

c. sell any real or personal property owned by the Association with an aggregate fair market value in excess of five percent (5%) of said estimated Common Expensed during any fiscal year.

d. pay compensation to directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association. Notwithstanding the foregoing, the Association may pay reasonable compensation, including professional fees, to Members of the Design Review Committee for service on that Committee.

Section 5. Association Rules. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties enforceable as Special Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Community Facilities; provided, however, that the Association Rules may not discriminate among Owners, except to reflect the different nature of the estate lots which lots will be designated by the Declarant, and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed, or a notice setting forth the adoption, amendment, or repeal of special portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any

conflict between any such Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be supersede by the provisions of this Declaration, the Articles, or the Bylaws to the extent of any such conflict.

Section 6. Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees, or agents any of its duties and powers under this Declaration, the Articles, and Bylaws; provided, however, no such delegation to a professional management company, the Design Review Committee, or otherwise shall relieve the Association of its obligation to perform such delegated duty.

Section 7. Pledge of Assessment Rights. The Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association; provided, however, any such pledge shall require the prior affirmative vote or written assent of not less than sixty-seven percent (67%) of the Members who may be levied by the Association. Said power shall include, but not be limited to the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association; which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all of its rights, including, without limitation, the right to foreclose its lien, pursuant to the Article hereof entitled "Nonpayment of Assessments." Without limiting the generality of the foregoing, any pledge of Assessment rights in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then preceding fiscal year, shall require the prior written approval of sixty-seven percent (67%) of the Institutional Mortgagees based on one (1) vote for each first mortgage held. Failure of any Institutional Mortgagee to respond to a request by the Association for written approval within thirty (30) days of receipt of a certified letter making such request shall be deemed approved on the thirtieth (30) day following receipt.

ARTICLE VII

REPAIR AND MAINTENCE

Section 1. Repair and Maintenance by Association. Except to the extent that an Owner may be obligated to maintain and repair as hereinafter provided, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

a. maintain, repair, restore, replace and make necessary improvements to the Community Facilities, including, without limitation, the following:

(1) private walkways, bicycle paths, trails or other pedestrian paths;

(2) private streets and adjacent streetscapes with the Covered Property in conformance with the standard of maintenance established by the Director of Public Works of the City for public streets and streetscapes with the City; provided; that if such maintenance of such private streets and streetscapes is the responsibility of a Maintenance Association to conform to such standards and if such Maintenance Association action fails to so conform the Association may perform such maintenance itself and levy on such Owners or the members of such Maintenance Association a Special Assessment therefore;

(3) drainage facilities and easements in accordance with the requirements of the Department of the City having jurisdiction thereof as well as any other state and federal authorities having jurisdiction thereof;

b. maintain in a safe and attractive condition those slope banks within the public rights-of-way or located within or adjoining the private streets and which are included within the Community Facilities; provided that if such maintenance of such slope banks is the responsibility of a Maintenance Association, the Association shall cause such Maintenance Association to perform such maintenance and if such Maintenance Association fails to perform such maintenance, then the Association may perform such maintenance itself and levy on the owners of the Maintenance Association a special assessment therefor.

c. maintain all other areas, facilities, equipment services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of two thirds (2/3) of the voting power of the Members.

d. the costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise herein specified as payable by the particular Owners.

Section 2. Repair and Maintenance by Owner. Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall:

a. maintain the exterior of his Residence, walls fences and roof of such Residence in good condition and repair; and

b. install and thereafter maintain in attractive condition front yard landscaping in accordance with the provisions of this Article.

c. None of the provisions of this Section 2 regarding Repair and Maintenance by Owner shall govern the provisions which are provided by Declarant in any recorded Declarations of Covenants, Conditions or Restrictions for the estate lot areas in the project as may be designated in the future by Declarant and further the provisions of this Section shall not apply to the extent that such obligations are the responsibility of a Maintenance Association formed pursuant to a recorded Declaration of Covenants, Conditions and Restrictions on a portion of the project.

