

- ANCHORAGE RECORDING DISTRICT -

**AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
EAGLE CROSSING  
(A Planned Community)**

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**AMENDED AND RESTATED  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
PURSUANT TO THE  
UNIFORM COMMON INTEREST OWNERSHIP ACT  
(AS 34.08, et seq.)  
FOR  
EAGLE CROSSING  
(A Planned Community)**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this \_\_\_\_ day of September, 2002, by Eagle Crossing Homeowners Association, a non-profit corporation, hereinafter "ECHOA," and Eagle Crossing, Inc. (with respect to all phases of development other than Phase VI) and Spinell Homes, Inc. (with respect to Phase VI only), hereinafter collectively referred to as "Declarant," replaces in its entirety the Declaration for Eagle Crossing (A Planned Community), which was recorded in the Anchorage Recording District on May 4, 1994, in Book 2646 at Pages 537 through 595, and all amendment thereto, including, but not limited to, the following:

- Corrective Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on November 1, 1994, in Book 2723 at Pages 627 through 631;
- Second Amended Exhibit "C" to Declaration for Eagle Crossing (A Planned Community), Development Plan for Phases II & IV, recorded in the Anchorage Recording District on October 16, 1995, in Book 2646 at Pages 204 through 216;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on March 28, 1997, in Book 3043 at Pages 661 through 663;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on April 3, 1997, in Book 3046 at Pages 560 through 564;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on April 15, 1997, in Book 3050 at Pages 536 through 546;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on July 17, 1997, in Book 3094 at Pages 077 through 078;



- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on October 2, 1997, in Book 3133 at Pages 602 through 617;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on October 27, 1997, in Book 3144 at Pages 870 through 886;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on July 7, 1998 in Book 3285 at Pages 173 through 179;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on July 7, 1998 in Book 3285 at Pages 180 through 182;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on June 23, 1999, in Book 3492 at Pages 246 through 253;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on March 15, 2000, in Book 3607 at Pages 301 through 308;
- Declarant's Amendment to the Declaration for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on March 16, 2000, in Book 3607 at Pages 776 through 778;
- Protective Covenants, Conditions, and Restrictions for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on September 19, 1994, in Book 2707 at Pages 270 through 278;
- 1<sup>ST</sup> Amended Protective Covenants, Conditions, and Restrictions for Eagle Crossing, A Planned Community, recorded in the Anchorage Recording District on November 1, 1994, in Book 2723 at Pages 632 through 638;

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

**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 amendments 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 ECHOA. The Allocated Interests are described in Article 7, infra, and are shown in Exhibit C.

Section 1.5.           BYLAWS

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

Section 1.6. 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, as described in Exhibit A and any amendment thereto.

Section 1.7. COMMON EXPENSES

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

Section 1.8. COMMON EXPENSE LIABILITY

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

Section 1.9. 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.

Section 1.10. 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.

Section 1.11. DECLARANT

"Declarant" means Eagle Crossing, Inc. (with respect to all phases of development other than Phase VI) and Spinell Homes, Inc. (with respect to Phase VI only), Alaska corporations, or their successors, as described in AS 34.08.990(12).

Section 1.12. DECLARATION

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

Section 1.13. 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 1.14. DIRECTOR

"Director" means a member of the Executive Board.

Section 1.15. 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 1.16. DOCUMENTS

"Documents" means the Declaration and 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, schedule or certification accompanying the Declaration, Plans, Bylaws and/or Rules is part of the Documents.

Section 1.17. ECHOA

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

Section 1.18. ELIGIBLE INSURER

"Eligible Insurer" means an insurer or guarantor of a first Security Interest in a Unit which has notified the ECHOA 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 ECHOA, 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 ECHOA.

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. 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, fences, trees and shrubbery planted by the Declarant or the ECHOA, landscaping, paving, sidewalks, additions, utility wires, pipes and light poles.

Section 1.24. IDENTIFYING NUMBER

"Identifying Number" means the lot and block numbers of each Unit in the Common Interest Community.

Section 1.25. LIMITED COMMON ELEMENTS

"Limited Common Elements" means the portion of the Common Elements allocated by the Declaration for the exclusive use of one or more but fewer than all of the Units.

