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Jacobs, Walker, Rice & Barry, LLC
141 Main Street
Manchester, CT 06042
Attention: G.W. McCracken

NOTICE AND INCORPORATION OF
AMENDED AND RESTATED DECLARATION OF
BIRCHWOOD COMMONS
MONTVILLE, CONNECTICUT

Birchwood Commons Condominium Association, Inc. (sometimes, the "Association") hereby gives notice of and certifies to the following.

- A. The Declaration of Birchwood Commons dated May 12, 1988 and recorded on May 25, 1988 in Volume 201 at Page 1 of the Montville land records, as amended to date, has been amended and replaced by the Amended and Restated Declaration of Birchwood Commons that is attached to this Notice. Each and every term of the Amended and Restated Declaration of Birchwood Commons which is attached hereto (hereafter, the "A&R Declaration"), and all schedules and exhibits thereto, if any, are hereby incorporated by reference as though fully set forth herein. The A&R Declaration was adopted by the vote of Unit Owners holding at least 67 percent of the voting power in the Association. There are no Eligible Mortgagees holding mortgages on Units in the Common Interest Community.

Dated: August 8, 2019

Signed, Sealed and Delivered
in the presence of:

Robert Brun

Roger Arnold

Birchwood Commons Condominium
Association, Inc.

By Kathleen Hawkins

Kathleen Hawkins
Its President

State of Connecticut)
County of New London)

ss Montville Aug 12, 2019

Personally appeared Kathleen Hawkins, President of Birchwood Commons Condominium Association, Inc., and acknowledged the foregoing to be her free act and deed and the free act and deed of the corporation.

Michelle Giroux
~~Commissioner of the Superior Court~~
Notary Public Michelle Giroux
My Commission Expires: 12/31/2022

Attest Peter Hawkins
Peter Hawkins
Secretary, Birchwood Commons Condominium
Association, Inc.

**AMENDED AND RESTATED DECLARATION
OF
BIRCHWOOD COMMONS
ADOPTED BY THE MEMBERS OF THE
BIRCHWOOD COMMONS CONDOMINIUM ASSOCIATION, INC.
MONTVILLE, CONNECTICUT**

Table of Contents

ARTICLE I – Definitions	1
Section 1.1 – Advisory Committees	1
Section 1.2 – Allocated Interests	1
Section 1.3 – Association	1
Section 1.4 – Bylaws	1
Section 1.5 – CIOA	1
Section 1.6 – Common Elements	2
Section 1.7 – Common Expense Assessment	2
Section 1.8 – Common Expenses	2
Section 1.9 – Common Interest Community	3
Section 1.10 – Community Documents	3
Section 1.11 – Damaged or Destroyed	3
Section 1.12 – Declarant	3
Section 1.13 – Declaration	3
Section 1.14 – Development Rights	3
Section 1.15 – Director	3
Section 1.16 – Eligible Insurer	3
Section 1.17 – Eligible Mortgagee	4
Section 1.18 – Executive Board	4
Section 1.19 – High-Risk Components or Conditions	4
Section 1.20 – Improvements	4
Section 1.21 – Limited Common Elements	4
Section 1.22 – Maintain, Repair, and Replace	4
Section 1.23 – Manager	4
Section 1.24 – Material Adverse Action	4
Section 1.25 – Nonstock Corporation Act	6
Section 1.26 – Notice and Comment	6
Section 1.27 – Notice and Hearing	6
Section 1.28 – Person	6
Section 1.29 – Plans	6
Section 1.30 – Property	6
Section 1.31 – Record	6
Section 1.32 – Rules	6
Section 1.33 – Security Interest	7
Section 1.34 – Special Assessment	7
Section 1.35 – Special Board Committees	7

Section 1.36 – Special Declarant Rights	7
Section 1.37 – Structure, Structural	7
Section 1.38 – Survey	7
Section 1.39 – Unit	7
Section 1.40 – Unit Owner	7
Section 1.41 – Votes	8
 ARTICLE II – Name and Type of Common Interest Community and Association	 8
Section 2.1 – Common Interest Community	8
Section 2.2 – Association	8
 ARTICLE III – Description of Property	 8
Section 3.1 – Description of Property	8
 ARTICLE IV – Maximum Number of Units, Identification, and Boundaries	 8
Section 4.1 – Number of Units	8
Section 4.2 – Identification of Units	8
Section 4.3 – Unit Boundaries	8
 ARTICLE V – Limited Common Elements	 10
Section 5.1 – Limited Common Elements	10
 ARTICLE VI – Maintenance, Repair, and Replacement	 11
Section 6.1 – Common Elements	11
Section 6.2 – Units	11
Section 6.3 – Portions of the Limited Common Elements and Other Common Elements Maintained by the Unit Owners	 11
Section 6.4 – Access	12
Section 6.5 – Failure to Maintain, Repair, and Replace	13
Section 6.6 – Inspection, Repair, and Replacement of High-Risk Components or Conditions	 14
Section 6.7 – Conduct of Maintenance, Repair, and Replacement by the Association	 16
Section 6.8 – Work Done by or at the Direction of Unit Owners or Tenants of Units	 16
 ARTICLE VII – Development Rights and Special Declarant Rights	 17
Section 7.1 – No Development Rights or Special Declarant Rights.	17
 ARTICLE VIII – Allocated Interests	 17
Section 8.1 – Allocation of Interests	17
Section 8.2 – Formulas for the Allocation of Interests	17

ARTICLE XV – Termination	31
Section 15.1 – Termination	31
ARTICLE XVI – Mortgagee Protection	31
Section 16.1 – Introduction	31
Section 16.2 – Consent Required	32
Section 16.3 – Notice of Certain Actions or Events	32
Section 16.4 – Development Rights	33
Section 16.5 – Other Mortgagee Rights	33
Section 16.6 – Financial Statements	33
Section 16.7 – Enforcement	33
Section 16.8 – Attendance at Meetings	33
ARTICLE XVII – Assessment and Collection of Common Expenses	33
Section 17.1 – Apportionment of Common Expenses	33
Section 17.2 – Common Expenses Attributable to Fewer than All Units	34
Section 17.3 – Liens and Lien Foreclosures	36
Section 17.4 – Budget Adoption, Rejection, and Approval	37
Section 17.5 – Special Assessments Adoption, Rejection, and Approval	38
Section 17.6 – Certificate of Payment of Common Expense Assessments	39
Section 17.7 – Payment of Common Expense Assessments	39
Section 17.8 – Acceleration of Common Expense Assessments	39
Section 17.9 – No Waiver of Liability for Common Expenses	39
Section 17.10 – Personal Liability of Unit Owners	39
Section 17.11 – Surplus Funds	39
ARTICLE XVIII – Association Borrowing and Assignment of Future Income	40
Section 18.1 – Notice of Proposed Borrowing	40
Section 18.2 – Approval of Assignment of Future Income	40
ARTICLE XIX – Persons and Units Subject to Documents;	
Rules and Enforcement	40
Section 19.1 – Compliance with Community Documents	40
Section 19.2 – Adoption of Rules	41
Section 19.3 – Notice to the Unit Owners of Changes to Rules	41
Section 19.4 – Limitation on Challenges	41
Section 19.5 – Certification and Recording of Rules	41
Section 19.6 – Abatement and Enjoinment of Violations	42
Section 19.7 – Suspension of Privileges for Non-Payment or Breach	43
ARTICLE XX – Insurance	44
Section 20.1 – Coverage	44
Section 20.2 – Property Insurance	44
Section 20.3 – Flood Insurance	46
Section 20.4 – Liability Insurance	46

Section 20.5 – Fidelity Insurance	47
Section 20.6 – Workers’ Compensation Insurance	47
Section 20.7 – Directors’ and Officers’ Liability Insurance	47
Section 20.8 – Unit Owner Policies	48
Section 20.9 – Other Insurance	48
Section 20.10 – Premiums	48
Section 20.11 – Compliance with Insurance Requirements	48
ARTICLE XXI – Damage to or Destruction of Property	49
Section 21.1 – Restoration	49
Section 21.2 – Cost	49
Section 21.3 – Plans	50
Section 21.4 – Restoration of Less than the Entire Property	51
Section 21.5 – Insurance Proceeds	51
Section 21.6 – Certificates by the Executive Board	52
Section 21.7 – Certificates by Attorneys	52
ARTICLE XXII – Rights to Notice and Comment and to Notice and Hearing	52
Section 22.1 – Notice and Comment	52
Section 22.2 – Notice and Hearing – Generally	53
Section 22.3 – Notice and Hearing – On the Request of a Unit Owner	54
ARTICLE XXIII – Executive Board	55
Section 23.1 – Powers and Duties	55
Section 23.2 – Executive Board Limitations	58
Section 23.3 – Board Discretion	59
ARTICLE XXIV – Condemnation	59
Section 24.1 – Condemnation	59
ARTICLE XXV – Miscellaneous	60
Section 25.1 – Captions	60
Section 25.2 – Number and Gender	60
Section 25.3 – Waiver	60
Section 25.4 – Invalidity	60
Section 25.5 – Conflict	60
EXHIBITS	
Exhibit A-1 – Property Description	61
Exhibit A-2 – Table of Interests	63
Exhibit A-3 – Survey Certificates	65
Exhibit A-4 – Plans Certificate and Supplement	66
Exhibit A-5 – Architect’s Certificate	67

**AMENDED AND RESTATED DECLARATION
OF BIRCHWOOD COMMONS
ADOPTED BY THE MEMBERS OF THE
BIRCHWOOD COMMONS CONDOMINIUM ASSOCIATION, INC.**

This is the amended and restated Declaration of Birchwood Commons, Montville, Connecticut. The original declaration of Birchwood Commons by Pieniadz Development Corporation, was dated May 12, 1988, and recorded on May 25, 1988 in Volume 201 at Page 1 of the Montville land records. This Declaration replaces the original declaration of Birchwood Commons and the amendments made prior to this Declaration, except as provided herein.

**ARTICLE I
DEFINITIONS**

In the Community Documents, when the following words and phrases appear with initial capital letters, they shall have the following meanings. When they appear without initial capitals letters, they shall have their ordinary meaning:

Section 1.1 – Advisory Committees. One or more committees established by the Executive Board or by the president, whose members may include Directors, Unit Owners and other individuals, which is not empowered to exercise the power of the Executive Board.

Section 1.2 – Allocated Interests. 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 A-2.

Section 1.3 – Association. Birchwood Commons Condominium Association, Inc., a nonstock corporation organized under the laws of the State of Connecticut. It is the association of unit owners pursuant to Section 47-243 of CIOA.

Section 1.4 – Bylaws. The Bylaws of the Association, as they may be amended from time to time. The current Bylaws have been recorded contemporaneously with this amended and restated Declaration.

Section 1.5 – CIOA. The Common Interest Ownership Act, Chapter 828, Sections 47-200 through 47-299, of the Connecticut General Statutes, as it may be amended from time to time. Amendments to CIOA that are applicable to common interest communities already in existence will apply to this Common Interest Community, however amendments that are expressly applicable only to common interest communities created after the effective date of the amendments will not apply to this Common Interest Community unless the Community Documents are amended to incorporate such amendments to CIOA.

Section 1.6 – Common Elements. All portions of the Common Interest Community other than the Units. Common Elements may include easements in favor of Units or the Common Elements over other Units and other interests in real property for the benefit of Unit Owners which are subject to this Declaration.

Section 1.7 – Common Expense Assessment. An assessment for Common Expenses against one or more Units adopted by the Association. It includes fees, charges, late charges, fines, and interest charged against a Unit Owner pursuant to CIOA, the Community Documents, or both.

Section 1.8 – Common Expenses. Expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including, but not limited to:

- (a) Expenses of administration, operation, and Maintenance, Repair, or Replacement of the Common Elements and those portions of the Units for which the Association is responsible;
- (b) Expenses necessary or useful for the operation of the Association or the accomplishment of its purposes, or that the Association incurs in exercising its powers or performing its duties under the Community Documents, CIOA, or other applicable law;
- (c) Expenses declared to be Common Expenses by the Community Documents or by CIOA;
- (d) Expenses agreed upon as Common Expenses by vote of a majority of the Votes cast by Unit Owners at a meeting at which a quorum is present;
- (e) Expenses incurred by the Association for electricity, gas, water, sewer, telecommunication, and other utility charges not billed by the provider to individual Units; and
- (f) Such reserves as may be established by the Association, whether held in trust or by the Association, including, but not limited to, reserves for Maintenance, Repair, Replacement, or addition to the Common Elements, to those portions of the Units for which the Association is responsible, and to any other real or personal property acquired or held by the Association.

Some costs and expenses imposed by the Association shall be Common Expenses but shall be assessed against fewer than all the Units as provided in Section 17.2 of this Declaration.

Section 1.9 – Common Interest Community. Birchwood Commons.

Section 1.10 – Community Documents. The Community Documents consist of the following as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a document is a part of that document:

- (a) This amended and restated Declaration;
- (b) The Survey;
- (c) The Plans;
- (d) The amended and restated certificate of incorporation of the Association adopted contemporaneously with this amended and restated Declaration;
- (e) The amended and restated Bylaws of the Association recorded contemporaneously with this amended and restated Declaration; and
- (f) The amended and restated Rules of the Association recorded contemporaneously with this amended and restated Declaration.

Section 1.11 – Damaged or Destroyed. A portion of the Common Interest Community is Damaged or Destroyed (or suffers Damage or Destruction) if it suffers physical damage that is of a type and is caused by an occurrence of a type covered by the insurance the Association is required to carry by Section 47-255 of CIOA, by insurance the Association is required to carry by this Declaration, or by other insurance carried by the Association.

Section 1.12 – Declarant. Pieniadz Development Corporation, a Connecticut stock corporation, which declared the Common Interest Community in 1988. It is no longer involved in the Common Interest Community and all of its rights as Declarant have expired.

Section 1.13 – Declaration. This document, including any amendments.

Section 1.14 – Development Rights. The rights that may be reserved by a declarant as defined in Subsection 47-202(16) of CIOA. No Development Rights exist as of the date of this amended and restated Declaration.

Section 1.15 – Director. A member of the Executive Board.

Section 1.16 – Eligible Insurer. An insurer or guarantor of a first Security Interest in a Unit that has notified the Association in writing, of its name and address, that it has insured or guaranteed such Security Interest, and the identification of the Unit on which it has insured or guaranteed such Security Interest. Such notice shall be

deemed to include a request that the Association give the Eligible Insurer the notices and other rights described in Article XVI.

Section 1.17 – Eligible Mortgagee. The holder of a first Security Interest in a Unit that has notified the Association in writing, of its name and address, that it holds a first Security Interest in a Unit, and the identification of the Unit on which it holds such Security Interest. Such notice shall be deemed to include a request that the Association notify the Eligible Mortgagee of any proposed action requiring the consent of a specified percentage of holders of first Security Interests and that the Eligible Mortgagee be given the other notices and rights described in Article XVI.

Section 1.18 – Executive Board. The board of directors of the Association pursuant to Subsections 47-245(a) and (b) of CIOA, and Sections 33-1080 through 33-1139 of the Nonstock Corporation Act, except where superseded by CIOA.

Section 1.19 – High-Risk Components or Conditions. Those objects, fixtures, components, or conditions within the Units which are determined to pose a particular risk of damage to or which could have an adverse effect on other Units and Common Elements pursuant to Section 6.6 of this Declaration.

Section 1.20 – Improvements. Any structures, facilities, amenities, landscaping, or infrastructure existing from time to time on the land included in the Common Interest Community, including, but not limited to, buildings, paving, utility wires, pipes, light poles and trees, shrubbery, and lawns planted by the Declarant or the Association.

Section 1.21 – Limited Common Elements. A portion of the Common Elements allocated by this Declaration or by the operation of Subsections 47-221(2) or (4) of CIOA for the exclusive use of one or more but fewer than all of the Units. The Limited Common Elements in the Common Interest Community are described in Article V of this Declaration.

Section 1.22 – 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 which has not suffered Damage or Destruction.

Section 1.23 – Manager. A Person engaged by the Association to perform management services for the Common Interest Community and the Association.

Section 1.24 – Material Adverse Action. Any amendment to this 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:

- (a) Abandonment, partition, subdivision, encumbrance, sale, or transfer of any Common Elements, other than the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements;
- (b) Any change in the procedures that protect the interest of a holder of a first Security Interest 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;
- (c) Any change in the Unit Owner's interest in or obligations to the Common Interest Community in order to levy assessments or charges, to allocate distribution of homeowner's insurance proceeds or condemnation awards, or to determine Unit Owner's interest in the Common Elements;
- (d) Changes in the priority of liens for assessments made against the Units;
- (e) Reductions in reserves for Maintenance, Repair, and Replacement of Common Elements (other than use of reserves for the purpose for which the reserve are established);
- (f) Responsibility for Maintenance, Repair, and Replacement of the Common Elements;
- (g) Reallocations of interests in the Common Elements or rights to their use, except reallocation made under Article XI of this Declaration;
- (h) Redefinition of any Unit boundaries (except that when only boundaries between adjoining Units are involved, then only the approval of the Unit Owners of such Units and the holders of all Security Interests in such Units is required);
- (i) Conversion of Units into Common Elements or of Common Elements into Units;
- (j) 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;
- (k) Imposition of any restrictions on the leasing or rental of Units;
- (l) Imposition of any restrictions on a Unit Owner's right to sell or transfer a Unit; and

- (m) Any action to terminate the Common Interest Community or use of insurance proceeds for any purpose other than to rebuild.

Notwithstanding the foregoing, no amendment or action that is taken pursuant to the exercise of Development Rights shall constitute a Material Adverse Action.

Section 1.25 – Nonstock Corporation Act. The Connecticut Revised Nonstock Corporation Act, Chapter 602, Sections 33-1000 through 33-1330 of the Connecticut General Statutes, as amended.

Section 1.26 – 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 22.1 of this Declaration.

Section 1.27 – 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, or to request a hearing to enforce a right granted or obligation imposed by CIOA or by the Community Documents. The procedures for Notice and Hearing are set forth in Sections 22.2 and 22.3 of this Declaration.

Section 1.28 – Person. An individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, public corporation, government, governmental subdivision or agency, instrumentality or any other legal or commercial entity.

Section 1.29 – Plans. The plans of the Common Interest Community filed or recorded with the original declaration of the Common Interest Community and the amendments, if any, made prior to this Declaration, as they may be further amended from time to time in the future.

Section 1.30 – Property. The land, all Improvements, easements, rights, appurtenances, and any other interests in real property that have been submitted to the provisions of CIOA by the original declaration of the Common Interest Community and the amendments, if any, made prior to this Declaration, as they may be further amended from time to time in the future.

Section 1.31 – Record. Used as a noun, it means information that is inscribed on a tangible medium or that is stored in an electronic or other medium in perceivable form. It includes information written or printed on paper as well as information stored on a computer hard drive, zip drive, or compact disk.

Section 1.32 – Rules. The Rules of the Association, as they may be amended from time to time. A Rule is a policy, guideline, restriction, procedure, or regulation, however denominated, which is not set forth in the Declaration or Bylaws, which is

adopted by the Association pursuant to Sections 19.2 and 19.3 of this Declaration, and which governs the conduct of Persons or the use or appearance of property. The current Rules have been recorded contemporaneously with this amended and restated Declaration.

Section 1.33 – Security Interest. An interest in real property or personal property, created by conveyance or contract, 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 leases 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 1.34 – Special Assessment. Any Common Expense Assessment assessed against all of the Units that is not adopted in the same resolution as the budget adopted in accordance with Section 17.4 of this Declaration. Special Assessments include amendments to the current budget and assessments which, by their terms, become part of the budget once adopted.

Section 1.35 – Special Board Committees. One or more committees established by the Executive Board, whose members consist solely of Directors, which is empowered to exercise the power of the Executive Board to the extent specified by the Executive Board in the resolution establishing the committee.

Section 1.36 – Special Declarant Rights. Rights that may be reserved for the benefit of a declarant as defined in Subsection 47-202(33) of CIOA. No Special Declarant Rights exist as of the date of this amended and restated Declaration.

Section 1.37 – 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 1.38 – Survey. The survey or surveys of the Common Interest Community filed or recorded with the original declaration of the Common Interest Community and the amendments, if any, made prior to this Declaration, as they may be further amended from time to time in the future.

Section 1.39 – Unit. A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in Section 4.3 of this Declaration.

Section 1.40 – Unit Owner. Any Person who holds legal title to a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation.

Section 1.41 – Votes. The votes allocated to each Unit as shown on Exhibit A-2.

**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 Birchwood Commons. Birchwood Commons is a condominium.

Section 2.2 – Association. The name of the Association is Birchwood Commons Condominium Association, Inc. It is a nonstock corporation organized under the laws of the State of Connecticut.

**ARTICLE III
DESCRIPTION OF PROPERTY**

Section 3.1 – Description of Property. The Common Interest Community is situated in the Town of Montville, Connecticut and is located on the Property as defined in Section 1.30 of this Declaration.

**ARTICLE IV
MAXIMUM NUMBER OF UNITS, IDENTIFICATION,
AND BOUNDARIES**

Section 4.1 – Number of Units. The Common Interest Community contains 36 Units. No more Units may be created.

Section 4.2 – Identification of Units. All Units are identified by number and are shown on the Survey or Plans or both.

Section 4.3 – Unit Boundaries. Boundaries of each Unit created by this Declaration are shown on the Survey and Plans as numbered Units with their identifying number and are described as follows.

- (a) **General.** Walls, floors, windows, exterior doors, and ceilings are designated as boundaries of a Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, windows, exterior doors, and ceilings are a part of the Common Elements. Boundaries are more particularly described as follows.
- (b) **Upper Boundary.** The horizontal or sloping plane or planes of the undecorated or unfinished lower surfaces of the ceiling bearing structure

surfaces, beams, and rafters, each extended to an intersection with the vertical perimeter boundaries.

- (c) Lower Boundary. The horizontal plane or planes of the upper surfaces of the concrete basement floor or crawl space floor extended to an intersection with the vertical perimeter boundaries.
- (d) Vertical Perimeter Boundaries. The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of poured concrete walls; the unfinished inner surfaces of the interior trim and thresholds along perimeter walls and floors; and the innermost unfinished planes of wall surfaces of all interior bearing studs and framing of bearing walls, bearing columns, bearing partitions, and partition walls between separate Units.
- (e) Inclusions. Each Unit shall include the spaces and Improvements lying within the boundaries described in Subsections 4.3(a), (b), (c), and (d) above, and each Unit shall also contain any pipes, wires, ducts, and conduits situated in the perimeter walls of the Unit serving only that Unit.
- (f) Exclusions. Except when specifically included by other provisions of Section 4.3, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Subsections 4.3(a), (b), (c), and (d) above and all chutes, pipes, flues, ducts, wires, conduits, skylights, windows, doors, and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units or Common Elements or both.
- (g) Easements for Structures Serving Other Units or Common Elements and Access. Each Unit is subject to an easement in favor of the Association and the Unit Owners of other Units for any Common Elements, including, but not limited to, Limited Common Elements and portions of other Units located within the boundaries of such Unit.
- (h) Monuments as Boundaries. Physical Improvements described as defining the boundaries will be boundary monuments as described in Section 47-233 of CIOA, regardless of the location of the boundary as shown on the Survey or Plans.
- (i) Guide to Interpretation. In applying or interpreting the Unit boundary definitions set out in this Section 4.3, the following principles shall be used *where the boundary definitions do not otherwise provide a clear answer*:

- (i) Elements and materials that are visible from the outside of a Unit are part of the Common Elements.
- (ii) Elements and materials that support the 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.
- (j) Inconsistency with Plans. If the Survey and Plans are inconsistent with this definition, then this definition will control.

ARTICLE V LIMITED COMMON ELEMENTS

Section 5.1 – Limited Common Elements. The following portions of the Common Elements are designated as Limited Common Elements and are allocated as stated. If any portion of the Property described in this Section 5.1 is part of a Unit then it is not a Limited Common Element, even though it is listed in this Section 5.1.

- (a) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
- (b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.
- (c) Any space heating, water heating, and air conditioning apparatus and all electrical switches, television, telephone, and electrical receptacles and light switches serving one Unit exclusively, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

- (d) One parking space assigned to each individual Unit as designated on the Survey, and as set forth in Exhibit A-2 to this Declaration, is a Limited Common Element allocated exclusively to that Unit.
- (e) The storage room adjoining a Unit as shown on the Plans is a Limited Common Element allocated exclusively to the Unit it adjoins.

As to each of the foregoing, a right of use is reserved as an appurtenance to the particular Unit or Units as described above. The fee ownership of the Limited Common Elements, however, is vested in all of the Unit Owners.

ARTICLE VI MAINTENANCE, REPAIR, AND REPLACEMENT

Section 6.1 – Common Elements. The Association shall Maintain, Repair, and Replace all of the Common Elements, except the portions of the Limited Common Elements or other Common Elements that are required by this Declaration to be Maintained, Repaired, or Replaced by the Unit Owners.

Section 6.2 – Units. Each Unit Owner shall Maintain, Repair, and Replace, at the expense of the Unit Owner, all portions of the Unit, except the portions thereof to be Maintained, Repaired, or Replaced by the Association. By Rule, the Association may adopt additional standards concerning Maintenance, Repair, and Replacement of Units for the purpose of avoiding adverse effects on the condition, use, or enjoyment of other Units or the Common Elements.

Section 6.3 – Portions of the Limited Common Elements and Other Common Elements Maintained by the Unit Owners. Notwithstanding the provisions of Section 6.1 and Section 6.2 of this Declaration, each Unit Owner shall Maintain, Repair, and Replace, at the expense of the Unit Owner, the following, even if they are Limited Common Elements or other Common Elements, and not part of the Unit:

- (a) Any pipes, wires, ducts, and conduits serving only a single Unit that are Limited Common Elements under Subsection 5.1(a) of this Declaration;
- (b) The Limited Common Elements described in Subsection 5.1(c) of this Declaration; and
- (c) All portions of any fireplace serving the Unit, including without limitation the chimney, flue, damper, and firebox.

Section 6.4 – Access.

(a) Access by Association.

- (i) Any individual 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:
 - (A) Performing inspections;
 - (B) Adjusting insurance claims;
 - (C) Maintaining, Repairing, and Replacing the Common Elements and portions of the Units for which the Association is responsible;
 - (D) Restoring portions of the Units and the Common Elements that have been Damaged or Destroyed;
 - (E) Making additions, alterations, and betterments to the Common Elements;
 - (F) Exterminating insects and vermin; and
 - (G) Correcting any condition threatening a Unit or the Common Elements.
- (ii) 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.
- (iii) If a Unit is damaged as a result of access obtained under this Subsection 6.4(a), the Association will be responsible for the prompt repair of the Unit, subject to the provisions of Subsection 17.2(c) of this Declaration. If the damage occurred because the Unit Owner did not provide the Association with a pass key to the Unit for use in emergencies, the Unit Owner shall be responsible for the repair of the Unit. The Association may adopt provisions concerning emergency access by use of pass keys by Rule.

(b) Access by Unit Owners.

- (i) A Unit Owner or a qualified contractor or professional engaged by the Unit Owner shall have the right of access to all portions of the Property for the purpose of carrying out the Unit Owner's powers and duties to Maintain, Repair, or Replace the Unit and the portions of the Common Elements for which the Unit Owner is responsible, including, but not limited to:
 - (A) Performing inspections;
 - (B) Maintaining, Repairing, and Replacing the Unit and portions of the Common Elements for which the Unit Owner is responsible; and
 - (C) Making additions, alterations, and betterments as permitted pursuant to this Declaration to the Unit and the Common Elements.
- (ii) Requests for entry to a Unit, Limited Common Element, or other Common Element shall be made in advance, and any such entry shall be made at a time reasonably convenient to any affected Unit Owner or the Association, as the case may be, consistent with the availability of contractors and others employed or engaged by the Unit Owner making the request. In case of an emergency, immediate access to other Units may be arranged through the Association, whether or not the Unit Owner of the other Unit is present at the time.
- (iii) If a Unit or the Common Elements are damaged as a result of access obtained under this Subsection 6.4(b), the Unit Owner obtaining access will be responsible for the prompt repair of the Unit or Common Elements, as the case may be.

