

**2002-059186-0**

Recording Dist: 301 - Anchorage  
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**\* ANCHORAGE RECORDING DISTRICT \***

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**DECLARATION**

**FOR**

**MOSS CREEK**

**RETURN TO:**

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508 W. Second Avenue, Third Floor  
Anchorage, Alaska 99501

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EXHIBIT D - EASEMENTS, COVENANTS AND/OR LICENSES



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
PURSUANT TO THE  
UNIFORM COMMON INTEREST OWNERSHIP ACT  
(AS 34.08, et seq.)

FOR

Moss Creek

THIS DECLARATION is made on the 27<sup>th</sup> day of August, 2002, by Toyon, LLC, an Alaska limited liability company, hereinafter referred to as "Declarant."

Declarant is the owner of the real property described in Exhibit A and submits said real property in Exhibit A to the provisions of the Uniform Common Interest Ownership Act (the "Act"), AS 34.08 of the Alaska Statutes, for the purpose of creating Moss Creek.

ARTICLE 1.  
DEFINITIONS

Section 1.1. ACT.

"Act" means the Uniform Common Interest Ownership Act, Title 34 Chapter 8, of the Alaska Statutes, and any amendment thereto.

Section 1.2. AFFILIATE OF DECLARANT.

"Affiliate of Declarant" means any person or entity which controls, is controlled by, or is under common control with, a Declarant. A person or an entity shall be deemed to control a Declarant if that person or entity (i) is a general partner, officer, director, or employee of Declarant; (ii) directly or indirectly are acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting shares of Declarant; (iii) controls in any manner the election of a majority of the directors of Declarant; or (iv) has contributed more than twenty percent (20%) of the capital of Declarant. A person or entity shall be deemed to be controlled by Declarant if Declarant (i) is a general partner, officer, director, or employee of that person or entity; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing more than





twenty percent (20%) of the voting share of that person or entity; (iii) controls in any manner the election of a majority of the directors of that person or entity; or (iv) has contributed more than twenty percent (20%) of the capital of that person or entity.

Section 1.3. AHFC.

"AHFC" means Alaska Housing Finance Corporation.

Section 1.4. ALLOCATED INTERESTS.

"Allocated Interests" means the following interests allocated to each unit: the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association. The Allocated Interests are described in Article 7, infra, and are shown in Exhibit C.

Section 1.5. ASSOCIATION.

"Association" means the Unit Owners' association, Moss Creek Homeowners Association, a non-profit corporation organized under AS 10.20, et seq., pursuant to AS 34.08.310.

Section 1.6. BYLAWS.

"Bylaws" means the bylaws of the Association, as they may be amended from time to time.

Section 1.7. COMMON ELEMENTS.

"Common Elements" means each portion of the Common Interest Community other than a Unit and other than real estate in which Declarant has reserved Development Rights. Common Elements includes the "land" or "tract," as such terms are used in the Anchorage Municipal Code on subdivision or platting approval, situated in the Common Interest Community, and shall be owned by the Association.

Section 1.8. COMMON EXPENSES.

"Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.



Section 1.9. COMMON EXPENSE LIABILITY.

"Common Expense Liability" means the liability for Common Expenses allocated to each Unit under AS 34.08.150.

Section 1.10. COMMON INTEREST COMMUNITY.

"Common Interest Community" means the real estate with respect to which a Person, by virtue of ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or Improvement of other real estate described in the Declaration. The Common Interest Community described herein is a planned community.

Section 1.11. DEALER.

"Dealer" means a person who owns either six or more units in the Common Interest Community or fifty percent (50%) or more of the units in the Common Interest Community. The Dealer of the Common Interest Community is Toyon LLC, an Alaska limited liability company, who is also the Declarant.

Section 1.12. DECLARANT.

"Declarant" means Toyon LLC, or its successor or transferee as described in AS 34.08.990(12).

Section 1.13. DECLARATION.

"Declaration" means this document, including its attachments, exhibits, and amendments, which creates the Common Interest Community.

Section 1.14. DEVELOPMENT RIGHT.

"Development Right" means a right or a combination of rights reserved by Declarant in the Declaration to: (a) add real estate to a Common Interest Community; (b) create Units, Common Elements, or Limited Common Elements within a Common Interest Community; (c) subdivide Units or convert Units into Common Elements; or (d) withdraw real estate from a Common Interest Community.

Section 1.15. DIRECTOR.

"Director" means a member of the Executive Board.

Section 1.16. DISPOSE.

"Dispose" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not mean any transfer or release of a security interest.

Section 1.17. DOCUMENTS.

"Documents" means the Declaration, the Plans recorded and filed pursuant to the provisions of the Act, the Bylaws, and the Rules as they may be amended from time to time. Any exhibit or certification accompanying the Declaration, Plans, Bylaws and/or Rules is part of the Documents.

Section 1.18. ELIGIBLE INSURER.

"Eligible Insurer" means an insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a Unit.

Section 1.19. ELIGIBLE MORTGAGEE.

"Eligible Mortgagee" means the holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit.

Section 1.20. EXECUTIVE BOARD.

"Executive Board" or "Board" means the Board of Directors of the Association.

Section 1.21. FHLMC

"FHLMC" means the Federal Home Loan Mortgage Corporation.

Section 1.22. FNMA

"FNMA" means the Federal National Mortgage Association.

Section 1.23. HOME SITE.

"Home Site" means a "Unit" as defined in subsection 34.08.990(32) of the Act and in this Declaration and is located within the areas above the land. The Home Sites consist of the sixty (60) Units designated as Units 47 through 76 and Units 95



through 124 on the Plans. A Home Site includes the title and the right to possession and Improvements therein in the air space above the physical surface and planes constituting extensions thereof above the land within the vertical boundaries extending up to the boundary lines as designated on the Plans.

A Home Site lies within the air space above the "land" or "tract," as these terms are used in the Anchorage Municipal Code on subdivision or platting approval, consisting of all spaces and Improvements above the surface of the land and within the vertical boundaries defined by the Home Site lines shown on the Plans, extended to the heavens. The land below the Home Site remains unsubdivided and is a Common Element.

Section 1.24. IMPROVEMENTS.

"Improvements" means any existing construction or facilities, or any facilities that are to be constructed, on the land which is described in Article 3, including but not limited to buildings, trees and shrubbery planted by the Declarant or the Association, landscaping, paving, sidewalks, additions, utility wires, pipes, and light poles.

Section 1.25. IDENTIFYING NUMBER.

"Identifying Number" means the symbol or address that identifies only one Unit in the Common Interest Community.

Section 1.26. LIMITED COMMON ELEMENTS.

"Limited Common Elements" means the portion of the Common Elements, including water and sewer extension lines, allocated by the Declaration for the exclusive use of one or more but fewer than all of the Units. Limited Common Elements within the Common Interest Community are described as real property and Improvements therein appurtenant to Home Sites.

Section 1.27. MAJORITY OF UNIT OWNERS.

"Majority of Unit Owners" means the owners of more than fifty percent (50%) of the votes in the Association.



Section 1.28. MANAGER.

"Manager" means a person, business, firm, or corporation employed, contracted, or otherwise engaged to perform management services for the Association.

Section 1.29. NOTICE AND COMMENT.

"Notice and Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment on such action. The procedures for Notice and Comment are set forth in Section 23.2 of this Declaration.

Section 1.30. NOTICE AND HEARING.

"Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard on such action. The procedures for Notice and Hearing are set forth in Section 23.1 of this Declaration.

Section 1.31. PERSON.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity. In the case of a land trust, "Person" means the beneficiary of the land trust and not the land trust or its trustee.

Section 1.32. PLANS.

"Plans" means the plans, plat, and/or surveys required by AS 34.08.170 and recorded and attached to this Declaration as Exhibit B, as they may be amended from time to time.

Section 1.33. PROPERTY.

"Property" means the Common Interest Community, the real property described in Exhibit A, any real property added to the Common Interest Community by amendment, Improvements, easements, Units and Home Sites, rights, and appurtenances which have been submitted to the provisions of the Act by this Declaration.



Section 1.34. PURCHASER.

"Purchaser" means a Person, other than the Declarant or Dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than a leasehold interest, including renewal options, of less than forty (40) years, or a security for an obligation.

Section 1.35. RESIDENTIAL PURPOSES.

"Residential Purposes" means use for dwelling or recreational purposes, or both.

Section 1.36. RULES.

"Rules" means rules for the use of Units and Common Elements, including water and sewer extension lines, and for the conduct of Persons within the Common Interest Community, adopted by the Executive Board pursuant to this Declaration.

Section 1.37. SECURITY INTEREST.

"Security Interest" means an interest in real property or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.38. SPECIAL DECLARANT RIGHTS.

"Special Declarant Rights" means the rights reserved for the benefit of a Declarant to:

- (a) complete Improvements indicated on the Plans filed with the Declaration;
- (b) exercise any Development Right;
- (c) convey utility and drainage easements to utility companies and the Municipality of Anchorage, respectively, in Declarant's own name and on behalf of the Association; and convey public use easements in any Common Elements. As a condition of



their purchase, all purchaser's are deemed to have consented to any such conveyances;

(d) maintain sales offices, management offices, models, and signs advertising the Common Interest Community;

(e) use and maintain easements through the Common Elements, including water and sewer extension lines, for the purpose of making Improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community;

(f) make the Common Interest Community subject to a Master Association;

(g) merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; or

(h) appoint or remove an officer of the Association or a Master Association or any Executive Board member during any period of Declarant control.

Special Declarant Rights are more fully described in Article 6 of this Declaration.

Section 1.39. TIME SHARE.

"Time Share" means a right to occupy a Unit or any of several Units during five (5) or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a Common Interest Community or a specified portion of a Common Interest Community.

Section 1.40. TRUSTEE.

"Trustee" means the entity which may be designated by the Executive Board as the trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources. If no Trustee has been designated, the Trustee will be the Executive Board, acting by majority vote, as executed by the president and attested by the secretary.



Section 1.41. UNIT.

"Unit" means a physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in Section 5.3 of this Declaration and designated as a Home Site.

Section 1.42. UNIT OWNER.

"Unit Owner" means the Declarant or other Person who owns a Unit or holds the possessory interest under a real estate purchase contract. "Unit Owner" does not include a Person having an interest in a Unit solely as security for an obligation. Nor does "Unit Owner" include a Person having a leasehold interest, including renewal options, of less than forty (40) years in a unit. The Declarant is the initial owner of the Units created by this Declaration.

ARTICLE 2.  
NAMES OF THE COMMON INTEREST  
COMMUNITY AND ASSOCIATION

Section 2.1. COMMON INTEREST COMMUNITY.

The name of the Common Interest Community is Moss Creek.

Section 2.2. ASSOCIATION.

The name of the Association is Moss Creek Homeowners Association, a non-profit corporation organized under the laws of the State of Alaska.

ARTICLE 3.  
DESCRIPTION OF REAL ESTATE

The Common Interest Community is situated in the Municipality of Anchorage, State of Alaska, and includes the real property described in Exhibit A.

ARTICLE 4.  
PERSONS SUBJECT TO DOCUMENTS AND THE ACT.

Section 4.1. COMPLIANCE WITH DOCUMENTS.

All Unit Owners, tenants, mortgagees, and occupants of the Units shall comply with the Documents and the Act. The acceptance of a deed, the entering into a lease, the exercise of





any incident of ownership, 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. All Documents recorded in 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 any Unit of the Common Interest Community.

Section 4.2. COMPLIANCE WITH RULES.

Subject to Notice and Comment, the Executive Board may adopt Rules regarding the use and occupancy of Units, Common Elements, Limited Common Elements, and the activities of occupants of the Units. All Unit Owners, tenants, mortgagees, and occupants of the Units shall comply with the Rules.

ARTICLE 5.

NUMBER OF UNITS, UNIT IDENTIFICATION, AND UNIT BOUNDARIES

Section 5.1. NUMBER OF UNITS.

The Common Interest Community upon creation contains sixty (60) Units. Ninety-five (95) additional Units may be added to the Common Interest Community. Declarant reserves the right to develop a total of one hundred fifty-five (155) Units in the Common Interest Community. Declarant does not guarantee that any or all of these additional Units will be developed.

Section 5.2. UNIT IDENTIFICATION.

All Units have an Identifying Number. These numbers are shown on the Plans.

Section 5.3. HOME SITE BOUNDARIES.

(a) The boundaries of each Home Site created by this Declaration as shown on the Plans and designated Units 1 through 155, are more particularly described as follows:

(1) Perimeter and Lower Boundaries: The Home Site is the real property of the space filled with air above the surface of the "land" or "tract," as such terms are used in the Anchorage Municipal Code on subdivision or platting approval, and the rights of possession therein and all Improvements lying therein within the vertical plans intersecting the surface of the earth at the boundary lines of each Home Site as described below and as shown in

the Plans. [Exhibit B] The surface of the land is depicted as the contours shown in the Plans, and the extension of the plane of the surfaces of the land through Improvements at the surface intersection with the Improvements as they may be located from time to time. Below the surface and within such planes, all of the underlying land remains undivided and a Common Element, with the spaces lying below the boundaries of the Home Site and within the Improvements as they may from time to time be located therein being Limited Common Elements appurtenant to the Home Site.

(2) Party Wall Boundaries. Vertical boundaries that define planes within party walls will run through the center of the party wall, equidistant from the plane joining and along the outermost surfaces of studs and structural beams making up the party wall between the attached buildings in separate Home Sites.

(3) Exclusions. Except when specifically included by other provisions of Article 5, the following is excluded from the Home Site: the spaces and Improvements lying outside of the boundaries described in subsection 5.3(a), paragraph (1) above; pipes, chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Home Site; drive portions and other facilities running through and within any Home Site for the purpose of furnishing sewerage, utility, access, water and other similar services to other Home Sites and other Common Elements. Pipes, wires, ducts and cables are a Common Element up to the valve or switch being part of a Unit. Facilities supporting, enclosing or sheltering two or more Home Sites are party facilities owned jointly by the Unit Owners of the Home Sites served. Facilities serving a Home Site and lying within the Common Elements are Limited Common Elements appurtenant to the Home Site served.

(b) Limited Common Elements: The Improvements and spaces within the Improvements lying directly below each Home Site within the extension of the planes of the vertical perimeter of the boundaries of the Home Site extended to the center of the earth described below.

The Limited Common Elements for each Home Site shall include the spaces and Improvements within the spaces below the surface of the land as defined in subsection 5.3(a), paragraph (1) above, which contain any sewage system, floorings, slabs, drives, electrical wiring, lawns, planted shrubs, pipes, pavement, ducts, conduits, television, telephone and electrical receptacles, light fixtures, posts, vaults, boxes, and underground Improvements



serving the Home Site exclusively, the surfaces of the foregoing being the boundaries of the Limited Common Elements allocated to each Home Site, whether or not such spaces are contiguous or below the surface of the land or within the Common Elements or adjoining Home Sites or Limited Common Elements allocated to such Home Sites, or accurately depicted in the Plans.

(1) Shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and each exterior door and window or other fixture designed to serve a single Unit that is located outside the boundaries of the Home Site, are Limited Common Elements allocated exclusively to the Unit.

(2) Except when specifically designated as a Limited Common Element allocated exclusively to a Unit which it serves, water and sewer extension lines are a part of the Common Elements.

(3) Except when specifically included by other provisions of this section, the following are excluded from each Unit: the spaces and improvements lying outside of the boundaries described above.

#### Section 5.4. INCONSISTENCY WITH PLANS.

If this definition of Unit Boundaries is inconsistent with the Plans, then this definition shall control.

### ARTICLE 6.

#### SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS

##### Section 6.1. SPECIAL DECLARANT RIGHTS.

The Declarant reserves the following rights, to the maximum extent permitted by law, to be exercised anywhere within the Common Interest Community or within real estate that may be added to the Common Interest Community. Declarant may:

(a) complete Improvements indicated on the Plans filed with the Declaration;

(b) exercise any Development Right including the rights to (i) add real estate presently outside of Moss Creek to the Common Interest Community; (ii) create Units, Common Elements, or Limited Common Elements within the Common Interest Community. Declarant may, at the time it adds any additional Units and/or Common Elements to the Common Interest Community, specify



restrictions on use, occupancy, and alienation, as well as standards for architectural control for the additional Units and/or Common Elements, should Declarant determine that, in its sole discretion, that restrictions and standards different than those contained in this Declaration are appropriate; (iii) subdivide Units or convert Units into Common Elements; or (iv) withdraw real estate from the Common Interest Community;

(c) convey utility and drainage easements to utility companies and the Municipality of Anchorage, respectively, in Declarant's own name and on behalf of the Association; and convey public use easements in any Common Elements. As a condition of their purchase, all purchasers are deemed to have consented to any such conveyances;

(d) maintain sales offices, management offices, models, and signs advertising the Common Interest Community;

(e) use and maintain easements through the Common Elements, including water and sewer extension lines, for the purpose of making Improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community;

(f) make the Common Interest Community subject to a Master Association.

(g) merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; or

(h) appoint or remove an officer of the Association or a Master Association or any Executive Board member during any period of Declarant control.

Section 6.2. NO INTERFERENCE WITH SPECIAL DECLARANT RIGHTS.

Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

Section 6.3. PHASING OF DEVELOPMENT RIGHTS.

Declarant will exercise its Development Rights for adding Units in phases as shown on the Plans. [See Exhibit B] Declarant completed or anticipates phased development as follows:



| <u>Phase</u> | <u>Unit Nos.</u>         | <u>Estimated Completion</u> |
|--------------|--------------------------|-----------------------------|
| Phase 1      | 47-76<br>95-124          | 2002                        |
| Phase 2      | 1-46<br>77-94<br>124-155 | 2003                        |

No additional units will be added to the Common Interest Community. Declarant does not guarantee that the Units identified in the anticipated phases will be built.

Section 6.4. PERSONAL PROPERTY OF DECLARANT.

The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the Common Interest Community that Declarant has not explicitly represented as Property of the Association. The Declarant reserves the right to remove from the Property any and all goods, models, and Improvements used in development, marketing, and construction, whether or not they have become fixtures.