Section 1.26. MAJORITY OF UNIT OWNERS

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

Section 1.27. MANAGER

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

Section 1.28. 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 ECHOA, 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 1.29. 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 ECHOA, 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 1.30. 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 1.31. PLANS

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

Section 1.32. 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, rights and appurtenances which have been submitted to the provisions of the Act by this Declaration.

Section 1.33. 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 (i) a security for an obligation, or (ii) a leasehold interest of less than forty (40) years including any renewal options.

Section 1.34. RESIDENTIAL PURPOSES

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

Section 1.35. RULES

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

Section 1.36. 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 ECHOA, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.37. 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 ECHOA; and convey public use easements in any common elements. As a condition to the purchase of a Unit, all Purchasers are deemed to consent 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 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. merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; or
- g. appoint or remove an officer of the ECHOA 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 1.38. 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 (5) 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 1.39. 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 as defined in the Bylaws. 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 1.40. 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.

Section 1.41. 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 of less than forty (40) years in a Unit, including any renewal options. 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 EAGLE CROSSING (A PLANNED COMMUNITY), a planned community.

**Section 2.2. ECHOA**

The name of the association is EAGLE CROSSING HOMEOWNERS ASSOCIATION ("ECHOA"), 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, any Common Elements, any 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 consists of a maximum of three hundred seventy eight (378) Units.

**Section 5.2. UNIT IDENTIFICATION**

All Units have an Identifying Number. These numbers, the lot and block numbers of each unit, are shown on the Plans.

**Section 5.3. UNIT BOUNDARIES**

The boundaries of each Unit in Eagle Crossing (A Planned Community) are the boundaries of the numbered lots originally created by Plat No. 94-24, filed in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, and subsequent plats subdividing tracts within the Common Interest Community, and are shown on the Plans attached to this Declaration as Exhibit D.

**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 ("Special Declarant Rights"). Declarant may:

- a. complete improvements indicated on Plans filed with the Declaration;
- b. exercise any Development Rights including the rights to (i) add real estate presently outside of Eagle Crossing (A Planned Community) to the Common Interest Community, (ii) create Units, Common Elements and/or Limited Common Elements within the Common Interest Community, and 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 controls for the additional Units and/or Common Elements, should Declarant determine, 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, and (iv) withdraw real estate from the Common Interest Community provided that such withdrawn land will be developed in accordance with the Municipal Land Use Code.

c. convey utility and drainage easements to utility companies and the Municipality of Anchorage, respectively, and convey public use easements in any common elements, in Declarant's own name and on behalf of the ECHOA; and, as a condition of 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 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. merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; or

g. appoint or remove any officer of the ECHOA or any Executive Board member during any period of Declarant control, subject to the provisions of this Article.

Section 6.2. NO INTERFERENCE WITH SPECIAL DECLARANT RIGHTS

Neither the ECHOA 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. 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 ECHOA. 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 6.4. DECLARANT'S EASEMENT FOR CONSTRUCTION

The Declarant reserves the right to perform warranty work, repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and reserves 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 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 and withdraw utility and drainage easements to public utilities, municipalities, the State, riparian owners and upland owners. In exercising Development Rights, Declarant also has an easement to construct utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated "Development Rights Reserved" on Exhibit B for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property and on the land designated as "Development Rights Reserved" on Exhibit B.

Section 6.5. SALES ACTIVITIES

Notwithstanding any contrary provisions of Section 11.5, Declarant reserves the right to post signs and displays in the Units and 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 6.6. 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. Declarant may have no more than fifteen (15) model Units and five (5) sales/management offices within the Common Interest Community at any one time, although the specific location may change from time to time as Units are sold and developed. A model Unit or sales/management office may be no larger than a typical Unit constructed for sale to the public. A temporary structure may be used as a sales/management office during the time that residences are being constructed. Declarant may delegate this authority to dealers who purchase Units to construct residences.

Subject to the provisions of this Article, 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 6.7. DECLARANT CONTROL

a. Subject to subsection 6.7.b hereof, there shall be a period of Declarant control of the ECHOA, 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 ECHOA. The period of Declarant control shall terminate as required by the Act and no later than the earlier of:

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

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

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

(4) 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 ECHOA 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 the Declarant, at least one (1) 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 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, all 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 6.8. 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 6.9. LIMITATIONS

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

b. The Declarant may not exercise, voluntarily abandon or terminate any Development Rights unless approved as provided in Section 18.7(d)(iv).

c. 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 only be exercised by the Declarant (1) so long as the Declarant is obligated under any warranty or obligation, owns any Units or has any Security Interest in any Units, or (2) up and until May 4, 2004, whichever is sooner.

d. Unless Declarant has previously terminated its Development Rights by recorded instrument or unless sooner terminated by the Act, and subject to Section 18.7(d)(iv), Development Rights may be exercised at any time up and until May 4, 2004.

Section 6.10. 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 6.11. 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 6.12. 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 reflecting Units and their Allocated Interests is attached as Exhibit C, the “Table of 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 (1) equal vote. Unless otherwise stated in the documents, any specified percentage of Unit Owners shall mean the specified percentage of all votes allocated to Units in the ECHOA.

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 Allocated Interests, 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 that Limited Common Element shall be assessed equally among the Units it serves.

b. Any Common Expenses for services provided by the ECHOA 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 ECHOA is caused by the misconduct of, or a failure to act by, a Unit Owner, or the Unit Owner's family members, guests or invitees, the ECHOA 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, or construction on, 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 ECHOA 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 ECHOA 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 ECHOA'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 the 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 ECHOA 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 ECHOA'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 ECHOA. A lien under this Section is not subject to the provisions of AS 09.38.010 as it may be amended from time to time.

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 ECHOA's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the United States 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 to prohibit the ECHOA from taking a deed in lieu of foreclosure.

h. If a holder of a 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.

i. If the ECHOA 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 ECHOA during the pendency of the action to the extent of the ECHOA's Common Expense assessments based on a periodic budget adopted by the ECHOA; 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 as it may be amended from time to time.

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

l. Any payments received by the ECHOA 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.

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

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 not less than fourteen (14) days nor more than thirty (30) days from mailing or otherwise providing the summary to the Unit Owners, for the Unit Owners to consider ratification of the budget. Regardless whether a quorum is present, unless a Majority of Unit Owners at that meeting reject the proposed budget, the budget is ratified. If the proposed budget is rejected, then 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. NON-BUDGETED 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 ECHOA shall provide a statement in recordable form setting out the amount of unpaid assessments against the Unit. The ECHOA must provide the statement within ten (10) business days after it receives the Unit Owner's request, and such statement is binding on the ECHOA, the Executive Board and each Unit Owner.

Section 8.7. COMMON EXPENSES TO BE PAID MONTHLY

All Common Expenses assessed under this Section shall be due and payable on the first day of each and every month.

Section 8.8. ASSESSMENT RESERVE FUND

Upon recordation of a deed to the first Unit Owner other than the Declarant of an interest in the Common Interest Community, the Unit Owner and each subsequent Unit Owner in the ECHOA shall establish an assessment reserve fund with the ECHOA. In the event of a subsequent transfer of the Unit Owner's interest in the Common Interest Community, the subsequent Purchaser shall be responsible for establishing and maintaining this reserve fund. The assessment reserve fund shall equal the projected assessments to the Unit Owner for a two-month period. In addition, the Unit Owner shall pay to the ECHOA the regular monthly assessment as provided herein, the purpose being to have available at all times for the ECHOA an assessment reserve fund equal to two (2) months of assessments. The assessment reserve fund shall be maintained at all times just as a reserve for taxes and insurance as so maintained. The reserve fund must be

segregated from the ECHOA's operating account.

Declarant may not use the assessment reserve fund 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 ECHOA.

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 any 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 Common Expense Liability, personal liability for such assessments shall not pass to a successor in title to the Unit. Such agreement shall be provided to the ECHOA.

**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, including all landscaping and fencing in any easements within the Unit Boundaries, except the portions thereof which may otherwise be required by this Declaration or by the ECHOA to be maintained, repaired or replaced by the ECHOA or other Persons.

Section 9.2. COMMON ELEMENTS

The ECHOA shall maintain, repair and replace all such Common Elements, except any 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

At the time this Declaration is recorded, Declarant has not assigned any Limited Common Elements to Units in ECHOA. However, if Declarant subsequently allocates any such Limited Common Elements, Common Expenses associated with the maintenance, cleaning, repair or replacement of the Limited Common Elements will be assessed against the Unit(s) to which the Limited Common Element(s) is (are) assigned.

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 for entry are made in advance and that any such entry is at a reasonably convenient time for the affected Unit Owner, except in cases of emergencies, in which case no such request or notice is required and such right of entry shall be immediate, regardless whether the Unit Owner is present at the time.

Section 9.5. NEGLIGENCE

Each Unit Owner will reimburse the ECHOA for any cost incurred by the ECHOA and for any damage to any other Unit or to the Common Elements 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 who is authorized such access by Section 9.4. The ECHOA shall assess such expenses to the responsible Unit Owner(s) only after Notice and Hearing.

The ECHOA will be responsible for damage to Units caused by its intent or negligence, or by its failure to maintain, repair or make replacements to the Common Elements.

**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 of this Declaration, portions of the Common Elements may be conveyed or subjected to a Security Interest by the ECHOA if persons entitled to cast at least eighty percent (80%) of the votes in the ECHOA, 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 any 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 ECHOA.

**Section 10.2. RECORDATION OF AGREEMENT**

An agreement to convey any Common Elements or to subject any 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 ECHOA**

The ECHOA, 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 ECHOA until approved, ratified and recorded pursuant to Sections 10.1 and 10.2. After such approval, ratification and recordation, the ECHOA 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**

Subject to the Development Rights and Special Declarant Rights, all Units and the Common Elements are to be used exclusively for single-family Residential Purposes except as provided for in Section 11.2. Except as otherwise set forth in Exhibit E Occupancy Restrictions and Exhibit F Standards For Architectural Control, no trailer or tent, shed, garage, outhouse of any kind, or any other temporary dwelling shall be erected or maintained on any Lot or be used for dwelling purposes.

**Section 11.2. BUSINESS ACTIVITY**

No business or commercial activity shall be maintained or conducted in any Unit or on any Common Element, except that: (1) Declarant, or a person designated by the ECHOA as agent of the ECHOA for purposes of managing the property, may maintain management offices and facilities in a residence; (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; and (3) further, non-residential activities must comply with governmental regulations addressing Home Occupations, no signs may indicate in any way that a non-residential activity is being conducted, and no increase in street traffic, substantial or insubstantial, is permissible. A residence may be used as a "bed and breakfast" if, and only if, permitted as provided and restricted by Title 21 of the Anchorage Municipal Code. A current copy of such municipal permit must be filed with the ECHOA. Notwithstanding the forgoing, the use of a Lot for a child care facility consisting of more than four (4) children is not permissible.

**Section 11.3. NUISANCES**

No immoral, unlawful, noxious or offensive activities shall be carried on upon any part of the Property, nor shall anything be done therein which might be, or may become, an annoyance or nuisance to the Common Interest Community or the neighborhood. Such nuisances include the use of any heavy equipment or derelict automobiles. No trade or business of an offensive nature shall be permitted upon any part of the Property. 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.

**Section 11.4. ARCHITECTURAL CONTROL STANDARDS; OCCUPANCY RESTRICTIONS**

All Units and Common Elements in the Common Interest Community are also subject to Occupancy Restrictions, attached as Exhibit E, Standards for Architectural Control, attached as Exhibit F, and to this Declaration. Where the Architectural Controls or Occupancy Restrictions conflict with the Declaration, the more restrictive standards shall

apply. At the time Declarant adds additional Units to the Common Interest Community, Declarant may amend the Architectural Controls and/or Occupancy Restrictions for said Units as permitted in Article 6.

Section 11.5. HOLD HARMLESS AND INDEMNIFICATION

As described in Section 9.5, Unit Owners will be liable to the ECHOA for any damages to the Common Elements 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 ECHOA 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 ECHOA, reciprocal easements of access, ingress and egress over all of the Common Elements. Such easements may be used by Declarant's successors, purchasers and all Unit Owners, and their guests, tenants and invitees residing or temporarily visiting the Common Interest Community, for pedestrian walkways and such other purposes reasonably necessary for the use and enjoyment of a Unit and the ECHOA. Such easements shall be appurtenant to, and shall pass and run with, the title to every Unit conveyed. If Declarant also assigns any Limited Common Elements to any Unit, then Declarant expressly reserves, for the benefit of each Unit to which such Limited Common Elements are assigned, an exclusive easement for the use of such Limited Common Elements. 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.

## Section 12.3. LIMITATIONS ON UNIT OWNERS' EASEMENTS

In the event (i) any Common Element encroaches upon any Unit or (ii) any Unit or Improvement, at no fault of the Unit Owner, encroaches upon any Common Element, 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 ECHOA, subject to other provisions of this Declaration and the Act, and subject to its Articles and Certificate of Incorporation and the Bylaws, may 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 ECHOA to charge fees for a Unit Owner's use of the Common Elements if such use is substantially different from the use offered to other Unit Owners and involves additional expense to the ECHOA, which fees shall be Assessments. The Unit Owners' easements are also limited by the ECHOA's right to administer the Common Elements for the safety, health and mutual benefit of the Unit Owners, and to take such steps as are reasonably necessary to protect the rights of the Unit Owners in the Common Elements against foreclosure. Finally, the Unit Owners' easements are limited by the right of the ECHOA to grant licenses and concessions to Persons for the use of Common Elements, including licenses for non- Unit Owners.

The ECHOA shall also have the right to suspend the enjoyment rights (except rights of egress and ingress) of any Unit Owner for any period during which any Assessment remains unpaid, and for a period not exceeding thirty (30) days for any infraction of the Declaration, Bylaws or Rules, and to levy liquidated minimum damages in an amount not to exceed twice the monthly assessment for each offense for such infractions, as well as specific damages as may occur, all of which shall become Assessments.

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**

Common Elements conveyed by Declarant to ECHOA which are not originally conveyed as a Limited Common Elements may subsequently 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 Elements are assigned. No Limited Common Elements may be reallocated by amendment without consent of affected Unit Owners.

Such amendments 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 ECHOA. 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 ECHOA 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, common or limited-common area landscaping, or planting shall be effected on any Unit 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. The Standards for Architectural Control contained in Exhibit F are applicable to such additions, alterations and improvements.

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.

All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to the prior approval of the Board, cause any increase in the premiums or any insurance policies carried by the ECHOA or by the owners of any Units other than those affected by such change.

Any construction commenced without the prior written consent of the Board will result in a penalty not to exceed One Hundred Dollars (\$100) per day against the Unit Owner violating the provisions of this Article, as assessed by resolution of the Board.

#### 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 encumbrances, in good faith and for value, be deemed to comply with all of the provisions hereof, unless: (1) a notice of such noncompliance or noncompletion, 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. If provisions of this Article conflict with provisions of Standards for Architectural Control, attached as Exhibit F to this Declaration, the provisions of Exhibit F control.

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 the Board. Nor shall the ECHOA or the Executive Board be liable for any condition of approval or any other matter connected with a Unit Owner's Improvement, addition or alteration. There will be no liability whatsoever created on the part of the ECHOA and the Board, and any of their members, except for the Unit Owner effecting such addition, alteration or improvement, to any contractor, sub-contractor, materialman or any other Persons on account of such addition, alteration or improvement, or to any Person having any claim for injury to person or damage to property arising therefrom.

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 and/or Exhibit F for 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 ECHOA 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 ECHOA, notwithstanding any interest reallocation under this Article.

Section 15.3. AMENDMENT

If the Board approves the application, the ECHOA 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 ECHOA'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 ECHOA. The ECHOA 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 ECHOA 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 ECHOA 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, Section 16.4, Article 13 and Article 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 ECHOA 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 to the extent expressly permitted or required by other provisions of this Declaration and the Act, no amendment may change the uses to which any Unit is restricted, increase or otherwise change 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 (100%) 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, any required Plans and any other required exhibits. Any amendment effected by Declarant's exercise of rights reserved in Article 6 requires Declarant approval only. The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interest among all Units. The amendment shall describe any Common Elements created thereby.

Section 16.5. EXECUTION

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

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 to the proponent(s) of such amendment all costs, as well as reasonable attorney's and/or consultant's costs and fees, incurred by the ECHOA in the preparation and recordation of an amendment.

**ARTICLE 17.**  
**AMENDMENTS TO BYLAWS**

Following Notice and Comment to all Unit Owners, the Bylaws may only 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 ECHOA shall permit any Eligible Mortgagee, Eligible Insurer or Unit Owner to inspect the books and records of the ECHOA, 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 ECHOA shall provide a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the ECHOA. Such financial statement shall be audited by an independent certified public accountant. The cost of the audit shall be a Common Expense.

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 ECHOA shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(1) 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.

(2) 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.

(3) Any cancellation, lapse or material modification of any insurance policy or fidelity bond required under this Declaration to be maintained by the ECHOA;

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as provided in Section 18.2;

(5) Any judgment rendered against the ECHOA.

b. If the FNMA holds any mortgage in the existing Common Interest Community at the time additional property is to be added, the ECHOA 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 ECHOA shall promptly deliver, by certified or registered U.S Postal Service, with a return receipt requested, 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 ECHOA for approval of a non-material addition or amendment to the Documents (Subsections 18.7(b) and (c)) shall constitute that Eligible Mortgagee's implied approval of the non-material 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 ECHOA of any material provision of the Documents described in this subsection may be effective until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees. The foregoing approval requirements do not apply to amendments effected by the exercise of any Special Declarant Rights. For purposes of this section, "material" includes, but is not limited to, any provision affecting:

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

(2) convertibility of Common Elements into Units or Units into Common Elements;

(3) rights to use Common Elements;

(4) assessment, assessment liens, or subordination or priority of assessment liens;

(5) responsibility for maintenance and repairs in the Common Interest Community;

(6) voting rights;

(7) insurance or fidelity bonds;



(8) addition, annexation or withdrawal of Property to or from the Common Interest Community;

(9) reserves for maintenance, repair and replacement of Common Elements;

(10) 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;

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

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

(13) the benefits of mortgage holders, insurers or guarantors of first mortgages on Units in the Common Interest Community;

(14) establishment of self-management by the ECHOA when professional management had been required previously by any Eligible Mortgagee;

(15) termination of the Common Interest Community after substantial destruction or condemnation to the Common Interest Community; and

(16) 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 ECHOA 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:

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

(2) 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

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

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

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

(6) the assignment of the ECHOA'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:

(1) 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;

(2) the termination of the Common Interest Community for reasons other than a substantial destruction or condemnation requires approval of at least sixty-seven percent (67%) of Eligible Mortgagees;

(3) the ECHOA may not change the period for collection of regularly budgeted Common Expense assessments to any period other than a monthly period without the unanimous consent (100%) of all Eligible Mortgagees; and

(4) Development Rights may not be exercised, voluntarily abandoned or terminated by the Declarant without the unanimous consent (100%) of all Persons holding a Security Interest in the Development Rights.

#### 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, and 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. Proceeds will thereafter be distributed pursuant to Article 21 or pursuant to a condemnation award.

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 at law or in equity.

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 ECHOA is in default on any taxes on the Common Elements, if any of the ECHOA's insurance premiums are overdue, or if the ECHOA has failed to renew insurance coverage required under this Declaration on the Common Elements, any Eligible Mortgagee, jointly or singly, may pay the ECHOA'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 ECHOA.

**ARTICLE 19.**  
**ASSIGNMENT OF FUTURE INCOME**

Any assignment of the ECHOA's future income and/or its right to receive Common Interest Expense assessments requires the affirmative vote of fifty-one percent (51%) of the votes in the ECHOA at a meeting called by the Executive Board for the purpose of voting on such an assignment, and subject to Article 18 with regard to obtaining Eligible Mortgagees' consent.

**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 hand-delivered, or sent by certified or registered U.S. Postal Service, with a return receipt requested, to all Unit Owners and Eligible Mortgagees at their last known addresses.

The maximum deductible for each type of insurance policy required under this Article shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount, whichever is less.

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 ECHOA, whether or not such person receives compensation for his or her services. The bond shall name the ECHOA as obligee and shall cover the maximum funds that will be in the custody of the ECHOA or the Manager at any time while the bond is in force, and in no event less than the sum of three (3) months' assessments on all Units in the Common Interest Community plus the ECHOA's reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the ECHOA, 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 ECHOA.

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 ECHOA in such limits as the Executive Board, from time to time, determines.

Section 20.4. WORKERS' COMPENSATION INSURANCE

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

Section 20.5. LIABILITY INSURANCE

The ECHOA 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' ECHOA 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 and maintenance of the Common Elements, any areas under the ECHOA's supervision to include public ways, and the activities of the ECHOA.

Section 20.6. PROPERTY INSURANCE

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

The Common Elements and any buildings, fixtures, equipment, Improvements and betterments which are constructed or maintained on the Common Elements must be insured by the ECHOA 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 ECHOA must also insure personal property owned by the ECHOA for an amount equal to its cash value. The ECHOA must, on an annual basis, take reasonable steps satisfactory to the insurance company to determine the replacement cost of the insured property.

If the Executive Board deems it necessary, it may obtain appraisals at least annually to determine the replacement cost for the property described in this subsection. The cost of any such appraisals shall be a Common Expense.

#### Section 20.7 OTHER INSURANCE

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

#### Section 20.8 INSURANCE PROVISIONS

a. Insurance policies carried under Section 20.5 and Section 20.6 must provide the following provisions.

(1) 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 ECHOA, will not prejudice the policy in any way or be a condition to recovery under the policy.

(2) 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 ECHOA.

(3) A Unit Owner's claim will not be denied because of

negligent acts of the ECHOA or another Unit Owner.

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

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

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

(7) Any loss must be adjusted with the ECHOA.

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

(9) 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.

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

(11) The name of the insured shall be as follows: "EAGLE CROSSING HOMEOWNERS ASSOCIATION, for the use and benefit of the individual Owners."

(b) 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 20.9 INSURANCE PREMIUMS

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

#### Section 20.10 INSURANCE POLICIES OBTAINED BY UNIT OWNERS

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

#### Section 20.11 INSURER'S RATING AND REINSURANCE

The property insurance, liability insurance and fidelity bond must be written by an insurance carrier with at least a B/III policy holder's rating and financial category rating in the Best's Key Rating Guide or by an insurance carrier which is covered by reinsurance with a company that does meet such rating requirements. Both insurer and reinsurer must execute an assumption of liability agreement or a similar endorsement providing for one hundred percent (100%) reinsurance of the insurer's policy. Further, the reinsurer must give the borrower, lender and the insurer ninety (90) days written notice before cancelling or substantially changing the reinsurance.

In addition to the foregoing requirements for insurers, the ECHOA 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, if any, for which insurance is required under AS 34.08.440 or for which insurance is actually carried by the ECHOA, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the ECHOA 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:

(1) 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

(2) 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 ECHOA 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 ECHOA'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' ECHOA as attorney-in-fact for the 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 ECHOA, 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 ECHOA, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or unless the Common Interest Community is terminated.

Section 21.7. CERTIFICATIONS BY EXECUTIVE BOARD

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 and/or destroyed Property, and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.8. CERTIFICATION BY ATTORNEY OR TITLE COMPANY

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, and occupants of Units whose interests would be significantly affected by the proposed action, no less than five (5) days before the hearing. Notice shall be effected by personal delivery or by the U.S. Postal Service, registered or certified mail, return receipt requested, delivered or mailed to the last known address. 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 or affected Person may, personally or by a representative, give written and/or oral testimony (as specified in the notice), 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 ECHOA'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 in writing, effected by personal delivery or by mail to each Unit Owner's last known address, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken or a hearing, if any, 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 ECHOA.

**Section 23.3. APPEAL**

Any interested Unit Owner and occupants of Units 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 required for the original hearing.

**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 ECHOA. 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 ECHOA and of the Common Interest Community including, but not limited to, the power to:

- a. adopt and amend Bylaws, Rules, regulations, budgets for revenues, expenditures and reserves;
- b. collect assessments for Common Expenses from Unit Owners;
- c. hire and discharge employees, agents, managing agents and independent contractors;
- d. institute, defend or intervene in litigation or administrative proceedings in the ECHOA's name on behalf of the ECHOA or on behalf of two or more Unit Owners on matters affecting the Common Interest Community;
- e. make contracts and incur liabilities;
- f. govern the use, maintenance, repair, replacement and modification of the Common Elements;
- g. cause any additional Improvements by the ECHOA to be held as a part of the Common Elements;
- h. acquire, hold, encumber and convey in the ECHOA'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 through or over the Common Elements 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;
- 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 reasonable 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 ECHOA;

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 ECHOA's officers and Executive Board, and maintain Directors' and officers' liability insurance;

n. assign the ECHOA'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 ECHOA; and

q. 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 maintain and publish notice 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. LIMITATIONS ON THE EXECUTIVE BOARD

The Executive Board may not act on behalf of the ECHOA 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. The Executive Board may, after approval by the ECHOA, provide in the Bylaws that (1) non-Unit Owners may serve on the Executive Board of Directors and/or (2) a Manager, if so engaged, shall sit on the Executive Board of Directors initially and in perpetuity so long as the position of Manager exists. Neither the Executive Board nor its Directors shall receive compensation for services performed pursuant to this Declaration. The ECHOA is hereby authorized and directed to reimburse members of the Executive Board for their respective reasonable expenditures for the benefit of the ECHOA; however, the Executive Board's prior approval is required for any expenditure to exceed Fifty Dollars (\$50.00).

Section 24.3. RECORDS and MINUTES

The Executive Board shall permit any Unit Owner, or any Eligible Insurer, to inspect the records of the ECHOA, and the minutes of the Executive Board and committee meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 24.4. MEETINGS

a. ECHOA Meetings

The Executive Board shall call a meeting of the ECHOA at least once each year. A special meeting of the ECHOA 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 ECHOA. 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, registered or certified mail, return receipt requested, 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 ECHOA 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, except as provided below in this subsection. 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. However, meetings of the Executive Board may be held, without giving notice and without the requirement that they be open to Unit Owner, in either of the following situations: (a) if no action is taken at the executive session requiring the affirmative vote of Directors, or (b) if the action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual Unit Owners, matters which are to remain confidential by individual Unit Owners, matters which are to remain confidential by request of the affected parties and agreement of the Executive Board, or an action taken by unanimous consent of the Executive Board.

**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 ECHOA 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 ECHOA, 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 ECHOA, 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 Eagle Crossing (A Planned Community) 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 Eagle Crossing (A Planned Community) 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 ECHOA, 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, then 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. RIGHT OF ACTION

The Declarant, ECHOA 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 ECHOA. Unit Owners shall also have such rights of action against the ECHOA.

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. CONFLICT

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

Section 26.9. LIQUIDATED DAMAGES

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, Eagle Crossing Homeowners Association and the Declarant have caused this Declaration to be executed on the day and year first hereinabove written.

**EAGLE CROSSING HOMEOWNERS  
ASSOCIATION, A NON-PROFIT CORPORATION**

By: \_\_\_\_\_  
Thomas L. Jennings,  
Its President

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2002 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Thomas L. Jennings, President of Eagle Crossing Homeowners Association, known to me to be the individual named herein and who executed the foregoing instrument, and acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the corporation 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:

**DECLARANT: EAGLE CROSSING, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
Its President

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2002 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_, President of Eagle Crossing, Inc., known to me to be the individual named herein and who executed the foregoing instrument, and acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the corporation 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:

**DECLARANT: SPINELL HOMES, INC.**  
(with respect to Phase VI only)

By: \_\_\_\_\_

\_\_\_\_\_  
Its President

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2002 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_, President of Spinell Homes, Inc. known to me to be the individual named herein and who executed the foregoing instrument, and acknowledged the execution thereof to be his free and voluntary act and deed on behalf of the corporation 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:

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