Section 3. Right of Association to Maintain and Install.

In the event that an Owner fails to accomplish any maintenance or repair required by this Article, the Association or its delegates may, but shall not be obligated to, cause such maintenance and installation to be accomplished as hereinafter set forth.

a. Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purposes. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

b. Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

c. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it shall further set a date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

d. If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

e. In the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply;

(1) The Owner shall have no more than ten (10) days following the receipt thereby of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished;

(2) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said the (10) day period;

(3) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) Unless the Owner and the Board otherwise agree such maintenance or installation shall take place only during the hours of 8:00 a.m. to 5:00 p.m. on any day, Monday through Friday, excluding holidays.

f. If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Residence.

Section 4. Standards for Maintenance and Installation.

a. Maintenance of the exterior of the Residences, including without limitation walls, fences and roofs shall be accomplished in accordance with the Design Review Standards and, if required by the Design Review Standards, only after approval of the Design Review Committee; and

b. All portions of the front yard of a Residence which are unimproved shall be landscaped by the Owner thereof on or before a date twelve (12) months from the completion of such Residence by a builder. Thereafter, such landscaping shall be maintained by the Owner in an attractive condition according to any rules promulgated by the Board.

c. All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

Section 5. Right of Entry. The Association shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Association.

Section 6. Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Community Facilities owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 7. Assumption of Maintenance Obligations. Declarant, its subcontractors and the agents and employees of the same shall have the right to come on the Community Facilities to

complete the construction of any landscaping or other improvement to be installed on the Community Facilities as provided in this Declaration. In the event that Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on the Community Facilities such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by reason of construction or maintenance pursuant to this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

Section 8. Relationship With Maintenance Associations.

A Maintenance Association shall be deemed responsible for the maintenance of an area if this Declaration or a declaration of covenants, conditions and restrictions recorded by Declarant designates such area to be maintained by such Maintenance Association. Such declaration shall not be amended to modify or terminate such maintenance responsibility without the prior written approval of the Board. In the event that a Maintenance Association does not execute its maintenance responsibilities in compliance with the Design Review Standards and the Section of this Article entitled "Standards for Maintenance and Installation," the Association may perform such maintenance itself and levy on the members of such Maintenance Association a Special Assessment therefor. The Association shall be responsible for any maintenance or other obligation imposed on it by any declaration of covenants, conditions and restrictions recorded by Declarant for a portion of the Covered Property, or any amendment thereto to which the Board consents in writing, and any such maintenance for which the Association is responsible shall not be the responsibility of any Maintenance Association.

ARTICLE VIII

INSURANCE

Section 1. Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance so long as such amounts or type of insurance coverage are not, in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Covered Property, the Association and the Members:

a. A comprehensive policy of public liability insurance covering the Community Facilities with a limit of not less than One Million Dollars (\$1,000,000,) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an

Owner because of negligent acts or omissions of the Association or other Owners;

b. A policy of fire and casualty insurance with extended coverage for the full replacement value of the Community Facilities (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar developments in the area of the Covered Property.

c. Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

Section 2. Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3. Other Insurance. The Board may and, if required by any Institutional Mortgagee, shall purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild, as well as a blanket policy of flood insurance. The Board shall also purchase and maintain workmen's compensation insurance, to the extent that the same shall be required by law, for all employees of the Association. The Board shall also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary or as is required by an Institutional Mortgagee including, without limitation, earthquake insurance, plate-glass insurance and officers' and directors' liability insurance.

Section 4. Premiums, Proceeds and Settlement. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the

Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "Destruction of Improvements." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

Section 5. Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Covered Property in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 6. Abandonment of Replacement Cost Insurance. Unless at least sixty-seven percent (67%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis. Failure of any Institutional Mortgagee to respond to a request by the Association for written approval within thirty (30) days of receipt of a certified letter making such request shall be deemed approved on the thirtieth (30) day following receipt.

Section 7. Federal Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by any of the Federal Agencies, so long as either is a Mortgagee, Owner, or insures or guarantees a Mortgage within the Covered Property, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

Section 1. Duty of Association. In the event of partial or total destruction of improvements upon the Community Facilities, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

Section 2. Automatic Reconstruction. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair or the cost not covered by insurance proceeds is less than the sum of One Hundred Fifty Dollars (\$150) per year per Lot, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damages or destroyed Community Facilities to be restored as closely as practical to its condition prior to the destruction or damage. The \$150 figure referred to in this Section and in Section 3 of this Article shall be adjusted annually beginning January 1 of the calendar year following recordation of this Declaration by the amount of change in the consumer price index for all items for the Municipality of Anchorage.

Section 3. Vote of Members. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair or greater than the sum of One Hundred Fifty Dollars (\$150) per year per Lot, the improvements shall not be replaced or restored unless a majority of the voting power of the Association agrees in writing to such replacement or restoration or gives its affirmative vote at a meeting duly called therefor. If the Members approve such replacement or restoration, the Board shall cause the damaged or destroyed Community Facilities to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the improvements on the Community Facilities, the Community Facilities shall be used as determined by the Board.

Section 4. Excess Insurance Proceeds. In the event any excess insurance proceeds remain, after any reconstruction by the Association pursuant to this Article, the Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. In the absence of such prior rights, the rights of an Owner and the Mortgagee of his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

Section 5. Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE X

EMINENT DOMAIN

Section 1. Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Community Facilities.

Section 2. Representation by Board in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Community Facilities, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Section 3. Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 4. Award for Community Facilities. Any awards received on account of the taking of Community Facilities shall be paid to the Association. The Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his Lot as to any pro rata distribution shall be governed by the provision of the Mortgage encumbering such Lot.

ARTICLE XI

USE RESTRICTIONS

Section 1. Commercial Use. Subject to the Section entitled "Construction and Sales" of the Article hereof entitled "Easements", no part of a Lot shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purposes; provided, however, that the Association shall have the right to provide or authorize such services on the Community Facilities as it deems appropriate for the enjoyment of the Community Facilities or for the benefit of the Members. Notwithstanding the foregoing, a business which does not cause a noticeable increase in vehicular traffic or on-street parking may be operated from within a Residence. In such case there shall be no signs or other evidence of the existence of the business visible outside the Residence.

Section 2. Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Covered Property except such signs as may be used by Declarant or its sales agents in connection with the development of the Covered Property and sale of the Lot; provided, however, that a Member

may display on his Lot, a sign advertising its sale or lease by him so long as such sign shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape, or other qualification for permitted signs.

The sign located at the entrance to the Potter Bluff Property may be removed at the option of the Board of Directors of the Association. The area where the sign was located shall be part of the Potter Bluff Community Facilities.

Section 3. Nuisance. No noxious or offensive trade or activity shall be carried on upon any Residence, or any part of the Covered Property nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Residence, or which shall in any way increase the rate of insurance.

Section 4. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall hereafter be used on any Residence at any time, either temporarily or permanently.

Section 5. Recreational and Junk Vehicles. No trailer, camper, boat, snowmachine, recreational vehicle, airplane or similar equipment shall hereafter be permitted to remain upon the Covered Property, including, without limitation, streets, alleys or driveways, unless placed or maintained within an enclosed area, or unless obscured from view of adjoining Lots, streets, or alleys by a fence or appropriate screen, nor permitted to be parked other than temporarily, on any street, alley, or any other portion of the Covered Property. Temporary parking shall mean parking of vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments. Any fence or screen required under this Section shall comply with any standards promulgated pursuant to the Article entitled "Design Review Control" of the Declaration as to size, color, or other qualification for permitted fences or screens. In addition, the Board may designate areas within the Covered Property for parking of campers and similar equipment without the requirement of fencing or screening.

No automobile whether inoperative or not may be parked on the street unless it is there on a temporary basis between regular usage. Regular usage shall mean at least once every forty-eight (48) hours. No work of any kind including tune ups, oil changes or any other minor maintenance may be performed on a car while in view of the street whether or not it is in the street or on a Lot. No inoperable vehicles may be stored on the street or on a Lot.

Section 6. Animals. No animals, livestock, or poultry of any kind, shall be raised, bred, or kept upon the Covered Property, except that dogs, cats, or other household pets may be kept on the Covered Property, provided they are not kept, bred, or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. In no case shall there be more than two (2) dogs or three (3) cats allowed in or about any Residence. Notwithstanding the foregoing, no animals or fowl may be kept on the Residences which in the good faith judgment of the Board or a committee selected by the Board for this purpose, result in an annoyance or are obnoxious to residents in the vicinity. All animals permitted to be kept by this Section shall be kept on a leash when on any portion of the Covered Property except within a Residence.

Section 7. Oil and Mineral Rights. No oil drilling, oil development operations, oil refining, gravel pits, quarrying, or mining operations of any kind shall be permitted upon or in the Covered Property nor, subsequent to the recording of this Declaration, shall oil wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of the Covered Property or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for oil or natural gas shall be designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Covered Property.

Section 8. Unsightly Items. All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from the Residences and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Residence unless obscured from view of adjoining streets or portions of the Covered Property from a height of six (6) feet or less. Any fence or screen required by this Section shall comply with any standards promulgated pursuant to the Article entitled "Design Review Control" of this Declaration as to size, color or other qualification for permitted fences or screens.

Section 9. Antennae. No television, radio, or other electronic antenna or devise of any type shall hereafter be erected, constructed, placed or permitted to remain on the Covered Property unless and until the same shall have been approved in writing by the Design Review Committee, or unless the same be contained within a residence.

Section 10. Drainage. All drainage of water from any Residence shall drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under any other portion of the Covered Property unless an easement for such purpose is granted.

Section 11. Window Covers. Curtains, drapes, shutters, or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material.

Section 12. Single Family Residential. All Lots shall be used only for single family development only and solely for residential purposes. The maximum density shall be 6 dwelling units per acre.

Section 13. Fences and/or Walls. Owners with Residences situated on property with a slope may construct and install fences or walls only at the toe of said slope. The height or location of any fence or wall shall be subject to approval of the Design Review Committee as set forth in Article V of this Declaration. Fences may extend only from the rear of the Lot to the point where the exterior walls of the Residence are nearest the road.

Certain fences may be permitted as accessory structures within a private and/or greenbelt easement if they meet the criteria established by the Design Review Committee. Except as otherwise provided herein, there shall be no fences or other obstructions erected by any person on any common areas which are open spaces

Section 14. Maintenance Association Use Restrictions. Nothing herein shall prevent a Maintenance Association from adopting use restrictions for its portion of the Covered Property which are more restrictive than those set forth herein, provided that such restrictions shall in no way modify the provision hereof.

Section 15. Removal of Trees from Lots. No trees may be removed from any Lot except those trees necessary for clearing a construction site for the dwelling to be constructed on that Lot. It is the intent of this provision that all persons purchasing Lots shall do their utmost to maintain the trees and the natural wooded surroundings of their properties. In the event of excess removal of trees on any Lot, the Owner shall be responsible to replant and maintain live trees to the satisfaction of the Design Review Committee at his own expense. Any Lot re-contouring shall be done only with the written approval of the Design Review Committee, and such approval shall be given only after a comprehensive plan has been developed by the Owner.

Section 16. Streets. All new subdivisions of Tract B and Tract C, Southcreek Estates Subdivision and Tracts 10 and 11, Villages Subdivision shall have streets built to Municipal Standards and dedicated to the Municipality of Anchorage. Tracts 10 and 11, Villages Subdivision shall be prohibited direct access to the Villages Scenic Parkway.

Section 17. Easements. With respect to the Covered Property described in Exhibit D, Paragraph 1 attached hereto, private and/or greenbelt easements that are either dedicated by plat, described in plat notes or described in this Declaration shall consist of natural vegetation or reflect a landscape plan approved by the Design Review Committee. The objective of all greenbelt easements is to promote the preservation of the tree canopy. Greenbelt easements located on privately held Lots will be maintained primarily as buffers. They should be maintained in natural vegetation.

The Design Review Committee shall have the right to approve an alternate landscaping plan for the private and/or greenbelt easements as set forth in Article V, Section 6 of this Declaration. No principal structure shall be located in the private and/or greenbelt easements and permitted accessory structures may only be located in the private and/or greenbelt easements if such structures are approved by the Design Review Committee and meet the criteria set forth in Article V, Section 6 of this Declaration.

Section 18. Future Development. With respect to the Covered Property described in Exhibit D, Paragraphs 2 and 3, the following standards shall apply:

- a. Areas intended to be reserved as undisturbed open space shall be provided as separate open space tracts and not as an easement located within an individual lot;
- b. 33% of the subdivided land area shall remain as undisturbed open space to provide a buffer between development areas;
- c. Any new subdivision plats shall contain plat notes which note open space shall remain as natural vegetation and shall remain undisturbed; and
- d. Yard setbacks shall be 20 foot front yard; 5 foot side yard; and 10 foot rear yard.

ARTICLE XII

RIGHTS OF ENJOYMENT

Section 1. Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Community Facilities and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Residence, subject to all of the easements, covenants, conditions, restrictions and other provisions of record and as contained in this Declaration, including, without limitation, the following provisions:

a. The right of the Association to limit the number of guests of Members and to limit the use of the Community Facilities by persons not in possession of a Residence, but owning a portion of the interest in a Residence required for membership.

b. The right of the Association to establish reasonable rules and regulations pertaining to the use of the Community Facilities.

c. The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Community Facilities or adding new Community Facilities and in aid thereof, to mortgage said property, provided that the prior

affirmative vote or written approval of a majority of each of the Class A and the Class B Members has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Community Facilities, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members, and, if necessary, to open the enjoyment of the Community Facilities to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored.

d. The rights of the Association to suspend the right of a Member to use the Community Facilities of any portion thereof designated by the Board during any time in which any Assessment against his Residence remains unpaid and delinquent or for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided that any suspension of such right to use such Community Facilities, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Members' right to use any portion of the Covered Property necessary for such Member to gain access to his Residence.

e. The right of the Association subject to the approval rights of Institutional Mortgagees pursuant to the Article hereof entitled "Rights of Lenders", to dedicate or transfer all or any part of the Community Facilities to any public agency, authority or utility or other entity. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Community Facilities to a special tax assessment district or to the City, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the membership has been recorded, agreeing to such dedication or transfer. The certificate of the President and the Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Association shall be deemed conclusive proof thereof.

Section 2. Delegation of Use. Any member may delegate his right of enjoyment to the Community Facilities to the members of his family or his tenants who reside on his Lot, or to his guests, subject to rules and regulations adopted by the Board.

Section 3. Waiver of Use. No member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens, charges, and other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Community Facilities, or the abandonment of his Residence.

ARTICLE XIII

EASEMENTS

Section 1. Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

Section 2. Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

Section 3. Certain Rights and Easements Reserved to Declarant.

a. Utilities. Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Residences or the Community Facilities.

b. Construction and Sales. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Declarant's sales agents and representatives and prospective purchasers of Lots, over the Covered Property as the same may from time to time exist, easements for construction, display, maintenance, sales, and exhibit purposes in connection with the sale or lease of Lots within the Covered Property; provided, however, that such use shall not be for a period beyond the sale by Declarant of all Lots within the Covered Property, and additions thereto pursuant to Article XIV, and provided further that no such use by Declarant and others shall otherwise restrict the Members in the reasonable use and enjoyment of the Covered Property.

Section 4. Certain Easements for Owners.

a. Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Lot, and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth

below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

b. Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and grants to all Owners a nonexclusive easement for ingress, egress, pedestrian walkway and general recreational purposes over and upon the Community Facilities. Such easements are subject to the rights of the Association as set forth in the Article hereof entitled "Rights of Enjoyment."

Section 5. Certain Easements for Association.

a. Association Rights. There is hereby reserved to Declarant easements over the Covered Property, together with the right and obligation to grant and transfer the same to the Association, for the purpose of permitting the Association to discharge its obligations as described in this Declaration.

b. Rights and Duties: Utilities and Cable Television. Whenever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Community Facilities, the Association shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association an easement to the full extent necessary for the full use and enjoyment of such Facilities and to enter upon the Lots owned by others, or to have utilities companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

Section 6. Support, Settlement and Encroachment. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, the following reciprocal easements for the purposes set forth below:

a. An easement appurtenant to each Lot which is contiguous to another Lot or Community Facilities which Lot shall be the dominant tenement and the contiguous Lot or Community Facilities shall be the servient tenement.

b. An easement appurtenant to the Community Facilities contiguous to a Lot, which Community Facilities shall be the dominant tenement and which contiguous Lot shall be the servient tenement.

c. It is provided, however, that in the event Community Facilities are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners.

d. Said easements shall be for the purposes of:

(1) support and accommodation of the natural settlement of structures;

(2) encroachment by reason of a roof or eave overhang from a Residence and for the maintenance of such roof or eave overhand by the Owner of the dominant tenement;

(3) encroachment of fireplaces, doorsteps, foundation footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction modifications of such structures, project beyond the external surface of the outer walls of such structures.

ARTICLE XIV

INTEGRATED NATURE OF THE COVERED PROPERTY

The real property (hereinafter in this Article referred to as the "Annexation Property") and/or any other real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 1. Development of the Covered Property.

Declarant intends to sequentially develop the Annexation Property on a phased basis, however, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of the Annexation Property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexation Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and recorded by the Declarant. Declarant reserves the right to annex property contiguous to property described in Exhibit A which Declarant acquires in the future and which is annexed pursuant to supplementary declaration in accordance with the provisions of this Article.

Section 2. Supplementary Declarations.

A Supplementary Declaration shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements, and other provisions of this Declaration

and shall contain such other provisions as set forth in this Declaration relating to Supplementary Declarations. Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, or any merger or consolidation, revoke, modify or add to the covenants established by this Declaration with respect to the existing property.

Section 3. Annexation Without Approval and Pursuant to General Plan. All or any part of the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration covering the portion of the Annexation Property to be annexed, shall be executed and recorded by Declarant, provided, however, no Supplementary Declaration shall be so executed and recorded pursuant to this Section more than three (3) years (i) subsequent to the recordation of this Declaration or (ii) subsequent to the last recordation of a Supplementary Declaration for a phase of the project, whichever of (i) and (ii) shall have later occurred. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots in said annexed real property shall automatically by Members.

Section 4. Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to the two-thirds (2/3) majority of the voting power of each class of its Members or the written assent of such Members, persons other than Declarant who desire to add real property, other than the Annexation Property, to the plan of this Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplementary Declaration. The provisions of this Section shall also apply to the Annexation Property subsequent to the expiration of the power of Declarant to annex such property without the approval of the Members as provided in this Article. The certificate of the President and the Secretary of the Association attached to any Supplementary Declaration recorded pursuant to this Section certifying that the required two-thirds (2/3) majority of the voting power of each class of Members has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

Section 5. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by two-thirds (2/3) of each class of Members, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the

properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants and restrictions established upon any other property as one plan.

