

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS,  
RESTRICTIONS AND RESERVATIONS FORVINTAGE BUSINESS PARK  
JUNEAU, ALASKA

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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS,  
RESTRICTIONS AND RESERVATIONS FOR

VINTAGE BUSINESS PARK  
JUNEAU, ALASKA

This Declaration of Covenants, Conditions, Easements, Restrictions and Reservations (this "Declaration") made this \_\_\_\_ day of August, 1997, by BBS Enterprises and is made with reference to the following facts:

RECITALS:

A. BBS Enterprises is the owner of that certain real property in the City and Borough of Juneau, State of Alaska, described in Part I of Exhibit A attached hereto and by this reference incorporated herein.

B. Vintage Business Park is being developed as a planned business park. It is the desire and intention of BBS Enterprises to subject the real property in said business park to certain covenants, conditions and restrictions for the benefit of the property, Vintage Business Park, and the purchasers of the Lots in the business park. It is intended that said covenants, conditions and restrictions bind and benefit not only said purchasers, but also their respective successors, heirs and assigns and that all Lots in the Vintage Business Park should be held, used, leased, sold and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, as used in this Declaration, have the meaning herein set forth:

1.1 Association. The term "Association" shall mean the association of the property owners of Vintage Business Park as hereinafter created, known as "Vintage Business Park Owners Association".

1.2 Beneficiary. The term "Beneficiary" shall mean a mortgagee under a mortgage as well as a beneficiary under a deed of trust.

1.3 Board. The term "Board" shall mean the Board of Directors of the Association, who shall be elected by the Association from among its members.

1.4 Park. The term "the Park" shall mean all of the real property in Vintage Business Park now or hereafter subjected of record to this Declaration.

1.5 Common Area or Common Areas. The term "Common Areas" shall mean those portions of the Park including easements which are designated as such on the Plat and are dedicated for the common use and benefit of the owners and occupants of the Park.

1.6 Declarant. The term "Declarant" shall mean Vintage Business Park and, to the extent identified as such in an instrument executed by BBS Enterprises and recorded in the Department of Records and Election of The City and Borough of Juneau, its successors and assigns.

1.7 Declaration. The term "Declaration" shall mean this Declaration of Covenants, Conditions, Easement, Restriction and Reservations for Vintage Business Park as it may from time to time be amended or supplemented.

1.8 Deed of Trust. The term "Deed of Trust" shall mean a mortgage as well as a deed of trust.

1.9 Development Standards. The term "Development Standards" shall mean the procedures, goals, objectives and standards set forth in ordinance serial number 86-54 of the City and Borough of Juneau, and any other ordinances, rules or regulations of the City and Borough of Juneau applicable to the Park.

1.10 First Class. When used in this Declaration in connection with the development, maintenance, operation or condition of the Park, or any portion thereof, the term "First Class" shall refer to comparative standard of quality judged in accordance with other similar well maintained corporate business parks within the City and Borough of Juneau.

1.11 Improvement-Improvements. The term "Improvement" or "Improvements" shall include buildings, outbuilding, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas and all other structures, installations and landscaping of every type and kind, whether on, above or below the land surface.

1.12 Lot. The term "Lot" shall mean a fractional part of the Park with a numerical designation on the plat for Vintage Business Park in the Office of Records and Elections of the City and Borough of Juneau, State of Alaska.

1.13 Master Plan. The term "Master Plan" shall mean the plan submitted to and approved by the City and Borough of Juneau for the development of the Park, as reflected in Ordinance Serial Number 84-03 (AM) of the Planning and Community Development Department of the City and Borough of Juneau, as hereafter amended from time to time.

1.14 Mortgage. The term "Mortgage" shall mean and include a mortgage, a Deed of Trust and a sale and leaseback transaction, and the making of any such relationship; "mortgagee" shall mean a mortgagee under a Mortgage, the trustee and Beneficiary under a Deed of Trust, and the leaseback lessor in a sale and leaseback transaction. The term "Mortgagee" shall not refer to any of the foregoing persons, when and to the extent in possession of all or any of the Parcel of a Party.

1.15 Occupant. The term "Occupant" shall mean a lessee or licensee or an Owner, or any other person or entity other than an Owner in lawful possession of a Lot, or any portion thereof, with the permission of the Owner.

1.16 Owner or Owners. The term "Owner" shall mean and refer to any person or entity which is the record Owner of fee simple title to any Lot (except any entity or person who holds such interest as security for the payment of an obligation) and the purchaser under a real estate contract in actual possession of a Lot.

1.17 Person or Persons. The term "Person" shall mean and include any individual, partnership, firm, association, corporation, trust, or any other form of business entity.

1.18 Plat. The term "Plat" shall mean the Binding Site Plan of Vintage Business Park filed May 5, 1985 under Vintage Subdivision recording number 85-58.

1.19 Proportionate Share. The term "Proportionate Share" shall mean the ratio which the acreage of a Lot bears to the acreage of all Lots subjected to this Declaration at the time, as such acreage is shown on the Plat.

1.20 Record-Recorded-Recordation. The terms "Record," "Recorded," "Recording," or "Recordation," shall mean with respect to any document, the recordation of said document in the Office of Records and Elections of the City and Borough of Juneau, State of Alaska.

1.21 Sign. The term "Sign" shall mean any structure, device or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, business name, information or advertising device of any kind whatsoever is used, placed, posted, tacked, nailed, pasted, painted or otherwise fastened or affixed.

1.22 Street or Streets. The term "Street" or "Streets" shall mean any street, highway, road, or thoroughfare within or adjacent to the Park and shown on any recorded subdivision or parcel map, or record or survey, whether designated thereon as street, boulevard, place, drive road, court, terrace, way, lane, circle, or otherwise.

1.23 Subject Property. The term "Subject Property" shall mean the Vintage Business Park.

1.24 Transition Date. The term "Transition Date" shall have the meaning set forth in Section 8.1.

1.25 Utility or Utilities. The term "Utilities" shall mean all common water, sanitary and storm sewer lines and related facilities, water mains, conduits or systems, telephone lines, electrical utilities or systems, and other utilities and services, wherever located within the Park to the point where such line, system or facility crosses a line of a building area, together with all Improvements, replacements, modifications, additions, extensions, or new construction, whether such system, line or facility now or hereafter exists on the Park.

## ARTICLE II

### DECLARATION AND EXPANSION

2.1 General Declaration. BBS Enterprises hereby declare that all of that real property located in the City and Borough of Juneau, State of Alaska, and more particularly described in Exhibit A is, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions and restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said real property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Park and every part thereof. All of said covenants, condition and restrictions shall run with all of the Park for all purposes and shall be binding upon and inure to the benefit of BBS Enterprises, and all Owners, Occupants, and their

successors in interest as set forth in this Declaration. Declarant reserves for itself, until the Transition Date, the right to initiate any and all studies, sign any and all agreements, and otherwise take any and all actions which it deems necessary or desirable to satisfy the City and Borough of Juneau in connection with Development Standards and/or the Master Plan.

