

EXHIBIT A

DECLARATION

OF

BIRCHWOOD COMMONS

MONTVILLE, CONNECTICUT

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EXHIBITS

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DECLARATION

BIRCHWOOD COMMONS

Pieniadz Development Corporation, a Connecticut stock corporation with an office at 51 Norwich-New London Turnpike, Quaker Hill, Connecticut does hereby declare:

ARTICLE I

Submission of Property

Declarant submits the Property in the Town of Montville, Connecticut described in Exhibit A-1, to the provisions of the Common Interest Ownership Act, [Chapter 828] of the Connecticut General Statutes, for the purpose of creating Birchwood Commons, a condominium development.

ARTICLE II

Definitions

In the Common Interest Community Documents, the following words and phrases mean:

Section 2.1 - Act. The Common Interest Ownership Act, [Chapter 828] of the Connecticut General Statutes.

Section 2.2 - 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 X of the Declaration and shown on Exhibit A-2.

Section 2.3 - Association. Birchwood Commons Condominium Association, Inc., a non-stock corporation organized under the laws of the State of Connecticut. It is the Association of Unit Owners pursuant to Section 47-243 of the Act.

Section 2.4 - By-laws. The Bylaws of the Association, as they may be amended from time to time.

Section 2.5 - Common Elements. All portions of the Common Interest Community other than the units. The Declarant is the initial owner of the Common Elements. Each Unit Owner will be transferred its allocated interest in the Common Elements as an appurtenance to the conveyance of each individual unit.

Section 2.6 - Common Expenses. The expenses for the operation of the Common Interest Community as set forth in Section 20.1 of this Declaration.

Section 2.7 - Common Interest Community. The real property described in Exhibit A-1, subject to the Declaration - Birchwood Commons.

Section 2.8 - Declarant. Pieniadz Development Corporation, a Connecticut stock corporation or its successor as defined in Section 47-202(12) of the Act.

Section 2.9 - Declaration. This document, including any amendments.

Section 2.10 - Development Rights. The rights reserved by the Declarant under Section 9.1 of this Declaration.

Section 2.11 - Director. A member of the Executive Board.

Section 2.12 - Documents. The Declaration, Survey and Plans recorded and filed pursuant to the provisions of the act, the by-laws and the rules, as they may be amended from time to time. Any exhibit, schedule or certification accompanying a document is a part of that document.

Section 2.13 - Eligible Mortgagee. The holder of a first Security Interest in a unit which has notified the Association in writing of its name and address and that it holds a first security interest in a unit. Such notice shall be deemed to include a request that the eligible mortgagee be given the notices and other rights described in Article XIX.

Section 2.14 - Eligible Insurer. An insurer or guarantor of a first Security Interest in a unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a unit. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XIX.

Section 2.15 - Executive Board. The Board of Directors of the Association.

Section 2.16 - Improvements. Any construction or facilities existing or to be constructed on the land included in the Common Interest Community, such as buildings, paving, utility wires, pipes, and light poles.

Section 2.17 - Limited Common Elements. A portion of the Common Elements allocated by the Declaration or by the operation of [Subsection (2) or (4) of Section 43-221] of the Act for the exclusive use of one or more but fewer than all of the Units. The Limited Common Elements in this Common Interest Community are described in Article VI of the Declaration.

Section 2.18 - Manager. A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 2.19- 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. These provisions are set forth in Section 25.1 of the Declaration.

Section 2.20 - 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. These provisions are set forth in Section 25.2 of the Declaration.

Section 2.21 - Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 2.22 - Plans. The plans filed with the Declaration as Exhibit A-4, as they may be amended or supplemented from time to time.

Section 2.23 - Property. The land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Act by this Declaration.

Section 2.24 - Rules. Rules for the use of Units and Common Elements and for the conduct of persons within the Common Interest Community, adopted by the Executive Board pursuant to this Declaration or the Bylaws.

Section 2.25 - Security Interest. An interest in real property or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 2.26 - Special Declarant Rights. Rights reserved for the benefit of the declarant to maintain sales offices, management offices, signs advertising the Common Interest Community and models within the Common Interest Community. And to appoint or remove any officer of the Association or any Executive Board Member during any period of Declarant Control; and to install and use easements through the Common Elements for the purpose of making improvements within the Common Interest Community, and to exercise any other rights enumerated in Article IX of the Declaration.