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 or to the Common Elements, the Unit Owner shall reimburse the Unit Owner of the damaged Unit, or the Association, as the case may be, for the cost of restoring the damage in excess of any insurance proceeds received by the Association under its insurance policy,

whether such excess results from the application of a deductible or otherwise.

- (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 the Association's property insurance as described in Section 20.2 of this Declaration, the Association shall restore it in accordance with Article XXI of this Declaration, except that the provisions of Subsection 21.2(b) of this Declaration shall not apply; or
 - (ii) If the damage is not covered by the Association's insurance policy, 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, it may assess the cost of such action against the Unit Owner in accordance with the provisions of Subsection 17.2(c) of this Declaration.

Section 6.6 – Inspection, Repair, and Replacement of High-Risk Components or Conditions.

- (a) Notwithstanding the other provisions of this Article VI, the Executive Board may, from time to time, after Notice and Comment, determine that certain portions of the Units required to be Maintained, Repaired, or Replaced by the Unit Owners under this Declaration or Subsection 47-249(a) of CIOA, or certain objects, fixtures, components, or conditions within the Units, pose a particular risk of damage to, or could have an adverse effect on, other Units or the Common Elements if they are not properly inspected, operated, treated, Maintained, Repaired, or Replaced. By way of example, but not of limitation, these portions, objects, fixtures, components, or conditions might include smoke detectors, washer hoses, chimneys, insect infestations, and water heaters. Those items determined by the Executive Board to pose such a particular risk are referred to as "High-Risk Components or Conditions."

- (b) At the same time that it designates a High-Risk Component or Condition or at a later time, the Executive Board, after Notice and Comment, may require one or more of the following with regard to the High-Risk Component or Condition:
- (i) That it be inspected at specified intervals by the Association, an inspector or inspectors designated by the Association, or an inspector or inspectors having particular licenses, training, or professional certification;
 - (ii) That it be operated in a specified manner, or that it be operated or not operated at specified times or under specified conditions;
 - (iii) That it be Maintained, Repaired, Replaced, or treated at specified intervals as established by the Executive Board, or with reference to manufacturers' warranties, whether or not the individual component is deteriorated or defective;
 - (iv) That it be Maintained, Repaired, Replaced, or treated with items or components meeting particular standards or specifications established by the Executive Board, whether or not the individual component is deteriorated or defective;
 - (v) That when it is Maintained, Repaired, or Replaced, the installation include additional components or installations specified by the Executive Board;
 - (vi) That it be Maintained, Repaired, Replaced, or treated by contractors having particular licenses, training, or professional certification or by contractors approved by the Association; or
 - (vii) If the Maintenance, Repair, Replacement, or treatment is completed by a Unit Owner, that it be inspected by an individual designated by the Association, or an inspector or inspectors having particular licenses, training, or professional certification.
- (c) The imposition of requirements by the Executive Board under Subsection 6.6(b) of this Declaration shall not relieve a Unit Owner of any obligation under Section 6.2 of this Declaration, including, but not limited to, the obligation to perform and pay for Maintenance, Repair, and Replacement.
- (d) If any Unit Owner fails to Maintain, Repair, or Replace a High-Risk Component or Condition, or have the High-Risk Component or Condition treated or inspected, in accordance with the requirements established by the Executive Board pursuant to this Section 6.6, the Association may, in

addition to any other rights and powers granted to it under the Community Documents and CIOA:

- (i) Enter the Unit in accordance with Section 6.4 of this Declaration, and treat, inspect, Maintain, Repair, or Replace the High-Risk Component or Condition, and charge the cost to the Unit Owner as a Common Expense attributable to the Unit under Subsection 17.2(c) of this Declaration;
- (ii) Fine the Unit Owner or the occupant of the Unit or both under Subsection 23.1(n) of this Declaration; and
- (iii) Bring an action against the Unit Owner for specific performance of the Unit Owner's duties under this Section 6.6.

Section 6.7 – Conduct of Maintenance, Repair, and Replacement by the Association. The Association, acting at the direction of the Executive Board, and not any Unit Owners or occupants, 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.

All Unit Owners and occupants, regardless of whether their Unit or Limited Common Element is affected by such work, shall not interfere with or attempt to direct the work of contractors or vendors hired by the Association to perform work in the Property.

Section 6.8 – Work Done by or at the Direction of Unit Owners or Tenants of Units. Any work done to any portion of the Property by any Unit Owner or tenant of a Unit or by any Person hired by or working at the direction of any Unit Owner or tenant of a Unit, whether compensated or not, shall be subject to the requirements set out below. These requirements shall be in addition to any requirements created by or pursuant to other portions of the Community Documents or by applicable law:

- (a) Any Person performing work for which a license or registration is required, must hold the appropriate license or registration.
- (b) If a permit is required from any department or governmental authority for the work, the permit must be obtained at the expense of the Unit Owner or tenant of the Unit before the work is commenced.
 - (i) Any applications for such permit shall be executed by the Association only. Such execution shall not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor, or material supplier on account of any

addition, alteration, or betterment or to any individual having any claim for bodily injury or damage to property arising there from.

- (ii) Copies of all permits, as well as inspection reports, orders, and certificates of occupancy or completion issued in relation to the permit shall be furnished to the Association.
- (c) Any Person performing work, who is required to carry workers' compensation insurance by the State of Connecticut, shall maintain such insurance.
- (d) Any Person performing work, except for Unit Owners and tenants of Units and members of their respective households, shall maintain liability insurance in an amount of not less than \$1,000,000.00 for bodily injury or for property damage for any single occurrence.
- (e) The Executive Board may adopt other reasonable requirements for the performance of such work by Rule.

ARTICLE VII DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 7.1 – No Development Rights or Special Declarant Rights. All of the Development Rights and Special Declarant Rights relating to the Common Interest Community have expired.

ARTICLE VIII ALLOCATED INTERESTS

Section 8.1 – Allocation of Interests. The table showing Unit numbers of each Unit and their Allocated Interests is attached as Exhibit A-2. These interests have been allocated in accordance with the formulas set out in this Article VIII. In the event of discrepancy between the Allocated Interests of a Unit shown on Exhibit A-2 and the results derived from the formulas set out in this Article VIII, the Allocated Interests shown on Exhibit A-2 shall prevail.

Section 8.2 – Formulas for the Allocation of Interests. The Allocated Interests for each Unit have been calculated by applying 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 compared to the floor area of all of the Units in the Common Interest Community. For the purpose of this calculation, the floor areas of basements and crawl spaces are not to be counted.

- (b) Liability for Common Expenses. The percentage of liability for Common Expenses allocated to each Unit is equal to the percentage of the undivided interest in the Common Elements allocated to each Unit within the Common Interest Community. Nothing in this Subsection 8.2(b) shall prohibit certain Common Expenses from being apportioned to particular Units under Article XVII of this Declaration.
- (c) Votes. Each Unit in the Common Interest Community has one equal Vote.

ARTICLE IX RESTRICTIONS ON USE, OCCUPANCY, AND ALIENATION

Section 9.1 – Use and Occupancy Restrictions for the Units. The following restrictions apply to the use and occupancy of the Units. They may also apply to the Common Elements, including, but not limited to, the Limited Common Elements, to the extent the restrictions so require.

- (a) Residential Use. Each Unit is restricted to residential use as a single-family residence including home occupations not involving employees, regular visits from the public or unreasonable levels of mail, shipping, trash, or storage. No sign indicating commercial or professional uses may be displayed outside a Unit. A single-family residence is defined as a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area.
- (b) Compliance with Laws. Unit Owners and occupants of Units shall comply with all laws, ordinances, and regulations, including, but not limited to, zoning and land use regulations, of all governmental bodies having jurisdiction over the Common Interest Community and the Units, and Unit Owners and occupants of Units shall hold the Association and other Unit Owners harmless from all fines, penalties, costs, and prosecutions arising out of any noncompliance or other violation.
- (c) Structural Integrity. Except pursuant to Article XII of this Declaration, nothing may be done to any Unit that will impair the Structural integrity of or change the Structure of any Improvement. No Unit Owner may do any work that may jeopardize the soundness or safety of the Property, reduce the value of any portion thereof, or impair any easements or any interest constituting a Common Element.
- (d) Rules Affecting the Use and Occupancy of Units. Except as required or permitted by other provisions of this Declaration, the Association may adopt Rules that affect the use or occupancy of Units only to:

- (i) Implement a provision of this Declaration;
 - (ii) Regulate any behavior in or occupancy of a Unit which violates this Declaration or adversely affects the use and enjoyment of other Units or the Common Elements by other Unit Owners; or
 - (iii) Restrict the leasing of a Unit to the extent that the Rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans on units in common interest communities or regularly purchase such mortgages.
- (e) Offensive Activities. No noxious or unreasonably offensive activities may be carried on in any Unit, nor may anything be done therein either willfully or negligently that may be or become an unreasonable annoyance, that interferes with the proper use of the Property by Unit Owners or other occupants of Units, or that adversely affects other Units or the Common Elements.

Section 9.2 – Use and Occupancy Restrictions for the Common Elements.

The following restrictions apply to the use and occupancy of the Common Elements, including, but not limited to, the Limited Common Elements. They do not apply to the use and occupancy of the Units.

- (a) Devices in Windows. Unit Owners may not install window air conditioners or other ventilating or protruding devices in the front or any gable end of any building within the Common Interest Community.
- (b) Outdoor Displays. Nothing may be hung or displayed on the windows or placed on the outside walls of any of the buildings or within Common Elements in the buildings, unless it is permitted by this Declaration, by Rule, or by prior written approval from the Association.
- (c) Awnings, Canopies, Etc. No awnings, canopies, shutters, or other items may be affixed to or placed upon the exterior walls or roofs of any building without the prior written consent of the Executive Board.
- (d) Signs, Flags, and Decorations. Subject to the provisions of Subsections 9.2(e) and (f) of this Declaration, no signs, including, but not limited to, “For Sale” signs and signs indicating commercial uses, may be placed in the window of any Unit, or on the exterior walls or roofs of any building, or anywhere else in the Common Elements, unless permitted by Rule or by the prior written consent of the Executive Board. Flags and holiday decorations may be affixed to or placed upon the exterior walls or roofs of any building only under standards, if any, established by Rule of the Association.

- (e) U.S. Flags, State Flags, and Political Displays. The Association may not prohibit display on a Unit or on a Limited Common Element adjoining a Unit, of the United States flag, the flag of the State of Connecticut, or signs regarding candidates for public or Association office or ballot questions but the Association may adopt reasonable Rules governing the time, place, size, number, and manner of those displays consistent with applicable state and federal law.
- (f) Religious Displays. A Unit Owner or other resident of a Unit may attach to an entry door or entry door frame of such Unit an object, the display of which is motivated by observance of a religious practice or sincerely held religious belief, provided that, except to the extent allowed by the First Amendment to the United States Constitution and Section 3 of Article First of the Constitution of the State of Connecticut, such item may not:
- (i) Threaten the public health or safety;
 - (ii) Hinder the opening and closing of an entry door;
 - (iii) Violate any federal, state, or local law;
 - (iv) Contain graphics, language, or any display that is obscene or otherwise patently offensive;
 - (v) Individually or in combination with each other item displayed or affixed to an entry door frame have a total size greater than 25 square inches; or
 - (vi) Individually or in combination with each other item displayed or affixed on an entry door have a total size greater than four square feet.
- (g) Bylaws and Rules. The use and occupancy of the Common Elements is subject to the Bylaws and the Rules of the Association.
- (h) Color of Exterior Fixtures. No change shall be made in the color of any exterior window, door, window covering, glass, or screen, except with the prior written consent of the Executive Board under Section 12.3. All coverings of exterior doors and windows shall be uniform in color as prescribed by the Executive Board by Rule.
- (i) No Items on Buildings. Nothing may be affixed, attached to, hung, displayed, or placed on exterior walls, awnings, storm shutters, doors, or windows, except with the prior written consent of the Executive Board under Section 12.3.

- (j) Landscaping. The planting and maintenance of any type of plant, shrubbery, flower, vine, or grass in the Common Elements requires the prior written consent of the Executive Board under Section 12.3. Any approved planting and maintenance are subject to the Rules.
- (k) Clotheslines. No clotheslines or other devices for the drying or airing of laundry are allowed in the Common Elements. Clothes may be hung in the Common Elements only in locations designated by the Executive Board by Rule.

Section 9.3 – Limitations on Activities within Units or the Common Elements.

- (a) Use Affecting Insurance. Nothing may be done or kept in any Unit or the Common Elements which will increase the rate of insurance on any portion of the Property, or the contents of other Units, beyond the rates generally applicable to similar residential common interest communities, without prior written consent of the Executive Board. No Unit Owner may permit anything to be done or kept in the Unit or the Common Elements which will result in the cancellation of insurance on any portion of the Property or the contents of other Units.
- (b) Trash. Trash may not be stored, either inside or outside of any building, in such a manner as to promote the spread of fire, vermin or offensive odors. No accumulation of trash, garbage, recyclable materials, rubbish, debris, or unsightly material shall be permitted inside or outside of any building, except in designated and approved trash storage containers. By Rule, the Association may provide additional restrictions, procedures, and requirements concerning the deposit, storage, and removal of trash, for the location of trash containers, and for administration of this provision.
- (c) 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.
- (d) Insects and Vermin. Each Unit Owner or occupant of a Unit shall keep the Unit free of insects and vermin, including, but not limited to, bedbugs. If insects or vermin are found in a Unit, the Unit Owner or occupant shall take whatever action is reasonably necessary to eliminate them and to prevent their return.
- (e) Antennas and Satellite Dishes. The Association may adopt Rules regulating and restricting the installation of antennas or satellite dishes in the Common Interest Community. However, any such Rule, as it applies

to the Units and Limited Common Elements may not exceed the limitations set by the Federal Telecommunications Act.

