

to retain the services of any consultant and/or attorney, and any other costs reasonably incurred by the Association in connection with any application under this Article.

ARTICLE 17.
AMENDMENTS

Section 17.1. GENERAL.

Except as otherwise provided by the Documents and the Act, including, without limitation, AS 34.08.740, AS 34.08.260, and Section 17.3, and Articles 14 and 19 herein, this Declaration and its Plans may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 17.2. CONSENT OF SECURITY INTEREST HOLDERS.

As required by Articles 14 and 19, amendments may be subject to the consent of certain holders of Security Interests.

Section 17.3. UNANIMOUS CONSENT.

Except to the extent expressly permitted or required by other provisions of the Act and this Declaration, no amendment may change the uses to which any Unit is restricted, increase the number of Units, create or increase Special Declarant Rights, alter the boundaries of any Unit, or change the Allocated Interests of any Unit, in the absence of unanimous consent of the Unit Owners.

Section 17.4. DECLARANT RIGHTS.

Provisions in this Declaration reserving Declarant rights may not be amended without the consent of Declarant and as set forth in Section 17.9.

If, in Declarant's exercise of any rights described in Article 6 of this Declaration, an amendment to the Declaration is required, the Declarant shall, in conformance with the Act, prepare, execute, and record an amendment, any required Plans, and any other required exhibits. Any amendment effected by Declarant's exercise of rights reserved in Article 6 requires Declarant approval only.

Section 17.5. EXECUTION.

Amendments to this Declaration required by the Act to be recorded by the Association, which have been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 17.6. RECORDATION.

Each amendment to the Declaration is effective only upon recording as set forth in AS 34.08.250(c) of the Act.

Section 17.7. LIMITATIONS.

Actions to challenge the validity of an amendment adopted pursuant to this Article may not be brought more than one (1) year after the amendment is recorded.

Section 17.8. COSTS.

The Board may allocate reasonable attorney's and/or consultant's costs and fees incurred by the Association in the preparation and recordation of an amendment to the proponent(s) of such amendment.

17.9. APPROVAL RIGHTS OF CARR-GOTTSTEIN PROPERTIES, GP, LLC.

All rights of approval granted to Carr-Gottstein Properties, GP, LLC, granted in this Declaration and its exhibits, may not be amended nor deleted during the period of Declarant control of the Association, including any period of Declarant control following a transfer of Declarant's rights under Section 6.8 of this Declaration. This Declaration may not be amended, including amendments to Declarant's rights as set forth in Section 17.4, without prior written approval by Carr-Gottstein Properties, GP, LLC.

However, following the period of Declarant control as further defined in Section 6.7 of this Declaration, all of Carr-Gottstein Properties, GP, LLC's rights of approval shall expire automatically, but without prejudice to its right to enforce violations of the Declaration and its rights during the period of Declarant control.

ARTICLE 18.
AMENDMENTS TO BYLAWS

Following Notice and Comment to all Unit Owners, the Bylaws may be amended by vote of two-thirds (2/3) of the members of the Executive Board at any meeting duly called for such purpose.

ARTICLE 19.
PROTECTION OF MORTGAGEES

Section 19.1. GENERAL.

This Article establishes standards and covenants on behalf of the holders, insurers, and guarantors of certain Security Interests in the Common Interest Community. In the case of conflict with other provisions of the Declaration, this Article shall control.

Section 19.2. PERCENTAGE OF ELIGIBLE MORTGAGEES.

Where this Declaration requires that certain actions have the approval or consent of a specified percentage of Eligible Mortgagees, "percent of Eligible Mortgagees" is calculated by dividing the total number of votes allocated to Units subject to Security Interests held by Eligible Mortgagees that approve or consent to the proposed action, by the total number of votes allocated to all Units subject to Security Interests held by Eligible Mortgagees.

Section 19.3. INSPECTION OF BOOKS.

The Association shall permit any Eligible Mortgagee, Eligible Insurer, or Unit Owner to inspect the books and records of the Association, including the Declaration, Rules, financial statements, and Bylaws, during normal business hours or under other reasonable circumstances.

Section 19.4. FINANCIAL STATEMENTS.

Upon any Eligible Mortgagee's or Eligible Insurer's written request, the Association shall provide a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if the Common Interest Community contains fifty (50) or more Units or if any Eligible Mortgagee or Eligible Insurer specifically requests an audited financial statement. If the Common Interest Community contains fifty (50) or more Units, the cost of the audit shall be a Common Expense. If the Common Interest Community contains less than fifty (50) Units, the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 19.5. RIGHT OF ATTENDANCE.

Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting at which Unit Owners have the right of attendance.

