

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
TONJESS ESTATES

THIS DECLARATION, MADE THIS 27 day of April, 1981, by TONJESS ESTATES JOINT VENTURE, comprised of ANTHONY SCHAFF and JESSE L. PRINCE, JR., an Alaska Partnership, shall be hereinafter referred to as "Declarant".

R E C I T A L S

A. Declarant is the fee owner of the real property described as follows:

Lots One through Seven (1-7), Block One (1);  
Lots One (1), Two (2), and Ten through Twelve  
(10-12), Block Two (2); and Lots One through Six  
(1-6), Block Three (3), TONJESS ESTATES SUBDIVISION,  
according to Plat Y-77, Anchorage Recording  
District, Third Judicial District, State of  
Alaska.

This Declaration is being imposed by Declarant upon the covered property.

B. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the covered property and each and every lot and portion thereof, which will constitute a general scheme for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.

C. It is desirable for the efficient preservation of the value, desirability and attractiveness of the covered property to create an association to which should be delegated and assigned the powers of administering and enforcing these covenants and restrictions and collecting and disbursing funds pursuant to the assessment and charges created and referred to.

D. Declarant will hereafter hold and convey title to all of the covered property subject to certain protective covenants, conditions and restrictions hereafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the covered property (not including Tracts A and B of TONJESS ESTATES) described above, shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding

on and inure to the benefit of all parties having any right, title or interest in the covered property or any part thereof, including their legal representatives, heirs, successors and assigns.

**ARTICLE I  
DEFINITIONS**

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committees provided for in the Article hereof entitled "Architectural Control".

Section 2. "Bylaws" shall mean and refer to the Bylaws of the Association as the same from time to time be duly amended.

Section 3. "Association" shall mean and refer to TONJESS ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 4. "Common Expenses" shall mean and refer to the costs of management and administration of the Association; reasonable reserves as appropriate; taxes, if any, paid by the Association; costs incurred by the Architectural Committee; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with this Declaration, the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 5. "Covered Property" or "Project" shall mean and refer to all the real property known as and particularly described in Exhibit "A" hereto.

Section 6. "Lot" shall mean the lots of TONJESS ESTATES.

Section 7. "Member" shall mean and refer to every person or entity who is a member in the Association pursuant to this Declaration. "Member" shall also mean and refer to Declarant so long as Declarant is an "Owner" as hereinafter defined.

Section 8. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a lot, including Declarant, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Dwelling" shall mean the residential dwelling unit together with garages and other structures on the same lot.

Section 10. "Board" shall mean the Board of Directors of the Association.

Section 11. "Association Rules" shall mean rules adopted by the Association pursuant to the Articles hereof entitled "Duties and Powers of the Association".

Section 12. "Mortgage, Mortgagee, Mortgagor". Reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

#### ARTICLE II MEMBERSHIP

Section 1. Membership. Every owner shall be a member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all owners, are not exclusive, as owners shall, in addition, be subject to the terms and provisions of the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. In the event of conflict between the terms and provisions of the Declaration and Bylaws, the terms of the Declaration shall prevail. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership of owners shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Ownership of a lot shall be the sole qualification for membership.

Section 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 deed of trust holder of such lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

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.

Class B. The Class B member shall be Declarant. The Class B member shall be entitled to three (3) votes for each

lot in which it holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal seventy-five percent (75%) of the lots, or

(b) December 31, 1985.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws of the Association.

#### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned by it, hereby covenants and agrees to pay, and each owner of any lot by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the assessments of the Association, as set forth in the Bylaws of the Association. The assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also 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 his successors in title unless expressly assumed by them.

Section 2. Liability of Mortgagee or Purchaser. Where the mortgagee of a mortgage of record or a trustee of a recorded deed of trust or other purchaser of a lot obtains possession of the lot as the result of foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the owners including such possessor, his successors and assigns.

Section 3. Conveyance - Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's

conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

#### ARTICLE IV ARCHITECTURAL CONTROL

Section 1. Approval and Conformity of Plans. No dwelling or out building shall be commenced, erected or maintained upon the covered property, nor shall any exterior addition to or change or alteration in any such structure, be made:

(A) Until there has been approved by the Architectural Committee described below, plans and specifications showing the nature, kind, shape, height, materials, exterior color and surface, and location of such structure. Before granting such approval, the Architectural Committee shall have in its reasonable judgment determined that the plans and specifications conform to such architectural standards, if any, as may from time to time be adopted by the Board ("Architectural Standards"), and provide for a structure which is in harmony as to external design and location with surrounding structures and topography; and

(B) Which are not constructed in accordance with such approved plans and specifications.

Such plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been submitted to it, such plans and specifications will be deemed approved.

Section 2. Appointment of Architectural Committee. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace members of the Architectural Committee until December 31, 1983, or when ninety-five percent (95%) of the lots have been conveyed by Declarant, whichever shall first occur, provided that Declarant may, at its sole option, transfer this right to the Board of Directors of the Association by written notice

thereof prior to the end of such period. On December 31, 1983, or when ninety-five percent (95%) of the lots have been conveyed by the Declarant, the right to appoint, augment or replace members of the Architectural Committee shall automatically be transferred to the Board of Directors of the Association, but the Directors' choice of Architectural Committee members shall be restricted to members of the Association.

Section 3. Appeal. Decisions of the Architectural Committee shall be appealable to the Board of Directors. Appeals may be taken to the Board by written notice to the Board not more than thirty (30) days following the final decision of the Architectural Committee, and within thirty (30) days following the receipt of such notice of appeal, the Board shall render a decision with respect to such appeal. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision in favor of the appellant.

Section 4. General Provisions.

(A) The Architectural Committee may establish reasonable rules, subject to adoption by the Board, in connection with its review of plans and specifications, including, without limitation, the number of sets to be submitted, and the payment of a fee. Unless such rules are complied with, such plans and specifications shall be deemed not submitted.

(B) The address of the Committee is TONJESS ESTATES JOINT VENTURE, 2412 West 29th Avenue, Anchorage, Alaska, 99503, or such other place as may from time to time be designated by the Architectural Committee. Such address shall be the place for the submittal of plans and specification and the place where the current architectural standards and landscaping standards, if any, shall be kept.

ARTICLE V  
DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers. In addition to the duties and powers enumerated in its Bylaws, or elsewhere provided for 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 assessment 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) To 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 a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association; and

(E) Own, maintain and otherwise manage all of the common area and all facilities, improvements and landscaping thereon.

Section 2. Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (The Association Rules). The Association rules shall cover such matters in furtherance of the purposes of the Association; provided, however, that the Association rules may not discriminate among owners and shall not be inconsistent with this Declaration or Bylaws.

#### ARTICLE VI OWNER'S MAINTENANCE AND INSTALLATION OBLIGATIONS

Section 1. Maintenance and Installation. Every owner shall:

(A) Maintain his dwelling, patios, and fences of his dwelling in good condition and repair; and

(B) Maintain in attractive and viable condition landscaping on the lot.

#### Section 2. Standards for Maintenance and Installation.

(A) Maintenance of the exterior of the dwellings, walls, and roofs shall be accomplished in accordance with the architectural standards.

#### ARTICLE VII USE RESTRICTIONS

##### Section 1. General Provisions.

(A) All restrictive covenants listed and/or contained herein are subject in all instances to compliance with the

State of Alaska and the ordinances of the Municipality of Anchorage, Alaska, and pertinent restrictions.

(B) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of the covenants; whether to restrain such violation(s) or to recover damages.

These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent.

(C) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the subdivision plat.

Section 2. Residences. All the lots, except Lots 1 and 2, Block 1, Tonjess Estates Subdivision, shall be used exclusively for residential purposes. No business or commercial activity shall be maintained or conducted on the above lots, provided; however, that professional and administrative occupations may be carried on within residences on lots so long as there exists no external evidence thereof.

Section 3. Business or Commercial Activity. Lots 1 and 2, Block 1, of Tonjess Estates Subdivision may be used for residential and/or "rural business" purposes. "Rural business" means business activities intended to serve the needs of rural residential areas for professional offices, goods and services. Such activities are intended to include, but not be limited to, the following businesses: day nurseries and kindergartens, offices of physicians, banks, drug stores, retail food stores and liquor stores, and restaurants.

Section 4. Building Locations. No building shall be located on any lot nearer than thirty-five feet (35') to the front lot line, or nearer than twenty-five feet (25') to the rear lot line, or nearer than twenty-five feet (25') to the side lot lines. Notwithstanding the above lot line requirements, no structure shall be placed nearer than twenty-five feet (25') from the right of way line of any public right of way.

Section 5. Dwelling Quality and Size. No dwelling or out building shall be commenced, erected or maintained upon the properties, nor shall any exterior addition be made until the plans and specifications, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.



Section 6. Nuisances. No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be, or may become, a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots.

Section 7. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a permanent living area while located on the project. No trailers or mobile homes may be placed, maintained, or occupied on any lot.

Section 8. Outbuildings. Outbuildings including greenhouses, storage sheds, barns, etc. shall be permitted only if constructed in a permanent manner, and in a style which is compatible with the architectural design of the main dwelling structure. No outbuildings will be permitted which are not properly sided, painted, and roofed.

Section 9. Pet and Livestock Regulations. A reasonable number of domestic animals, livestock or poultry may be kept on any lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance as defined by VII, Section 6.

Section 10. Waste Material. No trash, garbage, rubbish, refuse or other solid waste of any kind, including but not limited to inoperable automobiles, appliance(s) and furniture, shall be thrown, dumped, stored, disposed of or otherwise placed in any part of Tonjess Estates. Garbage and similar solid waste shall be kept in secure, sanitary containers well suited for that purpose. The owner or occupant of each lot shall be responsible for the disposal outside of Tonjess Estates of all such trash, garbage, rubbish, refuse or other solid waste.

