

**THIS DOCUMENT IS A DRAFT, AND IS SUBJECT TO  
CHANGE PRIOR TO BE RECORDED.**

**DECLARATION  
OF  
HOME PORT AT KENAI LANDING**

*A Live-Work Condominium Community*

- Creating Units:                      •

AFTER RECORDING RETURN TO:

*KENAI LANDING, INC.  
4621 West Hill Road  
Homer, Alaska 99603*

## TABLE OF CONTENTS

<b>ARTICLE I DEFINITIONS.....</b>	<b>1</b>
Section 1.1 - Act .....	1
Section 1.2 - Allocated Interests. ....	1
Section 1.3 - Association. ....	1
Section 1.4 - Bylaws. ....	1
Section 1.5 - Common Elements. ....	1
Section 1.6 - Common Expenses. ....	1
Section 1.7 - Common Interest Community .....	2
Section 1.8 - Damaged or Destroyed .....	2
Section 1.9 - Declarant.....	2
Section 1.10 - Declaration.....	2
Section 1.11 - Development Rights. ....	2
Section 1.12 - Director. ....	2
Section 1.13 - Documents. ....	2
Section 1.14 - Eligible Insurer. ....	2
Section 1.15 - Eligible Mortgagee. ....	2
Section 1.16 - Environmental Laws.....	2
Section 1.17 - Executive Board. ....	3
Section 1.18 - Hazardous Materials. ....	3
Section 1.19 - Improvements. ....	3
Section 1.20 - Limited Common Elements.....	3
Section 1.21 - Maintain, Repair and Replace .....	3
Section 1.22 - Majority or Majority of Unit Owners .....	3
Section 1.23 - Manager. ....	3
Section 1.24 - Notice and Comment. ....	3
Section 1.25 - Notice and Hearing. ....	3
Section 1.26 - Person. ....	3
Section 1.27 - Plat and Plans.....	3
Section 1.28 - Property. ....	4
Section 1.29 - Recreational Vehicle.....	4
Section 1.30 - Rules. ....	4
Section 1.31 - Security Interest. ....	4
Section 1.32 - Special Declarant Rights. ....	4
Section 1.33 - Structure, Structural.....	4
Section 1.34 - Trustee. ....	4
Section 1.35 - Unit. ....	4
Section 1.36 - Unit Owner .....	4
Section 1.37 - Vehicle.....	4
<b>ARTICLE II NAME AND TYPE OF COMMON INTEREST COMMUNITY AND ASSOCIATION.....</b>	<b>5</b>
Section 2.1 - Common Interest Community. ....	5
Section 2.2 - Association. ....	5

<b>ARTICLE III DESCRIPTION OF LAND.....</b>	<b>5</b>
<b>ARTICLE IV MAXIMUM NUMBER OF UNITS; BOUNDARIES .....</b>	<b>5</b>
Section 4.1 - Maximum Number of Units .....	5
Section 4.2 - Unit Boundaries.....	5
<b>ARTICLE V COMMON ELEMENTS AND LIMITED COMMON ELEMENTS .....</b>	<b>9</b>
Section 5.1 - Common Elements. ....	9
Section 5.2 - Limited Common Elements.....	10
<b>ARTICLE VI MAINTENANCE, REPAIR, AND REPLACEMENT.....</b>	<b>10</b>
Section 6.1 - Common Elements. ....	10
Section 6.2 - Units.....	11
Section 6.3 - Limited Common Elements.....	11
Section 6.4 - Access by Association. ....	12
Section 6.5 - Failure to Maintain, Repair, and Replace .....	13
Section 6.6 - Additional Standards. ....	13
Section 6.7 - Conduct of Maintenance, Repair, and Replacement by the Association.....	14
<b>ARTICLE VII DEVELOPMENT RIGHTS, SPECIAL DECLARANT RIGHTS, AND OTHER RESERVED RIGHTS.....</b>	<b>14</b>
Section 7.1 - Reservation of Development Rights.....	14
Section 7.2 - Additional Rights Reserved by Declarant .....	15
Section 7.3 - Limitations on Development Rights.....	17
Section 7.4 - Phasing of Development Rights. ....	18
Section 7.5 - Special Declarant Rights. ....	18
Section 7.6 - Construction: Declarant's Easement .....	18
Section 7.7 - Signs and Marketing.....	19
Section 7.8 - Declarant's Personal Property.....	19
Section 7.9 - Declarant Control of Association .....	19
<b>ARTICLE VIII ALLOCATED INTERESTS.....</b>	<b>20</b>
Section 8.1 - Allocation of Interests. ....	20
Section 8.2 - Formulas for the Allocation of Interests.....	20
<b>ARTICLE IX RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY.....</b>	<b>21</b>
Section 9.1 - Use of Residential Units .....	21
Section 9.2 - Use of Commercial Units .....	22
Section 9.3 - Cleanliness.....	22
Section 9.4 - Nuisance .....	23
Section 9.5 - Noise Restrictions.....	23
Section 9.6 - Vehicles .....	23
Section 9.7 - Animals.....	24
Section 9.8 - Window Coverings .....	25
Section 9.9 - Holiday Lighting.....	25
Section 9.10 - Antennae and Satellite Dishes .....	25

Section 9.11 - Storage of Personal Property .....	26
Section 9.12 - Playground or Recreational Equipment.....	26
Section 9.13 - Garbage and Refuse Disposal.....	26
Section 9.14 - Burning .....	26
Section 9.15 - Water and Sewer.....	26
Section 9.16 - Mailboxes .....	27
Section 9.17 - Signs .....	27
Section 9.18 - Oil and Mining Operations .....	27
Section 9.19 - Drones.....	27
Section 9.20 - Limited Common Element RV Storage spaces .....	28
Section 9.21 - RV Open Parking Areas .....	28
Section 9.22 - Public Parking Areas .....	28
Section 9.23 - Common Elements .....	28
Section 9.24 - Compliance with Documents and Law.....	28
Section 9.25 - Liability for Hazardous Materials.....	29
Section 9.26 - Leasing.....	29
Section 9.27 - Transient Usage .....	30
<b>ARTICLE X EASEMENTS AND LICENSES .....</b>	<b>30</b>
Section 10.1 - Recorded Easements and Licenses .....	30
Section 10.2 - Easement for Ingress and Egress Through Common Elements .....	30
Section 10.3 - Easements for Support.....	30
Section 10.4 - Easements for Encroachments.....	30
Section 10.5 - Ingress and Egress by the Public .....	31
<b>ARTICLE XI ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS.....</b>	<b>31</b>
<b>ARTICLE XII ADDITIONS, ALTERATIONS OR IMPROVEMENTS.....</b>	<b>31</b>
Section 12.1 - Additions, Alterations and Improvements to Units by Unit Owners .....	31
Section 12.2 - Additions, Alterations, and Improvements to or Affecting Common Elements by Unit Owners .....	31
Section 12.3 - Approval by Executive Board .....	33
Section 12.5 - Additions, Alterations, and Improvements by Executive Board.....	34
<b>ARTICLE XIII COMBINING, SUBDIVIDING, AND RELOCATING BOUNDARIES BETWEEN UNITS ..</b>	<b>34</b>
Section 13.1 - Subdividing and Combining Units .....	34
Section 13.2 - Relocating Boundaries Between Units.....	34
<b>ARTICLE XIV AMENDMENTS TO DECLARATION.....</b>	<b>35</b>
Section 14.1 - General.....	35
Section 14.2 - When Unanimous Consent Required .....	35
Section 14.4 - Development Rights and Other Reserved Rights .....	35
Section 14.5 – Amendments to Comply with Financing Agencies .....	35
Section 14.6 - Consent of Holders of Security Interests.....	36
Section 14.7 - Notice to Unit Owners of Amendments to the Declaration.....	36
Section 14.8 - Limitation of Challenges. ....	36

Section 14.9 - Recording and Execution of Amendments .....	36
<b>ARTICLE XV AMENDMENTS TO BYLAWS .....</b>	<b>36</b>
<b>ARTICLE XVI TERMINATION AND MERGER.....</b>	<b>36</b>
<b>ARTICLE XVII MORTGAGEE PROTECTION.....</b>	<b>37</b>
Section 17.1 - Introduction. ....	37
Section 17.2 - Percentage of Eligible Mortgagees.....	37
Section 17.3 - Notice of Actions.....	37
Section 17.5 - Development Rights. ....	40
Section 17.7 - Financial Statements.....	41
Section 17.8 - Attendance at Meetings .....	41
Section 17.9 - Appointment of Trustee.....	41
Section 17.10 - Implied Approval or Consent. ....	41
Section 17.11 - Enforcement.....	41
<b>ARTICLE XVIII ASSESSMENT AND COLLECTION OF COMMON EXPENSES .....</b>	<b>41</b>
Section 18.1 - Apportionment of Common Expenses. ....	41
Section 18.2 - Common Expenses Attributable to Fewer Than All Unit Owners.....	42
Section 18.3 - Lien.....	43
Section 18.4 - Budget Adoption and Ratification.....	44
Section 18.5 - Ratification of Non-budgeted Common Expense Assessments .....	45
Section 18.6 - Certificate of Payment of Common Expense Assessments.....	45
Section 18.7 - Commencement of Common Expense Assessments.....	45
Section 18.8 - Regular Payment of Common Expenses .....	45
Section 18.9 - Acceleration of Common Expense Assessments.....	45
Section 18.10 - No Waiver of Liability for Common Expenses.....	45
Section 18.11 - Personal Liability of Unit Owners.....	45
Section 18.12 - Reserves.....	45
<b>ARTICLE XIX RIGHT TO ASSIGN FUTURE INCOME .....</b>	<b>46</b>
<b>ARTICLE XX PERSONS AND UNITS SUBJECT TO INSTRUMENTS .....</b>	<b>46</b>
Section 20.1 - Compliance with Documents.....	46
Section 20.2 - Adoption of Rules.....	46
Section 20.3 - Notice to Unit Owners of Rule Changes .....	46
Section 20.4 - Limitation on Challenges.....	46
<b>ARTICLE XXI INSURANCE .....</b>	<b>47</b>
Section 21.1 - Coverage.....	47
Section 21.2 - Property Insurance.....	47
Section 21.3 - Liability Insurance.....	48
Section 21.4 - Fidelity Insurance.....	49
Section 21.5 - Workers' Compensation Insurance.....	49
Section 21.6 - Directors' and Officers' Liability Insurance.....	49
Section 21.7 - Other Insurance.....	50

Section 21.8 - Premiums .....	50
Section 21.9 - Deductibles .....	50
Section 21.10 - Unit Owner Policies.....	50
<b>ARTICLE XXII DAMAGE TO OR DESTRUCTION OF PROPERTY.....</b>	<b>51</b>
Section 22.1 - Duty to Restore.....	51
Section 22.2 - Cost of Restoration.....	51
Section 22.3 - Plans.....	51
Section 22.4 - Replacement of Less Than Entire Property.....	51
Section 22.5 - Vote not to Rebuild a Unit.....	51
Section 22.6 - Insurance Proceeds.....	52
Section 22.7 - Certificates by the Executive Board.....	52
Section 22.8 - Title Insurance Policies.....	52
<b>ARTICLE XXIII RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING.....</b>	<b>52</b>
Section 23.1 - Right to Notice and Comment.....	52
Section 23.2 - Right to Notice and Hearing.....	52
Section 23.3 - Appeals.....	53
<b>ARTICLE XXIV EXECUTIVE BOARD.....</b>	<b>53</b>
Section 24.1 - Powers and Duties.....	53
Section 24.2 - Executive Board Limitations.....	54
Section 24.3 - Executive Board Meetings.....	55
<b>ARTICLE XXV CONDEMNATION.....</b>	<b>55</b>
<b>ARTICLE XVI MEDIATION &amp; ARBITRATION.....</b>	<b>55</b>
Section 26.1 - Mediation Clause.....	55
Section 26.2 - Arbitration Clause.....	56
<b>ARTICLE XXVII MISCELLANEOUS.....</b>	<b>56</b>
Section 27.1 - Captions.....	56
Section 27.2 - Gender.....	57
Section 27.3 - Waiver.....	57
Section 27.4 - Invalidity.....	57
Section 27.5 - Conflict.....	57
Section 27.6 - Rights of Action.....	57
Section 27.7 - Association Not a Guarantor of Safety or Security.....	57
<b>ARTICLE XXVIII CHANGES IN LAW.....</b>	<b>58</b>
<b>SCHEDULE A-1 DESCRIPTION OF COMMON INTEREST COMMUNITY.....</b>	<b>60</b>
<b>SCHEDULE A-2 TABLE OF INTERESTS.....</b>	<b>61</b>
<b>SCHEDULE A-3 PLAT AND PLANS.....</b>	<b>62</b>

DRAFT

**DECLARATION  
OF  
HOME PORT AT KENAI LANDING**

---

Declarant, **KENAI LANDING, INC.**, whose mailing address is *4621 West Hill Road, Homer, Alaska 99603*, hereby submits the real property located in Kenai, Alaska, described in **SCHEDULE A-1**, to the provisions of the Uniform Common Interest Ownership Act, Title 34, Chapter 8, of the Alaska Statutes, for the purpose of creating, governing and operating **HOME PORT AT KENAI LANDING**, and making the Improvements shown in the Plat and Plans attached as **Schedule A-3**.

Home Port at Kenai Landing is a condominium common interest community.