Section 19.6. NOTICES.

a. The Association shall give prompt notice to each Eligible Mortgagee and Eligible Insurer of:

i. Any casualty or condemnation loss exceeding \$10,000 in damages which affects: (1) a material portion of the Common Interest Community; or (2) any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee and/or Eligible Insurer.

ii. Any delinquency in the payment of any Common Expense assessments or any other default under the Documents by a Unit Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, if such delinquency or default remains uncured for a period of sixty (60) days;

iii. Any cancellation, lapse, or material modification of any insurance policy or fidelity bond required under this Declaration to be maintained by the Association;

iv. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as provided in Section 19.2;

v. Any state or federal court judgment rendered against the Association.

b. If the FNMA holds any mortgage in the existing Common Interest Community at the time additional property is to be added, the Association must furnish the FNMA with title evidence, in a form satisfactory to the FNMA, which discloses any lien, easement, or other encumbrance affecting the Property to be added or which will effect the existing Common Interest Community Property after such addition.

c. The Association shall promptly deliver, by U.S. Postal Service or hand-delivery, all notices required under this section without awaiting any request from Eligible Mortgagees and/or Eligible Insurers.

Section 19.7. CONSENT REQUIRED.

a. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of a non-material addition or amendment to the Documents shall constitute that Eligible Mortgagee's implied approval of the addition or amendment.

b. Notwithstanding any lesser requirement permitted by this Declaration or the Act and not excepting any greater requirements mandated by this Declaration or the Act, no amendment by the Association or Unit Owners of any material provision of the Documents described in this subsection may be effective without the vote of at least seventy-five percent (75%) of the Unit Owners and until approved in writing by at least seventy-five percent (75%) of the Eligible Mortgagees. The foregoing approval requirements do not apply to amendments effected by the exercise of any Special Declarant Rights. For purposes of this section, "material" includes, but is not limited to, any provision affecting:

i. allocation or reallocation of interests in the Common Elements or any Limited Common Elements, except that when any Limited Common Elements are allocated or reallocated by agreement between Unit Owners, then, in addition to other requirements which may be mandated by other Articles of this Declaration or the Act, only those Unit Owners and only the Eligible Mortgagees holding Security Interests in such Units must approve such action;

ii. convertibility of Common Elements into Units or Units into Common Elements;

iii. rights to use Common Elements;

iv. assessment, assessment liens, or subordination of assessments;

v. responsibility for maintenance and repairs in the Common Interest Community;

vi. voting rights;

vii. insurance or fidelity bonds;

viii. the addition or withdrawal of Property to or from the Common Interest Community;

ix. reserves for maintenance, repair, and replacement of Common Elements;

x. partition or subdivision of Units or Unit boundaries except that when boundaries of only adjoining Units are involved, or when only a single Unit is being subdivided, then, in addition to other requirements which may be mandated by other Articles of this Declaration or the Act, only those Unit Owner(s) and the Eligible Mortgagee(s) holding Security Interests in such Unit or Units must approve such action;

xi. imposition of restrictions on a Unit Owner's right to sell, transfer, or otherwise convey his or her Unit;

xii. restoration or repair of the Common Interest Community after a hazard damage or partial condemnation in a manner other than specified in the Documents;

xiii. the benefits of mortgage holders, insurers, or guarantors of first mortgages on Units on the Common Interest Community;

xiv. establishment of self-management by the Association when professional management had been required previously by any Eligible Mortgagee;

xv. termination of the Common Interest Community after substantial destruction or condemnation to the Common Interest Community; and

xvi. leasing of units.

c. Notwithstanding any lesser requirement permitted by this Declaration or the Act and not excepting any greater requirements mandated by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

i. use of hazard insurance proceeds for losses to any Property, whether to a Unit or to the Common Elements, for other than the repair, replacement, or reconstruction of such Improvements;

ii. the granting of any easements, leases, licenses, and concessions through or over the Common Elements except leases, licenses, or concessions for a term of no more than one (1) year, and except for any utility easements intended to serve the Common Interest Community;

iii. the restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Declaration;

iv. the merger of this Common Interest Community with any other Common Interest Community;

v. any action taken not to repair or replace the Property; and

vi. the assignment of the Association's future income and its right to receive Common Expense assessments.

d. Notwithstanding any lesser requirement permitted by this Declaration or the Act and not excepting any greater requirements mandated by other Articles of this Declaration or the Act, the following actions, other than rights reserved to the Declarant as Special Declarant Rights, require the consent of Eligible Mortgagees as indicated below:

i. conveyance or encumbrance of the Common Elements or any portion thereof requires approval of at least eighty percent (80%) of Eligible Mortgagees. A "conveyance or encumbrance" for purposes of this subsection does not include the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community;

ii. the termination of the Common Interest Community for reasons other than a substantial destruction or condemnation requires approval of at least seventy-five percent (75%) of Eligible Mortgagees; and

iii. the Association may not change the period for collection of regularly budgeted Common Expense assessments to any period other than a monthly period without the consent of all Eligible Mortgagees.

