

# DECLARATION OF THE ORCHARD

(EXHIBIT A)

THE ORCHARD HOMEOWNER'S  
ASSOCIATION, INC.

Amended and Revised October 1991, June 2008

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**Declaration of The Orchard**  
**Glastonbury, Connecticut**

WHEREAS, SUMMIT DEVELOPMENT, INC. (hereinafter “Declarant”) desires to submit certain parcels of real property to the provisions of the Common Interest Ownership Act, Connecticut States 47-200 et seq.

NOW THEREFORE, the Declarant does hereby declare:

**ARTICLE I**  
**SUBMISSION OF PROPERTY**

Declarant submits the property in the Town of Glastonbury, Connecticut, described in Schedule A-1, to the provisions of the Common Interest Ownership Act, of the Connecticut General Statutes, for the purposes set forth herein.

**ARTICLE II**  
**DEFINITIONS**

In the Documents, the following words and phrases mean:

**Section 2.1 Act:** The Common Interest Ownership Act, Connecticut General Statutes 47-200 et seq. as it may be amended from time to time.

**Section 2.2 Association:** The Orchard Homeowners’ Association, Inc., a non-stock corporation organized and existing under the laws of the State of Connecticut. It is the Association of Unit Owners pursuant to Section 44 of the Act.

**Section 2.3 By-Laws:** The By-Laws of the Association, as they may be amended from time to time.

**Section 2.4 Common Elements:** All portions of the Common Interest Community other than the Units.

**Section 2.5 Common Expenses:** The expenses for the operation of the Common Interest Community as set forth in Section 18.1 of this Declaration.

**Section 2.6 Common Interest Community:** The Orchard.

**Section 2.7 Declarant:** Summit Development, Inc., a Connecticut corporation or its successor as defined in Subsection 3 (12) of the Act.

**Section 2.8 Declaration:** This document, including any amendments.

**Section 2.9 Director:** A member of the Executive Board.

**Section 2.10 Documents:** The Declaration and survey recorded and filed pursuant to the provisions of the Act. Any exhibit, schedule or certification accompanying a Document is a part of the Document.

**Section 2.11 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 XVII.

**Section 2.12 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 XVII.

**Section 2.13 Executive Board:** The Board of Directors of the Association.

**Section 2.14 Improvements:** Any construction or facilities existing or to be constructed on the land included in the Common Interest Community, included but not limited to, buildings, paving, utility wires, pipes, landscaping and light poles.

**Section 2.15 Land:** The land described in Schedule A-1 to the Declaration, and any Additional Land added to the Common Interest Community from time to time by Amendments to the Declaration.

**Section 2.16 Limited Common Elements:** A portion of the Common Elements allocated by the Declaration or by the operation of Subsection (2) or (4) of Section 22 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 2.17 Majority or Majority of Units Owners:** The owners of more than fifty percent (50%) of the votes in the Association. Any specified percentage or fraction of Unit Owners, unless otherwise stated in the instruments, means such percentage or fraction in the aggregate of such portion of votes.

**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 on that action. These provisions are set forth in Section 23.1 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 on that action. These provisions are set forth in Section 23.2 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 Property:** The land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Act by this Declaration.

**Section 2.23 Rules:** Rules for the use of Units and Common Elements for the conduct of persons within the Common Interest Community, adopted by the Executive Board pursuant to the By-Laws.

**Section 2.24 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 2.25 Special Declarant Rights:** Rights reserved for the benefit of the Declarant to a) complete improvements indicated on surveys filed with the Declaration or any amendment to it; b) exercise any Development Right; c) maintain sales offices, management offices, signs advertising the Common Interest Community, models and work trailers within the Common Elements, the unsold Units or any Unit leased by the Declarant; d) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real property which may be added to the Common Interest Community, and to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Interest Community; e) appoint or remove any officer of the Association or any master association or any Executive Board member during any period of Declarant control; and f) make the Common Interest Community subject to a master association.

**Section 2.26 Survey:** The survey filed with the Declaration as Schedule A-3, as it may be amended from time to time.

**Section 2.27 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 2.28 Unit Owner:** The Declarant or other person who owns a Unit, but the term does not include a person holding an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created by the Declaration.

**Section 2.29 Votes:** The votes allocated to each Unit as shown on Schedule A-2.

**ARTICLE III**  
**NAME OF COMMUNITY AND ASSOCIATION**

**Section 3.1 Common Interest Community:** The name of the Common Interest Community is The Orchard. The Orchard is a planned community of forty (40) Units.

**Section 3.2 Association:** The name of the Association is The Orchard Homeowners' 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 Glastonbury, Connecticut. A legal description of the land currently included in the Common Interest Community is set forth in Schedule A-1. A legal description of the land included as Common Areas in the Common Interest Community is set forth in Schedule A-1-A.

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

**Section 5.1 Number of Units:** There are forty (40) residential Units in the Common Interest Community being the forty (40) lots shown on the survey described in Schedule A-1.