Section 9.4 – Time-Sharing Prohibited. A Unit may not be conveyed pursuant to a time-sharing plan as defined under Chapter 734b of the Connecticut General Statutes.

Section 9.5 – Limitations on Leasing.

- (a) A Unit Owner may not lease less than an entire Unit.
- (b) No Unit may be leased for less than a term of six months.
- (c) The Executive Board, after Notice and Comment, may adopt one or more Rules restricting the leasing of Units to the extent permitted by Subsection 9.1(d)(iii) of this Declaration, including procedures for administering the limitation, including, but not limited to, the procedures for determining which Units are rented, the establishment of waiting lists and the standards for determining priorities.
- (d) The Association may not require that a lease be approved by the Association or its agents, including, but not limited to, approval of the prospective tenant.
- (e) The lease must be in writing, and it must be subject to the requirements of the Community Documents.

Section 9.6 – Written Agreements Between Unit Owners and Tenants of Units. The Executive Board, after Notice and Comment, may adopt a Rule establishing a form of addendum to be executed by any Unit Owner who leases a Unit or otherwise grants exclusive possession of the Unit to another Person and by the tenant or other occupant of the Unit. The form of addendum may contain provisions which, in the opinion of the Executive Board, will help to ensure that the tenant or other occupant, as well as the Unit Owner, abides by the Community Documents. These provisions may include without limitation:

- (a) A requirement that the Association be notified of the names, work addresses, telephone numbers, and motor vehicle information for all tenants and occupants;
- (b) A requirement that the Unit Owner furnish the tenants or other occupants with a copy of the Community Documents and an acknowledgment by the tenants and other occupants that they have received the copy;

- (c) An acknowledgment by the tenants and other occupants that they are aware that the Unit is located in the Common Interest Community and that they agree to be bound by the terms of the Community Documents as if these terms were contained in the lease of the Unit;
- (d) An agreement by the tenants and other occupants that the Association has all of the same enforcement powers against the tenants and other occupants as it has against the Unit Owner, including the power to fine after Notice and Hearing;
- (e) An agreement by the tenants and other occupants and the Unit Owner landlord that if the tenants or other occupants violate any of the provisions of the Community Documents, or CIOA, the Association has those powers conferred on it by Subsection 47-244(d) of CIOA;
- (f) An agreement by the tenants and other occupants and the Unit Owner that they will be jointly and severally liable to the Association for any assessment against the Unit, including, but not limited to, fines, attorney's fees and costs, charges resulting from misconduct, and any other sums that may be due to the Association, as a result of the occupancy of the Unit by the tenants or other occupants or by their conduct or the conduct of the members of their household or their guests in the Common Interest Community;
- (g) An agreement that copies of any notice relating to the occupancy of the Unit or the Common Interest Community by the tenants and other occupants which the Association is required to give or may choose to give may, at the Association's option, be given to both the Unit Owner and the tenants and other occupants; and
- (h) An agreement by the Unit Owner landlord and the tenants and other occupants that the Association shall not be liable to any of them for any action it takes in good faith to enforce the terms of the Community Documents or CIOA against the tenants and other occupants including, but not limited to, those powers conferred on it by Subsection 47-244(d) of CIOA.

No later than the time the tenants or other occupants first occupy the Unit, the Unit Owner shall furnish the Association with a copy of the addendum, executed by the parties, together with any other documents and information which the addendum requires to be furnished to the Association.

**ARTICLE X
EASEMENTS AND LICENSES**

Section 10.1 – Easements and Licenses Generally. All easements or licenses appurtenant to the Common Interest Community or to which the Common Interest Community is subject are recited in the original declaration of the Common Interest Community and the amendments thereto, if any, made prior to this Declaration, as they may be further amended from time to time in the future.

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

Section 11.1 – Subsequent Allocation of Limited Common Elements. The Association may allocate certain Common Elements and Limited Common Elements in accordance with Section 11.2 of this Declaration.

Section 11.2 – Common Elements that May Be Allocated as Limited Common Elements by the Association. The Association may allocate parking spaces that were not already allocated as Limited Common Elements to Units. Allocation of parking spaces by the Association requires an amendment to the Declaration specifying the Unit or Units to which the parking spaces are allocated as Limited Common Elements.

Section 11.3 – Reallocation of Existing Limited Common Elements.

- (a) Except as otherwise provided in this Section 11.3, no Limited Common Element may be reallocated between Units by an amendment to this Declaration.
- (b) Parking spaces may be reallocated between Units by an amendment to this Declaration.
- (c) Limited Common Elements may also be reallocated between Units as part of the reallocation of the boundaries of adjoining Units pursuant to Article XIII of this Declaration.
- (d) The reallocation of Limited Common Elements between Units, as permitted by this Section 11.3 shall be effected by an amendment to this Declaration executed by the Unit Owners between whose Units the reallocation is made. Such amendment shall require the written approval of all holders of Security Interests in the affected Units, which approval shall be attached to the amendment. The individuals executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and CIOA, shall endorse its approval on the amendment and record it.

The amendment shall contain words of conveyance between the Unit Owners and shall be recorded and indexed in the names of the parties and of 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 attorney's fees in connection with the review of the amendment, and for recording costs.

ARTICLE XII ADDITIONS, ALTERATIONS, AND BETTERMENTS

Section 12.1 – Additions, Alterations, and Betterments to Units by Unit Owners. A Unit Owner:

- (a) May make any alterations or betterments to the interior of the Unit that do not impair the Structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community or create a bathroom, kitchen, or sleeping area in the basement of a Unit.
- (b) After acquiring an adjoining Unit or an adjoining part of 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 Interest Community. The plans for such changes shall be first submitted to the Executive Board for approval as to Structural integrity, safety, and compliance with building and other codes. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries.

Section 12.2 – Additions, Alterations, and Betterments to or Affecting Common Elements by Unit Owners.

- (a) Unless permitted by the Executive Board as provided in Section 12.3 of this Declaration, a Unit Owner or occupant of a Unit:
 - (i) May not make any addition, alteration, or betterment to the interior of the Unit that may impair the Structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community or create a bathroom, kitchen, or sleeping area in the basement of the Unit; and
 - (ii) May not make any addition, alteration, or betterment 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.

- (b) A Unit Owner or occupant of a Unit may make Structural or nonstructural changes to the Unit or to the Common Elements in order to accommodate the needs of handicapped individuals as required by fair housing laws. The plans for such changes shall first be submitted to the Executive Board for approval in accordance with the procedures set out in Section 12.3 of this Declaration as to Structural integrity, safety, compliance with building and other codes, and consistency with the aesthetic integrity of the Common Interest Community. All exposed elements of such changes will be surfaced, painted, and trimmed in a manner consistent with surface materials, paint colors, and trim styles of the other Improvements.

Section 12.3 – Approval by Executive Board of Certain Additions, Alterations, and Betterments by Unit Owners.

- (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, the Unit Owners of all Units located within 100 feet of the proposed addition, alteration, or betterment, and any other Unit Owner who, in the sole opinion of the Executive Board, may be especially impacted by the proposed addition, alteration, or betterment, within 60 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) In acting on any request made under Subsection 12.3(a) of this Declaration, the Executive Board shall observe the requirements and limitations of all applicable laws, ordinances, and regulations, including, but not limited to fair housing laws.
- (c) The Executive Board may establish time limits and impose conditions on its approval of an application under Subsection 12.3(a) of this Declaration. These may include, but are not limited to, the following:
- (i) That the addition, alteration, or betterment be made by contractors holding particular licenses or certifications, having particular qualifications, or having specified levels of insurance coverage;
 - (ii) That, subject to the requirements of Subsection 12.4(a) of this Declaration, the Unit Owner obtain and pay for all necessary permits and other governmental approvals for the addition, alteration, or betterment;

- (iii) That the work be done in a specified manner or only during specified times;
 - (iv) That the addition, alteration, or betterment be completed by a certain deadline;
 - (v) That the Unit Owner Maintain, Repair, and Replace the addition, alteration, or betterment or reimburse the Association for the costs of Maintenance, Repair, and Replacement; and
 - (vi) That the approval and the conditions imposed on the approval be incorporated in a written agreement, signed on behalf of the Association and by the Unit Owner and recorded on the land records of each town in which any portion of the Common Interest Community is located.
- (d) The Association may require the Unit Owner to pay an application fee, at the time the application is made, at such later time as the Executive Board determines, or both, to reimburse the Association for its costs in considering and acting on the application including, but not limited to, recording charges and the reasonable fees of attorneys and design professionals.
- (e) In the absence of a recorded agreement to the contrary, any addition, alteration, or betterment installed by a Unit Owner will be Maintained, Repaired, and Replaced by the Unit Owner at the expense of the Unit Owner. If the Unit Owner fails to Maintain, Repair, or Replace the addition, alteration, or betterment, the Association may, in addition to any other remedies available under the Community Documents or CIOA, and after Notice and Hearing:
- (i) Perform the needed Maintenance, Repair, or Replacement and assess the cost of the work against the Unit; or
 - (ii) Remove the addition, alteration, or betterment, restore the affected portions of the Property to their original condition and assess the cost of the removal and restoration against the Unit.
- (f) The Executive Board may grant approval for a type or class of modifications or installations by adopting a Rule, after Notice and Comment.
- (g) The Executive Board may establish forms and procedures for the making and processing of applications under this Section 12.3 including, but not limited to, requirements that plans and specifications for proposed

additions, alterations, or betterments, or certain classes of proposed additions, alterations, or betterments, be prepared by individuals having particular licenses, training, or professional certification.

- (h) Nothing in this Section 12.3 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.

Section 12.4 – General Provisions Relating to Additions, Alterations, and Betterments by Unit Owners.

- (a) Any applications to any department or to any governmental authority for a permit to make any addition, alteration, or betterment to any Unit or to the Common Elements by a Unit Owner shall be executed by the Association only. Such execution shall not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or material supplier on account of such addition, alteration, or betterment or to any individual having any claim for bodily injury or damage to property arising therefrom.
- (b) No additions, alterations, or betterments to the Units and Common Elements that will materially increase the premiums of any insurance policies carried by the Association or by the Unit Owners of any other Units shall be made by any Unit Owner unless approved in writing by the Executive Board.

Section 12.5 – Additions, Alterations, and Betterments by Executive Board.

Subject to the limitations of Sections 17.4 and 17.5 of this Declaration, the Executive Board may make any additions, alterations, or betterments to the Common Elements, which, in its judgment, it deems necessary, appropriate, or useful.

**ARTICLE XIII
RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS**

Section 13.1 – Application and Amendment.

- (a) Subject to the approval, if any, required pursuant to Article XII of this Declaration, and any governmental approvals that may be required, the boundaries between adjoining Units may be relocated by an amendment to this Declaration on application to the Association by the Unit Owners of the Units affected by the relocation. If the Unit Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocation. Unless the Executive Board determines, within 30 days after receipt of the

application, that the reallocations are unreasonable or that the Unit Owners have failed to obtain the required governmental approvals, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocation, and indicates the Association's consent. The amendment shall be executed by those Unit Owners and contain words of conveyance between them, and the approval of the Association shall be endorsed thereon. Such amendment shall also require the written approval of all holders of Security Interests in the affected Units, which approval shall be attached to the amendment. On recording, the amendment shall be indexed in the names of the Unit Owners as grantor and grantee, and in the name of the Association and the Common Interest Community as grantee.

- (b) The applicants shall reimburse the Association for its reasonable costs incurred in the review of the application and the preparation of the amendment, including, but not limited to, any required amendments to the Surveys or Plans, the fees of architects, attorneys, and other professionals engaged by the Association, and recording costs.

Section 13.2 – Surveys and Plans. The Association shall prepare and record any amendments to the Surveys or Plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

ARTICLE XIV AMENDMENTS TO DECLARATION

Section 14.1 – Amendment – Generally.

- (a) Except as otherwise provided in CIOA or in this Declaration, this Declaration, including the Survey and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least 67% of the Votes in the Association are allocated.
- (b) Certain provisions of this Declaration which are mandated or limited by CIOA or other applicable law may not be freely amended. Amendments to certain provisions may require corresponding amendments to other provisions of this Declaration or of other Community Documents. It is recommended that no amendment be made to this Declaration or to other Community Documents without the advice of knowledgeable counsel. It is intended that this recommendation not provide a basis for a new cause of action against the Executive Board, although it may be relevant to the standard of care for the Executive Board.

Section 14.2 – When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of this Declaration or of CIOA, no

amendment may create or increase Special Declarant Rights, increase the number of Units, or change the boundaries of any Unit or the Allocated Interests of any Unit in the absence of the unanimous consent of the Unit Owners.

Section 14.3 – Amendments Relating to Use and Occupancy.

- (a) By vote or agreement of Unit Owners of Units to which at least 80% of the Votes in the Association are allocated, amendments to this Declaration may be adopted which prohibit or materially restrict the permitted uses or occupancy of a Unit or the number or other qualifications of individuals who may occupy Units or which alter any such existing prohibitions or material restrictions.
- (b) Any amendment approved under this Section 14.3, must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

Section 14.4 – Amendments Creating or Extending Development Rights.

New Development Rights or other Special Declarant Rights may be created by amendment to this Declaration if Unit Owners entitled to cast at least 80% of the Votes in the Association, including 80% of the Votes allocated to Units not owned by the Declarant, agree to the action. The amendment must identify the Association or other Persons who hold any new rights that are created. Notice of the proposed amendment to this Declaration must be delivered in writing to all Persons holding Development Rights or Security Interests in those rights. Notwithstanding the provisions of Section 14.8 of this Declaration, an amendment adopted under this Section 14.4 is effective 30 days after the amendment is recorded and notice delivered unless any of the Persons entitled to notice under this Section 14.4 records an objection on the land records of each town in which any portion of the Common Interest Community is located within the 30 day period, in which case the amendment is void, or unless all of the Persons entitled to notice under this Section 14.4 consent in writing at the time the amendment is recorded in which case the amendment is effective when recorded.

Section 14.5 – Other Amendments.

- (a) 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.
- (b) 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 14.6 – 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 14.7 – Limitation on Challenges. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article XIV may be brought more than one year after the amendment is recorded.

Section 14.8 – Recording and Execution of Amendments.

- (a) Every amendment to this Declaration shall be recorded on the land records of each town in which any portion of the Common Interest Community is located and is effective only on 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 as grantees and in the name of the parties executing the amendment as grantors.
- (b) Amendments to this Declaration required by CIOA to be recorded by the Association, which have been adopted in accordance with this Declaration and CIOA, shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 14.9 – Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article XVI of this Declaration.

**ARTICLE XV
TERMINATION**

Section 15.1 – Termination. Termination of the Common Interest Community may be accomplished only in accordance with Section 47-237 of CIOA.

**ARTICLE XVI
MORTGAGEE PROTECTION**

Section 16.1 – Introduction. This Article XVI establishes certain standards and covenants for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article XVI is supplemental to, and not in substitution for, any other provisions of the Community Documents, but in the case of conflict, this Article XVI shall control.

Section 16.2 – 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 more than 50% of the Units that are subject to Security Interests held by Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing consents do not apply to the exercise of any Development Right.
- (b) 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 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.
- (c) Unless otherwise expressly provided, wherever in this Declaration the request, approval or consent of a specified percentage of holders of Security Interests on Units is required, it shall mean the request, approval, or consent of holders of first Security Interests in Units which, in the aggregate, have allocated to them such specified percentage of Votes in the Association when compared to the total allocated to all Units then subject to first Security Interests.

Section 16.3 – Notice of Certain Actions or Events. 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 condemnation loss or any casualty loss which affects a material portion of the Common Interest Community (for this purpose material includes a condemnation or property loss greater than ten percent of the annual Common Expense 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;
- (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 60 days;

- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of holders of first Security Interests on Units.

Section 16.4 – Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all Persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 16.5 – 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 holders of first Security Interests on Units may require professional management of the Common Interest Community.

Section 16.6 – Financial Statements.

- (a) 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.
- (b) If so requested by a majority of the holders of first Security Interests on Units, the Association shall have its financial records audited.

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

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

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

Section 17.1 – Apportionment of Common Expenses. Except as provided in Section 17.2 of this Declaration, all Common Expenses shall be assessed against all Units in accordance with their share of the Common Expenses as shown on Exhibit A-2 to this Declaration.

Section 17.2 – Common Expenses Attributable to Fewer than All Units.

- (a) 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.
- (b) Fees, charges, late charges, fines, and interest charged against a Unit Owner or the occupant of a Unit pursuant to the Community Documents and CIOA are enforceable as Common Expense Assessments against the Unit or Units owned by such Unit Owner.
- (c) If the Association, or anyone acting at the direction of the Association, incurs any expense for Maintenance, Repair, or Replacement of any portion of a Unit or any other portion of the Common Interest Community for which the Unit Owner is responsible, made or performed for the purpose of correcting a condition threatening another Unit or the Common Elements or for the treatment, inspection, Maintenance, Repair, or Replacement pursuant to Subsection 6.6(d)(i) of this Declaration including, but not limited to, gaining entry to the Unit in order to correct such condition pursuant to Section 6.4 of this Declaration, the Association may assess that expense against the Unit Owner and the Unit, following Notice and Hearing to the affected Unit Owner.
- (d) If any tax is imposed on the Association or upon any goods or services purchased by the Association by virtue of the use or occupancy of some, but less than all, of the Units, including, but not limited to, the use of any Unit for the production of income, such tax shall be paid as a Common Expense and may be assessed exclusively against the Unit or Units whose use or occupancy gives rise to the imposition of the tax, in which case such assessment shall be allocated among the Units against which it is assessed in the same proportion as each Unit's share of liability for Common Expenses bears to the liability for Common Expenses of all Units against which such assessment is assessed. The Association may require certificates of status from Unit Owners in order to enforce and determine applicability of such impositions.
- (e) Notwithstanding the provisions of Subsection 21.2(b) of this Declaration, if any Common Expense is caused by the willful misconduct, failure to comply with a written maintenance standard promulgated by the Association, or gross negligence of any Unit Owner or tenant or a guest or invitee of a Unit Owner or tenant, the Association may, after Notice and Hearing, assess the portion of that Common Expense in excess of any insurance proceeds received by the Association under its insurance policy, whether that portion results from the application of a deductible or otherwise, exclusively against that Unit Owner's Unit.

- (f) If the Association incurs any expense in connection with any action taken under Subsection 12.3(e) of this Declaration, the Association may assess that expense against the Unit Owner and the Unit, following Notice and Hearing to the affected Unit Owner.
- (g) Portions of the cost of restoring Units allocated to individual Units under the provisions of Subsection 21.2(b) of this Declaration shall be assessed against the Unit or Units to which they are allocated.
- (h) 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 Community Documents or CIOA, or does provide such services to all Units pursuant to a policy or resolution adopted by the Executive Board, the 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.
- (i) All reasonable attorney's fees and costs incurred by the Association in collecting past due Common Expense Assessments and other sums due from a Unit Owner, with or without the commencement of a foreclosure action or other legal proceedings, or incurred in representing the Association in any foreclosure action brought against a Unit Owner in which the Association is named as a defendant, shall be added to and included in the amount due to the Association from the Unit Owner as a Common Expense.
- (j) All reasonable attorney's fees and costs incurred by the Association in enforcing the provisions of this Declaration, the Bylaws, and 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 against the Unit and its Unit Owner as a Common Expense:
 - (i) By the Executive Board after Notice and Hearing; or
 - (ii) As awarded by a court or arbitration.
- (k) If the Association incurs any expense, including, but not limited to, all reasonable attorney's fees and costs, in connection with any action taken

under Subsection 19.6(c) of this Declaration, the Association may assess that expense against the Unit Owner and the Unit, following Notice and Hearing to the affected Unit Owner.

- (l) Any other Common Expenses attributed to a particular Unit or the Unit Owner of a Unit by this Declaration, if incurred by the Association shall be assessed against such Unit.

Section 17.3 – Liens and Lien Foreclosures.

- (a) The Association has a statutory lien on a Unit to the maximum extent, for the maximum amount, and with the maximum priority, permitted by CIOA and other applicable law from time to time.
- (b) This Section 17.3 does not affect the priority of liens for real property taxes and other governmental assessments or charges against a Unit.
- (c) This Section 17.3 does not prohibit actions against Unit Owners to recover sums for which the Association has a lien or prohibit the Association from taking a deed in lieu of foreclosure.
- (d) A judgment or decree in any action brought under this Section 17.3 shall include costs and reasonable attorney's fees for the prevailing party.
- (e) Subject to the provisions of Subsection 17.3(f) of this Declaration, the Association's lien may be foreclosed in like manner as a mortgage on real property.
- (f) The Association may not commence an action to foreclose a lien on a Unit under this Section 17.3 unless:
 - (i) The Unit Owner, at the time the action is commenced, owes a sum equal to at least two months of Common Expense Assessments based on the periodic budget last adopted by the Association pursuant to Section 17.4 of this Declaration;
 - (ii) The Association has made a demand for payment in a written or electronic communication as required by CIOA;
 - (iii) The Executive Board has either voted to commence a foreclosure action specifically against that Unit or has adopted as a Rule, pursuant to Sections 19.2 and 19.3 of this Declaration, a standard policy that provides for foreclosure against that Unit; and

- (iv) The Association has complied with any other provisions of CIOA relating to the commencement of an action to foreclose its lien.
- (g) In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner pursuant to Section 52-504 of the Connecticut General Statutes to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments based on a periodic budget adopted by the Association pursuant to Section 17.4 of this Declaration.
- (h) 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 Common Expense Assessments against that Unit which became due before the sale, other than the Common Expense Assessments which are prior to that Security Interest under CIOA. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.
- (i) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due or in such other order as the Executive Board may determine, notwithstanding any designation or other indication from the Unit Owner as to how the payment is to be applied.
- (j) Every aspect of a foreclosure, sale, or other disposition under this Section 17.3, including the method, advertising, time, date, place, and terms, shall be commercially reasonable.

Section 17.4 – Budget Adoption, Rejection, and Approval.

- (a) The Executive Board, at least annually, shall adopt a proposed budget for the Common Interest Community for consideration by the Unit Owners.
- (b) Not later than 30 days after the adoption of a proposed budget, the Executive Board shall provide to all Unit Owners a summary of the budget, including a statement of the amount of any reserves, and a statement of the basis on which such reserves are calculated and funded. Simultaneously, the Executive Board shall set a date not less than ten days or more than 60 days after providing the summary for either a meeting of the Unit Owners or a vote by ballot without a meeting to consider approval of the budget. If, at that meeting or in the vote by ballot without

a meeting, Unit Owners holding a majority of all of the Votes in the Association vote to reject the budget, the budget is rejected; otherwise the budget is approved. The absence of a quorum at such meeting or participation in the vote by ballot without a meeting shall not affect rejection or approval of the budget. If a proposed budget is rejected, the budget last approved by the Unit Owners continues until Unit Owners approve a subsequent budget.

Section 17.5 – Special Assessments Adoption, Rejection, and Approval.

- (a) The Executive Board, at any time, may adopt a proposed Special Assessment.
- (b) Not later than 30 days after adoption of a proposed Special Assessment, the Executive Board shall provide to all Unit Owners a summary of the Special Assessment. If such Special Assessment, together with all other Special Assessments, including emergency Special Assessments, proposed by the Executive Board in the same calendar year, do not exceed 15% of the Association's last adopted periodic budget for that calendar year, the proposed Special Assessment is effective upon adoption by the Executive Board without approval of the Unit Owners. Otherwise, the Executive Board shall set a date not less than ten days or more than 60 days after providing the summary for either a meeting of the Unit Owners or a vote by ballot without a meeting to consider approval of the Special Assessment. If, at such meeting or in the balloting, Unit Owners holding a majority of all of the Votes in the Association vote to reject the Special Assessment, the Special Assessment shall be rejected; otherwise the Special Assessment shall be approved. The absence of a quorum at such meeting or participating in the vote by ballot without a meeting shall not affect the rejection or approval of the Special Assessment.
- (c) Special Assessments as proposed by the Executive Board may be payable in installments, may be payable over periods in excess of one year, and may provide for lump sum prepayment at a discount. If a Special Assessment is adopted to repay a loan to the Association, the assessment resolution may provide for the adjustment of the Special Assessment when and if the loan payments are adjusted in accordance with the terms of the loan.
- (d) Notwithstanding the provisions of Subsection 17.5(b) of this Declaration, if the Executive Board determines by a two-thirds vote that a Special Assessment is necessary to respond to an emergency:
 - (i) The Special Assessment becomes effective immediately in accordance with the terms of the vote;

- (ii) Notice of the Special Assessment must be provided promptly to all Unit Owners; and
- (iii) The Executive Board may spend the funds paid on account of the Special Assessment only for the purposes described in the vote.

Section 17.6 – Certificate of Payment of Common Expense Assessments. The Association on request made electronically or in writing shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid Common Expense Assessments against the Unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner. The Executive Board may, from time to time, establish a fee for the preparation of the statement.

Section 17.7 – Payment of Common Expense Assessments.

- (a) All Common Expenses assessed under Section 17.4 of this Declaration shall be due and payable monthly unless the resolution adopting the budget provides for some other schedule of payment.
- (b) All other Common Expenses shall be due and payable on the first day of the month following the month in which they are assessed or charged unless other payment terms are established by the Executive Board in the resolution adopting such assessment.

Section 17.8 – Acceleration of Common Expense Assessments. In the event of default by any Unit Owner in the payment of any Common Expense Assessment levied against the Unit for a period of ten days after the payment is due, the Executive Board may, after Notice and Hearing, require all unpaid Common Expense Assessments for the pertinent fiscal year to be immediately due and payable and, at a later date, to reverse such a requirement.

Section 17.9 – No Waiver of Liability for Common Expenses. Unit Owners may not exempt themselves from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which such assessments are made.

Section 17.10 – 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 such assessment. Personal liability for such assessment shall not pass to a successor in title to the Unit unless such successor agrees to assume the obligation.

Section 17.11 – Surplus Funds. Any surplus funds of the Association remaining at the end of a fiscal year after payment of, or provision for, Common Expenses and

budgeted contributions to reserves shall be added to the reserve funds of the Association unless the Executive Board votes to pay the surplus to the Unit Owners in proportion to their liability for Common Expenses or to credit the surplus to them to reduce their future Common Expense Assessments.

ARTICLE XVIII ASSOCIATION BORROWING AND ASSIGNMENT OF FUTURE INCOME

Section 18.1 – Notice of Proposed Borrowing. At least 14 days before the closing of any loan to the Association, the Executive Board shall:

- (a) Disclose in a written or electronic communication to all Unit Owners the amount and terms of the loan and the estimated effect of such loan on any Common Expense Assessment; and
- (b) Afford the Unit Owners a reasonable opportunity to submit written or electronic comments to the Executive Board with respect to such loan.

Section 18.2 – Approval of Assignment of Future Income. The Association may borrow money and assign its right to future income as security for the loan only provided:

- (a) The loan transaction and the assignment have been approved by the Executive Board;
- (b) Unit Owners holding a majority of all of the Votes in the Association vote in favor of or agree to the assignment; and
- (c) The Association has complied with the requirements of Section 18.1 of this Declaration.

ARTICLE XIX PERSONS AND UNITS SUBJECT TO DOCUMENTS; RULES AND ENFORCEMENT

Section 19.1 – Compliance with Community Documents. All Unit Owners, tenants and other occupants of Units, and holders of Security Interests shall comply with the Community Documents. The acceptance of a deed or mortgage or the exercise of any incident of ownership, or the entering into a lease, or the entering into occupancy of a Unit constitutes agreement that the provisions of the Community Documents are accepted and ratified by such Unit Owner or other Person and shall bind any Person having at any time any interest or estate in such Unit.

Section 19.2 – Adoption of Rules.

- (a) The Executive Board may adopt and amend Rules only after Notice and Comment.
- (b) Rules concerning the Common Elements, including Limited Common Elements, may regulate any conduct, condition, or activity, including use and occupancy.
- (c) Rules concerning the Units may regulate any conduct, condition, or activity that is not use and occupancy.
- (d) Rules concerning the Units may also regulate the use and occupancy of a Unit only to the extent permitted by Subsection 9.1(d) of this Declaration.
- (e) The Executive Board may not adopt a Rule which contravenes an express provision of this 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 this Declaration so long as such Rule does not contravene an express provision of this Declaration or a right reasonably inferable therefrom.

Section 19.3 – Notice to the Unit Owners of Changes to Rules. Following the adoption, amendment, or repeal of a Rule, the Association shall give all Unit Owners notice of its action and include with it a copy of any new or amended Rule.

Section 19.4 – 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 year after the date that notice of the amendment was given to the Unit Owners.

Section 19.5 – Certification and Recording of Rules.

- (a) Amendments to the Rules that have been duly adopted shall be prepared and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.
- (b) The Rules and all amendments to the Rules shall be recorded on the land records of every town in which any portion of the Common Interest Community is located and are effective only on recording. The Association shall request that the town clerk index the Rules and all amendments to the Rules in the name of the Common Interest Community and in the name of the Association as both grantors and grantees. The Rules are not part of this Declaration and are not to be considered to be

title documents. Such recorded Rules shall not be considered a muniment of title, additional encumbrances, or covenants affecting land.

Section 19.6 – Abatement and Enjoinment of Violations.

- (a) If any Unit Owner, tenant, or other occupant of a Unit violates or breaches any provision of the Community Documents, then, subject to Subsection 19.6(b), the Association may take action under Subsection 19.6(c).
- (b) Prior to taking such action under Subsection 19.6(c) the Association shall provide Notice and Hearing to such Unit Owner or occupant. Provided however:
 - (i) Notice and Hearing will not be required if the Association takes such action to prevent immediate or irreparable harm; and
 - (ii) The Association gives notice of such action to such Unit Owner or occupant as soon as practical whether before or after taking such action, except such notice must be given before anything is disposed of under Subsection 19.6(c)(iii).
- (c) Subject to Subsections 19.6(a) and (b), the Association may, at its discretion, do one or more of the following:
 - (i) Enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of such Unit Owner or occupant, any Improvement, thing, or condition (except for additions, alterations, or betterments of a permanent nature that may exist therein) that violates or breaches the provisions of the Community Documents, and the Association shall not thereby be deemed liable for any manner of trespass;
 - (ii) Summarily abate and remove any Improvement, thing, or condition from the Common Elements, including the Limited Common Elements, that violates or breaches the provisions of the Community Documents (including, but not limited to, the towing of motor vehicles), at the expense of such Unit Owner or occupant responsible for placing such Improvement, thing, or condition within the Common Elements or Limited Common Elements;
 - (iii) If the Association removes anything from a Unit, Limited Common Element, or Common Element pursuant to Subsections 19.6(c)(i) or (ii), then after removal the Association may store it, at the expense of such Unit Owner or occupant, and sell or otherwise dispose of it in a commercially reasonable manner, and offset the

net proceeds of such sale, if any, against the costs incurred by the Association in addressing the violation or breach including, but not limited to, fines, late charges, and legal fees;

- (iv) Bring appropriate legal proceedings, either at law or in equity, to enjoin, abate, or remedy the continuance of any such violation or breach;
- (v) Bring appropriate legal proceedings, either at law or in equity, for specific performance of the Community Documents; or
- (vi) Take any other actions permitted under the Community Documents or applicable law.

Section 19.7 – Suspension of Privileges for Non-Payment or Breach.

- (a) If a Unit Owner fails to pay any Common Expense Assessment, the Executive Board, after Notice and Hearing, may suspend any right or privilege of the Unit Owner and all occupants of the Unit, except as provided in Subsection 19.7(c) of this Declaration, until such assessment is paid.
- (b) If a Unit Owner, tenant, or other occupant of the Unit violates or breaches any provision of the Community Documents, the Executive Board, after Notice and Hearing, may suspend any right or privilege of the Unit Owner and all occupants of the Unit, except as provided in Subsection 19.7(c) of this Declaration, for a period not to exceed the longer of 30 days or until the breach is cured.
- (c) The suspension of any right or privilege under this Section 19.7:
 - (i) Shall not deny a Unit Owner or other occupant of a Unit access to the Unit or the Limited Common Elements appurtenant to the Unit;
 - (ii) Shall not suspend a Unit Owner's right to vote or participate in meetings of the Association;
 - (iii) Shall not prevent a Unit Owner from seeking election as a Director or officer of the Association;
 - (iv) Shall not permit the Association to withhold services provided to a Unit or a Unit Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any Person; and

- (v) Shall not take effect until ten days after the Executive Board notifies the Unit Owner of its decision to suspend the use of the Common Elements.

ARTICLE XX INSURANCE

Section 20.1 – Coverage. The Association shall obtain and maintain insurance coverage required by this Article XX to the extent such coverage is reasonably available. If it is not and the Executive Board determines that any insurance described in this Article XX will not be maintained, the Association shall cause notice of that fact to be given to all Unit Owners, Eligible Mortgagees, and Eligible Insurers.

Section 20.2 – Property Insurance. The Association shall obtain and maintain property insurance.

- (a) Property insurance will cover:
 - (i) The project facilities (which term in this Section 20.2 means all buildings on the Property, including the Units and, except to the extent provided in Subsection 20.2(a)(ii) of this Declaration, all fixtures, equipment, Improvements and betterments, including Improvements and betterments installed by Unit Owners, whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the undersurface of the lowest basement floors, underground pilings, piers, pipes, flues, drains, and other items normally excluded from property policies.
 - (ii) Instead of providing property insurance covering all betterments and Improvements, the Association may elect to insure only those betterments and Improvements set out on a standard schedule, in which case the Association shall:
 - (A) Prepare and maintain a schedule of the standard fixtures, Improvements, and betterments in the Units, including any standard wall, floor, and ceiling coverings covered by the Association’s insurance policy;
 - (B) Provide such schedule at least annually to the Unit Owners in order to enable the Unit Owners to coordinate their homeowners insurance coverage with the coverage afforded by the Association’s insurance policy; and

- (C) Include such schedule in any resale certificate prepared pursuant to Section 47-270 of CIOA.
- (iii) All personal property owned by the Association.
- (b) Property insurance shall be for the following amounts:
 - (i) The project facilities for full replacement; and
 - (ii) Personal property owned by the Association for an amount equal to its actual cash value.
- (c) The deductible may not exceed \$10,000.00 per occurrence. This maximum deductible amount shall be increased by the percentage increase, if any, in the value of the "Index" (as defined in Subsection 47-213(a) of CIOA) as of the first day of July 2018 and any subsequent first day of July over the value of the Index as of the end of this year, provided that, the percentage change shall be rounded to the nearest whole percentage point and no adjustment shall be made until the percentage increase is at least ten percent and any percentage of change in excess of a multiple of ten percent shall be disregarded so that the maximum deductible amount shall increase only in multiples of ten percent. The Index shall be revised as provided in Subsection 47-213(c) of CIOA, provided, however, if property insurance is reasonably available only with larger minimum deductibles, deductibles that apply on a basis other than per occurrence, or both, the Association may purchase insurance with such deductibles.
- (d) The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing the 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.
- (e) The insurance shall afford protection against all risks of direct physical loss commonly insured against and such other perils as the Executive Board deems it appropriate to cover.
- (f) Insurance policies required by this Section 20.2 shall provide all of the following:
 - (i) The insurer waives its right to subrogation under the policy against any Unit Owner or member of the Unit Owner's household;

- (ii) No act or omission by any 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;
- (iii) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;
- (iv) The loss shall 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 the Association, each Unit Owner, and lien holders as their interests may appear;
- (vi) The insurer may not cancel or refuse to renew the policy until 60 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses; and
- (vii) The insured shall be "Birchwood Commons Condominium Association, Inc. for the use and benefit of the individual Unit Owners."

Section 20.3 – Flood Insurance. The Association shall obtain and maintain flood insurance as required by the National Flood Insurance Act if:

- (a) The Property is located in a flood hazard area as defined in such act; and
- (b) The Unit Owners vote to direct the Association to purchase the insurance.

Section 20.4 – Liability Insurance. The Association shall obtain and maintain liability insurance.

- (a) Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000.00, 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.
- (b) Insurance policies carried pursuant to this Section 20.4 shall provide all of the following:

- (i) Each Unit Owner is an insured Person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.
- (ii) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of the Unit Owner's household.
- (iii) No act or omission by any 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.
- (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 Association's policy provides primary insurance.
- (v) The insurer may not cancel or refuse to renew the policy until 60 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

Section 20.5 – Fidelity Insurance. The Association shall obtain and maintain fidelity insurance. Fidelity insurance 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 insurance 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 months' assessments plus reserve funds. The insurer may not cancel or refuse to renew the policy until 60 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

Section 20.6 – Workers' Compensation Insurance. The Association shall obtain and maintain workers' compensation insurance to meet the requirements of the laws of the State of Connecticut.

Section 20.7 – Directors' and Officers' Liability Insurance. The Association shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association as well as other individuals typically covered under such policies. The insurance shall, as far as reasonably available, include such coverage as is necessary to satisfy the Association's duty of indemnification to its officers and Directors.

Section 20.8 – Unit Owner Policies.

- (a) Other Insurance. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for their own benefit.
- (b) Notices to Unit Owners.
 - (i) At least once in each calendar year and any time the deductible under the Association’s property insurance policy is changed, the Association shall give notice to each Unit Owner of the need to obtain individual coverage for restoration costs that may be allocated against the individual Units under the provisions of Subsection 21.2(b) of this Declaration. However, the failure of the Association to furnish such notice shall not create any liability on the part of the Association or prevent it in any way from making the allocations provided for in that Subsection.
 - (ii) If the Association has adopted a schedule of standard fixtures under Subsection 20.2(a)(ii)(A) of this Declaration, it shall provide a copy of the schedule to the Unit Owners in accordance with the requirements of Subsection 20.2(a)(ii)(B) of this Declaration.

Section 20.9 – Other Insurance. The Association may carry such other insurance as the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.10 – Premiums. Insurance premiums for insurance carried by the Association shall be a Common Expense.

Section 20.11 – Compliance with Insurance Requirements. No Unit Owner, tenant, holder of a Security Interest, or occupant of a Unit shall do or suffer to be done any action in the Common Interest Community, shall allow any condition to exist in the Common Interest Community, or shall bring or suffer to be brought any article or substance into the Common Interest Community that may render any insurance purchased by the Association void or voidable, or cause the non-renewal of such insurance, or cause an increase in the premiums for such insurance. By Rule, after Notice and Comment, the Executive Board may designate and regulate or prohibit particular actions, conditions, articles, and substances which violate or may violate the provisions of this Section 20.11.

ARTICLE XXI
DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 21.1 – Restoration.

- (a) Any portion of the Property for which insurance is required under Section 47-255 of CIOA or for which insurance carried by the Association is in effect, whichever is more extensive, which is Damaged or Destroyed shall be restored promptly by the Association unless:
 - (i) The Common Interest Community is terminated;
 - (ii) Restoration would be illegal under any state or local statute or ordinance governing health or safety; or
 - (iii) 80% of the Unit Owners, including every Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

- (b) The Association, acting at the direction of the Executive Board, and not any Unit Owners or occupants, shall have the exclusive authority to select, contract with, direct, retain, and replace all contractors and vendors for all activities to restore any portion of the Property under Subsection 21.1(a) of this Declaration that has been Damaged or Destroyed. All Unit Owners and occupants, regardless of whether their Unit or Limited Common Element is affected by such work, shall not interfere with or attempt to direct the work of contractors or vendors hired by the Association to perform work in the Property.

Section 21.2 – Cost.

- (a) Except as provided in Subsection 21.2(b) of this Declaration, the cost of restoring Damage or Destruction in excess of insurance proceeds shall be a Common Expense assessed against all Units under Section 17.1 of this Declaration.

- (b) The cost of restoring Damage or Destruction in excess of insurance proceeds to the extent of the application of a deductible up to the limits set out in Subsection 20.2(c) of this Declaration, shall be a Common Expense, allocated as follows:
 - (i) If the restoration is entirely to the Common Elements, such excess shall be assessed against all Units under Section 17.1 of this Declaration.

- (ii) If the restoration is entirely to a single Unit, such excess shall be assessed against the affected Unit only, under Subsection 17.2(g) of this Declaration.
 - (iii) In all other cases, such excess shall be prorated among the affected Unit or Units and Common Elements, as the case may be, in the same proportion as the total cost of restoration of each of the affected Units and Common Elements bears to the total cost of restoration of all of the affected Units and Common Elements. In calculating this proration, the Association may rely on itemized bills or reports from the contractor or contractors making the restorations or on estimates prepared by an adjuster or construction estimator engaged by the company issuing the property insurance coverage required under Section 20.2 of this Declaration or engaged by the Association. The portion of the excess allocated to an affected Unit under this Subsection 21.2(b)(iii) of this Declaration shall be assessed against the Unit under Subsection 17.2(g) of this Declaration. The portion of the excess allocated to the Common Elements shall be assessed as a Common Expense against all Units under Section 17.1 of this Declaration.
- (c) Nothing in this Section 21.2 of this Declaration shall limit the Association's ability to assess the Unit or the Unit Owner for Common Expenses caused by willful misconduct, failure to comply with a written maintenance standard, or gross negligence to the maximum amount permitted under Subsection 17.2(e) of this Declaration.

Section 21.3 – Plans. Any portion of the Property that must be restored under the provisions of Section 21.1 of this Declaration shall be restored in accordance with either Subsection (a) or Subsection (b) of this Section 21.3:

- (a) To its condition prior to the Damage or Destruction:
 - (i) Subject to changes in building codes and other applicable laws and regulations and to the availability of building components and materials; and
 - (ii) Either:
 - (A) In accordance with plans and specifications used in the construction or previous renovation of the Property, if available; or
 - (B) To the extent such plans and specifications are not available, in accordance with new plans based on such

information as is available concerning such Property before it was Damaged or Destroyed.

- (b) In accordance with other plans and specifications which have been approved by the Executive Board, Unit Owners holding a majority of all of the Votes in the Association, including the Unit Owners of every Unit for which the plans and specifications are proposed to be changed, and more than 50% of Eligible Mortgagees.
- (c) Nothing in this Section 21.3 shall be deemed to prevent a Unit Owner from making additions, alterations, or betterments to a Unit in accordance with Article XII of this Declaration, contemporaneously with the restoration of the Unit, provided that such additions, alterations, or betterments do not interfere with, or increase the cost of, the restoration required to be performed by the Association.

Section 21.4 – Restoration of Less than the Entire Property. If all of the Property is not to be restored by the Association:

- (a) The insurance proceeds attributable to the Common Elements that have been Damaged or Destroyed shall be used to restore such 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 Units and Limited Common Elements that are not restored shall be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear; and
 - (ii) The remainder of the proceeds shall be distributed to all the Unit Owners or lien holders, as their interests may appear, in proportion to the Common Expense liabilities of all the Units.
- (c) If the Unit Owners vote not to restore any Unit, that Unit's Allocated Interests are automatically reallocated on the vote as if the Unit had been condemned under Subsection 47-206(c) of CIOA, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations.

Section 21.5 – Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Association, 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 21.1 of this Declaration, the proceeds shall be disbursed first for the restoration of the Property that has been Damaged or Destroyed, 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 restored, or the Common Interest Community is terminated.

Section 21.6 – Certificates by the Executive Board. An insurance 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 restored; and
- (b) The amount or amounts to be paid for restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.7 – Certificates by Attorneys. If payments are to be made to Unit Owners, holders of Security Interests, or other lien holders, the Executive Board and the insurance trustee, if any, shall obtain and may rely on an attorney's certificate of title or a title insurance policy based on a search of the land records of each town in which any portion of the Common Interest Community is located from the date of the recording of the original declaration stating the names of the Unit Owners, holders of Security Interests, and other lien holders.

ARTICLE XXII RIGHTS TO NOTICE AND COMMENT AND TO NOTICE AND HEARING

Section 22.1 – Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Community Documents require that an action be taken after Notice and Comment, and at any other time the Executive Board determines it is in the interest of the Association to do so, the Association shall give notice to the Unit Owners at least ten days before the date on which the Executive Board will act. The notice shall include:

- (a) A statement that the Executive Board is considering an amendment to the Bylaws or the Rules or other action;
- (b) A copy of the text of the proposed amendment, addition, or deletion;
- (c) The method or methods by which the Unit Owners may furnish comments to the Executive Board; and
- (d) The date on which the Executive Board will act on the proposal after considering comments from the Unit Owners.

Section 22.2 – Notice and Hearing – Generally.

- (a) The procedures set out in this Section 22.2 shall be followed:
 - (i) Whenever the Community Documents require that an action be taken after Notice and Hearing; and
 - (ii) Before the Association brings an action or institutes a proceeding against a Unit Owner other than a Declarant, except if the action is brought to prevent immediate or irreparable harm or to foreclose a lien for an assessment attributable to a Unit or fines imposed against a Unit Owner.
- (b) The hearing must be held during a regular or special meeting of the Executive Board.
- (c) Not less than ten business days prior to the hearing, the Association shall send written notice of the hearing to the affected Unit Owner, and to any other parties the Association considers appropriate.
 - (i) The notice shall be sent to the affected Unit Owner by certified mail, return receipt requested, and by regular mail;
 - (ii) The notice shall be sent to any other parties in any manner permitted by the Bylaws; and
 - (iii) The notice given under this Subsection 22.2(c) shall be in addition to any other notice of the meeting of the Executive Board required to be given by the Community Documents or by applicable law.
- (d) The notice shall include the following:
 - (i) The date, time, and place of the hearing;
 - (ii) A description of the alleged violation or the nature of the claim against the Unit Owner;
 - (iii) Instructions as to how the Unit Owner can participate in the hearing and present the Unit Owner's position; and
 - (iv) An explanation of the consequences of not participating in the hearing.
- (e) At the hearing, the Unit Owner shall have the right, personally or through a representative, to present information orally, in writing, or both, subject

to reasonable rules of procedure established by the Executive Board to assure a prompt and orderly resolution of the issues. The Executive Board may also receive information from anyone else who, in the opinion of the Executive Board, will assist it in making a decision. The hearing shall not be conducted as a formal trial. All information presented shall be considered in making a decision but shall not bind the decision makers.

- (f) The Executive Board shall make its decision and send notice of its decision within 30 days after the conclusion of the hearing. Notice of the decision shall be sent to the affected Unit Owner by certified mail, return receipt requested, and by regular mail.

Section 22.3 – Notice and Hearing – On the Request of a Unit Owner.

- (a) Any Unit Owner, other than a Declarant, seeking to enforce a right granted or obligation imposed by CIOA or the Community Documents against the Association or another Unit Owner other than the Declarant, may submit a written request to the Association for a hearing. The request shall include:
 - (i) A statement of the nature of the claim being made;
 - (ii) The names of the party or parties against whom the claim is being made; and
 - (iii) A reference to the provision or provisions of CIOA or of the Community Documents on which the claim is based.
- (b) Not later than 30 days after the Association receives such request, it shall schedule a hearing to be held during a regular or special meeting of the Executive Board. The meeting must be held not more than 45 days after the Association receives the request.
- (c) Not less than ten business days prior to the hearing, the Association shall send written notice of the hearing to the Unit Owner who requested the hearing, to any Unit Owner against whom a claim is being made, and to any other parties the Executive Board considers appropriate.
 - (i) The notice shall be sent to the Unit Owner requesting the hearing and to any Unit Owner against whom a claim is being made by certified mail return receipt requested, and by regular mail;
 - (ii) The notice shall be sent to any other parties in any manner permitted by the Bylaws; and

- (iii) The notice given under this Subsection 22.3(c) shall be in addition to any other notice of the meeting of the Executive Board required to be given by the Community Documents or by applicable law.
- (d) The notice shall include the following:
 - (i) The date, time, and place of the hearing;
 - (ii) A copy of the request received by the Association under Subsection 22.3(a) of this Declaration; and
 - (iii) If the notice is sent to anyone other than the Unit Owner who requested the hearing, it shall also include copies of any other material submitted to the Association by the Unit Owner requesting the hearing in connection with the request.
- (e) At the hearing, the Unit Owner requesting the hearing and the Unit Owner, if any, against whom the claim is made shall have the right, personally or through a representative, to present information orally, in writing, or both, subject to reasonable rules of procedure established by the Executive Board to assure a prompt and orderly resolution of the issues. The Executive Board may also receive information from anyone else which, in the opinion of the Executive Board, will assist it in making a decision. The hearing shall not be conducted as a formal trial. All information presented shall be considered in making a decision but shall not bind the decision makers.
- (f) The Executive Board shall make its decision and send notice of its decision within 30 days after the conclusion of the hearing to the Unit Owner requesting the hearing and any Unit Owner against whom a claim is being made by certified mail, return receipt requested, and by regular mail.

ARTICLE XXIII EXECUTIVE BOARD

Section 23.1 – Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws, or CIOA. The Executive Board acts only pursuant to the procedures set out in this Declaration, the Bylaws, the Association’s certificate of incorporation, and CIOA. The activities of the Association are administered by its officers and designated agents in performing their authorized functions. The Executive Board shall have, subject to the limitations contained in this Declaration and CIOA, 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 powers and duties listed in this Section 23.1. The Executive Board:

- (a) Except as limited by Subsections 23.2(d) and (e) of this Declaration and by the provisions of the Bylaws, shall adopt and may amend Bylaws, and may adopt and amend Rules;
- (b) Shall adopt and may amend budgets, may adopt and amend Special Assessments, and may invest funds of the Association;
- (c) May collect assessments for Common Expenses from Unit Owners;
- (d) May hire and discharge managing agents;
- (e) May hire and discharge employees, agents other than managing agents, and independent contractors;
- (f) May institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Common Interest Community, subject to the limitations placed on the Association's authority to institute and maintain proceedings alleging construction defects set out in Section 47-261f of CIOA;
- (g) May make contracts and incur liabilities;
- (h) May regulate the use, Maintenance, Repair, Replacement, and modification of Common Elements;
- (i) May cause additional Improvements to be made as a part of the Common Elements;
- (j) May acquire, hold, encumber, and convey in its own name any right, title, or interest to real property or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 47-254 of CIOA;
- (k) May grant easements through or over the Common Elements, for any period of time including permanent easements;
- (l) May grant leases, licenses, and concessions through or over the Common Elements provided that they are either:
 - (i) For a term of no more than one year; or

- (ii) For a term of more than one year if the lease, license, or concession does not materially interfere with the use and enjoyment of the Property by the Unit Owners.

The grant of any other lease, license, or concession through or over the Common Elements must be approved by both the Executive Board and by a majority of the Votes cast at a meeting of the Unit Owners at which a quorum is present;

- (m) May impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements described in Subsections 47-221(2) and (4) of CIOA, and for services provided to Unit Owners;
- (n) May impose charges or interest or both for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, the Bylaws, and the Rules of the Association;
- (o) May impose reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates required by Section 47-270 of CIOA, or statements of unpaid assessments;
- (p) May provide for the indemnification of its officers and Directors and maintain directors' and officers' liability insurance;
- (q) Subject to Subsection 47-261e(e) of CIOA and Article XVIII of this Declaration, may assign its right to future income, including the right to receive Common Expense Assessments;
- (r) May exercise any other powers conferred by this Declaration or the Bylaws;
- (s) May exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- (t) May exercise any other powers necessary and proper for the governance and operation of the Association;
- (u) May require, by regulation, that disputes between the Executive Board and Unit Owners or between two or more Unit Owners regarding the Common Interest Community must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding;

- (v) In accordance with the provisions of Section 19.7 of this Declaration, may suspend any right or privilege of a Unit Owner or occupant of a Unit for failure to pay an assessment or for violation or breach of the Community Documents;
- (w) By resolution, establish one or more Special Board Committees that are composed only of incumbent Directors, which committees may be authorized to exercise the power of the Executive Board to the extent specified by the Executive Board in the resolution establishing such committee. All such committees must maintain and publish notice of their actions to the Executive Board and otherwise comply with applicable provisions of the Bylaws; and
- (x) By resolution, establish one or more Advisory Committees that are not authorized to exercise the power of the Executive Board that are composed of such individuals as may be specified in the resolution establishing such committee.

Section 23.2 – Executive Board Limitations. The Executive Board may not act on behalf of the Association:

- (a) To amend this Declaration;
- (b) To terminate the Common Interest Community;
- (c) To elect Directors, except that the Executive Board may fill vacancies in its membership, other than vacancies created by the removal of a Director by the Unit Owners, until the next meeting at which Directors are elected;
- (d) To determine the qualifications, powers and duties, or terms of office of Directors; or
- (e) To amend any provision of the Bylaws that relates to or affects:
 - (i) The number of Directors;
 - (ii) The manner of election of Directors;
 - (iii) The timing or content of notices of meetings of Unit Owners, opportunities for Unit Owner comment at any meeting of the Executive Board or the Association, methods or procedures for voting or actions by Unit Owners without meeting or any provision of Article IV of the Bylaws; or
 - (iv) The manner or required vote to adopt, amend, or repeal any Bylaw.

Section 23.3 – Board Discretion.

- (a) In addition to any other discretion the Executive Board has under applicable law, the Executive Board may determine whether to take enforcement action by exercising the Association’s power to impose sanctions, by commencing an action for a violation of the Community Documents, or by commencing or defending any other action or proceeding relating to the rights, powers, or obligations of the Association, which may include a determination of whether to compromise any claim for unpaid assessments or other claim made by or against the Association. The Executive Board does not have a duty to take enforcement or other action if it determines that, under the facts and circumstances presented:
- (i) The Association’s legal position does not justify taking any or further action;
 - (ii) The covenant, restriction, or Rule being enforced is, or is likely to be construed as, inconsistent with law;
 - (iii) Although a violation may exist or have occurred, it is not so material as to be objectionable to a reasonable individual or to justify expending the Association’s resources; or
 - (iv) It is not in the Association’s best interests to take enforcement action.
- (b) The Executive Board’s decision under Subsection 23.3(a) of this Declaration, or otherwise, not to take action under one set of circumstances does not prevent the Executive Board from taking action under another set of circumstances, except that the Executive Board may not be arbitrary or capricious in taking enforcement action.

**ARTICLE XXIV
CONDEMNATION**

Section 24.1 – 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 47-206 of CIOA.

**ARTICLE XXV
MISCELLANEOUS**

Section 25.1 – Captions. The captions contained in the Community Documents are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of the Community Documents or the intent of any provision thereof.

Section 25.2 – Number and 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 Community Documents so requires.

Section 25.3 – Waiver. No provision contained in the Community 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 25.4 – Invalidity. The invalidity of any provision of the Community 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 Community Documents shall continue in full force and effect.

Section 25.5 – Conflict. The Community Documents are intended to comply with the requirements of CIOA and the Nonstock Corporation Act. In the event of any conflict between the Community 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 Community Document, this Declaration shall control.

– END –

Exhibit A-1
to
Declaration of Birchwood Commons

Property Description

A certain tract or parcel of land, together with the buildings and all other improvements thereon, situated on the easterly side of the Norwich-New London Turnpike in the Town of Montville, County of New London and State of Connecticut and being more particularly shown on a certain map or plan entitled "Exhibit A-3 Survey Map Birchwood Commons 1691 Norwich-New London Tpke. Montville, Connecticut Declarant: Pieniadz Development Corporation Scale: 1"=60 feet Chandler Palmer & King Norwich, Connecticut March 3, 1988", which premises are more particularly bounded and described as follows:

Beginning at a point located North 21° 58' 00" East 1.30 feet from a GHD monument in the southeasterly street line of Connecticut Route #32 at the southwesterly corner of the herein described tract and on the dividing line between the herein described tract and land now or formerly of the Norwich Roman Catholic Diocesan Corporation; thence running North 21° 58' 00" East for a distance of 155.00 feet bounded northwesterly by Connecticut Route #32 to a point; thence running South 70° 32' 33" East for a distance of 124.16 feet along a fence line to a fence post; thence running South 69° 55' 21" East for a distance of 83.31 feet along a fence line to a fence post; thence running South 71° 55' 11" East for a distance of 221.58 feet along a fence line to a drill hole found at the end of a stone wall; thence running North 16° 58' 58" West for a distance of 80.86 feet along a stone wall to a drill hole found; thence running North 14° 35' 56" West for a distance of 104.19 feet along a stone wall to a drill hole found; thence running South 70° 05' 41" East for a distance of 30.02 feet along a fence line to a point; thence running South 68° 07' 48" East for a distance of 68.98 feet along a fence line to a fence post; thence running South 73° 42' 03" East for a distance of 86.36 feet along a fence line to a fence post; thence running South 62° 31' 58" East for a distance of 112.30 feet along a fence line to a fence post; thence running South 65° 18' 40" East for a distance of 76.75 feet along a fence line to a fence post; thence running South 69° 01' 25" East for a distance of 104.62 feet along a fence line to a fence post; thence running South 64° 20' 48" East for a distance of 83.13 feet along a fence line to an iron pipe found; thence running South 22° 09' 05" West for a distance of 53.45 feet along a fence line to a fence post; thence running South 18° 41' 53" West for a distance of 45.60 feet along a fence line to a fence post; thence running South 16° 36' 41" West for a distance of 106.31 feet along a fence line to a drill hole found at a stone wall intersection; thence running South 77° 05' 11" East for a distance of 80.48 feet along a stone wall to an angle point; thence running South 84° 40' 51" East for a distance of 110.35 feet along a stone wall to a drill hole set, the last seventeen courses being bounded by land now or formerly of the Norwich Roman Catholic Diocesan Corporation; thence running South 03° 10' 00" East for a distance of 75.55 feet to an iron pipe set; thence running South 16° 29' 19" West for a distance of 126.54 feet to an iron pipe set; thence running South 73° 30' 41" East for a distance of 13.00 feet to an iron pipe set; thence running North 16° 29' 19" East for a distance of 126.54 feet to an iron pipe set; thence running North 61° 34' 33" East for a distance of 30.72 feet to an iron pipe set; thence running North 03° 10' 00" West for a distance of 30.00 feet to a drill hole set, the last six courses being bounded by land now or formerly of Pieniadz Development Corporation; thence running South 84° 40' 51" East for a distance of 9.06 feet along a stone wall to an angle point; thence running South 63° 09' 03" East for a distance of 84.43 feet along a stone wall to a stone wall corner; thence running South 18° 20' 54" West for a distance of 171.57 feet along a stone wall to an angle point; thence running South 21° 30' 51" West for a distance of 217.90 feet along a stone wall to

a stone wall corner; thence running North 57° 41' 53" West for a distance of 272.62 feet along a stone wall to a drill hole found; thence running North 56° 50' 51" West for a distance of 204.08 feet along a stone wall to an angle point; thence running North 58° 46' 00" West for a distance of 363.76 feet along a stone wall to a drill hole found; thence running North 55° 57' 50" West for a distance of 110.19 feet along a stone wall to a drill hole found; thence running North 58° 06' 25" West for a distance of 178.71 feet along a stone wall to an angle point; thence running North 59° 17' 13" West for a distance of 127.70 feet along a stone wall to the point and place of beginning, the last ten courses being bounded by land now or formerly of the Norwich Roman Catholic Diocesan Corporation.

Reference is hereby made to a warranty deed from Storybook Acres to Fianlitz Development Corporation dated August 21, 1987 and recorded at Volume 192, Page 646 of Montville Land Records.

Said premises are subject to the following encumbrances:

1. Any and all provisions of municipal ordinances and public or private law.
2. The designation of a portion of the premises as containing inland wetland soils as defined in Connecticut General Statutes Section 22a-38.
3. Taxes due the Town of Montville, Connecticut hereafter coming due.
4. A mortgage in the face amount of \$2,400,000.00 to Farmers and Mechanics Savings Bank dated August 21, 1987 and recorded on August 21, 1987 at Volume 192, Page 649 of the Montville Land Records.
5. An assignment of rents and leases in favor of Farmers and Mechanics Savings Bank dated August 21, 1987 and recorded on August 21, 1987 at Volume 192, Page 661 of the Montville Land Records.
6. A financing statement in favor of Farmers and Mechanics Savings Bank recorded on August 21, 1987 at Volume 192, Page 664 of the Montville Land Records.
7. An underground residential distribution easement in favor of The Connecticut Light & Power Company dated February 26, 1988 and recorded March 16, 1988 at Volume 198, Page 674 of the Montville Land Records.
8. Rights of Indian nations or tribes and governmental organizations representing Indian nations or tribes in and to the subject premises.

Exhibit A-2
to
Declaration of Birchwood Commons

Table of Interests

Unit No.	Undivided Interest in the Common Elements	Liability for Common Expenses	Votes	Parking Space No.
A1	2.7777%	2.7777%	1	A1
A2	2.7777%	2.7777%	1	A2
A3	2.7777%	2.7777%	1	A3
A4	2.7777%	2.7777%	1	A4
A5	2.7777%	2.7777%	1	A5
A6	2.7777%	2.7777%	1	A6
B1	2.7777%	2.7777%	1	B1
B2	2.7777%	2.7777%	1	B2
B3	2.7777%	2.7777%	1	B3
B4	2.7777%	2.7777%	1	B4
B5	2.7777%	2.7777%	1	B5
B6	2.7777%	2.7777%	1	B6
B7	2.7777%	2.7777%	1	B7
B8	2.7777%	2.7777%	1	B8
B9	2.7777%	2.7777%	1	B9
B10	2.7777%	2.7777%	1	B10
C1	2.7777%	2.7777%	1	C1
C2	2.7777%	2.7777%	1	C2
C3	2.7777%	2.7777%	1	C3
C4	2.7777%	2.7777%	1	C4
C5	2.7777%	2.7777%	1	C5
C6	2.7777%	2.7777%	1	C6

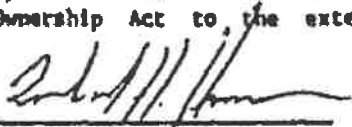
Unit No.	Undivided Interest in the Common Elements	Liability for Common Expenses	Votes	Parking Space No.
C7	2.7777%	2.7777%	1	C7
C8	2.7777%	2.7777%	1	C8
C9	2.7777%	2.7777%	1	C9
C10	2.7777%	2.7777%	1	C10
D1	2.7777%	2.7777%	1	D1
D2	2.7777%	2.7777%	1	D2
D3	2.7777%	2.7777%	1	D3
D4	2.7777%	2.7777%	1	D4
E1	2.7777%	2.7777%	1	E1
E2	2.7777%	2.7777%	1	E2
E3	2.7777%	2.7777%	1	E3
E4	2.7777%	2.7777%	1	E4
E5	2.7777%	2.7777%	1	E5
E6	2.7777%	2.7777%	1	E6

Exhibit A-3
to
Declaration of Birchwood Commons

Survey Certificates

This certificate is given with regard to the survey entitled "Exhibit A-3 Survey Map Birchwood Commons 1691 Norwich-New London Tpke. Montville, Connecticut Declarant: Pieniadz Development Corporation Scale: 1"=60 feet Chandler Palmer & King Norwich, Connecticut March 3, 1988",

I hereby certify that the above survey contains all of the information required by Section 47-228 of the Common Interest Ownership Act to the extent that any such information is not shown on the plans.

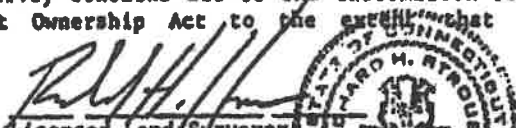


Licensed Land Surveyor
Registration Number 9679



This certificate is given with regard to the survey entitled "Exhibit A-3 Survey Map Birchwood Commons 1691 Norwich-New London Tpke. Montville, Connecticut Declarant: Pieniadz Development Corporation Scale: 1"=60 feet Chandler Palmer & King Norwich, Connecticut November 10, 1988",

I hereby certify that the above survey contains all of the information required by Section 47-228 of the Common Interest Ownership Act to the extent that any such information is not shown on the plans.



Licensed Land Surveyor
Registration Number 9679




Exhibit A-4
to
Declaration of Birchwood Condominium

Plans Certificate and Supplement

This Certificate is given with regard to the plans entitled "Birchwood Commons Montville, Connecticut Prepared for Pieniadz Development Drawn by JRD Checked by Jerome Date May 12, 1988 Job Number 8703 Scale Noted", prepared by Jerome R. Dixon Architect P. O. Box 4516, Boston, MA 02101 617/230-9684 Connecticut License No. 6621.

I hereby certify that the above plans contain all of the information required by Section 47-228 of the Common Interest Ownership Act to the extent that any such information is not shown on the survey prepared by Chandler, Palmer & King.

Jerome R. Dixon
Registered Professional Architect
Registration Number 6621


This Certificate Supplement is given with regard to the plans entitled "Birchwood Commons Montville, Connecticut Prepared for Pieniadz Development Drawn by _____ Checked by Jerome Date 24 Oct 1988 Job Number 8703 Scale Noted", prepared by Jerome R. Dixon Architect P. O. Box 4516, Boston, MA 02101 617/230-9684 Connecticut License No. 6621.

I hereby certify that the above plans contain all of the information required by Section 47-228 of the Common Interest Ownership Act to the extent that any such information is not shown on the survey prepared by Chandler, Palmer & King.

Jerome R. Dixon 10/20/88
Registered Professional Architect
Registration Number 6621


Exhibit A-5
to
Declaration of Birchwood Commons

Architect's Certificate

RE: 1691 Norwich-New London Turnpike, Montville, Connecticut
Units A1, A2, A3, A4, A5, A6, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10

Birchwood Commons situated on the easterly side of Norwich-New London Turnpike in the Town of Montville, County of New London and State of Connecticut, which premises are more particularly shown on a survey plan entitled "Exhibit A-3 Survey Map Birchwood Commons 1691 Norwich-New London Tpk. Montville, Connecticut Declarant: Pieniadz Development Corporation Scale: 1"=60 feet Chandler Palmer & King Norwich, Connecticut May 12, 1988", said survey being on file in the office of the Town Clerk of said Town of Montville.

The undersigned hereby certifies that:

1. The undersigned architect, is certified by the State of Connecticut under Certification No. 6621.
2. To the best of his knowledge, information and belief, all structural components of all of the above buildings containing the above units, are substantially completed in accordance with the Survey attached to the Declaration as Exhibit A-3 and the Plans attached as Exhibit A-4, entitled "Birchwood Commons Montville, Connecticut Prepared for Pieniadz Development Drawn by JRD Checked by Jerome Dixon May 12, 1988 Job Number 8703 Scale Noted", prepared by Jerome R. Dixon Architect P.O. Box 4516, Boston, MA 02101 617/230-9684 Connecticut License No. 6621.
3. Said certificate is made pursuant to the provisions of the Common Interest Ownership Act of the Connecticut General Statutes.
4. Pursuant to Connecticut General Statutes Section 47-74(d) the undersigned architect certifies that it does not have any legal or equitable ownership interest in the Common Interest Community.

Jerome Dixon
Registered Architect
Registration Number 6621



Dated: May 12, 1988

I hereby certify to the best of my knowledge, information and belief that these plans contain all of the information required by Section 47-228 of the Connecticut General Statutes.

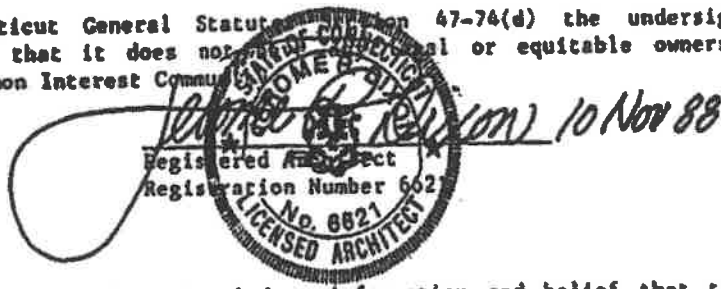
Jerome Dixon
Registered Architect
Registration Number 6621

RE: 1691 Norwich-New London Turnpike, Montville, Connecticut
Units A1, A2, A3, A4, A5, A6, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, C1, C2, C3,
C4, C5, C6, C7, C8, C9, C10, D1, D2, D3, D4, E1, E2, E3, E4, E5, E6

Birchwood Commons situated on the easterly side of Norwich-New London Turnpike in the Town of Montville, County of New London and State of Connecticut, which premises are more particularly shown on a survey plan entitled "Exhibit A-3 Survey Map Birchwood Commons 1691 Norwich-New London Tpke. Montville, Connecticut Declarant: Pieniadz Development Corporation Scale: 1"=60 feet Chandler Palmer & King Norwich, Connecticut November 10, 1988", said survey being on file in the office of the Town Clerk of said Town of Montville.

The undersigned hereby certifies that:

1. The undersigned architect, is certified by the State of Connecticut under Certification No. 6621.
2. To the best of his knowledge, information and belief, all structural components of all of the above buildings containing the above units, are substantially completed in accordance with the Survey attached to the Declaration as Exhibit A-3 and the Plans attached as Exhibit A-4, entitled "Birchwood Commons Montville, Connecticut Prepared for Pieniadz Development Drawn by _____ Checked by Jerome Date 10 Nov 1988 Job Number 8703 Scale Noted", prepared by Jerome R. Dixon Architect P.O. Box 4516, Boston, MA 02101 617/230-9684 Connecticut License No. 6621.
3. Said certificate is made pursuant to the provisions of the Common Interest Ownership Act of the Connecticut General Statutes.
4. Pursuant to Connecticut General Statutes Section 47-74(d) the undersigned architect certifies that it does not constitute a legal or equitable ownership interest in the Common Interest Community.



Dated: November 10, 1988

I hereby certify to the best of my knowledge, information and belief that these plans contain all of the information required by Section 47-228 of the Connecticut General Statutes.

Received for Record NOV 10 1988
at 10:22 A.M. and recorded by
Margaret P. Skinner Town Clerk

Jerome R. Dixon 10 Nov 88
Registered Architect
Registration Number 6621

Kathleen...