**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, Title 34, Chapter 8, of the Alaska Statutes, 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** and shown on **Schedule A-2**.

Section 1.3 - Association. **HOME PORT CONDOMINIUM ASSOCIATION, INC.**, a nonprofit corporation organized under Title 10, Chapter 20 of the Alaska Statutes. 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.

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 incurred by the Association for the governance and operation of the Common Interest Community. These include, without limitation:

- (a) Expenses of management, administration, insurance, governance and operation of the Common Interest Community;
- (b) Expenses for maintenance, repair, or replacement of the Common Elements;
- (c) Expenses declared to be Common Expenses by the Documents or by the Act;



- (d) Expenses agreed upon as Common Expenses by the Association;
- (e) Expenses incurred by the Association for electricity, gas, water, telecommunication, and other utility charges not billed by the provider to individual Units; and
- (f) 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. HOME PORT AT KENAI LANDING.

Section 1.8 - Damaged or Destroyed. A portion of the Common Interest Community is Damaged or Destroyed (or suffers Damage or Destruction) if it suffers physical damage caused by reasons other than deterioration, decay, wear and tear, or obsolescence.

Section 1.9 - Declarant. KENAI LANDING, INC., or its successor as defined in AS 34.08.990(12).

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

Section 1.11 - Development Rights. The rights reserved by the Declarant under **Section 7.1** of the Declaration.

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

Section 1.13 - Documents. The Declaration, Plat and Plans recorded and filed pursuant to the provisions of the Act, the Articles of Incorporation, the Bylaws, and the Rules as they may be amended from time to time. Any attachment, 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.

Section 1.15 - Eligible Mortgagee. The holder of a first Security Interest in a Unit.

Section 1.16 - Environmental Laws. All present and future federal, state and local laws, statutes, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to Hazardous Materials or protection of human health or the environment, including without limitation the following federal laws: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, the Solid Waste Disposal Act of 1965, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, and any amendments to the same and regulations adopted, published and/or promulgated pursuant thereto.

Section 1.17 - Executive Board. The board of directors of the Association.

Section 1.18 - Hazardous Materials. Any material, substance or compound now or in the future defined as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, or contaminant within the meaning of any Environmental Law, including, without limitation, petroleum, petroleum products, oil, waste oil, and unsanitary waste

Section 1.19 - Improvements. Any construction, structure, signage, fixture, or facilities existing or to be constructed on the land included in the Common Interest Community, including but not limited to, buildings, trees, and shrubbery, paving, sidewalks, signage, utility wires, pipes, and light poles.

Section 1.20 - Limited Common Elements. The portion of the Common Elements allocated for the exclusive use of one (1) or more but fewer than all of the Units by the Declaration. The Limited Common Elements in the Common Interest Community are described in **Article V**.

Section 1.21 - Maintain, Repair and Replace. To Maintain, Repair, and Replace (or to perform Maintenance, Repair, and Replacement) is the act of addressing and correcting deterioration, decay, wear and tear, and obsolescence to any portion of the Property. With respect to yards, gardens, grass and other landscaped areas, Maintenance, Repair, and Replacement includes regular watering, mowing, trimming, weed removal, fertilizing and any other maintenance activities essential to ensure the landscaped area is in good health and appearance.

Section 1.22 - Majority or Majority of Unit Owners. The Unit Owners of more than fifty percent (50%) of the voting interest in the Association.

Section 1.23 - Manager. A Person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.24 - Notice and Comment. The right of a Unit Owner 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 23.1**.

Section 1.25 - Notice and Hearing. The right of a Unit Owner 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 23.2**.

Section 1.26 - Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 1.27 - Plat and Plans. The Plat and Plans filed in the Kenai Recording District, copies of which are filed with the Declaration as **SCHEDULE A-3**, as it may be amended from time to time.

Section 1.28 - Property. The land, all Improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Act by the Declaration.

Section 1.29 - Recreational Vehicle. A self-propelled or nonmotorized vehicle that is intended or designed for recreation, camping, or travel purposes, including, but not limited to, including but not limited to travel trailers, camping trailers, truck campers, motorhomes, boats, personal watercraft, all-terrain vehicles, snowmobiles, and similar vehicles.

Section 1.30 - Rules. Rules for the use of Units and Common Elements and for the conduct of Persons within the Common Interest Community, adopted by the Executive Board pursuant to **Section 20.2** of the Declaration.

Section 1.31 - Security Interest. An interest in real estate created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a 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, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.32 - Special Declarant Rights. The rights reserved by the Declarant under **Section 7.5** of the Declaration.

Section 1.33 - Structure, Structural. The Structure of a building includes all components that support any portion of the building, that enclose the building or that keep the building weather tight. Any portion of the Structure of a building is Structural.

Section 1.34 - 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 1.35 - Unit. A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in **Article IV**. Each Unit includes all Improvements located within the boundaries of the Unit.

Section 1.36 - Unit Owner. The Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial Unit Owner of any Unit created by the Declaration.

Section 1.37 - Vehicle. The term "Vehicle" means every vehicle which is self-propelled and used for the transportation of people or cargo. The term "Vehicle" includes, but is not limited to, an automobile, motorcycle, truck, van, and Recreational Vehicle. Notwithstanding the foregoing, a low-speed electric bicycle is not considered a Vehicle.

**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 HOME PORT AT KENAI LANDING and it is a condominium community.

Section 2.2 - Association. The name of the Association is HOME PORT CONDOMINIUM ASSOCIATION, INC.

**ARTICLE III**  
**DESCRIPTION OF LAND**

The entire Common Interest Community is situated in the Kenai Recording District, Third Judicial District, State of Alaska, and is located on land described in **Schedule A-1**.

**ARTICLE IV**  
**MAXIMUM NUMBER OF UNITS; BOUNDARIES**

Section 4.1 - Maximum Number of Units. The Common Interest Community upon creation contains **two (2) Units**. The Declarant reserves the right to create and add additional Units for an aggregate maximum of **two hundred (200) Units** within the Common Interest Community. All Units created shall be identified with numbers and/or letters, listed in **Schedule A-2**, and shown on the Plat and Plans attached as **Schedule A-3**.

Section 4.2 - Unit Boundaries. The boundaries of each Unit created by the Declaration as initially recorded are the planes or surfaces located as shown on the Plat and Plans, and are more particularly described in the balance of this **Section 4.2**. The outside facing surfaces of elements or materials included within the Unit and the inside facing surfaces of elements or materials excluded from the Unit define the boundaries of the Unit. An outside-facing surface is one which faces away from the interior of the Unit and towards a Common Element, another Unit or the outside of the Common Interest Community. An inside-facing surface is one which faces towards the interior of the Unit and away from a Common Element, another Unit, or the outside of the Common Interest Community.

- (a) Ceiling. Except as otherwise provided, the ceiling of each level of the Unit is the upper boundary of the Unit or portion of the Unit.
  - (i) When a ceiling is a boundary, the outside-facing surfaces of the outermost of the following elements and materials define the Unit boundary, and the following elements and materials, if present, are included within the Unit:
    - (A) Drywall, plasterboard, wallboard, sheet rock, gypsum board, and such other similar materials;
    - (B) Plaster, joint compound, and joint tape;

- (C) Ceiling panels, planks, slats, tiles, wallpaper, finish trim, paint, and any other materials constituting any part of the finished surfaces of the ceilings;
  - (D) Ceiling hatchway doors, and their jambs, frames, hardware, and trim;
  - (E) Ventilation grilles and trim; and
  - (F) Ceiling lights, outlets, switches, and fixtures, including enclosures and trim.
- (ii) When a ceiling is a boundary, the inside-facing surfaces of the following elements and materials define the Unit boundary, and the following elements and materials, if present, are excluded from the Unit:
- (A) Covered Structural elements, including studs, rafters, trusses, beams, and associated hardware; and
  - (B) Visible Structural elements, beneath their finishes.
- (b) Floor. Except as otherwise provided, the floor of each level of the Unit is the lower boundary of the Unit or portion of the Unit.
- (i) When a floor is a boundary, the outside facing surfaces of the outermost of the following elements and materials define the Unit boundary, and the following elements and materials, if present, are included within the Unit:
- (A) Resilient finished floor covering, including, linoleum, tiles, floorboards, vinyl, and rolled plastic flooring material;
  - (B) Finished flooring, finish trim, paint, and any other materials constituting any part of the finished surfaces of the floor;
  - (C) Wall to wall installed carpet;
  - (D) Ventilation grilles and trim;
  - (E) Switches, lights, outlets, and fixtures, including enclosures and trim;
  - (F) Plumbing fixtures, including faucets, sinks, and toilets;
  - (G) Fireplace surfaces and hearths; and
  - (H) Cabinets and enclosures.
- (ii) When a floor is a boundary, the inside facing surfaces of the following elements and materials define the Unit boundary, and the following elements and materials, if present, are excluded from the Unit:
- (A) Covered Structural elements, including rafters, trusses, joists, beams, subfloors and floor sheathing, and associated hardware;
  - (B) Visible Structural elements, beneath their finishes.
- (c) Walls. Except as otherwise provided, the walls that separate the Unit from other Units or from the Common Elements are the vertical boundaries of the Unit.

- (i) When a wall is a boundary, the outside facing surfaces of the outermost of the following elements and materials define the Unit boundary, and the following elements and materials, if present, are included within the Unit:
  - (A) Drywall, plasterboard, wallboard, sheet rock, gypsum board, and such other similar materials;
  - (B) Plaster, joint compound, and joint tape;
  - (C) Finish trim, paint, and any other materials constituting any part of the finished surfaces of the walls,
  - (D) Paneling, tiles and wallpaper;
  - (E) Ventilation grilles and trim;
  - (F) Perimeter pedestrian doors, and their jambs, frames, trim and hardware (including exterior paint);
  - (G) Garage doors, and their jambs, frames, trim and hardware (including exterior paint);
  - (H) Perimeter windows, and their panes, sills, jambs, frames, trim and hardware (including exterior paint);
  - (I) Wall lights, outlets, switches, and fixtures, including enclosures and trim;
  - (J) Plumbing fixtures, including faucets, sinks, bathtubs, shower enclosures, and toilets;
  - (K) Fireplace surfaces and hearths; and
  - (L) Cabinets and enclosures.
- (ii) When a wall is a boundary, the inside facing surfaces of the following elements and materials define the Unit boundary, and the following elements and materials, if present, are excluded from the Unit:
  - (A) Covered Structural elements, including studs, rafters, beams, shear walls, poured concrete or masonry, and associated hardware;
  - (B) Visible Structural elements, beneath their finishes.
- (d) Additional Inclusions. Each Unit includes the following, if present, whether or not such spaces are contiguous:
  - (i) The spaces and Improvements lying within the boundaries described in Subsections 4.2(a), (b) and (c) above;
  - (ii) Those spaces, and the Improvements within such spaces, containing electrical switches and outlets, circuit breakers, wiring, pipes, valves, ducts, conduits, smoke, fire, and other alarm systems, meters, meter boxes and telecommunication systems serving such Unit exclusively, but located outside of the boundaries described in Subsections 4.2(a), (b) and (c) above;

- (iii) Decorative elements affixed to and penetrating the walls, ceilings, or floors; and
  - (iv) Any space heating, water heating, or air conditioning machinery or equipment, serving such Unit exclusively, but located outside of the boundaries described in Subsections 4.2(a), (b) and (c) above, together with any pipes, wires, ducts, or other items exclusively serving such machinery or equipment. Notwithstanding the foregoing, radiant floor heating systems are not included as part of the Unit.
- (e) Additional Exclusions. Except when specifically included by other provisions of this **Section 4.2**, the following are excluded from each Unit and are part of the Common Elements:
- (i) The spaces and Improvements lying outside of the boundaries described in Subsections 4.2(a), (b) and (c) above;
  - (ii) All chutes, pipes, flues, ducts, wires, conduits, utility lines and other facilities running through or within any interior wall or partition of the Unit for the purpose of furnishing utility services or similar services to one (1) or more other Units or to the Common Elements;
  - (iii) Any radiant floor heating system serving one (1) or more Units, together with any pipes, wires, ducts, pumps or other items exclusively serving such system; and
  - (iv) Any element located within the Unit that provides Structural support for or materially contributes to the support of the building.
- (f) Guide to Interpretation. In applying or interpreting the Unit boundary definitions set out in this **Section 4.2**, the following principles shall be used where the boundary definitions do not otherwise provide a clear answer:
- (i) Elements and materials that are visible only from the outside of a Unit are part of the Common Elements, except for perimeter doors and windows and the exterior paint on such doors and windows.
  - (ii) Elements and materials that support the Structure of a building in which a Unit is located or that keep that building weather-tight are part of the Common Elements.
  - (iii) Elements and materials that are visible only from the interior of the Unit and that may be subject to change or redecoration without fundamental change to the Structure of the building in which a Unit is located are part of the Unit.

- (iv) The hardware and supports necessary to operate any element, to permit it to move or function or to keep it in place are of the same character (Unit, Common Element, or Limited Common Element) as the element they serve.
- (g) Inconsistency with Plat and Plans. If the Plat and Plans are inconsistent with this definition, then this definition will control.

**ARTICLE V**  
**COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

Section 5.1 - Common Elements. The Common Elements are each portion of the Common Interest Community other than a Unit and include, without limitation, internal roads, sidewalks, driveways and walkways, parking spaces, exterior lights and light poles, lawns and landscaped areas, signs and sign poles, and cluster mailbox(es).

Each Unit Owner has a non-exclusive right to the use, access and enjoyment in and to the Common Elements subject to:

- (a) the Documents;
- (b) the Special Declarant Rights, Development Rights, and other rights reserved by the Declarant in **Article VII** of the Declaration;
- (c) any easements, restrictions or limitations described on the Plat attached as **Schedule A-3** to this Declaration;
- (d) the Executive Board's right to adopt reasonable Rules regulating use and occupancy of the Common Elements;
- (e) the Executive Board's right to grant easements, leases, licenses, and concessions through or over the Common Elements;
- (f) the Executive Board's right to convey or transfer all or any part of the Common Elements, subject to a vote of the Association in accordance with AS 34.08.430;
- (g) the right of certain Unit Owners to the primary or exclusive use and enjoyment of such portions of the Common Elements designated as Limited Common Elements;
- (h) the Executive Board's right to mortgage, pledge or hypothecate any or all of the Common Elements for money borrowed or debts incurred, subject to a vote of the Association in accordance with AS 34.08.430; and
- (i) the right of the general public to use certain portions of the Common Elements for parking, in the areas designated on the Plat as "Public Parking Area (PPA)".



- (j) the right of the general public to use certain portions of the Common Elements for ingress and egress, in the areas designated on the Plat as "33' Section Line Easement" and "50' Public Access Easement".

Section 5.2 - Limited Common Elements. The following portions of the Common Elements are designated as Limited Common Elements assigned to the Units as stated:

- (a) Each driveway or walkway labeled on the Plat as "LCE Driveway" or "LCE Walkway" is a Limited Common Element allocated to the Unit or Units served by such driveway or walkway, and its use is limited to those Units.
- (b) Each deck or balcony labeled on the Plat as "LCE Deck" or "LCE Balcony" is a Limited Common Element allocated to the Unit to which it is appurtenant, and its use is limited to that Unit.
- (c) Each exterior light fixture attached to a building in which Units are located is a Limited Common Element allocated to the Unit to which it is appurtenant, and its use is limited to that Unit.
- (d) Each yard area labeled on the Plat as "LCE Yard" is a Limited Common Element allocated to the Unit to which it is appurtenant, and its use is limited to that Unit.
- (e) Each patio area labeled on the Plat as "LCE Patio" is a Limited Common Element allocated to the Unit to which it is appurtenant, and its use is limited to that Unit.
- (f) Each numbered parking space within an area labeled on the Plat as "Limited Common Element Parking Area" is a Limited Common Element allocated to the Unit shown on **Schedule A-2**, and its use is limited to that Unit.
- (g) Each numbered space within an area labeled on the Plat as "Limited Common Element RV Storage" is a Limited Common Element allocated to the Unit shown on **Schedule A-2**, and its use is limited to that Unit.
- (h) If any chute, pipe, flue, duct, wire, conduit, water line, sewer line, bearing wall, bearing column, or other facility or subsurface improvement lies partially within and partially outside the boundaries of a Unit, the portion serving only the Unit is a Limited Common Element allocated solely to the Unit, and any portion serving more than one (1) Unit or a portion of the Common Elements is a part of the Common Elements.

## **ARTICLE VI**

### **MAINTENANCE, REPAIR, AND REPLACEMENT**

Section 6.1 - Common Elements. The Association shall Maintain, Repair and Replace all Common Elements, except the specific Limited Common Elements which are required to be Maintained, Repaired or Replaced by the Unit Owners pursuant to **Section 6.3** of this Declaration.

The Association shall also be responsible for keeping the following portions of the Common Elements reasonably free of debris, snow, ice and water accumulation: the internal roads, curbs, and exterior paved areas within the Common Interest Community, except for the specific paved areas that are the responsibility of the Unit Owner pursuant to **Section 6.3**.

The Executive Board may adopt a chart or other summary of the Maintenance, Repair and Replacement responsibilities provided in this **Article VI**, but in the case of conflict the provisions of this **Article VI** shall control.

Section 6.2 - Units. Each Unit Owner shall Maintain, Repair, and Replace, at the expense of the Unit Owner, all portions of his or her Unit, including, without limitation:

- (a) Drywall, plasterboard, wallboard, sheet rock, gypsum board, and such other similar materials;
- (b) Plaster, joint compound, and joint tape;
- (c) Finish trim, paint, and any other materials constituting any part of the finished surfaces of the ceilings, floors, and walls;
- (d) Finished floor coverings, including, linoleum, asbestos, vinyl, carpet, floorboards, and similar finished floor materials;
- (e) Finished wall and ceiling coverings, including wallpaper, paneling, tiles and similar finished wall and ceiling materials;
- (f) Perimeter pedestrian doors, and their jambs, frames, trim and hardware (including exterior paint);
- (g) Garage doors, and their jambs, frames, trim and hardware (including exterior paint);
- (h) Perimeter windows, and their panes, sills, jambs, frames, trim and hardware (including exterior paint);
- (i) Ventilation grilles and trim;
- (j) Wall and ceiling lights, outlets, switches, and fixtures, including enclosures and trim.
- (k) Water heating, space heating or air conditioning machinery or equipment serving the Unit (but excluding radiant floor heating systems), together with any pipes, wires, ducts, pumps or other items exclusively serving such machinery or equipment;
- (l) Plumbing fixtures, including faucets, sinks, bathtubs, shower enclosures, and toilets;
- (m) Cabinets and enclosures;
- (n) Those spaces, and the Improvements within such spaces, containing electrical switches and outlets, circuit breakers, wiring, pipes, valves, ducts, conduits, smoke, fire, and other alarm systems, meters, meter boxes and telecommunication systems serving such Unit; and
- (o) Fireplaces, fireplace surfaces and hearths.

Section 6.3 - Limited Common Elements. Notwithstanding the provisions of **Section 6.1** of this Declaration:

- (a) Each Unit Owner shall be responsible for removing debris, snow, ice and water accumulation from any Limited Common Element driveways, walkways, decks or balconies allocated to their Unit. The Association shall be responsible for removing debris, snow, ice and water accumulation from any areas labeled on the Plat as "LCE Parking Area."

- (b) Each Unit Owner shall be responsible for Maintaining, Repairing and Replacing Limited Common Element exterior light fixtures allocated to their Unit, including the light bulbs in such fixtures.
- (c) Each Unit Owner shall be responsible for Maintaining, Repairing and Replacing any Limited Common Element patio areas allocated to their Unit.
- (d) Limited Common Element Yards that are enclosed with a fence shall be Maintained, Repaired, and Replaced by the Unit Owner of the Unit to which the Limited Common Element Yard is allocated, including the fence enclosing the yard. If two adjacent Limited Common Element Yards are enclosed with a fence, the portion of the fence that separates the two Limited Common Element Yards shall be Maintained, Repaired, and Replaced jointly by the Unit Owners of the Units to which the Limited Common Element Yards are allocated.

If a Limited Common Element Yard is not enclosed with a fence, the yard shall be Maintained, Repaired, and Replaced by the Association, and the cost thereof shall be a Common Expense assessed against all Units in accordance with their Allocated Interests in the Common Expenses.

Except as otherwise specifically provided herein, the Association shall be responsible for the Maintenance, Repair, and Replacement of all other Limited Common Elements—including, without limitation, Limited Common Element driveways, walkways, parking areas, decks and balconies—and any Common Expenses associated therewith will be assessed against Units in accordance with **Sections 18.1 and 18.2** of the Declaration.

Section 6.4 - Access by Association.

- (a) Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of carrying out the Association's powers and duties including, but not limited to:
  - (i) Performing inspections;
  - (ii) Adjusting insurance claims;
  - (iii) Maintaining, Repairing, and Replacing the Common Elements and portions of the Units for which the Association is responsible;
  - (iv) Restoring portions of the Units and the Common Elements that have been Damaged or Destroyed;
  - (v) Making additions, alterations, and improvements to the Common Elements;
  - (vi) Correcting any condition threatening a Unit or the Common Elements.

- (b) Requests for entry to a Unit or Limited Common Element shall be made in advance and any such entry shall be made at a time reasonably convenient to the affected Unit Owner consistent with the availability of contractors and others employed or engaged by the Association. In case of an emergency, no such request or notice shall be required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 6.5 - Failure to Maintain, Repair, and Replace.

- (a) If a Unit Owner fails to Maintain, Repair or Replace a Unit or any other portion of the Common Interest Community for which the Unit Owner is responsible after the Unit Owner knew or should have known that such Maintenance, Repair or Replacement was needed, and such failure causes damage to another Unit and/or the Common Elements, then the Unit Owner shall reimburse the Owner of the damaged Unit, or the Association, as the case may be, for the cost of restoring the damage. The amount to be reimbursed to the Association may be charged to the Unit Owner as a Common Expense attributable exclusively to the Unit, subject to the provisions and limitations set forth in **Section 18.2(e)** of the Declaration.
- (b) If the Association fails to Maintain, Repair or Replace the Common Elements or any other portion of the Common Interest Community for which it is responsible after the Association knew or should have known that such Maintenance, Repair or Replacement was needed, and such failure causes damage to a Unit:
  - (i) If the damage is covered by insurance maintained by the Association, the Association shall restore it in accordance with **Article XXII** of the Declaration; or
  - (ii) If the damage is not covered by insurance maintained by the Association, the Association shall reimburse the Unit Owner of the damaged Unit for the reasonable cost of restoring the damage.
- (c) If a Unit Owner fails to Maintain, Repair or Replace a Unit or any other portion of the Common Interest Community for which the Unit Owner is responsible and such failure creates a condition that threatens another Unit or the Common Elements, the Association may take such actions as are necessary to correct such condition without prior notice or with only such prior notice as can reasonably be given consistent with the threat. If the Association does take such action, the Unit Owner shall reimburse the Association for all reasonably necessary expenses incurred by the Association to correct the condition.

Section 6.6 - Additional Standards. By Rule, and in accordance with **Section 20.2** of the Declaration, the Association may adopt additional standards concerning Maintenance, Repair, and Replacement of Units and Limited Common Elements, including Improvements within Units and

Limited Common Elements, for the purpose of avoiding adverse effects on the condition, use, or enjoyment of other Units or the Common Elements.

Section 6.7 - Conduct of Maintenance, Repair, and Replacement by the Association. The Association shall have the exclusive authority to select, contract with, direct, retain, and replace all contractors and vendors for all activities to Maintain, Repair, and Replace portions of the Property for which funds of the Association are used or to be used.

**ARTICLE VII**  
**DEVELOPMENT RIGHTS, SPECIAL DECLARANT RIGHTS, AND OTHER RESERVED RIGHTS**

Section 7.1 - Reservation of Development Rights. The Declarant reserves the following Development Rights:

- (a) The right to add property to the Common Interest Community described in **Schedule A-1** as "*Property Not In the Common Interest Community Subject to Development Rights*" and which is labeled on the Plat as "Development Rights Reserved";
- (b) The right to create Units, Common Elements, or Limited Common Elements within the Common Interest Community in the locations shown as "Development Rights Reserved" on **Schedule A-3**; and
- (c) The right to subdivide Units or convert Units into Common Elements in the locations shown as "Development Rights Reserved" on **Schedule A-3**; and
- (d) The right to withdraw Property from the Common Interest Community as may be described in **Schedule A-1** as Property that is in Common Interest Community and subject to Development Rights, in which case there is reserved for the benefit of the withdrawn property:
  - (i) A non-exclusive easement for vehicular and pedestrian ingress and egress over and across the roads and any sidewalks and paths located within the Common Interest Community. This shall be for the benefit of the owners, occupants and guests and invitees of each owner or occupant of any lot, dwelling unit or building located on any land withdrawn from the Common Interest Community by Declarant pursuant to its Special Declarant Rights.
  - (ii) A non-exclusive right and easement to connect to and use utility lines which may at any time be constructed within the Common Interest Community for the purpose of servicing property that the Declarant withdraws from the Common Interest Community, to the extent that such utility lines are designed for and adequate to serve improvements on the property that is withdrawn from the Common Interest Community. The easement for construction and placement of the connections to utility lines shall be at reasonable locations on

the Common Elements within the Property remaining in the Common Interest Community. Each Person within the property withdrawn, who connects to such utility lines, shall be responsible for the payment of charges for use and maintenance equitably charged to that Person.

- (iii) The rights provided for in **Section 7.1(d)(i)** and **(ii)** with respect to easements are subject to the obligation of the owner of the withdrawn property to pay a reasonable share of the cost of maintenance, repair, and replacement with respect to utility lines, sidewalks, roads and paths. Prior to connecting to such utility lines, streets, paths or sidewalks, the owner of the property withdrawn from the Common Interest Community shall enter into a reasonable agreement with the Association equitably allocating the shared costs and expenses of operation, maintenance, repair and replacement of those Improvements. The easements and rights granted hereby with respect to the streets, sidewalks, paths, and utility lines, shall be easements appurtenant to the portion of the Property that is withdrawn and shall accrue to the benefit of Declarant, its successors and assigns.

Section 7.2 - Additional Rights Reserved by Declarant. The Declarant reserves the following additional rights:

- (i) The right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Common Interest Community for the purpose of furnishing utility and other services to buildings and Improvements existing or to be constructed on the Property;
- (ii) The right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the Common Interest Community for the purposes stated in **Section 7.2(i)**, above. If the Declarant grants any such easements, **Schedule A-1** will be amended to include reference to the recorded easement;
- (iii) The right to dedicate all or any portion of the Common Element roads as a "Public Use Easement" or "Public Right-of-Way", at the Declarant's sole discretion, and in accordance with the requirements of the City of Kenai and/or Kenai Peninsula Borough, including the right to take any and all actions and execute any and all documents necessary to file a plat as required to dedicate such Common Element roads.

The right to create mailbox locations anywhere on the Common Elements, or to create easement rights for mailboxes located on Property Subject to Development Rights, and the right to change the location of the mailboxes or easements until such time as Declarant no longer owns any units.

- (iv) The right to grant easements to other persons, including without limitation, easements appurtenant or in gross, over the Common Element roads for any purpose, including without limitation, providing ingress and egress to land located outside of the Common Interest Community. Any holder of the beneficial interest granted under any such easements shall pay an equitable share of the expenses for the road Maintenance, Repair, and Replacement and liability insurance for the Association.
- (v) With regard to any improvements that may be constructed on the property described in **Schedule A-1** as "*Property Not In the Common Interest Community Subject to Development Rights*" and which is labeled on the Plat as "Development Rights Reserved," the right to connect such improvements to the Common Element water and/or sewer system and their respective utility lines, and to grant the owners of such improvements the right to use such systems and utility lines. The owners of any improvements that are connected to the Common Element water and/or sewer system shall pay an equitable share of the expenses for the Maintenance, Repair, and Replacement of the Common Element water and/or sewer system, as the case may be.
- (vi) The right to subdivide Property in the Common Interest Community, in the locations shown as "Development Rights Reserved" on **Schedule A-3**, under applicable laws governing the subdivision of real property.
- (vii) After withdrawing Property from the Common Interest Community pursuant to **Section 7.1(d)** of the Declaration, the right to add all or any portion of such withdrawn property back into the Common Interest Community, to the extent that the amendment withdrawing the property identifies such property as "*Property Not In the Common Interest Community Subject to Development Rights*".
- (viii) At the time any new Units are created pursuant to **Section 7.1(b)**, the right to amend the Declaration to:
  - (a) Define new Unit boundaries for any such new Units, which may be different than the boundaries set forth in **Section 4.2** of this Declaration;
  - (b) Establish the responsibility of the Unit Owner of any such new Units for the Maintenance, Repair and Replacement of the new Units, which may be different than the responsibilities set forth in **Section 6.2** of the Declaration;
  - (c) Establish restrictions governing the use, alienation or occupancy of any such new Units, consistent with the overall nature and character of the Common Interest Community, which may be different than the restrictions set forth in **Article IX** of the Declaration; and

- (d) Provide that any Common Expenses or portion of the Common Expenses attributable to and benefiting such new Units may be assessed exclusively against one (1) or more of the new Units.
- (ix) At the time any new Limited Common Elements are created pursuant to **Section 7.1(b)**, the right to amend the Declaration to:
  - (a) Establish the responsibility for Maintenance, Repair and Replacement of any such Limited Common Elements;
  - (b) Provide that any Common Expenses or portion of the Common Expenses attributable to such new Limited Common Elements may be assessed exclusively against one (1) or more of the Units to which the new Limited Common Elements are allocated;
  - (c) Establish restrictions governing the use, alienation or occupancy of any such new Limited Common Elements, consistent with the overall nature and character of the Common Interest Community.
- (x) At the time any new Common Elements are created pursuant to **Section 7.1(b)**, the right to amend the Declaration to:
  - (a) Establish the responsibility of Unit Owners and the Association for the Maintenance, Repair and Replacement of any such new Common Elements;
  - (b) Establish restrictions governing the use, alienation or occupancy of any such new Common Elements, including any Improvements thereon, consistent with the overall nature and character of the Common Interest Community; and
  - (c) Provide that any Common Expenses or portion of the Common Expenses attributable to such new Common Elements, benefiting one (1) or more but fewer than all of the Units, may be assessed exclusively against the Units benefitted.

Section 7.3 - Limitations on Development Rights. The Development Rights reserved in **Section 7.1** are limited as follows:

- (a) The Development Rights may be exercised at any time, but not more than **twenty (20) years** after the recording of the initial Declaration.



- (b) Not more than **one hundred ninety-eight (198)** additional Units may be added to the Common Interest Community under the Development Rights, for an aggregate total of **two hundred (200)** Units in the Common Interest Community.

Section 7.4 - Phasing of Development Rights. With regard to the portions of the Property subject to Development Rights, no assurances are made by the Declarant as to where the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

Section 7.5 - Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- (a) To exercise a Development Right reserved in the Declaration.
- (b) To complete Improvements indicated on the Plat.
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community, and model Unit(s).
- (d) To use or grant easements through the Common Elements and Units owned by the Declarant for the purpose of making Improvements within the Common Interest Community or within property that may be added to the Common Interest Community.
- (e) To make the Common Interest Community subject to a master association.
- (f) To merge or consolidate the Common Interest Community with another common interest community of the same form of ownership.
- (g) 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 7.9**.

Section 7.6 - Construction: Declarant's Easement. The Declarant reserves the right to perform repair and construction work, and to store materials in secure areas, on Common Elements and on Units owned by Declarant, and the further right to control all such work and repairs on Units, and the right of access thereto, until its completion of the work on the Units. All work may be performed by the Declarant without the consent or approval of the Executive Board or any Unit Owner. The Declarant has 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 7.7 - Signs and Marketing. The Declarant reserves the right to post signs and displays on Units 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 7.8 - 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 Property that has not been represented as property of the Association. The Declarant reserves the right to remove from the Property, promptly after the sale of the last Units, any and all personal property and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 7.9 - Declarant Control of Association.

- (a) Subject to **Section 7.9(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 in the Common Interest Community to Unit Owners other than the Declarant;
  - (ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or
  - (iii) two (2) years after any right to add new Units was last exercised.

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 in the Common Interest Community 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 in the Common Interest Community to Unit Owners other than the Declarant, not less than thirty-three-and-one-third percent ( $33\frac{1}{3}\%$ ) 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 the 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 7.10 - Time Limitations on Special Declarant Rights Other than Development Rights. Except for Declarant Control which shall terminate as set forth in **Section 7.9**, and except for Special Declarant Rights that may terminate earlier by statute and unless previously terminated by an amendment to the Declaration executed by the Declarant, Special Declarant Rights terminate at the latest to occur of the following:

Such time as the Declarant or a successor Declarant:

1. is no longer obligated under any warranty or obligation;
2. no longer holds any Development Right;
3. no longer owns a Unit; or
4. no longer holds any Security Interest in any Unit.

Section 7.11 - Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

## **ARTICLE VIII ALLOCATED INTERESTS**

Section 8.1 - Allocation of Interests. A table showing the Unit numbers of each Unit and their Allocated Interests is attached as **SCHEDULE A-2**. Allocated Interests have been determined in accordance with the formulas set out in this **ARTICLE VIII**. These formulas are to be used in reallocating Allocated Interests if additional Units are created within the Common Interest Community.

Section 8.2 - Formulas for the Allocation of Interests. The Allocated Interests are calculated using the following formulas:

- (a) *Undivided Interest in the Common Elements.* The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of each Unit as shown on the Plat and Plans compared to the combined floor area of all of the Units in the Common Interest Community.

- (b) *Liability for Common Expenses.* The percentage of Common Expense liability allocated to each Unit is based on the relative floor area of each Unit as shown on the Plat and Plans compared to the combined floor area of all of the Units in the Common Interest Community.

Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under **Article XVIII**.

- (c) *Votes.* Each Unit in the Common Interest Community shall have one (1) equal vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Declaration, means the specified percentage, portion, or fraction of all of the votes as allocated in **Schedule A-2**.
- (d) *Multiple Ownership of a Unit.* When more than one (1) Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as determined among those Unit Owners, but in no event shall more than one (1) vote be cast with respect to any such Unit.

#### **ARTICLE IX RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

The following restrictions apply to all Units and to the Common Elements.

Section 9.1 - Use of Residential Units. Each Unit designated on **Schedule A-2** as "Residential" is referred to in this **Section 9.1** as a "Residential Unit." Residential Units are restricted to residential use as a single-family residence. 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.

Notwithstanding the foregoing, certain nonresidential or commercial uses are permitted within Residential Units—subject to the requirements set forth below—provided that the primary use of the Unit is residential and the nonresidential or commercial use of such Unit is secondary.

- (a) Nonresidential or commercial uses within Residential Units must be compatible with the overall residential nature of the Common Interest Community.
- (b) The space that is used for nonresidential or commercial purposes within a Residential Unit may not exceed 49% of the total square footage of the Unit.
- (c) Nonresidential or commercial uses within Residential Units may include retail operations, restaurants and bars, professional offices, home occupations, fitness or art studios, small fabrication or repair shops, and similar businesses.
- (d) Nonresidential or commercial uses within Residential Units shall not generate unreasonable levels of traffic, parking, mail, sewage, waste, trash, storage, or noise, in excess of what is reasonable in a primarily residential community.

- (e) Nonresidential or commercial uses within Residential Units shall not create a hazard to persons or property, or become a nuisance within the Common Interest Community.
- (f) Combustible, explosive, or toxic fluids or materials, including Hazardous Materials and other noxious or dangerous substances, may only be stored within Residential Units or Limited Common Elements in such quantities as are reasonably required for the nonresidential or commercial use of such Units. Such materials and substances must be stored in a safe manner and in accordance with applicable laws and insurance requirements.
- (g) Additions, alterations, or Improvements to the Common Elements that are designed to accommodate nonresidential or commercial uses of a Residential Unit must be reasonably consistent with the overall residential nature of the Common Interest Community.
- (h) A Residential Unit must be occupied by the owner, operator or manager of the nonresidential or commercial business within such Unit.
- (i) Nonresidential or commercial uses within a Residential Unit must comply with all applicable local, state, and federal laws or regulations, including local zoning and other legal requirements of the City of Kenai and Kenai Peninsula Borough.
- (j) The Executive Board may adopt Rules governing Residential Units to ensure compliance with the requirements of the Declaration, applicable laws, and Financing Agencies as are typically used to finance condominium purchases.

Section 9.2 - Use of Commercial Units. Each Unit designated on **Schedule A-2** as "Commercial" is referred to in this **Section 9.2** as a "Commercial Unit." Commercial Units are restricted to light commercial and retail operations that do not detract from the overall residential nature of the Common Interest Community. Permitted uses within a Commercial Unit include retail sales, business or professional offices, professional services, restaurants and bars, small repair shops, small storage and warehousing operations, and similar types of light commercial uses that do not generate unreasonable levels of traffic, parking, mail, sewage, waste, trash, storage, or noise. All uses within a Commercial Unit must comply with all applicable local, state, and federal laws or regulations, including local zoning and other legal requirements of the City of Kenai and Kenai Peninsula Borough. The Executive Board may adopt Rules governing Commercial Units to ensure compliance with the requirements of the Declaration, applicable laws, and Financing Agencies as are typically used to finance condominium purchases.

Section 9.3 - Cleanliness. Each Unit Owner or occupant of a Unit shall keep the Unit in a good state of preservation and cleanliness. By Rule, the Association may provide additional standards concerning preservation and cleanliness of Units.

Section 9.4 - Nuisance. No noxious, offensive, dangerous or unsafe activity shall be carried on within the Common Interest Community, nor shall anything be done therein which may become an annoyance or nuisance to the Unit Owners.

Section 9.5 - Noise Restrictions. Unit Owners, tenants, guests or invitees within the Common Interest Community shall not make or permit any noises to be made that interfere with the peaceful use and enjoyment of the Common Interest Community by other Unit Owners or occupants. This includes, but is not limited to, sound from audio equipment, musical instruments, social gatherings or motor vehicles. The unnecessary discharge of firearms is not permitted anywhere within the Common Interest Community.

Section 9.6 - Vehicles.

- (a) Junk Vehicles and inoperable Vehicles shall not be parked or stored anywhere within the Common Interest Community, unless parked or stored within an enclosed garage. An "inoperable Vehicle" means a vehicle which has remained incapable of movement under its own power for a period of seven (7) consecutive days, and will remain so without repairs or part replacement. A "junk Vehicle" means a Vehicle which is missing one or more essential parts, such as, but not limited to, tires, wheels, engine, brakes, windows, lights and lenses, exhaust system, and such other parts as are necessary for the legal operation of a Vehicle.
- (b) No repair, restoration or disassembly of any Vehicle shall be permitted anywhere within the Common Interest Community, except for: (1) emergency repairs only to the extent necessary to enable movement of the Vehicle to inside a garage or to a repair facility; or (2) repairs performed inside a garage.
- (c) No Vehicle shall be parked on any portion of a LCE yard, lawn or sidewalk, or parked so as to block access to any driveway. A Vehicle parked in a Limited Common Element driveway or parking space must be parked entirely in the driveway or parking space so that no portion of the Vehicle encroaches upon any other Limited Common Element driveway or parking space, or upon any street or sidewalk in the Common Interest Community.
- (d) No Vehicle belonging to a Unit Owner or their tenants, guests or invitees shall be parked on any portion of the internal roads; provided, however, that temporary parking within the internal roads may be permitted with the prior written approval of the Executive Board.
- (e) Vehicles belonging to members of the general public, or belonging to guests or invitees of Unit Owners, may be parked in the areas designated on the Plat as "Public Parking Area" on a "first come, first served" basis.
- (f) Limited Common Element driveways and parking spaces shall be kept clean and clear of all oil drippings, stains, or other unsightly Vehicle byproducts or discharge.

- (g) No Vehicle shall be covered in any manner with tarpaulins or other coverings determined to be unsightly by the Executive Board in its sole discretion.
- (h) Recreational Vehicles are permitted within Limited Common Element driveways for no more than twenty-four (24) consecutive hours in any seven (7) day period. At all other times, Recreational Vehicles within the Common Interest Community shall only be parked in a garage, within a Limited Common Element RV Storage space, or within an RV Open Parking Area.
- (i) All Vehicles within the Common Interest Community must be licensed and/or registered in accordance with applicable law.
- (j) Unit Owners and their tenants, guests or invitees shall comply with such other Rules as may be adopted by the Executive Board governing the operation and parking of Vehicles within the Common Interest Community.
- (k) Vehicles parked in violation of these restrictions may be towed by the Association.

Section 9.7 - Animals. Unit Owners may maintain animals within the Common Interest Community of the following types: domestic cats; domestic dogs; domestic birds (not poultry, roosters or other fowl); gerbils, rodents, reptiles; and fish. No other animals or insects may be kept within any part of the Common Interest Community.

- (a) Birds, gerbils, rodents, and reptiles must be kept in cages or terrariums within the Unit.
- (b) No more than a total of two (2) dogs and/or cats, *in any combination*, are permitted per Unit. No unreasonable quantity of other animals shall be permitted.
- (c) Animals shall not be kept, raised or bred for commercial purposes.
- (d) Unit Owners shall hold the Association harmless from all claims resulting from the actions of any animal owned by the Unit Owner or their tenants, guests or invitees.
- (e) Unit Owners shall be responsible for keeping their Units, and all Common Elements, free and clear of animal feces. Unit Owners shall immediately remove their animals' feces from all areas of the Common Interest Community.
- (f) Except when confined within the boundaries of a Unit, animals shall either be leashed or controlled by command at all times. Control by command means to control by visual or audible commands, or a combination thereof, to which the animal responds promptly and accurately. Control of an animal by command is allowed only if: (a) the animal is engaged in an activity that precludes it from accomplishing that activity if restrained, and (b) the owner or custodian of the animal has a leash restraint

immediately available for the physical control of the animal and is physically capable of controlling the animal.

- (g) Animals shall be licensed, vaccinated and maintained in accordance with applicable law.
- (h) Unit Owners shall contain and control their animals to the extent necessary to prevent their animal from creating or becoming a nuisance.
- (i) If the Executive Board, after Notice and Hearing, determines that an animal, or the animal's owner, has done or permitted any of the following without sufficient and reasonable justification, the owner will permanently remove the pet from the Common Interest Community upon three (3) days' written notice of the determination:
  - (i) The animal chases and displays threatening or aggressive behavior, or otherwise threatens or endangers the safety of any person or another domestic animal;
  - (ii) The animal bites or causes physical injury to any person or another domestic animal;
  - (iii) The animal repeatedly makes noise that disturbs Unit Owners or other occupants of Units; or
  - (iv) The owner of the animal repeatedly fails to remove their animal's feces from the Property.

Section 9.8 - Window Coverings. No window shall be covered with garments, sheets, blankets, aluminum foil or similar materials.

Section 9.9 - Holiday Lighting. Decorative holiday lighting is permitted on the exterior of a Unit, subject to the following restrictions:

- (a) Holiday lighting shall be securely attached to the exterior of the Unit in a clean, tidy, attractive and professional like manner at all times, and in such a manner that their removal does not damage any portion of the Common Elements.
- (b) The installation of holiday lighting shall comply with reasonable safety standards.
- (c) Holiday lighting must not interfere with the quiet enjoyment or comfort of any other Unit Owner or result in unreasonable levels of light pollution.

Section 9.10 - Antennae and Satellite Dishes. The following restrictions govern the installation of satellite dishes and antennae if compliance does not (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increases the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal to the Unit Owner.

- (a) *Shielded from View.* Except as otherwise provided herein, antennas and satellite dishes shall be located in a place shielded from the view of the public or from other Units to the extent reasonably possible.



- (b) *Installation.* Wiring shall be installed in a neat, secure and inconspicuous manner so as to minimize exposed satellite wiring on the exterior of the building. No loose or sagging wiring shall be permitted. Installation shall be completed in a professional and workmanlike manner, shall comply with reasonable safety standards, and may not interfere with cable, telephone or electrical systems of neighboring Units.
- (c) *Antenna Height.* Antennae shall not extend more than six feet (6 ft.) above the highest point of the building in which the Unit is located.
- (d) *Color.* Satellite dish color shall be neutral tones only, including white, grey, beige, and any similar neutral toned color. No commercial advertising on the satellite dish shall be permitted other than the brand name.

Section 9.11 - Storage of Personal Property. No storage of personal property shall be permitted outside of a Unit or on a Limited Common Element deck or balcony, except within a fenced Limited Common Element Yard. Personal property stored within a fenced Limited Common Element Yard shall be stored in a safe and neat fashion. Notwithstanding the foregoing, deck furniture, such as bistro tables and chairs, may be stored on Limited Common Element decks and Limited Common Element patio areas in a safe and neat fashion. In addition, barbecue grills shall be permitted within Limited Common Element patio areas.

Section 9.12 - Playground or Recreational Equipment. Playground or recreational equipment such as basketball hoops, hockey or soccer nets, swing sets, slides, play structures, sandboxes, trampolines, hot tubs, or similar items shall only be permitted within a fenced Limited Common Element Yard.

Section 9.13 - Garbage and Refuse Disposal. Refuse, trash, garbage or other waste material (collectively "Garbage") shall be disposed of only by depositing the same in an appropriate trash container, and complying with Rules for trash storage and disposal adopted by the Association. No portion of the Common Interest Community shall be used for or maintained as a dumping ground for Garbage. Composting of matter for use in gardening is permitted. All equipment for the storage or disposal of Garbage shall be kept in clean and sanitary condition. Except for any Common Element dumpsters that may be provided for the use of Unit Owners, Garbage containers shall not be visible to adjacent Units or to the public from the street, except when placed outside for collection the evening before or the day of garbage pick-up. Raw fish waste or animal carcasses shall be disposed of in a manner approved, or otherwise provided for, by the Association.

Section 9.14 - Burning. Burning of Garbage or any toxic or noxious smelling material (plastics, etc.) is prohibited anywhere within the Common Interest Community. No fires or fire pits shall be permitted in a setting that creates a fire hazard. No fires may be left unattended.

Section 9.15 - Water and Sewer. Each Unit Owner has an undivided interest in the Common Element water lines and sewer service lines. To preserve and minimize potential damage and deterioration to the sewer service lines and water lines, Unit Owners shall not pour grease, oils or

cooking fat residues into sinks, garbage disposal units or other drains. No diapers, sanitary napkins, newspapers, solid rags or paper towels are to be disposed in toilets. No used oil, oil-based paints, solvents or other chemicals are to be disposed into the Common Element sewer service lines or elsewhere in the Common Interest Community.

Section 9.16 - Mailboxes. Unit Owners shall use cluster mailboxes approved by the U.S. Postal Service and provided for the Common Interest Community by the Declarant.

Section 9.17 - Signs.

- (a) No signs shall be displayed to the public view within the Common Interest Community, except:
  - (i) Common Element monument, parking, and Unit identification signs, in locations installed by the Declarant or approved by the Executive Board;
  - (ii) A single sign may be affixed to the exterior of a Unit, not more than five square feet (5 sq. ft.) in size, advertising a Unit for sale;
  - (iii) A single sign may be affixed to the exterior of a Unit, not to exceed a size of three feet by five feet (3' x 5'), bearing the trade name, business description or graphic logo of any business operated within a Unit; and
  - (iv) A single "Open/Closed" sign, not to exceed two square feet (2 sq. ft.) in size, may be affixed to a perimeter pedestrian door or window of a Unit.
- (b) All signs must comply with local zoning and other requirements of the City of Kenai and Kenai Peninsula Borough.
- (c) Unit Owners and their tenants, guests or invitees shall comply with such other Rules as may be adopted by the Executive Board governing the location, illumination, or content of signs within the Common Interest Community.

Section 9.18 - Oil and Mining Operations. No oil or gas drilling, development operations, refining, quarrying, or mining operations of any kind shall be permitted on the Property, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Unit. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Unit. No surface entry will be permitted and no extraction of minerals will be permitted within a two hundred fifty foot (250') buffer measured vertically from the surface.

Section 9.19 - Drones. A drone is defined as a powered aerial vehicle that flies autonomously or is remotely piloted. No Person may operate, cause, allow, or authorize the operation of a drone in the airspace above any portion of the Common Interest Community in such a way as to invade the privacy of the Unit Owners or their guests, whether equipped with a camera

or otherwise. The Executive Board may, in its sole discretion, adopt Rules governing the use of drones in the Common Interest Community.

Section 9.20 - Limited Common Element RV Storage spaces. Limited Common Element RV Storage spaces shall be used only for the parking and storage of Recreational Vehicles. Recreational vehicles within a Limited Common Element RV Storage space shall be parked or stored in a safe and neat fashion. Unit Owners shall comply with such other Rules as may be adopted by the Executive Board governing the operation and parking of Recreational Vehicles within Limited Common Element RV Storage spaces.

Section 9.21 - RV Open Parking Areas. Areas labeled in the Plat as "RV Open Parking" are reserved for the parking of Recreational Vehicles, on a "first come, first served" basis, by Unit Owners or their tenants, guests or invitees, upon payment of a reasonable fee to the Association. The amount of the fee for the use of the RV Open Parking areas shall be established by the Executive Board. Recreational vehicles within an RV Open Parking area shall be parked in a safe and neat fashion. The operation and parking of Recreational Vehicles within RV Open Parking areas shall be subject to such other Rules as may be adopted by the Executive Board.

Section 9.22 - Public Parking Areas. Vehicles belonging to members of the general public, or belonging to guests or invitees of Unit Owners, may be parked in the areas designated on the Plat as "Public Parking Area" on a "first come, first served" basis. Recreational Vehicles shall not be parked within a Public Parking Area. A Vehicle may not be parked within a Public Parking Area for more than forty-eight (48) consecutive hours in any seven (7) day period. The operation and parking of Vehicles within a Public Parking Area shall be subject to such other Rules as may be adopted by the Executive Board.

Section 9.23 - Common Elements. Except as provided in **Article VII**, or except as expressly permitted by another provision of the Declaration, the following activities are prohibited anywhere within the Common Elements unless expressly authorized by, and then subject to such conditions as may be imposed by, the Executive Board:

- (i) Disposing of lawn or yard waste.
- (ii) Disposing of Garbage or other materials.
- (iii) Cutting, mowing, harvesting, or disturbing the trees, shrubbery, or other natural vegetation.
- (iv) Overnight camping or the erection of tents or other shelters.
- (v) Processing fish or other animals.

Section 9.24 - Compliance with Documents and Law. The use of a Unit and all activities within the Common Interest Community shall be in compliance with the provisions of the Declaration and other Documents, and Unit Owners and Improvements within a Unit shall comply

with and conform to all applicable Federal, State, and local laws and regulations. A violating Unit Owner shall hold the Association and other Unit Owners harmless from all demands, claims, fines, penalties, costs, fees, damages, losses, awards, judgments and liabilities that in any way arise out of, result from, the violation thereof or non-compliance therewith.

Section 9.25 - Liability for Hazardous Materials. In the event that any fuel, oil, lubricant, or other Hazardous Material is spilled, released or discharged in any Unit or in, on or about any Common Element, or any property or surface or ground water adjacent thereto, the Unit Owner who caused or suffered, or whose invitee caused or suffered, such spill, release or discharge, shall: (a) promptly respond to and remediate such spill, release or discharge in accordance with the requirements of applicable law; and (b) defend, indemnify and hold harmless the Association, the other Unit Owners and the State from all demands, claims, fees, fines, penalties, judgments, awards, costs, damages, losses, obligations, and liabilities that in any way arise out of, result from or are based upon any legal obligation to respond to, remediate and/or dispose of such spilled, released or discharged fuel, oil, lubricant, or Hazardous Material.

Section 9.26 - Leasing. No Unit, or any portion thereof, may be conveyed pursuant to a time-sharing plan. A Unit may be rented only by a written lease, subject to the following:

- (a) The lease shall be for the entire Unit. A lease of only a portion of a Unit is prohibited.
- (b) Each lease must have a lease term of at least three (3) days, which lease term must be entered into in good faith.
- (c) Each lease must incorporate the terms and restrictions of the Documents as a personal obligation of each tenant.
- (d) Each lease must attorn to the Association as landlord solely for the purpose of enforcing the restrictions of the Documents following Notice and Hearing to the Unit Owner, and an opportunity to cure the violation, and then by direct levy, injunction and/or eviction by summary process, against the tenant(s). The Association will not otherwise assume the responsibilities or obligations of the Unit Owner under the lease.
- (e) A true and complete copy of the lease, and the name and telephone contact number of each tenant, shall be provided to the Executive Board at least five (5) days prior to the first day of the lease term. The Unit Owner shall promptly provide the Executive Board with written notice of any termination of the lease.
- (f) A copy of the Rules must be conspicuously posted or displayed within the Unit.
- (g) The Unit Owner must either be personally available by telephone or have a designated agent available by telephone at all times during the term of the lease. If a Unit Owner will not be personally available, the name and telephone contact

number of their designated agent shall be provided to the Association in writing prior to the first day of the lease term. The Unit Owner or their designated agent must be able to promptly contact the tenant(s) for purposes of addressing any complaints and/or violations of the Documents.

- (h) The Unit Owner must obtain and maintain appropriate insurance coverage for property damage or personal injury caused by any tenant(s) or otherwise arising from the lease of the Unit. Proof of such insurance shall promptly be provided to the Executive Board upon request.
- (i) The Unit Owner shall remain liable for compliance with the Documents, and shall be responsible for securing such compliance from the tenant(s) of the Unit.
- (j) The Unit Owner shall be responsible for the payment of all assessments or fines that are assessed by the Association as a result of the actions or omissions of any tenant(s) or their guests.

Section 9.27 - Transient Usage. No Unit may be used for bed and breakfast, transient, hotel or motel purposes. If a Unit is owned or leased by a business entity or individually owned business, the occupancy of the Unit by employees or guests of the business is permitted only if the same employee(s) or guest(s) intends to occupy the Unit for a period of at least three (3) days.

## **ARTICLE X EASEMENTS AND LICENSES**

Section 10.1 - Recorded Easements and Licenses. Easements or licenses to which the Common Interest Community is presently subject are recited in **Schedule A-1** to the Declaration. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under **Article VII**.

Section 10.2 - Easement for Ingress and Egress Through Common Elements. Each Unit Owner has an easement in common with all other Unit Owners for ingress and egress through the Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Executive Board. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through the Common Elements by Persons lawfully using or entitled to the same.

Section 10.3 - Easements for Support. Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and the Common Elements.

Section 10.4 - Easements for Encroachments. In the event any portion of the Common Elements encroaches upon a Unit or a 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 10.5 - Ingress and Egress by the Public. The general public has the right to use the areas designated on the Plat as "33' Section Line Easement" and "50' Public Access Easement" for ingress and egress.

**ARTICLE XI**  
**ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS**

A Limited Common Element depicted on the Plat may be reallocated pursuant to this **Article XI** by an amendment to this Declaration executed by the Unit Owners between or among whose Units the reallocation is made. Such amendment shall require the approval of all holders of Security Interest in the affected Units, which approval shall be endorsed thereon. The Persons executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Act, shall record it in the Kenai Recording District. The amendment shall contain words of conveyance and shall be recorded and indexed in the names of the parties, the Association, and the Common Interest Community. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for recording costs.

**ARTICLE XII**  
**ADDITIONS, ALTERATIONS OR IMPROVEMENTS**

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

A Unit Owner:

- (a) May make any Improvements or alterations to the interior of his or her Unit that do not impair the Structural integrity or mechanical systems or lessen the support of any portion of the Common Elements.
- (b) May paint the exterior of perimeter pedestrian doors, garage doors and windows, including their frames, trim and sills, subject to obtaining the prior approval of the Executive Board as to the color of paint used.
- (c) After acquiring an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the Structural integrity or mechanical systems or lessen the support of any portion of the Common Elements. The plans for such changes shall be first submitted to the Executive Board for approval. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries or a combination of Units.

Section 12.2 - Additions, Alterations, and Improvements to or Affecting Common Elements by Unit Owners.

- (a) Unless approved by the Executive Board as provided in **Section 12.3** of the Declaration, and except as provided in **Section 9.9** (Holiday Lighting) and **Section 9.17** (Signs), a Unit Owner:
- (i) Shall not make any addition, alteration, or Improvement to, attach anything to or change the appearance of any portion of the Common Elements or the exterior appearance of any other portion of the Common Interest Community.
  - (ii) Shall not make any Improvements or alterations to the interior of his or her Unit that may impair the Structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community.
- (b) A Unit Owner shall be permitted to construct a fence enclosing the Limited Common Element Yard allocated to his or her Unit, at the Unit Owner's own expense, in accordance with the following:
- (i) Fence materials shall be compatible with the appearance of surrounding fences; must be made of wood or material that has the appearance of wood. Chain link fences are expressly prohibited.
  - (ii) A fence enclosing a Limited Common Element Yard may not block or otherwise prevent any other Unit Owner from accessing a Limited Common Element Yard allocated to the other Unit Owner's Unit.
  - (iii) After a fence has been constructed enclosing a Limited Common Element Yard, the Unit Owner of a Unit with an adjacent Limited Common Element Yard shall be permitted to construct a fence that connects to the portion of the existing fence separating the adjoining Limited Common Element Yards. Double-fencing between Limited Common Element Yards is prohibited.
  - (iv) Fences enclosing Limited Common Element Yards shall be maintained, repaired and replaced in accordance with **Section 6.3(b)** of the Declaration.
  - (v) The plans for any fence to be constructed under this **Section 12.2(b)** shall first be submitted to the Executive Board for approval.
- (c) A Unit Owner shall be permitted to make additions, alterations or Improvements within a Limited Common Element yard area allocated to his or her Unit to accommodate vegetable and flower gardening activities, in accordance with the following:
- (i) Garden boxes, flower beds, garden edging materials, and similar Improvements installed in or above the ground shall not: (1) extend more than four feet (4 ft.) above ground level; or (2) cause any change in the

natural drainage that may adversely affect any Unit or any portion of the Common Elements.

- (ii) Any vegetables or flowers planted by a Unit Owner, and any garden boxes, flower beds, garden edging materials, or similar Improvements installed by a Unit Owner, shall be Maintained, Repaired, and Replaced by such Unit Owner at the Unit Owner's own expense.

Section 12.3 - Approval by Executive Board.

- (a) A Unit Owner may submit a written request to the Executive Board for approval to do anything that is otherwise prohibited or regulated under **Section 12.2** of this Declaration. The Executive Board shall answer any written request for such approval, after Notice and Hearing to the applicant and any other Unit Owner who, in the sole opinion of the Executive Board, may be impacted by the proposed addition, alteration or Improvement, within thirty (30) days after it receives the request. Failure to answer within such time, as it shall be extended by agreement of the applicant, shall be deemed to be a denial by the Executive Board of the proposed action.
- (b) The Executive Board may establish time limits and impose conditions on its approval of a request under **Subsection 12.3(a)**. These may include, but are not limited to, the following:
  - (i) That the addition, alteration, or Improvement be made by contractors holding particular licenses or certifications, having particular qualifications, or having specified levels of insurance coverage.
  - (ii) That the Unit Owner obtain and pay for all necessary permits and other governmental approvals for the addition, alteration, or improvement.
  - (iii) That the work be done in a specified manner or only during specified times.
  - (iv) That the addition, alteration, or improvement be completed by a certain deadline.
  - (v) That the Unit Owner be responsible for the Maintenance, Repair, and Replacement of the addition, alteration, or Improvement (or the portion of the Property to which the addition, alteration, or Improvement is made) or reimburse the Association for the costs of Maintenance, Repair, and Replacement.
- (c) The Executive Board may grant approval for a type or class of modifications or installations by adopting a Rule, after Notice and Comment.



- (d) The Executive Board may establish forms and procedures for the making and processing of applications under this **Section 12.3**.
- (e) The Executive Board may require the Unit Owner to pay a reasonable fee to reimburse the Association for its costs in considering and acting on a request made under **Subsection 12.3(a)**, including, but not limited to, recording costs and the reasonable fees of attorneys and design professionals.
- (f) Nothing in this Section shall be deemed to require the Executive Board to approve or disapprove any particular request. Neither shall the approval or disapproval of any prior request require the Executive Board to approve or disapprove any other request at a later date.
- (g) Review and approval by the Executive Board under this **Article XII** does not imply a review as to the adequacy of the plans or specifications for compliance with the laws and regulations of the State of Alaska for building codes, strength, suitability, durability or structural design. Furthermore, approval of a request to the Executive Board shall not give rise to any liability or responsibility for the quality or sufficiency of design or materials. The purpose of Executive Board review and approval is to ensure the conformity and harmony of additions, alterations, or Improvements, as to the quality, external designs and location, in relation to the development of the entire Common Interest Community.

Section 12.5 - Additions, Alterations, and Improvements by Executive Board. Subject to the limitations of **Sections 18.4 and 18.5** of the Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

### **ARTICLE XIII**

#### **COMBINING, SUBDIVIDING, AND RELOCATING BOUNDARIES BETWEEN UNITS**

Section 13.1 - Subdividing and Combining Units. Except as provided in **Article VII**, Units may not be combined or subdivided.

Section 13.2 - Relocating Boundaries Between Units. Subject to approval of any Structural changes and required permits pursuant to **Article XII**, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the Unit Owners of the Units affected by the relocation of such boundaries. Within thirty (30) days after receipt of an application under this **Section 13.2**, the Association shall prepare and record: (a) an amendment to the Declaration that identifies the Units involved, states the action(s) being taken, and indicates the Association's consent; and (b) Plats necessary to show the relocated boundaries between adjoining Units, and the dimensions and identifying numbers of such Unit(s). The amendment to the Declaration must be executed by the Unit Owners affected by the relocation and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units

shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

The applicants will pay for the costs of preparation of the amendment, Plat, recording costs, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

#### **ARTICLE XIV AMENDMENTS TO DECLARATION**

Section 14.1 - General. Except as otherwise provided in the Act or in the Declaration, and except as limited by **Article XVII** (Mortgagee Protection), the Declaration, including the Plat, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty seven percent (67%) of the Votes in the Association are allocated.

Section 14.2 - When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Act or this Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Units, or change the boundaries of any Unit, the Allocated Interests of any Unit, or the uses to which a Unit is restricted, in the absence of the unanimous consent of the Unit Owners.

Section 15.3 - Other Amendments.

- (a) Amendments made by the Declarant in the exercise of its Development Rights or other reserved rights shall be made in accordance with the provisions of **Article VII** of this Declaration and Section 34.09.180 of the Act.
- (b) Certain amendments relating to the allocation or reallocation of Limited Common Elements are governed by and shall be made in accordance with the provisions of **Article XI** of this Declaration.
- (c) Certain amendments relating to the relocation of boundaries between adjoining Units are governed by and shall be made in accordance with the provisions of **Article XIII** of this Declaration.

Section 14.4 - Development Rights and Other Reserved Rights. Provisions in this Declaration creating Development Rights, Special Declarant Rights, or other rights reserved in **Article VII** that have not expired may not be amended without the consent of the Declarant.

Section 14.5 – Amendments to Comply with Financing Agencies. The Declarant and all Unit Owners agree that, notwithstanding anything to the contrary contained herein, in the event that the Common Interest Community does not comply with the requirements of Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Veterans Administration (VA), Alaska Housing Finance Corporation (AHFC), or any other national major secondary financing agency pertaining to the qualifications for and purchase of FNMA or conventional loans or mortgages to be secured by the Units in the Common Interest Community, (collectively the “Financing

Agencies”), the Declarant, shall have the power, on behalf of the Association and each and every Unit Owner, to enter into any agreement with such Financing Agencies or other governmental agency regulating the Unit loans or mortgages, or the mortgagees and/or to pass such amendments required by such entities as attorney-in-fact for the Unit Owners to the Documents to allow the Common Interest Community to comply with such requirements. This includes, but is not limited to, making amendments to the Declaration and Bylaws to effectuate the purposes of this Section, so long as such amendment does not adversely affect the Security Interest of any mortgagee. The Declarant shall have discretion regarding the entering of such agreements or passing such amendments and may decline to so act if it feels the amendment or agreement would not be in the interest of the Association.

Section 14.6 - Consent of Holders of Security Interests. Amendments are subject to the consent requirements of **Article XVII** of this Declaration.

Section 14.7 - Notice to Unit Owners of Amendments to the Declaration. Following the adoption of an amendment to this Declaration by the Association, the Association shall give all Unit Owners notice of its action and include with it a copy of such amendment.

Section 14.8 - Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this **Article XIV** may not be brought more than one (1) year after the amendment is recorded.

Section 14.9 - Recording and Execution of Amendments.

- (a) Every amendment to this Declaration shall be recorded in the Kenai Recording District and the amendment is effective only upon recording. An amendment, except an amendment pursuant to **Article XIII** of this Declaration, shall be indexed in the name of the Common Interest Community and the Association and in the name of the parties executing the amendment.
- (b) An Amendment to the Declaration required by the Act to be recorded by the Association 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 designation, by the President of the Association.

#### **ARTICLE XV AMENDMENTS TO BYLAWS**

The Bylaws may be amended only by a vote of at least fifty-one percent (51%) of the Directors serving on the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purposes.

#### **ARTICLE XVI TERMINATION AND MERGER**

Termination of the Common Interest Community may be accomplished only in accordance

with Section 34.08.260 of the Act. The Common Interest Community may not be merged or consolidated with another common interest community except as provided in Section 34.08.290 of the Act.

## ARTICLE XVII MORTGAGEE PROTECTION

Section 17.1 - 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 17.2 - Percentage of Eligible Mortgagees. Wherever in this Article the approval or consent of a specified percentage of Eligible Mortgagees is required it shall mean the approval or consent by Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 17.3 - Notice of Actions. The Association shall give prompt written notice by certified mail, return receipt requested, or by any express or courier service that produces a receipt, to each Eligible Mortgagee and Eligible Insurer, and each Unit Owner hereby consents to and authorizes such notice, of the following:

- (a) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in **Section 17.4** of the Declaration;
- (b) Any delinquency or default in the payment of Common Expense assessments owed by a Unit 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 of any obligation under the Documents by a Unit 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;
- (d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (e) Any proposal to terminate the Common Interest Community or dissolve the Association, in which case at least thirty (30) days' prior notice shall be provided;
- (f) Any judgment rendered against the Association; or
- (g) Any condemnation loss or any casualty loss in accordance with the following

requirements:

- (i) With respect to loans issued by the Federal National Mortgage Association (FNMA): any condemnation or casualty loss that affects either a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;
- (ii) With respect to loans issued by the Veteran's Administration (VA): any property loss, condemnation or eminent domain proceeding affecting the Common Elements resulting in losses greater than ten percent (10%) of the annual budget or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;
- (iii) With respect to loans issued by the Alaska Housing Finance Corporation (AHFC): any condemnation or casualty of ten thousand dollars (\$10,000) or more to the Common Interest Community or to a Unit in which AHFC holds a first Security Interest, or any loss to, or taking of, the Common Elements if such loss or taking exceeds ten thousand dollars (\$10,000), or damage to a Unit in which AHFC holds a first Security Interest exceeds ten thousand dollars (\$10,000);
- (iv) With respect to loans issued by the Housing and Urban Development (HUD): Eligible Mortgagees and Eligible Insurers shall receive notice as required by existing HUD rules and regulations.

Section 17.4 - Consent Required.

- (a) No Material Adverse Action may be taken by the Association or by the Executive Board or shall be effective until approved by Eligible Mortgagees holding Security Interests in at least fifty-one percent (51%) of the Units that are subject to Security Interests held by Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration).
- (b) For purposes of this **Section 17.4**, "Material Adverse Action" shall mean any amendment to the Declaration or any action of the Executive Board or the Association that is of a material adverse nature to holders of first Security Interests in a Unit, including, but not limited to, any of the following:
  - (i) Abandonment, partition, subdivision, encumbrance, sale, conveyance, transfer or relocation of the boundaries of the Common Elements or any portion thereof, other than the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements;

- (ii) Reallocation of interests in the Common Elements or Limited Common Elements, including any change in the pro rata interest or obligations of any Unit Owner for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding Security Interests in such Units must approve such action;
- (iii) Changes in the assessments, assessment liens, or priority of liens for assessments made against the Units;
- (iv) Changes in voting rights;
- (v) Reductions in reserves for Maintenance, Repair, and Replacement of Common Elements (other than use of reserves for the purpose for which the reserve is established);
- (vi) Making capital expenditures (other than for repair or replacement of existing Improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget;
- (vii) Changes to the responsibility for Maintenance, Repair, and Replacement;
- (viii) Changes in the rights of Unit Owners to use Common Elements and Limited Common Elements;
- (ix) Subdivision or partition of any Unit, or redefinition of any Unit boundaries (except that when only boundaries between adjoining Units are involved, or a Unit is being subdivided, then only the approval of the Unit Owners of such Units and the holders of all Security Interests in such Units is required);
- (x) The alteration of any partition or creation of any aperture between adjoining Units when Unit boundaries are not otherwise being affected, in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;
- (xi) Conversion of Units into Common Elements or of Common Elements into Units;
- (xii) Abandonment, partition, subdivision, expansion or contraction of the Common Interest Community, or the addition, annexation, or withdrawal of property to or from the Common Interest Community, except pursuant to the exercise of Development Rights or as otherwise provided in this Declaration;

- (xiii) Merging or consolidating the Association, including the merger of this Common Interest Community with any other common interest community;
- (xiv) Any assignment of the future income of the Association, including its right to receive Common Expense assessments; and
- (xv) Changes to insurance or fidelity bond requirements;
- (xvi) The use of hazard insurance proceeds for losses to any property in the Common Interest Community for other than the repair, replacement, or reconstruction of such property, except as provided in Section 34.08.440(h) of the Act;
- (xvii) Imposition of any restrictions on the leasing or rental of Units;
- (xviii) Imposition of any restrictions on a Unit Owner's right to sell or transfer a Unit; and
- (xix) Changes in the right of a majority of the Eligible Mortgagees to demand professional management of the Common Interest Community;
- (xx) A decision by the Association to establish self-management when professional management of the Common Interest Community had been required previously by the Documents;
- (xxi) Restoration or repair of the Common Interest Community after a hazard damage or partial condemnation in a manner other than that specified in the Documents;
- (xxii) Any action taken not to repair or replace the Property in the manner specified in the Documents;
- (xxiii) Any action to terminate the Common Interest Community. In cases of termination for substantial destruction or condemnation, sixty-seven percent (67%) Eligible Mortgagee approval is required;
- (xxiv) Any change in the procedures that protect the interest of an Eligible Mortgagee when handling any losses or proceeds from condemnation, destruction, or liquidation of all or part of the Common Interest Community, or from termination of the Common Interest Community; or
- (xxv) Any change in any provisions that expressly benefit Eligible Mortgagees.

Section 17.5 - Development Rights. No Development Rights may be exercised, voluntarily abandoned or terminated by the Declarant unless all Persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

Section 17.6 - Other Mortgagee Rights.

- (a) The Association shall permit any Eligible Mortgagee or Eligible Insurer to inspect the books and records of the Association during normal business hours on the same terms as Unit Owners.
- (b) A majority of the Eligible Mortgagees may require professional management of the Common Interest Community.

Section 17.7 - Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer, which submits a written request, with a copy of the most recently available annual financial statement of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 17.8 - Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

Section 17.9 - Appointment of Trustee. In the event of Damage or Destruction under **ARTICLE XXII** or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee as defined in **Section 1.34**. Such Trustee may be required to be a corporate trustee licensed by the State of Alaska. Proceeds will thereafter be distributed pursuant to **ARTICLE XXII** 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 17.10 - Implied Approval or Consent. The approval or consent of any Person holding a Security Interest in a Unit of any Material Adverse Action shall be deemed granted if a refusal to consent in a record is not received by the Association within sixty (60) days after the Association delivers notice of the proposition requiring consent to the holder of the Security Interest or mails the notice to such holder by certified mail, return receipt requested. The Association may rely on the last-recorded Security Interest of record in delivering or mailing notice to the holder of such Security Interest.

Section 17.11 - 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.

**ARTICLE XVIII**  
**ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

Section 18.1 - Apportionment of Common Expenses. Except as provided in **Section 18.2** of this Declaration, all Common Expenses shall be assessed against all Unit Owners in accordance with their Allocated Interest in the Common Expenses as shown on **SCHEDULE A-2**.



Section 18.2 - Common Expenses Attributable to Fewer Than All Unit Owners.

- (a) Common Expenses for the Maintenance, Repair and Replacement of Limited Common Element driveways, walkways, parking spaces, decks or balconies shall be assessed exclusively against the Unit or Units to which such Limited Common Elements are allocated.
- (b) The Association may, from time to time, provide services to individual Units, their Unit Owners or their occupants at the request of or with the authorization of the Unit Owner. These services may be provided pursuant to a schedule of services and charges established by the Association or they may be provided on an ad hoc basis. Unless the Association is required to provide such services to all Units by the Documents or the Act, or does provide such services to all Units pursuant to a policy or resolution adopted by the Executive Board, any Common Expenses for such services shall be assessed against the Unit to which the service was provided or to whose Unit Owner or occupant the service was provided.
- (c) Any increase in insurance premiums attributable to a particular Unit or Units by virtue of the occupancy of, activities in or construction of the Unit or Units shall be assessed against that Unit or Units.
- (d) 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.
- (e) Notwithstanding the provisions of **Section 22.2** of the Declaration, if a Common Expense is caused by the willful misconduct, failure to comply with the Documents, or the gross negligence of a Unit Owner or tenant or guest or invitee of a Unit Owner or tenant, or if a Unit Owner is required to reimburse the Association pursuant to the provisions of **Section 6.5(a)** of the Declaration, the Association may assess that Common Expense exclusively against the Unit Owner's Unit, following Notice and Hearing to the affected Unit Owner, *subject to the following*:

If the Common Expense is incurred to repair Damage or Destruction to any portion of the Common Interest Community, then:

- (i) The amount assessed exclusively against the Unit Owner's Unit may not exceed the amount of the deductible under the policy of property insurance maintained by the Association, regardless of whether such Damage or Destruction is covered by the insurance policy; and
- (ii) Any portion of the Common Expense that exceeds the amount of the deductible under the policy of property insurance maintained by the Association shall be assessed against all Unit Owners in accordance with **Section 18.1** of the Declaration, regardless of whether such

Damage or Destruction is covered by the insurance policy.

- (f) Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments exclusively against the Unit or Units owned by such Unit Owner.
- (g) Any fees or costs required or incurred by the Association in connection with additions, alterations, or Improvements applied for or approved under **Section 12.3** of this Declaration, including any Maintenance, Repair, and Replacement costs that may be required to be reimbursed to the Association pursuant to **Section 12.3(b)(v)**, may be assessed exclusively against the Unit Owner's Unit.
- (h) All reasonable attorney's fees and costs incurred by the Association in enforcing the provisions of the Declaration, the Bylaws, the Rules, or any applicable law, ordinance, or regulation relating to the Common Interest Community against a Unit Owner or a tenant or other occupant of a Unit, with or without the commencement of litigation, arbitration, mediation, administrative proceedings, or hearings before the Executive Board, may be assessed exclusively against the Unit Owner's Unit (i) by the Executive Board after Notice and Hearing to the affected Unit Owner; or (ii) as awarded by a court or arbitration.

#### Section 18.3 - 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, fines and interest charged pursuant to the Act and the 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 encumbrances recorded before the recordation of the Declaration; (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 charged against the Unit. A lien under this Section is also prior to all Security Interests described in Subsection (2) of this **Section 18.3(b)** if the Common Expense assessments based on the periodic budget adopted by the Association pursuant to **Section 18.4** would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in Subsection (2) of this **Section 18.3(b)**. This Section does not affect the priority of mechanics' or material men's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of AS 09.38.010.

- (c) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section is required.
- (d) A lien for an unpaid assessment 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 a Unit Owner of a Unit subject to a lien under this Section files a petition for relief under the United States 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 Section 362 of the Bankruptcy Code is lifted.
- (e) This Section does not prohibit an action to recover sums for which **Section 18.3(a)** creates a lien or prohibit an Association from taking a deed in lieu of foreclosure.
- (f) A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.
- (g) A judgment or decree in an action brought under this Section is enforceable by execution under AS 09.35.010.
- (h) The Association's lien must be foreclosed as a lien is foreclosed under AS 34.35.005.
- (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 18.4**.
- (j) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the foreclosure sale, other than the assessments which are prior to that Security Interest under **Section 18.3(b)**. Any unpaid assessments not satisfied from the proceeds of the foreclosure sale shall become a Common Expense collectible from all Unit Owners, excluding the purchaser of the foreclosed Unit.
- (k) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due, regardless of any contrary payment directive given by the Unit Owner.

Section 18.4 - Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Unit Owner, and 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 Unit Owners reject 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 18.5 - Ratification of 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 18.2**, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under **Section 18.4**.

Section 18.6 - 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 the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 18.7 - Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first (1<sup>st</sup>) day of the month following the month in which conveyance of the first (1<sup>st</sup>) Unit to a Unit Owner other than the Declarant occurs.

Section 18.8 - Regular Payment of Common Expenses. Common Expenses assessed under **Sections 18.1** and **18.2** shall be due and payable on the first (1<sup>st</sup>) day of each month, or in such other intervals as the Executive Board determines.

Section 18.9 - Acceleration of Common Expense Assessments. In the event of default for a period of thirty (30) 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.

Section 18.10 - 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 Elements or by abandonment of the Unit against which the assessments are made.

Section 18.11 - Personal Liability of Unit Owners. The Unit 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 18.12 - Reserves. As part of the adoption of the regular budget pursuant to **Section 18.4**, 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 within the Common Elements, based upon the Improvement's age, remaining life and estimated replacement

cost. Alternatively, the Executive Board, in its reasonable business judgment, may choose not to collect reserves for the maintenance, repair and replacement of the Common Elements. In such case, if any maintenance, repair and replacement of the Common Elements is necessary at a future date, which (1) the cost of maintenance is not covered or (2) a deductible is required under the insurance policy obtained by the Association, a special assessment may be assessed to each Unit Owner for the cost of such maintenance or said insurance deductible.

**ARTICLE XIX  
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 XX  
PERSONS AND UNITS SUBJECT TO INSTRUMENTS**

Section 20.1 - Compliance with Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes an 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 Kenai Recording District of the Third Judicial District are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

Section 20.2 - Adoption of Rules. Following Notice and Comment to all Unit Owners, the Executive Board may adopt Rules concerning: (a) the use and occupancy of Units, Common Elements, and Limited Common Elements, including Improvements on Common Elements; (b) the activities of Unit Owners, tenants, visitors or occupants within the Common Interest Community; and (c) the assessment of fines against Unit Owners, consistent with the Declaration, for any violation of the provisions of the Documents.

The Executive Board may not adopt a Rule which contravenes an express provision of the Declaration or a right reasonably inferable from an express provision of this Declaration, but the Executive Board may adopt a Rule implementing, refining, or applying an express provision of the Declaration so long as such Rule does not contravene an express provision of the Declaration or a right reasonably inferable therefrom.

Section 20.3 - Notice to Unit Owners of Rule Changes. Following the adoption, amendment, or repeal of a Rule, the Executive Board shall give all Unit Owners notice of its action and include with it a copy of any new or amended Rule.

Section 20.4 - Limitation on Challenges. No action to challenge the validity of any adoption, amendment, or repeal of a Rule adopted may be brought more than one (1) year after the date that notice of the amendment was given to the Unit Owners.

**ARTICLE XXI**  
**INSURANCE**

Section 21.1 - Coverage. To the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this **Article XXI**. 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 21.2 - Property Insurance.

- (a) *Coverage.* Property insurance will cover:
- (i) The project facilities (which term means all buildings on the Property, including the Units and all fixtures, equipment, improvements and betterments appurtenant thereto), but excluding land, excavations, foundations, underground pilings, piers, pipes, flues and drains, and other items normally excluded from property policies;
  - (ii) All personal property owned by the Association; and
- (b) *Amounts.* Property insurance shall be for the following amounts:
- (i) The project facilities for an amount (after application of any deductibles) equal to one hundred percent (100%) of their actual cash value, but not less than their insurable replacement cost, at the time the insurance is purchased and at each renewal date.
  - (ii) 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.
- (c) *Risks Insured Against.* The insurance shall afford protection against all risks of direct physical loss commonly insured against, all risks as may be required by Financing Agencies as are typically used to finance condominium purchases, and such other perils as the Executive Board deems it appropriate to cover.
- (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 of 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 policy of the Association 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 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:

*" HOME PORT CONDOMINIUM ASSOCIATION, INC., for the use and benefit of the individual Unit Owners."*

- (e) *Building Ordinance or Law Insurance coverage.* To the extent it is reasonably available, Building Ordinance or Law Insurance coverage shall be maintained, covering the costs attributable to the enforcement of any building, zoning, or land use law resulting in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. The coverage must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction.
- (f) *Inflation Guard Endorsement.* To the extent it is reasonably available, the Association's property insurance shall include an Inflation Guard Endorsement.

Section 21.3 - Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than one million dollars (\$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.

- (a) *Other Provisions.* Insurance policies carried pursuant to this Section shall provide that:
- (i) Each Unit Owner is an insured Person under the policy with respect to liability arising out of interest of the Unit Owner in the Common Elements or membership in the Association.
  - (ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.
  - (iii) 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.
  - (iv) 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.
  - (v) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 21.4 - Fidelity Insurance. A blanket fidelity insurance policy shall be obtained 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 policy shall name the Association as the insured and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the policy is in force and in no event less than the sum of three (3) months' assessments plus reserve funds. The policy shall provide that the insurer may not cancel or refuse to renew the policy until sixty (60) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, each holder of a Security Interest in a Unit, and to the insurance trustee, if any, at their respective last known addresses.

Section 21.5 - Workers' Compensation Insurance. The Association shall obtain and maintain workers' compensation insurance as necessary to meet the requirements of the laws of the State of Alaska.

Section 21.6 - Directors' and Officers' Liability Insurance. The Association shall obtain and maintain Directors' and officers' liability insurance, if reasonably 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 21.7 - Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 21.8 - Premiums. The cost of premiums for insurance maintained by the Association shall be a Common Expense.

Section 21.9 - Deductibles. The maximum deductible for insurance policies shall be in an amount that satisfies the requirements of the Financing Agencies as are typically used to finance condominium purchases. Except as provided in **Section 18.2(e)**, any deductibles for insurance coverage maintained by the Association shall be paid by the Association as a Common Expense.

Section 21.10 - Unit Owner Policies.

- (a) Each Unit Owner shall obtain and maintain in effect, at their own expense, a condominium unit owner's insurance policy (namely form type HO-6 as established by Insurance Services Office, Inc., or its equivalent) that includes, at a minimum, personal property coverage, liability coverage, loss assessment coverage, and coverage for assessments to reimburse the Association for costs in excess of insurance proceeds. All such Unit Owner's policies shall, if permitted by the insurer, contain waivers of subrogation in favor of the Association.
- (b) Each Unit Owner or tenant that uses any portion of a Unit for nonresidential or commercial or purposes shall obtain and maintain in effect, at their own expense, a commercial general liability or comprehensive general liability insurance policy providing coverage against claims for personal injury, bodily injury or death, property damage and products liability occurring upon, in, or about the Unit or any Limited Common Element allocated to the Unit, or arising from the activities of the Unit Owner or tenant of the Unit. The limits of such policy shall be in such amounts as the Unit Owner or tenant may from time to time reasonably require, but in any event not less than one million dollars (\$1,000,000) for each occurrence.
- (c) No Unit Owner shall maintain such insurance coverage which would decrease the amount which the Association may realize under any insurance policy maintained by the Association, or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner.
- (d) Proof of insurance required to be carried under this **Section 21.10** shall be provided to the Executive Board at any time upon request. However, neither the Association nor its officers, directors or managers have any obligation to monitor whether an Owner has procured such personal insurance coverage.
- (e) Each Unit Owner is responsible for and encouraged to consult with their own insurance professional to determine the appropriate insurance coverage that the Unit Owner may need.

**ARTICLE XXII**  
**DAMAGE TO OR DESTRUCTION OF PROPERTY**

Section 22.1 - Duty to Restore. A portion of the Common Interest Community for which insurance is required under AS 34.08.440 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 Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 22.2 - Cost of Restoration. Except as provided in **Section 18.2(e)**, the cost of restoring Damage or Destruction in excess of insurance proceeds and reserves is a Common Expense.

Section 22.3 - 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.

Section 22.4 - Replacement of Less Than Entire Property. If the entire Common Interest Community is not repaired or replaced, then:

- (a) The insurance proceeds attributable to the Damaged or Destroyed Common Elements shall be used to restore the Damaged or Destroyed 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 are not rebuilt must be distributed to the Unit Owner of the Unit and the Unit 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 insurance 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.

Section 22.5 - Vote not to Rebuild a Unit. If the Unit Owners vote not to rebuild a Unit in accordance with **Section 22.1(c)**, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Section 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 22.6 - Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Executive Board of the Association, acting by 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 **Section 22.1(a)** through **Section 22.1(c)**, the proceeds shall be disbursed first for the repair or restoration of the Damaged or Destroyed 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 22.7 - 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;
- (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 22.8 - Title Insurance Policies. 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 policy based on a search of the records of the Palmer Recording District, Third Judicial District, State of Alaska, from the date of the recording of the original Declaration stating the names of the Unit Owners and the lienholders.

### **ARTICLE XXIII**

#### **RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING**

Section 23.1 - Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive 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 five (5) 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 23.2 - 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 and other 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. 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 23.3 - 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 XXIV EXECUTIVE BOARD**

Section 24.1 - Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, the Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the 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 not be 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 and agents, other than managing agents, and independent contractors;
- (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 a part of the Common Elements;

- (j) Acquire, hold, encumber and convey in this 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, 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, or for services provided to Unit Owners;
- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine 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 the Declaration, 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 the 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 and Unit Owners 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 (unless such Unit Owner has been given notice of the proposed action under the provisions of **ARTICLE XXIII**, in which case that Article shall govern appeals), and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 24.2 - Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend the 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 any term.

Section 24.3 - Executive Board Meetings.

- (a) *Notice.* Notice of meetings shall be provided in accordance with the provisions of the Bylaws.
- (b) *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 otherwise provided herein.
- (c) *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, in either of the following situations only:
  - (i) No action is taken at the executive session requiring the affirmative vote of Directors; or
  - (ii) The action taken at the executive session involves personnel, pending litigation, contract negotiations, or enforcement actions.
- (d) *Minutes.* 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 any such meeting.

**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 XVI  
MEDIATION & ARBITRATION**

Section 26.1 - Mediation Clause. No Unit Owner shall commence an arbitration proceeding under the provisions of **Section 26.2** below, unless such Unit Owner shall first give a written notice ("**Dispute Notice**") to the Association stating the nature of the dispute. The parties shall attempt in good faith to resolve the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association in effect on the date of the Dispute Notice. If the dispute has not been resolved by mediation as provided above within sixty (60) days after the delivery of the Dispute Notice, the dispute shall be determined by arbitration in accordance with the provisions of **Section 26.2**.

Section 26.2 - Arbitration Clause. Any controversy, claim, counterclaim or dispute ("**Claim**") of whatever nature arising between Unit Owners, or between Unit Owners and the Association, including but not limited to, those arising out of or relating to the Declaration and associated Documents or the construction, interpretation, performance, breach, termination, enforceability or validity of the Declaration, whether such claim existed before or arises on or after the date of the Declaration, including the determination of the scope of the Declaration to arbitrate, that is not settled through mediation as provided in **Section 26.1** above shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and, if applicable, Title 9 of the U.S. Code. All claims will be subject to the statutes of limitation applicable if they were litigated.

If arbitration occurs, one neutral arbitrator will decide all issues unless any Claim is \$100,000.00 or more, in which case three neutral arbitrators will decide all issues. All arbitrators will be active Alaska State Bar members in good standing. In addition to all other powers, the arbitrator(s) will have the exclusive right to determine all issues of arbitrability. Judgment on any arbitration award may be entered in any court with jurisdiction.

The arbitrator(s) shall award the prevailing party reasonable expenses and costs including reasonable attorneys' fees plus interest on the amount due at the legal rate provided in AS 45.45.010(a). The decision of the arbitrator shall be final and binding and judgment may be entered thereon in any court with jurisdiction. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with arbitrator's award, the other party is entitled reasonable expenses and costs including reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

If any Unit Owner or the Association institutes any judicial proceeding, such action will not be a waiver of the right to submit any Claim to arbitration. In addition, each Unit Owner and the Association have the right before, during, and after any arbitration to exercise any of the following remedies, in any order or concurrently: (i) setoff, (ii) self-help repossession, (iii) judicial or non-judicial foreclosure against real or personal property collateral, (iv) provisional remedies, including injunction, appointment of receiver, attachment, claim and delivery, and replevin.

This arbitration clause cannot be modified or waived by any Unit Owner or the Association except in a writing that refers to this arbitration clause and is signed by all parties to the Claim.

## **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 neutral 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 Title 10, Chapter 20 of the Alaska Statutes (Alaska Nonprofit 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 the Declaration and any other Document, the 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. In an action to enforce the provisions of the Declaration, the prevailing party shall be entitled to recover court costs, actual damages, fines imposed pursuant to the Declaration, and reasonable actual attorney fees.

Section 27.7 - Association Not a Guarantor of Safety or Security. Each Unit Owner and their respective tenants, guests or invitees shall be responsible for their own personal safety and the security of their property in the Common Interest Community. The Association is not an insurer or guarantor of safety or security within the Common Interest Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Common Interest Community designed to make the Property safer than it otherwise might be.

NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT, SHALL BE CONSIDERED AN INSURER OR GUARANTOR OF SAFETY OR SECURITY WITHIN THE COMMON INTEREST COMMUNITY, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SAFETY OR SECURITY OR INEFFECTIVENESS OF SAFETY OR SECURITY MEASURES UNDERTAKEN. EACH UNIT OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS AND UNIT OCCUPANTS THAT THE ASSOCIATION, ITS EXECUTIVE BOARD AND COMMITTEES, THE DECLARANT AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMON INTEREST COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.





the said corporation for the uses and purposes therein expressed pursuant to its bylaws or a resolution of its Board of Directors.

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

DRAFT

**SCHEDULE A-1**  
***DESCRIPTION OF COMMON INTEREST COMMUNITY***

**PROPERTY IN THE COMMON INTEREST COMMUNITY**  
**NOT SUBJECT TO DEVELOPMENT RIGHTS**

That portion of Tract \_\_, according to the official plat thereof, filed under Plat No. \_\_, Kenai Recording District, Third Judicial District, State of Alaska, and shown on the Plat attached as Schedule A-3 as “Property Not Subject to Development Rights.”

**PROPERTY IN THE COMMON INTEREST COMMUNITY**  
**SUBJECT TO DEVELOPMENT RIGHTS**

That portion of Tract \_\_, according to the official plat thereof, filed under Plat No. \_\_, Kenai Recording District, Third Judicial District, State of Alaska, and shown on the Plat attached as Schedule A-3 as “Development Rights Reserved”

**PROPERTY NOT IN THE COMMON INTEREST COMMUNITY**  
**SUBJECT TO DEVELOPMENT RIGHTS**

Tracts \_\_, according to the official plat thereof, filed under Plat No. \_\_, Kenai Recording District, Third Judicial District, State of Alaska, and shown on the Plat attached as Schedule A-3 as “Development Rights Reserved”

---

**THE RECORDING DATA FOR RECORDED EASEMENTS**  
**AND LICENSES APPURTENANT TO OR INCLUDED IN THE**  
**COMMON INTEREST COMMUNITY**

1. Reservations and exceptions as contained in the United States Patent and/or in Acts authorizing the issuance thereof.
2. TITLE REPORT.
3. Water and Sewer Service Agreement with PRL.

*[SCHEDULE A-2 APPEARS ON THE FOLLOWING PAGE]*

**SCHEDULE A-2  
TABLE OF INTERESTS**

Unit No.	Square Footage of Unit	Liability for Common Expenses & Undivided Interest in Common Elements	Vote in the Affairs of the Association	LCE Parking Space No.	Commercial or Residential Unit
<b># Units</b>	<b># Sq. Ft.</b>	<b>100%</b>	<b># Votes</b>		

- Allocations are subject to rounding to result in one hundred percent (100%).

*[SCHEDULE A-3 APPEARS ON THE FOLLOWING PAGE]*

**SCHEDULE A-3  
PLAT AND PLANS**

*Plat Number:* \_\_\_\_\_  
*Plat Serial Number:* \_\_\_\_\_

DRAFT