**Section 5.2 Identification of Units:** All Units are identified by number and are shown on the survey.

**Section 5.3 Boundaries:** The boundaries of each Unit created by the Declaration are located as shown on the survey as numbered Units with their identifying number. Each Unit shall be a lot as shown on the survey description A-3.

- (a) **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 of a lot as described in Schedule A-1.

**Section 5.4 Improvements:** Declarant intends to construct upon the Unit/lot a detached single family dwelling pursuant to and in accordance with Planned Area Development for this site prior to the transferring of any Unit/lot with the details of such dwellings/improvement, warranties, etc. to be specified in the contract for the sale of such Unit/lot and the details of such dwelling/improvement are not part of this Declaration.

**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) Any decks, patios or exterior lighting fixtures designed to serve a single Unit, or other fixtures designated to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.
- (b) Walks and driveways, the use of which is limited to the Units which they serve, as shown on the plans.

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 the Association.

**ARTICLE VII**  
**MAINTENANCE, REPAIR AND REPLACEMENT**

**Section 7.1 Common Elements:** The Association shall maintain, repair and replace all of the Common Elements.

**Section 7.2 Units:**

**A.** The Association shall maintain, repair and replace the exterior portions of a Unit, including roofing shingles, trim boards, siding, gutters and downspouts, chimneys, steps, windows and doors and those elements of the Common Elements, defined as Limited Common Elements and those portions of Units, outside improvements such as landscaping, etc.

**B.** Each Unit Owner shall maintain, repair and replace, at his or her own expense, all interior portions of his or her Unit.

**Section 7.3 Limited Common Elements:** The Association shall keep be responsible for removing all snow, leaves and debris from all portions of the Common Areas and the exterior of the Units and from all patios, decks, walks and driveways which are Limited Common Elements appurtenant to a Unit.

**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 any emergency, no such

request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

**Section 7.5 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 own 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**  
**DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

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

- (a) The right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Interest Community for the purposes of constructing utility lines, pipes, wires, ducts, conduits, drainage facilities or structures of any kind and other facilities. If the Declarant grants any such easement, Schedule A-1 shall be amended to include reference to the recorded easement.

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

- (a) The Development Rights may be exercised at any time but not more than seven (7) years after the recording of the Declaration.

**Section 8.3 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 complete improvements indicated on surveys filed with the Declaration or with an Amendment to the Declaration or described in the Declaration.
- (b) To exercise any Development Right reserved in this Declaration anywhere within the Common Interest Community.
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community, models and work trailers.
- (d) To use easements, through the Units and the Common Elements for the purpose of making improvements within the Common Interest Community, and to grant easements to public utility companies and to convey improvements within those easements anywhere in the Units and Common Interest Community for the purpose of constructing

utility lines, pipes, wires, ducts, conduits, drainage facilities or structures of any kind and other facilities.

(e) To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

(f) To make the Common Interest Community subject to a master association.

**Section 8.4 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 8.5 Construction; Declarant's Easement:** The Declarant reserves the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Units and Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in the Declaration.

**Section 8.6 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 8.7 Association or Executive Board Actions Subject to Declarant's Approval:** Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant control, 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.

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

**Section 8.9 Declarant Control of the Association:**

(a) Subject to subsection (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 (60) days after conveyance of sixty (60%) percent of the Units that may be created to Unit Owners other than a Declarant; or (2) two (2) years

after all Declarants have ceased to offer Units for sale in the ordinary course of business. 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 (60) days after conveyance of one-third (1/3) of the Units that may be created to Unit Owners other than a Declarant, at least one (1) member and not less than one-third (1/3) 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 (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.
- (d) Notwithstanding any provision of the Declaration or By-Laws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

**Section 8.10 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 so long as the Declarant is obligated under any warranty or obligation, owns any Units or any Security Interest on any Units, or for seven (7) years after recording the Declaration, whichever is sooner. Earlier termination of certain rights may occur by statute.

**Section 8.11 Right to Lease:** So long as the Declarant is the owner of any Unit, Declarant reserves the right to lease each such Unit, from time to time, under such terms as it deems appropriate.

**Section 8.12 Interference with Special Declarant Rights:** Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

## **ARTICLE IX** **LIABILITY FOR COMMON EXPENSES**

**Section 9.1 Liability for the Common Expenses:** The Common Expenses Liability for each Unit is based upon equality. Accordingly, the percentage of liability for payment of Common Expenses for each Unit at any time may be arrived at by dividing the total number of Units in the

Common Interest Community into the number one hundred (100). The percentage shall then be applied to all Common Expenses.

**ARTICLE X**  
**RESTRICTIONS ON USE, ALIENATION OR OCCUPANCY**

**Section 10.1 Use and Occupancy Restrictions:** Subject to the Special Declarant rights reserved under Article VIII, the following use restrictions apply to all Units and to the Common Elements:

- (a) The residential Units may be used only for residential purposes, for home professional pursuits not requiring regular visits from the public or unreasonable levels of mail, shipping, trash or storage, and for such other purposes as may be permitted by the Town of Glastonbury in a Rural Residential zone.
  
- (b) The use of Common Elements is subject to the By-Laws and the Rules of the Association.

**Section 10.2 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 residential Unit may not be leased for a term of less than six (6) months. The form of all leases must be approved by the Association and a copy of each lease provided to the Association.

**ARTICLE XI**  
**EASEMENTS, LICENSES**

All easements or licenses to which the Common Interest Community is subject are listed in Schedule A-1 to the Declaration. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declaration pursuant to its powers under Article VIII of this Declaration.

**ARTICLE XII**  
**INTENTIONALLY DELETED**

**ARTICLE XIII**  
**ADDITIONS, ALTERATIONS AND IMPROVEMENTS**

**Section 13.1 Additions, Alterations and Improvements by Unit Owners:**

- (a) No Unit Owner shall make any structural addition, structural alteration, or structural improvement in or to the Common Interest Community without the prior written consent

thereto of the Executive Board. The Executive Board shall answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement within sixty (60) days after such request, and may impose reasonable conditions to its approval.

(b) Subject to subsection 13.1(a), a Unit Owner

- i. May make any other improvements or alterations to the interior of his Unit; 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.

(c) A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under subsection 13.1(b)(ii). The Executive Board shall answer any written request for such approval, after notice and hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its rules.

**Section 13.2 Additions, Alterations and Improvements by Executive Board:** Subject to the limitations of Sections 18.5 and 18.6 of this Declaration, the Executive Board may make any alterations, additions or improvements to the Common Elements which, in its judgment, it deems necessary.

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

**Section 14.1 General:** Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by certain Unit Owners under Section 38 of the Act, and except as limited by Section 14.4 and Article XVII 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 sixty-seven (67%) percent of the votes in the Association are allocated.

**Section 14.2 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 (1) year after the amendment is recorded.

**Section 14.3 Recordation of Amendments:** Every amendment to the Declaration shall be recorded in Glastonbury and is effective only on recordation. An amendment 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 14.4 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 14.5 Execution of Amendments:** Amendments to the Declaration required by this Act to be recorded by the Association, which have been adopted in accordance with the Declaration and the Act, shall be prepared, executed, recorded, and certified on behalf of the Association by the President or Secretary of the Association.

**Section 14.6 Special Declarant Rights:** Provisions in the Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

**Section 14.7 Consent of Holders of Security Rights:** Amendments are subject to the consent requirements of Article XVII.

## **ARTICLE XV** **AMENDMENTS TO BY-LAWS**

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

## **ARTICLE XVI** **TERMINATION**

Termination of the Common Interest Community may be accomplished only in accordance with Section 38 of the Act.

## **ARTICLE XVII** **MORTGAGEE PROTECTION**

**Section 17.1 Introduction:** This article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this article shall control.

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

**Section 17.3 Notice of Action:** 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 on which there is a first mortgage 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 an Owner whose Unit is subject to a first mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.4.
- (e) Any judgment rendered against the Association.

**Section 17.4 Prior Consent Required:**

- (a) Document changes: Notwithstanding any lower requirement permitted by the Declaration or the Act, no amendment of any material provision of the instruments by the Association or Unit Owners described in this subsection 17.4(a) maybe adopted without the vote of at least sixty-seven percent (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 fifty-one percent (51%) of the Eligible Mortgagees. "Material" includes, but is not limited to, any provision affecting:
  - (i) Assessments, assessment liens or subordination of assessment liens.
  - (ii) Voting rights.
  - (iii) Reserves for maintenance, repair and replacement of Common Elements.
  - (iv) Responsibility for maintenance and repairs.
  - (v) Rights to use Common Elements and Limited Common Elements.
  - (vi) Boundaries of Units.
  - (vii) Convertibility of Units into Common Elements or Common Elements into Units.
  - (viii) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community.
  - (ix) Insurance or fidelity bonds.
  - (x) Leasing of Units.
  - (xi) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit.
  - (xii) Establishment of self-management when professional management had been required previously by an Eligible Mortgagee of a Unit.

- (xiii) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the instruments.
- (xiv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation.
- (xv) The benefits of mortgage holders, insurers or guarantors.

(b) Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

- (i) Convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements for the benefit of 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 instruments.
- (iv) Termination of the Common Interest Community (as to which sixty-seven percent (67%) Eligible Mortgagee approval is required).
- (v) The merger of this Common Interest Community with any other common interest community.
- (vi) The creation of any additional improvements on any portion of the Common Elements which is subject to any Development Rights, but improvements made by the Declarant pursuant to its Development Rights shall not be deemed to come within this clause.
- (vii) The granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements, easements for electrically transmitted communications or governmentally required easements, serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one (1) year).
- (viii) The assignment of the future income of the Association, including its right to receive Common Expense assessments.

The foregoing consents do not apply to the exercise of any Development Right.

**Section 17.5 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 17.6 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, upon reasonable advance notice.

**Section 17.7 Financial Statements:** Upon request of an Eligible Mortgagee or Eligible Insurer, the Association shall provide each Eligible Mortgagee and each Eligible Insurer with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

- (a) The Common Interest Community contains fifty (50) or more Units.
- (b) Any Eligible Mortgagee requests it, in which case the Eligible Mortgagee shall bear the cost of the audit.

**Section 17.8 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 17.9 Attendance at Meetings:** Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

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

**Section 18.1 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 Act.
- (c) Expenses agreed upon as Common Expenses by the Association.
- (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 18.2 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 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.
- (d) If any Common Expense is caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against his Unit.
- (e) Fees, charges, late charges, fines and interest charged against a Unit Owner pursuant to the instruments and the Act are enforceable as Common Expense assessments.

**Section 18.3 Lien:** Common Expenses shall include:

- (a) The Association has a statutory lien on a Unit for any assessment levied against that Unit or fines imposed against its Units Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
- (b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: 1) liens and encumbrances recorded before the recordation of this Declaration; 2) a first or second Security Interest in 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 18.5 of this article which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in 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 this 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 (2) years after the full amount of the assessments become due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- (e) This Section does not prohibit 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's lien may be foreclosed in like manner as a mortgage on real property.
- (h) In an 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 18.5 of this Declaration.
- (i) 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 18.4(b). Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.
- (j) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

**Section 18.4 Budget Adoption and Ratification:** Within thirty (30) 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 (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. 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 18.5 Ratification of Non-Budget Common Expense Assessments:** If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 18.2, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 18.4.

**Section 18.6 Certificate of Payment of Common Expense Assessments:** The Association 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 (10) business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner.

**Section 18.7 Monthly Payments of Common Expenses:** All Common Expenses assessed under Section 18.2 shall be due and payable monthly.

**Section 18.8 Acceleration of Common Expense Assessments:** In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after notice and hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

**Section 18.9 Commencement of Common Expense Assessments:** Common Expense assessments pursuant to the budget attached hereto as Exhibit E shall begin on the first day of the month following the recording of this Declaration.

**Section 18.10 No Waiver of Liability for Common Expenses:** No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

**Section 18.11 Personal Liability of Unit Owners:** The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

**Section 18.12 Water and Sewer Charges:** Each Unit Owner shall be required to pay the water and sewer charges, if any, pertaining to his Unit. The water and sewer charges, if any, applied to the Common Elements shall be billed separately and the Association shall pay such bills as a Common Expense.

**Section 18.13 Electricity:** Electricity shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the charges for such meter. The electricity serving the Common Elements shall be metered separately and the Association shall pay all charges for such meters as a Common Expense.

**Section 18.14 Natural Gas:** Natural gas shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the charges for such meter. Natural gas serving the Common Elements shall be metered separately and the Association shall pay all charges for such meter as a Common Expense.

## **ARTICLE XIX** **RIGHT TO ASSIGN FUTURE INCOME**

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

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

**Section 20.1 Compliance with Instruments:** All Units 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 instruments 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 Glastonbury are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

**Section 20.2 Adoption of Rules:** 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 XXI**  
**INSURANCE**

**Section 21.1 Coverage:** To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in Sections 21.2 and 21.3 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 21.2 Property Insurance:**

- (a) Property insurance covering:
  - (i) The Common Elements, where applicable; exclusive of land excavations, foundations and other items normally excluded from property policies.
  - (ii) All personal property owned by the Association.
  
- (b) Amounts. The Common Elements, where applicable, for an amount equal to one hundred percent (100%) of their replacement cost at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

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

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



- (d) Others 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 risk 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 thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.
  - (vii) The name of the insured shall be substantially as follows: "The Orchard Homeowners' Association, Inc. for the use and benefit of the individual Owners".

**Section 21.3 Liability Insurance:** The Association shall maintain liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

**Section 21.4 Other Provisions:** Insurance policies carried pursuant to this Section shall provide that:

- (a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his or her interest in the Common Elements or membership in the Association.
- (b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his or her household.
- (c) No act of 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.
- (d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

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

**Section 21.5 Fidelity Bonds:** At such time, if any, as the Community contains thirty (30) Units, the Executive Board shall obtain a blanket fidelity bond for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force, and in no event less than the sum of three (3) months' assessments plus reserve funds. The bond shall include a provision that calls for thirty (30) days' written notice to the Association, to each holder of a Security Interest in a Unit and to each servicer that services an FNMA-owned or FHLMC-owned mortgage on a Unit before the bond can be cancelled or substantially modified for any reason; except that if cancellation is for non-payment or premiums, only ten (10) days' notice shall be required.

**Section 21.6 Unit Owner Policies:** An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

**Section 21.7 Workers' Compensation Insurance:** The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Connecticut.

**Section 21.8 Directors' and Officers' Liability Insurance:** The Executive Board may 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 21.9 Other Insurance:** The Executive Board is authorized to obtain and maintain such other insurance as it may from time to time deem appropriate.

**Section 21.10 Insurance Certificates:** An insurer that has issued an insurance policy shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or holder of a Security Interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, 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 21.11 Premiums:** Insurance premiums for insurance required to be maintained by the Association shall be Common Expense.

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

**Section 22.1 Duty to Restore:** Any portion of the Property for which insurance is required under Section 56 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 and safety.
- (c) Eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

**Section 22.2 Cost:** The cost of repair or replacement in excess of insurance proceeds shall be a Common Expense.

**Section 22.3 Plans:** The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

**Section 22.4 Replacement of Less than Entire Property:**

- (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 Common Elements that are not rebuilt 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.

**Section 22.5 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 subsection 22.1(a) through subsection 22.1(b), 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 22.6 Certificates by the Executive Board:** A trustee, if any, may rely on the following certifications in writing made by the Executive Board:

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

**Section 22.7 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 Glastonbury from the date of the recording of the original Declaration stating the names of the Unit Owners and the mortgagees.

**ARTICLE XXIII**  
**RIGHTS TO NOTICE AND COMMENTS; NOTICE AND HEARING**

**Section 23.1 Right to Notice and Comment:** Before the Executive Board amends the By-Laws or the Rules whenever the Documents require that an action be taken after "Notice and Comment" and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

**Section 23.2 Right to Notice and Hearing:** Whenever the instruments 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 23.3 Appeals:** Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

**ARTICLE XXIV**  
**EXECUTIVE BOARD**

**Section 24.1 Minutes of Executive Board Meetings:** The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

**Section 24.2 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 (2) or more Unit Owners on matters affecting the Common Interest Community.
- (g) Make contracts and incur liabilities.
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements and grant or withhold approval to a Unit Owner as a result of a request from a Unit Owner pursuant to Section 13.1(c).
- (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 may be conveyed or subjected to a Security Interest only pursuant to Section 55 of the Act.
- (k) Grant easements for any period of time including permanent easements and leases, licenses and concessions for no more than one (1) year, through or over the Common Elements.

- (l) Impose and receive 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 22 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 71 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.
- (t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

**Section 24.3 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 or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

**ARTICLE XXV**  
**CONDEMNATION**

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 7 of the Act.

**ARTICLE XXVI**  
**MISCELLANEOUS**

**Section 26.1 Captions:** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the instruments nor the intent of any provision thereof.

**Section 26.2 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 26.3 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 26.4 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 26.5 Conflict:** The Documents are intended to comply with the requirements of the Act and Chapter 600 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 instruments, this Declaration shall control.

**Section 26.6 Execution of Documents:** The President or Secretary of the Association are responsible for preparing, executing, filing and recording amendments to the Documents.

IN WITNESS WHEREOF, the Declarant has caused this Amended Declaration to be executed this 28<sup>th</sup> day of September, 1987.

Signed and Delivered in the presence of:

Thomas P. Kane

Barbara M. DePasquale

SUBMIT DEVELOPMENT, INC., by Kenneth M. Tibbles, Secretary

STATE OF CONNECTICUT, COUNTY OF HARTFORD: ss Glastonbury, September 28, 1987





SCHEDULE A-1  
DESCRIPTION OF SUBMITTED PROPERTY

A certain piece or parcel of land situated in the Town of Glastonbury, County of Hartford and State of Connecticut and shown on a map entitled "Plan of planned Area Development THE ORCHARD Prepared For ORCHARD ROAD ASSOCIATES, INC. Glastonbury, Conn. Megson & Heagle Civil Engineers & Land Surveyors Glastonbury, Conn. Date: 9-25-87 Scale: 1" = 40' Map No. 1-85-1P", which map is on file or to be filed in the Glastonbury Town Clerk's Office to which reference is had. Said premises are more particularly bounded and described as follows:

- NORTHERLY: by land now or formerly of Bonnie R. Berliner, by Cavan Lane, by land now or formerly of Steven A. Albrecht, et al, by land now or formerly of John B. Baribault, et al and by Orchard Street, partly by each, in all, a distance of 832.74 feet;
- NORTHEASTERLY AND EASTERLY: by land now or formerly of Manuel Soares, et al, partly by each, in all, a distance of 141.42 feet;
- NORTHERLY AGAIN: by land now or formerly of Manuel Soares, et al and by land now or formerly of Catholic Cemeteries Assoc., partly by each, in all, a distance of 537.68 feet;
- EASTERLY AGAIN: by land now or formerly of Veronica T. Slogesky and by land now or formerly of Antonio V. D'Addeo, partly by each, in all, a distance of 276.36 feet;
- SOUTHERLY: by land now or formerly of Mary Smyk, a distance of 1,396.89 feet; and
- WESTERLY: by land now or formerly of Orchard Road Associates, Inc., a distance of 400.45 feet.

Excepting therefrom the public streets being shown as Cavan Lane and Orchard Street and that parcel of land being shown as "Reserved For Future Road" on the above referred to map.

SCHEDULE A-1

Said property is subject to the following:

1. Taxes to the Town of Glastonbury on the List of October 1, 1986.
2. Any and all provisions of any governmental regulation, municipal ordinance, or public or private law.
3. A 5 foot easement parallel to and 5 feet distant from the boundary line of each Unit is reserved unto the Grantor, its successors and assigns for the purpose of installing, maintaining, repairing and replacing utility and drainage facilities as may hereafter be required for the benefit of other Units within the Common Interest Community.
4. Two caveats from Edward A. Kowsz to the Town of Glastonbury, one caveat dated June 25, 1976 and recorded in the Glastonbury Land Records in Vol. 195, Page 418 and the other caveat dated October 18, 1976 and recorded in the Glastonbury Land Records in Vol. 216, Page 447.
5. A possible right of way as set forth in a deed from Anton Kieratus to Lawrence Bemer dated and recorded September 20, 1920 in the Glastonbury Land Records in Vol. 57, Page 492.
6. A private conservation easement as shown on the herein-before referred to map in favor of the Town of Glastonbury.
7. An easement from Summit Development, Inc. to the Metropolitan District Commission on file or to be filed in the Glastonbury Land Records.
8. An easement from Summit Development, Inc. to Connecticut Light and Power dated June 10, 1987 and recorded in the Glastonbury Land Records on June 16, 1987 in Vol. 351, Page 193.
9. An easement from Summit Development, Inc. to Connecticut Natural Gas recorded in the Glastonbury Land Records in Vol. 354, Page 111.
10. Easements in favor of the Town of Glastonbury for the installation of sanitary sewer facilities as more particularly shown on the aforementioned map.
11. The terms and conditions contained in the Declaration of The Orchard, a Common Interest Community together with all exhibits and amendments thereto dated September 28, 1987 and recorded in the Glastonbury Land Records in Vol. , Page .

SCHEDULE A-1-A  
LAND INCLUDED AS COMMON AREAS

The Common Areas in said Planned Community are more particularly bounded and described as follows:

A certain piece or parcel of land situated in the Town of Glastonbury, County of Hartford and State of Connecticut and shown on a map entitled "Plan of Planned Area Development THE ORCHARD Prepared For ORCHARD ROAD ASSOCIATES, INC. Glastonbury, Conn. Megson & Heagle Civil Engineers & Land Surveyors Glastonbury, Conn. Date: 9-25-87

Scale: 1" = 40' Map No. 1-85-1P", which map is on file or to be filed in the Glastonbury Town Clerk's Office to which reference is had. Said premises are more particularly bounded and described as follows:

- NORTHERLY: by land now or formerly of Bonnie R. Berliner, by Cavan Lane, by land now or formerly of Steven A. Albrecht, et al, by land now or formerly of John B. Baribault, et al and by Orchard Street, partly by each, in all, a distance of 832.74 feet;
- NORTHEASTERLY AND EASTERLY: by land now or formerly of Manuel Soares, et al, partly by each, in all, a distance of 141.42 feet;
- NORTHERLY AGAIN: by land now or formerly of Manuel Soares, et al and by land now or formerly of Catholic Cemeteries Assoc., partly by each, in all, a distance of 537.68 feet;
- EASTERLY AGAIN: by land now or formerly of Veronica T. Slogesky and by land now or formerly of Antonio V. D'Addeo, partly by each, in all, a distance of 276.36 feet;
- SOUTHERLY: by land now or formerly of Mary Smyk, a distance of 1,396.89 feet; and
- WESTERLY: by land now or formerly of Orchard Road Associates, Inc., a distance of 400.45 feet.

Excepting therefrom the public streets being shown as Cavan Lane and Orchard Street and that parcel of land being shown as "Reserved For Future Road" on the above referred to map.

Also excepting therefrom those lot/Units being shown on said map as Unit #3, 4, 8, 9, 12, 15, 19, 23, 35, 40, 41, 42, 45, 46, 49, 320, 322, 324, 325, 326, 328, 330, 332, 334, 336, 337, 338, 341, 346, 349, 350, 353, 354, 358, 361, 362, 365, 366, 367, 370.

SCHEDULE A-2  
TABLE OF SHARES OF COMMON EXPENSES

| <u>Unit No.</u>     | <u>Percentage Share of Common Expenses</u> | <u>Vote in the Affairs of the Association</u> |
|---------------------|--|---|
| 3                   | 2.5%                                       | 1   |
| 9                   | 2.5%                                       | 1   |
| 15                  | 2.5%                                       | 1   |
| 19                  | 2.5%                                       | 1   |
| 41                  | 2.5%                                       | 1   |
| 45                  | 2.5%                                       | 1   |
| 49                  | 2.5%                                       | 1   |
| 46                  | 2.5%                                       | 1   |
| 42                  | 2.5%                                       | 1   |
| 40                  | 2.5%                                       | 1   |
| 35                  | 2.5%                                       | 1   |
| 23                  | 2.5%                                       | 1   |
| 12                  | 2.5%                                       | 1   |
| 8                   | 2.5%                                       | 1   |
| 4                   | 2.5%                                       | 1   |
| 325                 | 2.5%                                       | 1   |
| 337                 | 2.5%                                       | 1   |
| 341                 | 2.5%                                       | 1   |
| 349                 | 2.5%                                       | 1   |
| 353                 | 2.5%                                       | 1   |
| 361                 | 2.5%                                       | 1   |
| 365                 | 2.5%                                       | 1   |
| 367                 | 2.5%                                       | 1   |
| 366                 | 2.5%                                       | 1   |
| 370                 | 2.5%                                       | 1   |
| 346                 | 2.5%                                       | 1   |
| 350                 | 2.5%                                       | 1   |
| 354                 | 2.5%                                       | 1   |
| 358                 | 2.5%                                       | 1   |
| 362                 | 2.5%                                       | 1   |
| 338                 | 2.5%                                       | 1   |
| 336                 | 2.5%                                       | 1   |
| 334                 | 2.5%                                       | 1   |
| 332                 | 2.5%                                       | 1   |
| 330                 | 2.5%                                       | 1   |
| 328                 | 2.5%                                       | 1   |
| 326                 | 2.5%                                       | 1   |
| 324                 | 2.5%                                       | 1   |
| 322                 | 2.5%                                       | 1   |
| 320                 | 2.5%                                       | 1   |
| 40 Total # of Units | 100.0%                                     | 40  |

SCHEDULE A-3  
SURVEY

A survey entitled "Plan of planned Area Development THE ORCHARD Prepared For ORCHARD ROAD ASSOCIATES, INC. Glastonbury, Conn. Megson & Heagle Civil Engineers & Land Surveyors Glastonbury, Conn. Date: 9-25-87 Scale: 1" = 40' Map No. 1-85-1P".

**AMENDMENT TO DECLARATION OF THE ORCHARD HOMEOWNER'S  
ASSOCIATION, INC. PLANNED AREA DEVELOPMENT**

At a meeting of the Unit Owners of the Orchard Homeowner's Association, Inc. Planned Area Development, of the Town of Glastonbury, County of Hartford and State of Connecticut, the following Motion was made and approved:

That the Declaration of the Orchard Homeowner's Association, Inc. Planned Area Development be amended as follows:

1. Section 2.4 is hereby deleted and the following is inserted in lieu thereof:

**Section 2.4 Common Elements:** All portions of the Common Interest Community other than the Units (A Unit at the Orchard is defined by reference to the survey of the Common Interest Community and within the confines of each Unit as shown on said survey, there exists a single family residential dwelling).

2. Section 7.2A is hereby deleted and the following is inserted in lieu thereof:

**Section 7.2A Units:**

- A. The Association shall maintain, repair and replace, only as against those items caused by normal wear and tear and not as against those items caused by fire or other casualty (a) roofing, shingles, trim boards, siding, gutters and downspouts, chimneys, steps, windows (but not including replacement of broken glass), doors, and (b) those elements of the Common Elements defined as Limited Common Elements, and (c) exterior improvements within the confines of each Lot/Unit but not attached to the structure therein such as landscaping, etc.

Section 7.2B is hereby deleted and the following is inserted in lieu thereof:

- B. Each Unit Owner shall maintain, repair and replace at his or her own expense (i) all items of damage of whatsoever the nature or extent caused to the exterior of the dwelling on the Unit other than by normal wear and tear, and (ii) all interior portions of his or her Unit.

3. Section 7.5 is hereby deleted and the following is inserted in lieu thereof:

**Section 7.5 Repairs Resulting From Negligence:** Each Unit Owner shall reimburse the Association for any expense incurred by the Association for repairs or replacement performed by the Association as a result of damage to such Unit Owner's Unit, 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 properly maintain, repair or make replacements to the Unit or Common Elements.

4. Section 18.2 is amended by adding thereto the following:

**Section 18.2(f):** Any Common Expenses for services provided by the Association to an individual Unit as a result of such Unit Owner's failure to maintain, repair or replace pursuant to Section 7.5 of the Declaration shall be assessed against the Unit which benefits from such service.

**5. Section 21 Insurance:**

Sections 21.1 through 21.5 are hereby deleted and replaced with the following:

**Section 21.1 Coverage:** To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in Sections 21.2 and 21.3 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 21.2 Property Insurance:**

(a) Property insurance covering:

- (i) The Common Elements, where applicable; exclusive of land excavations, foundations and other items normally excluded from property policies.
- (ii) All personal property owned by the Association.

(b) Amounts. The Common Elements, where applicable, for an amount equal to one hundred percent (100%) of their replacement cost at the time insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value. The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the Common Elements and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

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

**Section 21.3 Liability Insurance:** The Association shall maintain liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

**Section 21.4 Other Provisions:** Insurance policies carried pursuant to this Section shall provide that (i) each Unit Owner is an insured person under the policy with respect to liability arising out of his or her 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 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; (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; and (v) the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

**Section 21.5** The Association shall have no responsibility to repair or replace as a result of any casualty or any act (other than normal wear and tear) any portion of any Unit except as set forth in Section 7.2(a).