2.2 **Expansion.** Declarant reserves the right, until the Transition Date, to expand the Park onto other property (each, the "Expansion Area") adjacent to the Park, which such expansion shall be accomplished by Recording (i) an amendment to this Declaration that specifies the Expansion Area being added and subjects all such Expansion Area to this Declaration (ii) an amendment or supplement to the Plat covering the Expansion Area and setting forth the acreage of each Lot therein. From and after the Recording thereof, all of the land originally subjected and subsequently subjected to this Declaration shall constitute the Park as a single project pursuant to the provisions of this Declaration. Declarant shall complete, or cause to be completed, all Common Area Improvements required by the City of Juneau in connection with all Expansion Area hereafter subjected to this Declaration. All costs of Common Area Improvements in the Expansion Area shall be the sole responsibility of Declarant; and neither the Association nor any Lot Owner shall have any liability for such costs. In addition to general easements reserved in other sections of this Declaration, there is reserved a nonexclusive easement in favor of Declarant and its successors and assigns over and across all roads and driveways that may exist from time to time on the Subject Property for ingress and egress and over and across easements and utility lines specified or established in and for adjacent land now or hereafter acquired by declarant prior to the Transition Date, and the right to connect thereto; provided that, such can be accomplished (a) without cost to any Lot Owner of the Subject Property, (b) without material interference with the use or operation of the Subject Property, and (c) without reduction in the quality of the utility service to the Subject Property. Such reservations are for the purpose either of completing common area Improvements to be subjected to this Declaration or otherwise developing adjacent land if not completed as a part of the Park; provided, however, that Declarant shall bear the cost of tie-ins to said utilities and roads and will not connect with said utilities in a manner that impairs or significantly reduces the quality of the utility service to the Subject Property. The provisions of Section 6.2 shall apply to this Section 2.2.

## ARTICLE III

## CONSTRUCTION OF IMPROVEMENTS

3.1 Approval of Plans Required. No Improvements shall be erected, placed, altered, maintained or permitted to remain on any Lot by any Owner or Occupant until final plans and specifications shall have been submitted to and approved in writing by Declarant. Such final plans and specifications shall be submitted with the authorized signature of the Owner or Occupant, or the authorized agent thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the Declaration, but shall in any event include the following:

(a) A site development plan of the Lot showing the nature, grading scheme, kind, shape, composition and location of all structures with respect to the particular Lot (including proposed front, rear and side setback lines), and with respect to structures on adjoining Lots, and the number and location of all parking spaces and driveways on the Lot;

(b) A landscaping plan for the particular Lot;

(c) A plan for the location of signs and exterior lighting which conforms to the Sign Plan and Lighting Plan for the Park, as required by the City and Borough of Juneau; and

(d) Building elevations and plans, showing dimensions, materials and external color scheme in no less detail than required by the appropriate governmental authority for the issuance of a building permit or design review approval. Material changes in approved plans must be similarly submitted to a approved by Declarant and the City and Borough of Juneau.

3.2 Basis for Approval. Approval shall be based, among other things, upon adequacy of site dimensions, conformity and harmony of external design with neighboring structures, effect of location and use of proposed Improvements upon neighboring Lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning or other roof top installations, and conformity of the plans and specifications to the purposes and general plan and intent of this Declaration. No plans will be approved which do not provide for the underground installation of power, electrical, telephone and other utility lines from the



property line buildings. Declarant shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, Declarant shall have the right to disapprove or require any modification in any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

- (a) Failure to comply with any of the restrictions set forth in this Declaration;
- (b) Failure to comply with either the Development Standards, or the design guidelines promulgated by Declarant from time to time;
- (c) Failure to include information in such plans and specifications as may have been reasonably requested by Declarant;
- (d) Objection to the exterior design, the appearance of material or materials employed in any proposed structure;
- (e) Objection on the grounds of the incompatibility of any proposed structure or use with existing structures or uses upon other Lots, or other property in the vicinity of the Park;
- (f) Objection to the grading or landscaping plan for any Lot;
- (g) Objection to the color scheme, finish, proportions, style or architecture, height, bulk or appropriateness of any structure;
- (h) Objection to the number or the size of parking spaces, or to the design of the parking area;
- (i) Any other matter which, in the judgement of the Declarant, would render the proposed improvements or use inharmonious with the general plan for improvements of the Park or with improvements located upon other Lots or other property in the vicinity.

**3.3 Review Fee.** An architectural review fee of Five Hundred Dollars (\$500) shall be paid to Declarant at such time as plans and specifications are submitted to it.

**3.4 Result of Inaction.** If Declarant fails either to approve or disapprove plans and specifications submitted to it within forty-five (45) days after the same have been submitted, it shall be conclusively presumed that Declarant

has disapproved said plans and specifications; provided, however, that if within the forty-five (45) day period Declarant gives written notice of the fact that more time is required for the review of such plans and specifications, there shall be no presumption that the same are disapproved until the expiration of such reasonable period of time as is set forth in the notice.

3.5 Approval. Declarant may approve plans and specifications as submitted, or altered or amended, or it may grant its approval to the same subject to specific conditions. Upon approval or conditional approval by Declarant of any plans and specifications, together with any conditions, shall be deposited for permanent record with Declarant, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the Owner of Occupant submitting the same.

3.6 Proceeding with Work. Upon receipt of approval of the final construction documents from Declarant, The Owner, or Occupant, or both, to whom the same is give, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing and alterations. In all cases, work shall commence within one (1) year from The date of approval, and if work is not so commenced approval shall be deemed revoked unless Declarant, pursuant to written request made and received prior to the expirations of said one (1) year period, extends the period of time within which work must be commenced.

3.7 Completion of Work. Any Improvement commenced pursuant hereto shall be completed within one (1) year from the date of commencement of work except for so long as such proposed Improvements would impose a great hardship or upon the occurrence of a the strike, fire, national emergency, natural disaster or other supervening force beyond the control of Owner of Occupant. Declarant may, upon written request made and received prior to the expiration of the on (1) year period, extend the period of time within which work must be completed. Failure to comply with this Section 3.7 shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VII.

3.8 Declarant Not Liable. Declarant shall not be liable for any damage, loss or prejudice suffered or claimed by any Person on account of:

- (a) The approval or disapproval of any plans, drawings and specifications, whether or not in any way defective;

(b) The construction of any Improvement, or performance of any work, whether or not pursuant to approved plans, drawing and specifications; or

(c) The development of any Lot within the Park.

Declarant shall not be liable to any Owner or Occupant of the Park by reason of any mistake in judgement, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this Declaration; provided, that Declarant shall be liable for gross negligence, fraud or willful or wanton misconduct. Every Owner or Occupant of any of the Park by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

3.9 Construction Without Approval. If any Improvement shall be erected, placed or maintained upon any Lot, or any new use commenced upon any Lot, other than in accordance with the approval by the Declarant pursuant to the provisions of this Article III, such alteration, erection, placement, maintenance or use shall be deemed to have been undertaken in violation of this Declaration, and upon written notice from Declarant any such Improvement so altered, erected, placed, maintained or used upon any Lot in violation of this Declaration shall be removed or altered so as to conform to this Declaration. Should such removal, or alteration, of cessation or amendment or use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this Declaration shall be subject to the enforcement procedures set forth in Article VII.

