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**DECLARATION TO**  
**TURNAGAIN VILLAGE**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
PURSUANT TO THE  
UNIFORM COMMON INTEREST OWNERSHIP ACT  
(AS 34.08, et seq.)**

**FOR**

**TURNAGAIN VILLAGE**

1997 THIS DECLARATION is made on the 20<sup>th</sup> day of February, 1996, by BELL HOMES, a division of BELL BUILDERS INC., hereinafter referred to as "Declarant" herein.

Declarant submits the property in the Anchorage Recording District, Third Judicial District, State of Alaska, described as follows:

Lots One (1) through Sixteen (16), and Tract One (1) Turnagain Village, a subdivision of the NEW McRAE ADDITION, according to Plat No. 96-66, in the Anchorage Recording District, Third Judicial District, State of Alaska,

to the provisions of the Uniform Statutes, for the Common Interest Ownership Act, AS 34.08 of the Alaska Statutes, for the purpose of creating Turnagain Village, a planned community and making the improvements shown in the plat and plans attached as Exhibits A and B.

I.

**DEFINITIONS**

**Section 1. ACT**

"Act" shall mean the Common Interest Ownership Act, AS 34.08 of the Alaska Statutes as it may be amended from time to time.

**Section 2. ALLOCATED INTERESTS**

"Allocated Interests" shall mean the undivided interest in the Common Elements, the common expense liability, and votes in the Association, allocated to the Units in the Common Interest Community. The Allocated Interests are described in Article VIII of this Declaration and shown on Exhibit "C."



**Section 3. ASSOCIATION**

"Association" shall mean a nonprofit corporation organized under AS 10.20, et seq. It is the association of unit owners pursuant to Section 34.08.310 of the Act.

**Section 4. BYLAWS**

"Bylaws" shall mean the bylaws of the Association, as they may be amended from time to time.

**Section 5. COMMON ELEMENTS**

Each portion of the Common Interest Community other than a unit and sometimes referred to herein as "open space."

**Section 6. COMMON EXPENSES**

a. The expenses or financial liabilities for the operation of the Common Interest Community. These include:

(1) Expenses of administration, maintenance, repair, or replacement of the Common Elements;

(2) Expenses declared to be Common Expenses by the Instruments or by the Act;

(3) Expenses agreed upon as Common Expenses by the Association; and

(4) 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 7. COMMON INTEREST COMMUNITY**

The real property which is the subject matter of this Declaration, sometimes referred to as a "Planned Community."

**Section 8. DECLARANT**

Bell Homes, a division of Bell Builders Inc., as defined in subsection 34.08.990(12) of the Act.

**Section 9. DECLARATION**

This document, including any amendments.

**Section 10. DEVELOPMENT RIGHTS**

"Development Rights" shall mean a right or a combination of rights reserved by a Declarant in the Declaration to add real estate to a Common Interest Community; create units, common elements, or limited common elements within a Common Interest Community; subdivide units or convert units into Common Elements; or withdraw real estate from a Common Interest Community.

**Section 11. DIRECTOR**

"Director" shall mean a member of the Executive Board.

**Section 12. DOCUMENTS**

"Documents" shall mean the Declaration and Plans recorded and filed pursuant to the provisions of the Act and the Bylaws and the Rules as they may be amended from time to time. Any exhibit or certification accompanying a document is a part of that document.

**Section 13. ELIGIBLE INSURER**

"Eligible Insurer" shall mean an insurer or guarantor of a first security interest in the unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first security in a unit. Such notice shall be deemed to include a request that the eligible insurer be given the notices and other rights described in Article XVII.

**Section 14. ELIGIBLE MORTGAGEE**

"Eligible Mortgagee" shall mean the holder of a first security interest in a unit which has notified the Association, in writing, of its name and address, and that it holds a first security interest in a unit. Such notice shall be deemed to include a request that the eligible mortgagee be given the notices and other rights described in Article XVII.

**Section 15. EXECUTIVE BOARD**

The Board of the Corporation.

**Section 16. IMPROVEMENTS**

"Improvements" shall mean any construction 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 planted by the Declarant or the Association, paving, utility wires, pipes, light poles, and perimeter fences.

**Section 17. LIMITED COMMON ELEMENTS**

The portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the units by the Declaration or by operation of subsections (2) and (4) of Section 34.08.100 of the Act. The Limited Common Elements in the Common Interest Community are described in Article V in this Declaration. At the time of the recording of this Declaration there are no Limited Common Elements in this project. Any reference to Limited Common Elements in this Declaration shall have prospective application only.

**Section 18. MAJORITY OR MAJORITY OF UNIT OWNER**

The owners of more than fifty percent (50%) of the votes in the Association.

**Section 19. MANAGER**

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

**Section 20. NOTICE AND COMMENT**

"Notice and Comment" shall mean 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 Article XXIV of this Declaration.

**Section 21. NOTICE AND HEARING**

"Notice and Hearing" shall mean 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 Article XXIV of this Declaration.

**Section 22. PERSON**

"Person" shall mean an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**Section 23. PLANS**

"Plans" shall mean the floor plans and plat filed with this Declaration as they may be amended from time to time as required by AS 34.08.170.

**Section 24. PROPERTY**

"Property" shall mean the land, all improvements, easements, rights and appurtenances which have been submitted to the provisions of the Act by this Declaration.

**Section 25. PUBLIC OFFERING STATEMENT**

The current document prepared pursuant to AS 34.08.530 of the Act as it may be amended from time to time and provided to purchasers prior to the time of execution of a purchase agreement.

**Section 26. RULES**

"Rules" shall mean 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 this Declaration.