Section 2.27 - Survey. The survey filed with the Declaration as Exhibit A-3, as it may be amended or supplemented from time to time.

Section 2.28 - Unit. A physical portion of the Common Interest Community designated for separate ownership or occupancy the boundaries of which are described in Section 5.3. of this Declaration.

Section 2.29 - Unit Owner. The Declarant or other person who owns a unit. Unit Owner does not include a person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

Section 2.30 - Votes. The votes allocated to each Unit as shown on Exhibit A-2.

ARTICLE III

Name and Type of Common Interest Community and Association

Section 3.1 - Common Interest Community. The name of the Common Interest Community is Birchwood Commons. The Common Interest Community is a Condominium.

Section 3.2 - Association. The name of the Association is Birchwood Commons Condominium Association, Inc. It is a non-stock corporation organized under the laws of the State of Connecticut.

ARTICLE IV

Description of Land

The entire Common Interest Community is situated in the Town of Montville, Connecticut. A legal description of the Common Interest Community is found at Exhibit A-1.

ARTICLE V

Maximum Number of Units; Boundaries

Section 5.1 - Number of Units. The Common Interest Community contains sixteen (16) residential Units. The Declarant may create an additional one hundred twenty-four (124) residential Units and additional common elements and limited common elements to the Common Interest Community to result in a total of one hundred forty (140) residential Units within the Common Interest Community. The Common Interest Community has a maximum area of 35.6 acres. There will be a maximum of four (4) units per acre within the Common Interest Community.

Section 5.2 - Identification of Units. All Units are identified by number and are shown on the Survey or Plans or both. The Units created by this initial Declaration are shown on Exhibit A-4 to this Declaration.

Section 5.3 - Boundaries. Boundaries of each Unit created by the 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 concrete 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; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of wall surfaces of all interior bearing studs and framing of bearing walls, 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 Section 5.3 (a), (b), and (c) and (d) above, and 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 5.3, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Section 5.3 (a), (b), and (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) Inconsistency with Plans: If this definition is inconsistent with the Survey and Plans, then this definition shall control.

ARTICLE VI

Limited Common Elements

Section 6.1 - Limited Common Elements. The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

- (a) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element the use of which is limited 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 and their use is limited 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 and their use is limited to that Unit.
- (d) One parking space assigned to each individual unit as designated on the Exhibit A-3 to this Declaration, and as set forth in Exhibit A-2 to this Declaration.

As to each of the foregoing: (i) In the case of a Limited Common Element assigned to a single unit, the owner of that unit is hereby vested with a right and exclusive easement in and to such Limited Common Element; and (ii) in the case of a Limited Common Element assigned to more than one Unit, each owner of a unit to which such Limited Common Element is assigned is hereby vested with a right and non-exclusive easement in and to such Limited Common Element; as an appurtenance to the particular Unit or Units as described above.

ARTICLE VII

Maintenance Repair and Replacement

Section 7.1 - Common Elements. The Association shall maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.

Section 7.2 - Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

Section 7.3 - Limited Common Elements. Each Unit Owner shall be responsible for the maintenance, repair and replacement of those Limited Common Elements described in Article VI Subsection 6.1(c) of this Declaration. The Association shall be responsible for the maintenance, repair and replacement of all other Limited Common Elements.

Section 7.4 - Access. Any person authorized by the Executive Board shall have the right of access to all portions of the property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice shall be required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 7.5 - Repairs Resulting From Negligence. Each Unit Owner shall reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit. The Association shall be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements.

ARTICLE VIII

Subsequently Allocated Limited Common Elements

Those portions of the Common Elements shown as unallocated parking spaces on the survey may be subsequently allocated as Limited Common Elements in accordance with subsection 9.1(b) and 13.1 of this Declaration.

ARTICLE IX

Development Rights and Other Special Declarant Rights

Section 9.1 - Reservation of Development Rights. The Declarant reserves the following Development Rights:

- (a) The right to add units and limited common elements on those parcels of land described in Exhibit A-6 and as delineated as "Development Rights Reserved in this Area" on the survey, Exhibit A-3.
- (b) The right to add real property delineated as "Area B" and "Area C" in Exhibit A-6 and as delineated on the survey, Exhibit A-3, to the Common Interest Community.
- (c) The right to allocate the unallocated parking spaces shown on the survey as limited common elements and assign them to particular units.

