

ARTICLE XII. Additions, Alterations, and Improvements.

Section 12.1. Additions, Alterations, and Improvements by Unit Owners.

(a) No Unit Owner may make any structural addition, structural alteration, or structural improvement in or to the Common Interest Community without the prior written consent thereto of the Executive Board in accordance with Subsection 12.1(c).

(b) Subject to Subsection 12.1(a), a Unit Owner:

(i) May make any other Improvements or alterations to the interior of his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community;

(ii) May not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Common Interest Community without permission of the Association; and/or

(iii) After acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.

(c) A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 12.1(a) or 12.1(b). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute consent by the Executive Board to the proposed action. The approval of a written request may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by reason of reasonable dissatisfaction of the Board with the location of the proposed structure, the elevation, color scheme, finish, design, proportions, architecture, shape, height, style and appropriateness of the proposed structure or alteration, the material used therein, or because of its reasonable dissatisfaction with any or all other matters or things which in the reasonable judgment of the Board will render the proposed alteration or improvement inharmonious or out of keeping with the general plan of improvement of the Common Interest Community. Improvements erected or maintained, otherwise than as approved by the Board, shall be deemed to have been undertaken without the approval of the Board as required by the Declaration. The approval of the Board of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the Board of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied. The Executive Board shall review requests in accordance with the provisions of its rules.



(d) Any applications to any department or to any governmental authority for a permit to make any addition, alteration, or Improvement in or to any Unit must be approved in writing by the Association before the application is submitted to the relevant department or authority. Such approval will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor, or materialman on account of such addition, alteration, or Improvement or to any person having any claim for injury to person or damage to property arising therefrom. Upon approval of the Board, it shall be conclusively presumed that the location and height of any improvement does not violate the provisions of this Declaration.

(e) All additions, alterations, and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

(f) The provisions of this Article shall not apply to the Declarant in the exercise of any Special Declarant Right.

Section 12.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Section 16.4 of this Declaration, or any other limitations contained herein, the Executive Board may make any additions, alterations, or Improvements to the Common Elements that, in its judgment, it deems necessary.

ARTICLE XIII. Amendments to Declaration.

Section 13.1. General. Except as otherwise provided by law or elsewhere in this Declaration, this Declaration, including the Plat and 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 13.2. When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Act and this Declaration, an amendment may not create or increase Special Declarant Rights, create or increase the number of Units, change the number of Units, change the boundaries of a Unit, change the Allocated Interests of a Unit, or change the uses to which a Unit is restricted, in the absence of unanimous (100%) consent of the votes in the Association.

Section 13.3. Execution of Amendments. An amendment to the Declaration required by AS 34.08.250 of the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and AS 34.08.250 of 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 such designation, by the President of the Association.

Section 13.4. Recordation of Amendments. Each amendment to the Declaration must be recorded in the Anchorage Recording District, Third Judicial District, Anchorage, Alaska in which Creekside Townhomes is located. The amendment is effective only upon recording.



Section 13.5. Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article XVI.

Section 13.6. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is recorded.

Section 13.8. Amendments to Create Units. To exercise any Development Right reserved under Section 8.1 of this Declaration, the Declarant shall prepare, execute, and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Subsections (a), (b), and (d) of the Section 170 of the Act or new certifications of Exhibits 1 and 2 previously recorded if the Exhibits otherwise conform to the requirements of those Subsections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Subsection 160(a) of the Act.

ARTICLE XIV. Amendments to Bylaws of the Association.

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

ARTICLE XV. Termination.

Termination of the Common Interest Community may be accomplished only in accordance with Section 34.08.260 of the Act.

ARTICLE XVI. Mortgagee Protection.

Section 16.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 16.2. Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when



compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 16.3. Notice of Action. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) Any condemnation loss or casualty loss which affects the Common Elements, if such loss exceeds \$10,000, or any damage to an Improvement or a Unit on which there is a first Security Interest held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable, if such damage exceeds \$10,000;

(b) Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, which remains uncured for a period of sixty (60) days;

(c) Any default in performance by the individual Unit borrower of any obligation under the condominium constituent documents which is not cured within sixty (60) days;

(d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association and/or the property manager;

(e) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and

(f) Any judgment rendered against the Association.

Section 16.4. Consent Required.