Section 19.8. TRUSTEE.

In the event of damages or destruction under Article 22 or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that any proceeds from such damages, destruction, or condemnation to be payable to a Trustee established pursuant to Section 22.5. Such Trustee may be required to be a corporate trustee licensed by the State of Alaska and may be required to represent the Unit Owners in condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Elements, or any part thereof, by the condemning authority. Where required, each Unit Owner shall appoint the Trustee as attorney-in-fact for such purpose. Unless otherwise prohibited by this Declaration or by the Act, the members of the Executive Board acting by majority vote through the president may serve collectively as Trustee.

Section 19.9. ENFORCEMENT.

The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means.

Section 19.10. CONDEMNATION AND INSURANCE PROCEEDS.

Subject to the terms of an Eligible Mortgagee's Security Interest in a Unit, no provision of this Declaration shall be construed to give priority to any Unit Owner over any rights of such Eligible Mortgagee to any condemnation or insurance proceeds from the Property.

Section 19.11. REIMBURSEMENT.

If the Association is in default on any taxes on the Common Elements, or if any of the Association's insurance premiums are overdue, or if the Association has failed to renew insurance coverage required under this Declaration on the Common Elements, any Eligible Mortgagee may pay the Association's overdue taxes or overdue premiums or may pay to secure the required insurance coverage. Any Eligible Mortgagees making such payments shall be entitled to prompt reimbursement from the Association.

ARTICLE 20.
ASSIGNMENT OF FUTURE INCOME

Any assignment of the Association's future income and/or its right to receive Common Interest Expense assessments requires the affirmative vote of seventy-five percent (75%) of the votes in the Association at a meeting called by the Executive Board for the purpose of voting on such an assignment.

ARTICLE 21.
INSURANCE

Section 21.1. GENERAL.

To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such coverage is not reasonably available, and the Executive Board thus determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be delivered to all Unit Owners and Eligible Mortgagees at their last known addresses.

Section 21.2. BONDS.

A blanket fidelity bond is required for any person who either handles or is otherwise responsible for funds received, held, or administered by the Association, whether or not such person receives compensation for his or her services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the bond is in force, and in no event less than the sum of three months' assessments on all Units in the Common Interest

Community plus the Association's reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the Association, to each first mortgage holder of a Unit, to each servicer that services a Unit mortgage owned by the FNMA, FHLMC, VA, or AHFC, and to the insurance Trustee, if any, before the bond can be cancelled or substantially modified for any reason. The bond shall contain waivers by the issuer of the bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums for the fidelity bond shall be paid as a Common Expense by the Association.

Section 21.3. LIABILITY INSURANCE FOR DIRECTORS AND OFFICERS.

The Executive Board must obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the Directors and officers of the Association in such limits as the Executive Board determines.

Section 21.4. WORKERS' COMPENSATION INSURANCE.

The Executive Board must obtain and maintain Workers' Compensation Insurance if such insurance is required by the laws of the State of Alaska.

Section 21.5. LIABILITY INSURANCE.

The Association shall secure comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000 per occurrence, covering any legal liability that may result from lawsuits related to employment contracts in which the Owners' Association is a party, and all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, operation, or maintenance of the Common Elements, any areas under the Association's supervision to include public ways, and the activities of the Association.

Insurance policies carried pursuant to this section shall also provide that:

a. An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not prejudice the policy in any way or be a condition to recovery under the policy.

b. The insurer issuing the policy may not cancel, refuse to renew, or otherwise substantially change it until 30 days after notice of the proposed cancellation, non-renewal, or substantial change(s) has (have) been mailed to the Association,

each Unit Owner, each holder of a first mortgage on a Unit, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their last known addresses.

c. The insurer waives the right to subrogation under the policy against Unit Owners or members of the households of Unit Owners.

d. Each Unit Owner is an insured Person under the policy with respect to liability arising out of interest of the Unit Owner in the Common Elements or membership in the Association.

e. If, at the time of a loss under the policy, there is other insurance covering the same risk covered by the Association's policy, the Association's policy provides primary insurance.

f. A Unit Owner's claim will not be denied because of negligent acts of the Association or another Unit Owner.