Section 6.5. DECLARANT'S EASEMENT FOR CONSTRUCTION.

The Declarant reserves the right to perform warranty work, repairs, construction work, and to store materials in secure areas in Units and Common Elements, and the further right to control all such work and repairs and the right of access thereto, until the completion of any such repair or work. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has an easement through the Common Elements, including water and sewer extension lines, as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising any Development or Special Declarant Rights, whether arising under the Act or reserved in this Declaration. Such easement also includes the Declarant's right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners, or upland owners.

Section 6.6. SALES ACTIVITIES.

Notwithstanding any contrary provisions of Section 11.5, the Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general



sales activities, in a manner which does not unreasonably disturb Unit Owners' rights.

Section 6.7. UNIT OWNERSHIP BY DECLARANT.

Until Declarant no longer owns any Units in the Common Interest Community, the Declarant and its duly authorized agents, representatives, and/or employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit, sales office, or management office.

Subject to Declarant's rights described in this Declaration, Declarant enjoys the same rights and assumes the same duties as they relate to individual Units which have not been conveyed to Unit Owners other than Declarant.

Section 6.8. DECLARANT CONTROL.

(a) Subject to subsection 6.8.(b) hereof, there shall be a period of Declarant control of the Association, during which the Declarant, or any Person designated by it, may, in its sole discretion, appoint and remove the officers and members of the Executive Board and/or officers of the Association, and any Association representative to the Master Association. The period of Declarant control shall terminate as required by the Act and no later than the earlier of:

(i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Unit Owners other than a Declarant;

(ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business;

(iii) two (2) years after any right to add new Units was last exercised; or

(iv) five (5) years after the first Unit in the Common Interest Community is conveyed to Unit Owners other than a Declarant.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control,



that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent ( $33\frac{1}{3}\%$ ) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

(c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

(d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under AS 34.08.390, the Unit Owners, by a two-thirds ( $2/3$ ) vote of all Persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

#### Section 6.9. TRANSFERENCE OF DECLARANT RIGHTS.

Declarant may transfer any and all rights reserved by this Declaration to a transferee Declarant pursuant to AS 34.08.350.

#### Section 6.10. LIMITATIONS.

(a) The Declarant or Affiliate of Declarant may not bind the Association to any management contract, employment contract, lease of facilities, licenses, or other contracts or leases unless the Association has the right of termination thereof, exercisable without penalty with not more than ninety (90) days' notice to the other party.

(b) Unless Declarant has previously terminated its Special Declarant Rights by recorded instrument or unless sooner



terminated by the Act, any Special Declarant Right, except for Development Rights, may be exercised by the Declarant so long as: (1) the Declarant is obligated under any warranty or obligation, owns any Units, or has any Security Interest in any Units; or (2) for twenty (20) years after recording the original Declaration, as long as Declarant continues to be obligated under any warranty or obligation, own any Units, or continues to have any Security Interest in any Units.

Section 6.11. CONSTRUCTION OF MAILBOXES.

Declarant reserves the right and has an easement on any portion of the Common Interest Community to construct centralized mailbox facilities for the Units and any necessary appurtenances.

Section 6.12. GOVERNMENTAL INTERESTS.

So long as the Declarant owns any Property described on Exhibit "A" or added by amendment to the Common Interest Community, the Declarant may designate sites within the Properties for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may include Common Elements.

Section 6.13. CONFLICT.

If any provisions of this Article conflict with other provisions of this Declaration, this Article shall control.

ARTICLE 7.  
ALLOCATED INTERESTS

Section 7.1. TABLE OF ALLOCATED INTERESTS.

The Table of Allocated Interests, attached as Exhibit C, reflects Units and their Allocated Interests. These interests have been allocated in accordance with the formulas set out in this Article.

Section 7.2. ALLOCATION FORMULAS.

(a) Votes. Each Unit in the Common Interest Community shall have one equal vote.

(b) Undivided Interests. The percentage of liability for any Common Expenses and for the undivided interest in the Common Elements allocated to each Unit is an equal percentage interest derived by dividing the total number of Units in the





Common Interest Community into one hundred percent (100%). The specified percentage is set forth in Exhibit C. When Units are added to or removed from the Common Interest Community, the above formula shall be used in reallocating interest and liabilities of Units and a revised Exhibit C shall be recorded in an amendment to the Declaration. Nothing in this subsection shall preclude apportionment of Common Expenses pursuant to Article 8.

ARTICLE 8.  
COMMON EXPENSE ASSESSMENT AND COLLECTION

Section 8.1. COMMON EXPENSE APPORTIONMENT.

Except as otherwise provided in Section 8.2, any Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses. See Table of Interest, attached as Exhibit C.

Section 8.2. APPORTIONMENT OF COMMON EXPENSES TO LESS THAN ALL UNITS.

(a) Any Common Expenses associated with the maintenance, repair, or replacement of any Limited Common Element which serves exclusively one Unit shall be assessed against that Unit. If any Limited Common Element serves more than one Unit, but less than all Units, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units it serves.

(b) Any Common Expenses for services provided by the Association for the benefit of an individual Unit at the request of the individual Unit Owner shall be assessed against said Unit.

(c) If an expense to the Association is caused by the misconduct of a Unit Owner, the Unit Owner's family members, guests, or invitees, the Association may assess that expense exclusively against the Unit.

(d) Any Common Expense insurance premium increase attributable to a particular Unit by virtue of activities in the Unit or by the Unit Owner, or by a Unit Owner's loss history, shall be assessed against that Unit.

(e) 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 percentage interests in the Common Expenses at the time judgment was entered.



(f) Any 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 8.3. LIEN.

(a) The Association shall have a lien on a Unit for any assessment levied against the Unit and/or for any fines, fees, charges, late charges, collection costs, and/or interest imposed against its Unit Owner from the time any such assessment or fines, fees, charges, late charges, collection costs, and/or interest become due. The full amount of the assessment, fines, fees, charges, late charges, collection costs, and/or interest is a lien from the time the first installment thereof becomes due. Subject to subsection 8.3.(h), liens under this section are not affected by sale or transfer of a Unit.

(b) The recordation of this Declaration constitutes record notice and perfection of the lien. This Section does not require further recording of a claim of lien for assessment.

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

(d) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a first Security Interest on a Unit recorded before the date on which the assessments sought to be enforced became delinquent, unless such assessments, based on the periodic budget adopted by the Association pursuant to Section 8.4, 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 or a Security Interest described in this Section; (2) liens for real estate taxes and other governmental assessments or charges against the Unit; and (3) liens and encumbrances recorded before the recordation of the Declaration.

This subsection does not affect the priority of mechanic's 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.



(e) Subject to subsection 8.3.(f), 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.

(f) 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 lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(g) This section shall not be construed to prohibit an action to recover sums for which subsection 8.3.(a) creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(h) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale 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 8.3.(d). Any unpaid assessments not satisfied from the proceeds of the foreclosure sale become Common Expenses collectible from all the Unit Owners, including said purchaser. "Purchaser" for purposes of this subsection, includes any Security Interest holder that obtains title through foreclosure.

(i) If the Association commences any action to foreclose a lien for unpaid assessments or to otherwise collect assessments, the court may appoint a receiver of the Unit Owner. The court may then order the receiver to: (1) collect all sums alleged to be due from the Unit Owner prior to or during the pendency of the action; (2) 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; and (3) take any other actions consistent with this Declaration and the Act.

(j) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party and is enforceable by execution under AS 09.35.010.

(k) If the Association forecloses on a Unit pursuant to this Section for unpaid assessments, the Association may hold, mortgage, lease, and convey such Unit.



(1) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied first to interest, late charges, collection costs, fines, and fees, and then to the oldest balance due from the Unit Owner for Common Expense assessments.

Section 8.4. ADOPTION AND RATIFICATION OF PROPOSED BUDGET.

Within thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall mail or otherwise provide a summary of the proposed budget to each Unit Owner, and shall set a date for a meeting fourteen (14) to thirty (30) days from mailing or otherwise providing the summaries to the Unit Owners, for the Unit Owners to consider ratification of the budget. Unless a Majority of Unit Owners reject the proposed budget at that meeting, the budget is ratified. 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 8.5. NONBUDGETED COMMON EXPENSES.

If the Executive Board votes to levy a Common Expense assessment not included in the current budget and not attributable to fewer than all Units as described in Section 8.2, the Common Expense assessment shall be submitted to the Unit Owners and ratified in accordance with Section 8.4.

Section 8.6. CERTIFICATION OF UNPAID ASSESSMENTS.

Upon a Unit Owner's written request, the Association shall provide a statement in recordable form setting out the amount of unpaid assessments against the Unit. The Association must provide the statement within ten (10) business days after it receives the Unit Owner's request and is binding on the Association, the Executive Board, and each Unit Owner.

Section 8.7. COMMON EXPENSES TO BE PAID MONTHLY.

All Common Expenses assessed under this Section, including those for use of water and sewage extension lines, shall be due and payable monthly.

Section 8.8. ASSESSMENT RESERVE FUND.

Declarant shall establish a reserve fund in an amount at least equal to the projected assessments for a two-month period for

each Unit in the Common Interest Community. Upon the first conveyance of record title to a Unit from Declarant, the Unit Owner shall contribute to the Association's reserve fund for said Unit an amount at least two times the monthly assessment in effect at the time of sale but no less than the amount originally contributed by Declarant in establishing the reserve fund for said Unit. Upon the sale of each Unit from the Declarant to a Unit Owner, Declarant shall receive from the Association reserve fund a refund of the contribution to the reserve fund made by Declarant for such Unit.

The Association shall maintain the reserve funds in a segregated account to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Unit Owners. Any payments to this fund shall not be considered advance payments of monthly assessments and, except for refunds to Declarant, shall not be refundable. Except as expressly provided by the Documents, Declarant may not use any reserve funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

Upon the sale of each Unit from the Declarant to a Unit Owner, the Unit Owner shall, in addition to contributing the amount specified previously in this section, pay to the Association the regular monthly assessment in effect at the time of sale, the purpose being to have available at all times for the Association a reserve fund equal to two (2) months of assessments for each Unit. The reserve fund shall be maintained at all times, just as a reserve for taxes and insurance is so maintained.

#### Section 8.9. ACCELERATION.

In the event of a Unit Owner's default for a period of ten (10) days or more on 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 for that Unit to be immediately due and payable.

#### Section 8.10. COMMENCEMENT OF ASSESSMENTS.

Common Expense assessments shall commence on the first day of the month in which the first Unit is conveyed to a Unit Owner other than the Declarant.



Section 8.11. NO EXEMPTION FROM COMMON EXPENSES.

Unit Owners may not exempt themselves from liability for payment of the Common Expenses by either waiver of the use or enjoyment of the Common Elements or by abandonment of their Units.

Section 8.12. PERSONAL LIABILITY FOR ASSESSMENTS.

A Unit Owner is personally liable for the Common Expense assessments which become due and payable during his or her ownership of the Unit. In absence of a successor's written agreement to assume a Unit Owner's obligation, personal liability for such assessments shall not pass to a successor in title to the Unit.

ARTICLE 9.  
MAINTENANCE AND REPAIR

Section 9.1. UNITS.

Each Unit Owner shall maintain, repair, and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof which may otherwise be required by this Declaration or by the Association to be maintained, repaired or replaced by other Persons.

Section 9.2. COMMON ELEMENTS.

The Association shall maintain, repair and replace all of the Common Elements, including water and sewer extension lines, except the Limited Common Elements or other Common Elements which are required by this Declaration to be maintained, repaired or replaced by less than all Unit Owners.

Section 9.3. LIMITED COMMON ELEMENTS.

Maintenance, repair or replacement of subsurface Improvements within the Limited Common Elements directly below and appurtenant to the Home Site will be the responsibility of the of the appurtenant Home Site Unit Owner. Common Expenses associated with the maintenance, repair, or replacement of all Limited Common Elements will be assessed against the Home Sites or Units to which the Limited Common Elements are assigned herein. If any such Limited Common Element is assigned to more than one Home Site or Unit, the Common Element attributable to the Limited Common Element will be among the Home Sites or Units to which it is assigned in proportion to the Allocated Interests shown in Exhibit C.



#### Section 9.4. RIGHT OF ACCESS.

Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing any installations, alterations, repairs, and/or utility work to include meter reading, equipment, upgrades, and/or repairs, provided that requests in advance for entry are made and that any such entry is at a reasonably convenient time for the affected Unit Owner except in cases of emergencies, where no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

#### Section 9.5. NEGLIGENCE.

Each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements, including water and sewer extension lines, caused by that Unit Owner's: intent or negligence; failure to properly maintain, repair, or make replacements to his or her Unit or to the Limited Common Elements, assigned to his or her Unit; or failure to permit timely access to his or her Unit by any Person authorized such access by Section 9.4. The Association shall assess expenses to the responsible Unit Owners only after Notice and Hearing.

The Association will be responsible for damage to Units caused by its intent, negligence, or by its failure to maintain, repair, or make replacements to the Common Elements, including water and sewer extension lines.

### ARTICLE 10.

#### CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS

##### Section 10.1. UNIT OWNER AGREEMENT.

Subject to other provisions of the Act, and subsection 18.7.(d)(i) of the Declaration, portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by a Declarant, agree to the action, but each Unit Owner to which a Limited Common Element is allocated must agree in order to convey such Limited Common Element or subject it to a Security Interest. The proceeds of the sale or any loan secured by the encumbrance or sale of any Common Elements are assets of the Association.

Section 10.2. RECORDATION OF AGREEMENT.

An agreement to convey the Common Elements or to subject the Common Elements to a Security Interest must be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before the date. The agreement and each ratification of the agreement must be recorded in the Anchorage Recording District and is effective only upon recording.

Section 10.3. CONTRACTS BY THE ASSOCIATION.

The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Interest Community pursuant to Section 10.1, but such contract is not enforceable against the Association until approved, ratified, and recorded pursuant to Sections 10.1 and 10.2. After such approval, ratification, and recordation, the Association shall have the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute a deed or other instrument.

Section 10.4. UNIT INTEREST IN THE COMMON ELEMENTS.

Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

ARTICLE 11.

RESTRICTIONS ON USE, OCCUPANCY, AND ALIENATION

Section 11.1. SINGLE-FAMILY RESIDENCE.

Residences shall be used exclusively for single-family Residential Purposes except as provided for in Section 11.9.

Section 11.2. NUISANCES.

No noxious or offensive activities shall be carried on upon any land subject to this Declaration, nor shall anything be done therein which might be, or may become, an annoyance or nuisance to the Common Interest Community. Such nuisances include the use of any heavy equipment or derelict automobiles.





Section 11.3. WASTE REMOVAL.

Trash, garbage, refuse, or other waste shall be disposed of through a household garbage disposal or wrapped in a secure package and deposited into a designated trash container. No owner of a Unit shall permit or cause any trash, garbage, refuse, or other waste to be disposed of on any portion of the Property except in a designated trash container. No portion of the Property shall be used for the storage of building materials, refuse, or any other materials other than in connection with approved construction.

Section 11.4. VEGETATION.

Vegetation shall be maintained along the land incline that is adjacent to those Units located on Lots 22, 23, 24, 25, 26, 27, 28, 29 and 30, as designated in Section 6.3 above and in the Plans. Such vegetation shall be sufficient to prevent the land incline from erosion.

Section 11.5. VEHICLE RESTRICTIONS.

No wrecked, inoperative, vandalized, or otherwise derelict-appearing automobiles shall be kept, placed, stored, or maintained upon any land subject to this Declaration. Operable vehicles (including a Unit Owner's and a Unit Owner's guest's), trucks, trailers, truck campers, detached camper units, boats, and commercial vehicles shall be kept, placed, stored, or maintained within a Unit's garage or in a Unit's driveway.

Section 11.6. SIGNS.

Subject to Section 6.6, no signs of any kind shall be displayed to the public on any land subject to this Declaration, except that a Unit Owner may post one sign of not more than five (5) square feet advertising his or her Unit for sale or rent, and Declarant may post one sign per lot, not to exceed twenty-five (25) square feet to advertise Units until they are first sold to a Unit Owner other than Declarant.

Section 11.7. PET REGULATIONS.

No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit, except domestic dogs, cats, or other normal household pets, provided that they are not kept, bred, or maintained for commercial purposes, and provided that all dogs shall be restrained as necessary to prevent them from becoming a nuisance. Except as otherwise provided in writing by the Executive

Board, no more than two dogs, or one dog and one cat, or two cats may be kept in any Unit or on any Limited Common Element of any Unit. The Association shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Executive Board, a nuisance to any other Unit Owner. Any Unit Owner shall be liable to each and all other Unit Owners, their families, guests and invitees, for any damage to person or property caused by any pets brought or kept upon the property by an owner, his or her family members, guests, licensees, or invitees.

Section 11.8. EXTERIOR INSTALLATIONS.

No outside pole or antennae shall be erected or maintained without first obtaining the approval of the Executive Board. No air conditioning or other machine shall be installed on the exterior of any Improvement on the Property or be allowed to protrude through the walls or roof of any Improvement on the Property without the prior written approval of the Executive Board. No basketball standards or other athletic fixtures shall be attached to any residence or Improvement on the Property without the prior written approval of the Executive Board.

Section 11.9. BUSINESS ACTIVITY.

No business or commercial activity shall be maintained or conducted in any residence, except that: (1) Declarant, or a person designated by the Association as agent of the Association for purposes of managing the property, may maintain management offices and facilities in a residence; or (2) Unit Owners may engage in home professional pursuits not requiring regular visits from the public or unreasonable levels of mail, shipping, trash, or storage, provided that there exists no external evidence thereof.

Section 11.10. TIME SHARING PLAN.

Conveyance of a Unit pursuant to a time-sharing plan is prohibited.

Section 11.11. UNIT LEASING.

Any Unit Owner may lease his or her Unit to a third party, but such a lease arrangement must be in writing, must be for a term of more than sixty (60) days, must comply with the terms of the Documents, must not be for transient or hotel purposes, must provide that the failure to comply in all respects with the Documents shall be a default under the terms of the lease, and must be approved by the Executive Board. Any Unit Owner who wishes to



lease his or her Unit to a third party must submit a copy of the lease to the Executive Board. The Executive Board's approval of any Unit Owner's lease may not be unreasonably withheld; however, the Executive Board may, without limitation, disapprove leases which may effect any Unit's eligibility for any type of AHFC, FHA, HUD, FNMA, FHLMC, or VA financing.