3.10 Termination of Declarant's Control. Declarant may at any time, prior to the Transition Date, relinquish authority under all or any of this Article III, Article IV and/or Article V to the Association. The Association may thereafter delegate its duties and rights under this Article III to an Architectural Committee consisting of at least three (3) Owners in the Park, or their designated representatives, whereupon The Architectural Committee shall exercise all power and authority of Declarant under this Article; provided, however, that the Architectural Committee or any member may be removed at any time by vote of a majority of the Owners at an annual or special meeting of the Association called for that purpose.

## ARTICLE IV

## IMPROVEMENTS STANDARDS

4.1 Minimum Setback. No Improvements of any kind, and no part thereof, shall be placed closer than permitted by the City and Borough of Juneau to an Interior Property Line, except as otherwise provided in Section 4.2. "Interior Property Line" shall mean the boundary between any Lot within The Park and all other Lots bordering upon said Lot. Minimum setbacks shall be as described in Exhibit B.

4.2 Exceptions to Setback Requirements. The following Improvements, or parts of Improvements, are specifically excluded from The setback requirements set forth in Section 4.1:

(a) Roof overhang, subject to approval in writing from Declarant, provided said overhang does not extend more that thirty (30) inches into the setback area;

(b) Steps and walkways;

(c) Fences, subject to the requirements set forth in Section 4.4;

(d) Landscaping;

(e) Planters, not to exceed three (3) feet in height, except that planters of greater height may be built within the setback area with the prior written approval of Declarant;

(f) Business park identification Signs, directional and parking Signs and Signs identifying the Owner or Occupant of a Lot, subject to the prior written approval of Declarant;

(g) Lighting facilities, subject to the prior written approval of Declarant; and

(h) Underground utility facilities and sewers.

4.3 Signs. All Signs shall be subject to applicable law and ordinances of the City and Borough of Juneau including the Development Standards. No Sign shall be permitted on any Lot unless approved by Declarant in Writing. No Sign shall be approved other than reasonable and non-obstructive; business park identification Signs, information and vehicular control Signs, Signs identifying the building or the business of the Owner or Occupant of a Lot, and Signs offering the Lot for sale or lease, and

temporary development Signs; provided, however, Declarant shall have the right to advertise the Park and any Lot for sale or lease by Signs displayed to the public until all Lots within The Park have been sold or leased by Declarant.

4.4 Fences. No fences or walls shall be permitted on any Lot unless such fence or wall is necessary for security or screening purposes. Declarant reserves the right to approve the location and design of all fences, and no fence shall be constructed without a letter of approval from the Declarant. No chain link fences will be permitted.

4.5 Parking Areas. Off-street parking must be adequate to accommodate the parking needs of the Owner or Occupants. Parking for the employees and visitors thereof shall be provided by the Owner or Occupant of each Lot. If parking requirements increase as a result of a change in the use of a Lot or in the number of persons employed by the Owner or Occupant, additional off-street parking shall be provided so as to satisfy the intent of this section. All parking and loading areas shall conform to applicable Development Standards of the City and Borough of Juneau and the following requirements:

(a) Required off-street parking shall be provided on the Lot, on a contiguous Lot, or within such distance from the Lot as Declarant deems reasonable. Where parking is provided other than upon the Lot concerned, Declarant shall be given a certified copy of a Recorded Instrument, duly executed and acknowledged by the Person or Persons holding title to the Lot or other Property upon which the parking area is located, stipulating to the permanent reservation of the use of the Lot or other Property for such parking area.

(b) Parking areas shall be paved so as to provide dust-free, all-weather surfaces. Each parking space provided shall be designated by lines painted upon the paved surface and shall be adequate in area. All parking areas shall provide, in addition to parking spaces, adequate driveways and space for the movement of vehicles.

4.6 Storage and Loading Areas. Storage, maintenance and loading areas must be constructed, maintained and used in accordance with applicable Development Standards and the following conditions:

(a) Outside storage of materials, supplies or equipment, including trucks or other motor vehicles, shall be permitted only if approved in writing by Declarant.

(b) Provision shall be made on each lot for any necessary vehicle loading and no on-street vehicle loading shall be permitted.

(c) Loading areas shall be set back, recessed or screened so as to be minimally visible from neighboring property or streets.

4.7 Drainage Control. All Lots shall be responsible to control drainage within said Lot as may be required to assure compliance with the Development Standards of The City and Borough of Juneau and as required by the applicable agencies. Each Lot shall construct a storm facility that services the collection of impervious surfaces i.e., roofs, walks, parking areas, and will connect such runoff areas to the storm connections provided or as required to assure these water do not enter the natural draining outfall. All pervious areas, i.e., lawn and landscape features shall direct surface and subsurface collection systems to the subdrains installed, or as may be modified to receive said water. This provision is to assure that each Lot Owner will recharge the natural ground water as much as possible. No landscaping or regrading of said Lots shall preclude the surface water from entering the required storm draining systems. Maintenance of all systems within private property shall be the individual Lot Owner's responsibility, except the easements as may be required for transporting impervious area storm run-off from dedicated public right-of-ways, or owned by public agencies. The agency having to maintain said storm facility shall have the right to enter each Lot as may be required to repair, reconstruct or maintain said system as deemed necessary.

4.8 Vacant Lots. Any vacant Lot shall be maintained in an orderly condition and debris, weeds and any waste materials shall be removed or controlled on a regular basis.

## ARTICLE V

### REGULATION OF OPERATIONS AND USES

5.1 Permitted Uses. Only uses allowed by the Master Plan shall be permitted in the Park. Any use shall be performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to other Lots or property, such as, but not limited to, vibration, sound, electro-mechanical disturbances, radiation, air or water pollution, dust or the emission of odorous, toxic or non-toxic matter (including steam). Certain activities which cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in

writing, and further provided such activity is screened so as not to be visible from neighboring property and streets. All lighting for exterior business activities other than parking and landscaping, shall be shielded so as not to be visible from neighboring property.

Nothing contained herein shall preclude an Owner from recovering from any Person liable therefor, damages to which such Owner might be entitled for any act or omission to act requiring an expenditure by the Owner for the maintenance and repair of the parking area, driveway, walkway and/or landscaping on his Lot.

5.2 Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any adjacent Lot or site of neighboring property or to its occupants. A "nuisance" shall include, but not be limited to any of the following conditions:

(a) Any use of the Lot which emits smoke, dust, dirt, or other particulates into the atmosphere. Any discharge of contaminated water, oil, grease, detergents or other improper liquids, solid wastes, or other harmful matter into the storm sewer system, or other waterway which, in the opinion of Declarant, may adversely affect the health, safety, or comfort of Person within the area, or intended use of their property, or cause negative impacts to the downstream receiving waters. No toxic waste, deleterious substance or improper materials of any kind shall be discharged into any public sewer serving the Park or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer.