Section 11. Parking and Vehicular Restrictions. No vehicle which shall be in an inoperative condition shall be parked or left on the property subject to this Declaration other than in a garage of each lot. Each owner shall provide adequate off-street parking for all vehicles, including campers, camp trailers, and boats, and no vehicle shall be parked on the streets of the subdivision.

Section 12. Water Supply. No individual water supply system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 13. Sanitary Waste Disposal: No individual sanitary waste disposal system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation Title 18, Chapter 72, or such other regulations which may be promulgated by the State or local authority. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 14. Signs. No signs shall be erected or maintained on any lot except:

- (A) one sign of not more than three square feet identifying lot owners or occupants, and
- (B) one sign of not more than six square feet advertising a lot for sale or rent.

Nothing herein shall preclude Declarant or its sales agents from erecting and maintaining such temporary signs and structures as may, in the Declarant's judgment, promote the development and sale of lots or other interests in Tonjess Estates.

Section 15. Culverts. Each Owner shall, at the time of driveway construction, provide a culvert at the ditch crossing. The culvert must be of corrugated metal or equivalent pipe and of a diameter required by the Municipality of Anchorage.

Section 16. Vegetation Removal. No more than sixty percent (60%) of the area of any lot may be cleared of the vegetation present on the lot at the time of the purchase from the Declarant; provided, however, that the Board of Directors of the Association may, by a vote of a majority in number, in its discretion, determine to clear more than sixty percent (60%) thereof.

#### ARTICLE VIII RIGHTS OF MORTGAGEE

Section 1. Priority. Where the mortgagee of a first mortgage of record which is recorded prior to the date on which any assessment lien became effective, or other lot owner obtains title to the same as a result of foreclosure of any such first mortgage, or as the result of a deed taken in lieu of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer, but shall be subject to any future assessments which become due subsequent to his acquisition of title.

Section 2. Default. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the recordation of any lien or assessment hereunder, or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien of any mortgage made by a lot owner in good faith and for value upon the interest of a lot owner. All of the provisions herein shall be binding upon and effective against any owner whose title to said property is hereafter acquired through foreclosure or trustee's sale.

Section 3. Notice to Mortgagee. The first mortgagee shall be entitled to written notification of any default by the lot owner in the performance of the lot owner's obligations under this Declaration and Bylaws of the Association, which default is not cured within thirty (30) days, and no disposition thereof shall disturb mortgagee's first lien priority.

#### ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any member to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the covered property and shall inure to the benefit of and be enforceable by the Association or any member, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then members has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of the covered property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended as follows:

(A) at any time until and through December 31, 1983, the Declarant by a written instrument recorded in the Anchorage Recording District may:

(i) subject to the approval of the appropriate platting authority, if any, change or lay out a new or discontinue any existing road, street, thoroughfare or way depicted on the Plat, which is not necessary for ingress or egress to or from a lot owner's premises; or

(ii) make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as it and the Board of Directors of the Association may reasonably deem necessary and proper, or both; and

(B) at any time by a written instrument recorded in the Anchorage Recording District, sixty-six and two-thirds percent (66-2/3%) of the lot owners, by an affirmative vote of two-thirds (2/3) of each class of members, may make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as they deem appropriate.

Section 6. 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.

Section 7. 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 forty-eight (48) hours after such deposit.

Section 8. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other 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 decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 9. Resubdivision. The area of the lots herein described shall not be reduced in size by resubdivision, except that (i) the owners of three contiguous lots may replat such lots by dividing the inner or middle lot, thus increasing the size of the two remaining lots, which shall then be treated for all purposes pertinent to those covenants as enlarged single lots, and (ii) one or more lots may be resubdivided provided such replatting conforms to all applicable ordinances, rules and regulations of local authorities.

Section 10. Arbitration. Any dispute, controversy, or claim arising out of, in connection with, or in relation to this Declaration, shall be submitted and determined by arbitration in accordance with the rules, then pertaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11. Annexation.

(A) Tract B may be annexed to the subject property as described herein, for the purpose of subjecting Tract B to regulations and assessments by the Association. Such annexation must be as follows:

(i) By Declarant: At any time prior to December 31, 1983, Declarant shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration without the consent of the members.

(ii) By Consent of the Members: At any time after December 31, 1983 the then owner(s) shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration, upon obtaining the consent of two-thirds (2/3) of each class of members.

(B) The annexation authorized under this Section 11, shall be made by recording a supplemental Declaration of Covenants and Restrictions with respect to the annexed property. Such supplemental Declaration may contain such additions and modifications of the covenants, restrictions and charges contained in

this Declaration as may be deemed appropriate for the development of such additional property. In no event, however, shall such supplemental Declaration remove, modify or add to the covenants established by this Declaration with respect to the subject property.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

TONJESS ESTATES JOINT VENTURE,  
an Alaska Partnership, Declarant

By *Anthony Schaff*  
ANTHONY SCHAFF

By *Jesse E. Prince*  
JESSE E. PRINCE

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 27th day of June, 1981, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared ANTHONY SCHAFF known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it as his free and voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last hereinabove written.

*Thomas A. [Signature]*  
Notary Public in and for Alaska  
My Commission Expires: 12-31-82

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 17th day of April, 1981, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JESSE L. PRINCE known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it as his free and voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last hereinabove written.

William K. McIntosh  
Notary Public in and for Alaska  
My Commission Expires: 12-25-82

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REC. FILED  
ANCHORAGE REC.  
DISTRICT

APR 27 11 09 AM '81

REQUESTED BY James E. Cote  
ADDRESS 2412 29th

Anchorage Alaska  
99503

*Declaration*

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

TONJESS ESTATES

THIS DECLARATION, MADE THIS 10th day of May, 1982, by TONJESS ESTATES JOINT VENTURE, comprised of ANTHONY SCHAFF and JESSE L. PRINCE, an Alaska Partnership, shall be hereinafter referred to as "Declarant".

RECITALS

A. Declarant is the fee owner of the real property described as follows:

1. Lots One through Seven (1-7), Block One (1); Lots One (1), Two (2), Ten (10), and Eleven (11), Block Two (2); and Lots One through Six (1-6), Block Three (3), TONJESS ESTATES SUBDIVISION, according to Plat 81-72, Anchorage Recording District, Third Judicial District, State of Alaska.
2. Lots Three through Nine (3-9), and Lots Twelve through Twenty Three (12-23), Block Two (2), and Lots Seven through Twenty Four (7-24), Block Three (3), TONJESS ESTATES SUBDIVISION, according to Plat 82-59, Anchorage Recording District, Third Judicial District, State of Alaska.

This declaration is being imposed by Declarant upon covered property.

B. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the covered property and each and every lot and portion thereof, which will constitute a general scheme for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.

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Section 3. "Association" shall mean and refer to TONJESS ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

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Section 12. "Mortgage, Mortgagee, Mortgagor". Reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

#### ARTICLE II MEMBERSHIP

Section 1. Membership. Every owner shall be a member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all owners, are not exclusive, as owners shall, in addition, be subject to the terms and provisions of the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. In the event of conflict between the terms and provisions of the Declaration and Bylaws, the terms of the Declaration shall prevail. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership of owners shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Ownership of a lot shall be the sole qualification for membership.

Section 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 deed of trust holder of such lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

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.

Class B. The Class B member shall be Declarant. The Class B member shall be entitled to three (3) votes for each

lot in which it holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal seventy-five percent (75%) of the lots, or

(b) December 31, 1985.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws of the Association.

#### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned by it, hereby covenants and agrees to pay, and each owner of any lot by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the assessments of the Association, as set forth in the Bylaws of the Association. The assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also 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 his successors in title unless expressly assumed by them.

Section 2. Liability of Mortgagee or Purchaser. Where the mortgagee of a mortgage of record or a trustee of a recorded deed of trust or other purchaser of a lot obtains possession of the lot as the result of foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the owners including such possessor, his successors and assigns.

Section 3. Conveyance - Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's

conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

**ARTICLE IV**  
**ARCHITECTURAL CONTROL**

**Section 1. Approval and Conformity of Plans.** No dwelling or out building shall be commenced, erected or maintained upon the covered property, nor shall any exterior addition to or change or alteration in any such structure, be made:

(A) Until there has been approved by the Architectural Committee described below, plans and specifications showing the nature, kind, shape, height, materials, exterior color and surface, and location of such structure. Before granting such approval, the Architectural Committee shall have in its reasonable judgment determined that the plans and specifications conform to such architectural standards, if any, as may from time to time be adopted by the Board ("Architectural Standards"), and provide for a structure which is in harmony as to external design and location with surrounding structures and topography; and

(B) Which are not constructed in accordance with such approved plans and specifications.

Such plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been submitted to it, such plans and specifications will be deemed approved.

**Section 2. Appointment of Architectural Committee.** The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace members of the Architectural Committee until December 31, 1983, or when ninety-five percent (95%) of the lots have been conveyed by Declarant, whichever shall first occur, provided that Declarant may, at its sole option, transfer this right to the Board of Directors of the Association by written notice

thereof prior to the end of such period. On December 31, 1983, or when ninety-five percent (95%) of the lots have been conveyed by the Declarant, the right to appoint, augment or replace members of the Architectural Committee shall automatically be transferred to the Board of Directors of the Association, but the Directors' choice of Architectural Committee members shall be restricted to members of the Association.

**Section 3. Appeal.** Decisions of the Architectural Committee shall be appealable to the Board of Directors. Appeals may be taken to the Board by written notice to the Board not more than thirty (30) days following the final decision of the Architectural Committee, and within thirty (30) days following the receipt of such notice of appeal, the Board shall render a decision with respect to such appeal. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision in favor of the appellant.

**Section 4. General Provisions.**

(A) The Architectural Committee may establish reasonable rules, subject to adoption by the Board, in connection with its review of plans and specifications, including, without limitation, the number of sets to be submitted, and the payment of a fee. Unless such rules are complied with, such plans and specifications shall be deemed not submitted.

