

**MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
McCARTHY CREEK SUBDIVISION**

THIS DECLARATION of covenants, conditions, and restrictions is made this 9th day of December, 1996 by the **BOARD OF REGENTS OF THE UNIVERSITY OF ALASKA**, as Trustee for the University of Alaska, a corporation created under the Constitution and laws of the State of Alaska, and acting through its Statewide Office of Land Management (hereinafter referred to as "Declarant").

RECITALS

1. **WHEREAS**, Declarant is the owner of that certain real property located in the Chitina Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Lots 1, 2, 3, and 4, Block 1; Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, Block 2; and, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, Block 3; **McCARTHY CREEK SUBDIVISION, PHASE 1, according to the Plat filed on May 8, 1996, as Plat Number 96-08, records of the Chitina Recording District, Third Judicial District, State of Alaska.**

(hereinafter referred to as "McCARTHY CREEK SUBDIVISION"); and

2. **WHEREAS**, Declarant has established a general plan for the phased development of **McCARTHY CREEK SUBDIVISION** and it is Declarant's desire and intention to subject the real property in said **McCARTHY CREEK SUBDIVISION** to certain covenants, conditions and restrictions for the benefit of **McCARTHY CREEK SUBDIVISION**, the Declarant, and future purchasers of Lots in **McCARTHY CREEK SUBDIVISION**, and it is intended that said covenants, conditions and restrictions bind and benefit not only said purchasers and Declarant, but also their respective successors, heirs and assigns, and that all Lots in **McCARTHY CREEK SUBDIVISION** shall be held, used, leased, sold and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration; and
3. **WHEREAS**, as additional land owned by Declarant adjacent to **McCARTHY CREEK SUBDIVISION** is platted and developed for uses similar to that of **McCARTHY CREEK SUBDIVISION**, upon election by Declarant, said additional land shall become subject to certain covenants, conditions and restrictions set forth in this Declaration by annexing the same as provided herein; and

4. **WHEREAS**, by means of the covenants, conditions and restrictions set forth in this Declaration, it is the intention of the Declarant to (a) insure the enhancement and preservation of property values, (b) provide for proper design, development, improvement and use of McCARTHY CREEK SUBDIVISION, (c) create a residential/recreational development of high quality, and, (d) promote the health, safety and welfare of the residents; and
5. **WHEREAS**, Declarant will establish the McCarthy Creek Subdivision Lotowners' Association under the laws of the State of Alaska for the purpose of exercising the powers and functions herein; and
6. **WHEREAS**, McCARTHY CREEK SUBDIVISION will be developed in several phases, each of which may have unique characteristics, needs and requirements, and the Declarant may, from time to time, promulgate further covenants, conditions and restrictions as "Supplemental Declarations" relating to said additional phases or particular tracts or parcels of real property in additional phases of McCARTHY CREEK SUBDIVISION.

ARTICLE I DEFINITIONS

As used in this Declaration, unless context otherwise specifies or requires, the following words and phrases shall be defined as follows:

1. **Annexation:** The process by which additional tracts or parcels of land not initially part of McCARTHY CREEK SUBDIVISION are made subject to this Declaration.
2. **Articles:** The Articles of Incorporation of the McCarthy Creek Subdivision Lotowners' Association, including any amendments thereto duly adopted.
3. **Assessment:** A payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.
4. **Association:** McCarthy Creek Subdivision Lotowners' Association, an Alaska non-profit corporation.
5. **Association Rules:** Such rules and regulations as adopted by the Association from time to time.
6. **Board:** The duly elected and qualified Board of Directors of the Association.

7. **Building:** Any structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.
8. **Bylaws:** The Bylaws of the McCarthy Creek Subdivision Lotowners' Association, including any amendments.
9. **Commercial Lots:** Lots specifically designated by Declarant to be used for commercial or business purposes.
10. **Declarant:** The undersigned owner of the land comprising McCARTHY CREEK SUBDIVISION.
11. **Declaration:** This Master Declaration of Covenants, Conditions and Restrictions for McCARTHY CREEK SUBDIVISION and, as it may from time to time be amended.
12. **Deed of Trust:** A mortgage as well as a deed of trust.
13. **Improvement:** Includes, but is not limited to, buildings, dwellings, outbuildings, roads, driveways, parking areas, water wells, septic tanks, seepage pits and leach fields, fences, screening walls and barriers, retaining walls, stairs, decks, waterlines, sewers, electrical and gas distribution facilities, poles, signs, loading areas and all other structures and installations, whether above or below the land surface.
14. **Limited Assessment:** An Assessment levied by the Association upon one or more Lots, but not upon all Lots within McCARTHY CREEK SUBDIVISION, for the specific purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct or to cure an Owner's breach of this Declaration, Association Rules, or Plat(s).
15. **Lot:** A portion of McCARTHY CREEK SUBDIVISION which is a legally described tract or parcel of land or which is designated as a Lot on any recorded subdivision plat relating to the McCARTHY CREEK SUBDIVISION, Chitina Recording District, Third Judicial District, State of Alaska.
16. **Material Site Lot:** Lots specifically designated by Declarant to be used to extract gravel, earth or earth material in connection with the grading or construction of improvements within McCARTHY CREEK SUBDIVISION.
17. **Member:** Any person(s) who is an Owner of a Lot within McCARTHY CREEK SUBDIVISION.

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18. **Mortgage:** A deed of trust as well as a mortgage.
19. **Mortgagee:** A beneficiary under, or holder of, a deed of trust as well as a mortgagee under a mortgage.
20. **Occupant:** A lessee, licensee of an Owner or any other person or entity, other than an Owner, in lawful possession of a Lot in McCARTHY CREEK SUBDIVISION with the permission of the Owner.
21. **Owner:** A person(s) or other legal entity or entities, including the Declarant, holding title to a Lot in McCARTHY CREEK SUBDIVISION, including Lots added by Annexation, excluding those having such interest merely as security for the performance of an obligation, but including any mortgagee or other security holder who is in actual title and possession of a Lot as a result of foreclosure or otherwise and any person taking title through such mortgagee or other security holder by purchase at foreclosure sale or otherwise. Those who are in possession of a Lot under a Contract of Sale shall be an Owner while in good standing under the Contract of Sale.
22. **Plat:** All final subdivision plats covering any real property in any phase of McCARTHY CREEK SUBDIVISION, as recorded by the Declarant in the Chitina Recording District, Third Judicial District, State of Alaska, as may be amended by duly recorded amendments thereto.
23. **Property Line:** The boundary between any Lot within McCARTHY CREEK SUBDIVISION and all other Lots and streets bordering upon said Lot.
24. **Record, Recorded, Recordation:** Shall mean, with respect to any document, the recordation of said document in the Chitina Recording District, Third Judicial District, State of Alaska, or successor.
25. **Regular Assessment:** An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.
26. **Residential Lots:** Lots specifically designated by Declarant to be used for residential purposes.
27. **Sign:** Any structure, device or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

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28. **Municipal Code:** The most current code in existence as adopted by any organized city or borough and in which McCARTHY CREEK SUBDIVISION is within said city or borough boundary.
29. **Special Assessment:** An assessment levied by the Association other than a Regular or Limited Assessment.
30. **Street:** Any street, highway, right-of-way, road or thoroughfare within or adjacent to McCARTHY CREEK SUBDIVISION and shown on any recorded subdivision or parcel map or record of survey, whether designated thereon as a street, boulevard, place, drive, road, court, terrace, way, lane, circle or otherwise.
31. **Subject Property:** "Subject property" shall mean McCARTHY CREEK SUBDIVISION and all of the real property now or hereafter made subject to this Declaration.
32. **Supplemental Declarations:** Covenants, conditions and restrictions relating to additional phases, tracts or parcels of land not initially part of McCARTHY CREEK SUBDIVISION.
33. **Visible from Neighboring Property:** "Visible from neighboring property" shall mean, with respect to any given object on a Lot, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent Lot or other property at an elevation no greater than the elevation of the base of the object being viewed.

**ARTICLE II
SUBJECT PROPERTY**

1. **General Declaration.** Declarant hereby declares that all of that real property located in McCARTHY CREEK SUBDIVISION 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 said covenants, conditions and restrictions shall run with all of the subject property for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners, Occupants and their successors in interest as set forth in this Declaration.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of all future phases of McCARTHY CREEK SUBDIVISION in accordance with Declarant's preliminary master plan as currently existing, or which may be modified from time to time by Declarant in its sole discretion, nor prevent normal construction activities during the construction of improvements upon any Lot, public right-of-way, easement, open space or

common area in McCARTHY CREEK SUBDIVISION. The maximum number of Lots the Declarant reserves the right to create is five hundred (500).

2. **Annexation of Other Realty.** Declarant may, at its sole discretion, approve the annexation of other subdivision lots into McCARTHY CREEK SUBDIVISION at any time during the pendency of this Declaration. Upon recording of a notice of annexation of real property, executed by Declarant, containing at a minimum the requirements set forth in Article II, Section 3, the provisions of this Declaration specified in said notice shall apply to such annexed real property in the same manner as if it were originally covered by this Declaration. Thereafter, to the extent that this Declaration is made applicable thereto, the rights, powers, and responsibilities of the owners and occupants of lots within such annexed real property shall be the same as in the case of McCARTHY CREEK SUBDIVISION.
3. **Notice of Annexation of Real Property.** The notice of annexation of real property referred to in Article II, Section 2, shall contain at a minimum the following provisions:
 - a. A reference to this Declaration stating the date of recording and the book or books of the records of the Chitina Recording District, Third Judicial District, State of Alaska, and the page numbers where this Declaration is recorded;
 - b. A statement that the provisions of this Declaration, or some specified part thereof, shall apply to such annexed real property, plus an itemization of those applicable portions;
 - c. A legal description of such annexed real property;
 - d. Such other or different covenants, conditions and restrictions as Declarant shall, in its sole discretion, specify to regulate and control the use, occupancy and improvements of such annexed real property.

ARTICLE III MEMBERSHIP

1. **Membership.** Every Owner shall be a member of the Association. Ownership of a Lot shall be the sole qualification for membership. Not more than one membership shall exist based upon ownership of a single Lot. The terms and provisions set forth in this Declaration are binding upon all Owners. Owners shall also be subject to the terms and provisions of the Articles of Incorporation and the Bylaws of the Association. In the event of a conflict between the terms and provisions of this Declaration, the Bylaws or Articles, the terms of the Declaration shall prevail.

2. **Transfer.** The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the purchaser or mortgagee of such Lot.
3. **Voting Rights.** The Association shall have two (2) classes of voting membership.
 - a. Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
 - b. Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot, including newly annexed Lots, in which it holds the interest required for membership. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership.

ARTICLE IV ASSESSMENTS

1. **Owner's Personal Liability for Assessments.** The Owner of any Lot, by acceptance of a deed or other conveyance, covenants and agrees to pay the Assessments of the Association, whether those Assessments be Regular, Special or Limited. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to Owner's successor in title unless expressly assumed by said successor.
2. **Lien for Assessments.** The Association shall have a lien on a Lot for Assessments levied against the Lot or fines imposed against the Lot's Owner from the time the Assessment or fine becomes due. Assessments include, but are not limited to, fees, charges, late charges, fines, and interest charged by the Association. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The recording of this Declaration constitutes record notice and perfection of the Association's lien. Except as provided otherwise in this Declaration, common expenses shall be assessed against the Lots pro rata. Within ten (10) business days after receipt of a written request from an Owner, accompanied by payment of such reasonable fee as the Association may from time to time set, the Association shall furnish to the Owner a

statement in recordable form setting out the amount of unpaid Assessments against the Owner's Lot.

3. **Priority of Association Liens.** A lien of the Association is prior to all other liens and encumbrances on a Lot except (a) a lien and encumbrance recorded before the recordation of this Declaration; (b) a first security interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent; and (c) a lien for real estate taxes and other governmental assessments or charges against the Lot. A lien of the Association is also prior to all security interests described in Subsection (b) of this Section if the common expense assessments based on the periodic budget adopted by the Association would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This Section does not affect the priority of a mechanic's or materialman's lien.
4. **Assessments for Owner's Failure to Perform.** If any Owner shall fail to perform the maintenance and repairs required under this Declaration, then the Association, after fifteen (15) days written notice to such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and to assess against the Lot the costs of such work, together with interest thereon at the rate established by the Association not exceeding the maximum legal rate of interest per annum, from the date of the Association's advancement of funds for such payment.
5. **Foreclosure of Lien.** A lien of the Association is foreclosed under AS 34.35.005 (1996). A lien for an unpaid Assessment shall be extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due.
6. **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 under and by law, including but not limited to a suit to recover a money judgment for unpaid Assessments from an Owner(s).

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

1. **General Duties and Powers.** In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere as provided herein, and without limiting the generality thereof, the Association shall:
 - a. Enforce the provisions of this Declaration by appropriate means, including without limitation, the expenditure of funds of the Association, the employment of legal

counsel, the commencement of actions, the promulgation of the Association rules as provided in the Bylaws which shall include the establishment of a system of fines or penalties enforceable as Special Assessments also as provided for in the Bylaws.

- b. Maintain such policy or policies of insurance as the Board of Directors of the Association deems necessary or desirable in furthering the purpose of and protecting the interest of the Association and its members.
 - c. Contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.
 - d. Establish and maintain working capital and contingency funds in an amount to be determined by the Board of Directors of the Association.
2. **Association Rules.** The Association shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable. The Association Rules shall cover such matters in furtherance of the purpose of the Association; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration.

ARTICLE VI DEVELOPMENT STANDARDS

1. **Minimum Setbacks.** No part of an improvement shall be placed closer than thirty-five (35) feet from a property line. The following improvements, or parts of improvements, are specifically excluded from these setback requirements:
- a. Steps and walkways;
 - b. Fences and planters;
 - c. Public utility facilities.

Septic tanks, seepage pits or leach fields shall be located in compliance with all local, state and federal regulations, but in no case shall they be located within one hundred (100) feet of a well or water body. Exceptions to setback requirements may be waived in writing by the Association on individual Lots if the Lot Owner submits a site plan which demonstrates to the Association's sole satisfaction, that strict application of the setbacks is undesirable or impractical.

2. **Building Size and Quality.** No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) dwelling, not to exceed three (3) above ground levels or thirty-five (35) feet in height whichever is less, and not to provide for more than one (1) single family unit. Accessory buildings, such as garages or other buildings customarily adjunct to a place of residence, shall be of a permanent nature and of harmonious design and appearance with each other and with the dwelling house. The minimum permitted dwelling size for a Lot shall be three hundred (300) square feet, exclusive of basement, garages, decks and open porches. For a dwelling of two (2) or more levels the ground floor area must be at least two hundred (200) square feet. The exterior of said dwelling shall be completed and finished with an acceptable, recognized exterior paint, stain, or siding within three (3) years after the beginning of construction.

ARTICLE VII PROTECTIVE COVENANTS

1. **Permitted Uses.** All Lots, unless expressly designated by Declarant, are Residential Lots for residential use, only. Provided, however, professional and administrative activities may be permitted within a residential dwelling or associated outbuilding, provided that (a) it is completely contained within the dwelling, (b) there is no indication from the exterior of the dwelling that it is being used in part for home occupation purposes, and (c) it does not violate any other covenants contained herein. Such use shall be performed or carried out entirely within the residential dwelling that the enclosed operations and uses do not cause or produce health, noise, heat, light, odors, visual or safety impacts noticeable and materially different from a residential use to other Lots or property. Activities that cannot be carried on within a dwelling may be permitted, provided the Association specifically consents to such activity in writing and further provided such activity does not disrupt the enjoyment of other Lots as described above and is screened so as not to be visible from neighboring property and roads. This provision is not meant to prohibit the placement of a sign on the Lot according to the guidelines established in Article VII, Section 8, herein.
2. **Easements and Dedicated Land.** Easements for installation and maintenance of utilities and water drainage are reserved as shown on the recorded plat. Within these easements, no dwelling, or other improvement shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or drainage systems. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, service district, or utility company is responsible.
3. **Parking.** Each Owner shall provide adequate off-road parking for all vehicles. No vehicles shall be parked on any Lot within thirty-five (35) feet of a Lot property line or on

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any public right-of-way located within or adjacent to McCARTHY CREEK SUBDIVISION.

4. **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 any property or to its occupant. A "nuisance" shall include, but not be limited to, any of the following conditions:
 - a. **Excessive Noise.** Continuous noise disturbances caused by recreational or non-recreational use of motorized vehicles, or excessive noise disturbances caused by any equipment, generator, machine, device, or any combination of same, except for temporary use in construction of a permanent dwelling on the Lot. All recreational or non-recreational motorized vehicles, equipment, generators, machines, devices, or combination of same operated within McCARTHY CREEK SUBDIVISION shall be of the type that creates the least noise for that class of recreational or non-recreational motorized vehicles, equipment, generators, machines, devices, or combination of same and shall be muffled and housed so as to minimize noise levels. The use of fireworks shall not be permitted within McCARTHY CREEK SUBDIVISION.
 - b. **Parking/Storage.** The parking of commercial vehicles or the use of land for the storing of vehicles, machinery, surplus equipment, scrap or any other items not directly connected with the use of the land for strictly residential purposes, or the collection and keeping of non-operating motor vehicles and other non-operating machinery of any other type.
5. **Condition of Property and Improvements.** The Owner or occupant of any Lot shall at all times keep it and Owner's dwellings, structures, and improvements, in a safe, clean, and wholesome condition and comply, at Owner's own expense, in all respects with all applicable governmental, health, fire and safety ordinances, regulations, requirements and directives. Each dwelling and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
6. **Garbage and Refuse Disposal.** No Lot shall be used as a dumping or storage ground for refuse or rubbish of any kind whatsoever. Trash, garbage and other waste shall be kept in sanitary containers; accumulated trash, garbage and other waste shall be disposed of in compliance with all local, state and federal regulations. Containers and equipment used for the storage or disposal of refuse shall be maintained in a clean and sanitary condition and in accordance with the requirements of the State of Alaska and the National Park Service.
7. **Temporary Structures.** No building of a temporary character such as a trailer, shack, shed, garage, mobile home with or without a foundation, modular home, or other outbuilding shall be used on any Lot at any time as a residence or business either temporarily or permanently, unless the same is present for the actual construction or repair

of a permanent structure on the Lot. In no event shall the temporary structure be used for a period of more than ninety (90) days without prior written approval by the Association. Nothing contained herein shall be deemed to forbid the temporary use of tents to accommodate extra guests or family members, on occasion, provided the tents are used adjacent to an existing residence. This restriction shall not forbid the erection of permanent outbuildings (i.e. studios, workshops, etc.) on a Lot, provided the outbuildings are used in connection with an existing residence and are of a permanent nature harmonious in design and appearance with each other and with the dwelling house.

8. **Signs.** No sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than three (3) square feet, one (1) sign of not more than five (5) square feet advertising the Lot for sale or rent, four (4) no trespass hunting signs setback a minimum of thirty-five (35) feet from the property line, signs used by Declarant to advertise Lots during the development and sales period, and permanent subdivision signs.
9. **Airports and Heliports.** No airport, airstrip, airfield, heliport, or aircraft landing strips, sites or pads of any kind whatsoever shall be permitted within McCARTHY CREEK SUBDIVISION. No aircraft, airplanes, gliders, heliports or helicopters of any kind whatsoever, other than in the case of an emergency, shall be permitted to land or set down on any clearings, roads, rights-of-way or other areas within McCARTHY CREEK SUBDIVISION.
10. **Public Utilities.** The Association shall have the sole right to grant consents for the construction and operation of public utilities, including but not limited to, electricity, telephone, cable television, gas, water and sewer lines, below ground whenever possible, in and upon any and all rights-of-way and utility easements now existing or hereafter established, on any portion of McCARTHY CREEK SUBDIVISION. The Association shall have the exclusive right to grant consents and petition the proper authorities for any and all 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 the Association are necessary for McCARTHY CREEK SUBDIVISION. Notwithstanding the provisions of this section, the construction and operation of public utilities in rights-of-way dedicated to the public must be approved by the appropriate governmental authority.
11. **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 but not limited to, telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of McCARTHY CREEK SUBDIVISION other than within dwellings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed from public view and located on platted easements of record. No parabolic or other

antenna for the transmission or reception of telephone, television, microwave or radio signals shall be constructed, placed or maintained within fifty (50) feet of any property line and shall be placed in or upon a Lot so as to be concealed, whenever possible, from public view and to minimize its visual impact on other Lots. This shall not forbid the erection or use of temporary utility facilities incidental to the construction or repair of improvements within McCARTHY CREEK SUBDIVISION nor permanent public utility facilities required by a governmental agency to be placed or maintained above or below ground.

12. **Animals, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that a maximum of three (3) dogs, cats, or other strictly household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. The foregoing shall not apply to the following Lots:

Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, Block 2; McCARTHY CREEK SUBDIVISION, PHASE 1, according to the Plat filed on May 8, 1996, as Plat Number 96-08, records of the Chitina Recording District, Third Judicial District, State of Alaska,

which Lots shall be permitted a maximum of fifteen (15) animals, livestock or poultry, provided that they are not kept, bred, or maintained for commercial purpose. No animals shall be allowed to create a noticeable health, noise, odor, visual impact or other nuisance upon neighboring properties. No vicious animal (as determined by the Association) shall be kept on any Lot.

13. **Gravel/Subsurface Estate.** No Lot, except those Lots specifically designated by Declarant on the Plat as Material Site Lots, shall be used in any manner to explore for or to remove any steam, heat, oil, or other hydro-carbons, 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 on the Lot. Water may be extracted to the extent permitted by applicable governmental agencies.
14. **Wetlands.** No filling of wetlands shall be permitted unless a permit or other approval from the United States Army Corps of Engineers, or its successor, is first obtained.
15. **Clearing and Burning.** Bulldozers and/or other heavy equipment may be used to clear driveway and dwelling sites only. To preserve the natural environment, clearing or thinning of other trees or brush on the Lots shall be hand cleared. Any slash, stumps, berm piles, and surface debris created by clearing operations are to be disposed of in accordance with state and local permitting requirements, or removed from McCARTHY CREEK SUBDIVISION. All cleared or exposed soil surfaces disturbed by construction or landscaping activity will be reseeded to provide a suitable ground cover to prevent soil erosion.

16. **Drainage Ditches and Culverts.** No obstructions shall be placed in drainage ditches adjoining any Lot. Metal culverts of a diameter of not less than twelve (12) inches shall be placed under driveways leading from roads or streets onto said Lot, to avoid obstruction of said ditch; provided however, that if a larger diameter culvert is required by the State of Alaska, Department of Transportation and Public Facilities, or its successors, the more stringent requirements shall prevail.
17. **Driveways.** The first thirty (30) feet of all driveways shall have the same or better quality finish surface as the road to which they connect. The cost of this driveway finish surface shall be borne by the Owner of each Lot, and shall be completed prior to building occupancy by the Owner. In the event the road surface is upgraded after the start or completion of any dwelling construction, the Lot Owner shall, within one (1) year, upgrade said Owner's driveway to the same or better quality road surface, at said Owner's own expense. Owners shall comply with all driveway permitting requirements set forth by the State of Alaska, Department of Transportation and Public Facilities, or its successor. No Lot shall be permitted to have direct driveway access to McCarthy-Dan Creek Road except for those Lots which have no other alternative access to a secondary subdivision road or where access to a secondary subdivision road is not feasible due to topography or soils conditions.
18. **Water Runoff.** All driveways that have water runoff downhill towards dedicated roads and rights-of-way shall construct a crown on the driveways and ditches along both sides of the driveways to prevent any water runoff from flowing out onto adjacent roads and rights-of-way causing any type of erosion or deterioration. If erosion or deterioration occurs, the Lot Owner shall be responsible and liable for repair work necessary to restore the roads and rights-of-way to original standards prior to the erosion and deterioration caused by the runoff.
19. **Sewage Disposal.** No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation (DEC).
20. **Service Area.** The Association may, at its sole option, petition or contract with appropriate governmental agencies or community associations to establish a Service Area, or to annex MCCARTHY CREEK SUBDIVISION into an existing Service Area for the purpose of making additional improvements or providing trash removal, road maintenance, snow removal, or other similar services. Charges incurred by the Association for such services may be assessed by the Association against individual Lots on the same basis as the Association is charged by the service provider for services to such Lots or may be assessed pro rata.

**ARTICLE VIII
AMENDMENTS**

1. **Procedure.** Except as otherwise provided in Article VIII, Section 2, this Declaration or any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or otherwise amended, as to the whole of the subject property or any portion thereof, with the written consent of the Owners of seventy-five percent (75%) of the Lots in McCARTHY CREEK SUBDIVISION; provided, however, that for a period of fifteen (15) years from the effective date hereof, no such termination, modification, extension, or other amendment shall be effective without the written approval of the Declarant.
2. **Subdivision.** No Lot may be reduced in size by re-subdivision, except that Owners of three or more contiguous Lots may divide the inner or middle Lot, thus increasing the size of the two (2) remaining Lots which shall then be created for all purposes pertinent to these covenants as enlarged single Lots.

**ARTICLE IX
ENFORCEMENT**

1. **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 the Association, following thirty (30) days written notice to the Owner or Occupant in question, or with less, but reasonable notice in exigent circumstances, (a) the right, privilege and license to enter upon the Lot where said violation or breach exists and to abate and remove, at the expense of the Owner or Occupant thereof, any improvement, structure, thing or condition that is contrary to the terms of this Declaration; and/or (b) the right to bring legal proceedings against the person or persons who have violated or are attempting to violate any of these covenants, conditions or restrictions; and/or (c) the right to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation; and/or (d) the right to collect liquidated damages in the amount of \$25 for each day the condition continues after notice until cured. Liquidated damages shall not be construed to limit the right to seek injunctive relief which all Owners agree is a proper remedy. No such entry by the Association nor its agents shall be deemed a trespass, and neither the Association nor its agents shall be subject to 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 upon the Lot in question pursuant to Article IV hereof.

2. **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 to constitute a nuisance, and every remedy allowed by law against an Owner or Occupant either public or private, shall be applicable against every such result and may be exercised by the Association.
3. **Attorney's Fees.** In any legal proceeding for the enforcement of this Declaration or any provision hereof, whether it be an action for damages, declaratory relief or injunctive relief, or any other action, the losing party or parties shall pay the actual reasonable attorney's fees of the prevailing party. The prevailing party shall be entitled to attorney's fees even though the proceeding settled prior to judgment. All remedies provided shall be cumulative and not exclusive.
4. **Effect of Failure to Enforce.** The failure of the Association 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 X GENERAL PROVISIONS

1. **Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns, occupies or acquires any right, title or interest in or to any portion of McCARTHY CREEK SUBDIVISION 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 McCARTHY CREEK SUBDIVISION.
2. **Running with the Land.** All covenants, conditions, restrictions and agreements herein contained (a) are made for the direct, mutual and reciprocal benefit of each and every Lot in McCARTHY CREEK SUBDIVISION; (b) shall create mutual equitable servitudes upon each Lot in favor of every other Lot; (c) 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 (d) shall, as to the Owner and Occupant of each Lot, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots, except as provided otherwise herein.
3. **Rights of Mortgagees.** Except as provided in Article IV of this Declaration, no breach of any covenant, condition or restriction herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any mortgage or deed of trust now or hereafter executed upon McCARTHY CREEK SUBDIVISION or a portion thereof. If any portion of

McCARTHY CREEK SUBDIVISION is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale and its successors and assigns shall hold any and all property so purchased subject to all of the covenants, conditions and restrictions contained in this Declaration.

4. **Waivers.** Any covenant, condition or restriction contained herein may be waived in writing by the Association on individual Lots if the Owner demonstrates to the Association's sole satisfaction that a waiver of such covenant, condition or restriction does not adversely impact McCARTHY CREEK SUBDIVISION. A waiver of any covenant, condition or restriction by the Association shall in no event be deemed a waiver of that same covenant, condition or restriction as it applies to the remaining Lots within McCARTHY CREEK SUBDIVISION.
5. **Captions.** 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 define, limit or describe the scope and intent of the particular article or section to which they refer.
6. **Severability.** 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.
7. **Singular Includes Plural.** Whenever the context of this Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine.
8. **Notices.** In each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice shall be to one or two or more co-owners, or such notice may be delivered by United States mail, certified or registered, postage prepaid, to the Owner at the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot, and any notice so deposited in the mail within Alaska shall be deemed delivered 48 hours after such deposit.
9. **Non-Liability of Officials.** To the fullest extent permitted by law, neither the Board, nor any of the committees of the Association or any member thereof shall be liable to any member or the Association for any damage, loss or prejudice suffered or claimed on account of any decisions made in the course of action, act, omission, error, negligence or the like, made in good faith by the Board or committees or any member thereof.
10. **Zoning.** Notwithstanding the above, should all or any portion of McCARTHY CREEK SUBDIVISION be affected by a zoning ordinance established by any competent authority that is more restrictive than the provisions contained herein, then the more restrictive zoning provisions shall prevail. In no event are these covenants intended to provide for less

BOOK 47 PAGE 621

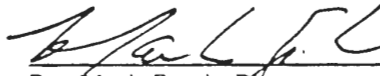
**Covenants, Conditions and Restrictions
McCarthy Creek Subdivision
Page 18 of 19**

restrictive use of land within McCARTHY CREEK SUBDIVISION than allowed by existing or future zoning.

11. **Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years unless amended in accordance with Article VIII.
12. **Exemption of Declarant.** Nothing herein contained shall limit the right of Declarant to plat, replat, subdivide or re-subdivide any Lot or portion of McCARTHY CREEK SUBDIVISION, or to grant licenses, reservations, rights-of-way or easements with respect to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of McCARTHY CREEK SUBDIVISION owned or controlled by Declarant, or to alter the foregoing and its Master Plan and design, or construct additional improvements as Declarant deems advisable in the course of development of the various phases of McCARTHY CREEK SUBDIVISION and without the consent of the Owners or Association. This Master Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements by itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain Association approval of any improvements constructed or placed within McCARTHY CREEK SUBDIVISION by Declarant in connection with the development of McCARTHY CREEK SUBDIVISION or future phases of McCARTHY CREEK SUBDIVISION. The Declarant shall be entitled to the use, without charge, of any common areas within McCARTHY CREEK SUBDIVISION in connection with developing, improving, constructing and marketing the Lots.

Know all persons by these presents that the undersigned has hereunto set his hand the day and year first above written.

UNIVERSITY OF ALASKA

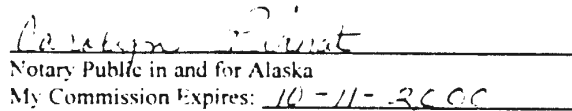

By: Martin Epstein, Director
Statewide Office of Land Management

12/4/96
Date

BOOK 47 PAGE 622

STATE OF ALASKA)
) : ss
THIRD JUDICIAL DISTRICT)

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



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 REC. FILED
 CHITINA, MO.

University of Alaska

University of Alaska

49 - 646

**AMENDMENT NO. 1
MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
McCARTHY CREEK SUBDIVISION**

The undersigned owner of seventy-five (75%) of the Lots in McCARTHY CREEK SUBDIVISION hereby amend the Master Declaration of Covenants, Conditions, and Restrictions for McCarthy Creek Subdivision dated December 9, 1996 and recorded in the Chitina Recording District, Third Judicial District, State of Alaska on December 10, 1996, in Book 47, at Pages 604 through 622 in accordance with the provisions set forth in this written consent.

1. Article II is amended by adding the following new Section 4 to said article:
4. **Specific Property Subject to Annexation.** The following property may, at Declarant's unrestricted discretion, be annexed pursuant to this Article II:

**TOWNSHIP 5 SOUTH, RANGE 13 EAST, COPPER RIVER
MERIDIAN, ALASKA**

SECTION 24: Lot 7;
SECTION 25: Lots 1, 2, SW4 and SE4NW4;
SECTION 26: Lots 3, 4, 5, 7, and SE4SE4;
SECTION 34: Lots 3, 6, and SE4SE4;
SECTION 35: Lots 1, 2, 3, NE4, SW4SW4, E2SW4 and SE4;

According to the GLO Survey Plat of Township 5 South, Range 13 East of the Copper River Meridian, Alaska, approved by the U.S. Surveyor General's Office in Juneau, Alaska on November 1, 1921, and

Lots 1, 2, 3, 4 and 5, Block 4; Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 5; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 6; Lots 1, 2, 3, 4, 5 and 6, Block 7; and, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, Block 8; McCARTHY CREEK SUBDIVISION, PHASE I, according to the Plat filed on May 8, 1996, as Plat Number 96-08, records of the Chitina Recording District, Third Judicial District, State of Alaska; and

Lots 1, 2, 3, 4 and 5, Block 9; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Block 10; Lots 1, 2, and 3, Block 11; Tract A-1; and, Tract A-2; McCARTHY CREEK SUBDIVISION, PHASE II, according to the Plat filed on April 21, 1997, as Plat Number 97-8, records of the Chitina Recording District, Third Judicial District, State of Alaska; and

49 647

Amendment No. 1
Master Declaration of Covenants, Conditions and Restrictions for McCarthy Creek Subdivision
Page 2 of 3

2. Article III, Section 3 is amended by deleting said section and inserting in lieu thereof:
 3. **Voting Rights.** Members of the Association, including Declarant, shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, the vote for such Lots shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
3. Article IV shall be amended by adding the following new section to said article:
 7. **Restrictions on Assessments.** The Association may not commence making common expense Assessments until such time as the Declarant has ceased to own any Lots in McCARTHY CREEK SUBDIVISION, but the Declarant may consent in a written and recorded instrument to the commencement of such Assessments at an earlier time. The Association may make common expense Assessments only upon the affirmative vote of a majority of the members voting on the issue at a meeting.
4. Article VII, Section 12 is amended by deleting the second sentence of said section and inserting in lieu thereof:

The foregoing shall not apply to the following Lots:

**Lots 1, 2, 3 and 4, Block 1; Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, Block 2;
McCARTHY CREEK SUBDIVISION, PHASE 1, according to the
Plat filed on May 8, 1996, as Plat Number 96-08, records of the
Chitina Recording District, Third Judicial District, State of Alaska,**

which Lots shall be permitted a maximum of fifteen (15) animals, livestock or poultry, provided that they are not kept, bred, or maintained for commercial purpose.
5. All other terms and conditions of the Master Declaration of Covenants, Conditions, and Restrictions for McCarthy Creek Subdivision are not effected by this Amendment.

49 648

Know all persons by these presents that the undersigned has hereunto set his hand the day and year herein written.

UNIVERSITY OF ALASKA

Martin Epstein
By: Martin Epstein, Director
Statewide Office of Land Management

10/27/97
Date

ACKNOWLEDGMENT

STATE OF ALASKA)
) : ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 27th day of October, 1997, before me, the undersigned Notary Public, in and for the State of Alaska, duly commissioned and sworn as such, personally appeared to me **MARTIN EPSTEIN**, the Director of the Statewide Office of Land Management, University of Alaska, a constitutional corporation organized and existing under the laws of the State of Alaska, and who acknowledged to me that he executed the within and foregoing document on behalf of said corporation by authority of its Board of Regents, as the voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

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



Carolyn Pirnat
Notary Public in and for Alaska
My Commission Expires: 10-11-00

After Recording Return To:
University of Alaska
Statewide Office of Land Management
3890 University Lake Drive, Suite 103
Anchorage, Alaska 99508

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University of Alaska

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**NOTICE NO. 1 OF ANNEXATION OF REAL PROPERTY
MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
McCARTHY CREEK SUBDIVISION**

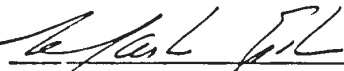
The **BOARD OF REGENTS OF THE UNIVERSITY OF ALASKA**, as Trustee for the University of Alaska, a corporation created under the Constitution and laws of the State of Alaska, and acting through its Statewide Office of Land Management, the Declarant under that certain Master Declaration of Covenants, Conditions, and Restrictions for McCarthy Creek Subdivision dated December 9, 1996 and recorded in the Chitina Recording District, Third Judicial District, State of Alaska on December 10, 1996, in Book 47, at Pages 604 through 622 (hereinafter referred to as "Declaration") hereby gives notice pursuant to Article II of said Declaration that the provisions of that Declaration shall apply to the following real property:

Lots 1, 2, 3, 4 and 5, Block 4; Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 5; Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 6; McCARTHY CREEK SUBDIVISION, PHASE I, according to the Plat filed on May 8, 1996, as Plat Number 96-08, records of the Chitina Recording District, Third Judicial District, State of Alaska.

The real property described above is hereby annexed into the real property described as McCARTHY CREEK SUBDIVISION in said Declaration within the meaning of Article II thereof. The real property described above shall be subject to all the terms and conditions of the Declaration and all amendments previously or hereafter recorded in the Chitina Recording District, Third Judicial District, State of Alaska or successor.

Know all persons by these presents that the undersigned has hereunto set his hand the day and year herein written.

UNIVERSITY OF ALASKA



By: Martin Epstein, Director
Statewide Office of Land Management

11/3/97
Date

49-0715

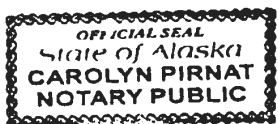
Notice No. 1 of Annexation of Real Property
Master Declaration of Covenants, Conditions and Restrictions for McCarthy Creek Subdivision
Page 2 of 3

ACKNOWLEDGMENT

STATE OF ALASKA)
) : ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 3rd day of November, 1997,
before me, the undersigned Notary Public, in and for the State of Alaska, duly commissioned and
sworn as such, personally appeared to me MARTIN EPSTEIN, the Director of the Statewide
Office of Land Management, University of Alaska, a constitutional corporation organized and
existing under the laws of the State of Alaska, and who acknowledged to me that he executed the
within and foregoing document on behalf of said corporation by authority of its Board of
Regents, as the voluntary act and deed of said corporation, for the uses and purposes therein
mentioned.

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



Carolyn Pirnat
Notary Public in and for Alaska
My Commission Expires: 10-11-00

After Recording Return To:
University of Alaska
Statewide Office of Land Management
3890 University Lake Drive, Suite 103
Anchorage, Alaska 99508

970966

B18 CC
REC'D - FILED
CHITINA REC.
DIST

Nov 10 1 30 PM '97

REQUESTED BY UA

ADDRESS _____