(b) The escape or discharge of any fumes, odors, gases, vapors, steam, acids or other substance into the atmosphere which discharge, in the opinion of Declarant may be interfere with comfort of Person within the area or which may be harmful to property or vegetation;

(c) The radiation or discharge of intense light, glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the point exterior to the site or Lot upon which the operation is conducted;

(d) Excessive noise, being any noise level which unreasonably disturbs the peace of the area taking into consideration the nature of the uses permitted in the

Park, or any noise level which violates any applicable law;

(e) Excessive emissions of smoke, steam, or particulate matter. Visible emissions of smoke or steam will not be permitted (outside any building) which exceed Ringlemann No. 1 on the Ringlemann Chart of the United States Bureau of Mines, or as determined by opacity limitations established by the State of Alaska. This requirement shall also be applied to the disposal of trash and waste materials. Wind-borne dust, sprays and mists are not permitted.

(f) Ground vibration. Buildings and other structures shall be constructed, and machinery and equipment installed, and insulated on each Lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point exterior to any Lot.

**5.3 Condition of Property.** The Owner of any Lot shall at all times keep it and the Improvements and appurtenances thereon in a safe, clean and wholesome condition and comply, at its own expense, in all respects with applicable governmental, health, fire and safety ordinances, regulations, requirements and directives, and shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such Lot.

**5.4 Maintenance of Grounds.** Except to the extent, from time to time, Declarant or, after the Transition Date, the Association, elects, by notice in writing, to sweep or clean driveways and parking lots, mow lawns or maintain sidewalks or grass areas between the curbs and sidewalks as if they were Common Areas, each Owner shall be responsible for the maintenance and repair of all parking areas, driveways, walkway, snow removal systems and landscaping on its Lot. Such maintenance and repair shall include, without limitation:

(a) Maintenance of all parking areas, driveways, curbs and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefor as shall, in all respects, be equal in quality, appearance and durability; the removal of debris and waste material and the washing and sweeping of paved areas as required; painting and repainting of striping markers and directional signals as required; and



(b) Cleaning, maintenance and relamping of any external lighting fixtures except such fixtures as may be the property of any public utility or government body; and

(c) Except to the extent performed by Declarant or the Association pursuant to this Section 5.4, performance of all necessary maintenance of all landscaping including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, replacement of any dead or diseased grass, ground cover, shrubs or trees.

(d) Installation, maintenance, repair and operation of the irrigation system on all landscaped areas of the Lot.

**5.5 Taxes and Assessments.** Owners shall pay taxes and assessments on their Lots before such taxes or assessments become a lien on the Lot or on any portion of the Park.

**5.6 Refuse Collection.** No refuse collection area shall be permitted between a street and the front of a building.

**5.7 Repair of Building.** No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

**5.8 Public Utilities.** Declarant reserves the sole right to grant consents for the construction and operation of public utilities including, but not limited to, underground lines for cable television antenna, electricity, telephone or telegraph, and gas pipes in and upon any and all streets now existing or hereafter established upon which any portion of the Park may now or hereafter front or abut. Declarant reserves the exclusive right to grant consents and to petition the proper authorities for any and all street improvements such as grading, seeding, tree planting, sidewalks, paving, sewer and water installation, whether it be on the surface or subsurface, which in the opinion of Declarant are necessary on or to the Park. Notwithstanding the provisions of Section 3.2, Declarant reserves the exclusive right to approve above ground utility lines across the Park or any portion thereof (excluding Lots owned by other Owners) on a temporary basis for the purpose of construction, and such lines shall be permitted when required by a government agency.

5.9 Utility Lines and Antennas. No sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power or signals, including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Park other than within buildings or structures unless the same shall be contained in conduit or cables constructed, placed or maintained underground or concealed in or under buildings or other structures. Antenna for the transmission or reception of telephone, television, microwave or radio signals placed on any Lot, shall be appropriately screened so as to have minimum visual impact on surrounding streets, public spaces and common open space. The final location and configuration of such antenna must be approved in writing by the Declarant. Nothing contained herein shall be deemed to forbid Declarant from allowing, by written approval, the erection or use of temporary above ground power or telephone facilities incidental to the construction or repair of buildings on the Park.

5.10 Mechanical Equipment. All mechanical Equipment, utility meters, storage tanks, air conditioning equipment and similar items shall be screened with landscaping or attractive architectural features integrated into the structure itself.

5.11 Mineral Exploration. No portion of the Park shall be used in any manner to explore for or to remove any steam, heat, oil or other hydrocarbons, gravel, earth, or any earth substances or other minerals of any kind, provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of Improvements within the Park.

## ARTICLE VI

### AMENDMENT AND REPEAL

6.1 Procedure. Except as otherwise provided in Section 6.2, this Declaration or any provision hereof, or any covenant, condition, easement, restriction or reservation contained herein, may be terminated, extended, modified or otherwise amended, as to the whole of the Park or any portion thereof, with the written consent of the Owners of eighty percent (80%) of the voting power in the Association, based upon each Lot having a vote equal to its Proportionate Share; provided, however, that until the Transition Date, no such termination, extension, modification or other amendment shall be effective without the written approval of Declarant. No such termination, extension, modification or other amendment shall be

effective until a proper instrument in writing has been executed, acknowledged and recorded.

6.2 Amendment by Declarant. Until the Transition Date, Declarant acting alone may (i) modify or amend the provisions of Articles III, IV, V and (ii) correct, clarify, amend, adjust or complete legal descriptions on any exhibit hereto and/or on the Plat, including adjusting Lot lines or (iii) add other property, as permitted by Section 2.2 hereof; provided, however, that (A) any such modification or amendment conform to the intent set forth herein; (B) prior to any such modification or amendment Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (C) any modification or amendment shall not provide for any type of Improvements or use not presently permitted by the Declaration or authorize Declarant to transfer any cost of Common Area Improvements in the Expansion Area to the Association of any Lot Owner. No such modification or amendment shall be effective until the Owners have been given thirty (30) days' prior written notice of the proposed change, and a proper instrument in writing has been executed, acknowledged and recorded. No material modification or amendment shall be effective until approved by the Owners. If Declarant, in its sole discretion, determines that it is necessary to amend this Declaration or the Plat, as permitted by this Section 6.2, then Declarant, on behalf of itself, the Association, and each and every Owner, is hereby authorized to execute and have recorded said required amendment or amendments. The Association, by the act of recording of this Declaration, and each and every Owner by the act of accepting or Recording a conveyance (including by real estate contract) of any interest in a Lot or any other Improvements thereon, shall be deemed thereby to grant to Declarant a full and complete and unconditional power of attorney which is and shall be deemed coupled with an interest, to take any and all actions to effectuate and record or file said amendment or amendments and agrees that any such amendment or binding upon their respective interests in Lots, the Association, and upon each of them personally and their heirs, representatives, tenants, successors and assigns, to the same extent as if they and each of them had personally executed and acknowledged amendment or amendments. The power of attorney reserved herein or arising out of this Section 6.2, however, shall expire on the Transition Date; from and after the Transition Date, this Declaration may be amended only pursuant to the provisions of Section 6.1.