Section 21.6. PROPERTY INSURANCE.

a. PROPERTY INSURANCE COVERAGE. The Association shall secure property insurance that, at a minimum, protects against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered, including those covered by the standard "all risk" endorsement. The property insured by such policy must include all personal property owned by the Association and all Common Elements, including any buildings, fixtures, equipment, Improvements, and betterments which have been constructed or are maintained on the Common Elements. The Association's property insurance, however, may exclude land, excavations, portions of any foundations below the undersurfaces of the lowest basement floors, underground pilings, piers, pipes, flues, drains, and other items normally excluded from insurance coverage policies.

The Common Elements and any buildings, fixtures, equipment, Improvements, and betterments which are constructed or maintained on the Common Elements must be insured by the Association for an amount, after application of any deductions, equal to one hundred percent (100%) of their replacement cost at the time the insurance is purchased and at each renewal date, or equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date, whichever is greater. The Association must also insure personal property owned by the Association for an amount equal to its cash value.

If the Executive Board deems it necessary, it may obtain appraisals periodically to determine the replacement cost for the

property described in this subsection. The cost of any such appraisals shall be a Common Expense.

b. OTHER PROVISIONS.

i. Insurance policies required by this Section shall also provide that:

(1) Any loss must be adjusted with the Association.

(2) The insurer may not cancel, refuse to renew, or otherwise substantially change the policy until thirty (30) days after notice of the proposed cancellation, non-renewal, or substantial change(s) has (have) been mailed to the Association, each Unit Owner, each holder of a first mortgage on a Unit, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their last known addresses.

(3) An act or omission by a Unit Owner or members of his or her household, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not prejudice the policy in any way or be a condition to recovery under the policy.

(4) The insurer waives the right to subrogation under the policy against Unit Owners or members of the households of Unit Owners.

(5) If, at the time of a loss under the Association's policy, there exists other insurance covering the same risk covered by the Association's policy, the Association's policy provides primary insurance.

(6) Insurance proceeds shall be paid to any insurance Trustee the Association designates in the policy for that purpose, and in the absence of such designation, to the Association itself. However, insurance proceeds in either case are to be held in trust for each Unit Owner and any Unit mortgagees.

(7) The policy shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Property is located and which, if appropriate, names the FNMA, FHLMC, AHFC, and/or VA as such corporations or holders of the first mortgages on the Units within the Common Interest Community.

(8) Notwithstanding any contrary provisions herein, the Association shall, if required by the FNMA, AHFC, VA,

and/or FHLMC as a Unit Owner mortgagee on a Unit in the Association, continuously carry a master (or "blanket") policy of casualty insurance, and a fidelity bond, with such coverage and endorsements in form and amounts, including full replacement costs coverage with an "agreed-amount endorsement" and, if available, an "inflation guard endorsement," as may be required by the FNMA, AHFC, VA, and/or FHLMC as a mortgagee on a Unit in the Association or the Owner of such a Unit.

(9) The name of the insured shall be as follows: "Hidden Cove Phase III (A Planned Community Within Southport), for the use and benefit of the individual Owners."

ii. The terms of the insurance carrier's charter, bylaws, or policy shall not:

(1) Permit contributions or assessments against borrowers, Eligible Mortgagees, or the designees of Eligible Mortgagees.

(2) Make payments contingent upon action by the insurance carrier's board of directors, policy holders, or members.

(3) Include any limiting clauses (other than insurance conditions) which could prevent Eligible Mortgagees or the borrowers from collecting insurance proceeds.

Section 21.7. INSURANCE PREMIUMS.

Insurance premiums are to be paid as a Common Expense and funds necessary to cover the deductible amounts under the Association's insurance policies are to be included in the Association's operating budget.

Section 21.8. INSURANCE POLICIES OBTAINED BY UNIT OWNERS.

Unit Owners may obtain insurance for their own benefit notwithstanding the issuance of a policy to the Association.

Section 21.9. OTHER INSURANCE.

The Association may obtain other insurance which the Executive Board determines is reasonably necessary to protect the Association.

Section 21.10. INSURER'S RATING AND REINSURANCE.

The property insurance, liability insurance, and fidelity bond must be written by an insurance carrier with at least a B/III policy holder's rating and financial category rating in the Best's

Key Rating Guide or by an insurance carrier which is covered by reinsurance with a company that does meet such rating requirements. Both insurer and reinsurer must execute an assumption of liability agreement or a similar endorsement providing for one hundred percent (100%) reinsurance of the insurer's policy. Further, the reinsurer must give the borrower, lender, and the insurer ninety (90) day written notice before cancelling or substantially changing the reinsurance.

In addition to the foregoing requirements for insurers, the Association must use general insurance carriers who meet the qualifications set forth in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Seller's Guide.

ARTICLE 22.
PROPERTY DESTRUCTION OR DAMAGE

Section 22.1. DUTY TO RESTORE PROMPTLY.