(a) Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 16.4(a) may be effective without approval in writing by at least fifty-one percent (51%) of the Eligible Mortgagees. The foregoing approval requirements do not apply to amendments effected by the exercise of Special Declarant Rights. "Material" includes, but is not limited to, any provision affecting:

(i) Assessments, assessment liens, or subordination of assessment liens;

(ii) Voting rights;

(iii) Reserves for maintenance, repair, and replacement of Common Elements;



- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the Common Elements, including Limited Common Elements;
- (vi) Rights to use Common Elements and Limited Common Elements;
- (vii) Boundaries of Units after conveyance of those Units by Declarant or a dealer to a purchaser;
- (viii) Convertibility of Units into Common Elements or Common Elements into Units;
- (ix) Expansion or contraction of the Common Interest Community or the addition, annexation or withdrawal of property to or from the Common Interest Community;
- (x) Insurance or fidelity bonds;
- (xi) Leasing of Units;
- (xii) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xiii) Establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (xiv) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;
- (xv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
- (xvi) The benefits of mortgage holders, insurers, or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

- (i) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (ii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;



(iii) The merger of this Common Interest Community with any other common interest community;

(iv) The granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses, or concessions for no more than one (1) year);

(v) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

(vi) Any action taken not to repair or replace the Property.

(c) Actions Requiring Other Than 51% Mortgagee Approval. The following actions by the Association require the consent of First Mortgagees as specified below:

(i) An eighty percent (80%) Eligible Mortgagee approval is required to convey or encumber the Common Elements or any portion thereof. (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 will not be deemed a transfer within the meaning of this clause).

(ii) A sixty-seven percent (67%) Eligible Mortgagee approval is required for the termination of the Common Interest Community for reasons other than substantial destruction or condemnation.

(iii) When Unit boundaries are not otherwise being affected, only the Owners of Units affected and Eligible Mortgagees of those Units need approve the alteration of any partition or creation of any aperture between adjoining Units.

(iv) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the unanimous (100%) consent of Eligible Mortgagees.

(d) Failure to Respond. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment to the Declaration shall constitute an implied approval of the addition or amendment, provided that notice was delivered by certified or registered mail with a return receipt requested.

Section 16.5. Inspection of Books. The Association shall maintain current copies of the Declaration, Bylaws, Rules, books, records, and financial statements. The Association shall permit any Eligible Mortgagee or Eligible Insurer, or other first mortgagee of units, to inspect the books and records of the Association during normal business hours.

Section 16.6. Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request, with 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 any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 16.7. 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, at law or in equity.

Section 16.8. Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

Section 16.9. Appointment of Trustee. In the event of damage or destruction under Article XXI or condemnation of all or a portion of the community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee. Such Trustee may be required to be a corporate trustee licensed by the State of Alaska. Proceeds will thereafter be distributed pursuant to Article XXI or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the President may act as Trustee.

Section 16.10. Priority on Insurance and Condemnation Proceeds. No provision of the Documents of the Association shall be deemed to give priority to an Owner or any other party over any rights of an Eligible Mortgagee pursuant to the terms of its Security Interest in the case of distribution of insurance proceeds or condemnation proceeds, whether such proceeds pertain to a Unit or Common Elements.

Section 16.11. Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination. No Development Rights may be exercised later than five (5) years after the date of recording of this Declaration unless fifty-one percent (51%) of the Eligible Mortgagees consent to the exercise of the Development Right.

Section 16.12. Exception to Consent Requirements for Pre-Sale Boundary Relocations. In the event that Declarant or a Dealer changes the boundaries between two or more Units, no consent is required from any Eligible Mortgagee so long as none of the Units having their boundaries changed have been conveyed to a purchaser. If a Unit having its boundaries changed has been conveyed to a purchaser, then the Eligible Mortgagee consent provisions of Section 16.4 apply.

ARTICLE XVII. Assessment and Collection of Common Expenses.

Section 17.1. Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit 1 to this Declaration.

Section 17.2. Common Expenses Attributable to Fewer Than All Units.

(a) If any Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit, either required by the Declaration or provided at the request of the Unit Owner, shall be assessed against the Unit that benefits from such service.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(e) If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

(f) Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Section 17.3. Lien.