6.3 Governmental Regulation. All Development Standards, including the Master Plan, are deemed to be a part of this Declaration and to the extent that they conflict with any

provision, covenant, condition or restriction hereof, said conflicting Development Standards, including the Master Plan, shall control and the provision, covenant, condition or restriction hereof in conflict therewith shall be either: (i) deemed amended to the extent necessary to bring the same into conformity with said Development Standards, including the Master Plan, while still preserving the intent and spirit of the provision, covenant, condition or restriction; or (ii) stricken herefrom should no amendment conforming to the Development Standards, including the Master Plan, be capable of preserving the intent and spirit of said provision, covenant, condition or restriction.

## ARTICLE VII

### VINTAGE BUSINESS PARK OWNERS ASSOCIATION

**7.1 Form of Association.** There is hereby created the Vintage Business Park Owners Association. Initially, the Association may be an unincorporated association. The Board, or Declarant until such time as the initial Board is selected, may at any time if deemed advisable in the exercise of Declarant's sole discretion, without necessity of prior approval or other action by the members being necessary, cause such unincorporated association to be converted to a non-profit corporation, the rights and duties of the members and of such corporation, the rights and duties of the members and of such corporation shall continue to be governed by the provisions of this Declaration.

### **7.2 Membership.**

**7.2.1 Qualification.** Each Owner shall be a member of the Association and shall be entitled to one membership for each Lot so owned.

**7.2.2 Transfer of Membership.** The Association membership of each Owner shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Lot or tract and then only to the transferee of title to such Lot or tract. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot or tract shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner.

### 7.3 Voting.

7.3.1 Number of Votes. The total voting power of all Owners shall be the number of acres (and fraction thereof) of all Lots in Vintage Business Park subject to this Declaration; each Lot shall be entitled to earn the number of votes (including fraction thereof) equal to its Proportional Share thereof.

7.3.2 Voting Owner. There shall be one voting representative of each Lot. If a Person owns more than one (1) Lot, he shall have the votes for each Lot owned. The voting representative shall be designated by the Owner or Owners of each Lot by written notice signed by all Owners and filed with the Board. A voting representative need not be an Owner. The designation shall be revocable at any time by any one of The Owners of a Lot upon written notice filed with the Board, or when the board receives actual notice of the death or judicially declared incompetence of an Owner of a Lot or by the conveyance of such Owner of his Lot. This power of designation and revocation may be exercised by the guardian, administrator or executor of an Owner's estate. Where no designation is made, or share a designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners.

7.3.3 Joint Owner Disputes. The vote for a Lot must be cast as a single vote. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than the vote to which a particular Lot is entitled is cast for a particular Lot, then all such votes for such Lot shall be deemed void and shall not be counted.

### 7.4 Meetings, Audits, Notices of Meetings.

7.4.1 Annual Meetings. There shall be an annual meeting of the Owners in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice of the Board delivered to the Owners no less than ten (10) days prior to the date fixed for said meeting. At the annual meeting, the Board shall present a summary of the common expenses, receipts and disbursements for the preceding fiscal year, and the allocation thereof to each Owner, and the estimated common expenses for the coming fiscal year. Within ten (10) days after the annual meeting, a copy of said summary shall be delivered or mailed to the Owners not present at said meeting.

7.4.2 Audits. The Board at any time, or upon the written request of Owners having at least forty percent (40%) of the total voting power, may require that an audit of the Association and management books be presented at any special meeting. An Owner, at his own expense, may at any reasonable time make an audit of the books of the Board and Association.

7.4.3 Special Meetings. Special meetings of the Owners may be called at any time for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Such meetings shall be called by written notice of the president of the Association upon the president's decision or upon a request signed by a majority of the Board, or by written request by Owners having forty percent (40%) of the total voting power, which notice shall be delivered not less than ten (10) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and in general the matters to be considered.

7.5 Bylaws of Association.

7.5.1 Adoption of Bylaws. Bylaws for the administration of the Association and the Park, and for other purposes not inconsistent with the intent of this Declaration, shall be adopted by the Association by a majority of the voting power of the voting Owners at a regular or special meeting. Notice of the time, place and purpose of such meeting shall be delivered to each Lot Owner at least ten (10) days prior to such meeting. Amendments to the Bylaws may be adopted by the same vote at a regular or special meeting similarly called.

7.5.2 Bylaws Provisions. The Bylaws shall contain provisions identical to those provided in this Article VII, and may contain supplementary, not inconsistent, provisions regarding the operation and administration of the property. The Bylaws shall establish such provisions for quorum, ordering of meetings, and varying the size of the Board and details as may be required for the proper administration of the Association and the Property.

7.5.3 Availability of Reports, Documents. The Association shall make available to Lot Owners and any first Mortgagee, current copies of this Declaration, Articles of Incorporation, if any, Bylaws, and other rules concerning the Association and the books, records

and financial statements of the Association. "Available" means available for inspection upon request, during normal business hours or under other reasonable circumstances.

## ARTICLE VIII

### MANAGEMENT OF ASSOCIATION

8.1 Management of Declarant. "Transition Date" shall mean a date one hundred twenty (120) days after the date on which Declarant shall have closed the sale of the last unsold Lot or the date on which Declarant elects to permanently relinquish all of its authority under this Section 8.1 by written notice to all Owners, whichever date first occurs. Until the Transition Date occurs, the Park shall be managed in the exercise of the sole discretion of the Declarant, as follows:

8.1.1 Declarant or a managing agent selected by Declarant shall have the power and authority to exercise all the rights, duties and function of the Board. To carry out this provision, Declarant may, from and after the date of Recording hereof, adopt and enforce temporary bylaws, rules and regulations for the Association of Owners; may give notices and call meetings, determine, assess, collect, receive and expend assessments and Association funds; hire a manager or other employees or service agencies as required; purchase supplies and for required services, property and insurance; set up and establish Association books and accounts; and generally exercise all powers necessary to carry out the provisions of the Declaration and itself or through a managing agent manage the Park. Acceptance of an interest in a Lot described in this Declaration evidences acceptance of this management authority in Declarant for the initial period of operation indicated and in carrying out the same, the Declarant is entitled to the benefits of all powers, indemnities and protections set forth in this Declaration for the Board.

8.1.2 These requirements and covenants are made in order to insure that the Park will be adequately administered in the initial phases of development, and to insure an orderly transition of Association operations.

8.1.3 Until the Transition Date, any reference in this Declaration to the "Association" or the "Board" shall be deemed to mean and refer to Declarant. From and after the Transition Date, any reference in this

Declaration to "Declarant" shall be deemed to mean and refer to the Association.

8.2 Management by Board. From and after the Transition Date, administrative power and authority shall vest in a Board of not less than three nor more than seven directors of such other number as may be provided in the Bylaws, elected from among the Owners. The board may delegate all or any portion of its administrative duties to a manager, managing agent, or officer of the Association, or in such manner as may be provided by the Bylaws. All Board positions shall be open for election at the first annual meeting. The Board shall elect officers of the Association from among its members, which shall include a president who shall preside over meetings of the Board and the meetings of the Association.

8.3 Authority of the Board.

8.2.1 Regular Assessments. The Board for the benefit of the Owners shall enforce the provisions of this Declaration and of the Bylaws, and shall acquire and shall pay for out of the Common Expense Fund, provided for in Article IX of the Declaration, all goods and services requisite for the proper functioning of the Park, including but not limited to the following:

(a) Water, sewer, garbage collection, electricity, telephone, gas and any other necessary Utility service as required for the Common Area.

(b) Policies of insurance coverage for hazards, liability for personal injury and property damage, and for fidelity bonds for Association officers and other employees, as the same are more fully required hereafter and/or in the Bylaws.

(c) The services of persons or firms as required to properly manage the affairs of the Park to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Board or are furnished by the manager of management firm or agent; provided that the fees paid for any services shall be reasonable.

(d) Legal and accounting services necessary or proper in the operation of the Association affairs, administration of the Common Area, or the enforcement of this Declaration.



(e) Planting, maintenance, repair and all landscaping and gardening work for the Common Areas, and such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Area.

(f) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the Enforcement of this Declaration; provided that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Lots or their Owners, the cost thereof shall be specially assessed to the Owner of such Lots.

(g) Maintenance and repair of any Lot, its appurtenances and Improvements, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Area or preserve the appearance and value of the Park, and the Owner of Owners of said Lot have failed or refused to perform said maintenance or repair as required by Article V.

(h) The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the Common Areas rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorneys' fees) incurred by the Board by reason of such lien or liens shall be specially charged against the Owners and the Lots responsible to the extent of their responsibility.

(i) The Board's power hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the Common Expense Fund capital additions and Improvements (other than for purposes of restoring, repairing or replacing portions of the Common Areas) having a total cost in excess of Two Thousand Five Hundred Dollars (\$2,500.00) in any one fiscal year, without first obtaining the affirmative vote of the Owners holding a majority of the voting power present or represented at an annual meeting or a special meeting called for such purpose, or voting by mail; provided that any expenditure or

contract for capital additions or Improvements in excess of Twenty-Five Thousand Dollars (\$25,000.00) must be approved by Owners having not less than two-thirds (2/3) of the voting power present or represented at such a meeting or voting by mail. This Section 8.3.1(i) shall not apply to assessments arising out of Section 8.3.2.

(j) Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any one of them.

(k) The Board shall have the exclusive right to contract for all goods and services, payment of which is to be made from the Common Expense Fund. The Board may delegate such powers subject to the terms hereof.

(l) The Board may, from the Common Expense Fund, acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the Owners in the same proportion as their respective Proportionate Shares, and such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct. The Board shall not, however, in any case acquire real property or personal property at a cost in excess of Two Thousand Five Hundred Dollars (\$2,500.00) without first obtaining the affirmative votes of the Owners holding a majority of the voting power present or represented at an annual meeting or a special meeting called for such purpose, or voting by mail; provided that any acquisition by lease or purchase of real or personal property valued in excess of Ten Thousand Dollars (\$10,000.00) must be approved by Owners having not less than two-thirds (2/3) of the voting power present at such meeting or voting by mail.

8.3.2 Special Assessments. Each Owner shall be responsible for paying its Proportionate Share of the cost of Off-site improvements and on-site improvements not benefitting the Park exclusively, which such improvements relate to proportional cost sharing by the Park with other affected properties in the City and Borough of Juneau, including such things as roadway extensions, traffic lights and utilities. Such improvements, if constructed, may be funded through a local improvement district ("LID"), or other means as

then determined by the City. Unless otherwise stipulated through a LID process, each Owner shall pay his Proportionate Share of such costs as follows: To the extent the Association elects to pay, or to the extent Declarant or any one or more of the Lot Owners elects to advance to the Association the cost of certain off-site and on-site improvements, the full amount of any such costs advanced shall constitute a loan which shall be repaid in forty (40) equal quarterly installments including interest, accruing on the unpaid principal balance, at the rate of twelve percent (12%) per annum or at the prime rate then charged plus two percent (2%), whichever is higher. The loan shall be evidenced by a Note substantially in the form of Exhibit B attached hereto. After the Transition Date, the Board may enter into such borrowing, under terms and conditions as shall be acceptable to it. Each Owner's Proportionate Share shall be assessed pursuant to Article IX and in the event an Owner fails to timely pay amounts due the Association pursuant to this Section 8.3.2, the lien provisions of Section 12.3 shall apply. Any Owner may prepay the entire remaining balance of such Owner's Proportionate Share of all special assessments arising out of this Section 8.3.2, at any time without penalty, and Declarant or the Board shall execute and deliver to the prepaying Owner a recordable instrument removing the special assessment arising out of this Section 8.3.2 from the Lot in question.

#### ARTICLE IX

##### FUND FOR REGULAR AND SPECIAL ASSESSMENTS

9.1 Estimated Expenses. Within thirty (30) day prior to the beginning of each fiscal year the Board shall prepare a budget and an estimate of the charges (including regular expenses, and any special assessments for particular Lots) to be paid during such year; shall make provisions for creating, funding and maintaining reasonable reserves for contingencies, operations, repairs, replacements, improvements and acquisition of Common Areas and facilities (the "Common Expense Fund"); and shall take into account any expected income and any surplus available from the prior year's operating fund. The Board may create and maintain from regular monthly assessments a reserve fund for replacement of those Common Areas which can reasonably be expected to require replacement. The estimated requirement shall be assessed among all Lots subject to this Declaration based upon their relative acreage as shown on the Plat. If the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment for any reason of

Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the Owners in like proportions. Within ninety (90) days after the end of each fiscal year, the Board shall furnish to each Owner a certified statement, in reasonable detail, of all expenditures during such period, prepared by the Association's accountant. If such certified statement shows that expenditures exceed estimated installments paid to the Association, then the Lot Owner shall pay the Association the excess with ten (10) day of receipt of such statement; if such certified statement shows that the contrary is the case, then the overpayment to the Association shall be a credit to the next amounts due from the Lot Owner to the Association pursuant to this Article IX.

**9.2 Payment by Owners.** Each Owner shall be obligated to pay assessment made pursuant to this Article to the treasurer of the Association in equal quarterly installments in advance on or before the first (1st) day of each calendar quarter during such year, or in such other reasonable manner as the Declarant of Board shall designate. Any unpaid assessments shall bear interest at the rate of twelve percent (12%) per annum or such other rate as provided in the Bylaws from due date until paid. In addition, the Board shall have the power to assess against an Owner a late fee of Fifty Dollars (\$50.00), or such other sum as may be provided in the Bylaws, for each installment which is unpaid for a period of ten (10) days after it is due. Assessments for all Lots shall begin upon the closing of the first sale of a Lot by Declarant.

**9.3 Contribution to Common Expense Fund.** Each Owner may be required by the Board to make an initial, one time contribution of up to twelve (12) months' estimated common expense assessment. The contribution shall be in lieu of payment of regular quarterly assessments for the first year.

**9.4 Purpose.** All funds collected hereunder shall be expended for the purposes designated in this Declaration.

**9.5 Separate Accounts.** After Declarant's management authority under Section 9.1 expires, the Board may require that the Association maintain separate accounts for current operations, reserves, and a special separate reserve account for payment of insurance. All assessment and charges shall be collected and held in trust for, and administered and expended for the benefit of the Owners.

**9.6 Based on Percentage.** Except for certain special charges which may be levied against particular Lots under the provision of this declaration, all assessments for

common expenses shall be divided among all Lots subject to this Declaration in accordance with their relative Proportionate Shares.

9.7 Omission of Assessment. The omission by the Board or the Association before the expiration of any fiscal year to fix the estimate and assessments and charges hereunder for that or the next fiscal year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments and charges, or any installment thereof for that or any subsequent fiscal year; but the assessment fixed for the preceding fiscal year shall continue until a new assessment or charge is fixed.

9.8 Records. The Board shall cause to be kept detailed and accurate records, in the form established by the Association's accountant, if any, of The receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expense incurred. such records and any resolution authorizing the payments involved shall be available for examination by any Owner at convenient hours of week days.

9.9 Certificate of Assessment. A certificate executed and acknowledged by the treasurer or the president of the Board or an authorized agent thereof if neither the president nor treasurer is available, stating the indebtedness for assessments and charges or lack thereof secured by the assessment lien upon any Lot shall by conclusive upon the Board and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith. Such a certificate shall be furnished to any Owner or any encumbrancer of a Lot within a reasonable time after request, in recordable form, at a reasonable fee. Unless otherwise prohibited by law, any encumbrancer holding a lien on a Lot may pay any unpaid assessments or charges payable with respect to such Lot, and, upon such payment, such encumbrancer shall have a lien on such Lot pursuant to Section 12.3 hereof, for the amounts paid of the same rank as the lien of his encumbrance.

## ARTICLE X

### INSURANCE

10.1 Insurance Coverage. The Board shall obtain, maintain and pay the premiums as a common expense a policy or policies of insurance and bonds written by companies licensed to do business in Alaska required to provide:

10.1.1 A Master of blanket type of property insurance covering all of the Common Areas, including common fixtures and equipment and personal property and supplies owned by the Association. The insurance policy shall afford, as a minimum, protection against loss or damage by fire and other peril normally covered by the standard extended coverage endorsements and all other perils which are customarily covered with respect to similar projects, including all peril normally covered by the standard "all risk" endorsement, where such is available.

10.1.2 General comprehensive liability insurance insuring Declarant, the Board, the Association, the Owner and managing agent, if any, against any liability to the public or to the Owners of Lots and their guests, invites, or tenants, incident to the ownership, maintenance and use of the Common Areas and legal liability arising out of lawsuits related to employment contracts of the Association. The liability insurance policies shall include such protection as the Board deems necessary. Coverages and policy limits shall be reviewed at least annually by the Board. The policies of liability insurance shall contain a severability of interest endorsement or equivalent coverage which shall preclude the insurer from denying the claim of Owner because of the negligent acts of the Association or other Owners.

10.1.3 Workmen's compensation insurance to the extent required by applicable law.

10.1.4 Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

10.1.5 Such other insurance as the Board deems advisable, including directors and officers liability insurance covering the Board and officers of the Association.

## ARTICLE XI

### INDEMNIFICATION OF BOARD MEMBERS

Each Board member of Association committee member, or Association officer shall be indemnified by the Owners against all expenses and liabilities, including attorney's fees, reasonable incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having held such position, or any settlement thereof, whether or not he holds

such position at the time such expenses or liabilities are incurred, except in such cases wherein such Person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

## ARTICLE XII

### REMEDIES

12.1 (a) Remedies for Failure to Maintain and Repair. If any Owner shall fail to perform the covenants and condition required by Article V, then Declarant or the Association shall, after fifteen (15) days' prior written notice to such delinquent Owner, and in addition to the other enforcement remedies provided herein, have the right, but not the obligation, to cure such default, and to charge the delinquent Owner with the cost of such work plus a fifteen percent (15%) coordination fee except for payments made pursuant to Section 5.5, together with interest thereon at the rate of twelve percent (12%) per annum from the date of Declarant's advancement of funds to the date of reimbursement of Declarant by Owner. If the delinquent Owner shall fail to reimburse Declarant for such costs within ten (10) days after demand therefor, Declarant for such costs within ten (10) days after demand therefor, Declarant may, at any time within two (2) years after such advance, file for record in the Department of Records and Elections of the City and Borough of Juneau, Alaska, a claim of lien signed by Declarant for the amount of such advances and interest thereon. The lien created by this section shall be effective to establish a lien against the interest of the delinquent Owner and its Lot, together with interest at twelve percent (12%) per annum on the amount of such advance from the date thereof, in addition to recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof and court costs and reasonable attorneys' fees which may be incurred in the enforcement of such a lien.

(b) Foreclosure of Lien. A lien created pursuant to Section 12.1(a), when so established against the Lot described in said claim, shall be prior or superior to any right, title, interest, lien, or claim which may be or may have been acquired in or attached to the real property interests subject to the lien subsequent to the time of filing such claim for record. Such lien shall be for the benefit of Declarant and may be enforced and foreclosed in a like manner as a real estate mortgage is foreclosed in the State of Alaska.

(c) Cure. If any Owner's failure to perform the obligations required by Article V is cured, and all amounts, including accrued interest, due and owing, to Declarant or the Association as a result of said failure to perform is paid, then Declarant of the Association shall file or Record a rescission of such notice, upon payment by the defaulting Owner of the costs of preparing and filing or Recording such rescission, and other reasonable costs, interest, and fees, including attorneys' fees which have been incurred.

(d) Nonexclusive Remedy. The foregoing lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies which any party may have hereunder and by law, including any suit to recover a money judgement for unpaid assessments. If any Owner shall fail to perform such maintenance and repair and, notwithstanding such failure, Declarant should fail to exercise its rights and remedies hereunder, then, any other Owner, after fifteen (15) days' prior written notice to Declarant and such delinquent Owner, shall have the right, but not the obligation to perform such maintenance and repair and shall have the same rights and remedies with respect thereto as are provided herein to Declarant.

12.2 Abatement and Suit. The Owner of each Lot shall be primarily liable, and the Occupant, if any, secondarily liable for the violation or breach of any covenant, condition or restriction herein contained. Violation or breach of any covenant, condition or restriction herein contained shall give to Declarant, following thirty (30) days' written prior notice to the Owner or Occupant in question, the right, privilege and license to enter upon the Lot where said violation or breach exists and to summarily abate and remove, at the expense of the Owner or Occupant thereof, any Improvement, structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the Person or Persons who have violated or are attempting to violate any of these covenants, conditions or restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation. No such entry by Declarant or its agent shall be deemed a trespass, and neither Declarant nor its agents shall be subject for liability to the Owner or Occupant of said Lot for such entry and any action taken to remedy or remove a violation. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on any Owner or Occupant in violation of any provision of this Declaration, as well as a lien (enforceable in the same manner as a Mortgage) upon the Lot in question. The lien provided for in this section shall not be valid as against a bona fide purchaser for



value or a bona fide Beneficiary for value of the lot in question, unless a suit to enforce said lien shall have been filed in a court of record in the City and Borough of Juneau, Alaska, prior to the Recordation of the Deed of Mortgage conveying or encumbering the Lot in question to such purchaser or Beneficiary, respectively.

**12.3 Creation of Lien and Personal Obligation for Assessments.** Each Owner of a Lot with the Park, by acceptance of the Deed to or other conveyance of that Lot, shall be deemed to covenant and agree to pay all costs and all assessments provided for herein. Any costs or assessment, or any portion thereof, not paid when due, together with interest payable hereunder, and all costs and attorney's fees incurred in connection with collection, shall be a continuing lien upon the Lot, which lien may be foreclosed by the Declarant, the Association or other Owner in the manner provided by law for the foreclosure of a Mortgage on real property. Each Lot Owner shall also be personally obligated to pay the amount of any assessment levied against the Owner's Lot during the time that the Lot Owner is the Owner thereof, together with all other amounts due and payable pursuant to this Section. The personal obligation shall not be released by any transfer of the Lot subsequent to the effective date of any particular assessment. Any lien arising out of this Article XII, shall be established by the Recordation of a claim of lien in the Records of the Department of Records and Elections of the City and Borough of Juneau, Alaska, signed by the Association, Declarant or other Owner. Such lien shall also secure Recording costs, costs of title search obtained in connection with the lien or the foreclosure thereof and court costs and reasonable attorneys' fees as may be incurred in the Lot described in the claim, shall be prior to and superior to any right, title, interest, lien, or claim which may be or may have been acquired in or attached to the real property interests for record. Such lien shall be for the benefit of Declarant, the Association or other Owner and may be enforced and foreclosed in a like manner as a real estate Mortgage is foreclosed in the State of Alaska.

**12.4 Right of Entry.** During reasonable hours and upon reasonable notice, and subject to reasonable security requirements, Declarant, or its agents, shall have the right to enter upon and inspect any Lot and the Improvements thereon covered by this declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither declarant nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

12.5 Deemed to Constitute a Nuisance. The result of every act or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or in equity against an Owner or Occupant, either public or private, shall be applicable against every such result and may be exercised by Declarant.

12.6 Attorneys' Fees. In any legal or equitable proceeding for the enforcement of this Declaration or any provision hereof, whether it be an action for damages, declaratory relief of injunctive relief, or any other action, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, which shall be fixed by the court in such proceedings or in a separate action brought for that purpose. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

12.7 Failure to Enforce No Waiver. The failure of Declarant to enforce any requirement, restriction or standard herein contained shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases, nor of the right to enforce any other restriction.

#### ARTICLE XIII

##### CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every Person who now or hereafter owns, occupies or acquires any right, title or interest in or to any portion of the Park is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Park.

#### ARTICLE XIV

##### WAIVER AND RELEASE

Neither Declarant nor its successors or assigns shall be liable to any Owner or Occupant of the Park by reason of any mistake in judgment, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this declaration. Every Owner or Occupant of any of the Park by acquiring interest therein: (1) agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same; and (2) hereby releases any claims it may have against Declarant or Declarant's successors or assigns.

## ARTICLE XV

## RUNS WITH LAND

All covenants, conditions, restrictions and agreements herein contained, or hereafter created pursuant to this Declaration, are made for the direct, mutual and reciprocal benefit of each and every Lot of the Park; shall create mutual equitable servitudes upon each Lot in favor of every other Lot; shall create reciprocal rights and obligations between respective Owners and Occupants of all Lots and privity of contract and estate between all grantees of said Lots, their heirs, successors and assigns; and shall, as to the Owner and Occupants of each Lot, their heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots, except as provided otherwise herein.

## ARTICLE XVI

## RIGHTS OF BENEFICIARIES

No breach of any covenant, condition or restriction herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any Mortgage now or hereafter executed upon the Park or a portion thereof; provided, however, that if any portion of the Park is sold under a judicial or nonjudicial foreclosure of any Mortgage, any purchaser at such sale and its purchased subject to all of the covenants, conditions and restrictions contained in this Declaration.

## ARTICLE XVII

## CAPTIONS; OTHER WORDS

The captions of articles and sections herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular article or section to which they refer. Any reference in this Declaration to the singularly shall include the plural, and vice versa, and any reference to one gender shall include the other genders. The locative adverbs "herein", "hereunder", "hereto", "hereby", "hereinafter", etc., shall mean and refer to this Declaration in its entirety and not to any specific Article, Section or other part thereof.

ARTICLE XVIII

EFFECT OF INVALIDATION

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

ARTICLE XIX

COUNTERPARTS

This Declaration may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement. The execution and delivery of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

BBS ENTERPRISES, an Alaska  
limited partnership

By: Its General Partner

*Wm. J. Bauer*

*By Lawrence J. Bauer*

William J. Bauer, by  
Lawrence Bauer, his  
attorney-in-fact

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 28 day of August, 1997, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Lawrence Bauer, attorney-in-fact of William J. Bauer**, to me known and known to me to be the person named in and who executed the within and foregoing instrument, and he acknowledged to me that he signed the same freely and voluntarily for the uses and purposes therein mentioned as attorney-in-fact of William J. Bauer the general partner of BBS Enterprises, an Alaska limited partnership.

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

*Jeanette M. Fisher*  
Notary Public, State of Alaska  
My commission expires: \_\_\_\_\_

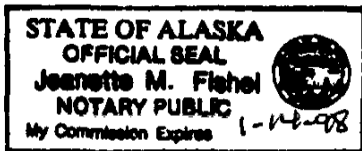


EXHIBIT A

Lots 1-13, inclusive, and Lots 20-40, inclusive, Block "C",  
Lots R-1, R-2, R-3/4 and R-5 and Tract "D", VINTAGE II  
SUBDIVISION, according to Plat 85-58, Juneau Recording  
District, First Judicial District, State of Alaska, and

Lots 14A and 16B, Block "C", VINTAGE II SUBDIVISION, according  
to Plat 96-34, Juneau Recording District, First Judicial  
District, State of Alaska, and

Lot 17A, Block "C", VINTAGE II SUBDIVISION, according to Plat  
96-15, Juneau Recording District, First Judicial District,  
State of Alaska, and

Lot 41A, Block "C", VINTAGE II SUBDIVISION, according to Plat  
88-1, Juneau Recording District, First Judicial District,  
State of Alaska, and

Tract A-1A and Tract A-1B, VINTAGE III SUBDIVISION, according  
to Plat 96-33, Juneau Recording District, First Judicial  
District, State of Alaska.

After recording return to:

Baxter, Bruce, Brand & Douglas  
P.O. Box 32819  
Juneau, Alaska 99803

006862 129  
JUNEAU  
RECORDING DISTRICT CC

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REQUESTED BY B3B4D