- (d) To amend and supplement this Declaration and the survey and floor plans and exhibits as may be reasonably necessary or desirable to facilitate the practical, technical, administrative or functional integration of units and Limited Common Elements into the Common Interest Community in the exercise of the Declarant's development rights and of the conversion of land shown as "Development Rights Reserved in this Area" with respect to "Area B" and "Area C" as defined in Exhibits A-3 and A-6 hereto into the Birchwood Commons condominium project.
- (e) The right to construct underground or overground utility lines, pipes, wires, ducts, conduits, and other facilities over, under, on and across the land shown on the survey for the purpose of furnishing utility and other services to the buildings and improvements proposed to be constructed on the land shown on the survey as "Development Rights Reserved in This Area." The Declarant also reserves the right to grant easements to the Town of Montville and to the Southeastern Connecticut Water Authority and the Connecticut Light and Power Company, if required, and other municipal authorities, and to public utility companies, and to convey improvements within those easements anywhere in the Common Interest Community for municipal and public utility purposes.

Section 9.2 - Limitations on Development Rights. The Development Rights reserved in Section 9.1 are limited as follows:

- (a) The Development Rights may be exercised at any time, but not more than seven (7) years after the recording of the initial Declaration.
- (b) Not more than one hundred twenty-four (124) additional units may be created under the Development Rights.
- (c) The quality of construction of any buildings and improvements to be created on the property shall be consistent with the quality of those constructed pursuant to this Declaration as initially recorded. However, architectural styles for newly created units may vary and designs may be modified to accommodate site conditions.
- (d) No units created pursuant to the Development Rights will be restricted entirely to residential use. However, the primary use of all units so created will be residential and will only allow home professional pursuits and occupations as permitted by the Town of Montville Zoning Regulations and not requiring regular visits from the public or unreasonable levels of mail, shipping, storage or trash.
- (e) No Development Rights may be exercised unless approved pursuant to Section 19.5 of this Declaration.

Section 9.3 - Phasing of Development Rights. Any Development Right may be exercised with respect to the area in which the Declarant has reserved Development Rights at different times, and no assurances are made by the Declarant regarding the boundaries of such portions, or the order in which those portions may be subjected to the exercise of Development Rights. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

Section 9.4 - Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- (a) To maintain sales offices, management offices, models and signs advertising the Common Interest Community.

- (b) To appoint or remove any officer of the Association or any Executive Board Member during any period of Declarant Control subject to the provisions of Section 9.6 of this Declaration.
- (c) To exercise any Development Right reserved in this Declaration.
- (d) To use and create easements through the Common Elements for the purpose of making improvements within the Common Interest Community or for the purpose of exercising any development rights, including the right to create easements for purposes of access and the installation of utilities for the development of development right areas A, B and C, and further including the right to rearrange those parking areas which have not been allocated as Limited Common Elements for the purpose of creating said easements.
- (e) To use easements through the Common Elements for the purpose of making improvements within the Common Interest Community;
- (f) To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.
- (g) The right to withdraw Development Rights Areas B and C from the Common Interest Community.

Section 9.5 - Models, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office or management office.

Section 9.6 - Improvements Under Construction; Declarant's Easement. The Declarant reserves the right to modify and vary the interior design, layout and arrangement of any unit, and the size, location, type and model of unsold units, and the size, location and exterior design of buildings, provided that the units shall remain substantially the same in size, materials and other particulars and that such modifications do not result in an increase of obligations with respect to Common Elements of any unit owner, other than Declarant, at the time of such modifications and that the overall design remains essentially the same as that shown on the plans shown to purchasers. The Declarant reserves the right to perform warranty work, repairs, construction work; to store materials in secure areas and in units and Common Elements; and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant's Rights, arising under the Act or reserved in the Declaration.

Section 9.7 - Signs and Marketing. The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 9.8 - Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property any and all goods and improvements used in development and marketing and construction whether or not they have become fixtures.

Section 9.9 - Declarant Control of the Association.

- (a) Subject to Subsection 9.9(b): There shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of: (1) Sixty days

after conveyance of sixty percent of the Units that may be created to Unit Owners other than a Declarant; (2) Two years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or (3) Five years after the first Unit is conveyed to a Unit Owner other than a Declarant or (4) Two years after any right to add new units was last exercised. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

- (b) Not later than sixty days after conveyance of one-third of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than one-third of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.
- (c) Not later than the termination of any period of Declarant control the Unit Owners shall elect an Executive Board of at least three members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.
- (d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Unit Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 9.10 - Limitations on Special Declarant Rights. Unless sooner terminated by a recorded instrument executed by the Declarant, any Special Declarant Right may be exercised by the Declarant at any time, but not later than 7 years after the recording of the initial Declaration. Earlier termination of certain rights may occur by statute.