(a) The Association has a lien on a Unit for an assessment levied against the Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, collection costs, including actual attorneys' fees, fines, and interest charged pursuant to AS 34.08, as it may be amended from time to time, and any of the Association's Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (i) a lien and encumbrances recorded before the recordation of the original Declaration described above in the introductory paragraph of this Document; (ii) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments

charged against the Unit. A lien under this Section is also prior to all Security Interests described in Subsection (ii) of this Subsection if the Common Expense assessments based on the periodic budget adopted by the Association, pursuant to Section 17.4 of this Article, would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce either the Association's lien. This Subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provisions of AS 09.38.010, as it may be amended from time to time.

(c) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section is required.

(d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's liens shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the United States Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection 17.3(c) creates a lien, foreclosure, or prohibit an Association from taking a deed in lieu of foreclosure.

(f) When the Association acquires a judgment or decree in any action brought under this Section, such judgment or decree shall include an award to the Association for actual collection costs and reasonable attorneys' fees.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under AS 09.35.010, as it may be amended from time to time.

(h) The Association's lien must be foreclosed under AS 34.35.005, as it may be amended from time to time.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments based on a periodic budget adopted by the Association pursuant to Section 17.4.

(j) The purchaser at a foreclosure sale initiated by the holder of a Security Interest in a Unit is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 17.3(b) above. Any unpaid assessments not satisfied from the proceeds of sale



become Common Expenses for which all the Unit Owners, including the purchaser, may be assessed. For the purposes of this paragraph, "the purchaser" shall include, but not be limited to, any holder of a Security Interest in a Unit which obtains title to a Unit.

(k) Any payments received by the Association to discharge of a Unit Owner's obligation may be applied to the oldest balance due.

(l) The Association may acquire, hold, lease, mortgage, and convey a Unit foreclosed upon pursuant to this Section for unpaid assessments.

(m) A lien under this Section shall not be affected by any sale or transfer of a Unit except as provided in Subsection (j) above.

(n) The rate of interest on unpaid assessments shall be no greater than the lesser of either the rate charged by the Internal Revenue Service on delinquent taxes, or the rate provided in AS 34.08.460(b).

Section 17.4. Budget Adoption and Ratification. The Executive Board shall adopt a proposed budget for the Common Interest Community, and shall, within thirty (30) days after adoption, provide a summary of the budget to each Unit Owner. The Executive Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5. Non-budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for their consideration and comment in the same manner as a budget under Section 17.4 above; provided, however, that such assessment can be considered at a special meeting as long as the notice required for annual meetings is provided to the Unit Owners.

Section 17.6. Certification of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement in recordable form setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board, and each Unit Owner.

Section 17.7. Monthly Payment of Common Expenses. All Common Expenses assessed under this Article XVII shall be due and payable monthly.

Section 17.8. Acceleration of Common Expense Assessments. In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense

assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable. The holder of a first Security Interest in a Unit which has acquired title to any Unit as a result of a foreclosure of its Security Interest shall be exempt from the application of this Subsection.

Section 17.9. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 17.10. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Areas or by abandonment of the Unit against which the assessments are made.

Section 17.11. Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

Section 17.12. Reserves. Declarant will establish a working capital fund in an amount at least equal to two (2) months' installments of the Annual Assessment for each Unit in the Project. Upon the first conveyance of record title to a Unit from Declarant, the Owner shall contribute to the working capital of the Association an amount equal to two (2) months' installments of the Annual Assessment at the rate in effect at the time of the sale, and upon the sale of each Unit from the Declarant to an Owner, Declarant will receive a refund of the contribution to the working capital fund made by Declarant for such Unit. The Association shall maintain the working capital funds in segregated accounts to meet unforeseen expenditures. Such payments to this fund shall not be considered advance payments of Annual Assessments and except for refunds to Declarant, shall not be refundable. Declarant may not use any working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits. As part of the adoption of the regular budget pursuant to Sections 17.4 and 17.5, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Elements.

Section 17.13. No Restrictions on Access for Nonpayment of Assessments or Declaration Violations. The right of access for necessary ingress and egress to the Unit and any utility services cannot be suspended by the Executive Board for violations of the Declaration or nonpayment of assessments.



ARTICLE XVIII. Right to Assign Future Income.

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.

ARTICLE XIX. Persons and Units Subject to Documents.

Section 19.1. Compliance with Documents. All Unit Owners, tenants, mortgagees, and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee, or occupant, and all such provisions recorded in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

Section 19.2. Adoption of Rules. After Notice and Comment, the Executive Board may adopt Rules regarding the use of Common Elements, and the use and occupancy of Units, Limited Common Elements, and the activities of occupants as they affect the Common Elements.

ARTICLE XX. Insurance.

Section 20.1. Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2. Property Insurance.

(a) Property insurance shall be maintained covering:

(i) The project facilities (which term means all buildings on the Property, including the Units and all fixtures, equipment, and any improvements and betterments whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the under surfaces of the lowest basement floors, underground pilings, piers, pipes, flues, and drains and other items normally excluded from property policies; and

(ii) All personal property owned by the Association.



(b) Amounts. The common property 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. Personal property owned by the Association for an amount equal to its actual cash value. The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the project facilities and the actual cash value of the personal property, and the cost of such appraisal shall be a Common Expense. The maximum deductible for insurance policies shall be the lesser of \$10,000.00 or one percent (1%) of the policy face amount. Allocation of responsibility for payment of the deductible shall be according to the policy established by the Executive Board.

(c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

(d) Other Provisions. Insurance policies required by this Section shall provide that:

(i) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.

(ii) 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 void the policy or be a condition of recovery under the policy.

(iii) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(iv) Loss must be adjusted with the Association.

(v) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and, in the absence of such designation, to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee.

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

(vii) The name of the insured shall be substantially as follows:

"Creekside Townhomes Condominium Association,
Inc., for the use and benefit of the individual
Owners."



Section 20.3. Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

(a) 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.

(b) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.

(c) 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 void the policy or be a condition to recovery under the policy.

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(e) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4. Fidelity Bonds. A blanket fidelity bond shall be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their 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 plus reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the Association, to each holder of a Security Interest in a Unit, to each Eligible Mortgagee, and Eligible Insurer that serves an AHFC-owned, FNMA-owned, or FHLMC-owned mortgage on a Unit, and to the insurance trustee, if any, before the bond can be cancelled or substantially modified for any reason.

Section 20.5. Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit. **Unit Owners must obtain their own insurance if they wish to have insurance for their personal property (for example: clothing, jewelry, furniture, electronics, etc.).**



Section 20.6. Workers' Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Alaska.

Section 20.7. Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain Directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.8. Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9. Premiums. Insurance premiums shall be a Common Expense.

ARTICLE XXI. Damage to or Destruction of Property.

Section 21.1. Duty to Restore. A portion of the Common Interest Community for which insurance is required under Section 34.08.440 of the Act or for which insurance carried by the Association is in effect, 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;
- (b) Repair or replacement would be illegal under a state statute or government ordinance governing health or safety; or
- (c) Eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3. 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. Said plans and specifications must meet all existing federal, state, and borough code requirements.

Section 21.4. Replacement of Less Than Entire 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 distributed to 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 Element interests of all the Units.

(c) If the Unit Owners 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 Subsection 34.08.740(a) of the Act, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

Section 21.5. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Executive Board of the Association, acting by the President, 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 Subsection 21.1(a) through Subsection 21.1(c), the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Common Interest Community is terminated.

Section 21.6. Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) Whether or not damaged or destroyed, Property is to be repaired or restored; and

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

Section 21.7. Title Reports and Certificates by Attorneys. Title insurance companies or, if payments are to be made to Unit Owners or Mortgagees, the Executive Board and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the records of the District Recorder's Office, Anchorage Recording District, Third Judicial District, State of Alaska, from the date of the recording of the original above-described Declaration stating the names of the Unit Owners and the Mortgagees.

ARTICLE XXII. Rights to Notice and Comment; Notice and Hearing.

Section 22.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and



Comment,” and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than ten (10) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2. Right to Notice and Hearing. Whenever the Documents require that an action be taken after “Notice and Hearing,” the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 22.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

Section 22.4. Association Records. The Association shall maintain current copies of the Declaration, Bylaws, Rules, bookkeeping records, and financial statements. The Association shall permit any Unit Owner to inspect the documents of the Association during normal business hours.

ARTICLE XXIII. Executive Board.

Section 23.1. Minutes of Executive Board Meetings. 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 fifteen (15) days after any such meeting.

Section 23.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws, or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act,



the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees, independent contractors, and agents, other than managing agents;
- (f) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws, or rules in the Association's name on behalf of the Association or two (2) or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- (i) Cause additional Improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 34.08.430 of the Act;
- (k) Grant easements for any period of time including permanent easements, and leases, licenses, and concessions for no more than one (1) year, through or over the Common Elements;
- (l) Impose and receive a payment, fee, or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of Section 34.08.100 of the Act, and for services provided to Unit Owners;
- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine for violations of this Declaration, Bylaws, rules, and regulations of the Association;



(n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, the filing and recording of a plat or plan that accompanies an amendment, resale certificates required by Section 34.08.590 of the Act, or a statement of unpaid assessments;

(o) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense assessments;

(q) Exercise any other powers conferred by this Declaration or the Bylaws;

(r) Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

(s) Exercise any other power necessary and proper for the governance and operation of the Association; and

(t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

Section 23.3. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and 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.

Section 23.4. Actions Requiring Supermajority Approval of Unit Owners. The following actions constitute extraordinary actions that require the approval of sixty-seven percent (67%) of the votes of Unit Owners present in person or by proxy at a duly noticed meeting of the Association:

(a) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);

(b) Determining not to require professional management if professional management is required by the Association documents, a majority of eligible mortgagees or a majority vote of the Unit Owners;

(c) Expanding the Association to include land not previously described as additional land that may be added to the project, and which increases the overall land area of the project or number of units by more than ten percent (10%);

(d) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended Common Elements' use; (ii) dedicating Common Elements as required by a public authority; (iii) limited boundary-line adjustments made in accordance with the provisions of the Declaration; or (iv) transferring Common Elements pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association);

(e) Using insurance proceeds for purposes other than construction or repair of the insured improvements;

(f) Making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget);

(g) Termination of the Declaration or other termination of the Common Interest Community;

(h) Dissolution of the Association except pursuant to a consolidation or merger; and

(i) Conveyance of all Common Elements.

In addition to the supermajority requirement, the actions above must be approved by at least a majority of the votes entitled to be cast by Unit Owners other than the Declarant.

ARTICLE XXIV. Open Meetings.

Section 24.1. Access. All meetings of the Executive Board at which action is to be taken by vote at such meeting will be open to the Unit Owners, except as hereafter provided.

Section 24.2. Notice. Notice of every such meeting will be given not less than twenty-four (24) hours prior to the time set for such meeting, by hand delivering a notice or posting such notice in a conspicuous location in the Common Interest Community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 24.3. Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners where the action taken at the executive session involves personnel, pending litigation,



contract negotiations, or enforcement actions, or where no action is taken at the executive session requiring the affirmative vote of Directors.

Section 24.4. Notice Requirements for Certain Meetings of the Association. Notwithstanding any contrary provision of the Articles, Bylaws, or this Declaration, for any meeting of the Association at which a Declaration amendment or an extraordinary action will be considered, the following notice requirement applies: (i) at least 25 days' advance notice to all Unit Owners is required; (ii) the notice must state the purpose of the meeting and contains a summary of any Declaration amendments or extraordinary actions proposed; and (iii) the notice must contain a copy of a proxy that can be cast in lieu of attendance at the meeting.

ARTICLE XXV. 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 Section 34.08.740 of the Act.

ARTICLE XXVI. Working Capital Fund.

Initial purchasers of Units in Creekside Townhomes shall pay at closing the equivalent of two months' assessment payments to establish a working capital fund for the Association. Payments to the working capital fund are not advance payment of regular assessments. Within sixty (60) days after closing of the first Unit, Declarant must pay each unsold Unit's share of the working capital fund to the Association, which shall keep all working capital funds in a segregated account. Declarant shall be reimbursed for its working capital fund payments from funds collected at closing when the unsold units are sold. The working capital fund may be terminated at such time as that is permitted by the Eligible Mortgagees.

ARTICLE XXVII. Miscellaneous.

Section 27.1. Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of the Documents nor the intent of any provision thereof.

Section 27.2. Gender. The use of the masculine gender refers to the feminine and neuter genders, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 27.3. Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 27.4. Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