**Section 27. SECURITY INTEREST**

"Security Interest" shall mean an interest in real property or personal property, 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, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

**Section 28. SPECIAL DECLARANT RIGHTS**

Right reserved for the benefit of a declarant to

- a. complete improvements indicated on plats and plans filed with the Declaration;
- b. exercise any development right (if retained by the Declaration);
- c. maintain sales offices, management offices, signs advertising the Common Interest Community, and models;

d. use easements through the common elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community if permitted by the Declaration; or

e. appoint or remove an officer of the Association or a master association or any Executive Board member during any period of Declarant control.

**Section 29. 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. 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 30. UNIT**

"Unit" shall mean a physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in Article IV, Section 3 of this Declaration. The term "lot" or "unit" may be used interchangeably.

**Section 31. UNIT OWNER**

"Unit Owner" shall mean the Declarant or other person who owns a unit or holding the possessory interest under a real estate purchase contract. Unit Owner does not include a person having an interest in a unit solely as security for an obligation. The Declarant is the initial owner of any unit created by this Declaration.

**II.**

**NAME AND TYPE OF COMMON INTEREST  
COMMUNITY AND ASSOCIATION**

**Section 1. COMMON INTEREST COMMUNITY**

The name of the Common Interest Community is Turnagain Village.

**Section 2. ASSOCIATION**

The name of the Association is Turnagain Village Homeowners Association.

### III.

#### DESCRIPTION OF LAND

The Common Interest Community is situated in the Anchorage Recording District, Third Judicial District, State of Alaska, and is more particularly described as follows:

Lots One (1) through Sixteen (16), and Tract One (1) Turnagain Village, a subdivision of the NEW McRAE ADDITION, according to Plat No. 96-66, in the Anchorage Recording District, Third Judicial District, State of Alaska.

### IV.

#### MAXIMUM NUMBER OF UNITS, IDENTIFICATION, AND BOUNDARIES

##### Section 1. NUMBER OF UNITS

The Common Interest Community upon creation will contain a maximum of sixteen (16) units.

##### Section 2. IDENTIFICATION OF UNITS

All Units are identified by number and are shown on the survey map and plans or both.

##### Section 3. BOUNDARIES

The boundaries of each Unit created by this Declaration are located as shown on the plat and are more particularly described as follows:

a. **General Boundaries.** Boundaries of Units are shown on the survey referred to in the plans attached to the Declaration, as it may be amended from time to time, subject to party wall rights and adjustments described below.

b. **Boundaries of Party Walls.** The boundaries of the Unit at party walls shall be the plane or planes extending through the party wall, dividing the faces of the studs, framing, unfinished concrete or structural masonry, extending from the center of the earth to the heavens from the lowest to the highest plane respectively enclosed by structural elements, and angling within the ends of the structural walls to meet the boundaries shown on Exhibit B. Such boundaries are subject to and together with mutual easements of support, shelter, and weather-tight integrity as described in this Declaration.

c. **Inconsistency With Plans.** If this definition is inconsistent with the Plan, then this definition shall control.

d. **Vertical Boundaries.** The surveyed lot lines of each Lot according to the plans.

e. **Horizontal Boundaries.** The center of the earth and the heavens above.

## V.

### LIMITED COMMON ELEMENTS

There are no limited common elements in this Planned Community.

## VI.

### PARTY WALLS AND EASEMENTS

#### Section 1. GENERAL RULES OF LAW TO APPLY

Each wall which is built as part of the original construction of the homes upon Common Interest Community and placed on the dividing line between the Units shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

#### Section 2. SHARING AND REPAIR AND MAINTENANCE

The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in proportion to such use.

#### Section 3. DESTRUCTION BY FIRE OR OTHER CASUALTY

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other unit Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. WEATHERPROOFING**

Notwithstanding any other provision of this Article, a Unit Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. RIGHT TO CONTRIBUTION RUNS WITH LAND**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. ENCROACHMENTS**

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside of a party wall, any portion serving only that Unit is a part of that unit, and any portion serving both units is a part of the party wall.

**Section 7. PARTY FENCES**

Fences and walls built on the dividing line between units or between units and open space are party fences and the rules of law apply thereto.

**Section 8. EXPENSES ALLOCATED TO SHARED ELEMENTS**

Any Common Expense associated with the maintenance, repair, or replacement of party walls or party fences shall be assessed equally among the Units to which it is assigned, unless caused by the sole negligence of a single unit owner.

**VII.**

**MAINTENANCE, REPAIR, AND REPLACEMENT**

**Section 1. COMMON ELEMENTS**

The Association shall maintain, repair, and replace all of the Common Elements.

**Section 2. UNITS**

Each Unit Owner shall maintain, repair, and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired, or replaced by the Association.



### **Section 3. ASSOCIATION**

In addition to maintenance upon Common Elements, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder as follows:

Paint and paint preparation of exterior building surfaces, including common perimeter fences, gutters, downspouts, trees, shrubs, grass, walks, and other exterior improvements, including the repair and maintenance of the roofs and snow removal from driveways by a licensed, bonded right-of-way permit holder as required by the Municipality of Anchorage. However, such exterior maintenance shall not include repair of driveways, doors, glass, and rear yard fences.

### **Section 4. ACCESS**

Any person authorized by the Executive Board shall have the right of access to all portions of the property for the purpose of correcting any condition threatening a unit or the common elements and for the purpose of performing installations, alterations, maintenance, or repairs, and for the purpose of reading, repairing, replacing utility meters, and related pipes, valves, wires, and equipment, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time. Access and use of any unit owner's utilities for maintenance purposes is authorized, and any cost thereof shall be borne by the Association if ever assessed to an individual unit owner.

### **Section 5. REPAIRS RESULTING FROM NEGLIGENCE**

Each Unit Owner will reimburse the Association for any damages to any other unit or to the common elements caused intentionally, negligently, or by his or her failure to properly maintain, repair, or make replacements to his or her unit. The Association will be responsible for damage to units caused intentionally, negligently or by its failure to maintain, repair, or make replacements to the common elements. If such expense is caused by misconduct, it will be assessed following notice and hearing.

## **VIII.**

### **SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS**

The Declarant does not contemplate any subsequent assignment of Limited Common Elements, but reserves the right to do so prior to conveyance of a unit.

## **IX.**

### **ALLOCATED INTERESTS**

#### **Section 1. ALLOCATION OF INTERESTS**

The table showing Unit numbers and their allocated interests is attached as Exhibit C. These interests have been allocated in accordance with the formulas set out in this Article.

#### **Section 2. FORMULAS FOR THE ALLOCATION OF INTERESTS**

a. **Undivided Interest in the Common Elements and Liability for Common Expenses.** The percentage of liability for common expenses and the interest in the common elements are based on the number of units in the Planned Community, each unit having an equal one-sixteenth (1/16) interest.

b. **Votes.** Each Unit in the Common Interest Community shall have one (1) equal vote.

## **X.**

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

#### **Section 1. SINGLE-FAMILY RESIDENCE**

Residences shall be used exclusively for single-family residential purposes.

#### **Section 2. PARKING AND VEHICULAR RESTRICTIONS**

No vehicle which shall not be in an operating condition shall be parked or left on the property subject to this Declaration, other than on an assigned parking space. The parking spaces shall be used for parking vehicles only and shall not be converted for living, recreational, or business purposes. No boats, snowmachines, motorhomes, or other recreational or commercial vehicles shall be stored anywhere on the property for any longer than twenty-four (24) hours.

#### **Section 3. NUISANCES**

No noxious or offensive activities (including, but not limited to, the repair of automobiles) shall be carried on upon the project. No horns, whistles, bells, or other sound devices, except security devices used exclusively to protect the security of a residence and its contents, shall be placed or used in any such residence. No loud noises shall be

permitted on the property, and the Executive Board of the Association shall have the right to determine if any noise or activity producing noise constitutes a nuisance. No Unit Owner shall permit or cause anything to be done or kept upon the property which will increase the rate of insurance thereon or which will obstruct or interfere with the rights of other Unit Owners, nor will a unit owner commit or permit any nuisance on the premises or commit or cause any illegal act to be committed thereon. Each Unit Owner shall comply with all of the requirements of the local or State health authorities and with all other governmental authorities with respect to the occupancy and use of a residence.

#### **Section 4. SIGNS**

No signs, posters, displays, or other advertising devices of any character shall be erected or maintained on, or shown or displayed from, the residences without prior written approval having been obtained from the Executive Board of the Association; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice of customary and reasonable dimension which states that the premises are for rent or sale. Address identification signs shall be maintained by the Association. The Executive Board may summarily cause all unauthorized signs to be removed and destroyed. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the units as set forth in Article XI, Section 3.

#### **Section 5. HOLD HARMLESS AND INDEMNIFICATION**

Each Unit Owner shall be liable to the Association for any damage to the Common Elements or any equipment thereon which may be sustained by reason of the negligence of said Unit Owner or of his guests or invitees, to the extent that any such damage shall not be covered by insurance. Each Unit Owner does further, by the acceptance of his deed, agree to indemnify each and every other Unit Owner, and to hold him or her harmless from any claim of any person for personal injuries or property damage occurring within the residence of the Unit Owner, unless said injury or damage shall occur by reason of the negligence of any other Unit Owner, and each Unit Owner further agrees to defend, at his expense, any and all remaining owners who may be sued by any person for a claim for personal injury or property damage alleged to have been sustained within the residence of that Unit Owner.

#### **Section 6. OUTSIDE INSTALLATIONS**

No outside pole or antennae shall be erected or maintained without first obtaining the approval of the Executive Board. No wiring or installation of air conditioning or other machine shall be installed on the exterior of the building of the project or be allowed to protrude through the walls or roof of the building, unless the prior written approval of the Executive Board is secured. No basketball standards or fixed sports apparatus shall be attached to any residence without the prior written approval of the Executive Board.

**Section 7. PET REGULATIONS**

No animals, livestock, or poultry shall be kept in any residence, except that domestic dogs, cats, fish, and birds in inside bird cages may be kept as household pets within the project, provided that they are not kept, bred, or raised therein for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall be deemed to limit the number of dogs, cats, and birds to one (1) each. The Association shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Directors of the Association, a nuisance to any other Unit Owner. Dogs and cats belonging to Unit Owners, occupants, or their licensees must be kept on a leash being held by a person capable of controlling the animal. Should any dog or cat belonging to a Unit Owner be found unattended and not being held on a leash by a person capable of controlling the animal, such animal may be removed by the Executive Board or a person designated by them to a pound under the jurisdiction of the local municipality in which the property is situated. Furthermore, any Unit Owner shall be absolutely liable to each and all remaining owners, their families, guests, and invitees, for any damage to person or property caused by any pets brought or kept upon the property by an owner or by members of his family, guests, licensees, or invitees.

**Section 8. VIEW OBSTRUCTIONS**

No vegetation or other obstruction shall be planted or maintained upon any deck in such location or of such a height as to unreasonably obstruct a view from any other residence in the vicinity thereof. In the event of a dispute between owners of units as to the obstruction of a view from a residence, such dispute shall be submitted to the Executive Board, whose decisions in such matters shall be binding. Any such obstruction shall, upon request of the Executive Board, be removed or otherwise altered to the satisfaction of the Executive Board by the owner of the residence upon which said obstruction is located.

**Section 9. BUSINESS OR COMMERCIAL ACTIVITY**

No business or commercial activity shall be maintained or conducted in any residence, except that Declarant, or a person designated by the Association as agent of the Association for purposes of managing the property, may maintain management offices and facilities in a residence or in a temporary structure constructed on the project; provided, however, that professional and administrative occupations may be carried on within the residences so long as there exists no external evidence thereof.

**Section 10. TEMPORARY STRUCTURE**

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

property may be maintained thereon, but shall be removed within a reasonable time upon completion of construction of the project.

#### **Section 11. RUBBISH REMOVAL**

Trash, garbage, or other waste shall be disposed of only by depositing same, wrapped in a secure package, into a designated trash container or garbage disposal. No owner of a unit shall permit or cause any trash or refuse to be disposed of on any portion of the project subject to this Declaration. No portion of the project shall be used for the storage of building materials, refuse, or any other materials other than in connection with approved construction. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles thereof.

#### **Section 12. LEASE OF UNITS**

Any Unit Owner may lease his unit to a third party, but such a lease arrangement must be in writing, for a term more than sixty (60) days, and shall provide that the failure to comply in all respects with the provisions of this Declaration and the Association Bylaws shall be a default under the terms of the lease. No Unit Owner may lease his unit for transient or hotel purposes, nor may less than the entire unit be leased.

All units shall be utilized in conformance with owner-occupancy requirements established by the Alaska Housing Finance Corporation (AHFC), Veterans Administration (VA), and Federal Housing Authority (FHA) governing the number of units in the project which may be leased to third parties. No owner or owners of a unit may enter into an agreement to lease such unit to a third party without having obtained the written consent of the Executive Board which shall be granted on a first-come first-served basis and be dependent only upon compliance with the most restrictive owner-occupancy requirements established by any one of the above-named entities. Request for approval of a proposed lease shall be made in writing, directed to the President of the Association, and mailed by first-class mail, postage prepaid, certified, return receipt requested. The Executive Board shall grant or refuse approval of the proposed lease and, within thirty (30) days of the mailing of the request for approval, give notice thereof in writing directed to the address indicated on the request for approval. Failure by the Executive Board to mail the notification within the time provided herein shall be construed as an approval of the request.

#### **Section 13. RESTRICTIONS ON ALIENATION**

A unit may not be conveyed pursuant to a time-sharing plan.

## XI.

### EASEMENTS AND LICENSES

a. All easements or licenses to which the Common Interest Community is presently subject are recited in Exhibit D to this Declaration.

b. Declarant expressly reserves, for the benefit of owners in the project, reciprocal easements of access, ingress, and egress over all of the common elements. Such easements may be used by Declarant's successors, purchasers, and all unit owners, their guests, tenants, and invitees, residing or temporarily visiting the project, for pedestrian walkways, vehicular access, and such other purposes reasonably necessary to the use and enjoyment of a unit in the project. Such easements shall be appurtenant to, and shall pass with, the title to every unit conveyed. The Declarant expressly reserves, for the benefit of each unit owner, an exclusive easement for use of those areas depicted on the plans as limited common elements, as assigned to each unit owner for his numbered unit. All building walls shall be considered to adjoin and abut the wall of the contiguous residence against the surface from the bottom of the foundation of the building. Such right of use shall be as not to interfere with the use and enjoyment of the owners of adjoining residences, and in the event that any such contiguous wall is damaged or injured from any cause other than the act or negligence of one of the owners, the same shall be repaired or rebuilt at their joint expense. In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Any roof and gutter overhang which encroaches across the property line of an adjoining unit shall be a valid encroachment and air easement for the benefit of the encroaching unit owner.

c. Prior to conveyance of a Unit to a Unit Owner other than the Declarant, the Declarant shall transfer legal title to the Common Elements free of all liens other than current taxes transferred to the Association.

## XII.

### ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

a. A Common Element not previously allocated as a Limited Common Element may be so allocated pursuant to the provisions in Article VIII of this Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Element is located.

b. Such an amendment shall require the approval of all holders of security interest in the affected units, which approval shall be endorsed thereon. The person

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. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Common Interest Community.

c. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorney's fees in connection with the review of the amendment and for the recording costs.

### XIII.

#### ADDITIONS, ALTERATIONS, AND IMPROVEMENTS

##### Section 1. **ADDITIONS, ALTERNATIONS, AND IMPROVEMENTS BY UNIT OWNERS**

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

b. Subject to Subsection 12.1(a), a Unit Owner:

(1) May make any other improvement or alterations to the interior of his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community;

(2) May not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Common Interest Community, including the rear yard fences, without permission of the Association;

(3) After acquiring an adjoining Unit or an adjoining part of any 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 Interest Community. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.

c. A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Section 12.1(a) or 12.1(b)(ii). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its rules.

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

The provisions of this Section shall not apply to the Declarant in the exercise of any Special Declarant Right.

**Section 2. ADDITIONS, ALTERATIONS, AND IMPROVEMENTS BY EXECUTIVE BOARD**

Subject to the limitations of Article XVIII, Section 5 of this Declaration, the Executive Board may make any additions, alterations, or improvements to the Common Elements which it deems necessary.

**XIV.**

**SUBDIVISION OF UNITS**

Subdivision of units is not permitted in this project.

**XV.**

**AMENDMENTS TO DECLARATION**

**Section 1. GENERAL**

Except in cases of amendments that may be executed by the Association under Article XII of this Declaration and Section 34.08.740 of the Act or by certain Unit Owners under Article XII and 34.08.260 of the Act, and except as limited by Section 4 of this Article, and Article XVIII of this Declaration, this Declaration, including the plat and plans, may be amended only by vote or agreement of Unit Owners of units to which at least 75 percent (75%) of the votes in the Association are allocated.

**Section 2. LIMITATION OF CHALLENGES**

No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded.



**Section 3. RECORDATION OF AMENDMENTS**

Each amendment to the Declaration must be recorded in each recording district in which a portion of the Common Interest Community is located and the amendment is effective only upon recording as set forth in AS 34.08.250(c).

**Section 4. WHEN UNANIMOUS CONSENT REQUIRED**

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

**Section 5. EXECUTION OF AMENDMENTS**

Amendments to this Declarant required by the Act to be recorded by the Association, which have been adopted in accordance with this Declaration and the Act, shall be prepared, executed, recorded and certified on behalf of the Association by any officers of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

**Section 6. SPECIAL DECLARANT RIGHTS**

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

**Section 7. CONSENT OF HOLDERS OF SECURITY INTERESTS**

Amendments are subject to the consent requirements of Article XVIII.

**XVI.**

**AMENDMENT TO BYLAWS**

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

## **XVII.**

### **TERMINATION**

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

## **XVIII.**

### **MORTGAGEE PROTECTION**

#### **Section 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 2. PERCENTAGE OF ELIGIBLE MORTGAGEES**

Wherever in this Declaration the approval or consent of a specified percentage of eligible mortgagees is required, it shall mean the approval or consent of eligible mortgagees holding security interest in units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all units then subject to security interests held by eligible mortgagees.

#### **Section 3. NOTICE OF ACTIONS**

The Association shall give prompt notice to each eligible mortgagee and eligible insurer of:

a. Any condemnation loss or any casualty loss which affects 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; if such loss of taking or damage to a unit exceeds \$10,000.

b. Any delinquency in the payment of common expense assessments owed by an owner, or any other default under the documents, 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 lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

d. Any proposed action which would require the consent of a specified percentage of eligible mortgagees as specified in Section 4;

e. Any judgment rendered against the Association.

#### Section 4. CONSENT REQUIRED

a. **Document Changes.** Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the documents by the Association or Unit Owners described in this subsection 4(a) may be effective without the vote of at least 75 percent (75%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved in writing by at least 75 percent (75%) of the eligible mortgagees (or any greater eligible mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments affected by the exercise of any development right. Material includes, but is not limited to, any provision affecting:

- (1) assessment, assessment liens, or subordination of assessments;
- (2) voting rights;
- (3) reserves for maintenance, repair, and replacement of common elements;
- (4) responsibility for maintenance and repairs;
- (5) reallocation of interests in the Common Elements or Limited Common Elements 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;
- (6) rights to use Common Elements and Limited Common Elements;
- (7) partition or subdivision of units except that when boundaries of only adjoining units are involved, or a unit is being subdivided, then only those Unit Owners and the eligible mortgagees holding security interests in such unit or units must approve such action;
- (8) convertibility of units into common elements or common elements into units;

(9) expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community;

(10) insurance or fidelity bonds;

(11) leasing of units;

(12) imposition of restrictions on a Unit Owner's right to sell or transfer his or her unit;

(13) establishment of self-management when professional management had been required previously by any eligible mortgagee;

(14) restoration or repair of the project after a hazard damage or partial condemnation in a manner other than specified in the documents;

(15) termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and

(16) the benefits of mortgage holders, insurers or guarantors.

b. **Actions.** Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to the Declaration as special Declarant rights without the approval of at least 51 percent (51%) of the eligible mortgagees:

(1) convey or encumber the Common Elements or any portion thereof (as to which an 80 percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause);

(2) the establishment of self-management when professional management had been required previously by any eligible mortgagee;

(3) the restoration or repair of the property (after a hazard damage or partial condemnation) in a manner other than that specified in the instruments or use of hazard insurance proceeds for losses to any property, whether to a unit or to the common elements, for other than the repair, replacement or reconstruction of such improvements;

(4) the termination of the Common Interest Community for reasons other than a substantial destruction or condemnation, as to which a 75 percent (75%) eligible mortgagee approval is required;

(5) 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;

(6) the merger of this Common Interest Community with any other Common Interest Community;

(7) the granting of any easements, leases, licenses, and concessions through or over the common elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses, or concessions for no more than one year);

(8) the assignment of the future income of the association, including its right to receive common expense assessments; and

(9) any action taken not to repair or replace the property;

c. The Association may not change the period for collection of regularly budgeted common expense assessments to other than monthly without the consent of all eligible mortgagees.

d. The failure of an eligible mortgagee to respond within thirty (30) days to any written request of the Association for approval of a nonmaterial addition or amendment to the documents shall constitute an implied approval of the addition or amendment.

#### **Section 5. INSPECTION OF BOOKS**

The Association shall permit any eligible mortgagee or eligible insurer to inspect the books and records of the association during normal business hours.

#### **Section 6. FINANCIAL STATEMENTS**

a. The Association shall provide any eligible mortgagee or eligible insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

(1) the Common Interest Community contains fifty (50) or more units in which case the cost of the audit shall be a common expense; or

(2) 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 7. ENFORCEMENT**

The provisions of this Article are for the benefit of eligible mortgagees and eligible insurers and their successors and may be enforced by any of them by any available means, at law, or in equity.

**Section 8. ATTENDANCE AT MEETINGS**

Any representative of an eligible mortgagee or eligible insurer may attend any meeting which a Unit Owner may attend.

**Section 9. APPOINTMENT OF TRUSTEE**

In the event of damage or destruction under Article XXIII or condemnation of all or a portion of the community, any eligible mortgagee may require that such proceeds to be payable to a Trustee established pursuant to Article XXIII, Section 5. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as trustee.

**XIX.**

**ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

**Section 1. APPORTIONMENT OF COMMON EXPENSES**

Except as provided in Section 2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit C to this Declaration.

**Section 2. COMMON EXPENSES ATTRIBUTABLE TO FEWER THAN ALL UNITS**

a. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element which serves only one unit shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

b. Any Common Expense for services provided by the Association to any individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.

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

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

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.

### Section 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. 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 a Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this section is also prior to all security interests described in Subdivision 2 of this Subsection if the Common Expense assessments based on the periodic budget adopted by the Association pursuant to Subdivision 5 of this Subsection which 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 Section 2 of this Article. This subsection does not affect the priority of mechanics' or materialmen'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. Further recording of a claim of lien for assessment under this Section is not 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 an 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 subsection (a) of this Article 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 attorney's fees for the prevailing party.

g. A judgment or decree in an action brought under this Article 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.

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 sale, other than the assessments which are prior to that security interest under Section 3(b). Any unpaid assessments not satisfied from the proceeds of the sale become common expenses collectible from all the Unit Owners, including the purchaser.

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

#### **Section 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 all 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 5. RATIFICATION OF NONBUDGETED COMMON EXPENSE**

If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 2 of this Article, in an amount greater than 15 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 4 of this Article.

**Section 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 7. MONTHLY PAYMENT OF COMMON EXPENSES**

a. All Common Expenses assessed under Sections 1 and 2 of this Article shall be due and payable monthly.

b. From and after the date of recordation of a deed to the first unit owner of an interest in the project, the unit owner shall establish an assessment reserve fund with the Association, which reserve fund shall equal the projected assessments to the unit owner for a two-month period. In addition, the unit owner shall pay to the Association the regular monthly assessment as provided herein, the purpose being to have available at all times for the Association an assessment reserve fund equal to two (2) months of assessments. This assessment reserve fund shall be maintained at all times, just as a reserve for taxes and insurance is so maintained, and in the event of a subsequent transfer of the unit owner's interest in the project, the subsequent purchaser shall be responsible for establishing and maintaining this reserve fund.

**Section 8. ACCELERATION OF COMMON EXPENSE ASSESSMENTS**

In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

**Section 9. COMMENCEMENT OF COMMON EXPENSE ASSESSMENTS**

Common Expense assessments shall begin at such time as the Declarant selects during the time of Declarant control, but such assessments will begin not later than one year from the date of conveyance of the first unit.

**Section 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 11. PERSONAL LIABILITY OF UNIT OWNERS**

The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

**XX.**

**RIGHT TO ASSIGN FUTURE INCOME**

The Association may assign its future income, including its right to receive Common Interest Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least 75 percent (75%) of the votes in the Association are allocated at a meeting called for that purpose.

**XXI.**

**PERSONS AND UNITS SUBJECT TO DOCUMENTS**

**Section 1. COMPLIANCE WITH DOCUMENTS**

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

**Section 2. ADOPTION OF RULES**

The Executive Board may adopt Rules regarding the use and occupancy of Units, Common Elements, and Limited Common Elements and the activities of occupants, subject to Notice and Comment.

**XXII.**

**INSURANCE**

**Section 1. COVERAGE**

To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance coverage 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 address.

**Section 2. PROPERTY INSURANCE**

**a. Property insurance covering:**

(1) the common facilities, which term means all fixtures, equipment, and any improvements that are common elements; and

(2) all personal property owned by the Association.

(3) the Association does not provide insurance covering the units, which insurance coverage is the responsibility of each unit owner.

**b. Amounts:**

(1) the common facilities for an amount (after application of any deductions) equal to 100 percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

c. 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.

d. **Risks Insured Against.** The insurance shall afford protection against "all risk" of direct physical loss commonly insured against.

e. **Other Provisions.** Insurance policies required by this Section shall provide that:

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

(2) 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 void the policy or be a condition to recovery under the policy.

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

(4) Loss must be adjusted with the Association;

(5) 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;

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

(7) Notwithstanding any provisions to the contrary herein, the Association shall be required to continuously carry a master policy of casualty insurance, and a fidelity bond, with such coverage and endorsements in form and amounts, including full replacement costs coverage with an agreed-amount endorsement as required by the Federal National Mortgage Association (FNMA), during such periods of time as the FNMA is a mortgagee on a unit in the project or the owner of such a unit.

(8) The name of the insured shall be substantially as follows: "Turnagain Village for the use and benefit of the individual Owners."

### Section 3. **LIABILITY INSURANCE**

a. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000, covering all occurrences commonly insured against for death, bodily injury, and property damage arising

out of or in connection with the use, ownership, or maintenance of the Common Elements, and the activities of the Association.

b. **Other provisions.** Insurance policies carried pursuant to this section shall provide that:

(1) 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;

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

(3) 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;

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

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

#### **Section 4. FIDELITY BONDS**

A blanket fidelity bond is required for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force, and in no event less than the sum of three months' assessments plus reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the Association, to each holder of a Security Interest in a Unit, to each servicer that services a FNMA-owned mortgage on a Unit, and to the insurance trustee, if any, before the bond can be canceled or substantially modified for any reason. The Association shall keep separate bank accounts for its operating funds and the Association reserve funds with a financial institution that provides monthly account statements to the Association. Two or more members on the Board must sign any checks written against the reserve account.

**Section 5. UNIT OWNER POLICIES**

An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit. Each unit owner shall be responsible for providing its own casualty, fire, and extended coverage for the owned unit.

**Section 6. WORKERS' COMPENSATION INSURANCE**

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

**Section 7. DIRECTORS' AND OFFICERS' LIABILITY INSURANCE**

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

**Section 8. OTHER INSURANCE**

The Association may carry other insurance which the Executive Board considers appropriate to protect the Association.

**Section 9. PREMIUMS**

Insurance premiums shall be a Common Expense.

**XXIII.**

**DAMAGE TO OR DESTRUCTION OF PROPERTY**

**Section 1. DUTY TO RESTORE**

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

- (1) the Common Interest Community is terminated;
- (2) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or

(3) 80 percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

## **Section 2. COST**

The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

## **Section 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 seventy-five percent (75%) of eligible mortgagees.

## **Section 4. 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 1 (a) through (c), the proceeds shall be disbursed first for the repair or restoration of the damaged Property and the Association. Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the Common Interest Community is terminated.

## **Section 5. CERTIFICATES BY THE EXECUTIVE BOARD**

a. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(1) whether or not damaged or destroyed Property is to be repaired or restored;

(2) 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 6. CERTIFICATES BY ATTORNEYS**

Title insurance companies or if payments are to be made to Unit Owners or Mortgagees, the Executive Board, and the Trustee, if any, shall obtain and may rely on a title insurance company certificate of ownership or a title insurance policy based on a search of the records of the Anchorage 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 Mortgagees.

#### XXIV.

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

#### Section 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. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

#### Section 2. RIGHT TO NOTICE AND HEARING

Whenever the Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include 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 not bind the decision makers. The affected persons shall be notified of the decision in the same manner in which notice of the meeting was given.

#### Section 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.



XXV.

EXECUTIVE BOARD

**Section 1. MINUTES OF EXECUTIVE BOARD MEETINGS**

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

**Section 2. POWERS AND DUTIES**

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

- (1) adopt and amend Bylaws, Rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves;
- (3) collect assessments for Common Expenses from Unit Owners;
- (4) hire and discharge managing agents;
- (5) hire and discharge employees and agents, other than managing agents, and independent contractors;
- (6) institute, defend, or intervene in litigation or administrative proceedings in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (7) make contracts and incur liabilities;
- (8) regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- (9) cause additional improvements to be held as a part of the Common Elements;

(10) acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property, but Common Elements may be conveyed or subject to a Security Interest only pursuant to Section 34.08.430 of the Act;

(11) grant easements for any period of time including permanent easements and leases, licenses and concessions for no more than one year, through or over the Common Elements;

(12) impose and receive payments, fees, or charges for the use, rental, or operation of the common Elements, other than Limited Common Elements described in Subsections of (2) and (4) of Section 34.08.100 of the Act and for services provided to Unit Owners;

(13) impose charges or interest or both for late payment of assessments and, after Notice of Hearing, levy reasonable fines for violations of this Declaration, and the bylaws, Rules, and regulations of the Association;

(14) impose reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates required by Section 34.08.590 of the Act or statements of unpaid assessments;

(15) provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;

(16) assign the Association's right to future income, including the right to receive Common Expense assessments;

(17) exercise any other powers conferred by this Declaration or by the Bylaws;

(18) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;

(19) exercise any powers necessary and proper for the governance and operation of the Association; and

(20) by resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

**Section 3. EXECUTIVE BOARD LIMITATIONS**

The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community or to elect members of the Executive Board or determine the qualifications, powers, and duties or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

**XXVI.**

**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.

**XXVII.**

**MISCELLANEOUS**

**Section 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 2. GENDER**

The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the document so require.

**Section 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 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 5. CONFLICT**

The documents are intended to comply with the requirements of the Act and Chapter 10.20 of the Alaska Statutes (Nonprofit Corporation Law). In the event of any conflict between the documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other document, this Declaration shall control.

## **XXVIII.**

### **SPECIAL DECLARANT RIGHTS**

#### **Section 1. DECLARANT RIGHTS**

a. 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.

(1) to complete improvements indicated on plats and plans filed with the Declaration;

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

(3) to use easements through the Common Elements for the purpose of making improvements within the Common Interest Community;

(4) to appoint or remove an officer of the Association or any Executive Board member during a period of Declarant control.

#### **Section 2. MODELS, SALES OFFICES, AND MANAGEMENT OFFICES**

As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives, and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit or sales office or management office.

#### **Section 3. CONSTRUCTION; DECLARANT'S EASEMENT**

The Declarant reserves the right to perform warranty work and repairs and construction work and to store materials in secure areas, in units and common elements, and the further right to control all such work and repairs and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or

approval of the Executive Board. The Declarant has such an easement through the common elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special Declarant rights, whether arising under the Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners, or upland owners to fulfill the plan of development.

#### **Section 4. SIGNS AND MARKETING**

The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of units and to conduct general sales activities in a manner as will not unreasonably disturb the right of Unit Owners.

#### **Section 5. DECLARANT'S PERSONAL PROPERTY**

The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property any and all goods and improvements used in development, marketing and construction whether or not they have become fixtures, including any models.

#### **Section 6. DECLARANT CONTROL OF THE ASSOCIATION**

a. Subject to subsection b. hereof, there shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board. The period of Declarant control shall terminate no later than the earlier of:

(1) sixty (60) days after conveyance of 60 percent (60%) of the Units that may be created to Unit Owners other than a Declarant;

(2) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(3) three (3) years after the first unit is conveyed to a Unit Owner other than a Declarant.

b. A 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.

c. Not later than sixty (60) days after conveyance of 25 percent (25%) of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than 25 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 50 percent (50%) of the units that may be created to Unit Owners other than a Declarant, not less than 33.333 percent (33-1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

d. 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, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

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

**Section 7. LIMITATIONS ON SPECIAL DECLARANT RIGHTS**

These rights may be exercised by the Declarant at any time prior to January 1, 1998.

**Section 8. 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.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on the day and year first hereinabove written.

BELL HOMES,  
A Division of Bell Builders Inc.

By Judy B. Bell  
Judy B. Bell

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)  
) ss.  
)

THIS IS TO CERTIFY, that on this 27<sup>th</sup> day of February, 1997, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Judy B. Bell, known to me to be the person named in and who executed the within and foregoing instrument; and she acknowledged to me that she signed the same freely and voluntarily for the uses and purposes therein mentioned.

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

Leresa B. Bell  
Notary Public in and for Alaska  
My Commission Expires: 3-22-2000

**EXHIBIT C**

**TABLE OF INTEREST**

<b>Unit No.</b>	<b>Percentage Share of Expenses and Interest In Common Elements</b>	<b>Votes In the Affairs of Association</b>
1	6.25%	1
2	6.25%	1
3	6.25%	1
4	6.25%	1
5	6.25%	1
6	6.25%	1
7	6.25%	1
8	6.25%	1
9	6.25%	1
10	6.25%	1
11	6.25%	1
12	6.25%	1
13	6.25%	1
14	6.25%	1
15	6.25%	1
16	6.25%	1



**EXHIBIT D**  
**EASEMENTS**

The only easements affecting the Planned Community are the utility and access easements specifically recorded on the plats on file with the Municipality of Anchorage, Public Works Department, Office of the Municipal Engineer and/or State of Alaska, District Recorder's Office.

No licenses have been issued that affect the Planned Community property.

State of Alaska  
Department of Commerce and Economic Development  
Division of Banking, Securities and Corporations

**CERTIFICATE  
OF  
INCORPORATION  
Nonprofit Corporation**

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, hereby certifies that Articles of Incorporation of

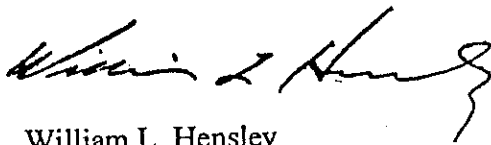
**TURNAGAIN VILLAGE HOMEOWNERS ASSOCIATION**

have been received in this office and have been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation and attaches hereto the original copy of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I execute this certificate  
and affix the Great Seal of the State of Alaska on

October 31, 1996



William L. Hensley

COMMISSIONER OF COMMERCE  
AND ECONOMIC DEVELOPMENT

OCT 31 1996

**ARTICLES OF INCORPORATION**

**OF**

Department of Commerce  
and Economic Development

**TURNAGAIN VILLAGE HOMEOWNERS ASSOCIATION**

We, the undersigned, being natural persons over the age of nineteen (19) years, desiring to form a nonprofit corporation pursuant to AS 10.20.005, et. seq., do hereby certify as follows:

**I.**

The name of this corporation is Turnagain Village Homeowners Association.

**II.**

The purposes for which the corporation is formed are as follows:

1. The specific and primary purposes are to provide for maintenance, preservation and architectural control of a planned community on real property located in the Municipality of Anchorage, Alaska, known as Turnagain Village, and the structures and improvements thereon.

2. The general purposes and powers are:

a. To promote the health, safety and welfare of the residents within said real property.

3. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association arising from the Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements applicable to the property described above ("Declaration").

4. To fix, levy, collect and enforce payment by lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

5. To have and to exercise any and all powers, rights and privileges which a corporation organized under the nonprofit corporation law of the State of Alaska by law may now or hereafter have or exercise.

a. To act in the capacity of principal, agent, joint venturer, partner or otherwise. The foregoing statements of purposes shall be construed as

a statement both of purposes and of powers, and purposes and powers in each clause shall not be limited or restricted by reference to, or inference from, the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. Notwithstanding any of the above statements of purposes and powers, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

III.

The duration of the Association shall be perpetual.

IV.

The Association shall be a nonprofit corporation, without shares of stock.

V.

The authorized number and qualifications of members of the Association, the different classes of membership, if any, the property, voting and other rights and privileges of members, and their liability to dues and assessments and the method of collection thereof, shall be as set forth in the Bylaws and Declaration.

VI.

The initial registered office of the corporation shall be located at 18622 Guillemot Circle, Anchorage, Alaska 99516.

VII.

The initial registered agent of the corporation shall be Judy B. Bell, whose business address is 18622 Guillemot Circle, Anchorage, Alaska 99516.

VIII.

The initial Board of Directors shall consist of three (3) persons, and said number may be changed by a duly adopted amendment to the Bylaws, except that in no event may the number of Directors be less than three. The names and addresses of the persons who shall serve as Directors until their successors shall be elected and qualified are as follows:

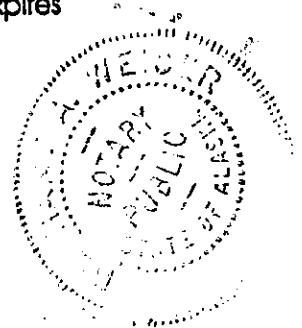
Steven L. Bell  
18622 Guillemot Circle  
Anchorage, Alaska 99516

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 22 day of October, 1996, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Steven L. Bell, Judy B. Bell, and ~~Teresa Bell~~, known to me to be the persons named in and who executed the within and foregoing instrument, and they acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein mentioned.

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

[Signature]  
Notary Public in and for Alaska My Commission Expires  
My Commission Expires: MAY 1, 1999



STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 22 day of October, 1996, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Teresa Bell, known to me to be the person named in and who executed the within and foregoing instrument, and she acknowledged to me that she signed the same freely and voluntarily for the uses and purposes therein mentioned.

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

[Signature]  
Notary Public in and for Alaska My Commission Expires  
My Commission Expires: MAY 1, 1999