**Section 21.6 Fidelity Bonds:** At such time, if any, as the Community contains thirty (30) Units, the Executive Board shall obtain a blanket fidelity bond for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force, and in no event less than the sum of three (3) months' assessments plus reserve funds. The bond shall include a provision that calls for thirty (30) days' written notice to the Association, to each holder of a Security Interest in a Unit and to each servicer that services an FNMA-owned or FHLMC-owned mortgage on a Unit before the bond can be cancelled or substantially modified for any reason; except that if cancellation is for non-payment of premiums, only ten (10) days' notice shall be required.

**Section 21.7 Unit Owner Policies:** An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

**Section 21.8 Workers' Compensation Insurance:** The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Connecticut.

**Section 21.9 Directors' and Officers' Liability Insurance:** The Executive Board may 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 21.10 Other Insurance:** The Executive Board is authorized to obtain and maintain such other insurance as it may from time to time deem appropriate.

**Section 21.11 Insurance Certificates:** An insurer that has issued an insurance policy shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or holder of a Security Interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been



mailed to the Association, each Unit Owner and each holder of Security Interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**Section 21.12 Premiums:** Insurance premiums for insurance required to be maintained by the Association shall be a Common Expense.

IN WITNESS WHEREOF, we hereunto set our hands and seals this day of , 1990.

IN WITNESS WHEREOF, we hereunto set our hands and seals this day of , 1990.

Paul R. Gooden  
Ed. Samuel Katz  
George Dattilio  
Michael H.P.  
Mark Schlinger  
Paul R. Gooden  
Mark Schlinger  
Karna Justice  
Mark Schlinger  
Michael H.P.  
George Dattilio

Mark Schlinger  
MARK SCHLINGER  
Karna Justice  
Michael H.P.  
George Dattilio  
Ed. Samuel Katz  
Karna Justice

**CLARIFICATION TO ARTICLE VII, SECTION 7.2A (AMENDED ABOVE) ADOPTED  
AT THE 2008 ANNUAL MEETING OF ORCHARD HOMEOWNERS**

The Declaration of the Orchard Homeowners' Association, Inc. shall be interpreted and handled by the Orchard Homeowners Association Board as follows:

**Items not Attached to the Unit.**

The Board is directly responsible for the upkeep and repair of all landscaping and grounds infrastructure such as mailboxes, asphalt areas, cement walkways, outdoor light poles, numbered unit signs, street signs, privacy fences etc. with the following exceptions:

- Mailbox keys and locks.  
Each homeowner is responsible for their mailbox keys and lock. The Board does not have any keys for the mailboxes. Replacement of locks and/or keys is the responsibility of homeowners. Locks should be kept in working order, and the Board will monitor to ensure that it is the case.
- Additional plantings and/or beds installed by the Owner.  
Each Unit Owner is responsible for any additional planting or beds even though the Board approved the addition of the planting or bed. If the Unit Owner no longer wants to maintain the bed or planting, the Unit Owner can return the area to grass at their expense, at which time the Board will once again assume responsibility for maintaining the area.

**Items Attached to the Unit.**

1. For items where the life span can be reasonably predicted, the Board will have direct responsibility for ensuring uniform replacement at the specified average lifetime. The items included in this category are:

- Painting each Unit on a regular cycle.  
The definition of painting each Unit will entail the following: the power washing of all exterior walls, then staining with high quality solid stain; full prep including scraping, sanding, and then staining of decks with proper deck stain; full prep including the scraping, sanding, and then painting of all exterior doors and hatchways with the proper metal paint in current colors; the scraping and painting of all basement window casings with high quality metal paint.
- Roof replacement for each Unit.  
The current roof replacement project began in 2006 and will be completed in the spring of 2008. The original shingles lasted for 2/3 of their rated life in our community. If the same factor is used with our 40-year shingles then the Board should be prepared to plan for the next roof replacement in 26 years (year 2034).
- Replacement of exterior house lights.  
We replaced our outside lights in 2007. When it will need to be done again is not exactly known but based on our previous experience the failure rate escalates in a relatively short period of time. The Board's responsibility will be to purchase replacement lights in bulk to ensure community uniformity. Installing the lights will be each Unit Owner's responsibility.

**2.** For all other exterior items, the Board will have the responsibility to monitor and ensure each Unit is maintained. The Board must approve all materials and repairs in order to maintain community uniformity and will enforce that the repairs/replacement be made. However, the Unit Owner will be directly responsible for the repair or replacement. Included in this grouping are:

- Exterior clapboards, trim boards, posts and decks,
- Gutters and downspouts,
- Windows, doors and casements including all glass, screen frame and mechanical components,
- Chimneys,
- Concrete porches, patios, foundations and floors,
- Piping for sump pumps, plumbing, water, gas, etc.,
- Water damage resulting from foundation leaks, etc. and water drainage from the foundation.