Section 9.11 - Interference With Special Declarant Rights. Neither the Association or any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

ARTICLE X

Allocated Interests

Section 10.1 - Allocation of Interests. The table showing Unit numbers 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 X.

Section 10.2 - Formulas for the Allocation of Interests. The Interests allocated to each Unit have been calculated on 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 the Common Expenses. The percentage of liability for Common Expenses allocated to each Unit will be equal to the percentage of the undivided interest in the common elements allocated to each Unit within the Common Interest Community. Nothing contained in this subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article XX of this Declaration.
- (c) Votes. Each residential Unit in the Common Interest Community shall have one equal vote. In the event of the exercise of Development Rights by the Declarant as herein set forth, each additional Unit so created shall have one equal vote.

ARTICLE XI

Restrictions on Use, Alienation or Occupancy

Section 11.1 - Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article IX, the following use restrictions apply to all Units and to the Common Elements:

- (a) Each Unit is restricted to residential use as a single family residence except for home professional pursuits not requiring regular visits from the public or unreasonable levels of mail, shipping, trash or storage requirements. No sign indicating commercial or professional uses may be displayed outside a Unit. A single family residence is defined as a single housekeeping Unit, operating on a non-profit, non-commercial basis, between its occupants, cooking and eating with a common kitchen and dining area, with no more overnight occupants than two per bedroom as designated on the plans on file with the building official of the Town of Montville.
- (b) The use of Units and Common Elements is subject to the Bylaws and Rules of the Association.
- (c) 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.
- (d) No change shall be made in the color of any exterior window, door, window covering, glass or screen of a unit, except with the prior written consent of the Board. All window covering, or other such covering of the exterior doors and windows, shall be uniform in color as prescribed by the Board. The unit owner shall not cause anything to be affixed, attached to, hung, displayed or placed on the exterior walls, including awnings and/or storm shutters, doors or windows of the building, nor shall the unit owner grow any type of plant, shrubbery, flower, vine, or grass outside his unit, except with the prior written consent of

the Board, and further, when approved, subject to the rules and regulations adopted by the Board. No clothes line or similar device shall be allowed on any portion of the condominium property nor shall clothes be hung anywhere except where designated by the Board.

Section 11.2 - Restrictions on Alienation. A Unit may not be conveyed pursuant to a time sharing plan as defined under Chapter 734b of the Connecticut General Statutes. A Unit may not be leased for a term of less than six months. All leases and rental agreements shall be in writing and subject to the requirements of the documents and the Association.

ARTICLE XII

Easements, Licenses

All easements or licenses to which the Common Interest Community is subject are listed in Exhibit A-1 to the Declaration. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers.

Section 12.1 - General. The recording data for recorded easements and licenses appurtenant to or included in the Common Interest Community or to which any portion of the Common Interest Community is or may become subject by virtue of a reservation in this Declaration is recited in Exhibit A-1 to this Declaration.

Section 12.2 - Easement of Unit Owners in Common Elements. Subject to the provisions of this Declaration, and of Subdivision (6) of Subsection (a) of Section 47-244 of the Act, and of Sections 47-254 of the Act, the Unit Owners are hereby vested with an easement:

- (a) In the Common Elements for purposes of access to their Units; and
- (b) To use the Common Elements for all other purposes.

ARTICLE XIII

Allocation and Reallocation of Limited Common Elements

No limited Common Element depicted on the Survey or Plans may be reallocated except as part of a reallocation of boundaries of Units pursuant to Article XV of this Declaration.

Section 13.1 - Allocation of Limited Common Elements Not Previously Allocated. A common element not previously allocated as a limited Common Element may be so allocated only pursuant to the provisions of this Declaration. The allocations shall be made by amendment to the Declaration.

Section 13.2 - Reallocation of Depicted Limited Common Elements. The Declarant has reserved the right under Article VIII of this Declaration to allocate as limited Common Elements additional parking spaces shown on the survey. If any such parking spaces are so allocated, they shall be assigned to particular units by amendment to this Declaration. Any parking spaces which are not allocated as limited Common Elements at the termination of the Development Rights may be so allocated by the Association by amendment to this Declaration. All amendments shall specify to which unit or units the limited Common Element is allocated.

