

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

OF

AGATE BEACH SUBDIVISION

Pursuant to Article IX, Section 2 of that certain Declaration of Covenants, Conditions and Restrictions of AGATE BEACH SUBDIVISION recorded in the Kenai Recording District, Third Judicial District, State of Alaska in Book 0243 at Page 802, this Amended and Restated Declaration is made on the date hereinafter set forth by Christopher J. Kubek and Michelle H. Kubek, husband and wife of P.O. Box 749, Girdwood, Alaska 99507 being the owners of not less than 75% of the lots described at Article I below, hereinafter "Declarant".

ARTICLE I

Description of Real Property

The real property hereby made subject to the covenants, conditions and restrictions herein set forth is as follows:

Tract A, Lots One (1), Two (2) and Three (3), Block One (1), Lots One (1) through Twenty-Three (23), inclusive, Block Two (2); Lots One (1) and Two (2) and the Greenbelt of block Three (3), and Lots One (1), Two (2) and three (3) of Block Four of AGATE BEACH SUBDIVISION, located within the West one-half (W 1/2) of the Southwest one-quarter (SW 1/4) of Section 31, Township 8 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska, containing 37.97 acres and containing 31 lots, one tract and a greenbelt.

ARTICLE II

Use Restrictions

Section 1. Land Use. No Lot shall be used except for residential purposes, except for Tract A and Lot Three (3), Block One (1), which are reserved for commercial uses, and Lot Twenty-Three (23), Block Two (2) which is reserved for multi-family uses, provided such multi-family use is limited to not more than a twelve-plex. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling. Temporary or surplus buildings may not be placed on any Lot for any purpose. No building may be placed on any Lot to be used as a utility shed unless its appearance is equal to the home standard, utilizing a proper foundation and siding.

RETURN TO:

THE LAW OFFICES OF
JIM CHRISTIE
& ASSOCIATES
1300 "C" STREET
SUITE 301
ANCHORAGE, AK 99503
(907) 561-0734
TELEFAX
(907) 565-4437

493-189

Section 2. Building Location. No building shall be located on any Lot nearer to the front lot line than forty feet (40') or nearer to the side street line than twenty feet (20'), except Lots One (1) and Two (2), Block Three (3), on which buildings may be located within twenty feet (20') of the front lot line. No building shall be located nearer than twenty feet (20') to an interior or rear lot line.

Section 3. Utilities and Easements. The road right-of-way shown on the plat shall be used for underground utility purposes, powerlines and telephone lines and utility employees shall have the right of access to the same. This restriction shall be deemed a permanent easement for that purpose. Declarant specifically reserves the same as a utility easement.

Section 4. Dwelling Size. Each dwelling unit shall contain a minimum floor area of 1,100 square feet exclusive of open decks, garages or carports. Siding shall be a grade of T-1-11 or better. Each home shall contain a minimum of 800 square feet for the first floor excluding garage, carports, or open decks. One storage building allowed other than house and garage on property.

Section 5. Signs. No signs of any kind shall be displayed to the public on any lot except one sign of not more than five square feet advertising the property for sale or rent, or signs by a building company to advertise the property during the construction and sales period.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which maybe or may become any annoyance or nuisance to other owners.

Section 7. Garbage Disposal. No trash cans, garbage cans, trash barrels, boxes or other refuse containers shall be placed or maintained on or along the side or end of any lot fronting upon or adjacent to a street. All owners shall be responsible for disposing of their own garbage. No burning of trash, garbage, refuse or other waste shall be permitted upon any lot at any time.

Section 8. Sewer and Water. No sewage treatment system or well shall be installed on any lot without the approval of all necessary governing authorities (i.e. DEC approved).

Section 9. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except dogs, cats, or other normal household pets may be kept, provided they are not kept, bred or maintained for commercial purposes, and all dogs shall be restrained as necessary to prevent their becoming nuisances.

Section 10. Business or Commercial Activity. No business or commercial activity shall be maintained or conducted on or about any Lot except Tract A and Lot Three (3), Block One (1).

Section 11. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a living area while located on the properties; however, trailers or temporary structures for use incidental to the initial construction of the improvements on the properties may be maintained thereon but shall be removed within a reasonable time after completion of construction.

Section 12. Motor Vehicles and Trailers. No motor vehicle or trailer may be abandoned for more than forty-eight (48) hours if it is not in operating condition. All vehicles and trailers within the properties must be duly licensed. No heavy equipment such as bulldozers and road graders may be parked on any Lot or street within the properties except during the time it is actually working. No commercial vehicle larger than one (1) ton in gross capacity shall be permitted to remain on any Lot or street within the Properties except as required for routine or emergency maintenance or for new construction, alteration or remodeling to an existing structure or for the purpose of moving in or out of a home.

Section 13. Water. Individual well or water systems shall be installed by the Owner at their expense.

Section 14. Driveways. All Owners shall construct driveways connecting their property to the existing roads, which driveway shall contain a culvert with a minimum diameter of eighteen inches (18") or such other dimension as may be reasonably necessary to adequately construct a driveway. The purpose of this paragraph is to prevent damage to the roads constructed within the subdivision. Ingress and egress to any Lot shall not be permitted by any vehicle which may cause damage to the road until such time as the driveway has been constructed. All driveways shall meet the existing road at a ninety (90) degree angle. All driveways shall be, when completed, at an elevation equal to the existing road at the point where the two meet and shall be built to any requirements by the Kenai Peninsula Borough.

Section 15. Trees. No owner shall be permitted to completely clear a lot where 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 16. Enforcement. Any Owner of a lot shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and reservations now or hereafter imposed by the provisions of this

Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

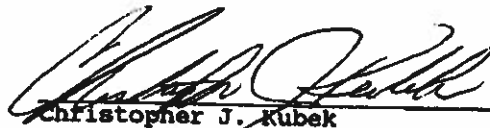
Section 17. Amendment. This Declaration may be amended during the first thirty (30) year period (commencing with the date of recording) by an instrument signed by not less than seventy-five percent (75%) of the owners of the lots described at Article I and thereafter by an instrument signed by owners of not less than sixty-five percent (65%) of the lots described at Article I. Any amendment must be recorded.

Section 18. Binding Effect of Declarations. All provisions of this Declaration, shall bind and be effective upon the Owners of all Lots, their tenants, employees, contractors and any and all other person that may use or be on or about said Property, or any part of it, in any manner.

The failure of any Owner to comply with the provisions of this Declaration, shall constitute a breach of contract and shall give rise to a cause of action by any aggrieved Lot Owner for the recovery of damages or injunctive relief or both.

Section 19. Severability. If any provision of this Declaration or the application thereof to any person or circumstance is held invalid by Judgment or Court Order, the remaining provisions and their application to other persons or to other circumstances shall not be affected thereby, and shall remain in full force and effect.

DATED at Anchorage, Alaska this 27th day of October, 1993.



Christopher J. Kubek



Michelle H. Kubek

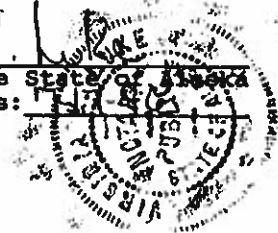
BOOK 0430 PAGE 346

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 27th day of October, 1993, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Christopher J. Kubek, known to me to be the person who executed the within instrument therein named, and acknowledged to me that he executed the same.

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

Virginia H. Lee
Notary Public for the State of Alaska
My commission expires: 11/15/98

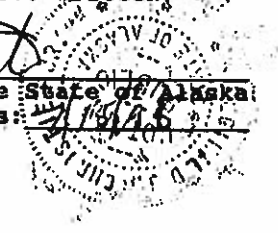


STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 27th day of October, 1993, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Michelle H. Kubek, known to me to be the person who executed the within instrument therein named, and acknowledged to me that she executed the same.

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

Reginald J. Christie
Notary Public for the State of Alaska
My commission expires: 11/15/98



93-9042

KENAI REC 27
DISTRICT
REQUESTED BY II

'93 NOV 2 AM 11 38

THE LAW OFFICES OF
JIM CHRISTIE
& ASSOCIATES
1000 "C" STREET
SUITE 101
ANCHORAGE, AK 99503
(907) 563-0934
TELEFAX
(907) 563-4217

AMENDMENT TO DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AGATE BEACH SUBDIVISION
(PHASE I)

BOOK 0260 PAGE 819

This Amendment is made on the date hereinafter set forth by Agate Beach Properties, Inc., an Alaska corporation having a principal place of business at 2550 Denali Street, Suite 1300, Anchorage, Alaska 99503, to those certain Declarations of Covenants, Conditions and Restrictions dated 26th day of July, 1984 and recorded on the 15th day of Aug, 1984, in Book 0243, Pages 802-813 records of the Kenai Recording District, Third Judicial District, State of Alaska.

As of the date of these Amendments title to all of the real property described herein is in Agate Beach Properties, Inc. which has full right to make these Amendments.

The real property which is the subject of these Amendments is described as follows:

Tract A, Lots One (1), Two (2) and Three (3), Block One (1); Lots One (1) through Twenty-Three (23), inclusive, Block Two (2); Lots One (1) and Two (2) and the Greenbelt of Block Three (3), and Lots One (1), Two (2) and Three (3) of Block Four (4) of AGATE BEACH SUBDIVISION, located within the West one-half (W 1/2) of the Southwest one-quarter (SW 1/4) of Section 31, Township 8 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska, containing 37.97 acres and containing 31 lots, one tract and a greenbelt.

(hereinafter Phase One property)

The Amendments shall be to the following sections:

Article V, Section 1 shall be amended to provide that Lots 1 and 2 of Block 1 are reserved for multi-family uses. The use of the other property described in Section 1 shall remain unchanged.

Article V, Section 2 shall be amended to provide that all main dwellings must be completed within eighteen (18) months

after construction begins and out buildings must be fully completed within three (3) months after construction begins.

Article V, Section 11. The following language shall be added to the foregoing section. "In no event shall any of the temporary structures for use incidental to the initial construction of the improvements be maintained for any period longer than a total of eighteen (18) months."

DATED this 2 day of May, 1985 at Anchorage, Alaska.

AGATE BEACH PROPERTIES, INC.

By: Christopher J. Kubek
CHRISTOPHER J. KUBEK

Its: President

)
DISTRICT) ss.

I, Paul C. Geyer, CERTIFY that on this 2nd day of May, 1985, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared CHRISTOPHER J. KUBEK, know to me to be the President of AGATE BEACH PROPERTIES, INC., the corporation that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its Board of Directors.

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

Paul C. Geyer
Notary Public in and for Alaska
My Commission Expires: 1/31/88

85-04456

RECORDED	FILED 11
REC. DIST.	
5-9	1985
11:35	A.M.
K. Christie, etc.	
2550. Ringler St, Anchorage 1300	
395327	Ans, 503

K-32072-43

0243-802

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

OF

AGATE BEACH SUBDIVISION
(Phase One)

THIS DECLARATION is made on the date hereinafter set forth by AGATE BEACH PROPERTIES, INC., an Alaska corporation, having a principal place of business at 2550 Denali Street, Suite 1300, Anchorage, Alaska 99503, hereinafter referred to as "Declarant."

ARTICLE I

Description of Real Property

The real property hereby made subject to the covenants, conditions and restrictions herein set forth is as follows:

Tract A, Lots One (1), Two (2) and Three (3), Block One (1); Lots One (1) through Twenty-Three (23), inclusive, Block Two (2); Lots One (1) and Two (2) and the Greenbelt of Block Three (3), and Lots One (1), Two (2) and Three (3) of Block Four (4) of AGATE BEACH SUBDIVISION, located within the West one-half (W 1/2) of the Southwest one-quarter (SW 1/4) of Section 31, Township 8 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska, containing 37.97 acres and containing 31 lots, one tract and a greenbelt.

(hereinafter Phase One property)

ARTICLE II

Association of Owners

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Transfer of a Lot to a different Owner automatically transfers membership in the Association

and all rights of the Transferor, with respect to the "Common Area" to which ownership of such Lot relates.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be members. 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 per Lot, nor shall fractional votes be cast.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to two (2) votes for each Lot owned. The Class B membership shall close and be converted to a Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) Upon the closing of a sale (conveyance) of a Class B membership lot to an Owner (but only as to the particular lot); or

(b) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership.

Section 3. The internal affairs of the Association shall be controlled by its "Bylaws" and as they may from time to time be amended. A copy of the Bylaws in effect at the time of recording of this Declaration is attached hereto as Exhibit "A" and all terms and provisions thereof are incorporated by reference herein as if fully set forth.

ARTICLE III

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, except as hereinbelow provided, for each Lot within the Properties, covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association a proportionate share of the "Common Expense" of administration of the Properties by payment of annual and special assessments which the Association, acting through its Board of Directors, shall levy and collect. "Common Expense" as used herein shall mean expenditures for or liabilities incurred by or on behalf of the Association. In

this regard the decision of the Board of Directors of the Association shall be determinative. The assessment(s) against any Lot, with interest, costs and reasonable attorney's fees, shall be a continuing lien upon it until paid. Each such assessment, together with interest, costs and a reasonable attorney's fee, shall also be the personal obligation of the Owner of the Lot at the time the assessment fell due. Where there is more than one Owner of a Lot, the liability shall be joint and several.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners including, without limiting the foregoing, the funding for snow removal services, maintenance and repair of the public roads within the properties and of the greenbelt areas.

Section 3. Regular (Annual) Assessments. Each year, on or before thirty (30) days after the annual meeting of the Association, the Board of Directors of the Association shall estimate the annual budget of Common Expense (the "annual budget") including the total amount required for the cost of wages, taxes, materials, insurance, services and supplies which will be required during the ensuing twelve (12) month period for the rendering of all services, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies and replacements, and such other expenses as the Board may deem proper, and shall, on or before fifteen (15) days thereafter, notify the Owner of each Lot in writing as to the amount of such estimate with reasonable itemization thereof. The proportionate share of the annual budget shall be assessed against each Lot in accordance with this Declaration and the Bylaws.

Section 4. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment (or installment thereof) not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate of interest until paid. The Association may, in addition to other sanctions available to it, bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property; and shall be entitled to collect reasonable costs of collection including attorney's fees, court costs and duly established late payment penalties. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or utilities or other services provided by or paid for by the Association, or abandonment of a Lot. All assessments are due without demand.

Section 5. Subordination of the Lien to Mortgages. The assessment lien provided for herein shall nevertheless be and hereby is made subordinate to any first mortgage or Deed of Trust on or against a Lot if the mortgage or Deed of Trust is recorded prior to the date on which such lien in favor of the Association arose, and assessments, liens and charges against a Lot in favor of the Municipality of Anchorage.

Section 6. Commencement Date for Regular Assessments. The regular assessments provided for herein shall, except as otherwise provided herein, commence as to all lots within a particular phase not later than the time construction of residences upon at least twenty-five percent (25%) of the lots within the particular phase has been commenced, but may, at the election of Declarant or the Board of Directors of the Association, be commenced sooner. Unimproved lots shall be assessed at fifty percent (50%) of the assessment rate of lots upon which construction has been commenced. Lots owned by the Declarant shall not be subject to assessment prior to two (2) years from the date of conveyance of the first lot in the particular phase to an Owner.

ARTICLE IV

Architectural Control

No building, structure or thing shall be erected, altered, placed or permitted to remain on the Properties nor shall any exterior addition to or change or alteration to an existing structure located on the Properties be made until the plans and specifications showing the nature, kind, height, materials, exterior color, surface and location of same shall have been submitted to and approved in writing by the Architectural Control Committee as to quality of workmanship and materials, harmony of exterior design with existing buildings and structures, and as to the location with respect to topography and finished grade elevation; nor shall any such building, structure or thing be permitted to remain on the properties not constructed in accordance with approved plans and specifications. Such plans and specifications will not be approved for engineering design, and by approving such plans and specifications, neither the Architectural Control Committee nor the members thereof, nor the Declarant shall be deemed to have assumed liability or responsibility therefor, or for any defect in the structure constructed from such plans and specifications.

The initial Architectural Control Committee is composed of CHRISTOPHER KUBEK and MICHELE KUBEK. The initial address of the initial Architectural Control

Committee is as follows: P. O. Box 133, Girdwood, Alaska 99587.

The Committee's approval or disapproval as required herein shall be in writing. In the event the Committee or designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the terms and provisions of this Article shall be deemed to have been fully complied with.

ARTICLE V

Use Restrictions

Section 1. Land Use. No Lot shall be used except for residential purposes, except for Tract A and Lot Three (3), Block One (1), which are reserved for commercial uses, and Lot Twenty-Three (23), Block Two (2) which is reserved for multi-family uses, provided such multi-family use is limited to not more than a twelve-plex. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling. Temporary or surplus buildings may not be placed on any Lot for any purpose. No building may be placed on any Lot to be used as a utility shed unless its appearance is equal to the home standard, utilizing a proper foundation and siding.

Section 2. Construction Completion Requirement. All main dwellings must be completed within twelve (12) months after construction begins. All outbuildings must be fully completed within three (3) months after construction begins.

Section 3. Building Location. No building shall be located on any Lot nearer to the front lot line than forty feet (40') or nearer to the side street line than twenty feet (20'), except Lots One (1) and Two (2), Block Three (3), on which buildings may be located within twenty feet (20') of the front lot line. No building shall be located nearer than twenty feet (20') to an interior or rear lot line.

Section 4. Utilities and Easements. The road right-of-way shown on the plat shall be used for underground utility purposes, powerlines and telephone lines and utility employees shall have the right of access to the same. This restriction shall be deemed a permanent easement for that purpose. Declarant specifically reserves the same as a utility easement.

Section 5. Signs. No sign of any kind shall be displayed to the public view on any lot except Tract A and Lot Three (3), Block One (1); provided, however, that a sign of not more than six (6) square feet advertising the property for sale or rent, or signs used by a builder to advertise property during the construction and sales period shall be permitted.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which maybe or may become any annoyance or nuisance to other owners.

Section 7. Garbage Disposal. No trash cans, garbage cans, trash barrels, boxes or other refuse containers shall be placed or maintained on or along the side or end of any lot fronting upon or adjacent to, a street. All owners shall be responsible for disposing of their own garbage. No burning of trash, garbage, refuse or other waste shall be permitted upon any lot at any time.

Section 8. Sewer and Water. No sewage treatment system or well shall be installed on any lot without the approval of all necessary governing authorities and the Architectural Control Committee.

Section 9. Pet Regulations. No animals, livestock or poultry shall be kept on any Lot except that domestic dogs, cats, fish and birds in inside bird cages may be kept as household pets, provided they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities. As used in this Declaration "unreasonable quantities" shall be deemed to limit the number of dogs and cats to two (2) each. No pitbulls shall be allowed. Dogs and cats belonging to Owners, occupants or their licensees or invitees within the property must be either kept within an enclosure or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board of Directors of the Association.

Section 10. Business or Commercial Activity. No business or commercial activity shall be maintained or conducted on or about any Lot except Tract A and Lot Three (3), Block One (1).

Section 11. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a living area while located on the properties; however, trailers or temporary structures for use incidental to the initial construction of

the improvements on the properties may be maintained thereon but shall be removed within a reasonable time after completion of construction.

Section 12. Motor Vehicles and Trailers. No motor vehicle or trailer may be abandoned for more than forty-eight (48) hours if it is not in operating condition. All vehicles and trailers within the properties must be duly licensed. No heavy equipment such as bulldozers and road graders may be parked on any Lot or street within the properties except during the time it is actually working. No commercial vehicle larger than one (1) ton in gross capacity shall be permitted to remain on any Lot or street within the Properties except as required for routine or emergency maintenance or for new construction, alteration or remodeling to an existing structure or for the purpose of moving in or out of a home.

Section 13. Water. Individual well or water systems shall be installed by the Owner at their expense.

Section 14. Fences. No chain link fences shall be constructed on any lot except as may be used as a dog run or kennel and, in such event, enclosing no more than two hundred (200) square feet. Any other type of fence is subject to prior approval by the Architectural Control Committee which may condition its approval on such things as obstructions of visibility resulting from the fence, aesthetic considerations and may impose such reasonable conditions as it deems appropriate.

Section 15. Driveways. All Owners shall construct driveways connecting their property to the existing roads, which driveway shall contain a culvert with a minimum diameter of eighteen inches (18") or such other dimension as may be reasonably necessary to adequately construct a driveway. The purpose of this paragraph is to prevent damage to the roads constructed within the subdivision. Ingress and egress to any Lot shall not be permitted by any vehicle which may cause damage to the road until such time as the driveway has been constructed. All driveways shall meet the existing road at a ninety (90) degree angle, absent permission from the Architectural Control Committee. All driveways shall be, when completed, at an elevation equal to the existing road at the point where the two meet and shall be built to any requirements by the Kenai Peninsula Borough.

ARTICLE VI

Annexation or Expansion

In addition to the "Phase One Property" Declarant owns all of the real property described as "Future Phase Property." Declarant intends that such property may in the future be made subject to the covenants, conditions and restrictions herein but shall not be obligated to do so. The following shall apply to any annexation or expansion of the Properties by Declarant to include the "Future Phase Property."

"Future Phase Property" shall mean any and all of the following described real property situate in the Kenai Recording District, Third Judicial District, State of Alaska:

The unsubdivided remainder of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4), and Lot Three (3) and the Southeast one-quarter (SE 1/4) of the Northwest one-quarter (NW 1/4), Section 31, Township 5 North, Range 11 West, Seward Meridian, Records of the Kenai Recording District, Third Judicial District, State of Alaska.

(a) Prior to December 31, 1994, all or any portion of the Future Phase Property may be annexed by the Declarant to the Phase One Properties and so add to the membership of the Association without further consent of the Association or any Owner or mortgagee, so long as such annexation is generally in accordance with the restrictions of this Article. Declarant may do so within such time period by one or more annexations.

(b) Owners of Lots subsequently annexed pursuant to this Article will be members of the Association and shall have all of the rights, privileges, easements and obligations of Lot Owners who became Owners prior to such annexation.

(c) Annexation shall be deemed to have occurred when an amendment to this Declaration has been recorded identifying the real property annexed to the Properties.

(d) As and when an annexation has occurred, the Owners of Lots located within the Properties as expanded by such annexation (some or all of whom may be the Declarant) will have the rights, privileges and obligations set forth

herein or in the Bylaws of the Association and the assessment responsibilities hereinabove provided.

(e) No improvement shall be constructed on any Lot in a future phase that is not compatible and harmonious in design, quality, exterior appearance, size and value with the improvements constructed on the Phase One Property.

ARTICLE VII

Reserved Rights and Easement of Declarant

Declarant intends to develop and market the Phase One Property as well as the Future Phase Property. Development may include both site or land development and construction. From time to time real property may be subject to this Declaration upon which development, construction or marketing has not been completed. In order to assure Declarant's ability and right to develop and market the Phase One Property and the Future Phase Property without hindrance or interference, in addition to all other rights or easements in favor of Declarant herein established or reasonably implied therefrom, and, not by way of limitation, the following shall apply:

(a) Declarant may maintain sales offices, "model homes," signs and other reasonable marketing facilities for the purpose of selling Lots (improved and unimproved) on the Phase One Property as well as Future Phase Property.

(b) During actual development and construction, Declarant may use and store development and construction equipment and materials (including temporary storage and construction office space) on or about the Properties except upon Lots owned by an Owner.

(c) For the purpose of such development, construction and sales, Declarant and duly authorized designees thereof shall have a continuing easement for use and access to the common areas so long as such use does not unreasonably interfere with the use and enjoyment of Owners.

(d) Without limitation to the foregoing, no portion of this Declaration shall be deemed to hinder, restrict or in any way apply to Declarant so far as the development, construction and marketing of the Phase One Property or the Future Phase Property.

ARTICLE VIII

Evidence of Ownership
And Registration of Mailing Address

Section 1. Proof of Ownership. Except for those Owners who initially purchase a Lot from Declarant, any person or entity on becoming an Owner shall furnish to the Secretary of the Association and any Managing Agent a machine or a certified copy of the recorded instrument vesting that person or entity with an interest or ownership in the Lot, which copy shall remain in the files of the Association.

ARTICLE IX

General Provisions

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Amendment. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than seventy-five percent (75%) of the members of the Association entitled to vote and thereafter by an instrument signed by not less than sixty-five percent (65%) of the members entitled to vote. Any amendment must be recorded. No amendment shall be effective with respect to Articles VI and VII unless consented to in writing by Declarant.

Section 3. Binding Effect of Declarations, Bylaws and Articles of Incorporation of Owners Association. All provisions of this Declaration, the Bylaws and the Articles of Incorporation shall bind and be effective upon the Association, the Owners of all Lots, their tenants, employees, contractors and any and all other person that may use or be on or about the Properties, or any part of it, in any manner.

The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles of Incorporation, shall constitute a breach of contract and shall give rise to a cause of action by the Association and any aggrieved Lot Owner for the recovery of damages or injunctive relief or both. Any such action may be brought

by the Board of Directors of the Association on behalf of the Association or by the duly appointed Manager of the Properties on behalf of the Association.

Section 4. Severability. If any provision of this Declaration or the application thereof to any person or circumstance is held invalid by Judgment or Court Order, the remaining provisions and their application to other persons or to other circumstances shall not be affected thereby, and shall remain in full force and effect.

Section 5. Conflict. In the case of any conflict between the Articles of Incorporation for the Association, the Bylaws of the Association and these Declarations, the Declarations shall control first, then the Articles of Incorporation and then the Bylaws.

DATED at Anchorage, Alaska this 21th day of July, 1984.

AGATE BEACH PROPERTIES, INC.

By: Christopher J. Kubek
Its: President

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 21th day of July, 1984, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Christopher J. Kubek, known to me to be the President of AGATE BEACH PROPERTIES, INC., the corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

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



Linda L. Stanley
Notary Public in and for Alaska
My commission expires: 3/4/88

BYLAWS
OF
AGATE BEACH HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME

The name of the corporation is AGATE BEACH HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association."

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to AGATE BEACH HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, excluding those having such interest merely as security for the performance of an obligation. "Owner" shall not include the "Declarant."

Section 3. "Property" or "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions defined in Section 6 below.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Kenai Recording District, Third Judicial District, State of Alaska, in Book _____ at Page _____, on the _____ day of _____, 19____, and amendments thereto duly recorded.

Section 6. "Declarant" shall mean and refer to the "Declarant" as defined in the Declaration.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 8. "Declaration Definitions." Words or phrases defined in the Declaration and not defined herein shall have the meanings set forth in the Declaration. Should a Declaration definition vary from a definition herein, the Declaration definition shall control.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Association shall be called by the Declarant, upon ten (10) days written notice, not later than ninety (90) days after the title to seventy percent (70%) of the Lots have been conveyed to an Owner by Declarant or seven hundred thirty (730) days after conveyance of a Lot to an Owner. Thereafter, an annual meeting of the Association shall be held at times selected by the Board of Directors of the Association for the purpose of electing members of the Board and such other business as may come before the meeting.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President, or by the Board of Directors, or upon written request of the Members who are entitled to vote, twenty-five percent (25%) of all the votes of Class A membership, or upon written request of Members who are entitled to vote, twenty-five percent (25%) of all of the votes of the entire membership.

Section 3. Notice of Meeting. A written or printed notice of every meeting of the Association stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place, day and hour thereof and the purpose therefor shall be given by the Secretary or the person or persons calling the meeting at least ten (10) days before the date set for such meeting. Such notice shall be given to each Member in any of the following ways: (A) by leaving the same with him or her personally or (b) by leaving the same at the residence or usual place of business of such Member, or (c) by mailing it, postage prepaid, addressed to such Member at his or her address as it appears on the records of the Association, or (d) if such Owner cannot be located by reasonable efforts, by publishing such notice in any newspaper of general circulation in Anchorage, Alaska, such notice to be published not less than two (2) times on successive days, the first publication thereof to be not less than three (3)

days nor more than ten (10) days prior to the day assigned for the meeting. If notice is given pursuant to the provisions of this section, the failure of any Member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. Upon written request for notices mailed by certified mail addressed to the Secretary of the Association at the address of said project, the holder of a duly recorded first mortgage or deed of trust against a Lot shall be sent copies of any and all notices permitted or required to be given, from and after receipt of said request until said request is withdrawn and said mortgage is discharged of record.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided by the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Voting. Any person, firm, corporation, trust or other legal entity or a combination thereof, owning a Lot in said project duly recorded in his, her or its name, the ownership whereof shall be determined by the records of the Palmer Recording District, shall be a Member of the Association, and either in person or by proxy entitled to a vote in accordance with the Declaration at all meetings of the Association. Any provision to the contrary notwithstanding, co-owners or joint owners shall be deemed one Owner. The authority given by a Member to another person to represent such Member at meetings of the Association shall be in writing, signed by such Member or, if a Lot is jointly owned, then by all joint Owners, or if such Member is a corporation, by the proper officers thereof, and shall be filed with the Secretary, and unless limited by its terms, such authority shall be deemed good until revoked in writing, or until the particular Lot is conveyed. An executor, administrator, guardian, or trustee (but not including a trustee on a deed of trust) may vote in person or by proxy at any meeting of the Association with respect to any Lot owned or held by him or her in such a capacity, whether or not the same shall have been transferred to his or her name by a duly recorded conveyance. In case such Lot shall not have been so transferred to his or her name, he or she shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee holding such Lot in such capacity.

Whenever any such Lot is owned by two or more jointly according to the records of said Recording District, the vote therefor may be exercised by any one of the Owners present in the absence of protest by the other or others.

Section 6. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the Members present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE

Section 1. Number and Qualification. The direction and administration of the project and the affairs of the Association shall be vested in a Board of Directors (hereinafter "Board"). The initial Board of Directors named in the Articles of Incorporation for this corporation is composed of three (3) persons. The elected Board of Directors shall be composed of three (3) persons who shall be elected as hereinafter provided. The number of Directors may be increased by the vote of a simple majority of Members at an annual meeting or a special meeting duly called for such purpose and regardless of other provisions for amendment herein set forth.

Section 2. Election. The original Board consisting of three (3) Directors named in the Articles of Incorporation shall continue in office until the first annual meeting of Members. At the first annual meeting of Members, the Members shall elect the entire Board for the forthcoming year. Members of the Board shall serve for one year and until their successors are elected. Vacancies in the Board shall be filled by the vote of the remaining Members.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his or her successor shall serve for the unexpired term of his or her predecessor; provided, however, that no Director removed by such majority vote shall be so selected as his or own replacement.

Section 4. Compensation. No Director shall receive compensation for any service he or she may render to

the Association. However, any Director may be reimbursed for his or actual expenses incurred in the performance of his or her duties.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors thirty (30) days prior to each annual meeting of the Members, to serve that time until thirty (30) days preceding the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 2. Election. Election to the Board of Directors shall be made by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without additional notice, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Action Taken Without a Meeting. The Directors shall have the right to take any action in the

absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Areas and facilities and the personal conduct of the Members and their guests thereon and to establish penalties for the infraction thereof;

(b) Declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

(c) Employ a manager, an independent contractor or such other employees as they deem necessary and to prescribe their duties;

(d) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership.

Section 2. Duties. It shall be the duty of the of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration to:

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and notify Lot Owners at least fifteen (15) days prior to its effective date;

(2) Send written notice of each special assessment to every Owner subject thereto at least thirty (30) days in advance of its due date or the due date of an installment thereof;

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

(d) Issue or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability insurance protecting the Association, its officers, Directors and Members from liability arising out of use or ownership of the "Properties";

(f) Cause the common area to be maintained.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President, a Vice President, a Secretary and a Treasurer who shall at all times be Members of the Board of Directors and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors immediately following the annual meeting of the Members at which said Directors were elected to the Board.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice President

(b) The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act and shall exercise and discharge such other duties as may be required of him or her by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; cause an annual audit of the Association books to be made by an audit committee at the completion of each fiscal year; shall prepare a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members; and shall co-sign all checks and promissory notes.

ARTICLE IX

COMMITTEES

The Board of Directors may appoint an Architectural Control Committee, as provided in the Declaration and shall appoint a Nominating Committee, as provided for in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose or as may from time to time be required or requested by institutional holders of first mortgages or deeds of trust as defined in the "Declaration."

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times during reasonable business hours be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association where copies may be purchased at reasonable cost.

ARTICLE XI

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the following words or abbreviations thereof: AGATE BEACH HOMEOWNERS ASSOCIATION, INC.

ARTICLE XII

0243 822

AMENDMENTS

Section 1. These Bylaws may be amended at a regular or special meeting of the Members by a vote of a majority of a quorum of Members present in person or by proxy, except that amendment of any provision which by its terms requires a vote in excess of such majority for action under said provision may only be amended upon approval of the number of votes required for such action under such provision prior to amendment.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIII

LIABILITY OF OFFICERS AND DIRECTORS

Section 1. Exculpation. No Director or officer of the Association shall be liable for acts or defaults of any other officer or Member or for any loss sustained by the Association or any Member thereof, unless the same has resulted from his or her own willful misconduct or negligence.

Section 2. Indemnification. Every Director, officer and Member of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including attorney's fees) actually and necessarily incurred by or imposed upon him or her in connection with any claim, action, suit, proceeding, investigation or inquiry of whatever nature in which he or she may be involved as a party or otherwise by reason of his or her having been an officer or Member or Director of the Association whether or not he or she continues to be such Director, officer or Member of the Association at the time of the incurring or imposition of such costs, expenses or liabilities, except in relation to matters as to which he or she shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or negligence to the Association in the performance of his or her duties or, in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law shall inure to the benefit of the legal representative of such person. Such

right of indemnification applies only to such costs, expenses or liabilities not covered by insurance.

ARTICLE XIV

MISCELLANEOUS

The fiscal year of the Association shall begin on the date that the Association is activated by adoption by the Bylaws by the initial Directors of the Association and may be changed by the Board of Directors as such Board sees fit.

IN WITNESS WHEREOF, we being all of the initial Directors of AGATE BEACH HOMEOWNERS ASSOCIATION, INC. have hereunto set our hands this 28 day of June, 1984.

Christopher Kubek
Christopher Kubek

Michele Kubek
Michele Kubek

Dan R. Coffey
Dan R. Coffey

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