

**DECLARATION FOR  
KINCAID TERRACE CONDOMINIUMS**

**TABLE OF CONTENTS**

	<u>Page</u>
<u>PREAMBLE</u> .....	1
<u>ARTICLE I - Definitions</u> .....	1
Section 1.1 - Act .....	2
Section 1.2 - Allocated Interests .....	2
Section 1.3 - Association .....	2
Section 1.4 - Bylaws .....	2
Section 1.5 - Common Elements .....	2
Section 1.6 - Common Expenses .....	2
Section 1.7 - Common Interest Community .....	2
Section 1.8 - Condominium .....	2
Section 1.9 - Declarant .....	3
Section 1.10 - Declaration .....	3
Section 1.11 - Development Rights .....	3
Section 1.12 - Director .....	3
Section 1.13 - Documents .....	3
Section 1.14 - Eligible Insurer .....	3
Section 1.15 - Eligible Mortgagee .....	3
Section 1.16 - Executive Board .....	3
Section 1.17 - Floor Plans .....	3
Section 1.18 - Improvements .....	3
Section 1.19 - Limited Common Elements .....	3
Section 1.20 - Majority or Majority of Unit Owners .....	4
Section 1.21 - Manager .....	4
Section 1.22 - Notice and Comment .....	4
Section 1.23 - Notice and Hearing .....	4
Section 1.24 - Person .....	4
Section 1.25 - Plans .....	4
Section 1.26 - Plat .....	4
Section 1.27 - Property .....	4
Section 1.28 - Rules .....	4
Section 1.29 - Security Interest .....	4
Section 1.30 - Special Declarant Rights .....	5
Section 1.31 - Trustee .....	5
Section 1.32 - Unit .....	5
Section 1.33 - Unit Owner .....	5

	<u>Page</u>
<u>ARTICLE II - Name and Type of Common Interest Community and Association</u> .....	5
Section 2.1 - Common Interest Community .....	5
Section 2.2 - Association .....	5
<u>ARTICLE III - Description of Land</u> .....	5
<u>ARTICLE IV - Maximum Number of Units; Description; Boundaries</u> .....	6
Section 4.1 - Maximum Number of Units .....	6
Section 4.2 - Description of Units .....	6
Section 4.3 - Boundaries .....	6
<u>ARTICLE V - Common Elements and Limited Common Elements</u> .....	7
Section 5.1 - Common Elements .....	7
Section 5.2 - Limited Common Elements Depicted on Plans .....	7
Section 5.3 - Additional Limited Common Elements .....	8
Section 5.4 - Reallocation of Limited Common Elements .....	8
<u>ARTICLE VI - Conveyance or Encumbrance of Common Elements</u> .....	8
Section 6.1 - Homeowner Approval .....	8
Section 6.2 - Proceeds of Sale or Loan .....	9
Section 6.3 - Form of Conveyance and Ratification .....	9
Section 6.4 - Association Contract to Convey .....	9
<u>ARTICLE VII - Maintenance, Repair and Replacement</u> .....	9
Section 7.1 - Common Elements and Limited Common Elements .....	9
Section 7.2 - Units .....	9
Section 7.3 - Access .....	10
Section 7.4 - Allocation of Costs of Repairs .....	10
<u>ARTICLE VIII - Development Rights and Special Declarant Rights</u> .....	10
Section 8.1 - Reservation of Development Rights .....	10
Section 8.2 - Limitations on Development Rights .....	11
Section 8.3 - Phasing of Development Rights .....	11
Section 8.4 - Special Declarant Rights .....	11
Section 8.5 - Models, Sales Offices and Management Offices .....	12
Section 8.6 - Construction; Declarant's Easement .....	12
Section 8.7 - Signs and Marketing .....	12
Section 8.8 - Declarant's Personal Property .....	12
Section 8.9 - Declarant Control of Association .....	13

Section 8.10 - Limitations on Special Declarant Rights .....	14
Section 8.11 - Interference with Special Declarant Rights .....	14
<u>ARTICLE IX - Allocated Interests .....</u>	<u>14</u>
Section 9.1 - Allocation of Interests .....	14
Section 9.2 - Formulas for the Allocation of Interests .....	14
Section 9.3 - Assignment of Allocated Interests Pursuant to Exercise of Development Rights .....	14
<u>ARTICLE X - Restrictions on Use, Alienation and Occupancy .....</u>	<u>14</u>
Section 10.1 - Use Restrictions .....	15
Section 10.2 - Occupancy Restrictions .....	15
Section 10.3 - Restrictions on Alienation .....	16
<u>ARTICLE XI - Easements and Licenses .....</u>	<u>16</u>
Section 11.1 - Easement for Ingress and Egress Through Common Elements	16
Section 11.2 - Easements for Support .....	16
Section 11.3 - Easements for Encroachments .....	16
Section 11.4 - Recorded Easements and Licenses .....	17
<u>ARTICLE XII - Additions, Alterations and Improvements .....</u>	<u>17</u>
Section 12.1 - Additions, Alterations and Improvements by Unit Owners .....	17
<u>ARTICLE XIII - Amendments to Declaration .....</u>	<u>18</u>
Section 13.1 - General .....	18
Section 13.2 - When Unanimous Consent Required .....	18
Section 13.3 - Execution of Amendments .....	18
Section 13.4 - Recordation of Amendments .....	19
Section 13.5 - Consent of Holders of Security Interests .....	19
Section 13.6 - Special Declarant Rights .....	19
Section 13.7 - Limitations of Challenges .....	19
Section 13.8 - Amendments to Create Units .....	19
<u>ARTICLE XIV- Amendments to Bylaws .....</u>	<u>19</u>
<u>ARTICLE XV- Termination .....</u>	<u>19</u>
<u>ARTICLE XVI - Mortgagee Protection .....</u>	<u>19</u>
Section 16.1 - Introduction .....	19

Section 16.2 - Percentage of Eligible Mortgagees .....	20
Section 16.3 - Notice of Actions .....	20
Section 16.4 - Consent Required .....	20
Section 16.5 - Inspection of Books .....	23
Section 16.6 - Financial Statements .....	23
Section 16.7 - Enforcement .....	23
Section 16.8 - Attendance at Meetings .....	23
Section 16.9 - Appointment of Trustee .....	23
Section 16.10 - Priority on Insurance and Condemnation Proceeds .....	23
Section 16.11 - Development Rights .....	23
<u>ARTICLE XVII - Assessment and Collection of Common Expenses .....</u>	<u>24</u>
Section 17.1 - Apportionment of Common Expenses .....	24
Section 17.2 - Common Expenses Attributable to Fewer Than All Units .....	24
Section 17.3 - Lien .....	24
Section 17.4 - Budget Adoption and Ratification .....	26
Section 17.5 - Non-Budgeted Common Expense Assessments .....	26
Section 17.6 - Certificate of Payment of Common Expense Assessments .....	26
Section 17.7 - Monthly Payment of Common Expenses .....	26
Section 17.8 - Acceleration of Common Expense Assessments .....	27
Section 17.9 - Commencement of Common Expense Assessments .....	27
Section 17.10 - No Waiver of Liability for Common Expenses .....	27
Section 17.11 - Personal Liability of Unit Owners .....	27
Section 17.12 - Reserves .....	27
<u>ARTICLE XVIII - Right to Assign Future Income .....</u>	<u>27</u>
<u>ARTICLE XIX - Persons and Units Subject to Documents .....</u>	<u>27</u>
Section 19.1 - Compliance with Documents .....	28
Section 19.2 - Adoption of Rules .....	28
<u>ARTICLE XX - Insurance .....</u>	<u>28</u>
Section 20. 1 - Coverage .....	28
Section 20. 2 - Property Insurance .....	28
Section 20. 3 - Liability Insurance .....	29
Section 20. 4 - Fidelity Bonds .....	30
Section 20. 5 - Unit Owner Policies .....	30
Section 20. 6 - Workers' Compensation Insurance .....	30
Section 20. 7 - Directors' and Officers' Liability Insurance .....	31
Section 20. 8 - Other Insurance .....	31
Section 20. 9 - Premiums .....	31

<u>ARTICLE XXI - Damage To or Destruction of Property</u> .....	31
Section 21.1 - Duty to Restore .....	31
Section 21.2 - Cost .....	31
Section 21.3 - Plans .....	31
Section 21.4 - Replacement of Less Than Entire Property .....	31
Section 21.5 - Insurance Proceeds .....	32
Section 21.6 - Certificates by the Executive Board .....	32
Section 21.7 - Title Reports and Certificates by Attorneys .....	32
<u>ARTICLE XXII - Rights to Notice and Comment; Notice and Hearing</u> .....	33
Section 22.1 - Right to Notice and Comment .....	33
Section 22.2 - Right to Notice and Hearing .....	33
Section 22.3 - Appeals .....	33
<u>ARTICLE XXIII - Executive Board</u> .....	33
Section 23.1 - Minutes of Executive Board Meetings .....	34
Section 23.2 - Powers and Duties .....	34
Section 23.3 - Executive Board Limitations .....	35
<u>ARTICLE XXIV - Open Meetings</u> .....	36
Section 24.1 - Access .....	36
Section 24.2 - Notice .....	36
Section 24.3 - Executive Sessions .....	36
<u>ARTICLE XXV - Condemnation</u> .....	36
<u>ARTICLE XXVI - Working Capital Fund</u> .....	36
<u>ARTICLE XXVII - Miscellaneous</u> .....	37
Section 27.1 - Captions .....	37
Section 27.2 - Gender .....	37
Section 27.3 - Waiver .....	37
Section 27.4 - Invalidity .....	37
Section 27.5 - Conflict .....	37
Section 27.6 - Rights of Action .....	37
<u>Exhibits to Declaration</u>	
Exhibit 1 - Table of Allocated Interests	
Exhibit 2 - Development Plan	
Exhibit 3 - Recorded Easements and Licenses	

ANCHORAGE RECORDING DISTRICT

**DECLARATION  
FOR  
KINCAID TERRACE CONDOMINIUMS**

Preamble

DISCOVERY CONSTRUCTION, INC., owns property in Anchorage, Alaska, described as:

Lots 9A, 10A, 13A and 14A, KINCAID TERRACE  
SUBDIVISION, according to Plat No. 2000-149, Anchorage  
Recording District, Third Judicial District, State of Alaska.

Discovery Construction, Inc., referred to herein as "Declarant", hereby submits the above-described property, to the provisions of AS 34.08, the Uniform Common Interest Ownership Act, for the purpose of creating the KINCAID TERRACE CONDOMINIUMS. Discovery Construction, Inc., declares that the Units created by this Declaration and shown on the as-built survey map and floor plans filed under Plat No. 2000-150 shall be held and conveyed subject to the following terms, covenants, conditions and restrictions.

ARTICLE I

Definitions

In the Documents, the following words and phrases shall have the following meanings:

Section 1.1 - Act. The Uniform Common Interest Ownership Act, AS 34.08, as it may be amended from time to time.

Section 1.2 - Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community. The Allocated Interests are described in Article IX of this Declaration and shown on Exhibit 1.

Section 1.3 - Association. KINCAID TERRACE CONDOMINIUM ASSOCIATION, a non-profit corporation organized under Chapter 10.20 of the statutes of the State of Alaska. It is the Association of Unit Owners pursuant to Section 34.08.310 of the Act.

Section 1.4 - Bylaws. The Bylaws of the Association, as they may be amended from time to time. Neither such Bylaws nor any amendments to such Bylaws need be recorded in the property records.

Section 1.5 - Common Elements. Each portion of the Common Interest Community other than a Unit.

Section 1.6 - Common Expenses. The expenses or financial liabilities for the operation of the Common Interest Community. These include:

- (a) Expenses of administration, maintenance, repair or replacement of the Common Elements;
- (b) Expenses declared to be Common Expenses by the Documents or by the Act;
- (c) Expenses agreed upon as Common Expenses by the Association; and
- (d) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

Section 1.7 - Common Interest Community. The real property subject to the Declaration for Kincaid Terrace Condominiums.

Section 1.8 - Condominium. A Common Interest Community in which portions of the real estate are designated for separate ownership, the remainder of the real estate is designated for common ownership solely by the owners of those portions, and the undivided interests in the Common Elements are vested in the Unit Owners.



Section 1.9 - Declarant. A person or a group of persons acting in concert who, as part of a common promotional plan, offer to dispose of its interest in a unit not previously disposed of, or who reserves or succeeds to a special declarant right; in this case, Discovery Construction, Inc.

Section 1.10 - Declaration. This document, including any amendments.

Section 1.11 - Development Rights. The rights reserved by the Declarant Under Article VIII of this Declaration to create Units, Common Elements and Limited Common Elements within the Common Interest Community.

Section 1.12 - Director. A member of the Executive Board.

Section 1.13 - Documents. The Declaration, Plat and Plans which have been recorded and filed, the Bylaws, and the Rules, if any, as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

Section 1.14 - Eligible Insurer. An insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XVI hereof.

Section 1.15 - Eligible Mortgagee. The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI hereof.

Section 1.16 - Executive Board. The Board of Directors of the Association.

Section 1.17 - Floor Plans. Those floor plans filed with the survey map under Plat No. 2000- 150, Records of the Anchorage Recording District, Third Judicial District, State of Alaska, as they may be amended from time to time.

Section 1.18 - Improvements. Any construction, structure, fixture or facility existing or to be constructed on the land included in the Common Interest Community including, but not limited to, buildings, trees and shrubbery planted by the Association, paving, utility wires, pipes, and light poles.

Section 1.19 - Limited Common Elements. The portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Subsections (2) and (4) of Section 34.08.100 of the Act. The

Limited Common Elements in the Common Interest Community are described in Article V of this Declaration.

Section 1.20 - Majority or Majority of Unit Owners. The Owners of more than 50% of the votes in the Association.

Section 1.21 - Manager. A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.22 - Notice and Comment. The right of Unit Owners to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

Section 1.23 - Notice and Hearing. The right of Unit Owners to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

Section 1.24 - Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 1.25 - Plans. The survey map and floor plans filed under Plat No. 2000-150, Records of the Anchorage Recording District, Third Judicial District, State of Alaska, as they may be amended from time to time.

Section 1.26 - Plat. The plat of Kincaid Terrace Subdivision, Plat No. 2000-149, Anchorage Recording District, Third Judicial District, State of Alaska, as it may be amended, which created Lots 9A, 10A, 13A and 14A.

Section 1.27 - Property. The land and all Improvements, easements, rights and appurtenances which are subject to this Declaration.

Section 1.28 - Rules. Regulations for occupancy of the Units and use of the Common Elements and for the conduct of persons within the Common Interest Community, adopted by the Executive Board pursuant to this Declaration.

Section 1.29 - Security Interest. An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.30 - Special Declarant Rights. The rights, as defined in AS 34.08.990(30), reserved for the benefit of a Declarant to (A) complete improvements indicated on plats and plans filed with the Declaration; (B) exercise a Development Right; (C) maintain sales offices, management offices, models and signs advertising the Common Interest Community; (D) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community; (E) make the Common Interest Community subject to a master association; (F) merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership; or (G) appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control. Special Declarant Rights are described in Article VIII.

Section 1.31 - Trustee. The entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the President and attested by the Secretary.

Section 1.32 - Unit. A physical portion of the Common Interest Community designated for separate ownership or occupancy, as shown on the development plan attached hereto as Exhibit 2, and the boundaries of which are described in Article IV of this Declaration.

Section 1.33 - Unit Owner. A Person, including the Declarant, who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation.

## ARTICLE II

### Name and Type of Common Interest Community and Association

Section 2.1 - Common Interest Community. The name of the Common Interest Community is KINCAID TERRACE CONDOMINIUMS.

Section 2.2 - Association. The name of the Association is KINCAID TERRACE CONDOMINIUM ASSOCIATION, a non-profit corporation organized under the laws of the State of Alaska.

## ARTICLE III

### Description of Land

The entire Common Interest Community is situated in the Anchorage Recording District, Third Judicial District, State of Alaska, and is located on land described as:

Lots 9A, 10A, 13A and 14A Kincaid Terrace Subdivision, according to Plat No. 2000-149, Anchorage Recording District, Third Judicial District, State of Alaska.

#### ARTICLE IV

##### Maximum Number of Units; Description; Boundaries

Section 4.1 - Maximum Number of Units. The Common Interest Community when fully developed may contain up to 14 Units. Phase 1 consists of 6 Units in two buildings, as shown on the development plan attached hereto as Exhibit 2, and as shown on the asbuilt survey and Floor Plans filed under Plat No. 2000-150.

Section 4.2 - Description of Units. All Units are multi-level Units grouped townhome-style three or four to a building. The lowest level of each Unit has a double-car garage, the entry, a bathroom, and one or two bedrooms. The upper level of each Unit has a bathroom, kitchen, living room, dining room, laundry room and one or two bedrooms. The specific details of the various floor plan models are listed at the end of Exhibit 1. From the ground level bedroom/den area there is access through a sliding glass door to an exterior wood deck. On the upper level, there is another exterior wood deck for which access is gained through a sliding glass door in the dining room.

Section 4.3 - Boundaries. Each Unit created by the Declaration is shown on the Floor Plans as a numbered Unit and the Unit boundaries are described as follows:

(a) Upper Boundary: The horizontal or sloping plane or planes of the unfinished lower surfaces of the upper living level ceiling bearing structure surfaces, beams, and rafters, and of closed fireplace dampers, extended to an intersection with the vertical perimeter boundaries.

(b) Lower Boundary: The horizontal plane or planes of the finished surface of the garage slab, extended to an intersection with the vertical perimeter boundaries, and open horizontal unfinished surfaces of trim, sills, and structural components.

(c) Vertical Perimeter Boundaries: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of poured concrete walls; the unfinished surfaces of the interior trim, fireplaces, and thresholds along perimeter walls and floors; the outer surfaces of closed windows and closed perimeter doors, except garage doors; and the innermost unfinished planes of all interior bearing

studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

(d) Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described in Section 4.3 (a), (b), and (c) above, and will also include the spaces and the Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.

(e) Exclusions: Except when specifically included by other provisions of Section 4.3, the following are excluded from each Unit: The spaces and Improvements lying outside of boundaries described in Section 4.3(a), (b) and (c) above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

(f) Non-Contiguous Portions: Certain Units may include special portions, pieces, or equipment, such as water heaters, furnaces, meter boxes, or utility connection structures, portions of which may be situated in crawl spaces or in buildings or structures that are detached or semi-detached from the buildings containing the principal occupied portion of the Units. Such special equipment is a part of the Unit notwithstanding its non-contiguity with the residential portions.

(g) Inconsistency with Plans: If this definition is inconsistent with the plans, then this definition will control.

## ARTICLE V

### Common Elements and Limited Common Elements

Section 5.1 - Common Elements. The Common Elements include all of the land area within the Common Interest Community and any man-made Improvements not included in a Unit.

Section 5.2 - Limited Common Elements Depicted on Plans. The following portions of the Common Elements are Limited Common Elements assigned on the Plans to the Units for the exclusive use of the Unit Owners:

- (a) decks accessible from within the Unit;
- (b) the fenced rear yard area;
- (c) walkways leading to front doors; and
- (d) the parking area in front of the Unit's garage.

Section 5.3 - Additional Limited Common Elements. In addition to the Limited Common Elements listed in Section 5.2, the following are also Limited Common Elements:

- (a) garage doors;
- (b) crawl space beneath the lower living level;
- (c) a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lying partially within and partially outside the designated boundaries of a Unit, that serves only the Unit, is allocated solely to that Unit, although any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements;
- (d) exterior doors, windows, screen doors, storm doors, storm windows, or other fixtures designed to serve a single Unit, that are located outside the boundaries of the Unit are Limited Common Elements allocated exclusively to the Unit, and their use is limited to that Unit; and
- (e) A chimney, the use of which is limited to the Unit in which its fireplace is located, is a Limited Common Element.

Section 5.4 - Reallocation of Limited Common Elements. Limited Common Elements may not be reallocated by Unit Owners.

## ARTICLE VI

### Conveyance or Encumbrance of Common Elements

Section 6.1 - Homeowner Approval. Portions of the Common Elements, except Limited Common Elements, may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least 80 percent of the votes in the Association, including 80 percent of the votes allocated to Units not owned by the Declarant, agree to this action. Each owner of a Unit to which a Limited Common Element is allocated must agree in order for the Limited Common Element allocated to that Unit to be conveyed or subjected to a Security Interest by the Association.

Section 6.2 - Proceeds of Sale or Loan. The proceeds of a sale and proceeds of a loan secured by encumbering a Common Element are an asset of the Association.

Section 6.3 - Form of Conveyance and Ratification. An agreement to convey Common Elements or to subject the Common Elements to a security interest must be evidenced by the execution of an agreement, or ratification of the agreement, in the same manner as a deed by the requisite number of Unit Owners. The Agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement is effective only upon recording.

Section 6.4 - Association Contract to Convey. The Association on behalf of the Unit Owners may contract to convey an interest in Common Elements as provided in this Article but the contract is not enforceable against the Association until approved as required herein. After approval, the Association has the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute a deed or other instrument.

## ARTICLE VII

### Maintenance, Repair and Replacement

Section 7.1 - Common Elements and Limited Common Elements. The Association shall maintain, repair and replace all of the Common Elements of the Property. Unit Owners shall maintain, repair and replace the Limited Common Elements, except as provided below:

(a) The Association shall repair and maintain decks, asphalt walkways, and individual asphalt driveways, except that Unit Owners are responsible for snow removal from their decks and walkways.

(b) The Association shall maintain, repair and replace the garage doors, but Unit Owners are individually responsible for the cost of repair or replacement if the need for repair or replacement is due to the act of anyone other than the Association.

(c) Maintenance, repair and replacement of garage door openers and garage door keys are the responsibility of the Unit Owners.

Section 7.2 - Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit.

Section 7.3 - Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, and replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 7.4 - Allocation of Costs of Repairs. Each Unit Owner will reimburse the Association for any costs, including insurance deductibles, incurred by the Association due to damage to any Unit or its appurtenant Limited Common Elements, or to the Common Elements to the extent that such damages or costs were caused intentionally, negligently or by the Unit Owner's failure to properly maintain, repair or make replacements to his or her Unit or appurtenant Limited Common Elements. Such expense will be assessed following Notice and Hearing. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements, not including the Limited Common Elements which are the responsibility of the Unit Owners.

## ARTICLE VIII

### Development Rights and Special Declarant Rights

Section 8.1 - Reservation of Development Rights. The Declarant reserves the following Development Rights:

(a) The right, by amendment, to add Units and Common Elements in the areas of the Common Interest Community designated as "Developer Rights Reserved" on Exhibit 2 and the Plans.

(b) The right, by amendment, to withdraw all or any part of the land designated as "Developer Rights Reserved" on Exhibit 2 and the Plans; provided, however, that if said land is withdrawn it will be used in accordance with the Municipal Land Use Code.

(c) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across land not designated "Developer Rights Reserved" on Exhibit 2 and the Plans for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property and on land designated "Developer Rights Reserved". The Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Common Interest Community not occupied by buildings, for the purposes mentioned



above. If the Declarant grants any such easements, Exhibit 3 will be amended to include reference to the recorded easement.

Section 8.2 - Limitations on Development Rights. The Development Rights reserved in Section 8.1 are limited as follows:

(a) The Development Rights may be exercised at any time, but not more than 7 years after the date of recording of this Declaration. If exercised more than 5 years after recording of the original Declaration, consent of 51% of the Eligible Mortgagees shall be required pursuant to Section 16.11.

(b) Not more than 14 total Units may be created in Kincaid Terrace Condominiums pursuant to the Development Rights.

(c) All buildings added to Kincaid Terrace Condominiums under the Development Rights will be architecturally compatible as to style with each other and will be of comparable quality of construction.

(d) All Units created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent.

(e) No Development Rights may be exercised, voluntarily abandoned or terminated by the Declarant unless approved as provided in Section 16.11.

Section 8.3 - Phasing of Development Rights. No assurances are made by the Declarant regarding the phasing indicated on lots designated "Developer Rights Reserved" on Exhibit 2. The exercise of Declarant's reserved Development Rights as to one lot will not obligate the Declarant to exercise them in the same manner as to other lots. At the time this Declaration is recorded, the anticipated phases of Kincaid Terrace Condominiums are as follows:

PHASE 1     Lots 10A and 13A     (6 units)

PHASE 2     Lots 9A and 14A     (8 units)

Section 8.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised anywhere within the Common Interest Community:

(a) to complete Improvements indicated on Plats and Plans filed with the Declaration;

(b) to exercise a Development Right reserved in the Declaration;

(c) to maintain sales offices, management offices, signs advertising the Common Interest Community and models;

(d) to use easements through the Common Elements for the purpose of making Improvements within the Common Interest Community; and

(e) to appoint or remove an officer of the Association or an Executive board member during a period of Declarant control subject to the provisions of Section 8.9 of this Declaration.

Section 8.5 Models, Sales Offices and Management Offices. As long as Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit, sales office or management office. Declarant may have no more than three (3) model Units and one (1) sales/ management office within the Common Interest Community at any time, although the specific location may change from time to time as Units are developed and sold. A model Unit or sales/management office may be no larger than a typical Unit constructed for sale to the public. Declarant may delegate this authority to dealers who purchase Units for resale.

Section 8.6 Construction: Declarant's Easement. The Declarant reserves the right to perform repair and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in the Declaration.

Section 8.7 - Signs and Marketing. The Declarant reserves the right to post signs and displays in the Units or Common Elements to promote sales of Units, and to conduct general sales activities, in a manner that will not unreasonably disturb the rights of Unit Owners.

Section 8.8 - Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove, promptly after the sale of the last Unit from the Property, any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 8.9 - Declarant Control of Association.

(a) Subject to Subsection 8.9(b), there shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of:

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

(ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business;

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

(iv) five (5) years after the first Unit is conveyed to a Unit Owner other than the Declarant.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board, shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

(c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) members, all of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office on election.

(d) Notwithstanding any provision of this Declaration or the Bylaws of the Association to the contrary, following notice under AS 34.08.390, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at a meeting of Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 8.10 - Limitations on Special Declarant Rights. Unless sooner terminated by a recorded instrument executed by the Declarant, any Special Declarant Right (except for Development Rights) may be exercised by the Declarant so long as the Declarant is obligated under any warranty or obligation, owns any Units or any Security Interest on any Units, or for ten (10) years after recording the original Declaration, whichever is sooner. Earlier termination of certain rights may occur by statute.

Section 8.11 - Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take an action or adopt any rules that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

## ARTICLE IX

### Allocated Interests

Section 9.1 - Allocation of Interests. The table showing Unit numbers and their allocated interests is attached hereto as Exhibit 1. The percentage of undivided interest in the Common Elements appertaining to each Unit for all purposes, voting and the determination of liability for Common Expenses, shall be in accordance with Exhibit 1.

Section 9.2 - Formulas for the Allocation of Interests. The formulas for the allocation of liability for Common Expenses and for the allocation of votes in the Association are as follows:

(a) Liability for Common Expenses. The percentage of liability for Common Expenses allocated to each Unit is derived by dividing the total number of Units into 100. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Section 17.2 of this Declaration.

(b) Votes. The total number of votes in the Association shall equal the total number of Units in the Association, with one vote for each Unit in the Common Interest Community.

Section 9.3 - Assignment of Allocated Interests Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Sections 8.1 and 13.8 of this Declaration shall be the date on which the amendment creating the Units is recorded in the records of the Anchorage Recording District.

## ARTICLE X

### Restrictions on Use, Alienation and Occupancy

Section 10.1 - Use Restrictions. Subject to the Special Declarant Rights reserved under Article VIII of this Declaration, each Unit is restricted to residential use for a single family including, therein, home professional pursuits not requiring regular visits from the public or unreasonable levels of mail, shipping, trash or storage. No sign indicating commercial or professional uses may be displayed outside a Unit. A single-family residence is defined as a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area, with no more than two (2) overnight occupants per bedroom.

Section 10.2 - Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article VIII of this Declaration, the following occupancy restrictions apply to the Units and the Common Elements.

(a) All Unit Owners shall maintain their Units in a clean and well maintained condition. No storage of trash will be permitted in any Unit or the Limited Common Elements appurtenant to a Unit, except in a container within the garage. The Executive Board may regulate or prohibit the storage of any type of material on the decks, walkways, and driveways in order to preserve the overall appearance of the Property.

(b) No nuisances shall be allowed on the Property, nor shall any use be made or practice be maintained by any Unit Owner or tenant of a Unit Owner that shall interfere with the quiet enjoyment of the Property by other Unit Owners and residents. The Executive Board, after Hearing and Comment, may further refine the definition of "nuisance" in the rules of the Association.

(c) Driveways shall be used only for the parking of vehicles by the Owner, or guests of the Owner, of the Unit to which that parking space is allocated as a Limited Common Element. There shall be no automotive repair conducted on the driveways. Campers parked on the driveways shall not be used for living space.

(d) No animals, livestock or poultry shall be kept in any Unit, except that domestic dogs, cats, fish and birds may be kept as household pets within the Unit, 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 total number of pets to four, no more than two of which shall be dogs. The Executive Board may, after Notice and Hearing limit the sizes and types of dogs, if sizes and types of dogs become a problem for the Association. Furthermore, the Executive Board may prohibit the maintenance of any animal that constitutes a nuisance to any other Unit Owner. Dogs and cats belonging to Unit Owners, occupants of Units, or their licensees or invitees, must be kept within the Unit except that they may be taken out of the Unit on a leash held by a person capable of controlling the animal. Should any dog or cat be found outside of the Unit, other than on a leash being held by a person capable of controlling the animal, the animal may be removed by Declarant or any person authorized by the Executive Board to

remove the dog or cat from the Property. The dog or cat so removed shall be taken to the municipal animal shelter and, if its owner is known, the Association shall notify the owner of the animal's whereabouts. The owner of any pet visiting or residing on the Property shall be absolutely liable to all other Unit Owners, their families, guests and invitees, for any damage to persons or property caused by the pet. Owners of pets are responsible for the removal of their pet's waste from the Common Elements of the Project.

Section 10.3 - Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan. A Unit may not be leased or rented for a term of less than thirty (30) days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association. A copy of all leases and rental agreements shall be given to the Association. All leases of a Unit shall include a provision that the tenant recognizes the Association as landlord, but solely for the purpose of the Association having power to enforce a violation of the provisions of the Documents against the tenant, provided that the Association first gives the Unit Owner notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

## ARTICLE XI

### Easements and Licenses

Section 11.1 - Easement for Ingress and Egress Through Common Elements. Each Unit Owner has an easement in common with each other Unit Owner for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same.

Section 11.2 - Easements for Support. Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element.

Section 11.3 - Easements for Encroachments. In the event any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements or another Unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 11.4 - Recorded Easements and Licenses. All recorded easements or licenses to which the Common Interest Community is presently subject are recited in Exhibit 3 to this Declaration or are shown on the Plats or Plans.

## ARTICLE XII

### Additions, Alterations and Improvements

#### Section 12.1 - Additions, Alterations and Improvements by Unit Owners.

(a) No Unit Owner may make any structural addition, structural alteration, or structural improvement in or to the Common Interest Community without the prior written consent thereto of the Executive Board in accordance with Subsection 12.1(c).

(b) A Unit Owner:

(i) May make any other improvements or alterations to his or her Unit not requiring approval as long as those alterations or improvements do not impair or lessen the support of any portion of the Common Interest Community;

(ii) May not change the appearance of the Common Elements or Limited Common Elements, without permission of the Association.

(c) A Unit Owner may submit a written request to the Executive Board for approval to do anything for which approval is required. The Executive Board shall answer any written request for such approval, within thirty (30) days after the request therefor. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The approval of a written request may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by reason of reasonable dissatisfaction of the Board with the location of the proposed structure, the elevation, color scheme, finish, design, proportions, architecture, shape, height, style and appropriateness of the proposed structure or alteration, the material used therein, or because of its reasonable dissatisfaction with any or all other matters or things which in the reasonable judgment of the Board will render the proposed alteration or improvement inharmonious or out of keeping with the general plan of improvement of the Common Interest Community. Improvements erected or maintained, otherwise than as approved by the Board, shall be deemed to have been undertaken without the approval of the Board as required by the Declaration. The approval of the Board of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the Board of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications. No member of the

Board shall be liable to any person for his or her decisions or failure to act in making decisions as a member of said Board. Upon approval of the Board, it shall be conclusively presumed that the location and height of any improvement does not violate the provisions of this Declaration.

(d) Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be approved in writing by the Association before the application is submitted to the relevant department or authority. Such approval will not, however, create any liability on the part of the Association or any of its members to any contractor, sub-contractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

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

### ARTICLE XIII

#### Amendments to Declaration

Section 13.1 - General. Except as otherwise provided by law or elsewhere in this Declaration, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven (67%) of the votes in the Association are allocated.

Section 13.2 - When Unanimous Consent Required. Except to the extent expressly permitted or required by provisions of the Act and this Declaration, an amendment may not create or increase Special Declarant Rights, create or increase the number of Units, change the number of Units, change the boundaries of a Unit, the allocated interests of a Unit, or the uses to which a Unit is restricted, in the absence of unanimous (100%) consent of the votes in the Association.

Section 13.3 - Execution of Amendments. An amendment to the Declaration required by AS 34.08.250 of the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and AS 34.08.250 of the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such designation, by the President of the Association.



Section 13.4 - Recordation of Amendments. Each amendment to the Declaration must be recorded in the recording district in which the Condominium is located. The amendment is effective only upon recording.

Section 13.5 - Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article XVI.

Section 13.6 - Special Declarant Rights. Provisions in the Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7 - Limitations of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is recorded.

Section 13.8 - Amendments to Create Units. To exercise any Development Right reserved under Section 8.1(a) or (b) of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record new Exhibits 1 and 2 to reflect the changes made by the exercise of the Development Right. The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements created thereby.

#### **ARTICLE XIV**

##### **Amendments to Bylaws**

The Bylaws may be amended only by two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

#### **ARTICLE XV**

##### **Termination**

Termination of the Common Interest Community may be accomplished only in accordance with Section 34.08.260 of the Act.

#### **ARTICLE XVI**

##### **Mortgagee Protection**

Section 16.1 - Introduction. This Article establishes certain standards and

covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 16.2 - Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 16.3 - Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) Any condemnation loss or any casualty loss which affects the Common Elements, if such loss exceeds \$10,000.00, or any damage to an Improvement or a Unit on which there is a first Security Interest held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable, if such damage exceeds \$10,000.00;

(b) Any delinquency in the payment of common expense assessments owed by an Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, which remains uncured for a period of sixty (60) days;

(c) Any default in the performance by the individual Unit borrower of any obligation under the condominium constituent documents which is not cured within sixty (60) days;

(d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association and/or the property manager;

(e) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and

(f) Any judgment rendered against the Association.

Section 16.4 - Consent Required.

(a) Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 16.4(a) may be effective without approval in writing by at least fifty-one percent (51%) of the Eligible Mortgagees. "Material" includes, but is not limited to, any provision affecting:

- (i) Assessments, assessment liens or subordination of assessment liens;
- (ii) Voting rights;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Responsibility for maintenance and repair;
- (v) Reallocation of interests in the Common Elements or Limited Common Elements;
- (vi) Rights to use Common Elements and Limited Common Elements;
- (vii) Boundaries of Units;
- (viii) Convertibility of Units into Common Elements or Common Elements into Units;
- (ix) Expansion or contraction of the Common Interest Community or the addition, annexation or withdrawal of property to or from the Common Interest Community;
- (x) Insurance or fidelity bonds;
- (xi) Leasing of Units;
- (xii) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xiii) Establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (xiv) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;
- (xv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
- (xvi) The benefits of mortgage holders, insurers or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions without the approval

of at least fifty-one percent (51%) of the Eligible Mortgagees:

- (i) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (ii) The restoration or repair of the property after a hazard damage or partial condemnation in a manner other than that specified in the Documents;
- (iii) The merger of this Common Interest Community with any other Common Interest Community;
- (iv) The granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one (1) year);
- (v) The assignment of the future income of the Association, including its right to receive common expense assessments; and
- (vi) Any action taken not to repair or replace the property.

(c) Actions requiring other than 51% Mortgagee approval. The following actions by the Association require the consent of First Mortgagees as specified below:

- (i) An eighty percent (80%) Eligible Mortgagee approval is required to convey or encumber the Common Elements or any portion thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause).
- (ii) A sixty-seven percent (67%) Eligible Mortgagee approval is required for the termination of the Common Interest Community for reasons other than substantial destruction or condemnation.
- (iii) When Unit boundaries are not otherwise being affected, only the Owners of Units affected and Eligible Mortgagees of those Units need approve the alteration of any partition or creation of any aperture between adjoining Units.
- (iv) The Association may not change the period for collection of regularly budgeted common expense assessments to other than monthly without the unanimous (100%) consent of Eligible Mortgagees.

(d) Failure to Respond. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment to the Declaration shall constitute an implied approval of the addition or amendment, provided that notice was delivered by certified or registered mail, with a return receipt requested.

Section 16.5 - Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules, books, records and financial statements. The Association shall permit any Eligible Mortgagee or Eligible Insurer, or other first mortgagee of units, to inspect the books and records of the Association during normal business hours.

Section 16.6 - Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association.

Section 16.7 - Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.8 - Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

Section 16.9 - Appointment of Trustee. In the event of damage or destruction under Article XXI or condemnation of all or a portion of the Community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee. Such Trustee may be required to be a corporate trustee licensed by the State of Alaska. Proceeds will thereafter be distributed pursuant to Article XXI or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the President may act as Trustee.

Section 16.10 - Priority on Insurance and Condemnation Proceeds. No provision of the Documents of the Association shall be deemed to give priority to an Owner or any other party over any rights of an Eligible Mortgagee pursuant to the terms of its Security Instrument in the case of distribution of insurance proceeds or condemnation proceeds, whether such proceeds pertain to a Unit or Common Elements.

Section 16.11 - Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination. No Development Rights may be exercised later than five (5) years after the date of recording of this Declaration, unless fifty-one percent (51%) of the Eligible Mortgagees consent to the exercise of the Development Right.

**ARTICLE XVII****Assessment and Collection of Common Expenses**

Section 17.1 - Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit 1 to this Declaration.

Section 17.2 - Common Expenses Attributable to Fewer than all Units.

(a) Any Common Expense for services provided by the Association to an individual Unit, either required by the Declaration or provided at the request of the Unit Owner, shall be assessed against the Unit which benefits from such service.

(b) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(c) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(d) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

(e) Fees, charges, late charges, fines, collection costs and interest charged against the Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Section 17.3 - Lien.

(a) The Association has a lien on a Unit for an assessment levied against the Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, collection costs, including actual attorney's fees, fines and interest charged pursuant to AS 34.08, as it may be amended from time to time, and any of the Association's Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a lien and encumbrance recorded before the recordation of the original Declaration described above in the introductory paragraph of this Document; (2) a first Security Interest on the Unit recorded before the date on which the assessment sought to

be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in Subdivision (2) of this Subsection if the common expense assessment based on the periodic budget adopted by the Association, pursuant to Section 17.4 of this Article, would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the Association's lien. This does not affect the priority of mechanic's or materialmen's liens, nor the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provisions of AS 09.38.010, as it may be amended from time to time.

(c) Recording of the Declaration constitutes a record notice and perfection of the lien. Further recording of a claim of lien for assessments under this Section is not required.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the US Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under §362 of the US Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subparagraph (c) of this Section creates a lien or foreclosure or prohibit the Association from taking a deed in lieu of foreclosure.

(f) When the Association acquires a judgment or decree in any action brought under this Section, such judgment or decree shall include an award to the Association for actual collection costs and reasonable attorney's fees.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under AS 09.35.010, as it may be amended from time to time.

(h) The Association's lien must be foreclosed as a lien is foreclosed under AS 34.35.005, as it may be amended from time to time.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's common expense assessments based on a periodic budget adopted by the Association pursuant to Section 17.4.

(j) The purchaser at a foreclosure sale initiated by the holder of a Security

Interest in a Unit is not liable for any unpaid assessments against the Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 17.3(b) above. Any unpaid assessments not satisfied from the proceeds of sale become common expenses for which all the Unit Owners, including the purchaser, may be assessed. For the purposes of this paragraph, "the purchaser" shall include, but not be limited to, any holder of a Security Interest in a Unit which obtains title to a Unit.

(k) Any payments received by the Association to discharge a Unit Owner's obligation may be applied to the oldest balance due.

(l) The Association may acquire, hold, lease, mortgage and convey a Unit foreclosed upon pursuant to this Section for unpaid assessments.

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

Section 17.4 - Budget Adoption and Ratification. The Executive Board shall adopt a proposed budget for the Common Interest Community, and shall, within thirty (30) days after adoption, provide a summary of the budget to each Unit Owner. The Executive Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5 - Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a common expense assessment not included in the current budget, other than one enumerated in Section 17.2, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board of Directors shall submit such common expenses to the Unit Owners for their consideration and comment in the same manner as a budget under Section 17.4 above; provided, however, that such assessment can be considered at a special meeting as long as the notice required for annual meetings is provided to the Unit Owners.

Section 17.6 - Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement in recordable form setting out the amount of unpaid assessments against his or her Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding upon the Association, the Executive Board and each Unit Owner.

Section 17.7 - Monthly Payment of Common Expenses. All common expenses assessed under this Article XVII shall be due and payable monthly.



Section 17.8 - Acceleration of Common Expense Assessments. In the event of a default for a period of ten (10) days by any Unit Owner in the payment of any common expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable. The holder of a first Security Interest in a Unit which has acquired title to any Unit as a result of a foreclosure of its Security Interest shall be exempt from the application of this Subsection.

Section 17.9 - Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 17.10 - No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the Common Areas or by abandonment of the Unit against which the assessments are made.

Section 17.11 - Personal Liability of Unit Owners. The Owner of a Unit at the time a common expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

Section 17.12 - Reserves. As part of the adoption of the regular budget pursuant to Sections 17.4 and 17.5, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Elements and Limited Common Elements.

## ARTICLE XVIII

### Right to Assign Future Income

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.

## ARTICLE XIX

### Persons and Units Subject to Documents

Section 19.1 - Compliance with Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, are covenants running with the land and shall bind any Persons having at any time any interest in such Unit.

Section 19.2 - Adoption of Rules. After Notice and Comment, the Executive Board may adopt Rules regarding the use of the Common Elements, and the use and occupancy of Units and Limited Common Elements, and the activities of occupants as they affect the Common Elements.

## ARTICLE XX

### Insurance

Section 20.1 - Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

#### Section 20.2 - Property Insurance.

(a) Property insurance shall be maintained covering:

(i) The project facilities (which term means all buildings on the Property, including the Units and all fixtures, equipment and any improvements and betterments whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the under surfaces of the lowest basement floors, underground pilings, piers, pipes, flues and drains and other items normally excluded from property policies; and

(ii) All personal property owned by the Association.

(b) Amounts. The project facilities for an amount (after application of any deductions) equal to one hundred percent (100%) of their replacement cost at the time the insurance is purchased and at each renewal date. Personal property owned by the

Association for an amount equal to its actual cash value. The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense. The maximum deductible for insurance policies shall be the lesser of \$10,000.00 or one percent (1%) of the policy face amount. Allocation of responsibility for payment of the deductible shall be according to the policy established by the Executive Board.

(c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

(d) Other Provisions. Insurance policies required by this Section shall provide that:

(i) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.

(ii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iii) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(iv) Loss must be adjusted with the Association.

(v) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation, to the Association; in either case, to be held in trust for each Unit Owner and such Unit Owner's mortgagee.

(vi) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(vii) The name of the insured shall be substantially as follows:

"KINCAID TERRACE CONDOMINIUM ASSOCIATION for the use and benefit of the individual Owners."

Section 20.3 - Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than

\$1,000,000, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of the interest of the Unit Owner in the Common Elements or membership in the Association;

(b) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;

(c) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and

(e) The insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known address.

Section 20.4 - Fidelity Bonds. A blanket fidelity bond is required for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force, and in no event less than the sum of three (3) months' assessments plus reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the Association, to each holder of a Security Interest in a Unit, to each servicer that services a FNMA-owned, VA-owned, FHLMC-owned, or AHFC-owned mortgage on a Unit and to the insurance trustee, if any, before the bond can be canceled or substantially modified for any reason.

Section 20.5 - Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

Section 20.6 - Workers' Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Alaska.

Section 20.7 - Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.8 - Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association and/or the Unit Owners.

Section 20.9 - Premiums. Insurance premiums shall be a Common Expense.

## ARTICLE XXI

### Damage To Or Destruction Of Property

Section 21.1 - Duty to Restore. A portion of the Common Interest Community for which insurance is required under Section 34.08.440 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Common Interest Community is terminated;
- (b) Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- (c) Eighty percent (80%) of the Unit Owners, including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2 - Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3 - Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners, and fifty-one percent (51%) of Eligible Mortgagees. Said plans and specifications must meet all existing federal, state and municipal code requirements.

Section 21.4 - Replacement of Less than Entire Property.

- (a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community.

(b) Except to the extent that other persons will be distributees,

(i) The insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the Owner of the Unit and the Owner of the Unit to which the Limited Common Elements were allocated, or to lien holders, as their interests may appear; and

(ii) The remainder of the proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the Common Element interests of all the Units.

(c) If the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Subsection 34.08.740(a) of the Act, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 21.5 - Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Executive Board of the Association, acting through the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Subsection 21.1(a) through Subsection 21.1(c), the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Common Interest Community is terminated.

Section 21.6 - Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) Whether or not damaged or destroyed Property is to be repaired or restored; and

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.7 - Title Reports and Certificates by Attorneys. Title insurance companies or, if payments are to be made to Unit Owners or Mortgagees, the Executive Board and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the records of the District Recorder's Office, Anchorage Recording District, Third Judicial District, State of Alaska, from the date of the recording of the original above-described Declaration stating the names of the Unit Owners and the Mortgagees.

**ARTICLE XXII****Rights to Notice and Comment;  
Notice and Hearing**

Section 22.1 - Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action to be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than ten (10) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2 - Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. The notice shall be given not less than ten (10) days before the hearing date. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 22.3 - Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of Persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

**ARTICLE XXIII****Executive Board**

Section 23.1 - Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after such meeting.

Section 23.2 - Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but are not limited to, the following:

- (a) Adopt and amend Bylaws, Rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees, independent contractors, and agents, other than managing agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws or Rules in the Association's name on behalf of the Association or two (2) or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (i) Cause additional improvements to be made as part of the Common Elements;
- (j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 34.08.430 of the Act;
- (k) Grant easements for any period of time, including permanent easements, and leases, licenses and concessions for no more than one (1) year, through



or over the Common Elements;

- (l) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of Section 34.08.100 of the Act, and for services provided to Unit Owners;
- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, Rules and regulations of the Association;
- (n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, the filing and recording of a plat or plan that accompanies an amendment, resale certificates required by Section 34.08.590 of the Act, or a statement of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;
- (p) Assign the Association's right to future income, including the right to receive Common Expense assessments;
- (q) Exercise any other powers conferred by this Declaration or the Bylaws;
- (r) Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;
- (s) Exercise any other power necessary and proper for the governance and operation of the Association; and
- (t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 23.3 - Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest

Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of the term.

## ARTICLE XXIV

### Open Meetings

Section 24.1 - Access. All meetings of the Executive Board, at which action is to be taken by vote at such meeting will be open to the Unit Owners, except as hereafter provided.

Section 24.2 - Notice. Notice of every such meeting will be given not less than twenty-four (24) hours prior to the time set for such meeting, by hand delivering a notice, or posting a notice in a conspicuous place within the Project except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 24.3 - Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners where the action taken at the executive session involves personnel, pending litigation, contract negotiations, or enforcement actions, or where no action is taken at the executive session requiring the affirmative vote of Directors.

## ARTICLE XXV

### Condemnation

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 34.08.740 of the Act.

## ARTICLE XXVI

### Working Capital Fund

Initial purchasers of Units in Kincaid Terrace Condominiums shall pay at closing the equivalent of two months' assessment payments to establish a working capital fund for the Association. Payments to the working capital fund are not advance payment of regular assessments. Within 60 days after closing of the first Unit, Declarant must pay each

unsold Unit's share of the working capital fund to the Association, which shall keep all working capital funds in a segregated account. Declarant shall be reimbursed for its working capital fund payments from funds collected at closing when the unsold units are sold. The working capital fund may be terminated at such time as that is permitted by the Eligible Mortgagees.

## ARTICLE XXVII

### Miscellaneous

Section 27.1 - Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof.

Section 27.2 - Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural and vice versa, whenever the context of the Documents so require.

Section 27.3 - Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 27.4 - Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 27.5 - Conflict. The Documents are intended to comply with the requirements of the Act and Chapter 10.20 of the Alaska Statutes (Non Profit Corporation Act). In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 27.6 - Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of the Documents, or with decisions of the Association which are made pursuant to the Documents. Unit Owners shall also have such rights of action against the Association.



MORTGAGEE CONSENT: NATIONAL BANK OF ALASKA

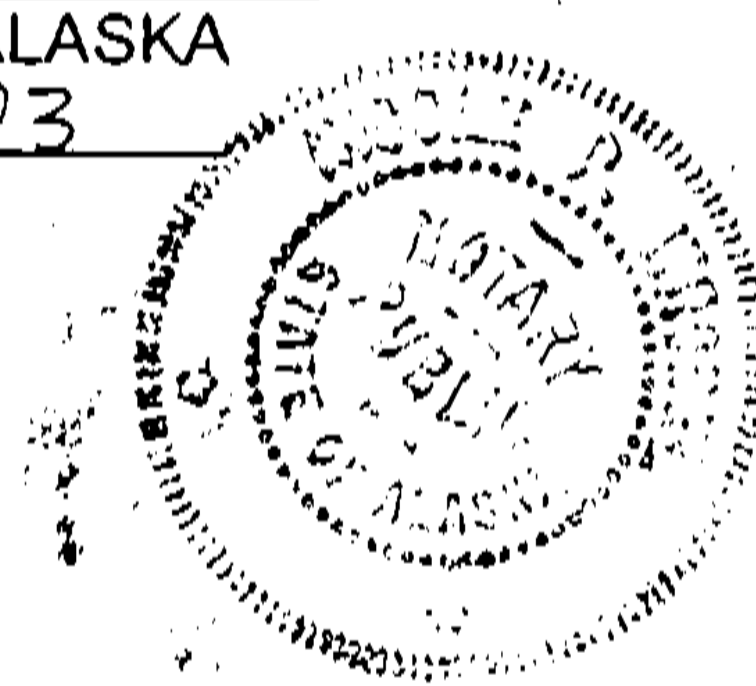
By: Cindy R. Jobe  
Cindy R. Jobe, Vice President

STATE OF ALASKA                    )  
  )ss:  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 29<sup>th</sup> day of December, 2000, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared CINDY R. JOBE, known to me and to me known to be a Vice President of the NATIONAL BANK OF ALASKA, and known to me to be the individual named in and who executed the foregoing document, and she acknowledged to me that she was authorized to execute the foregoing document on behalf of the NATIONAL BANK OF ALASKA for the uses and purposes therein set forth.

WITNESS MY HAND and notarial seal the day and year first hereinabove written.

Nicole R. Wrobel  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: 6-21-03



AFTER RECORDING RETURN TO:

Sandra J. Wicks, Esq.  
3237 W. 31<sup>st</sup> Avenue  
Anchorage, Alaska 99517

**DECLARATION FOR  
KINCAID TERRACE CONDOMINIUMS**

**EXHIBIT 1**

**TABLE OF ALLOCATED INTERESTS**

<b>Unit</b>	<b>Street Address</b>	<b>Model Type*</b>	<b>% Common Expense Liability</b>	<b>Votes in Association</b>
Phase 1 - Lot 10A				
5	8933 Arlene Street	Ranchette	16.7	1
6	8935 Arlene Street	Ranchette	16.7	1
7	8937 Arlene Street	Room to Spare	16.7	1
Phase 1 - Lot 13A				
8	8837 Arlene Street	Retreat	16.7	1
9	8839 Arlene Street	Outdoorsman	16.7	1
10	8841 Arlene Street	Ranchette	16.7	1

**Total 100%\*\* Total Votes 6**

\*Model descriptions at end of Exhibit 1

\*\*100.2% rounded to 100%

If Declarant exercises its reserved rights to create all 14 Units, the percentage of undivided interest per Unit will be 7.14%.

**KINCAID TERRACE MODEL TYPE DESCRIPTIONS**

**The Outdoorsman:** 1,225 sq. ft., entry, bedroom, bathroom and double car garage with shop area on ground level; two bedrooms; bathroom, kitchen, living room, dining room and laundry room on upper level.

**The Handyman:** 1,225 sq. ft., entry, bedroom, bathroom and double car garage with shop area on ground level; master bedroom; bathroom, kitchen, living room, dining room and laundry room on upper level.

**The Ranchette:** 1,376 sq. ft., entry, 2 bedrooms, bathroom and double car garage on the ground level; master bedroom; bathroom, kitchen, living room, dining room and laundry room on upper level.

**Room to Spare:** 1,376 sq. ft., entry, 2 bedrooms, bathroom and double car garage on the ground level; 2 bedrooms; bathroom, kitchen, living room, dining room and laundry room on upper level.

**The Retreat:** 1,376 sq. ft., entry, master bedroom, bathroom and double car garage on the ground level; 2 bedrooms; bathroom, kitchen, living room, dining room and laundry room on upper level.

**DECLARATION FOR  
KINCAID TERRACE CONDOMINIUMS**

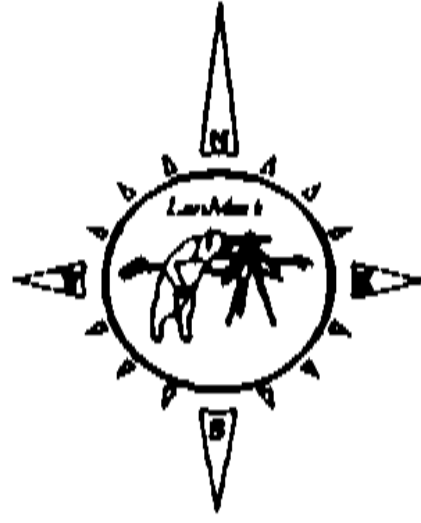
**EXHIBIT 2**

**DEVELOPMENT PLAN**



BK 03743PG0650

KINCAID TERRACE CONDOMINIUMS  
DEVELOPMENT PLAN LOTS 10A & 13A  
Kincaid Terrace Subdivision



LEGEND:

D = LIMITED COMMON ELEMENT DECK.

P = LIMITED COMMON ELEMENT PARKING.

Y = LIMITED COMMON ELEMENT YARD.

NOTE:

LIMITED COMMON ELEMENT YARD FENCES TO BE INSTALLED SUMMER 2001

ARLENE STREET

Date  
12-19-00

Grid  
2327

Drawn by  
TEG

Scale  
N.T.S.

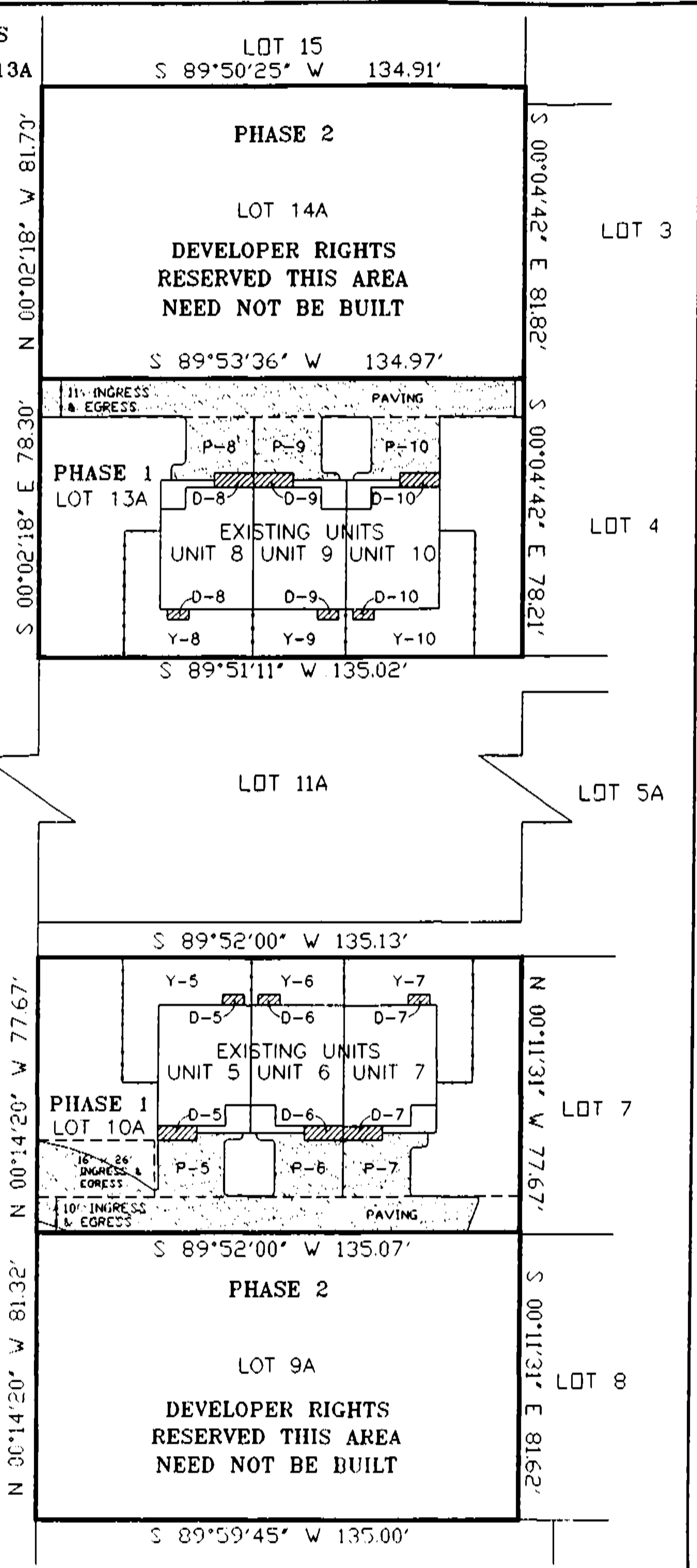
Legal Description

KINCAID TERRACE  
CONDOMINIUMS

KINCAID TERRACE  
SUBDIVISION

*LanMark*  
Engineering & Surveying, Inc.

9330 Vanguard St., # 203  
Anchorage, Alaska 99507  
(907) 582-8050



**DECLARATION FOR  
KINCAID TERRACE CONDOMINIUMS**

**EXHIBIT 3**

**RECORDED EASEMENTS AND LICENSES**

The following lots make up the common interest community of Kincaid Terrace Condominiums.

Lots 9A, 10A, 13A and 14A, KINCAID TERRACE  
SUBDIVISION, according to Plat No. 2000-149, Anchorage  
Recording District, Third Judicial District, State of Alaska.

These lots are burdened by recorded easements and licenses as follows:

1. Easements dedicated on plats of record.
2. Ten foot utility easement along the East boundary of Lots 9, 10, 13 and 14, dedicated on Plat No. 66-21.
3. Blanket easement for electric transmission granted to Chugach Electric Association, Inc., recorded February 11, 1952 in Book 67, Page 385.
4. Telephone underground easement across the South 5 feet of Lot 9, granted to the Municipality of Anchorage, recorded December 8, 1977, in Book 254, Page 210.
5. Easements for electric lines or system and/or telephone lines granted to Chugach Electric Association, Inc., recorded May 31, 1996, in Book 2933, Page 490, affecting the South 20 feet of Lot 13\*\* and the South 10 feet of Lot 10.
6. An easement for electric lines or system and/or telephone lines granted to Chugach Electric Association, Inc., recorded August 9, 2000, in Book 3673, Page 830, a strip 10 feet in width in the southwest corner of Lot 9.

All of these easements are shown on Plat 2000-149, which created Lots 9A, 10A, 13A and 14A.

\*\*The 20 foot easement on Lot 13 overlaps the condominium building on Lot 13A but is in the process of being vacated. Unit sales on Lot 13A will not be closed until the easement has been vacated to around the foundation of the building.

ANCHORAGE  
RECORDING DISTRICT

067044

2000 DE 29 PM 2:52

REQUESTED BY

*Discovery  
Contractor*

*169-3XCL*