(B) The address of the Committee is TONJESS ESTATES JOINT VENTURE, 2412 West 29th Avenue, Anchorage, Alaska, 99503, or such other place as may from time to time be designated by the Architectural Committee. Such address shall be the place for the submittal of plans and specification and the place where the current architectural standards and landscaping standards, if any, shall be kept.

**ARTICLE V  
DUTIES AND POWERS OF THE ASSOCIATION**

**Section 1. General Duties and Powers.** In addition to the duties and powers enumerated in its Bylaws, or elsewhere provided for 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 assessment 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) To 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 a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association; and

(E) Own, maintain and otherwise manage all of the common area and all facilities, improvements and landscaping thereon.

Section 2. Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (The Association Rules). The Association rules shall cover such matters in furtherance of the purposes of the Association; provided, however, that the Association rules may not discriminate among owners and shall not be inconsistent with this Declaration or Bylaws.

#### ARTICLE VI OWNER'S MAINTENANCE AND INSTALLATION OBLIGATIONS

Section 1. Maintenance and Installation. Every owner shall:

(A) Maintain his dwelling, patios, and fences of his dwelling in good condition and repair; and

(B) Maintain in attractive and viable condition landscaping on the lot.

#### Section 2. Standards for Maintenance and Installation.

(A) Maintenance of the exterior of the dwellings, walls, and roofs shall be accomplished in accordance with the architectural standards.

#### ARTICLE VII USE RESTRICTIONS

Section 1. General Provisions.

(A) All restrictive covenants listed and/or contained herein are subject in all instances to compliance with the

State of Alaska and the ordinances of the Municipality of Anchorage, Alaska, and pertinent restrictions.

(B) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of the covenants; whether to restrain such violation(s) or to recover damages.

These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent.

(C) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the subdivision plat.

Section 2. Residences. All the lots, except Lots 1 and 2, Block 1, Tonjess Estates Subdivision, shall be used exclusively for residential purposes. No business or commercial activity shall be maintained or conducted on the above lots, provided; however, that professional and administrative occupations may be carried on within residences on lots so long as there exists no external evidence thereof.

Section 3. Business or Commercial Activity. Lots 1 and 2, Block 1, of Tonjess Estates Subdivision may be used for residential and/or "rural business" purposes. "Rural business" means business activities intended to serve the needs of rural residential areas for professional offices, goods and services. Such activities are intended to include, but not be limited to, the following businesses: day nurseries and kindergartens, offices of physicians, banks, drug stores, retail food stores and liquor stores, and restaurants.

Section 4. Building Locations. No building shall be located on any lot nearer than thirty-five feet (35') to the front lot line, or nearer than twenty-five feet (25') to the rear lot line, or nearer than twenty-five feet (25') to the side lot lines. Notwithstanding the above lot line requirements, no structure shall be placed nearer than twenty-five feet (25') from the right of way line of any public right of way.

Section 5. Dwelling Quality and Size. No dwelling or out building shall be commenced, erected or maintained upon the properties, nor shall any exterior addition be made until the plans and specifications, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.



**Section 6. Nuisances.** No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be, or may become, a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots.

**Section 7. Temporary Structures.** No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a permanent living area while located on the project. No trailers or mobile homes may be placed, maintained, or occupied on any lot.

**Section 8. Outbuildings.** Outbuildings including greenhouses, storage sheds, barns, etc. shall be permitted only if constructed in a permanent manner and in a style which is compatible with the architectural design of the main dwelling structure. No outbuildings will be permitted which are not properly sided, painted, and roofed.

**Section 9. Pet and Livestock Regulations.** A reasonable number of domestic animals, livestock or poultry may be kept on any lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance as defined by VII, Section 6.

**Section 10. Waste Material.** No trash, garbage, rubbish, refuse or other solid waste of any kind, including but not limited to inoperable automobiles, appliance(s) and furniture, shall be thrown, dumped, stored, disposed of or otherwise placed in any part of Tonjess Estates. Garbage and similar solid waste shall be kept in secure, sanitary containers well suited for that purpose. The owner or occupant of each lot shall be responsible for the disposal outside of Tonjess Estates of all such trash, garbage, rubbish, refuse or other solid waste.

**Section 11. Parking and Vehicular Restrictions.** No vehicle which shall be in an inoperative condition shall be parked or left on the property subject to this Declaration other than in a garage of each lot. Each owner shall provide adequate off-street parking for all vehicles, including campers, camp trailers, and boats, and no vehicle shall be parked on the streets of the subdivision.

**Section 12. Water Supply.** No individual water supply system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 13. Sanitary Waste Disposal. No individual sanitary waste disposal system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation Title 18, Chapter 72, or such other regulations which may be promulgated by the State or local authority. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 14. Signs. No signs shall be erected or maintained on any lot except:

- (A) one sign of not more than three square feet identifying lot owners or occupants, and.
- (B) one sign of not more than six square feet advertising a lot for sale or rent.

Nothing herein shall preclude Declarant or its sales agents from erecting and maintaining such temporary signs and structures as may, in the Declarant's judgment, promote the development and sale of lots or other interests in Tonjess Estates.

Section 15. Culverts. Each Owner shall, at the time of driveway construction, provide a culvert at the ditch crossing. The culvert must be of corrugated metal or equivalent pipe and of a diameter required by the Municipality of Anchorage.

Section 16. Vegetation Removal. No more than sixty percent (60%) of the area of any lot may be cleared of the vegetation present on the lot at the time of the purchase from the Declarant; provided, however, that the Board of Directors of the Association may, by a vote of a majority in number, in its discretion, determine to clear more than sixty percent (60%) thereof.

#### ARTICLE VIII RIGHTS OF MORTGAGEE

Section 1. Priority. Where the mortgagee of a first mortgage of record which is recorded prior to the date on which any assessment lien became effective, or other lot owner obtains title to the same as a result of foreclosure of any such first mortgage, or as the result of a deed taken in lieu of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer, but shall be subject to any future assessments which become due subsequent to his acquisition of title.

Section 2. Default. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the recordation of any lien or assessment hereunder, or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien of any mortgage made by a lot owner in good faith and for value upon the interest of a lot owner. All of the provisions herein shall be binding upon and effective against any owner whose title to said property is hereafter acquired through foreclosure or trustee's sale.

Section 3. Notice to Mortgagee. The first mortgagee shall be entitled to written notification of any default by the lot owner in the performance of the lot owner's obligations under this Declaration and Bylaws of the Association, which default is not cured within thirty (30) days, and no disposition thereof shall disturb mortgagee's first lien priority.

#### ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any member to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the covered property and shall inure to the benefit of and be enforceable by the Association or any member, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then members has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of the covered property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended as follows:

(A) at any time until and through December 31, 1983, the Declarant by a written instrument recorded in the Anchorage Recording District may:

(i) subject to the approval of the appropriate platting authority, if any, change or lay out a new or discontinue any existing road, street, thoroughfare or way depicted on the Plat, which is not necessary for ingress or egress to or from a lot owner's premises; or

(ii) make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as it and the Board of Directors of the Association may reasonably deem necessary and proper, or both; and

(B) at any time by a written instrument recorded in the Anchorage Recording District, sixty-six and two-thirds percent (66-2/3%) of the lot owners, by an affirmative vote of two-thirds (2/3) of each class of members, may make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as they deem appropriate.

Section 6. 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.

Section 7. 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 forty-eight (48) hours after such deposit.

**Section 8. Nonliability of Officials.** To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other 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 decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**Section 9. Resubdivision.** The area of the lots herein described shall not be reduced in size by resubdivision, except that (i) the owners of three contiguous lots may replat such lots by dividing the inner or middle lot, thus increasing the size of the two remaining lots, which shall then be treated for all purposes pertinent to those covenants as enlarged single lots, and (ii) one or more lots may be resubdivided provided such replatting conforms to all applicable ordinances, rules and regulations of local authorities.

**Section 10. Arbitration.** Any dispute, controversy, or claim arising out of, in connection with, or in relation to this Declaration, shall be submitted and determined by arbitration in accordance with the rules, then pertaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

**Section 11. Annexation.**

(A) Tract B may be annexed to the subject property as described herein, for the purpose of subjecting Tract B to regulations and assessments by the Association. Such annexation must be as follows:

(i) By Declarant: At any time prior to December 31, 1983, Declarant shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration without the consent of the members.

(ii) By Consent of the Members: At any time after December 31, 1983, the then owner(s) shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration, upon obtaining the consent of two-thirds (2/3) of each class of members.

(B) The annexation authorized under this Section 11. shall be made by recording a supplemental Declaration of Covenants and Restrictions with respect to the annexed property. Such supplemental Declaration may contain such additions and modifications of the covenants, restrictions and charges contained in

this Declaration as may be deemed appropriate for the development of such additional property. In no event, however, shall such supplemental Declaration remove, modify or add to the covenants established by this Declaration with respect to the subject property.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

TONJESS ESTATES JOINT VENTURE,  
an Alaska Partnership, Declarant

By Anthony Schaff  
ANTHONY SCHAFF

By Jesse L. Prince  
JESSE L. PRINCE

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 10<sup>th</sup> day of May, 1982, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared ANTHONY SCHAFF known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it as his free and voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last hereinabove written.



Virginia K. Lutskanoff  
Notary Public in and for Alaska  
My Commission Expires: 10-24-82

*\* Partner in Tonjess Estates Joint Venture*

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STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 10<sup>th</sup> day of May, 1982, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JESSE L. PRINCE known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it as his free and voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last hereinabove written.



William L. Cutler  
Notary Public in and for Alaska  
My Commission Expires: 10-29-82

*\*Partners in Torres Estates Joint Venture*

82-026946

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REC'D & FILED  
ANCHORAGE REC.  
DISTRICT

MAY 11 4 25 PM '82

REQUESTED BY TORRES & PRINCE Joint Venture  
ADDRESS 2412 W. 29th  
Anch AK 99503

MARCH 1983

\*\*\* AMENDED \*\*\*

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

TONJESS ESTATES

THIS DECLARATION, MADE THIS 21st day of March,  
1983, by TONJESS ESTATES JOINT VENTURE, comprised of ANTHONY  
SCHAFF and JESSE L. PRINCE, an Alaska Partnership, shall be  
hereinafter referred to as "Declarant".

R E C I T A L S

A. Declarant is the fee owner of the real property described  
as follows:

1. Lots One through Seven (1-7), Block One (1);  
Lots One (1), Two (2), Ten (10), and Eleven (11),  
Block Two (2); and Lots One through Six (1-6),  
Block Three (3), TONJESS ESTATES SUBDIVISION,  
according to Plat 81-72, Anchorage Recording  
District, Third Judicial District, State of Alaska.
2. Lots Three through Nine (3-9), and Lots Twelve  
through Twenty Three (12-23), Block Two (2), and  
Lots Seven through Twenty Four (7-24), Block Three  
(3), TONJESS ESTATES SUBDIVISION, according to Plat  
82-59, Anchorage Recording District, Third  
Judicial District, State of Alaska.

This declaration is being imposed by Declarant upon covered property.

B. Declarant has deemed it desirable to establish covenants,  
conditions and restrictions upon the covered property and each and  
every lot and portion thereof, which will constitute a general scheme  
for the use, occupancy and enjoyment thereof, all for the purpose of  
enhancing and protecting the value, desirability and attractiveness  
thereof.

C. It is desirable for the efficient preservation of the value,  
desirability and attractiveness of the covered property to create  
an association to which should be delegated and assigned the powers  
of administering and enforcing these covenants and restrictions and  
collecting and disbursing funds pursuant to the assessment and charges  
created and referred to.

D. Declarant will hereafter hold and convey title to all of the  
covered property subject to certain protective covenants, conditions  
and restrictions hereafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the covered  
property (not including tracts A and B1 of TONJESS ESTATES) described  
above, shall be held, sold and conveyed subject to the following  
covenants, conditions and restrictions and restrictions, which are for  
the purpose of protecting the value and desirability of, and which  
shall run with, the real property and be binding on and inure to the

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AMENDED MARCH 1983

Benefit of all parties having any right, title or interest in the covered property or any part thereof, including their legal representatives, heirs, successors and assigns.

ARTICLE 1  
DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committees provided for in the Article hereof entitled "Architectural Control".

Section 2. "Bylaws" shall mean and refer to the Bylaws of the Association as the same from time to time be duly amended.

Section 3. "Association" shall mean and refer to TONJESS ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 4. "Common Expenses" shall mean and refer to the costs of management and administration of the Association; reasonable reserves as appropriate; taxes, if any, paid by the Association; costs incurred by the Architectural Committee; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with this Declaration, the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 5. "Covered Property" or "Project" shall mean and refer to all the real property known as and particularly described in Exhibit "A" hereto.

Section 6. "Lot" shall mean the lots of TONJESS ESTATES.

Section 7. "Member" shall mean and refer to every person or entity who is a member in the Association pursuant to this Declaration. "Member" shall also mean and refer to Declarant so long as Declarant is an "Owner" as hereinafter defined.

Section 8. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a lot, including Declarant, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Dwelling" shall mean the residential dwelling unit together with garages and other structures on the same lot.

Section 10. "Board" shall mean the Board of Directors of the Association.

Section 11. "Association Rules" shall mean rules adopted by the Association pursuant to the Articles hereof entitled "Duties and Powers of the Association".

Section 12. "Mortgage, Mortgagee, Mortgagor". Reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

## ARTICLE II MEMBERSHIP

Section 1. Membership. Every owner shall be a member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all owners, are not exclusive, as owners shall, in addition, be subject to the terms and provisions of the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. In the event of conflict between the terms and provisions of the Declaration and Bylaws, the terms of the Declaration shall prevail. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership of owners shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Ownership of a lot shall be the sole qualification for membership.

Section 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 deed of trust holder of such lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

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.

Class B. The Class B member shall be Declarant. The Class B member shall be entitled to three (3) votes for each

lot in which it holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal seventy-five percent (75%) of the lots, or

(b) December 31, 1985.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws of the Association.

ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned by it, hereby covenants and agrees to pay, and each owner of any lot by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the assessments of the Association, as set forth in the Bylaws of the Association. The assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also 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 his successors in title unless expressly assumed by them.

Section 2. Liability of Mortgagee or Purchaser. Where the mortgagee of a mortgage of record or a trustee of a recorded deed of trust or other purchaser of a lot obtains possession of the lot as the result of foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the owners including such possessor, his successors and assigns.

Section 3. Conveyance - Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's

conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the grantor and such grantee shall be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

ARTICLE IV  
ARCHITECTURAL CONTROL

Section 1. APPROVAL and Conformity of Plans. No dwelling or out building shall be commenced, erected or maintained upon the covered property, nor shall any exterior addition to or change or alteration in any such structure, be made:

(A) Until there has been approved in writing by the Architectural Committee described below, plans and specifications showing the nature, kind, shape, height, materials, exterior color and surface, and location of such structure. Before granting such approval, the Architectural Committee shall have taken into consideration such factors as workmanship and materials and have in its reasonable judgement determined that the plans and specifications conform to such architectural standards as may from time to time be adopted by the Board ("Architectural Standards"), and provide for a structure which is in harmony as to external design and location with surrounding structures and topography; and

(B) Which are not constructed in accordance with such approved plans and specifications.

(C) Plans will be approved on an individual lot basis. Blanket subdivision approval will not be granted to any specific plan.

(D) Fences must be approved by Architectural Committee and if approved must not exceed 6 feet in height nor extend to the front of the property beyond the front corners of the house.

Section 2. Appointment of Architectural Committee. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace members of the Architectural Committee until December 31, 1983 or when ninety-five percent (95%) of the lots have been conveyed by Declarant, whichever shall first occur, provided that Declarant may, at its sole option, transfer this right to the Board of Directors of the Association by written notice thereof prior to the end of such period. On December 31, 1983, or when ninety-five percent (95%) of the lots have been conveyed by the Declarant, the right to appoint, augment or replace members of the Architectural Committee shall automatically be transferred to the Board of Directors of the Association, but the Directors choice of Architectural Committee members shall be restricted to members of the Association.

Section 3. Appeal. Decisions of the Architectural Committee shall be appealable to the Board of Directors. Appeals may be taken to the Board by written notice to the Board not more than thirty (30) days following the final decision of the Architectural Committee, and within thirty (30) days following the receipt of such notice of appeal, the Board shall render a decision with respect to such appeal. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision in favor of the appellant.

Section 4. General Provisions.

(A) The Architectural Committee may establish reasonable rules, subject to adoption by the Board, in connection with its review of plans and specifications, including, without limitation, the number of sets to be submitted, and the payment of a fee. Unless such rules are complied with, such plans and specifications shall be deemed not submitted.

(B) The address of the Committee is TONJESS ESTATES JOINT VENTURE, 2412 West 29th Avenue, Anchorage, Alaska, 99503, or such other place as may from time to time be designated by the Architectural Committee. Such address shall be the place for the submittal of plans and specification and the place where the current architectural standards and landscaping standards, if any, shall be kept.

ARTICLE V  
DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers. In addition to the duties and powers enumerated in its Bylaws, or elsewhere provided for 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 assessment 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) To 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 a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association; and

(E) Own, maintain and otherwise manage all of the common area and all facilities, improvements and landscaping thereon.

Section 2. Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (The Association Rules). The Association rules shall cover such matters in furtherance of the purposes of the Association; provided, however, that the Association rules may not discriminate among owners and shall not be inconsistent with this Declaration or Bylaws.

ARTICLE VI  
OWNER'S MAINTENANCE AND INSTALLATION OBLIGATIONS

Section 1. Maintenance and Installation. Every owner shall:

(A) Maintain his dwelling, patios, and fences of his dwelling in good condition and repair; and

(B) Maintain in attractive and viable condition landscaping on the lot.

(C) Fences shall be approved by the Architectural Committee.

Section 2. Standards for Maintenance and Installation.

(A) Maintenance of the exterior of the dwellings, walls, and roofs shall be accomplished in accordance with the architectural standards.

ARTICLE VII  
USE RESTRICTIONS

Section 1. General Provisions.

(A) All restrictive covenants listed and/or contained herein are subject in all instances to compliance with the State of Alaska and the ordinances of the Municipality of Anchorage, Alaska, and pertinent restrictions.

(B) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of the covenants; whether to restrain such violation(s) or to recover damages.

These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent.

(C) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the subdivision plat.

Section 2. Residences. All the lots, except Lot 1A Block 1, Tonjess Estates Subdivision, shall be used exclusively for residential purposes. No business or commercial activity shall be maintained or conducted on the above lots, provided; however, that professional and administrative occupations may be carried on within residences on lots so long as there exists no external evidence thereof.

Section 3. Business or Commerical Activity. Lots 1 and 2, Block 1, of Tonjess Estates Subdivision may be used for residential and/or "rural business" purposes. "Rural business" means business activities intended to serve the needs of rural residential areas for professional offices, goods and services. Such activities are intended to include, but not be limited to, the following businesses: day nurseries and kindergartens, offices of physicians, banks, drug stores, retail food stores and liquor stores, and restaurants.

Section 4. Building Locations. No building shall be located on any lot nearer than thirty-five feet (35') to the front lot line, or nearer than twenty-five feet (25') to the rear lot line, or nearer than twenty-five feet (25') to the side lot lines. Notwithstanding the above lot line requirements, no structure shall be placed nearer than twenty-five feet (25') from the right of way line of any public right of way.

Section 5. Dwelling Quality and Size. No dwelling or out building shall be commenced, erected or maintained upon the properties, nor shall any exterior addition be made until the plans and specifications, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

Section 6. Nuisances. No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be, or may become, a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots.

Section 7. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a permanent living area while located on the project. No trailers or mobile homes may be placed, maintained, or occupied on any lot.

Section 8. Outbuildings. Outbuildings including greenhouses, storage sheds, etc. shall be permitted only if approved by Architectural Committee.

Section 9. Pet and Livestock Regulations. A reasonable number of domestic animals, livestock or poultry may be kept on any lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance as defined by VII, Section 6.

Section 10. Waste Material. No trash, garbage, rubbish, refuse or other solid waste of any kind, including but not limited to inoperable automobiles, appliance(s) and furniture, shall be thrown, dumped, stored, disposed of or otherwise placed in any part of Tonjess Estates. Garbage and similar solid waste shall be kept in secure, sanitary containers well suited for that purpose. The owner or occupant of each lot shall be responsible for the disposal outside of Tonjess Estates of all such trash, garbage, rubbish, refuse or other solid waste.

Section 11. Parking and Vehicular Restrictions. No vehicle which shall be in an inoperative condition shall be parked or left on the property subject to this Declaration other than in a garage of each lot. Each owner shall provide adequate off-street parking for all vehicles, including campers, camp trailers, and boats, and no vehicle shall be parked on the streets of the subdivision.

Section 12. Water Supply. No individual water supply system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 13. Sanitary Waste Disposal. No individual sanitary waste disposal system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation Title 18, Chapter 72, or such other regulations which may be promulgated by the State or local authority. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 14. Signs. No signs shall be erected or maintained on any lot except:

- (A) one sign of not more than three square feet identifying lot owners or occupants, and
- (B) one sign of not more than six square feet advertising a lot for sale or rent.



Nothing herein shall preclude Declarant or its sales agents from erecting and maintaining such temporary signs and structures as may, in the Declarant's judgment, promote the development and sale of lots or other interests in Tonjess Estates.

Section 15. Culverts. Each Owner shall, at the time of driveway construction, provide a culvert at the ditch crossing. The culvert must be of corrugated metal or equivalent pipe and of a diameter required by the Municipality of Anchorage.

Section 16. Vegetation Removal. No more than sixty percent (60%) of the area of any lot may be cleared of the vegetation present on the lot at the time of the purchase from the Declarant; provided, however, that the Board of Directors of the Association may, by a vote of a majority in number, in its discretion, determine to clear more than sixty percent (60%) thereof.

Section 17. Screening. All clotheslines, equipment, service yards, wood piles or storage piles shall be screened so as to conceal them from view of neighboring lots or streets.

#### ARTICLE VIII RIGHTS OF MORTGAGEE

Section 1. Priority. Where the mortgagee of a first mortgage of record which is recorded prior to the date on which any assessment lien became effective, or other lot owner obtains title to the same as a result of foreclosure of any such first mortgage, or as the result of a deed taken in lieu of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer, but shall be subject to any future assessments which become due subsequent to his acquisition of title.

Section 2. Default. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the recordation of any lien or assessment hereunder, or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien of any mortgage made by a lot owner in good faith and for value upon the interest of a lot owner. All of the provisions herein shall be binding upon and effective against any owner whose title to said property is hereafter acquired through foreclosure or trustee's sale.

Section 3. Notice to Mortgagee. The first mortgagee shall be entitled to written notification of any default by the lot owner in the performance of the lot owner's obligations under this Declaration and Bylaws of the Association, which default is not cured within thirty (30) days, and no disposition thereof shall disturb mortgagee's first lien priority.

ARTICLE IX  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any member to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the covered property and shall inure to the benefit of and be enforceable by the Association or any member, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then members has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of the covered property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended as follows:

(A) at any time until and through December 31, 1983, the Declarant by a written instrument recorded in the Anchorage Recording District may:

(i) subject to the approval of the appropriate platting authority, if any, change or lay out a new or discontinue any existing road, street, thoroughfare or way depicted on the Plat, which is not necessary for ingress or egress to or from a lot owner's premises; or

(ii) make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as it and the Board of Directors of the Association may reasonably deem necessary and proper, or both; and

(B) at any time by a written instrument recorded in the Anchorage Recording District, sixty-six and two-thirds percent (66-2/3%) of the lot owners, by an affirmative vote of two-thirds (2/3) of each class of members, may make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as they deem appropriate.

Section 6. 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.

Section 7. 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 forty-eight (48) hours after such deposit.

Section 8. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other 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 decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 9. Resubdivision. The area of the lots herein described shall not be reduced in size by resubdivision, except that (i) the owners of three contiguous lots may replat such lots by dividing the inner or middle lot, thus increasing the size of the two remaining lots, which shall then be treated for all purposes pertinent to those covenants as enlarged single lots, and (ii) one or more lots may be resubdivided provided such replatting conforms to all applicable ordinances, rules and regulations of local authorities.

Section 10. Arbitration. Any dispute, controversy, or claim arising out of, in connection with, or in relation to this Declaration, shall be submitted and determined by arbitration in accordance with the rules, then pertaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11. Annexation.

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(A) Tract B may be annexed to the subject property as described herein, for the purpose of subjecting Tract B to regulations and assessments by the Association. Such annexation must be as follows:

(i) <sup>TS</sup> By Declarant: At any time prior to December 31, 1988 <sup>TS</sup> Declarant shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration without the consent of the members.

(ii) <sup>TS</sup> By Consent of the Members: At any time after December 31, 1988 <sup>TS</sup> the then owner(s) shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration, upon obtaining the consent of two-thirds (2/3) of each class of members.

(B) The annexation authorized under this Section 11. shall be made by recording a supplemental Declaration of Covenants and Restrictions with respect to the annexed property. Such supplemental Declaration may contain such additions and modifications of the covenants, restrictions and charges contained in this Declaration as may be deemed appropriate for the development of such additional property. In no event, however, shall such supplemental Declaration remove, modify or add to the covenants established by this Declaration with respect to the subject property.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

TONJESS ESTATES JOINT VENTURE,  
an Alaska Partnership, Declarant

By *Anthony Schaff*  
ANTHONY SCHAFF

By *Jesse L. Prince*  
JESSE L. PRINCE

*Marya L. Prince little in fact*

STATE OF ALASKA )

THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 30 day of March, 1983, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \*ANTHONY SCHAFF known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it as his free and voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last hereinabove written.

*Virginia K. Hutchins*  
Notary Public in and for Alaska  
My Commission Expires: 9-25-83

STATE OF ALASKA )

THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 30 day of March, 1983, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \*JESSE L. PRINCE known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it as his free and voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last hereinabove written.

*Virginia K. Hutchins*  
Notary Public in and for Alaska  
My Commission Expires: 9-25-83

\*\* PARTNERS IN TONJESS ESTATES, JOINT VENTURE

83-18650 47.00

RECORDED - FILED	
<i>Anch</i>	REC. DIST.
DATE <u>3/21</u>	19 <u>83</u>
TIME <u>12:59</u>	<u>P</u> M
Requested by <u><i>Tonjess Estates</i></u>	
Address <u><i>2412 34th Ave</i></u>	
<u><i>Anch (03)</i></u>	

THIRD AMENDED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
TONJESS ESTATES

THIS AMENDED DECLARATION, MADE THIS 13<sup>th</sup> DAY of April, 1984, by TONJESS ESTATES JOINT VENTURE, comprised of ANTHONY SCHAFF and JESSE L. PRINCE, an ALASKA PARTNERSHIP in Tonjess Estates shall be hereinafter referred to as "Declarant".

RECITALS

A. Declarant and owners are the fee owners of the real property described as follows:

1. Lots One "A" (1A) and Three through Seven (3-7), Block One (1); Lots One (1), Two (2), Ten (10), and Eleven (11), Block Two (2); and Lots One through Six (1-6), Block Three (3), TONJESS ESTATES SUBDIVISION, according to Plat 81-72, Anchorage Recording District, Third Judicial District, State of Alaska.
2. Lots Three through Nine (3-9), and Lots Twelve through Twenty Three (12-23), Block Two (2), and Lots Seven through Twenty Four (7-24), Block Three (3), TONJESS ESTATES SUBDIVISION according to the Plat 82-59, Anchorage Recording District Third Judicial District, State of Alaska.

This Amended Declaration is being imposed by Declarant upon Covered Property.

B. Declarant has deemed it desirable to establish covenants, conditions, and restrictions upon the covered property and

each and every lot and portion thereof, which will constitute a general scheme for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.

C. It is desirable for the efficient preservation of the value, desirability and attractiveness of the Covered Property to create an association to which should be delegated and assigned the powers of administering and enforcing these covenants and restrictions and collecting and disbursing funds pursuant to the assessment and charges created and referred to.

D. Declarant will hereafter hold and convey title to all of the Covered Property subject to certain protective covenants, conditions and restrictions hereafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the Covered Property (not including tracts A and B1 of TONJESS ESTATES) described above, shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, desirability of, and which shall run with, the real property and be binding on and inure to the benefit of all parties having any right, title or interest in the Covered Property or any part thereof, including their legal representatives, heirs, successors and assigns.

#### ARTICLE 1 DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committees provided for in the Article hereof entitled "Architectural Control".

Section 2. "Bylaws" shall mean and refer to the Bylaws of the Association as the same from time to time may be duly amended.

Section 3. "Association" shall mean and refer to TONJESS ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 4. "Common Expenses" shall mean and refer to the costs of management and administration of the Association; reasonable reserves as appropriate; taxes, if any, paid by the

Association; costs incurred by the Architectural Committee; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with this Declaration, the By-laws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 5. "Covered Property" or "Project" shall mean and refer to all the real property referred to above.

Section 6. "Lot" shall mean the lots of TONJESS ESTATES.

Section 7. "Member" shall mean and refer to every person or entity who is a member in the Association pursuant to this Declaration. "Member" shall also mean and refer to Declarant so long as Declarant is an "Owner" as hereinafter defined.

Section 8. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a lot, including Declarant, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Dwelling" shall mean the residential dwelling unit together with garages and other structures on the same lot.

Section 10. "Board" shall mean the Board of Directors of the Association.

Section 11. "Association Rules" shall mean rules adopted by the Association pursuant to the Articles hereof entitled "Duties and Powers of the Association."

Section 12. "Mortgage, Mortgagee, Mortgagor". Reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

## ARTICLE II MEMBERSHIP

Section 1. Membership. Every owner shall be a member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all owners, are not exclu-



sive, as owners shall, in addition, be subject to the terms and provisions of the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. In the event of conflict between the terms and provisions of the Declaration and Bylaws, the terms of the Declaration shall prevail. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership of owners shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Ownership of a lot shall be the sole qualification for membership.

Section 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 deed of trust holder of such lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all owners with the exception of the Tonjess Estates Joint Venture, an Alaska partnership. 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.

Class B. The Class B member shall be Tonjess Estates Joint Venture, an Alaska partnership. The Class B member shall be entitled to three (3) votes for each lot in which it holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal seventy-five percent (75%) of the lots, or

(b) December 31, 1985.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws of the Association.

ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Tonjess Estates Joint Venture, an Alaska partnership, for each lot owned by it, hereby covenants and agrees to pay, and each owner of any lot by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the assessments of the Association, as set forth in the Bylaws of the Association. The assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the owner of such lot at the time when the assessment fell due.

Section 2. Liability of Mortgagee or Purchaser. Where the mortgagee of a mortgage of record or a trustee of a recorded deed of trust or other purchaser of a lot obtains possession of the lot as the result of foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the owners including such possessor, his successors and assigns.

Section 3. Conveyance - Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

ARTICLE IV  
ARCHITECTURAL CONTROL

Section 1. Approval and Conformity of Plans. No dwelling or out building shall be commenced, erected or maintained upon the Covered Property, nor shall any exterior addition to or change or alteration in any such structure, be made:

(A) Until there has been approved in writing by the Architectural Committee described below, plans and specifications showing the nature, kind, shape, height, materials, exterior color and surface, and location of such structure. Before granting such approval, the Architectural Committee shall have taken into consideration such factors as workmanship and materials and have in its reasonable judgment determined that the plans and specifications conform to such architectural standards as may from time to time be adopted by the Board ("Architectural Standards"), and provide for a structure which is in harmony as to external design and location with surrounding structures and topography; and

(B) Which are not constructed in accordance with such approved plans and specifications.

(C) Plans will be approved on an individual lot basis. Blanket subdivision approval will not be granted to any specific plan.

(D) Fences must be approved by Architectural Committee and if approved must neither exceed six (6) feet in height nor extend to the front corners of the property beyond the front corners of the house, any fencing beyond the corner of the front of the house is to be based on a case by case basis depending on individual lots.

Such plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been submitted to it, such plans and specifications will be deemed approved.

Section 2. Appointment of Architectural Committee. Tonjess Estates Joint Venture shall initially appoint the Architectural Committee. Tonjess Estates Joint Venture shall retain the right to appoint, augment or replace members of the Architectural Committee until December 31, 1985 or when ninety-five percent (95%)

of the lots have been initially conveyed, whichever shall first occur, provided that Tonjess Estates Joint Venture may, at its sole option, transfer this right to the Board of Directors of the Association by written notice thereof prior to the end of such period. On December 31, 1985, or when ninety-five percent (95%) of the lots have been initially conveyed, the right to appoint, augment or replace members of the Architectural Committee shall automatically be transferred to the Board of Directors of the Association, but the Directors' choice of Architectural Committee members shall be restricted to members of the Association.

Section 3. Appeal. Decisions of the Architectural Committee shall be appealable to the Board of Directors. Appeals may be taken to the Board by written notice to the Board not more than thirty (30) days following the final decision of the Architectural Committee, and within thirty (30) days following the receipt of such notice of appeal, the Board shall render a decision with respect to such appeal. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision in favor of the applicant.

#### Section 4. General Provisions.

(A) The Architectural Committee may establish reasonable rules, subject to adoption by the Board, in connection with its review of plans and specifications, including, without limitation, the number of sets to be submitted, and the payment of a fee. Unless such rules are complied with, such plans and specifications shall be deemed not submitted.

(B) The address of the Committee is TONJESS ESTATES JOINT VENTURE, 2412 West 29th Avenue, Anchorage, Alaska 99503, or such other place as may from time to time be designated by the Architectural Committee. Such address shall be the place for the submittal of plans and specifications and the place where the current architectural standards and landscaping standards, if any, shall be kept.

### ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers. In addition to the duties and powers enumerated in its Bylaws, or elsewhere provided for 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 assessment also as provided for in the Bylaws;

(B) Maintain such policy or policies of insurance as the Board of Directors of the Association deem necessary or desirable in furthering the purpose of and protecting the interest of the Association and its members;

(C) To 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 a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association; and

(E) Own, maintain and otherwise manage all of the common area and all facilities, improvements and landscaping thereon.

Section 2. Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (The Association Rules). The Association rules shall cover such matters in furtherance of the purposes of the Association; provided, however, that the Association rules may not discriminate among owners and shall not be inconsistent with this Declaration or Bylaws.

## ARTICLE VI OWNER'S MAINTENANCE AND INSTALLATION OBLIGATIONS

Section 1. Maintenance and Installation. Every owner shall:

(A) Maintain his dwelling, patios, fences of his dwelling in good condition and repair; and

(B) Maintain in attractive and viable condition landscaping on the lot.

(C) Fences shall be approved by the Architectural Committee.

Section 2. Standards for Maintenance and Installation.

(A) Maintenance of the exterior of the dwellings, walls, and roofs shall be accomplished in accordance with the architectural standards.

ARTICLE VII  
USE RESTRICTIONS

Section 1. General Provisions.

(A) All restrictive covenants listed and/or contained herein are subject in all instances to compliance with the State of Alaska and the ordinances of the Municipality of Anchorage, Alaska, and pertinent restrictions.

(B) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of the covenants; whether to restrain such violation(s) or to recover damages.

These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent.

(C) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the subdivision plat.

Section 2. Residences. All the lots, except Lot 1A, Block 1, Tonjess Estates Subdivision, shall be used exclusively for residential purposes. No business or commercial activity shall be maintained or conducted on the above lots; provided, however, that professional and administrative occupations may be carried on within residences on lots so long as there exists no external evidence thereof.

Section 3. Business or Commercial Activity. Lot 1A, Block 1, of Tonjess Estates Subdivision may be used for residential and/or "rural business" purposes. "Rural business" means business activities intended to serve the needs of rural residential areas for professional offices, goods and services. Such activities are intended to include, but not be limited to, the following businesses: day nurseries and kindergartens, offices of physicians, banks, drug stores, retail food stores and liquor stores, and restaurants.

Section 4. Building Locations. No building shall be located on any lot nearer than thirty-five feet (35') to the front lot line, or nearer than twenty-five feet (25') to the rear lot line, or nearer than twenty-five feet (25') to the side lot lines. Notwithstanding the above lot line requirements, no structure shall be placed nearer than twenty-five feet (25') from the right of way line of any public right of way.

Section 5. Dwelling Quality and Size. No dwelling or out building shall be commenced, erected or maintained upon the properties, nor shall any exterior addition be made until the plans and specifications, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. A residence shall be a certain minimum, not including the garage area: a) a ranch style shall have a minimum of 1200 square feet and (b) a multilevel or split level style shall have a minimum of 1000 square feet on the first floor. Each residence must include at least a double car sized garage.

Section 6. Nuisances. No noxious, illegal or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be, or may become, a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots.

Section 7. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a permanent living area while located on the project. No trailers or mobile homes may be placed, maintained, or occupied on any lot.

Section 8. Outbuildings. Outbuildings including greenhouses, storage sheds, etc. shall be permitted only if approved by Architectural Committee.

Section 9. Pet and Livestock Regulations. A reasonable number of domestic animals may be kept on any lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance as defined by VII, Section 6. Livestock shall be limited to only horses and fowl provided that they are not kept, bred or maintained for any commercial purpose.

Section 10. Waste Material. No trash, garbage, rubbish, refuse or other solid waste of any kind, including but not limited to inoperable automobiles, appliance(s) and furniture,

shall be thrown, dumped, stored, disposed of or otherwise placed in any part of Tonjess Estates. Garbage and similar solid waste shall be kept in secure, sanitary containers well suited for that purpose. The owner or occupant of each lot shall be responsible for the disposal outside of Tonjess Estates of all such trash, garbage, rubbish, refuse or other solid waste.

Section 11. Parking and Vehicular Restrictions. No vehicle which shall be in an inoperative condition shall be parked or left on the property subject to this Declaration other than in a garage on each lot. Each owner shall provide adequate off-street parking for all vehicles, including campers, camp trailers, and boats; and, no vehicle shall be parked on the streets of the subdivision.

Section 12. Water Supply. No individual water supply system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 13. Sanitary Waste Disposal. No individual sanitary waste disposal system shall be permitted on any lot unless such a system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Alaska Department of Environmental Conservation Title 18, Chapter 72, or such other regulations which may be promulgated by the State or local authority. Approval of such a system as installed shall be the responsibility of the individual owner.

Section 14. Signs. No signs shall be erected or maintained on any lot except:

- (A) one sign of not more than three square feet identifying lot owners or occupants, and
- (B) one sign of not more than six square feet advertising a lot for sale or rent.

Nothing herein shall preclude Tonjess Estates Joint Venture or its sales agents from erecting and maintaining such temporary signs and structures as may, in the judgment of the partners of Tonjess Estates Joint Venture, promote the development and sale of lots or other interests in Tonjess Estates.

Section 15. Culverts. Each Owner shall, at the time of driveway construction, provide a culvert at the ditch crossing. The culvert must be of corrugated metal or equivalent pipe and of a diameter required by the Municipality of Anchorage.



Section 16. Vegetation Removal. No more than sixty percent (60%) of the area of any lot may be cleared of the vegetation present on the lot at the time of the purchase from the Declarant; provided, however that the Board of Directors of the Association may, by a vote of a majority in number in its discretion, determine to clear more than sixty percent (60%) thereof.

Section 17. Screening. All clotheslines, equipment, service yards, wood piles or storage piles shall be screened so as to conceal them from view of neighboring lots or streets.

#### ARTICLE VIII RIGHTS OF MORTGAGEE

Section 1. Priority. Where the mortgagee of a first mortgage of record which is recorded prior to the date on which any assessment lien became effective, or other lot owner obtains title to the same as a result of foreclosure of any such first mortgage, or as the result of a deed taken in lieu of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer, but shall be subject to any future assessments which become due subsequent to his acquisition of title.

Section 2. Default. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the recordation of any lien or assessment hereunder, or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien of any mortgage made by a lot owner in good faith and for value upon the interest of a lot owner. All of the provisions herein shall be binding upon and effective against any owner whose title to said property is hereafter acquired through foreclosure or trustee's sale.

Section 3. Notice to Mortgagee. The first mortgagee shall be entitled to written notification of any default by the lot owner in the performance of the lot owner's obligations under this Declaration and Bylaws of the Association, which default is not cured within thirty (30) days, and no disposition thereof shall disturb mortgagee's first lien priority.

ARTICLE IX  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any member to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any member, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then members has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Covered Property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended as follows:

(A) At any time until and through December 31, 1985, Tonjess Estates Joint Venture by a written instrument recorded in the Anchorage Recording District may:

(i) subject to the approval of the appropriate platting authority, if any, change or lay out a new or discontinue any existing road, street, thoroughfare or way depicted on the Plat, which is not necessary for ingress or egress to or from a lot owner's premises; or

(ii) make such further exceptions, amendments, and additions to these covenants, conditions and restrictions as it and the Board of Directors of the Association may reasonably deem necessary and proper, or both; and

(b) at any time by a written instrument recorded in the Anchorage Recording District, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the lot owners, by an affirmative vote of two-thirds ( $2/3$ ) of each class of members, may make such further exceptions, amendments and additions to these covenants, conditions and restrictions as they deem appropriate.

Section 6. 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.

Section 7. 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 forty-eight (48) hours after such deposit.

Section 8. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association, nor 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 decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 9. Resubdivision. The area of the lots herein described shall not be reduced in size by resubdivision, except that (i) the owners of three contiguous lots may replat such lots

by dividing the inner or middle lot, thus increasing the size of the two remaining lots, which shall then be treated for all purposes pertinent to those covenants as enlarged single lots, and (ii) one or more lots may be resubdivided provided such replatting conforms to all applicable ordinances, rules and regulations of local authorities.

Section 10. Arbitration. Any dispute, controversy, or claim arising out of, in connection with, or in relation to this Declaration, shall be submitted and determined by arbitration in accordance with the rules, then pertaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11. Annexation.

(A) Tract B may be annexed to the subject property as described herein, for the purpose of subjecting Tract B to regulations and assessments by the Association. Such annexation must be as follows:

(i) By Tonjess Estates Joint Venture: At any time prior to December 31, 1988, Tonjess Estates Joint Venture shall have the right to bring Tract B of Tonjess Estates within the scheme of this Declaration without the consent of the members.

(ii) By Consent of the Members: At any time after December 31, 1988, the then owner(s) shall have the right to bring Tract B of the Tonjess Estates within the scheme of this Declaration, upon obtaining the consent of two-thirds (2/3) of each class of members.

(B) The annexation authorized under this Section 11 shall be made by recording a supplemental Declaration of Covenants and Restrictions with respect to the annexed property. Such supplemental Declaration may contain such additions and modifications of the covenants, restrictions and charges contained in this Declaration as may be deemed appropriate for the development of such additional property. In no event, however, shall such supplemental Declaration remove, modify, or add to the covenants established by this Declaration with respect to the subject property.

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first hereinabove written.

TONJESS ESTATES JOINT VENTURE,  
an Alaska Partnership, Declarant

By: Anthony W. Schaff  
ANTHONY SCHAFF

By: Jesse L. Prince  
JESSE L. PRINCE

STATE OF ALASKA )

THIRD JUDICIAL DISTRICT ) ss.

THIS IS TO CERTIFY that on this 13th day of April, 1983, before me appeared \*\*ANTHONY SCHAFF, to me known and known to me to be the individual named in and who executed the foregoing instrument, and acknowledged voluntarily signing and sealing the same.

Theresa K. Cuthbert  
Notary Public in and for Alaska  
My Commission Expires: 9-15-85

STATE OF ALASKA )

THIRD JUDICIAL DISTRICT ) ss.

THIS IS TO CERTIFY that on this 13th day of April, 1983, before me appeared \*\*JESSE L. PRINCE, to me known and known to me to be the individual named in and who executed the foregoing instrument, and acknowledged voluntarily signing and sealing the same.

Theresa K. Cuthbert  
Notary Public in and for Alaska  
My Commission Expires: 9-15-85

PARTNERS IN TONJESS ESTATES, JOINT VENTURE

84-029756

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RECORDED FILED  
ANCHORAGE REC.  
DISTRICT

APR 17 10 02 AM '84

REQUESTED BY Tonjess Estates

ADDRESS 2417 W. 24th

*In the Anchorage Recording District*

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TONJESS ESTATES**

**PREAMBLE**

The lot owners of Tonjess Estates, pursuant to the amendment provisions contained in the Third Amended Declaration of Covenants, Conditions and Restrictions for Tonjess Estates, recorded April 17, 1984 in Book 1080, Page 300, Anchorage Recording District, Third Judicial District, State of Alaska, hereby amend and restate the covenants, conditions and restrictions governing Tonjess Estates.

All previous declarations and declaration amendments are hereby repealed.

This declarations applies to real property in the Peters Creek area of the Municipality of Anchorage described as follows:

Lots 1A and 3-7, Block 1; Lots 1, 2, 10 and 11, Block 2; and Lots 1-6 Block 3, TONJESS ESTATES SUBDIVISION, according to Plat No. 81-72; and

Lots 3-9 and 12-23, Block 2; and Lots 7-24, Block 3, TONJESS ESTATES SUBDIVISION, according to Plat No. 82-59.

Anchorage Recording District, Third Judicial District, State of Alaska.

By this amended and restated declaration, the owners of the above stated real property declare that said property shall be held, sold , and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protection the value of and desirability of said real property. These covenants shall run with the land and be binding on all parties having any right, title or interest in the property, and their heirs, successors and assigns. The benefit of these covenants shall inure to each lot owner and to the Association.

**ARTICLE 1  
DEFINITIONS**

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committees provided for in the Article hereof entitled "Architectural Control".

Section 2. "Bylaws" shall mean and refer to the Bylaws of the Association as the same from time to time may be duly amended.

Section 3. "Association" Shall mean and refer to TONJESS ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 4. "Common Expenses" shall mean and refer to the costs of management and administration of the Association; reasonable reserves as appropriate; taxes, if any, paid by the Association; costs incurred by the Architectural Committee; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with this Declaration, the bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 5. "Covered Property" or "Project" shall mean and refer to all the real property referred to in the preamble.

Section 6. "Lot" shall mean the lots of TONJESS ESTATES.

Section 7. "Member" shall mean and refer to every person or entity who is a member in the Association pursuant to this Declaration.

Section 8. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a lot , but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Dwelling" shall mean the residential dwelling unit together with garages and other structures on the same lot.

Section 10. "Board" shall mean the Board of Directors of the Association.

Section 11. "Association Rules" shall mean rules adopted by the Association pursuant to the Articles hereof entitled "Duties and Powers of the Association".

Section 12. "Mortgage, Mortgagee, Mortgagor". Reference in this Declaration to a Mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

## ARTICLE II MEMBERSHIP

Section 1. Membership. Every owner shall be a member of the Association.

Compliance with Documents, the terms and provisions set forth in this Declaration, which are binding upon all owners, are not exclusive, as owners shall, in addition, be subject to the terms and provisions of the Bylaws of the Association to the extent the provisions thereof are not in conflict with the Declaration. In the event of conflict between the terms and provisions of the Declaration and Bylaws, the terms of the Declaration shall prevail. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership of owners shall be appurtenant to and may not be separated from the fee ownership of any lot which is subject to assessment by the Association. Ownership of a lot shall be the sole qualification for membership.

Section 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 deed of trust holder of such lot.

Section 3. Voting Rights. All owners 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. All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws of the Association.

### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay the assessments of the Association, as set forth in the Bylaws of the Association. The assessments, together with interest thereon and costs of collection thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys fees, shall also be the personal obligation of the Owner of such lot at the time when the assessment fell due.

Section 2. Liability of Mortgagee or Purchaser. Where the mortgagee of a mortgage of record or a trustee of recorded deed of a trust or other purchaser of record or a trustee of recorded deed of trust or the purchaser of a lot obtains possession of the lot as the result of foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses



collectible from all of the owners including such possessor, his successors and assigns.

Section 3. Conveyance - Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore . Any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

#### ARTICLE IV ARCHITECTURAL CONTROL

Section 1. Approval and Conformity of Plans. No dwelling or out building shall be commenced, erected or maintained upon the Covered Property, nor shall any exterior addition to or change or alteration in any such structure, be made:

(A) Until there has been approved in writing by the Architectural Committee described below, Architectural representations or drawings showing the nature, kind, shape, height, initial exterior color and surface, and location of such structure. Before granting such approval, the Architectural Committee shall have taken into consideration such factors as workmanship and materials and have in its reasonable judgment determined that the representations or drawings conform to such architectural standards as may from time to time be adopted by the Board ("Architectural Standards"), and provide for a structure which is in harmony as to external design and location with surrounding structures and topography; and

(B) Which are not constructed in accordance with such approved Architectural representations or drawings.

(C) Plans will be approved on an individual lot basis. Blanket subdivision approval will not be granted to any specific plan.

(D) Fences must be approved by the Architectural Committee and must not exceed six (6) feet in height.

NOTE: The architectural representations or drawings required by this

Section are not approved for engineering design, and by approving them neither the Architectural Committee, the members thereof, nor the Association assumes liability or responsibility therefor, or for any defect in any structure constructed from such architectural representations or drawings. In the event the Architectural Committee fails to approve or disapprove such architectural representations or drawings, within thirty (30) days after the same have been submitted to it, such architectural representations or drawings will be deemed approved.

Section 2. Appointment of Architectural Committee. The Architectural Committee shall be appointed by the board of directors and shall consist of one director and two other association members. Terms shall be renewable each year.

Section 3. Appeal. Decisions of the Architectural Committee shall be appealable to the Board of Directors. Appeals may be taken to the Board by written notice to the Board not more than thirty (30) days following the final decision of the Architectural Committee, and within thirty (30) days following the receipt of such notice of appeal, the Board shall render a decision with respect to such appeal. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision in favor of the applicant.

Section 4. General Provisions.

(A) In connection of its review of plans, architectural representations or drawings the Architectural Committee may establish procedures subject to adoption by the Board. Any such adopted procedures will be documented, made a part of the Architectural Committee's files and reported upon in the annual meeting.

(B) The address where plans Architectural representations or drawings must be sent for Architectural Committee approval is P.O. Box 0633, chugiak, AK, 99567-0633.

## ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers. In addition to the duties and powers enumerated in its Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(A) Enforce the provisions of this Declaration by appropriate means, including the expenditure of funds of the Association, the employment of legal counsel, and the commencement of actions. The Association may promulgate rules to establish a system of fines or penalties enforceable as special assessments.

(B) Maintain such policy or policies of insurance as the Board of Directors of the

Association deem necessary or desirable in furthering the purpose of and protecting the interest of the Association and its members;

(C) To contract with the independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(D) Recommend a budget for a working capital and contingency fund to be approved by the Association.

Section 2. Association Rules. The Association shall also have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (The Association Rules). The Association rules shall cover such matters in furtherance of the purposes of the Association; provided, however, that the Association rules may not discriminate among owners and shall not be inconsistent with this Declaration or Bylaws.

## ARTICLE VI OWNER'S MAINTENANCE AND INSTALLATION OBLIGATIONS

Section 1. Maintenance and Installation. Every owner shall:

(A) Maintain his dwelling and improvements in good condition and repair .

(B) Maintain in attractive and viable condition landscaping on the lot.

Section 2. Standards for Maintenance and Installation.

(A) The exterior of the dwelling, and improvements, shall be maintained in general conformity with other structures in the subdivision.

(B) Deviations shall be referred to the Architectural Committee for review.

## ARTICLE VII USE RESTRICTIONS

Section 1. Compliance with Law and Easements.

(A) All restrictive covenants listed and or contained her in are subject in all instances to compliance with the laws of the State of Alaska and the ordinances of the Municipality of Anchorage, Alaska. These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each

covenant shall be independent to such extent.

(B) Plated easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the subdivision plat.

Section 2. Residences. All the lots , except Lot 1A, Block 1, Tonjess Estates Subdivision, shall be used exclusively for residential purposes. No business or commercial activity shall be maintained or conducted on the above lots unless approved by the Board of Directors or prohibited by law

Section 3. Business or Commercial Activities. Lot 1A, Block 1, of Tonjess Estates Subdivision may be used for residential and/or "rural business" purposes. "Rural business" means business activities intended to serve the needs of rural residential areas for professional offices, goods and services. Such activities are intended to include, but not be limited to, the following businesses: day nurseries and kindergartens, offices of physicians, banks, drug stores, retail food stores and liquor stores, and restaurants.

Section 4. Building Locations. Buildings shall be located in accordance with municipal codes and zoning regulations.

Section 5. Dwelling Quality and Size. No dwelling or permanent out building shall be commenced, erected or maintained upon the properties, nor shall any exterior addition be made until the plans, architectural representations or drawings showing the shape, height, material and allocations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. A residence shall be a certain minimum, not including the garage area: a) A ranch style home shall have a minimum of 1500 square feet and (b) A multilevel or split level style home shall have a minimum of 1700 square feet. Each residence must include a garage of at least 420 square feet with simultaneous entry for two (2) cars/trucks.

Section 6. Nuisances. No activity shall be carried on or upon any lot, nor shall anything be done thereon which may be, or may become, a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots.

Section 7. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a permanent living area while located on the project. No trailers or mobile homes may be placed, maintained, or occupied on any lot.)

Section 8. Out buildings. Outbuildings including greenhouses, storage sheds, etc. shall be permitted only if approved by Architectural Committee.

Section 9. Pet and Livestock Regulations. No more than six domestic animals may be kept on any lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance. Livestock shall be limited to fowl and a single horse provided that they are not kept, bred or maintained for any commercial purpose.

Section 10. Waste Material. No trash, garbage, rubbish, refuse or other solid waste of any kind, including but not limited to inoperable automobiles (which may be defined as junked vehicles), appliance(s) and furniture, shall be thrown, dumped, stored, disposed of or otherwise placed in any part of Tonjess Estates. Garbage and similar solid waste shall be kept in secure, sanitary containers well suited for that purpose. The owner or occupant of each lot shall be responsible for the disposal outside of Tonjess Estates of all such trash, garbage, rubbish, refuse or other solid waste.

Section 11. Parking and Vehicular Restrictions. Each owner shall provide adequate off-street parking for all vehicles, including campers, camp trailers, and boats. No vehicle shall be parked on the streets of the subdivision.

Section 12. Signs. No signs shall be erected or maintained on any lot for commercial activity. Signs may not exceed six (6) square feet. There may not be more than 2 signs.

Section 13 Culverts and Ditches. Each owner shall, at the time of driveway construction, provide a culvert at the ditch crossing. The culvert must be of corrugated metal or equivalent pipe and of a diameter required by the Municipality of Anchorage. Lot owners shall clear brush from roadside drainage ditches adjacent to their property.

Section 14 Trees. No owner shall be permitted to completely clear a lot on which standing trees of size and beauty exist. Space may be cleared to provide for construction and trees may be thinned so long as maximum natural beauty and esthetic value of the trees is retained.

Section 15. Miscellaneous. All clotheslines, equipment, wood piles or storage piles will be neatly maintained so as not to conflict with section 6 of this article.

## ARTICLE VIII RIGHTS OF MORTGAGEE

Section 1. Priority. Where the mortgagee of a first mortgage of record which is recorded prior to the date on which any assessment lien became effective, or other lot owner obtains title to the same as a result of foreclosure of any such first mortgage, or as the result of a deed taken in lieu of foreclosure, the acquirer of title, his successors

and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer, but shall be subject to any future assessments which became due subsequent to his acquisition of title.

Section 2. Default. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the recordation of any lien or assessment here under, or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien of any mortgage made by a lot owner in good faith and for value upon the interest of a lot owner. All of the provisions herein shall be binding upon and effective against any owner whose title to said property is hereafter acquired through foreclosure or trustee's sale.

Section 3. Notice to Mortgagee. Any first mortgagee which has notified the Association of its interest in a loan and its address shall be entitled to written notification of any default by the lot owner in performance of the lot owner's obligations under this Declaration and Bylaws of the Association, which default is not cured within thirty (30) days, and no disposition thereof shall disturb mortgagee's first lien priority.

## ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any member to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any member, their respective legal representatives, heirs, successors and assigns, until an instrument, signed by 67% of the members has been recorded, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of Covered Property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Declaration may be amended at any time by the approval of 67% of the members of the Association. All amendments must be signed by the President of the Association. Amendments are not effective until recorded in the Anchorage Recording District.

Section 6. 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.

Section 7. 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 any one of or two or more co-owners, or such notice may be delivered by United States mail, 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 forty-eight (48) hours after such deposit.

Section 8. Non liability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association, nor 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 decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 9. Resubdivision. The area of the lots herein described shall not be reduced in size by resubdivision, except that (i) the owners of three contiguous lots may replat such lots by dividing the inner or middle lot, thus increasing the size of the two remaining lots, which shall then be treated for all purposes pertinent to those covenants as enlarged single lots, and (ii) one or more lots may be re subdivided provided such replatting conforms to all applicable ordinances, rules and regulations of local authorities.

Sections 10. Arbitration. Any dispute, controversy; or claim arising out of, in connections with, or in relation to this Declaration, shall be submitted and determined by arbitration in accordance with the rules, then pertaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11. Annexation.

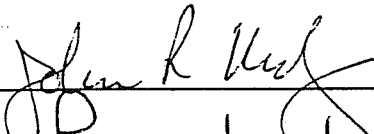
A. Tract B may be annexed to the subject property as described herein, for the purpose of subjecting Tract B to regulations and assessments by the Association. Such annexation must be by the consent of the Owner of said Tract and the consent of two-thirds (2/3) of the members of the Association.


B. The annexation authorized under this Section 11 shall be made by recording a supplemental Declaration of Covenants and Restrictions with respect to the annexed property. Such supplemental Declaration may contain such additions and modifications of the covenants, restrictions and charges contained in the Declaration as may be deemed appropriate for the development of such additional property. In no event, however, shall such supplemental Declaration remove, modify, or add to the covenants established by this Declaration with respect to the subject property.

#### ADOPTION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Dated this 1st day of Sept, 1997

TONJESS ESTATES HOMEOWNERS  
ASSOCIATION

By:   
Its: President

By:   
Its: Secretary