ARTICLE XIV

Section 14.1 - Additions, Alterations and Improvements by Unit Owners.

(a) A Unit Owner:

- (i) May make any improvements or alterations to the interior of his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community; and
- (ii) May not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Common Interest Community, without permission of the Executive Board; and
- (iii) 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. Removal of partitions or creations of apertures under this Subdivision is not an alteration of boundaries.

(b) A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Section 14.1(a)(ii). The Executive Board shall answer any written request for such approval, after notice and hearing within 60 days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its rules.

(c) Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

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

The provisions of this section shall not apply to the Declarant in the exercise of any special Declarant Right.

Section 14.2 - Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Section 20.5 and 20.6 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

ARTICLE XV

Relocation of Boundaries Between Adjoining Units

Section 15.1 - Application and Amendment. Subject to approval of any structural changes pursuant to Article XIV, the boundaries between adjoining units may be relocated by an amendment to the Declaration on application to the Association by the owners of those Units. If the owners of the adjoining Units have specified a reallocation between their Units of their allocated interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment to this Declaration that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment shall be executed by those Unit Owners, contain words of conveyance between them, and the approval of all holders of security interests in the affected Units shall be endorsed thereon. On recordation the amendment shall be indexed in the name of the grantor and the grantee, and in the name of the Association.

Section 15.2 - Recording Amendments. The Association shall prepare and record Surveys or Plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

The applicants shall pay for the costs of preparation of the amendment to this Declaration, including any Surveys and Plans, and for their recording, including all attorney's fees incurred in connection therewith.

ARTICLE XVI

Amendments to Declaration

Section 16.1 - General. Excepting cases of amendments that may be executed by the Declarant in the exercise of its Development Rights, or by certain Unit Owners under Section 15.1 of this Declaration and Section 47-237 of the Act, and except as limited by Section 16.4 and Article XIX of this Declaration, this Declaration, including the Surveys 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.

Section 16.2 - Limitation of Challenges. No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one year after the amendment is recorded.

Section 16.3 - Recordation of Amendments. Every amendment to this Declaration shall be recorded in the Land Records of the Town of Montville and is effective only on recording. An amendment except an amendment pursuant to Article XV of this Declaration, shall be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 16.4 - When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Act and the Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

Section 16.5 - Execution of Amendments. Amendments to this Declaration required by the Act to be recorded by the Association, which have been adopted in accordance with this Declaration and the Act, shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 16.6 - Special Declarant Rights. Provisions in the Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 16.7 - Consent of Holders of Security Rights. Amendments are subject to the consent requirements of Article XIX.

Section 16.8 - Development Rights Amendments. To exercise any Development Right reserved under Section 9.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. If necessary, the Declarant shall also record new surveys and plans necessary to conform to the requirements of Subsections (a), (b) and (d) of Section 47-228 of the Act and an amended Schedule A-2 to this Declaration.

The amendment to the Declaration shall assign an identifying number to each new Unit created and allocate the allocated interests among all units within the Common Interest Community. The amendment shall describe any common elements, limited common elements and units created thereby and designate the Unit to which each limited common element is allocated to the extent required by Subsection 47-227(a) of the Act.

ARTICLE XVII

Amendments to Bylaws

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

ARTICLE XVIII

Termination

Termination of the Common Interest Community may be accomplished only in accordance with [Section 47-237] of the Act.

ARTICLE XIX

Mortgagee Protection

Section 19.1 - Introduction. This article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 19.2. - Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding 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 Security Interests held by Eligible Mortgagees.

- (a) **Eligible Mortgagee:** The holder of a first Security Interest on a Unit who has notified the Association, in writing, of its name and address, and that it holds a mortgage on a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given notices and other rights described in this Article.
- (b) **Eligible Insurer:** An insurer or guarantor of a first Security Interest who has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest on a Unit. Such notice shall be deemed to include a request that the eligible insurer be given the notices and other rights described in this Article.
- (c) **Percentage of Eligible Mortgagees:** Wherever in this Article the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent by Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentages of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 19.3 - Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee and eligible insurer of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable.
- (b) Any delinquency 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.
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 19.4.

(e) Any judgment rendered against the Association.