The portion of the Common Interest Community, if any, for which insurance is required under AS 34.08.440 or for which insurance is actually carried by the Association, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- a. The Common Interest Community is terminated pursuant to AS 34.08.260;
- b. Repair or replacement would be illegal under a statute or municipal ordinance governing health or safety; or
- c. Eighty percent (80%) of the Unit Owners, including each Unit Owner of a Unit that will not be rebuilt, vote not to rebuild.

Section 22.2. PLANS.

The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a Majority of Unit Owners, and fifty-one percent (51%) of Eligible Mortgagees.

Section 22.3. PARTIAL RESTORATION OF THE PROPERTY.

- a. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community;

b. Except to the extent that other Persons will be distributees:

i. the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributable to the Owner of the Unit and the Owner of the Unit to which the Limited Common Elements were allocated, or to lien holders, as their interests may appear; and

ii. the remainder of the proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the common interests of all the Units;

c. If the Unit Owners including each Unit Owner of a Unit that will not be rebuilt, vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned under AS 34.08.740(a) of the Act, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

Section 22.4. COST.

If the cost of repair or replacement exceeds insurance proceeds and the Association's reserves, it shall be a Common Expense.

Section 22.5. INSURANCE TRUSTEE.

If an insurance Trustee is designated in any insurance policy, the Trustee may have exclusive authority to negotiate losses under such policies and to perform other functions as are necessary to accomplish this purpose. The insurance Trustee may also be designated by the owners' Association as attorney-in-fact for purpose of purchasing and maintaining insurance, collecting and disposing of insurance proceeds, negotiating losses, executing releases of liability, executing other necessary documents, and performing all other acts necessary to accomplish this purpose.

Section 22.6. INSURANCE PROCEEDS.

The insurance Trustee, or if there is no insurance Trustee, then the Executive Board shall hold any insurance proceeds in trust for the Association, Unit Owners, and lien holders as their interests may appear. Subject to the provisions of Section 22.1, the proceeds shall be disbursed first for the repair or restoration of the damaged Property. The Association, Unit Owners, and lien holders are not entitled to receive payment of a portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or unless the Common Interest Community is terminated.

Section 22.7. CERTIFICATIONS.

If a Trustee has been designated by the Executive Board, such Trustee may rely on the following written certifications made by the Executive Board:

a. Whether damaged and/or destroyed Property is to be repaired and/or restored;

b. The amount(s) to be paid for repairs and/or restoration of the damaged Property, and the names and addresses of the parties to whom such amounts are to be paid.

Section 22.8. ATTORNEY OR TITLE COMPANY CERTIFICATION.

If payments pursuant to this Article are to be made to Unit Owners or Mortgagees, the Executive Board or its designated Trustee shall obtain and may rely on a title insurance company's certificate of title, an attorney's certificate of title, or a title insurance policy. The certificate of title or title insurance policy must be based on a search of the records of the Anchorage Recording District, Third Judicial District, State of Alaska, from the date of the recording of the original Declaration, and must state the names of the Unit Owners and the Mortgagees.

ARTICLE 23.
CONDEMNATION

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with AS 34.08.740.

ARTICLE 24.
RIGHTS OF NOTICE, COMMENT, AND APPEAL

Section 24.1. NOTICE AND HEARING.

Whenever the Documents or Executive Board require that an action be taken only after "Notice and Hearing," the entity proposing the action shall give written notice of the proposed action to all Unit Owners no less than ten (10) days before the hearing. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, any interested Unit Owner may, personally or by a representative, give written and/or oral testimony, subject to reasonable rules of procedure established by the Executive Board to ensure a prompt and orderly resolution of the issues. Any testimony offered in such a hearing does not bind the decision makers. All Unit Owners shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 24.2. NOTICE AND COMMENT.

Whenever an amendment to the Association's Bylaws and/or Rules is proposed, whenever the Documents require "Notice and Comment," or whenever the Executive Board determines that "Notice and Comment" is otherwise appropriate, the Unit Owners have the right to receive notice of the proposed action(s) and the right to comment orally or in writing on the proposed action(s). Notice to each Unit Owner shall be effected by personal delivery or by the U.S. Postal Service, delivered or mailed to each Unit Owner's last known address. The notice shall be given not less than ten (10) days before the proposed action is to be taken or a hearing on the matter is scheduled. The Notice shall invite written or oral comments to the Executive Board on the proposed action(s) prior to the scheduled hearing. The rights described in this section do not entitle a Unit Owner to be heard at any hearing or meeting called by the Association.

Section 24.3. APPEAL.

Any interested Unit Owner having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of entities other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of said decision. The Executive Board shall conduct a hearing within thirty (30) days of receiving the written notice of appeal, giving the same notice and observing the same procedures as described in the preceding sections of this Article.

ARTICLE 25. EXECUTIVE BOARD

Section 25.1. POWERS AND DUTIES.

Except as otherwise limited by the Documents or the Act, the Executive Board may act in all instances on behalf of the Association. The Executive Board shall have, subject to said limitations, the powers and duties necessary for the administration of the affairs, operations, and governance of the Association and of the Common Interest Community including, but not limited to, the power to:

- a. adopt and amend Bylaws, Rules, regulations, budgets for revenues, expenditures, and reserves;
- b. collect assessments for Common Expenses from Unit Owners;

c. hire and discharge employees, agents, managing agents, and independent contractors;

d. institute, defend, or intervene in litigation or administrative proceedings in the Association's name on behalf of the Association or on behalf of two or more Unit Owners on matters affecting the Common Interest Community;

e. make contracts and incur liabilities;

f. govern the use, maintenance, repair, replacement, and modification of the Common Elements;

g. cause any additional Improvements by the Association to be held as a part of the Common Elements;

h. acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property, provided that Common Elements may be conveyed or subject to a Security Interest only pursuant to AS 34.08.430 of the Act and Article 19 of this Declaration;

i. grant easements for public utilities or for other public purposes consistent with the intended use of the Common Elements, and grant leases, licenses, and concessions for no more than one year, through or over the Common Elements;

j. impose and receive payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements, and for services provided to Unit Owners;

k. impose fees, penalties, fines, late charges, interest, and collection costs, or a combination thereof for late payment of assessments and, after Notice and Hearing, levy reasonable fines, fees, and/or penalties for violations of this Declaration, the Bylaws, Rules, and/or regulations of the Association;

l. impose reasonable charges for the preparation and recordation of amendments to this Declaration, any resale certificates that may be required by AS 34.08.590, and/or any statements of unpaid assessments;

m. provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;

n. assign the Association's right to future income, including the right to receive Common Expense assessments;

o. exercise any other powers conferred by this Declaration or the Bylaws;

p. exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;

q. designate, by resolution, a representative (or representatives) to the Southport Master Association Executive Board; and

r. establish, by resolution, committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing such committees. All committees must give written notice, by the U.S. Postal Service or personal delivery, of their actions or decisions to Unit Owners and the Executive Board within fifteen (15) days of said actions or decisions. Such committee actions or decisions must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

Section 25.2. LIMITATIONS ON THE EXECUTIVE BOARD.

The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, to elect members of the Executive Board to full terms, or to determine the qualifications, powers, duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term. Neither the Executive Board nor its Directors shall receive compensation for services performed pursuant to this Declaration.

Section 25.3. MINUTES.

The Executive Board shall permit any Unit Owner to inspect the Minutes of Executive Board meetings during normal business hours. The Minutes shall be available for inspection within ten (10) days after any such meeting.

Section 25.4. MEETINGS.

a. Association Meetings.

The Executive Board shall call a meeting of the Association at least once each year. A special meeting of the Association may be called by the president of the Board, by a majority of the members of the Executive Board, or by Unit Owners comprising at least twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of the meeting, an officer designated by the Executive Board shall cause notice to be hand delivered or mailed by the U.S.

Postal Service to the last known address of each Unit Owner. The notice of the meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Documents, budget changes, and any proposal to remove an officer or member of the Executive Board.

b. Executive Board Meetings.

All Association members shall have the right to attend all meetings of the Executive Board at which action is to be taken by vote of the directors. Notice of such meetings shall be given not less than twenty-four (24) hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the Common Interest Community and/or by hand delivering notice to each Unit. If an emergency situation requires an immediate meeting of the Executive Board, no such notice is required.

ARTICLE 26.
TERMINATION

The Common Interest Community may be terminated only in conformity with AS 34.08.260 of the Act.

ARTICLE 27.
MISCELLANEOUS

Section 27.1. SECURITY.

The Association may, but shall not be obligated to, maintain or support certain activities within the Common Interest Community designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMON INTEREST COMMUNITY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF ANY SECURITY MEASURE UNDERTAKEN. EACH UNIT OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS EXECUTIVE BOARD AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMON INTEREST COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

Section 27.2. CHANGES IN THE ACT.

Many provisions of this Declaration and in the Bylaws repeat exactly or substantially the same rule or outcome in a particular instance as that required by the Act on the date this Declaration was recorded, or repeat the same rule which the Act would impose as a default rule if the Declaration or Bylaws were silent on that subject.

The Declarant anticipates the possibility that the Act will be amended from time to time to reflect contemporary thinking and experience regarding the structure and governance of common interest communities. The Declarant believes it is in the best interest of the Unit Owners at Hidden Cove Phase III (A Planned Community Within Southport) that the Property might always be governed in accordance with the most current provisions of the Act, subject to the right in any particular case of the Unit Owners and the Executive Board to vary that outcome by adopting a rule or amendment to the Declaration in the manner provided for such amendments.

Accordingly, this Section directs that, in the future and from time to time, in all instances where this Declaration or the Bylaws contain language that precisely or substantially tracks the Act on the date that Hidden Cove Phase III (A Planned Community Within Southport) is declared, this Declaration and the Bylaws shall be automatically amended in accordance with the amended cognate language of the Act which may be adopted by the State of Alaska, unless the particular language of the Declaration or Bylaws, either as initially adopted or as amended at any subsequent time by the Association, is substantially at variance with the amended text of the Act.

Section 27.3. CAPTIONS.

The captions in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe, or limit the scope or intent of this Declaration or any of the provisions hereof. The exhibits referred to as being attached to this Declaration are intended to be incorporated in this Declaration by such reference.

Section 27.4. INVALIDITY.

If any term, covenant, or condition of this Declaration is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Declaration shall be construed as if such invalid or unenforceable provision had never been contained herein.

Section 27.5. WAIVER.

No delay in exercising any right or remedy of any of the parties hereunder shall constitute a waiver thereof, and no waiver by the parties of the breach of any covenant of this Declaration shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Declaration.

Section 27.6. GENDER.

As used herein, each of the masculine, feminine, and neuter genders shall include the other genders, the singular shall include the plural, and the plural shall include the singular, wherever appropriate to the context.

Section 27.7. RIGHT OF ACTION.

The Declarant, Association, Carr-Gottstein Properties, GP, LLC, and/or any aggrieved Unit Owner is granted the right of action against Unit Owner(s) who fail to comply with the provisions of the documents or the decisions made by the Association.

In an action to enforce this Declaration's provisions, the prevailing party shall be entitled to recover court costs and actual attorneys' fees.

Section 27.8. CONFLICT.

Declarant intends that the Documents comply with the requirements of the Act and Alaska Statutes governing nonprofit corporations, AS 10.20, et seq. If the Documents conflict with any statutes, the conflicting terms of the statutes shall control. If the Declaration conflicts with any other document, the Declaration shall control.

Section 27.9. LIQUIDATED DAMAGES.

Since it is difficult to determine damages for the violation of Declaration provisions, except where this Declaration provides some other figure, the prevailing party in any action to enforce the provisions of this Declaration shall be entitled to recover liquidated damages in the amount of \$30.00 per day for each day the condition, which is the subject matter of the action to enforce, exists. Each violation of the Declaration shall give rise to a separate liquidated damage recovery. This liquidated damage award shall increase, but not decrease, every five (5) years from the date of this Declaration to match the equivalent increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 equal \$100.00, issued by the Bureau of Labor Statistics for the United States Department of Labor with the index for December 1998 as the price index figure.

EXHIBIT F

**OCCUPANCY RESTRICTIONS
FOR
HIDDEN COVE PHASE III
(A Planned Community Within Southport)**

1. Newspaper Delivery receptacles. Newspaper stands and receptacles on individual Units for the purpose of newspaper delivery are not permitted.

2. Private Landscaping Easements. No dog run, shed, greenhouse, wood-pile, play equipment, or any other similar structure shall be placed in private landscape easements.

3. Fencing Easement. Declarant hereby reserves to itself an easement upon all Lots to construct fencing compatible with the standards set forth in Section 8 ("Fences") of the Design Guidelines, as referenced in Exhibit G. The Declarant may construct, repair and maintain fencing on the edge of the property line or within or on the interior line of any utility easements on any of the Lots even if a landscape easement is not designated on the Lot on Plat No. 2001-50.

Declarant shall have the right of entry upon the Lots for the purposes of construction, installation, repair and maintenance of fencing and landscaping, including the right of access to the area where the fence or landscaping is to be installed, the transportation of labor and materials, and the right to undertake such brushing, clearing, or grading as is necessary, at Declarant's sole discretion, to install the fencing or landscaping.