ARTICLE XV

RIGHTS OF LENDERS

Section 1. Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Such notice shall state which Lot or Lots are encumbered by such Mortgage, and shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 2. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

Section 3. Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board

made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding of all Mortgagees.

Section 4. Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 5. Relationship with Assessment Liens.

a. The lien provided for in the Article hereof entitled "Nonpayment of Assessments" for the payment of Assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due.

b. If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosures, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

c. Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots within the Covered Property.

d. Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

Section 6. Sixty-Seven Percent (67%) Vote of Institutional Mortgagees. Except upon the prior written approval of at least sixty-seven percent (67%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

a. Dissolve the Association or abandon or terminate the maintenance of the Community Facilities by the Association; or

b. Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of the Article hereof entitled "Insurance," this Article, any other rights granted specifically to Mortgagees pursuant to any other provision of this Declaration, or any provision of this Declaration, the Articles, or Bylaws which is a requirement of AHFC, FNMA, GNMA, FHLMC, FHA or VA shall be deemed to be material; or

c. Effectuate any decision to terminate professional management and assume self-management of the Covered Property if professional management was required by any governmental agency;

d. Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Community Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Facilities shall not require such approval.

e. Failure of any institutional mortgage to respond to a request by the Association for written approval within thirty (30) days of receipt of a certified letter making such request shall be deemed approved on the thirtieth (30) day following receipt.

Section 7. Other Rights of Institutional Mortgagees.
Any Institutional Mortgagee or its mortgage servicing contractor, shall upon written request to the Association, be entitled to:

a. Inspect the books and records of the Association during normal business hours;

b. Receive the annual audited financial statement of the Association ninety (90) days following the end of the Association's fiscal year;

c. Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

d. Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request thereof to the Association specifying the Lot or Lots to which such request relates.

Section 8. Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 9. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 10. Notice of Destruction or Taking. In the event that any Community Facilities, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

Section 11. Payment of Taxes or Premiums by Institutional Mortgagees. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Community Facilities, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees, may, jointly or singly, also pay overdue premiums of hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Community Facilities and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

ARTICLE XVI

EFFECTS OF GOVERNMENT PROGRAMS

Section 1. Governmental Approval. In the event that the approval of AHFC, FNMA, FHA or VA is so sought for the purpose of having those mortgagees insure or guarantee any Mortgage or providing any form of assistance within the purview of such agencies with respect to the Covered Property, and the rules and regulations of AHFC, FNMA, FHA and VA as the same exist at the date of recording of this Declaration would require this Declaration to be amended in certain respects and additionally require that AHFC, FNMA, FHA and/or VA participate in certain decisions affecting the entire Covered Property and the management of the Association, then the Declarant shall have the sole right to amend this Declaration to gain such approval.

ARTICLE XVII

ESTABLISHMENT OF POTTER BLUFF SUBASSOCIATION

Section 1. Authorization. The Association hereby authorizes the creation of Potter Bluff Subassociation to provide for the development and management of Potter Bluff Property.

Section 2. Establishment of Potter Bluff Subassociation. The Association hereby creates within the Association the Potter Bluff Subassociation.

Section 3. Rights and Obligations. The Potter Bluff Property shall be Covered Property for all purposes except as specified in the Declaration, as Amended. The Potter Bluff Property Owners shall be Members of the Association for all purposes except as set forth in this Amendment.

Section 4. Classes of Members. The Owners of Potter Bluff Property Lots shall constitute a separate class of Member.

Section 5. Potter Bluff Subassociation Assessments. Potter Bluff Property Owners' Assessments shall differ from other Association Owners in recognition that Potter Bluff Property will have public streets and utilities and that Potter Bluff Property Owners shall not be obligated to participate in the maintenance of existing Potter Creek streets and street lights.

Section 6. Amendment of Sections of the Declaration. In order to provide for Potter Bluff Subassociation, provisions of the Declaration shall be amended as set forth in this Amendment.