Section 19.4 - Consent Required.

- (a) Document Changes. Notwithstanding any lower requirement permitted by the Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 19.4(a) may be adopted without the vote of at least 67% of the Unit Owners (or any greater Unit Owner vote required in the Declaration or the Act) and until approved in writing by at least 51% of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by the Declaration). Material includes, but is not limited to, any provision affecting:
- (i) Assessments, assessment liens or subordination of assessment liens;
 - (ii) Voting rights;
 - (iii) Reserves for maintenance, repair and replacement of Common Elements;
 - (iv) Responsibility for maintenance and repairs;
 - (v) Reallocation of interests in the Common Elements or Limited Common Elements (except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding a Security Interest in such Units must approve such action);
 - (vi) Rights to use Common Elements and Limited Common Elements;
 - (vii) Boundaries of Units (except that when boundaries of only adjoining units are involved, or a unit is being subdivided, then only those unit Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units must approve such action);
 - (viii) Convertibility of Units into Common Elements or Common Elements into Units;
 - (ix) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community; except with respect to the addition to the Common Interest Community of common elements, limited common elements and units pursuant to the exercise of the Declarant's development rights pursuant to Article IX of this Declaration;
 - (x) Insurance or fidelity bonds;
 - (xi) Leasing of Units;
 - (xii) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;
 - (xiii) Establishment of self-management when professional management previously existed and had been required previously by an Eligible Mortgagee of a Unit;
 - (xiv) Restoration or repair of the property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;

- (xv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
 - (xvi) Any provision that expressly benefits mortgage holders, insurers or guarantors.
- (b) **Actions.** Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions without the approval of at least 51% of the Eligible Mortgagees or such higher percentage as set forth herein:
- (i) Convey or encumber the Common Elements or any portion thereof (as to which an 80% Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community shall not be deemed a transfer within the meaning of this clause);
 - (ii) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
 - (iii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;
 - (iv) The termination of the Common Interest Community, for reasons other than substantial destruction or condemnation, as to which a 67% Eligible Mortgagee approval is required;
 - (v) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;
 - (vi) The merger of this Common Interest Community with any other Common Interest Community;
 - (vii) The granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one year);
 - (viii) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and
 - (ix) Any action taken not to repair or replace the Property.
- (c) The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly without the consent of all Eligible Mortgagees.
- (d) The failure of an Eligible Mortgagee to respond within 30 days to any written request of the Association for approval of a non-material addition or amendment to the Documents shall constitute an implied approval of the addition or amendment.

Section 19.5 - Development Rights and Special Declarant 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 or Security Interests in the Property which are senior to the Declaration consent to the exercise, abandonment or termination of said Development Rights.

Section 19.6 - Inspection of Books. The Association shall permit any Eligible Mortgagee and Eligible Insurer to inspect the books and records of the Association during normal business hours.

Section 19.7 - Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request, with a copy of an annual financial statement of the Association within 90 days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

- (a) the Common Interest Community contains fifty or more Units, in which case the cost of the audit shall be a Common Expense; or
- (b) any Eligible Mortgagee requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 19.8 - Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, in law, or in equity.

Section 19.9 - Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

ARTICLE XX

Assessment and Collection of Common Expenses

Section 20.1 - Definition of Common Expenses. Common Expenses shall include:

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

Section 20.2 - Apportionment of Common Expenses. All Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit A-2.

Section 20.3 - Common Expenses Attributable to Fewer than all Units.

- (a) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.
- (b) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.
- (c) Assessments to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was rendered, in proportion to their Common Expense liabilities.
- (d) If any Common Expense is caused by the misconduct of any Unit Owner, the Association may, after notice and hearing, assess that expense exclusively against his Unit.
- (e) Fees, charges, late charges, fines and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Section 20.4 - Lien.