Section 11.12. HOLD HARMLESS AND INDEMNIFICATION.

As described in Section 9.5, Unit Owners will be liable to the Association for any damages to the Common Elements, including water and sewer extension lines, or to any equipment on the Common Elements caused negligently or intentionally by themselves, their families, their occupants, their guests, or their invitees. By the acceptance of his or her deed, each Unit Owner further agrees to indemnify each and every other Unit Owner, and to hold each and every other Unit Owner harmless from any claim of any Person for personal injuries or property damage occurring within the residence of the Unit Owner, unless said injury or damage occurs by reason of the negligence or intent of any other Unit Owner, and each Unit Owner further agrees to defend, at his or her expense, any and all remaining Unit Owners who may be sued by any Person for a claim for personal injury or property damage alleged to have been sustained within the Unit of that Unit Owner. Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Alaska and all ordinances of the Municipality of Anchorage. Unit Owners shall hold harmless the Association and other Unit Owners from all fines, penalties, costs, and prosecutions for their violations, noncompliance, and/or their use of the property.

ARTICLE 12.

EASEMENTS, COVENANTS, AND LICENSES

Section 12.1. GENERAL.

Easements, covenants, and/or licenses to which the Common Interest Community is presently subject are recited in Exhibit D to this Declaration and/or are shown on the Plans attached hereto. Declarant may subject the Common Interest Community to additional easements pursuant to Article 6.

Section 12.2. UNIT OWNERS' EASEMENTS.

Declarant expressly reserves, for the benefit of the Unit Owners and the Association, reciprocal easements of access, ingress, and egress over all of the Common Elements, including

water and sewer extension lines. Such easements may be used by Declarant's successors, purchasers, and all Unit Owners, their guests, tenants, and invitees, residing or temporarily visiting the Common Interest Community, for pedestrian walkways, vehicular access, and such other purposes reasonably necessary for the use and enjoyment of a Unit and the Association. Such easements shall be appurtenant to, and shall pass and run with, the title to every Unit conveyed.

The Declarant expressly reserves, for the benefit of each Unit Owner, an exclusive easement for use of those areas depicted on the Plans or otherwise described herein as Limited Common Elements, as assigned to each Unit Owner for his or her numbered unit. If any Limited Common Element is assigned to more than one (1) Unit, but less than all Units, the exclusive easement to such Limited Common Element shall be held jointly by the Units to which it is assigned.

All building walls shall be considered to adjoin and abut the wall of the contiguous Unit against the surface from the bottom of the foundation of the building. A Unit Owner's right of use of said wall shall be as not to interfere with the use and enjoyment of the Owners of adjoining Units, and in the event that any such contiguous wall is damaged or injured from any cause other than the act or negligence of one of the Unit Owners, the same shall be repaired or rebuilt at their joint and equal expense.

Section 12.3. LIMITATIONS ON UNIT OWNERS' EASEMENTS.

In the event any portion of the Common Elements encroaches upon any Unit, or any Unit or Improvement, at no fault of the Unit Owner, encroaches upon the Common Elements, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Common Interest Community, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

The Association may, subject to other provisions of this Declaration and the Act, pledge, mortgage, assign, grant, or hypothecate a Security Interest in the Common Elements. The Unit Owners' easements are further limited by the right of the Association to charge fees for a Unit Owner's use of the Common Elements, including water and sewer extension lines, if such use is substantially different from the use offered to other Unit Owners and involves additional expense to the Association. The Unit Owners' easements are also limited by the Association's right to administer the Common Elements for the safety, health, and mutual



benefit of the Unit Owners. Finally, the Unit Owners' easements are limited by the right of the Association to grant licenses to Persons for the use of Common Elements.

The Unit Owners' easements are limited by and subject to all other provisions of this Declaration and the Act.

ARTICLE 13.  
ALLOCATION/REALLOCATION  
OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated in accordance with the procedures outlined in Article 15 of this Declaration. Such allocations will be made by amendment to the Declaration. The amendment must specify to which Unit or Units the Limited Common Element(s) is (are) allocated.

No Limited Common Element depicted on the Plans may be reallocated by an amendment to this Declaration pursuant to this Article without the consent of all affected Unit Owners.

Such an amendment shall require the approval and written endorsement of all holders of Security Interests in the affected Units. The Person executing the amendment shall provide an executed copy of the amendment to the Association. Provided that the amendment complies with the provisions of this Declaration and the Act, the Executive Board shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Common Interest Community.

The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorney's and consultant's fees in connection with any review of the amendment and for the recording costs.

ARTICLE 14.  
IMPROVEMENTS AND ADDITIONS

Section 14.1. BOARD APPROVAL.

Excepting alterations or Improvements to the interior of Units, no replacement, addition, alteration, or removal of any building, structure, fence, drainage facility, on common or limited-common element landscaping or planting shall be effected in the Common Interest Community by any Unit Owner other than by

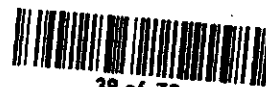
Declarant until the plans, and specifications showing the location and nature of such replacement, addition, alteration, or removal have been submitted to, and approved in writing by, the Board; nor shall any exterior painting or decorative alteration be commenced on any Unit other than by Declarant until the Board has approved the plans therefor, including, without limitation, the design, proposed color schemes, and the quality of the materials to be used.

All such plans and specifications shall be, if the Board so requires, prepared by an architect or landscape architect or licensed building designer, said architect and/or designer to be employed by the Unit Owner making application at his or her sole expense. Plans and any resubmittals required by the Board shall be approved or disapproved by the Board within forty-five (45) days of their submittal or resubmittal. Failure of the Board to respond to a submittal or resubmittal of plans within such period shall be deemed disapproval of the plans as submitted or resubmitted. If the Board grants approval, it shall be conclusively presumed that the location and height of any Improvement as approved does not violate the provisions of this Declaration.

The approval of the plans and specifications may be withheld, not only because of noncompliance with any of the specific conditions, covenants, and restrictions contained in this Declaration, but also because of the Board's reasonable dissatisfaction with the location, elevation, color scheme, finish, design, proportions, conformity with any architectural control standards, shape, height style, appropriateness, or materials of any Improvement, alteration, or addition, or because of the Board's reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the Board, will render the proposed additions, alterations, and/or Improvements inharmonious or out of keeping with the Improvements erected on other Units or with the general plan of the Common Interest Community. If, after such plans and specifications have been approved, the Improvements are altered, erected, or maintained upon the Unit other than as approved by the Board, such alteration, erection, and maintenance shall be deemed to have been undertaken without the approval of the Board as required by this Declaration.

#### Section 14.2. PERMITS.

In addition to securing the Board's approval, a Unit Owner must also obtain any necessary governmental permits before construction commences on any Improvements, additions, or



alterations. The cost of any such permits shall be paid by the Unit Owner.

Section 14.3. LIMITATIONS.

After the expiration of one (1) year from the date of completion of any Improvement, alteration, or addition, said Improvement, alteration, or addition shall, in favor of Purchasers and encumbrancers, in good faith and for value, be deemed to comply with all of the provisions hereof, unless: (1) a notice of such noncompliance or non-completion, executed by one or more members of the Board, shall appear of record in the Office of the Recorder, Anchorage Recording District; or (2) legal proceedings in connection with such Improvement, alteration, or addition shall have been instituted to enforce compliance with this Article.

Section 14.4. NO WAIVER.

The approval of the Board under this Article of any plans or specifications for additions, alterations, or Improvements to the Property shall not be construed in any way as a waiver by the Board of its right to object to any feature or aspect of such plans and specifications found in subsequent plans or specifications submitted for approval under this Article or found in any additions, alterations, or Improvements undertaken without first securing approval under this Article.

Section 14.5. NO LIABILITY.

No member of the Board shall be liable to any Person for his or her decisions or failure to act in making decisions as a member of said Board. Nor shall the Association or Executive Board be liable for any condition of approval or any other matter connected with a Unit Owner's Improvement, addition, or alteration.

Section 14.6. DECLARANT RIGHTS.

The provisions of this Article do not apply to Declarant in the exercise of any Special Declarant Rights or Development Rights.



ARTICLE 15.  
ALTERATION OF UNIT BOUNDARIES

Section 15.1. APPLICATION AND AMENDMENT

Subject to approval pursuant to Article 14 of any necessary alterations, the acquisition of any required governmental permits, and subject to any other Municipal requirements, the boundaries between adjoining Units may be reallocated by an amendment to the Declaration upon application to the Association by the Unit Owners affected by the reallocation. If the Unit Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall set forth the proposed reallocations. The application shall be approved or disapproved by the Executive Board within forty-five (45) days. Failure of the Board to respond within such period to the application shall be deemed disapproval of the application.

The Board's approval of the application 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 the Board's reasonable dissatisfaction with any or all matters or things which, in the Board's reasonable judgment will render the proposed subdivision inharmonious or out of keeping with the general plan of the Common Interest Community.

Section 15.2. VOTES.

Each Unit shall have only one (1) vote in the Association, notwithstanding any interest reallocation under this Article.

Section 15.3. AMENDMENT.

If the Board approves the application, the Association shall prepare an amendment that identifies the Units involved, states the reallocations of any interests in a revised Table of Allocated Interests, states the alteration(s) of Unit Boundaries, and states the Association's consent to the reallocation. The amendment must be executed by the affected Unit Owners and contain words of conveyance between them. If the amendment by any Person other than Declarant reallocates any interests in the Common Interest Community, the unanimous consent of the Unit Owners is necessary. The holders of any Security Interests in the affected Units shall endorse their approval on the amendment.





Section 15.4. RECORDATION.

On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association. The Association shall also prepare and record Plans necessary to show the altered boundaries between adjoining Units, and their dimensions and Identifying Numbers.

The applicants will pay for the costs of preparation and recordation of the amendment, preparation and recordation of amended Plans, the reasonable consultant and/or attorney fees of the Association if the Executive Board deems it necessary 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 16.  
AMENDMENTS

Section 16.1. GENERAL.

Except as otherwise provided by the Documents and the Act, including, without limitation, AS 34.08.740, AS 34.08.260, and Section 16.3, Articles 13 and 18 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 16.2. CONSENT OF SECURITY INTEREST HOLDERS.

As required by Articles 13 and 18, amendments may be subject to the consent of certain holders of Security Interests.

Section 16.3. UNANIMOUS CONSENT.

Except in the exercise of any rights described in Article 6 of this Declaration or 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 16.4. DECLARANT RIGHTS.

Provisions in this Declaration reserving Declarant rights may not be amended without the consent of Declarant.

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 and any required exhibits to the Declaration, including Plans which conform with the Act. Any amendment effected by Declarant's exercise of rights reserved in Article 6 requires Declarant approval only.

Section 16.5. 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 16.6. RECORDATION.

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

Section 16.7. 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 16.8. 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.

Section 16.9. COMPLETION OF IMPROVEMENTS.

Prior to any amendment of the Declaration to add additional real estate and/or Units to the Common Interest Community, all improvements required to be built on such real estate must be substantially completed. When additional real estate and/or Units are added to the Common Interest Community, an



amendment to the Declaration will be recorded which complies with Article 16 and any other requirements of the Declaration. Units and other improvements added by amendment to the Common Interest Community shall be consistent with the initial improvements' structure type and quality of construction. Duplexes, triplexes, and four-plexes shall be deemed "consistent" structure types for purposes of this section.

ARTICLE 17.  
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 18.  
PROTECTION OF MORTGAGEES

Section 18.1. 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 18.2. 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 18.3. 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 18.4. 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 18.5. 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 18.6. 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 18.2;



(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.

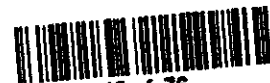
Section 18.7. CONSENT REQUIRED.

(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) reallocation of interests in the Common Elements or Limited Common Elements, except that when Limited Common Elements are 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 the 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, including water and sewer extension lines;
- (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 of the planned community, 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 alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

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

(v) the merger of this Common Interest Community with any other Common Interest Community;

(vi) any action taken not to repair or replace the Property; and

(vii) 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 18.8. TRUSTEE.

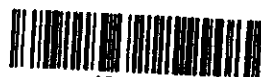
In the event of damages or destruction under Article 21 or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that any proceeds from such damages, destruction, or condemnation to be payable to a Trustee established pursuant to Section 21.5. Such Trustee 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 18.9. 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 18.10. 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 18.11. 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 19.  
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 20.  
INSURANCE

Section 20.1. 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 20.2. 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 20.3. 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 20.4. 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 20.5. 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 20.6. 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 for condominiums or planned communities, 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 the Common Interest Community facilities (which term, for purposes of this Article, 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). 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 Interest Community facilities 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) 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.



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(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") condominium or planned community 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: "Moss Creek Homeowners Association, 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 20.7. 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 20.8. 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 20.9. OTHER INSURANCE.

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

Section 20.10. 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<sup>+</sup> 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 canceling 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 21.

PROPERTY DESTRUCTION OR DAMAGE

Section 21.1. DUTY TO RESTORE PROMPTLY.

The portion of the Common Interest Community 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 21.2. 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 21.3. 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 21.4. COST.

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

Section 21.5. 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 21.6. 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 21.1, 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 21.7. 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 21.8. 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 22.  
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 23.  
RIGHTS OF NOTICE, COMMENT, AND APPEAL

Section 23.1. 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 23.2. 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 23.3. 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 24.  
EXECUTIVE BOARD

Section 24.1. 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, including those for use of water and sewage extension lines, 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, including water and sewer extension lines;

(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 18 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 a master association; 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 24.2. SPECIAL POWER OF AGENCY.

Subject to the approval of the Unit Owners as indicated by sixty-seven percent (67%) of the votes in the Association, the Executive Board shall be empowered to act as agent of the Unit Owners, individually and collectively, and in doing so shall represent the interests of such Unit Owners, in approving a platting of the Property on which the Common Interest Community is located.

#### Section 24.3. FENCES AND FENCING

Whether to serve as a Limited Common Element or to enclose land or real property to serve as a Limited Common Element, all fences and fencing, including, but not limited to, the type and materials used for the fence, must be approved by the Board.

#### Section 24.4. 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 24.5. 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 24.6. 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 25.  
TERMINATION

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



ARTICLE 26.  
MISCELLANEOUS

Section 26.1. 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 26.2. 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 Moss Creek 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 Moss Creek 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 26.3. 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 26.4. 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 26.5. 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 26.6. 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 26.7. COSTS AND FEES.

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

Section 26.8. RIGHT OF ACTION.

The Declarant, Association, 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 26.9. DISPERSION OF OWNERSHIP.

In the event that the Declarant is granted an exemption by the State of Alaska Regulatory Commission of proposed water and sewer utilities from regulation under AS 42.05.711(d), ownership of the Common Interest Community will be sufficiently dispersed so that no single entity or affiliated entities control more than twenty percent (20%) of the Association after two (2) years of initiating such water and sewer system service.

Section 26.10. 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.



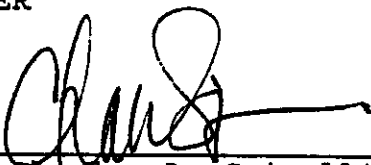
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on the day and year first hereinabove written.

DECLARANT:

TOYON, LLC

BY: SPINELL HOMES, INC.  
MEMBER

By:



Charles L. Spinelli  
President

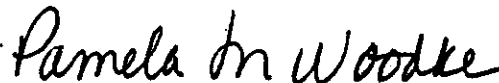
STATE OF ALASKA )

) ss.

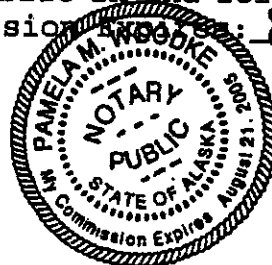
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 27<sup>th</sup> day of August, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared CHARLES L. SPINELLI, President of Spinell Homes, Inc., Member of Toyon, LLC, known to me to be the individual named herein and who executed the foregoing instrument, and he acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the limited liability company for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.