ARTICLE XVIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or nay amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or restrictions and the right to recover damages or other dues for such violation. the Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect Design Review control, Assessment liens or any other liens or charges and Association rules, the Association shall have the exclusive right to the enforcement thereof.

Section 2. No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

Section 3. Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such right, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in the Declaration.

Section 4. Severability. Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 5. Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representative, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners and sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage held, has been recorded at least one (1) year prior to the end of any such period, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 6. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 7. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Section 8. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 9. Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as party of the judgment, reasonable attorneys' fees and costs of such suit.

Section 10. Notices. Any notice to be given to an Owner or a Mortgagee or mortgage service contractor under the provision of this Declaration shall be in writing and may be delivered as follows:

a. Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Residence. Any notice so deposited in the mail within Anchorage, Alaska, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

b. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purpose of notice or, if no such address is furnished, to any office of the Mortgagee in Anchorage, Alaska, or if no such office is located in said Municipality, to any office of such Mortgagee.

c. The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees, or to all Members or all Mortgagees, to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

Section 11. Obligations of Declarant. So long as Declarant is utilizing the easement described in the Section entitled "Construction and Sales" of the Article in this Declaration entitled "Easements," Declarant shall not be subject to the provisions of the Article entitled "Design Review Control" or the provisions of the Article entitled "Use Restrictions."

Section 12. Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 13. Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or the Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 14. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Design Review Committee, any other committees of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 15. Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws, the Association Rules and any of the Governmental Agencies. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules; provided, however, the obligation of the foregoing sentence shall not apply to Declarant in the event Declarant leases a Lot for a term of twenty (20) years or more and such lease, or memorandum thereof, is recorded. No Lot shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days or any rental whatsoever, or if the occupants of the Lot are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. The Owner shall provide to the lessee a copy of this Declaration and any amendments thereto, a copy of the Bylaws of the Association and a copy of the current rules of the Association, if any. The Owner shall provide the Association with a copy of the lease prior to occupancy by the lessee.

Section 16. Construction By Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Community Facilities or the Lots, or to construct such additional improvements as Declarant deems advisable prior to completion of improvements upon and sale of the entire Development. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Covered Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Development. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of said entity's respective interest in

the Development, by an express assignment incorporated in a recorded deed or lease, as the case may be, transferring such interest to such successor. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Covered Property.

Section 17. Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees pursuant to the Articles hereof entitled "Insurance" and "Rights of Lenders," or otherwise, this Declaration may be amended as follows:

a. Until such time as there is a Class A Membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when recorded in the Official Records of Anchorage, Alaska. Thereafter any amendments shall require the affirmative written assent or vote of not less than sixty-seven percent (67%) of the voting power of the Members.

b. In addition to the foregoing, any amendment or modification of the Articles hereof entitled "Covenant for Maintenance Assessments," "Nonpayment of Assessment," "Design Review Control," "Repair and Maintenance," "Destruction of Improvements," and "Eminent Domain" shall additionally require the prior written approval of not less than sixty-seven percent (67%) of the Class A Members.

c. An amendment or modification that require the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendments or modification has been approved as hereinabove provided, and when recorded in the Official Records of Anchorage, Alaska.

d. Notwithstanding the foregoing, any provision of this Declaration, or the Articles, Bylaws or Association Rules which expressly requires the approval of the specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

Section 18. Exemption of Public Property. All properties dedicated to and accepted by, or otherwise owned or acquired by a public authority shall be exempt from this Declaration.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

POTTER CREEK HOMEOWNER ASSOCIATION

By: _____
Its: _____

By: _____
Its: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

On _____, 2003, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____, known to me to be the _____, and _____, known to me to be the _____ of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a Resolution of its Board of Directors.

WITNESS my hand and official seal on the day and year first above written.

Notary Public in and for Alaska
My commission expires:_____