- (a) The Association has a statutory lien on a Unit for any assessment levied against that Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes delinquent. Fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
- (b) A lien under this section is prior to all other liens and encumbrances on a Unit except (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first or second Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent and (3) liens for real property taxes and other governmental assessments or charges against the Unit. The lien is also prior to all Security Interests described in subdivision (2) of this subsection to the extent of the Common Expense assessments based on the periodic budget adopted by the Association pursuant to Section 20.5 of this Article which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in Subdivision (2) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the Association.
- (c) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

- (d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within two years after the full amount of the assessments becomes due; provided, that if an owner of a Unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- (e) This section does not prohibit actions to recover sums for which subsection (a) of this section creates a lien or prohibit the association from taking a deed in lieu of foreclosure.
- (f) A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
- (g) The Association on written request shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid 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.
- (h) The Association's lien may be foreclosed in like manner as a mortgage on real property.
- (i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the Court may appoint a receiver of the Unit Owner pursuant to Section 52-204 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 20.5 of this Declaration.
- (j) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 20.4 (b). Any unpaid assessments not satisfied from the proceeds of sale become common expenses collectible from all the Unit Owners, including the purchaser.
- (k) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 20.5 - Budget Adoption and Ratification. Within thirty days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

Section 20.6 - Ratification of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense Assessment not included in the current budget, other than enumerated in Section 20.3 of this Declaration, in an amount greater than fifteen (15%) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 20.5.

Section 20.7 - Certificate of Payment of Common Expense Assessments. The Association on written request shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid 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.

Section 20.8 - Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 20.1 and 20.2 shall be due and payable monthly.

Section 20.9 - Acceleration of Common Expense Assessments. In the event of default for a period of 10 days by any Unit Owner in the payment of any Common Expense Assessment levied against his or her Unit, the Executive Board shall have the right, after notice and hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 20.10 - Commencement of Common Expense Assessments. Common Expense Assessment shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 20.11 - No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 20.12 - Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense Assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

ARTICLE XXI

Right to Assign Future Income

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

ARTICLE XXII

Persons and Units Subject to Documents

Section 22.1 - Compliance with Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded on the Land Records of the Town of Montville are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

Section 22.2 - Adoption of Rules. The Executive Board may adopt Rules regarding the use and occupancy of Units, Common Elements, and Limited Common Elements and the activities of occupants, subject to Notice and Comment.

ARTICLE XXIII

Insurance

Section 23.1 - Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in Sections 23.2 and 23.3 of this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent prepaid by United States Mail to all Unit Owners and eligible Mortgagees at their respective last known addresses.

Section 23.2 - Property Insurance:

(a) Property Insurance Covering.

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

(ii) All personal property owned by the Association.

(b) Amounts. The project facilities for an amount equal to 100% of their replacement cost at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

The maximum deductible for insurance policies shall be \$10,000.00 or 1% of the policy face amount, whichever is less.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement costs of the project facilities and the actual cash value of the personal property, and the cost of such appraisal shall be a Common Expense.

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

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

(i) The Insurer waives its right to subrogation under the policy against any Unit Owner or member of his or her household;

(ii) No act or omission by any Unit Owner, unless acting within the scope of his or her 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 risks covered by the policy, the Association's policy provides primary insurance;

(iv) 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 each Unit Owner and such Unit Owner's mortgagee;

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

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

"Birchwood Commons Condominium Association, Inc. for the use and benefit of the individual Unit Owners".

Section 23.3 - Liability Insurance.

(a) Liability Insurance. Liability Insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000.00 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) Other provisions. Insurance policies carried pursuant to this section shall provide:

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

- (ii) The Insurer waives its right to subrogation under the policy against any Unit Owner of member of his or her household;
- (iii) No act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- (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 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a Certificate of Memorandum of Insurance has been issued, at their respective last known addresses.

Section 23.4 - Fidelity Bonds. A blanket fidelity bond for anyone who either handles or is responsible for funds held or administered by the Association, whether or not he or she receives compensation for his or her services. The Bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the Bond is in force, and in no event less than the sum of three months' assessments plus reserve funds. The Bond shall include a provision that calls for ten (10) days' written notice to the Association, to each holder of a security interest in a Unit, to each servicer that services an FNMA-owned or FHLMC-owned mortgage on a Unit and to the insurance trustee, if any, before the Bond can be cancelled or substantially modified for any reason.

Section 23.5 - Unit Owner Policies. An insurance policy issued to the Association does not prevent the Unit Owner from obtaining insurance for his or her own benefit.

Section 23.6 - Worker's Compensation Insurance. The Executive Board shall obtain and maintain worker's compensation insurance to meet the requirements of the laws of the State of Connecticut.

Section 23.7 - Directors and Officers Liability Insurance. The Executive Board shall obtain and maintain Directors and Officers Liability Insurance, if available, covering all of the Directors and Officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 23.8 - Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 23.9 - Premiums. Insurance premiums shall be a Common Expense.