4. Utility Lines, Aerials and Antennas. All electrical service, telephone lines and television cable shall be placed underground. No short wave antennas, transmitters, or base stations for amateur radio transceivers or other radios shall be permitted. Television antennas will be allowed provided:

a. The Unit Owner provides written notice to the Declarant, or designated representative, of its plans to install a television antenna or satellite dish prior to the actual installation of the same.

b. Antennas shall be no larger than, nor installed higher than, absolutely necessary for reception of quality signal and must be placed in the least obtrusive and least visible place (i.e., not seen from the street) providing reception quality. (Normally, the back yard has the same quality reception as the front yard.)

c. If a television antenna must be installed on a house to receive a quality signal, then it cannot exceed twelve (12) feet in height above the highest point of the roof, unless a permit is obtained from the Municipality of Anchorage. A copy of the permit must be supplied to the Declarant.

d. Antennas situated on the ground and visible from the street or from the other Lots must be camouflaged by existing landscaping or fencing, if an acceptable quality signal may be received from such placement. If no such existing landscaping or screening exists, the Declarant may require antennas to be screened by new landscaping or screening at reasonable cost to the Unit Owner.

5. Water and Sewer. No individual well or water system or sewage disposal system shall be installed on any Unit.

6. Sight Distance. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and one half (2-1/2) feet and eight (8) feet above the roadways shall be placed or permitted to remain on any corner Unit within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended. The exception to this rule is a tree which is trimmed so that the trunk is bare to a height of eight (8) feet as measured from the higher of the nearest curb or street centerline grade. The same sight line limitations shall apply on any Unit within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

7. Temporary Structures. No temporary structure, boat, truck, trailer, camper, or recreational vehicle of any kind shall be used as a living area while located in the planned community; however, trailers or temporary structures for use incidental to the initial construction of improvements on a Unit may be maintained thereon but shall be removed within a reasonable time after completion of construction of the project.

8. Additional Vehicle Restrictions. No repair or restoration of any motor vehicle, boat, trailer, aircraft, or other vehicle shall be permitted on any portion of any Unit except for emergency repairs thereto, and then only to the extent necessary to enable movement thereof to a proper repair facility. No vehicles or equipment shall be parked or placed in a public right-of-way for more than twenty-four (24) hours. No vehicle or equipment owned by or under the control of a resident or Unit Owner shall be placed on

a public street within the planned community for more than forty-eight (48) cumulative hours in any week.

9. Nuisances. All residences are entitled to the peaceful and quiet enjoyment of their premises between 10:00 p.m. and 8:00 a.m. All residents and guests shall have due regard for others. During this quiet time, televisions, stereos and/or musical equipment should be played at a substantially reduced volume. Activities such as snow blowing, lawn mowing, skateboarding, playing basketball, etc. should be curtailed.

10. Commercial Vehicles. With the sole exception of marked police patrol vehicles in active service, no commercial or governmental vehicles, or commercial or construction equipment, shall be parked, placed, erected, or maintained on any Unit for any purpose except during the period of construction.

11. Vehicles, Boats, Campers, etc. All vehicles, inoperable or otherwise, including but not limited to automobiles, trucks, campers, boats, recreational vehicles, snow machines, or other machinery, shall be kept in a garage or other closed structure, or screened so that the item is not visible from the public streets, adjoining lots or nearby houses. The purpose of this provision is to keep all vehicles and equipment, whether frequently used or unused, out of sight. However, clearly marked sedan-type patrol vehicles, in active service, excluding unmarked patrol vehicles, may be parked on the driveway at any time.

12. Pets, Livestock, and Poultry. No Unit Owner, resident or guest may permit an animal which he or she owns to annoy another Unit Owner, resident or guest by interfering with the latter's sleep, work or reasonable right to peace or privacy by the animal making repeated and continued noise.

A Unit Owner, resident or guest who owns an animal shall maintain all structures, pens and yards where he or she keeps the animal, and all areas adjacent thereto, in a clean and sanitary condition and free from objectionable odor.

All pets shall be chained, fenced or otherwise restrained at all times. No pet shall be allowed to run freely. Pets secured in the front yard where accessible by children should not be left unattended.

13. Additional Waste Restrictions. Except on the day of trash pick-up, all trash containers must be screened. All equipment for the storage or disposal of such trash, garbage, or other waste shall be kept in a clean and sanitary condition. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles therefor.

No materials, debris, equipment or similarly described items shall be stored at the front or side of a house on a Lot where such garbage and refuse is visible from the street or other Lots. All such items stored shall be removed or screened.

14. Natural Resource Extraction. No natural resource extraction operation of any nature shall be permitted upon or in any Unit, nor shall wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Unit. No derrick or other structure designed for use in oil or natural gas drilling shall be erected, maintained, or permitted upon any Unit.

15. Windows and Facades. No garments, rugs, or other objects shall be hung from the windows or facades of the improvements to a Unit, nor shall any garments, rugs, or other objects be dusted, shaken, or beaten from, about, or upon such windows or facades. Only customary curtains, shades, draperies, or some combination thereof, which are visible from the exterior of the improvements to a Unit, shall be used. Pursuant to and without limiting the foregoing, no newspaper, metal foil, sheets, blankets, or similar materials shall be used as window coverings.