Notary Public in and for Alaska  
My Commission Expires: 8-21-05



**EXHIBIT A**

**REAL PROPERTY SUBMITTED TO DECLARATION**

Tract 2E, TOYON SUBDIVISION,  
according to the official plat  
thereof filed under Plat No. 71-328,  
records of the Anchorage Recording  
District, Third Judicial District,  
State of Alaska



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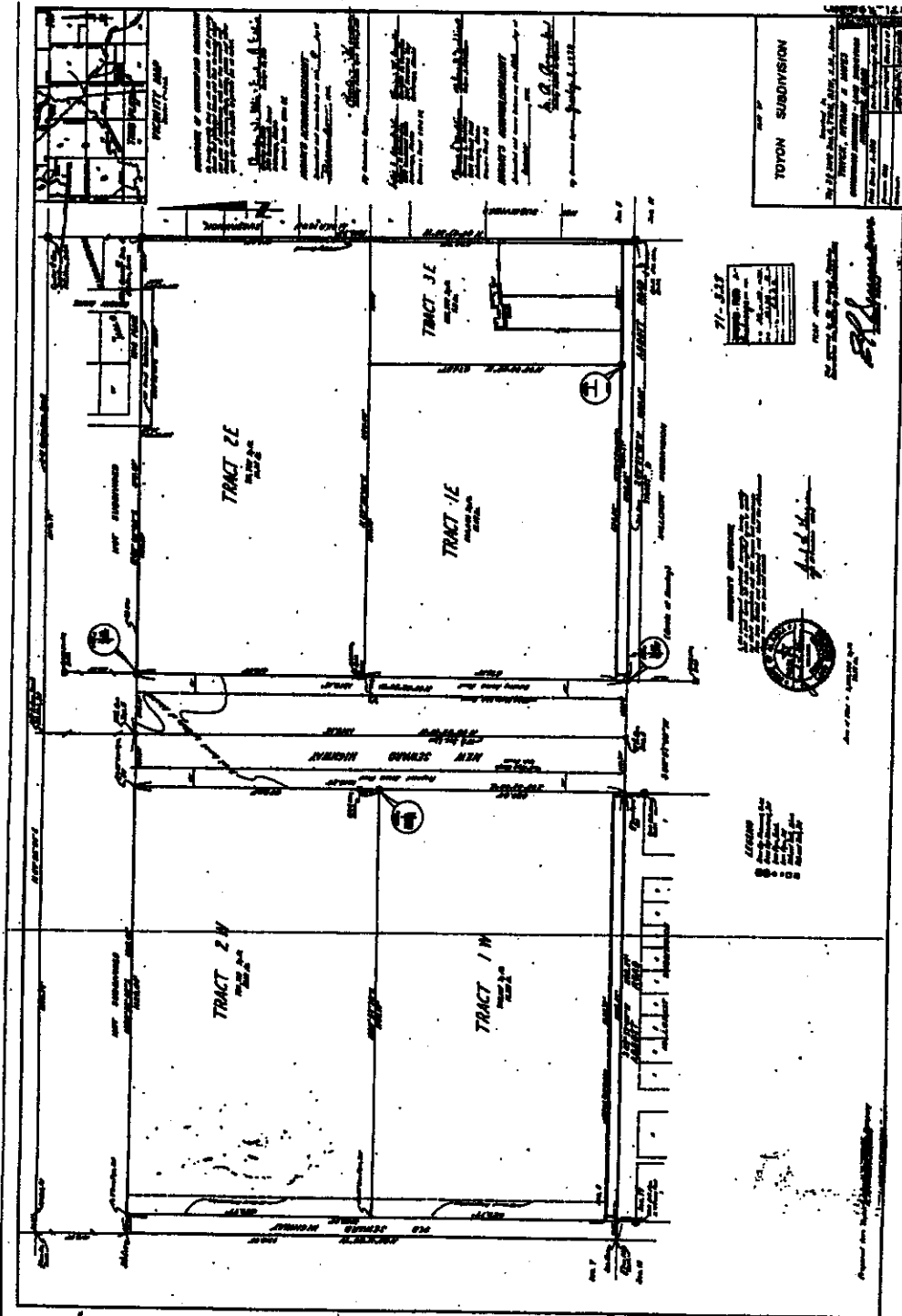
**EXHIBIT B**

**PLANS AND CERTIFIED SURVEYS**

(Containing information required  
by AS 34.08.170)

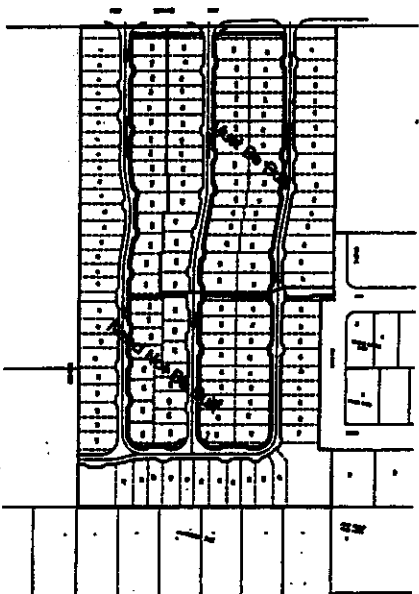


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# A DEVELOPMENT PLAN OF MOSS CREEK

SHEET 1 COVER SHEET  
SHEET 2 BUILDING/LANDSCAPE AREAS  
SHEET 3 UNIT BOUNDARY DIMENSIONS



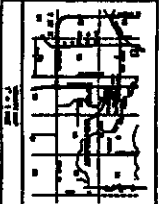
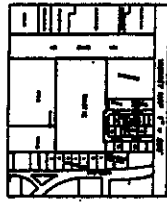
THIS DEVELOPMENT PLAN IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.

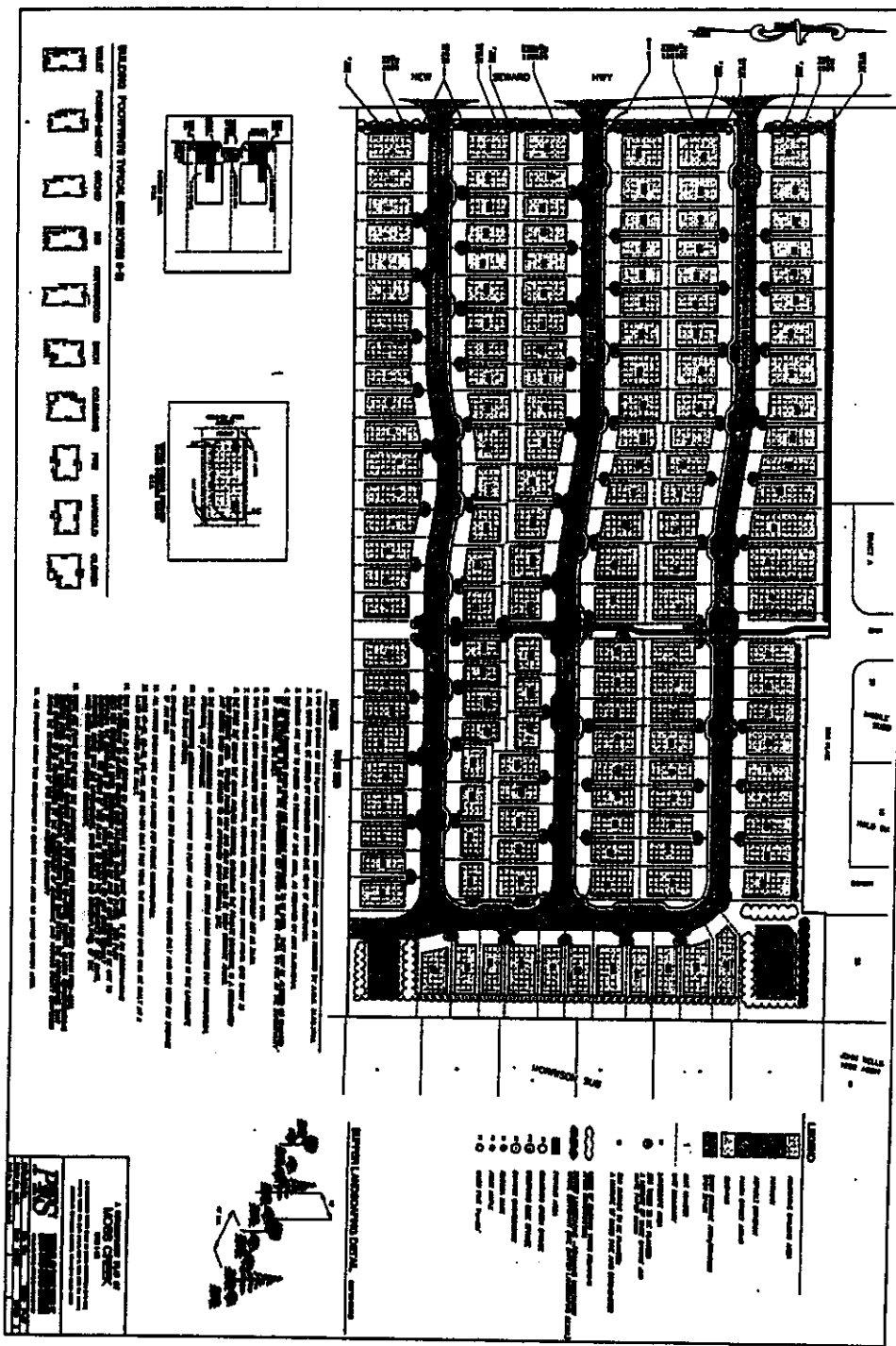
THE ENGINEER HAS PREPARED THIS DEVELOPMENT PLAN FOR THE CLIENT AND HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. THE CLIENT IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ENGINEER.

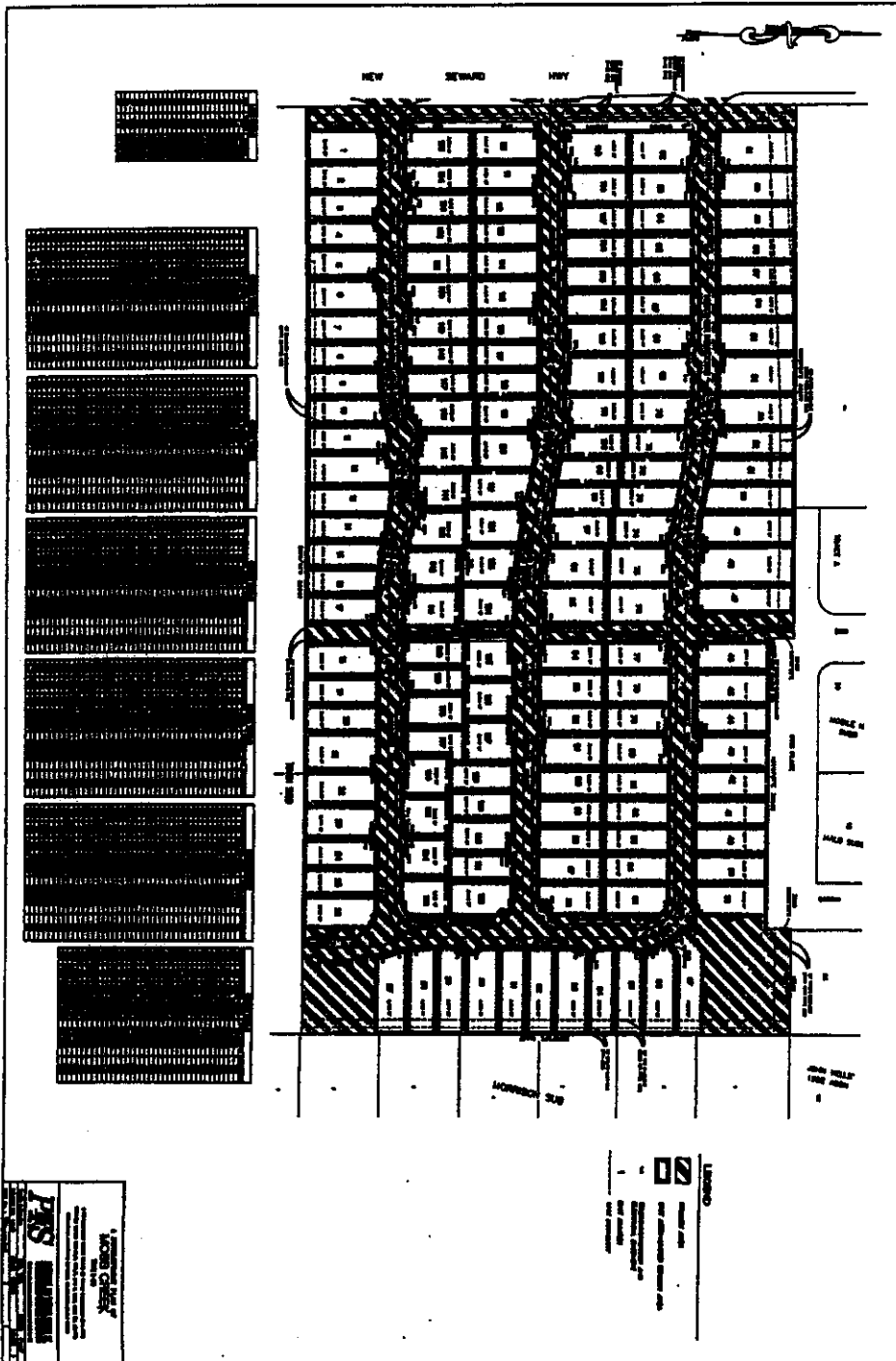
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**NOTES TO DEVELOPMENT PLAN FOR**  
**MOSS CREEK**

**NOTES**

TOYON SUBD

1. NO UNITS SHOWN ON THIS PLAN REQUIRE ADDITIONAL SNOW STORAGE AREA AS REQUIRED BY A.M.C. 21.80.330d.
2. ALL UNITS SHALL BE SEEDED BY HOMEOWNER WITHIN ONE YEAR OF OCCUPANCY.
3. BUILDINGS ARE NOT TO EXCEED 40 PERCENT OF SITE AREA, AS REQUIRED BY AMC 21.40.050.H.
4. THE BUILDING FOOTPRINTS GIVEN BELOW ARE POSSIBLE FOOTPRINTS TO BE USED. THEY MAY BE ALTERED OR CHANGED BY THE DEVELOPER AS LONG AS THE REQUIREMENTS SET FORTH IN THE SITE PLAN, ON FILE AT THE MUNICIPALITY OF ANCHORAGE, ARE MET.
5. ALL UNIT AREA NOT DEVOTED TO BUILDINGS SHALL BE DEEMED USABLE YARD.
6. THIS PARCEL IS BEING DEVELOPED UNDER THE COMMON INTEREST OWNERSHIP ACT AS 34.08.
7. COMMON AREAS INCLUDE PARKS, PATHWAYS, SIDEWALKS, CURB, AND PAVED STREET AREAS. (SEE SHEET 3)
8. THE FIRST 7.5' BEHIND THE CURB AND/OR SIDEWALK, EXCLUDING THE PRIVATE DRIVEWAY, IS A DESIGNATED SNOW STORAGE AREA. SPINELLI PARKS NO.1 AND NO.2 WILL ALSO BE SNOW STORAGE AREAS.  
EXCESS SNOW WILL BE HAULED TO AN APPROVED SNOW DISPOSAL SITE.
9. THE HOMEOWNERS ASSOCIATION HAS AUTHORITY TO ACCESS ALL STORM DRAIN FACILITIES FOR CONSTRUCTION, OPERATION, AND MAINTENANCE.
10. THE HOMEOWNERS ASSOCIATION HAS AUTHORITY TO PLANT AND MAINTAIN LANDSCAPING IN THE LANDSCAPE AREAS SHOWN HEREON.
11. DRIVEWAYS AND GARAGES SHALL BE USED FOR PARKING PASSENGER VEHICLES ONLY AND NOT USED FOR STORAGE OF ANY KIND.
12. ALL PHASES SHOWN HERE ON ARE PLANNED FOR FUTURE CONSTRUCTION.
13. UNITS 47-61, 62-76, 95-109, AND 110-124 BUILT THIS YEAR. THE REMAINING UNITS WILL BE BUILT AT A LATER DATE-NEED NOT BE BUILT.
14. THIS IS NOT A PLAT AS DEFINED BY ANCHORAGE MUNICIPAL CODE (AMC). IT IS AN ACCOMPANYING PLAN PURSUANT TO ALASKA STATUTE (AS) 34.08.170, PLATS AND PLANS. THIS PLAN DOES NOT CONSTITUTE A LEGAL SUBDIVISION AS DEFINED BY AMC 21 NOR SHOULD IT BE USED TO ESTABLISH THE BOUNDARIES OF TRACT 2E, TOYON SUBDIVISION OR ANY OTHER LEGALLY SUBDIVIDED PARCEL. THE INTENT OF THIS PLAN IS TO SHOW THE BOUNDARIES OF THE UNITS, EASEMENTS, ALONG WITH THE IMPROVEMENTS, BOTH EXISTING AND CONTEMPLATED, OF THE MOSS CREEK COMMON INTEREST COMMUNITY.
15. THERE ARE PLANS ON FILE WITH THE ANCHORAGE WATER AND WASTEWATER UTILITY (AWWU PSD1-125), DEPARTMENT OF PUBLIC WORKS, BUILDING SAFETY (PW PERMIT# 01-5976), ENSTAR, ALASKA COMMUNICATIONS SYSTEMS (ACS), GCI, AND CHUGACH ELECTRICAL ASSOCIATION (CEA) THAT DETAIL THE IMPROVEMENTS THAT WERE REQUIRED TO BE CONSTRUCTED BY THE MUNICIPALITY OF ANCHORAGE AND VARIOUS UTILITY COMPANIES DURING THE DEVELOPMENT OF THIS COMMON INTEREST COMMUNITY.
16. ALL PROPERTY WITHIN THIS DEVELOPMENT IS EITHER COMMON AREA OR LIMITED COMMON AREA.



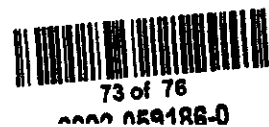
72 of 76  
2002-059186-0



EXHIBIT C

TABLE OF ALLOCATED INTERESTS

| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 47              | 1.66%                          | 1                               |
| 48              | 1.66%                          | 1                               |
| 49              | 1.66%                          | 1                               |
| 50              | 1.66%                          | 1                               |
| 51              | 1.66%                          | 1                               |
| 52              | 1.66%                          | 1                               |
| 53              | 1.66%                          | 1                               |
| 54              | 1.66%                          | 1                               |
| 55              | 1.66%                          | 1                               |
| 56              | 1.66%                          | 1                               |
| 57              | 1.66%                          | 1                               |
| 58              | 1.66%                          | 1                               |
| 59              | 1.66%                          | 1                               |
| 60              | 1.66%                          | 1                               |
| 61              | 1.66%                          | 1                               |
| 62              | 1.66%                          | 1                               |
| 63              | 1.66%                          | 1                               |
| 64              | 1.66%                          | 1                               |
| 65              | 1.66%                          | 1                               |
| 66              | 1.66%                          | 1                               |
| 67              | 1.66%                          | 1                               |
| 68              | 1.66%                          | 1                               |
| 69              | 1.66%                          | 1                               |
| 70              | 1.66%                          | 1                               |
| 71              | 1.66%                          | 1                               |
| 72              | 1.66%                          | 1                               |
| 73              | 1.66%                          | 1                               |
| 74              | 1.66%                          | 1                               |
| 75              | 1.66%                          | 1                               |
| 76              | 1.66%                          | 1                               |
| 95              | 1.66%                          | 1                               |
| 96              | 1.66%                          | 1                               |
| 97              | 1.66%                          | 1                               |
| 98              | 1.66%                          | 1                               |
| 99              | 1.66%                          | 1                               |
| 100             | 1.66%                          | 1                               |
| 101             | 1.66%                          | 1                               |
| 102             | 1.66%                          | 1                               |
| 103             | 1.66%                          | 1                               |
| 104             | 1.66%                          | 1                               |



|     |       |   |
|-----|-------|---|
| 105 | 1.66% | 1 |
| 106 | 1.66% | 1 |
| 107 | 1.66% | 1 |
| 108 | 1.66% | 1 |
| 109 | 1.66% | 1 |
| 110 | 1.66% | 1 |
| 111 | 1.66% | 1 |
| 112 | 1.66% | 1 |
| 113 | 1.66% | 1 |
| 114 | 1.66% | 1 |
| 115 | 1.66% | 1 |
| 116 | 1.66% | 1 |
| 117 | 1.66% | 1 |
| 118 | 1.66% | 1 |
| 119 | 1.66% | 1 |
| 120 | 1.66% | 1 |
| 121 | 1.66% | 1 |
| 122 | 1.66% | 1 |
| 123 | 1.66% | 1 |
| 124 | 1.66% | 1 |

---

|               |                |           |
|---------------|----------------|-----------|
| <b>TOTAL:</b> | <b>100.00%</b> | <b>60</b> |
|---------------|----------------|-----------|



## EXHIBIT D

### EASEMENTS, COVENANTS AND/OR LICENSES

1. Reservations and exceptions as contained in the U.S. Patent.
2. Taxes and/or assessments, if any, due to the Municipality of Anchorage.
3. Right of Way Easement, including terms and provisions thereof, granted to Chugach Electric Association, Inc., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone distribution line or system, by instrument recorded July 25, 1952, in Book 76 at Page 108. (Blanket easement)

Release of General Right of Way with Reservation of Specific Easement, and the terms and conditions thereof, recorded July 23, 1970, in Mis. Book 191 at Page 436. (Now Affects in east 10 feet)

4. Right of Way Easement, including terms and provisions thereof, granted to Chugach Electric Association, Inc., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone distribution line or system, by instrument recorded September 29, 1952, in Book 79 at Page 354. (Blanket Easement)

Release of General Right of Way with Reservation of Specific Easement, and the terms and conditions therefore, recorded July 23, 1970, in Misc. Book 191 at Page 437. (Now Affects the east 20 feet)

5. Easements as dedicated and shown on the plat of said subdivision.
6. Right of Way Easement, including the terms and provisions thereof, granted to th City of Anchorage, and its assigns and/or successors in interest, to construct, operate and maintain a telephone distribution line or system, by instrument recorded on August 13, 1973, in Misc. Book 218 at Page 270. (Affects the west 10 feet)
7. Easement for Sewer lines and appurtenances thereto granted to the Greater Anchorage Area Borough, recorded March 21, 1974, in Misc. Book 224 at Page 372. (See instrument for area affected)



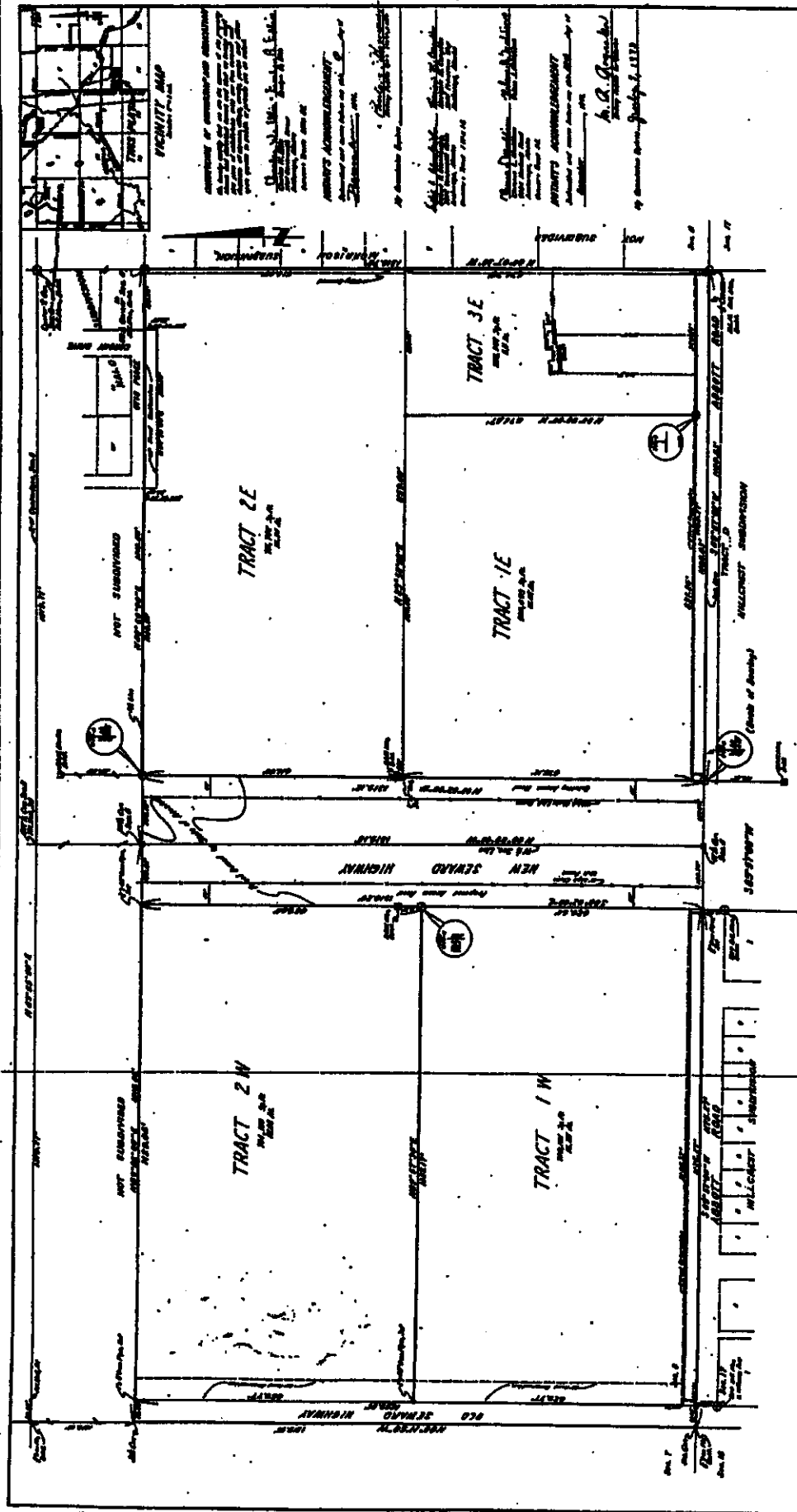
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8. Easement for Sewer lines and appurtenances thereto granted to the Greater Anchorage Area Borough, recorded July 2, 1975, in Misc. Book 30 at Page 909. (See instrument for area affected)
9. Easement for Sewer lines and appurtenances thereto granted to the Anchorage, a municipal corporation, recorded February 14, 1977, in Book 167 at Page 372. (Affects the south 10 feet of the east 459.25 feet of the west 649.25 feet)
10. Easement for Water lines and appurtenances thereto granted to the Anchorage, a municipal corporation, recorded April 9, 1987, in Book 1558 at Page 932. (See document for area affected)
11. Easement, including terms and provisions thereof, granted to Anchorage d/b/a Anchorage Water and Wastewater Utility, to construct, erect, operate and maintain sanitary sewer lines for the disposal of wastes, recorded November 29, 1999, in Book 3569 at Page 225. (Affect East 235 feet of the South 40 feet of Tract A, Lake Otis Acres) (Plat No. 83-138)
12. Unrecorded Subdivision Agreement, including the terms and provisions thereof, between Municipality of Anchorage and Meadow View, LLC, as disclosed by notice recorded October 5, 2001, under Serial Number 200-067393-0.
13. Deed of Trust, including the terms and provisions thereof conditions, to secure an indebtedness in the amount of \$1,072,500.00, with Toyon Development, LLC as Trustor, Stewart Title of Alaska as Trustee, and Northrim Bank as Beneficiary, dated July 19, 2001, and recorded July 20, 2001, in Book 3896 at Page 480.



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**TOYON SUBDIVISION**

Map No. 1

|              |                  |
|--------------|------------------|
| Tract 1E     | 10.00 AC.        |
| Tract 1W     | 10.00 AC.        |
| Tract 2E     | 10.00 AC.        |
| Tract 2W     | 10.00 AC.        |
| Tract 3E     | 10.00 AC.        |
| Tract 3W     | 10.00 AC.        |
| <b>Total</b> | <b>60.00 AC.</b> |

**7/1-325**

**PLAT 1**

**TOYON SUBDIVISION**

**7/1-325**

**NOTICE OF SALE**

**TOYON SUBDIVISION**

**7/1-325**

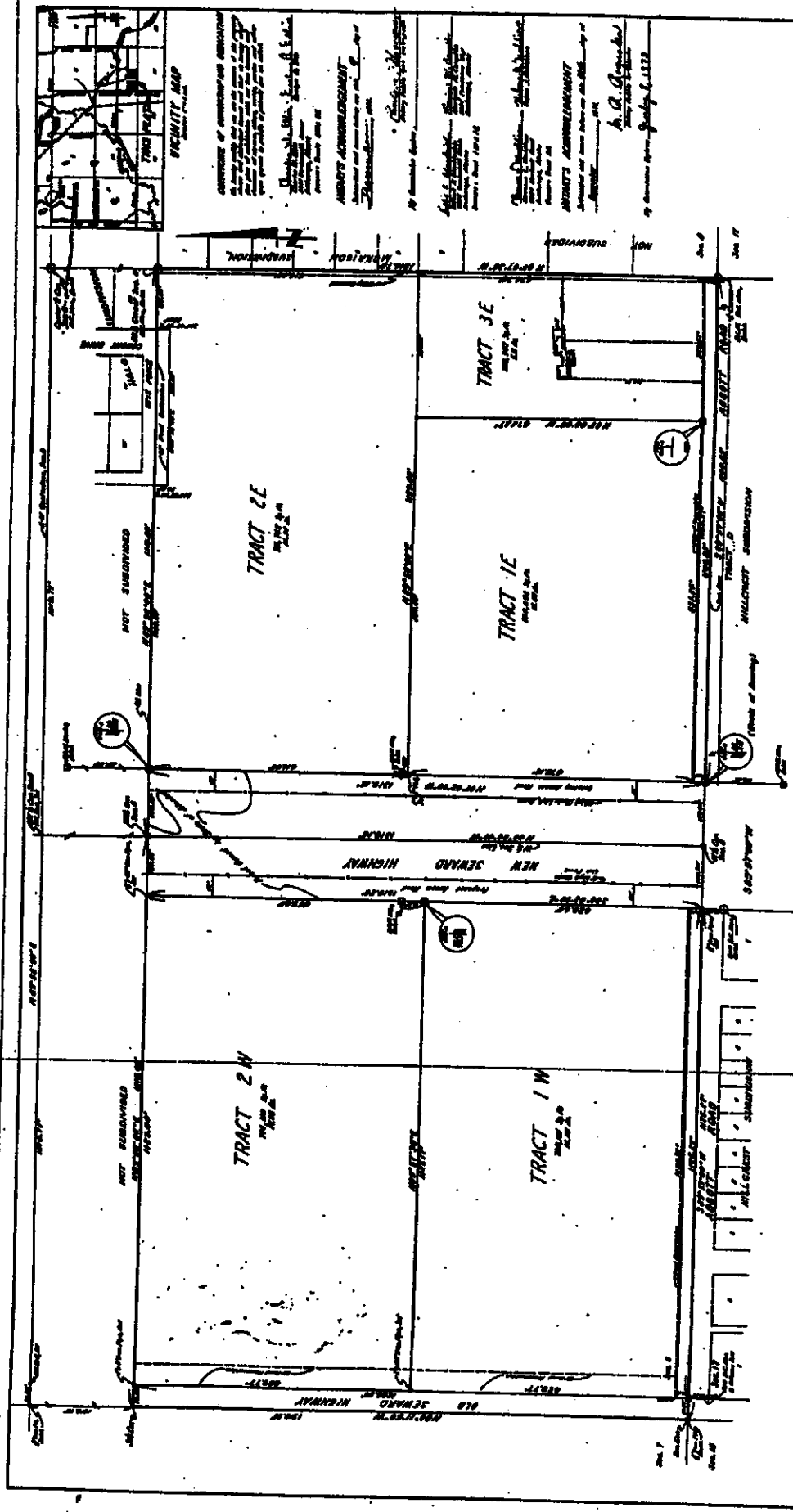
**PLAT 1**

**TOYON SUBDIVISION**

**7/1-325**



Prepared by [Name]



71-527



LEGEND

- 1. 100.00' x 100.00' (1.00 acre)
- 2. 100.00' x 100.00' (1.00 acre)
- 3. 100.00' x 100.00' (1.00 acre)
- 4. 100.00' x 100.00' (1.00 acre)
- 5. 100.00' x 100.00' (1.00 acre)

TOYON SUBDIVISION

PLAT MAP

71-527

APPROVED FOR RECORDING

DATE OF RECORDING

RECORDED

| TRACT    | ACRES | OWNER             |
|----------|-------|-------------------|
| TRACT 1W | 1.00  | TOYON SUBDIVISION |
| TRACT 2W | 1.00  | TOYON SUBDIVISION |
| TRACT 1E | 1.00  | TOYON SUBDIVISION |
| TRACT 2E | 1.00  | TOYON SUBDIVISION |
| TRACT 3E | 1.00  | TOYON SUBDIVISION |

**RECEIVED**

**JUL 03 2002**

**ARTICLES OF INCORPORATION OF  
MOSS CREEK HOMEOWNERS ASSOCIATION**

**BANKING, SECURITIES  
& CORPORATIONS**

We, the undersigned, being natural persons over the age of nineteen (19) years, desiring to form a non-profit corporation pursuant to the Alaska Non-profit Corporation Act, do hereby certify as follows:

**ARTICLE I  
NAME**

The name of this corporation is MOSS CREEK HOMEOWNERS ASSOCIATION (hereinafter, "Association").

**ARTICLE II  
PURPOSES**

The purposes for which the corporation is formed are as follows:

1. The general and primary purposes are to provide for maintenance, preservation and architectural control and enforcement of covenants, conditions and restrictions of a subdivision located in the Municipality of Anchorage, Alaska, under the terms of the Declaration recorded for Moss Creek.

2. The specific purposes and powers are:

(a) To promote the health, safety and welfare of the owners and residents within said subdivision.

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association arising from the Declaration applicable to the property described above, including architectural review of proposed improvements.

(c) To fix, levy, collect and enforce payment by lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the

conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(d) To have and to exercise any and all powers, rights and privileges which a corporation organized under the non-profit corporation law of the State of Alaska may now or hereafter have or exercise.

(e) To act in the capacity of principal, agent, joint venturer, partner or otherwise.

The foregoing statements of purpose shall be construed as a statement both of purposes and of powers, and purposes and powers in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. Notwithstanding any of the above statements or purposes and powers, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

### **ARTICLE III** **DURATION**

The duration of the Association shall be perpetual.

### **ARTICLE IV** **NON-PROFIT EXISTENCE**

The Association shall be a non-profit corporation, without shares of stock.

### **ARTICLE V** **QUALIFICATION OF MEMBERS**

The authorized number and qualifications of members of the Association, voting and other rights and privileges of members, and their liability for dues and



assessments and the method of collection thereof, shall be as set forth in the Bylaws.

**ARTICLE VI**  
**REGISTERED OFFICE**

The initial registered office of the corporation shall be located at 9210 Vanguard Drive, Suite 102, Anchorage, Alaska 99507.

**ARTICLE VII**  
**REGISTERED AGENT**

The initial registered agent of the corporation shall be Charles L. Spinelli, whose address is the same as the registered office set forth above.

**ARTICLE VIII**  
**INITIAL BOARD AND INCORPORATORS**

The initial Board of Directors shall consist of three (3) persons, and said number may be changed by a duly adopted provision of or amendment to the Bylaws, except that in no event may the subsequent number of Directors be less than three. The name and address of the persons who shall serve as incorporators and initial Directors until their successors shall be elected and qualified are as follows:

| <u>Name</u>            | <u>Address</u>  |
|------------------------|---|
| Charles L. Spinelli    | 9210 Vanguard Drive, Suite 102<br>Anchorage, Alaska 99507 |
| Pamela Woodke          | 9210 Vanguard Drive, Suite 102<br>Anchorage, Alaska 99507 |
| Jacqueline M. Spinelli | 9210 Vanguard Drive, Suite 102<br>Anchorage, Alaska 99507 |

**ARTICLE IX**  
**LIMITATION OF DIRECTORS' LIABILITY**

To the full extent permitted by law and subject to the limitations expressly stated in AS 10.20.151(d), no director of this corporation shall have any personal liability to the corporation for monetary damages for any breach or alleged breach of the director's fiduciary duty to the corporation.

**ARTICLE X**  
**INDEMNIFICATION**

The corporation has the power to indemnify, and to purchase and maintain insurance for its directors, officers, trustees, employees, and other persons and agents, and (without limiting the generality of the foregoing) shall indemnify its directors, against all liability, judgments, damages, fines, settlements and expenses arising from or in connection with service for, employment by, or other affiliation with this corporation or other firms or entities to the maximum extent permitted by law.

**ARTICLE XI**  
**AMENDMENT TO ARTICLES AND BYLAWS**

Amendment of these Articles shall require the consent of at least sixty-six and two-thirds percent (66-2/3%) of the Unit Owners' vote as defined in the Bylaws. Amendment of the Bylaws to be adopted hereunder shall be accomplished by the consent of not less than fifty percent (50%) of the Unit Owners' vote of the Unit Owners present at a meeting at which a quorum is present, as defined in the Bylaws.


**ARTICLE XII**  
**DISTRIBUTION OF ASSETS**

In the event the Association is dissolved or liquidated as provided by law, the assets, if any, will be distributed to each owner in the same percentage that that Owner's membership constitutes in the Association.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and in the execution of these Articles of Incorporation, in duplicate, this \_\_\_\_ day of July, 2002.

Name and Signature

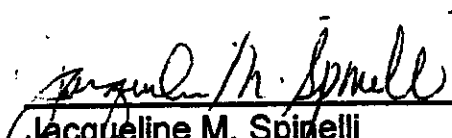
Address

  
\_\_\_\_\_  
Charles L. Spinelli

9210 Vanguard Drive, Suite 102  
Anchorage, Alaska 99507

  
\_\_\_\_\_  
Pamela Woodke

9210 Vanguard Drive, Suite 102  
Anchorage, Alaska 99507

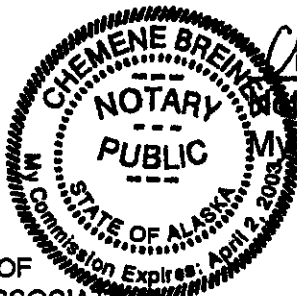
  
\_\_\_\_\_  
Jacqueline M. Spinelli


9210 Vanguard Drive, Suite 102  
Anchorage, Alaska 99507

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

On this 3rd day of July, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared CHARLES L. SPINELLI, to me known and known to me to be the person named in the foregoing, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

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

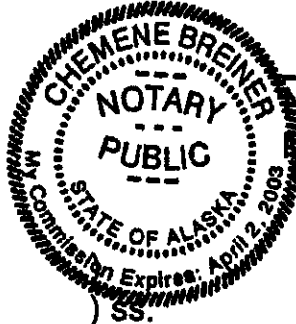


  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: 4/2/2003

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On this 3rd day of July, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **PAMELA WOODKE**, to me known and known to me to be the person named in the foregoing, and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

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

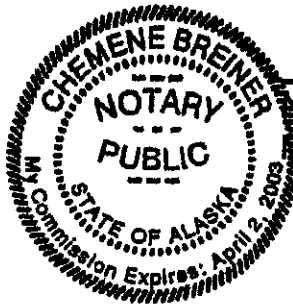


Chemene Breiner  
Notary Public in and for Alaska  
My Commission Expires: 4/2/2003

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On this 3rd day of July, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **JACQUELINE M. SPINELLI**, to me known and known to me to be the person named in the foregoing, and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

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



Chemene Breiner  
Notary Public in and for Alaska  
My Commission Expires: 4/2/2003

ANCHORAGE RECORDING DISTRICTDECLARANT'S AMENDMENT TO THE DECLARATION FOR  
MOSS CREEK

CC

Toyon LLC, an Alaska limited liability company, Declarant of the Declaration for Moss Creek, dated August 27, 2002, and recorded August 29, 2002, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, and identified by document identification number 2002-059186-0, pursuant to AS 34.08.250 and Article 16 of the Declaration, and as present owner of units in the Common Interest Community, by this Amendment adds a "Special HUD Provision" as a separate Section to the Declaration.

Section 1. By this Amendment, Sections 6.9 through 6.13 of the Declaration are deleted in their entirety, and replaced by the following Sections 6.9 through 6.14:

Section 6.9 SPECIAL HUD PROVISION.

For the period of Declarant control of the Association, Declarant shall be considered to have the equivalent of a Class B membership, as defined in the regulations of the U.S. Department of Housing and Urban Development (HUD) on planned unit developments (PUDs). Annexation of additional properties, dedication of the Common Elements, and amendment of this Declaration shall require HUD/VA approval so long as Declarant is in control of the Association.

Section 6.10 TRANSFERENCE OF DECLARANT RIGHTS.

Declarant may transfer any and all rights reserved by this Declaration to a transferee Declarant pursuant to AS 34.08.350.

Section 6.11 LIMITATIONS.

(a) The Declarant or Affiliate of Declarant may not bind the Association to any management contract, employment contract, lease of facilities, licenses, or other contracts or leases unless the Association has the right of termination thereof, exercisable without penalty with not more than ninety (90) days' notice to the other party.

(b) Unless Declarant has previously terminated its Special Declarant Rights by recorded instrument or unless sooner terminated by the Act, any Special Declarant Right, except for Development Rights, may be exercised by the Declarant so long as: (1) the Declarant is obligated under any warranty or obligation, owns any Units, or has any Security Interest in any Units; or (2) for twenty (20) years after recording the original Declaration, as long as Declarant continues to be obligated under any warranty or obligation, own any Units, or continues to have any Security Interest in any Units.

Section 6.12 CONSTRUCTION OF MAILBOXES.

Declarant reserves the right and has an easement on any portion of the Common Interest Community to construct centralized mailbox facilities for the Units and any necessary appurtenances.

Section 6.13 GOVERNMENTAL INTERESTS.

So long as the Declarant owns any Property described on Exhibit A or added by amendment to the Common Interest Community, the Declarant may designate sites within the Properties for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may include Common Elements.



Section 6.14 CONFLICT.

If any provisions of this Article conflict with other provisions of this Declaration, this Article shall control.

Section 2. Attached to, and recorded contemporaneously with, this Amendment is a revised "Table of Contents," which is renumbered by adding of the "Special HUD Provision" as a separate Section to the Declaration.

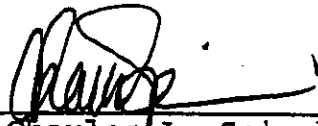
Section 3. All other provisions of the Declaration not expressly amended hereby remain in full force and effect as originally recorded, unless amendment must be implied to obtain consistency with this Amendment.

Section 4. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Declaration.

Section 5. If any term, covenant or condition of this Amendment is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Amendment shall be construed as if such invalid or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, Declarant, Toyon LLC, has caused this Amendment to be executed this 11 day of September, 2002.

TOYON, LLC  
BY: SPINELL HOMES, INC.  
MEMBER

By:   
Charles L. Spinelli  
President

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 11 day of September, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared CHARLES L. SPINELLI, President





**- ANCHORAGE RECORDING DISTRICT -**

**AMENDMENT TO THE DECLARATION  
FOR  
MOSS CREEK  
(Adding Phase 2, or 44 Additional Units,  
and Revising Phasing Schedule)**

Toyon, LLC, an Alaska limited liability company, Declarant of the Declaration for Moss Creek, dated August 27, 2002, recorded August 29, 2002, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, and identified by document identification number 2002-059186-0, pursuant to AS 34.08.180 and AS 34.08.250, and Declarant's reserved rights under Article 6 of the Declaration, by this Amendment revises Section 6.3, "Phasing of Development Rights," (by revising Phase 2 and adding a Phase 3), and adds Phase 2, or forty-four (44) additional Units, to the jurisdiction of the Moss Creek Homeowners Association and the Declaration.

The Common Interest Community of Moss Creek presently consists of sixty (60) Units: Units 47 through 76, and Units 95 through 124.

Section 1. In revision of the phasing of Declarant's development rights, Section 6.3 of the Declaration is hereby deleted in its entirety and replaced by the following:

**Section 6.3. PHASING OF DEVELOPMENT RIGHTS.**

**Declarant will exercise its Development Rights for adding Units in phases as shown on the Plans. Declarant completed or anticipates phased development as follows:**

| <u>Phase</u> | <u>Unit Nos.</u>                | <u>Estimated Completion</u> |
|--------------|---------------------------------|-----------------------------|
| Phase 1:     | Units 47-76 and<br>Units 95-124 | completed                   |



|                 |   |             |
|-----------------|---|-------------|
| <b>Phase 2:</b> | <b>Units 29-46,<br/>Units 77-94 and<br/>Units 125-132</b> | <b>2004</b> |
| <b>Phase 3:</b> | <b>Units 1-28 and<br/>Units 133-155</b>                   | <b>2005</b> |

**No additional units will be added to the Common Interest Community. Declarant does not guarantee that the Units identified in the anticipated phases will be built.**

**Section 2.** By this Amendment, Phase 2, or the following forty-four (44) additional Units, are submitted to the jurisdiction of the Moss Creek Homeowners Association and the Declaration: Phase 2, containing Units 29 through 46; Units 77 through 94; and Units 125 through 132, Moss Creek.

**Section 3.** Pursuant to Article 7 of the Declaration, Revised Exhibit "C" (Table of Allocated Interests) is attached to this Amendment and hereby incorporated by reference.

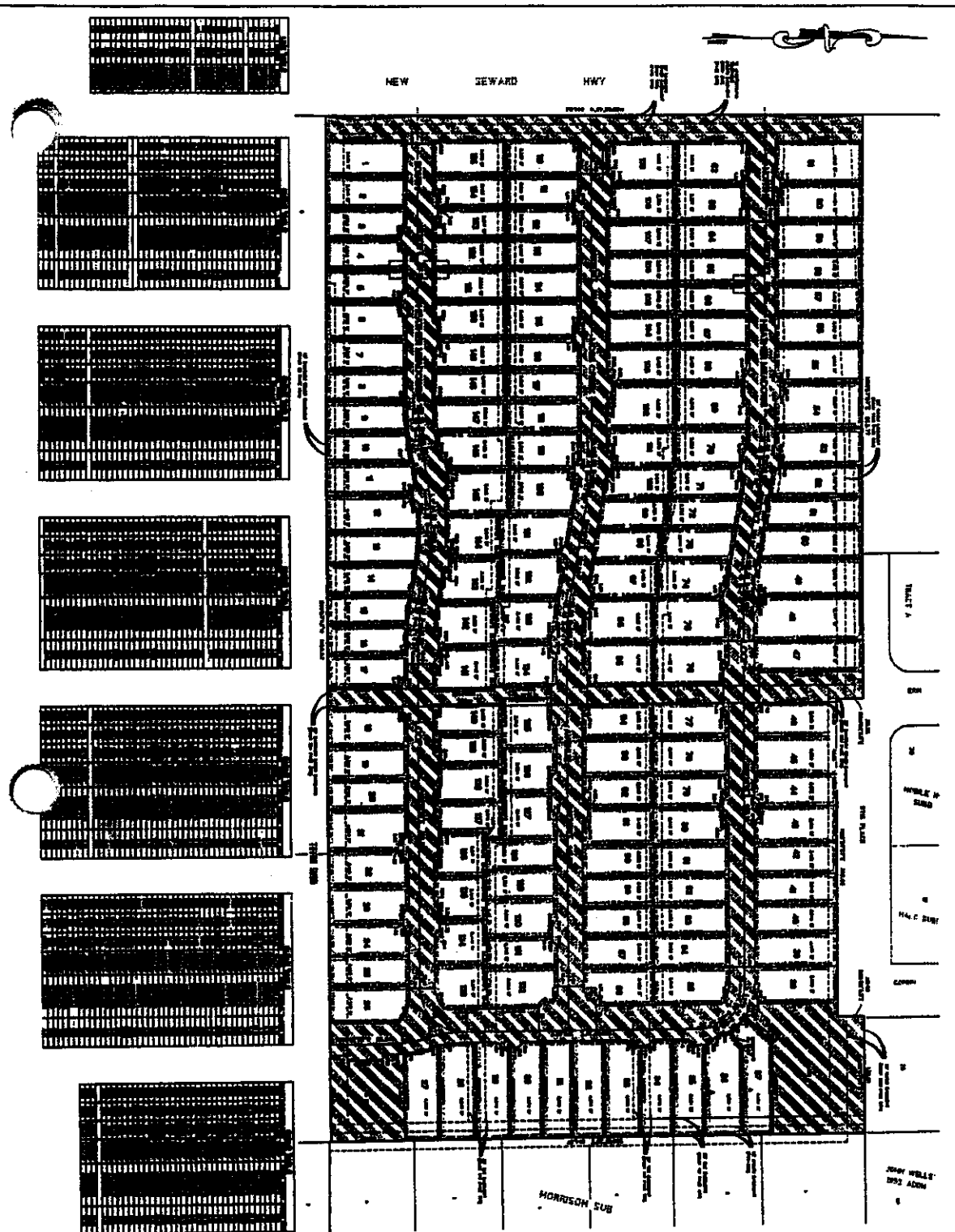
**Section 4.** Pursuant to Article 16 of the Declaration, the Plans attached to this Amendment are hereby added to Exhibit "B" to the Declaration and are hereby incorporated by reference.

**Section 5.** Capitalized terms used herein without definition shall have the meaning ascribed to them in the Declaration.

**Section 6.** All provisions of the Declaration not expressly amended herein shall continue in full force and effect unless amendment must be implied for consistency with the amendments contained herein.

**Section 7.** If any term, covenant or condition of this Amendment is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Amendment shall be construed as if such invalid or unenforceable provision had never been contained herein.







CERTIFICATE (Moss Creek)

I, BRUCE BROWN CERTIFY THAT THIS DEVELOPMENT PLAN MEETS THE REQUIREMENTS OF AS 34.08.170 IN THE FOLLOWING MANNER:

AS 34.08.170.(b)

- 1) THIS DEVELOPMENT PLAN IS THE "GENERAL SCHEMATIC MAP OF THE ENTIRE COMMON INTEREST COMMUNITY".
- 2) ALL 16.093 ACRES SHOWN HEREON ARE PART OF THE MOSS CREEK COMMON INTEREST COMMUNITY AND THE LOCATION AND DIMENSIONS OF THE EXISTING IMPROVEMENTS AT THIS TIME ARE AS SHOWN.
- 3) ALL UNITS ARE DECLARED AT THIS TIME.
- 4) ALL ENCROACHMENTS AT THIS TIME HAVE BEEN SHOWN ON PLAT P71-328 AND THIS DEVELOPMENT PLAN.
- 5) THE LOCATION AND TYPE OF EASEMENTS ENCUMBERING THIS COMMON INTEREST COMMUNITY ARE IDENTIFIED HEREON AND ON PLAT P71-328.
- 6) VERTICAL UNIT BOUNDARIES WITHIN THIS COMMON INTEREST COMMUNITY ARE DESCRIBED HEREON AS IMAGINARY VERTICAL PLANES BETWEEN THE UPPER AND LOWER HORIZONTAL UNIT BOUNDARIES AROUND THE PERIMETER OF THE UNIT AREA OR UNIT AND HOMESTE.
- 7) HORIZONTAL UNIT BOUNDARIES WITHIN THIS COMMON INTEREST COMMUNITY ARE DESCRIBED HEREON AS TWO IMAGINARY HORIZONTAL PLANES WITHIN THE VERTICAL UNIT BOUNDARIES; THE LOWER PLANE BEING ABOVE AND CONTIGUOUS WITH THE LAND; THE UPPER PLANE BEING 50.00 FEET ABOVE THE LOWER PLANE.
- 8) THERE IS NO "LEASEHOLD REAL ESTATE" WITHIN THIS COMMON INTEREST COMMUNITY.
- 9) THERE ARE NO "NON-CONTIGUOUS PARCELS" WITHIN THIS COMMON INTEREST COMMUNITY.
- 10) THE "UNITED COMMON ELEMENTS" WITHIN THIS COMMON INTEREST COMMUNITY ARE DEPICTED HEREON AS EVERYTHING BELOW THE LOWER HORIZONTAL UNIT BOUNDARY.
- 11) ALL "MATTERS CUSTOMARILY SHOWN ON LAND SURVEYS" HAVE BEEN SHOWN EITHER ON THIS PLAN OR PLAT P71-328.

AS 34.08.170.(c)

THIS DEVELOPMENT PLAN SHOWS ALL "CONTEMPLATED IMPROVEMENTS" AND THEY ARE IDENTIFIED IN NOTE 13, SHEET 2 AS "NEED NOT BE BUILT".


AS 34.08.170.(d.1) through (d.3)  
See above 6 and 7

AS 34.08.170.(e)  
See 7 above

AS 34.08.170.(f) N/A

AS 34.08.170.(g)  
THIS DEVELOPMENT PLAN IS STAMPED BY THE UNDERSIGNED, AN INDEPENDENT REGISTERED LAND SURVEYOR UNDER CONTRACT WITH THE DECLARANT TO PROVIDE PLATS, PLANS AND OTHER RELATED SERVICES.

AS 34.08.170.(h) N/A

  
BRUCE BROWN, LS 7834

10/5/04  
DATE

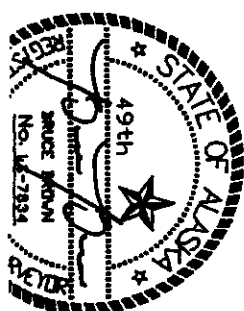


EXHIBIT B  
PAGE 5 of 8

**ADDENDUM TO CERTIFICATE FOR DEVELOPMENT PLAN  
OF MOSS CREEK**

This Addendum to Certificate for Development Plan of Moss Creek revises two notes on the Certificate for the Development Plan of Moss Creek, dated October 5, 2004, for the purpose of clarification.

The following notes are hereby revised to read as follows:

- 7) **Horizontal Unit boundaries within this common interest community are described hereon as immediately above the surface of land (as such term is used by municipal platting laws) and an imaginary plane parallel with the land at the maximum height above the land allowed by the height restrictions of the applicable laws.**
- 10) **Limited Common Elements within this common interest community are depicted hereon as the land (as such term is used by municipal platting laws) and everything below the land within the Unit Area, or Unit and Home Site as defined in the Declaration, except for community water and sewage lines.**

After note 11), a final unnumbered note for clarification is hereby added to read as follows:

**The Unit Area, or Unit and Home Site as defined in the Declaration, lies within the airspace, and improvements within the airspace (above the land, as such term is used by municipal platting laws).**

EXHIBIT B  
PAGE 6 of 8



9 of 15

2004-078337-0

## NOTES (Moss Creek)

1. NO UNITS SHOWN ON THIS PLAN REQUIRE ADDITIONAL SNOW STORAGE AREA AS REQUIRED BY A.M.C. 21.80.3304.
2. ALL UNITS SHALL BE SEED BY HOMEOWNER WITHIN ONE YEAR OF OCCUPANCY.
3. BUILDINGS ARE NOT TO EXCEED 40 PERCENT OF SITE AREA, AS REQUIRED BY AMC 21.40.0504.
4. THE BUILDING FOOTPRINTS GIVEN BELOW ARE POSSIBLE FOOTPRINTS TO BE USED. THEY MAY BE ALTERED OR CHANGED BY THE DEVELOPER AS LONG AS THE REQUIREMENTS SET FORTH IN THE SITE PLAN, ON FILE AT THE MUNICIPALITY OF ANCHORAGE, ARE MET.
5. ALL UNIT AREA NOT DEVOTED TO BUILDINGS SHALL BE DEDICATED USABLE YARD.
6. THIS PARCEL IS BEING DEVELOPED UNDER THE COMMON INTEREST OWNERSHIP ACT AS 34.08.
7. COMMON AREAS INCLUDE PARKS, PATHWAYS, SIDEWALKS, CURB, AND PAVED STREET AREAS. (SEE SHEET 3)
8. THE FIRST 7.5' BEHIND THE CURB AND/OR SIDEWALK, EXCLUDING THE PRIVATE DRIVEWAY, IS A DESIGNATED SNOW STORAGE AREA. SPINELLI PARKS NO. 1 AND NO. 2 WILL ALSO BE SNOW STORAGE AREAS. ANY EXCESS SNOW WILL BE HALLED TO AN APPROVED SNOW DISPOSAL SITE.
9. THE HOMEOWNERS ASSOCIATION HAS AUTHORITY TO ACCESS ALL STORM DRAIN FACILITIES FOR CONSTRUCTION, OPERATION, AND MAINTENANCE.
10. THE HOMEOWNERS ASSOCIATION HAS AUTHORITY TO PLANT AND MAINTAIN LANDSCAPING IN THE LANDSCAPE AREAS SHOWN HEREON.
11. DRIVEWAYS AND GARAGES SHALL BE USED FOR PARKING PASSENGER VEHICLES ONLY AND NOT USED FOR STORAGE OF ANY KIND.
12. ALL PHASES SHOWN HERE ON ARE PLANNED FOR FUTURE CONSTRUCTION.
13. SEE SHEET 4 FOR EXISTING IMPROVEMENT ASBUILT. THE REMAINING UNITS MAY BE BUILT AT A LATER DATE, BUT NEED NOT BE BUILT.
14. THIS IS NOT A PLAY AS DEFINED BY ANCHORAGE MUNICIPAL CODE (AMC). IT IS AN ACCOMPANYING PLAN PURSUANT TO ALASKA STATUTE (AS) 34.08.170. PLAYS AND PLANS. THIS PLAN DOES NOT CONSTITUTE A LEGAL SUBDIVISION AS DEFINED BY AMC 21 NOR SHOULD IT BE USED TO ESTABLISH THE BOUNDARIES OF TRACT 2E, TOWN SUBDIVISION OR ANY OTHER LEGALLY SUBDIVIDED PARCEL. THE INTENT OF THIS PLAN IS TO SHOW THE BOUNDARIES OF THE UNITS, EASEMENTS, ALONG WITH THE IMPROVEMENTS, BOTH EXISTING AND CONTINGENT, OF THE MOSS CREEK COMMON INTEREST COMMUNITY.
15. THERE ARE PLANS ON FILE WITH THE ANCHORAGE WATER AND WASTEWATER UTILITY (AWWU PS01-125, PS04-033), DEPARTMENT OF PUBLIC WORKS, BUILDING SAFETY (PW PERMIT 01-5976), ENSTAR, ALASKA COMMUNICATIONS SYSTEMS (ACS), GCI, AND CHUGACH ELECTRICAL ASSOCIATION (CEA) THAT DETAIL THE IMPROVEMENTS THAT WERE REQUIRED TO BE CONSTRUCTED BY THE MUNICIPALITY OF ANCHORAGE AND VARIOUS UTILITY COMPANIES DURING THE DEVELOPMENT OF THIS COMMON INTEREST COMMUNITY.
16. ALL PROPERTY WITHIN THIS DEVELOPMENT IS EITHER COMMON AREA OR LIMITED COMMON AREA.
17. LANDSCAPING SHOWN HEREON PER ORIGINAL APPROVAL. SEE SHEET 4 FOR EXISTING LANDSCAPING AT THIS TIME.

EXHIBIT B  
PAGE 7 of 8



10 of 16  
2004-078337-0

## NOTES (Moss Creek)

1. SYMBOLS ARE NOT TO SCALE AND ARE SHOWN LARGER THEN TRUE MEASUREMENT AS A VISUAL AID. REFER TO RECORD DRAWINGS ON FILE WITH THE MUNICIPALITY OF ANCHORAGE FOR ACTUAL DIMENSIONS. COORDINATES SHOWN HEREON ARE TO CENTER OF STRUCTURE.
2. BUILDING COORDINATE VALUES ARE TO BUILDING FOUNDATION CORNERS. EXISTING BUILDINGS ASBUILT BY GASTALDI LAND SURVEYING.
3. EXISTING WATER, SEWER AND STORM DRAIN IMPROVEMENTS LOCATED PER CONTRACTOR REDLINES, ALL IMPROVEMENTS ARE SHOWN HEREON.
4. SOME SIDE YARD AND REAR YARD FENCES MAY HAVE BEEN ADDED SINCE INDIVIDUAL ASBUILTS DONE BY GASTALDI LAND SURVEYING. DATE OF GASTALDI LAND SURVEYING ASBUILTS 1/28/2003 THRU 8/16/2004.
5. ALL ASBUILT SURVEYS BY GASTALDI LAND SURVEYING LOCATE GRAVEL DRIVE AT TIME OF SURVEY. VISUAL INSPECTION ON 9/22/2004 CONFIRM ALL DRIVEWAYS HAVE BEEN PAVED.
6. UNITS 1-28 AND UNITS 133-155 REMAIN COVERED WITH NATURAL VEGETATION AT THIS TIME.

EXHIBIT B  
PAGE A of A

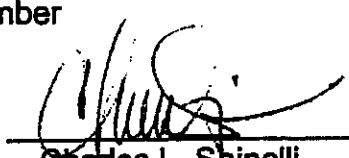


11 of 15  
2004-078337-0

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed this 8 day of October, 2004.

TOYON, LLC

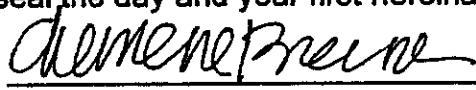
By: SPINELL HOMES, INC.  
Member

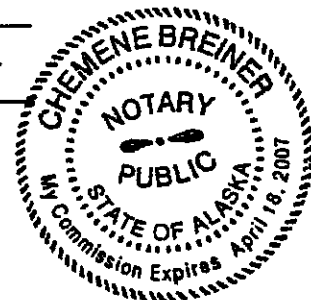
By:   
Charles L. Spinelli  
President

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on this 8 day of October, 2004, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared CHARLES L. SPINELLI, President of Spinell Homes, Inc., Member of Toyon, LLC, known to me to be the individual named herein and the individual who executed the foregoing instrument, and he acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the limited liability company for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

  
Notary Public in and for Alaska  
My Commission Expires: 4-18-07

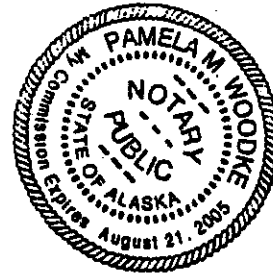




of Spinell Homes, Inc., Member of Toyon LLC, known to me to be the individual named herein and who executed the foregoing instrument, and he acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the limited liability company for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

Pamela M Woodke  
Notary Public in and for Alaska  
My Commission Expires: 8-21-05



**RETURN TO:**

John H. Tindall, Esq.  
Tindall Bennett & Shoup  
508 W. Second Avenue, Third Floor  
Anchorage, Alaska 99501







REVISED EXHIBIT C

TABLE OF ALLOCATED INTERESTS

| <u>Unit No.</u> | <u>Percentage Interest</u> | <u>Votes in Association</u> |
|-----------------|----------------------------|-----------------------------|
| 29              | 0.96%                      | 1                           |
| 30              | 0.96%                      | 1                           |
| 31              | 0.96%                      | 1                           |
| 32              | 0.96%                      | 1                           |
| 33              | 0.96%                      | 1                           |
| 34              | 0.96%                      | 1                           |
| 35              | 0.96%                      | 1                           |
| 36              | 0.96%                      | 1                           |
| 37              | 0.96%                      | 1                           |
| 38              | 0.96%                      | 1                           |
| 39              | 0.96%                      | 1                           |
| 40              | 0.96%                      | 1                           |
| 41              | 0.96%                      | 1                           |
| 42              | 0.96%                      | 1                           |
| 43              | 0.96%                      | 1                           |
| 44              | 0.96%                      | 1                           |
| 45              | 0.96%                      | 1                           |
| 46              | 0.96%                      | 1                           |
| 47              | 0.96%                      | 1                           |
| 48              | 0.96%                      | 1                           |
| 49              | 0.96%                      | 1                           |
| 50              | 0.96%                      | 1                           |
| 51              | 0.96%                      | 1                           |
| 52              | 0.96%                      | 1                           |
| 53              | 0.96%                      | 1                           |
| 54              | 0.96%                      | 1                           |
| 55              | 0.96%                      | 1                           |
| 56              | 0.96%                      | 1                           |
| 57              | 0.96%                      | 1                           |
| 58              | 0.96%                      | 1                           |
| 59              | 0.96%                      | 1                           |
| 60              | 0.96%                      | 1                           |
| 61              | 0.96%                      | 1                           |



| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 62              | 0.96%                          | 1                               |
| 63              | 0.96%                          | 1                               |
| 64              | 0.96%                          | 1                               |
| 65              | 0.96%                          | 1                               |
| 66              | 0.96%                          | 1                               |
| 67              | 0.96%                          | 1                               |
| 68              | 0.96%                          | 1                               |
| 69              | 0.96%                          | 1                               |
| 70              | 0.96%                          | 1                               |
| 71              | 0.96%                          | 1                               |
| 72              | 0.96%                          | 1                               |
| 73              | 0.96%                          | 1                               |
| 74              | 0.96%                          | 1                               |
| 75              | 0.96%                          | 1                               |
| 76              | 0.96%                          | 1                               |
| 77              | 0.96%                          | 1                               |
| 78              | 0.96%                          | 1                               |
| 79              | 0.96%                          | 1                               |
| 80              | 0.96%                          | 1                               |
| 81              | 0.96%                          | 1                               |
| 82              | 0.96%                          | 1                               |
| 83              | 0.96%                          | 1                               |
| 84              | 0.96%                          | 1                               |
| 85              | 0.96%                          | 1                               |
| 86              | 0.96%                          | 1                               |
| 87              | 0.96%                          | 1                               |
| 88              | 0.96%                          | 1                               |
| 89              | 0.96%                          | 1                               |
| 90              | 0.96%                          | 1                               |
| 91              | 0.96%                          | 1                               |
| 92              | 0.96%                          | 1                               |
| 93              | 0.96%                          | 1                               |
| 94              | 0.96%                          | 1                               |



| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 95              | 0.96%                          | 1                               |
| 96              | 0.96%                          | 1                               |
| 97              | 0.96%                          | 1                               |
| 98              | 0.96%                          | 1                               |
| 99              | 0.96%                          | 1                               |
| 100             | 0.96%                          | 1                               |
| 101             | 0.96%                          | 1                               |
| 102             | 0.96%                          | 1                               |
| 103             | 0.96%                          | 1                               |
| 104             | 0.96%                          | 1                               |
| 105             | 0.96%                          | 1                               |
| 106             | 0.96%                          | 1                               |
| 107             | 0.96%                          | 1                               |
| 108             | 0.96%                          | 1                               |
| 109             | 0.96%                          | 1                               |
| 110             | 0.96%                          | 1                               |
| 111             | 0.96%                          | 1                               |
| 112             | 0.96%                          | 1                               |
| 113             | 0.96%                          | 1                               |
| 114             | 0.96%                          | 1                               |
| 115             | 0.96%                          | 1                               |
| 116             | 0.96%                          | 1                               |
| 117             | 0.96%                          | 1                               |
| 118             | 0.96%                          | 1                               |
| 119             | 0.96%                          | 1                               |
| 120             | 0.96%                          | 1                               |
| 121             | 0.96%                          | 1                               |
| 122             | 0.96%                          | 1                               |
| 123             | 0.96%                          | 1                               |
| 124             | 0.96%                          | 1                               |
| 125             | 0.96%                          | 1                               |
| 126             | 0.96%                          | 1                               |
| 127             | 0.96%                          | 1                               |
| 128             | 0.96%                          | 1                               |
| 129             | 0.96%                          | 1                               |



| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 130             | 0.96%                          | 1                               |
| 131             | 0.96%                          | 1                               |
| 132             | 0.96%                          | 1                               |
| <hr/>           |                                |                                 |
| <b>TOTAL:</b>   | <b>100.00%</b>                 | <b>104</b>                      |

**Return To:**

John H. Tindall, Esq.  
Tindall Bennett & Shoup  
508 W. Second Avenue, Third Floor  
Anchorage, Alaska 99501



**- ANCHORAGE RECORDING DISTRICT -****AMENDMENT TO THE DECLARATION  
FOR  
MOSS CREEK****(Adding Phase 3, or 51 Additional Units)**

CC

Toyon, LLC, an Alaska limited liability company, Declarant of the Declaration for Moss Creek, dated August 27, 2002, recorded August 29, 2002, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, and identified by document identification number 2002-059186-0, pursuant to AS 34.08.180 and AS 34.08.250, and Declarant's reserved rights under Article 6 of the Declaration, by this Amendment adds Phase 2, or fifty-one (51) additional Units, to the jurisdiction of the Moss Creek Homeowners Association and the Declaration.

The Common Interest Community of Moss Creek presently consists of one hundred four (104) Units: Units 29 through 132.

Section 1. By this Amendment, Phase 3, or the following fifty-one (51) additional Units, are submitted to the jurisdiction of the Moss Creek Homeowners Association and the Declaration: Phase 3, containing Units 1 through 28; and Units 133 through 155, Moss Creek.

Section 2. Pursuant to Article 7 of the Declaration, Revised Exhibit "C" (Table of Allocated Interests) is attached to this Amendment and hereby incorporated by reference.

Section 3. Pursuant to Article 16 of the Declaration, the Plans attached to this Amendment are hereby added to Exhibit "B" to the Declaration and are hereby incorporated by reference.

Section 4. Capitalized terms used herein without definition shall have the meaning ascribed to them in the Declaration.

Section 5. All provisions of the Declaration not expressly amended herein shall continue in full force and effect unless amendment must be implied for consistency with the amendments contained herein.

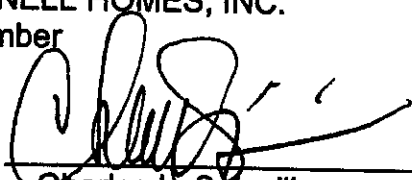


Section 6. If any term, covenant or condition of this Amendment is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Amendment shall be construed as if such invalid or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed this 7<sup>th</sup> day of December, 2005.

TOYON, LLC

By: SPINELL HOMES, INC.  
Member

By:   
Charles L. Spinelli  
President

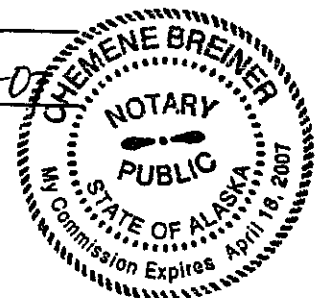
STATE OF ALASKA                     )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on this 7 day of December, 2005, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared CHARLES L. SPINELLI, President of Spinell Homes, Inc., Member of Toyon, LLC, known to me to be the individual named herein and the individual who executed the foregoing instrument, and he acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the limited liability company for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

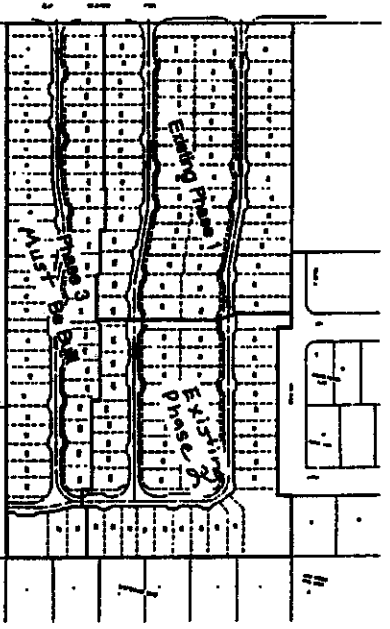


Notary Public in and for Alaska  
My Commission Expires: 4-18-07



# A DEVELOPMENT PLAN OF MOSS CREEK

- SHEET 1 COVER SHEET / CERTIFICATE
- SHEET 2 BUILDING AREAS/ TYPICAL BUILDING FOOTPRINT/ LANDSCAPE AREAS
- SHEET 3 UNIT BOUNDARY DIMENSIONS/ LIMITED COMMON AREA/ COMMON AREA
- SHEET 4 ASBUILT OF EXISTING IMPROVEMENTS



\* Phase 3: Units 1-28 AND Units 133-155

**NOTES:**

1. The owner shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.
2. The owner shall be responsible for obtaining all necessary easements and rights-of-way from the appropriate authorities.
3. The owner shall be responsible for obtaining all necessary utility easements and rights-of-way from the appropriate authorities.
4. The owner shall be responsible for obtaining all necessary environmental approvals from the appropriate authorities.
5. The owner shall be responsible for obtaining all necessary zoning approvals from the appropriate authorities.
6. The owner shall be responsible for obtaining all necessary fire department approvals from the appropriate authorities.
7. The owner shall be responsible for obtaining all necessary police department approvals from the appropriate authorities.
8. The owner shall be responsible for obtaining all necessary health department approvals from the appropriate authorities.
9. The owner shall be responsible for obtaining all necessary social services approvals from the appropriate authorities.
10. The owner shall be responsible for obtaining all necessary transportation approvals from the appropriate authorities.
11. The owner shall be responsible for obtaining all necessary education approvals from the appropriate authorities.
12. The owner shall be responsible for obtaining all necessary recreation approvals from the appropriate authorities.
13. The owner shall be responsible for obtaining all necessary cultural approvals from the appropriate authorities.
14. The owner shall be responsible for obtaining all necessary religious approvals from the appropriate authorities.
15. The owner shall be responsible for obtaining all necessary community approvals from the appropriate authorities.
16. The owner shall be responsible for obtaining all necessary neighborhood approvals from the appropriate authorities.
17. The owner shall be responsible for obtaining all necessary local government approvals from the appropriate authorities.
18. The owner shall be responsible for obtaining all necessary state government approvals from the appropriate authorities.
19. The owner shall be responsible for obtaining all necessary federal government approvals from the appropriate authorities.
20. The owner shall be responsible for obtaining all necessary international government approvals from the appropriate authorities.



**1. PRELIMINARY PLAN OF**

**MOSS CREEK**

**PREPARED BY:**

**DATE:**

**SCALE:**

**PROJECT NO.:**

**CLIENT:**



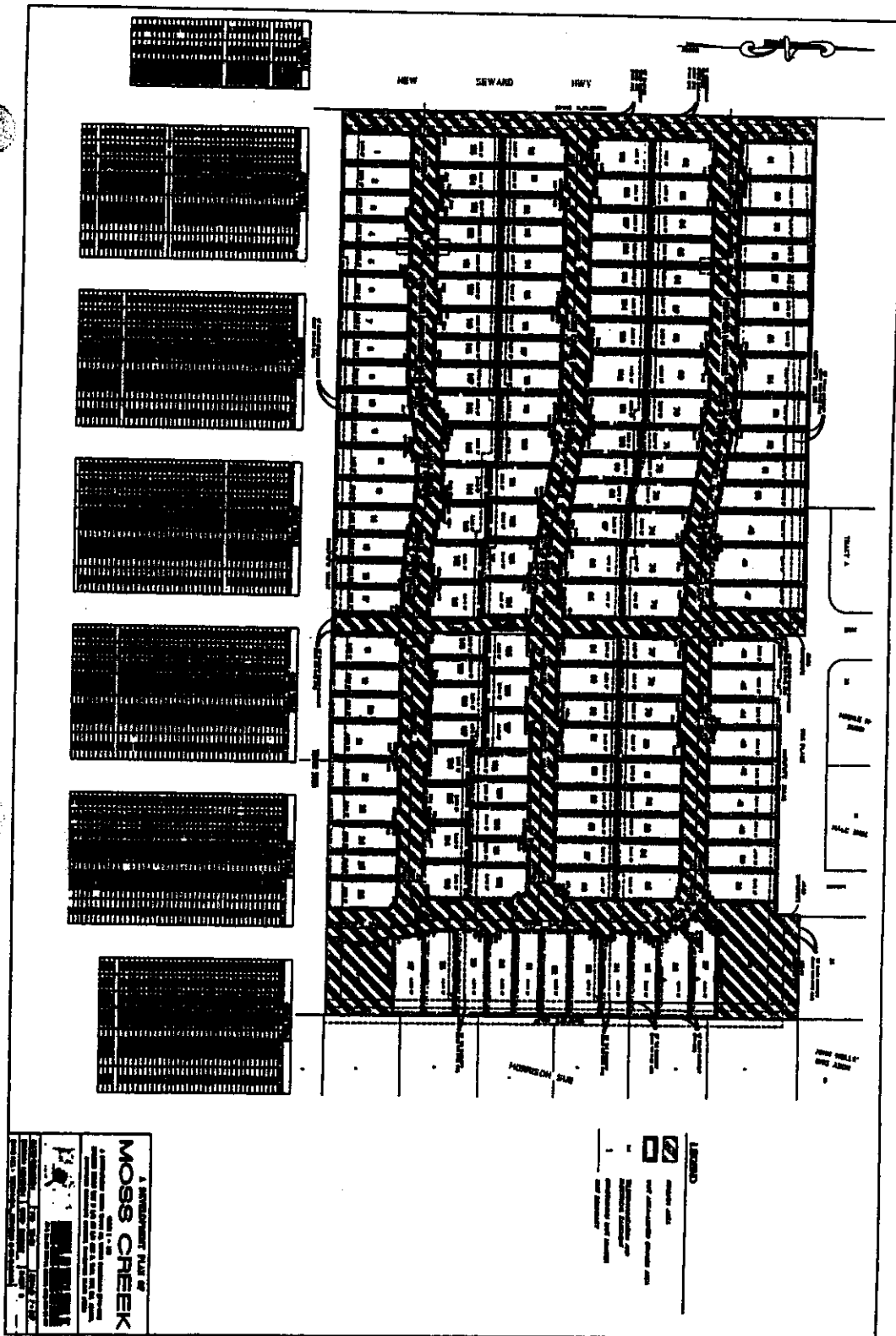


EXHIBIT B  
PAGE 3 of 4



5 of 11  
2005-088141-0



REVISED EXHIBIT C

TABLE OF ALLOCATED INTERESTS

| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 1               | 0.64%                          | 1                               |
| 2               | 0.64%                          | 1                               |
| 3               | 0.64%                          | 1                               |
| 4               | 0.64%                          | 1                               |
| 5               | 0.64%                          | 1                               |
| 6               | 0.64%                          | 1                               |
| 7               | 0.64%                          | 1                               |
| 8               | 0.64%                          | 1                               |
| 9               | 0.64%                          | 1                               |
| 10              | 0.64%                          | 1                               |
| 11              | 0.64%                          | 1                               |
| 12              | 0.64%                          | 1                               |
| 13              | 0.64%                          | 1                               |
| 14              | 0.64%                          | 1                               |
| 15              | 0.64%                          | 1                               |
| 16              | 0.64%                          | 1                               |
| 17              | 0.64%                          | 1                               |
| 18              | 0.64%                          | 1                               |
| 19              | 0.64%                          | 1                               |
| 20              | 0.64%                          | 1                               |
| 21              | 0.64%                          | 1                               |
| 22              | 0.64%                          | 1                               |
| 23              | 0.64%                          | 1                               |
| 24              | 0.64%                          | 1                               |
| 25              | 0.64%                          | 1                               |
| 26              | 0.64%                          | 1                               |
| 27              | 0.64%                          | 1                               |
| 28              | 0.64%                          | 1                               |
| 29              | 0.64%                          | 1                               |
| 30              | 0.64%                          | 1                               |
| 31              | 0.64%                          | 1                               |
| 32              | 0.64%                          | 1                               |
| 33              | 0.64%                          | 1                               |
| 34              | 0.64%                          | 1                               |
| 35              | 0.64%                          | 1                               |



| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 36              | 0.64%                          | 1                               |
| 37              | 0.64%                          | 1                               |
| 38              | 0.64%                          | 1                               |
| 39              | 0.64%                          | 1                               |
| 40              | 0.64%                          | 1                               |
| 41              | 0.64%                          | 1                               |
| 42              | 0.64%                          | 1                               |
| 43              | 0.64%                          | 1                               |
| 44              | 0.64%                          | 1                               |
| 45              | 0.64%                          | 1                               |
| 46              | 0.64%                          | 1                               |
| 47              | 0.64%                          | 1                               |
| 48              | 0.64%                          | 1                               |
| 49              | 0.64%                          | 1                               |
| 50              | 0.64%                          | 1                               |
| 51              | 0.64%                          | 1                               |
| 52              | 0.64%                          | 1                               |
| 53              | 0.64%                          | 1                               |
| 54              | 0.64%                          | 1                               |
| 55              | 0.64%                          | 1                               |
| 56              | 0.64%                          | 1                               |
| 57              | 0.64%                          | 1                               |
| 58              | 0.64%                          | 1                               |
| 59              | 0.64%                          | 1                               |
| 60              | 0.64%                          | 1                               |
| 61              | 0.64%                          | 1                               |
| 62              | 0.64%                          | 1                               |
| 63              | 0.64%                          | 1                               |
| 64              | 0.64%                          | 1                               |
| 65              | 0.64%                          | 1                               |
| 66              | 0.64%                          | 1                               |
| 67              | 0.64%                          | 1                               |
| 68              | 0.64%                          | 1                               |
| 69              | 0.64%                          | 1                               |
| 70              | 0.64%                          | 1                               |
| 71              | 0.64%                          | 1                               |
| 72              | 0.64%                          | 1                               |
| 73              | 0.64%                          | 1                               |
| 74              | 0.64%                          | 1                               |

Revised Exhibit "C" (Table of Allocated Interests)  
to Declaration for Moss Creek  
Page 2 of 5



8 of 11  
2005-088141-0

| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 75              | 0.64%                          | 1                               |
| 76              | 0.64%                          | 1                               |
| 77              | 0.64%                          | 1                               |
| 78              | 0.64%                          | 1                               |
| 79              | 0.64%                          | 1                               |
| 80              | 0.64%                          | 1                               |
| 81              | 0.64%                          | 1                               |
| 82              | 0.64%                          | 1                               |
| 83              | 0.64%                          | 1                               |
| 84              | 0.64%                          | 1                               |
| 85              | 0.64%                          | 1                               |
| 86              | 0.64%                          | 1                               |
| 87              | 0.64%                          | 1                               |
| 88              | 0.64%                          | 1                               |
| 89              | 0.64%                          | 1                               |
| 90              | 0.64%                          | 1                               |
| 91              | 0.64%                          | 1                               |
| 92              | 0.64%                          | 1                               |
| 93              | 0.64%                          | 1                               |
| 94              | 0.64%                          | 1                               |
| 95              | 0.64%                          | 1                               |
| 96              | 0.64%                          | 1                               |
| 97              | 0.64%                          | 1                               |
| 98              | 0.64%                          | 1                               |
| 99              | 0.64%                          | 1                               |
| 100             | 0.64%                          | 1                               |
| 101             | 0.64%                          | 1                               |
| 102             | 0.64%                          | 1                               |
| 103             | 0.64%                          | 1                               |
| 104             | 0.64%                          | 1                               |
| 105             | 0.64%                          | 1                               |
| 106             | 0.64%                          | 1                               |
| 107             | 0.64%                          | 1                               |
| 108             | 0.64%                          | 1                               |
| 109             | 0.64%                          | 1                               |
| 110             | 0.64%                          | 1                               |
| 111             | 0.64%                          | 1                               |
| 112             | 0.64%                          | 1                               |
| 113             | 0.64%                          | 1                               |





| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 114             | 0.64%                          | 1                               |
| 115             | 0.64%                          | 1                               |
| 116             | 0.64%                          | 1                               |
| 117             | 0.64%                          | 1                               |
| 118             | 0.64%                          | 1                               |
| 119             | 0.64%                          | 1                               |
| 120             | 0.64%                          | 1                               |
| 121             | 0.64%                          | 1                               |
| 122             | 0.64%                          | 1                               |
| 123             | 0.64%                          | 1                               |
| 124             | 0.64%                          | 1                               |
| 125             | 0.64%                          | 1                               |
| 126             | 0.64%                          | 1                               |
| 127             | 0.64%                          | 1                               |
| 128             | 0.64%                          | 1                               |
| 129             | 0.64%                          | 1                               |
| 130             | 0.64%                          | 1                               |
| 131             | 0.64%                          | 1                               |
| 132             | 0.64%                          | 1                               |
| 133             | 0.64%                          | 1                               |
| 134             | 0.64%                          | 1                               |
| 135             | 0.64%                          | 1                               |
| 136             | 0.64%                          | 1                               |
| 137             | 0.64%                          | 1                               |
| 138             | 0.64%                          | 1                               |
| 139             | 0.64%                          | 1                               |
| 140             | 0.64%                          | 1                               |
| 141             | 0.64%                          | 1                               |
| 142             | 0.64%                          | 1                               |
| 143             | 0.64%                          | 1                               |
| 144             | 0.64%                          | 1                               |
| 145             | 0.64%                          | 1                               |
| 146             | 0.64%                          | 1                               |
| 147             | 0.64%                          | 1                               |
| 148             | 0.64%                          | 1                               |
| 149             | 0.64%                          | 1                               |
| 150             | 0.64%                          | 1                               |
| 151             | 0.64%                          | 1                               |
| 152             | 0.64%                          | 1                               |



| <u>Unit No.</u> | <u>Percentage<br/>Interest</u> | <u>Votes in<br/>Association</u> |
|-----------------|--------------------------------|---------------------------------|
| 153             | 0.64%                          | 1                               |
| 154             | 0.64%                          | 1                               |
| 155             | 0.64%                          | 1                               |
| <hr/>           |                                |                                 |
| <b>TOTAL:</b>   | <b>100.00%</b>                 | <b>155</b>                      |

**Return To:**

John H. Tindall, Esq.  
Tindall Bennett & Shoup  
508 W. Second Avenue, Third Floor  
Anchorage, Alaska 99501



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**2011-060783-0**

Recording Dist: 301 - Anchorage

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**FOURTH AMENDMENT TO  
DECLARATION  
OF  
MOSS CREEK HOMEOWNERS ASSOCIATION**

**ANCHORAGE RECORDING DISTRICT  
AFTER RECORDING RETURN TO:**

Bonanza Realty, Inc.  
2825 Rose Street # 202  
Anchorage, AK 99508  
(907) 333-1244

WHEREAS, The Declaration for the Moss Creek Homeowners Association ("Moss Creek") was recorded on August 29, 2002 in the records of the Anchorage Recording district, Third Judicial District, State of Alaska, Serial Number 2002-059186-0; and

WHEREAS, Article 20 of the Declaration requires the Moss Creek Homeowners Association ("Association") to purchase property insurance that protects against loss or damage by fire and all other hazards for all personal property owned by the Association and the Common Interest Community Facilities, which includes all buildings in the Planned Community 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 coverages; and

WHEREAS, the Association is not required by law to purchase insurance for the buildings located on the Units of the Planned Community; and

WHEREAS, all of the Unit Owners currently maintain individual property insurance or their respective Units to protect against loss or damage to any building, fixture, or other item, including the personal property of Unit Owners, that is part of the Unit, as that term is defined in Section 1.23 of the Declaration; and

WHEREAS, it is the desire of the Association to amend Article 20 of the Declaration to remove the requirement of the Association to purchase insurance that protects against loss or damage to any building, fixture, or other item, including the personal property of Unit Owners, that is part of the Home Site, as that term is defined in Section 1.23 of the Declaration; and

WHEREAS, it is the desire of the Association to amend Article 20 of the Declaration to require that Unit Owners individually purchase insurance that protects against loss or damage to any building, fixture, or other item, including the personal property of Unit Owners, that is part of the Home Site as that term is defined in Section 1.23 of the Declaration; and

WHEREAS, the requirement in Article 20 of the Declaration that the Association purchase the above-described insurance is a material provision of the Declaration; and

WHEREAS, Section 18.7(b) of the Declaration requires the affirmative vote of at least seventy-five percent (75%) of the Unit Owners and at least seventy-five percent (75%) of Eligible-Mortgagees, as that term is defined in Section 1.19 of the Declaration, in order to amend a material provision of the Declaration; and

WHEREAS, there are currently one hundred fifty-five (155) votes allocated to Unit Owner in Moss Creek; and

WHEREAS, the Association gave notice on September 23, 2010, that it desired to amend Article 20, Sections 20.6(a) and 20.8 of the Declaration to read as follows:



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2011-060783-0

Section 20.6 Property Insurance.

(a) PROPERTY\_INSURANCE\_COVERAGE.

**Property insurance shall be maintained covering all common property of the Association. The Units, Structures within the Units, and any personal property on the Units ARE NOT common property of the Association and must be insured by the individual Unit Owners.**

The common property of the Association must be insured by the Association for an amount after application of any deduction, 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.

Section 20.8. INSURANCE POLICIES OBTAINED BY UNIT OWNERS.

An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit. **Units, Structures, and personal property of Unit Owners ARE NOT common property of the Association and must be insured by the Unit Owner.**

WHEREAS, a meeting of the Unit Owners was held on September 23 , 2010. to consider amending Article 20 of the Declaration: and

WHEREAS, at least seventy-five percent (75 %) of the Unit Owners voted in favor of amending the Declaration as stated above; and

WHEREAS, the Association has not received notice from any mortgagee as required by Section 1.19 of the Declaration, and therefore there are no Eligible Mortgagees, as that term is defined in Section 1.19 of the Declaration, entitled to vote on the above proposed Declaration amendment; and



WHEREAS, the requirements of Section 18.7(b) of the Declaration that seventy-five percent (75%) of Unit Owners and seventy-five percent (75%) of Eligible Mortgagees vote in favor of any amendment to the Declaration has been satisfied,

IT IS THEREFORE DECLARED THAT Sections 20.6(a) and 20.8 of the Declaration of Moss Creek Homeowners Association are now amended to read as follows:

Section 20.6 Property Insurance.

(b) PROPERTY INSURANCE COVERAGE.

Properly insurance shall be maintained covering all common property of the Association. **The Units, Structures within the Units and any personal property on the Units ARE NOT common property of the Association and must be insured by the individual Unit Owners.**

The common property of the Association must be insured by the Association for an amount, after application of any deduction, equal 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.

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Section 20.8 INSURANCE POLICIES OBTAINED BY UNIT OWNERS.

An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her benefit. **Unit, Structures, and personal property of Unit Owners ARE NOT common property of the Association and must be insured by the Unit Owner.**



No other part or portion of the Declaration is amended hereby, except as may be necessarily implied to give full force and effect to this Amendment.

IN WITNESS WHEREOF, the President of the Unit Owners' Association has caused this Fourth Amendment to the Declaration of Moss Creek Homeowners Association to be executed this 20 day of OCTOBER, 2011.



President of Moss Creek Homeowners Association

DAVID SWANNICK

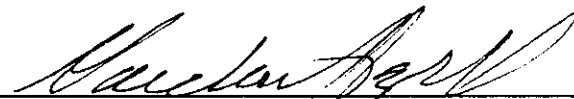
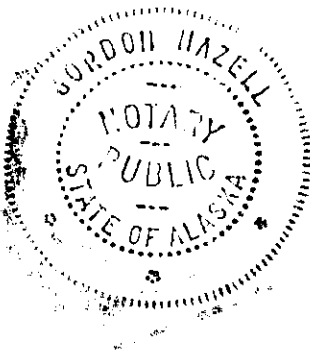
Printed Name

STATE OF ALASKA

THIRD JUDICIAL DISTRICT )  
)  
)

THIS IS TO CERTIFY that on this 20 day of OCTOBER 2011 before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared DAVID SWANNICK to me known and known to me to be the President of the Moss Creek Homeowners Association and known to me to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of the MOSS CREEK HOMEOWNERS ASSOCIATION for the uses and purposes therein set forth pursuant to the Association documents.

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



Notary Public in and for Alaska

My Commission Expires: 1-20-14



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