- (a) Whether or not damaged or destroyed Property is to be repaired or restored;
- (b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 24.6 - Certificates by Attorneys. If payments are to be made to Unit Owners or mortgagees, the Executive Board, and the trustee, if any, shall obtain and may rely on an attorney's certificate of title or a title insurance policy based on a search of the land records of the Town of Montville from the date of the recording of the original Declaration stating the names of the Unit Owners and the mortgagees.

ARTICLE XXV

Rights To Notice And Comment; Notice And Hearing

Section 25.1 - Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 25.2 - Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 25.3 - Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XXVI

Open Meetings

Section 26.1 - Access. All meetings of the Executive Board, at which action is to be taken by vote at such meeting shall be open to the Unit Owners, except as hereafter provided.

Section 26.2 - Notice. Notice of every such meeting shall be given not less than 24 hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the office of the Association, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 26.3 - Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners, in either of the following situations only:

- (a) No action is taken at the executive session requiring the affirmative vote of Directors; or
- (b) The action taken at the executive session involves personnel, pending litigation, or enforcement actions.

ARTICLE XXVII

Executive Board

Section 27.1 - Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the Minutes of Executive Board Meetings during normal business hours. The Minutes shall be available for inspection within 15 days after any such meeting.

Section 27.2 - Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the By-Laws or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but not be limited to, the following:

- (a) Adopt and amend By-Laws, Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves.
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees and agents, other than managing agents, and independent contractors;
- (f) Institute, defend or intervene in litigation or administrative proceedings in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (i) Cause additional improvements to be made as a part of the Common Elements;

(j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements and Limited Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 47-254 of the Act;

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

(l) Impose and receive payments, fees or charges for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of Section 47-221 of the Act, and for services provided to Unit Owners;

(m) Impose charges or interest or both for late payment of assessments and, after notice and hearing, levy reasonable fines for violations of this Declaration, and the By-Laws, Rules and Regulations of the Association;

(n) Impose reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates required by Section 47-270 of the Act or statements of unpaid assessments;

(o) Provide for the indemnification of the Association's Officers and Executive Board and maintain Directors and Officers liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense Assessments;

(q) Exercise any other powers conferred by this Declaration or the By-Laws;

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;

(s) Exercise any other powers necessary and proper for the governance and operation of the Association; and

(t) By resolution, establish Committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the Committee. All Committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a Committee may be appealed to the Executive Board by any Unit Owner within 45 days of publication of such notice, and such Committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 27.3 - Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Common Interest Community or to elect members of the Executive Board to determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE XXVIII

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 the Act.

ARTICLE XXIX

Miscellaneous

Section 29.1 - Captions. The captions contained in the Instruments are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Instruments nor the intent of any provision thereof.

Section 29.2 - Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Instruments so require.

Section 29.3 - Waiver. No provision contained in the Instruments 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 29.4 - Invalidity. The invalidity of any provision of the Instruments 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 Instruments shall continue in full force and effect.

Section 29.5 - Conflict. ¹⁸²⁸ The Instruments are intended to comply with the requirements of the Act and Chapter ~~666~~ of the Connecticut General Statutes. In the event of any conflict between the Instruments 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 Instrument, this Declaration shall control.

Section 29.6 - Execution of Documents. The president or secretary of the Association are responsible for preparing, executing, filing and recording amendments to the Instruments.

ARTICLE XXIV

Damage To Or Destruction of Property

Section 24.1 - Duty to Repair or Restore. Any portion of the Property for which insurance is required under Section 47-255 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, shall be repaired or replaced promptly by the Association unless (A) the Common Interest Community is terminated; (B) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (C) eighty percent of the Unit Owners, including every owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 24.2 - Plans. The property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and 51% of Eligible Mortgagees.

Section 24.3 - Replacement of Less than Entire Property.

- (a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community.
- (b) Except to the extent that other persons will be Distributees:
 - (i) The insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the owners of those Units and the 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 rebuild any Unit, that Unit's allocated Interests are automatically reallocated on the vote as if the Unit had been condemned under Section 47-296(a) of the Act, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 24.4 - 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 Subsection 24.1(A) through Subsection 24.1(C), the proceeds, shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and Lien Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Common Interest Community is terminated.

Section 24.5 - Certificates by the Executive Board. A trustee, if any, may rely on the following certifications in writing made by the Executive Board: