

Record and Return to:
Cohen and Wolf, P.C.
158 Deer Hill Avenue
Danbury, CT 06810

AMENDED AND RESTATED DECLARATION
OF
BROOKSIDE OF MIDDLEBURY

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MIDDLEBURY, CONNECTICUT

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**AMENDED AND RESTATED DECLARATION
OF BROOKSIDE OF MIDDLEBURY**

WHEREAS, Baker Residential Limited Partnership (the "Declarant") submitted the property described in **Schedule A-1** attached hereto to the provisions of the Common Interest Ownership Act by a Declaration dated December 10, 2003 which was recorded on January 26, 2004 in Volume 199 at Page 986 of the Middlebury Land Records (the "Original Declaration") together with the survey filed therewith; and

WHEREAS, the Original Declaration was amended by the following instruments, all of which have been recorded on the Middlebury Land Records:

First Amendment to Declaration recorded May 4, 2004 in Volume 202 Page 479;
Second Amendment to Declaration recorded December 21, 2004 in Volume 208, Page 918;
Third Amendment to Declaration recorded June 22, 2005 in Volume 213, Page 567; and
Fourth Amendment to Declaration recorded March 7, 2006 in Volume 220, Page 651.

WHEREAS, Brookside of Middlebury Association, Inc. (the "Association") and the Unit Owners of Brookside of Middlebury desire to further amend the Original Declaration and to restate the Original Declaration in its entirety as more particularly set forth herein; and

WHEREAS, the Association, acting herein by Matthew W. Gilchrist, its President, hereby certifies that a resolution approving the amendment of the Original Declaration as set forth in this Amended and Restated Declaration was approved by the affirmative vote of at least sixty seven percent (67%) the Unit Owners; and

WHEREAS, there are no Eligible Mortgagees or Eligible Insurers as defined in Section 1.15 of the Original Declaration.

NOW THEREFORE, the Original Declaration as amended is hereby amended and restated in its entirety as set forth herein. It is intended that this Amended and Restated Declaration shall supersede and replace the Original Declaration and amendments thereto.

**ARTICLE I
Definitions**

In the Community Documents, the following words and phrases shall have the following meanings:

Section 1.1 – Act

The Common Interest Ownership Act, Chapter 828, Sections 47-200 through 47-299 of the Connecticut General Statutes, as it may be amended from time to time.

Section 1.2 – Affordability Plan

The Plan of the Declarant developed in accordance with Connecticut General Statutes Section 8-30(g) to provide "Affordable Housing" in the Community, as more specifically referenced in Section 9.4 hereof and in Article XXV hereof;

Section 1.3 – Allocated Interests

The undivided interest in the Common Elements, the Common Expense liability, and the Votes in the Association allocated to the Units in the Community. The Allocated Interests are described in Article VIII of this Declaration and shown on **Schedule A-2**.

Section 1.4 – Association

Brookside of Middlebury Association, Inc., a nonstock corporation organized under the laws of the State of Connecticut. It is the association of unit owners pursuant to Section 47-243 of the Act.

Section 1.5 – Bylaws

The Bylaws of the Association, as they may be amended from time to time.

Section 1.6 – Common Elements

All portions of the Community other than the Units.

Section 1.7 – Common Expense Assessment

An assessment for Common Expenses against one (1) or more Units adopted by the Association. It includes fees, charges, late charges, fines, and interest charged against a Unit Owner pursuant to the Act, the Community Documents, or both.

Section 1.8 – Common Expenses

Expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including, but not limited to:

- (a) Expenses of administration, operation, Maintenance, Repair, or Replacement of the Common Elements and those portions of the Units for which the Association is responsible;
- (b) Expenses necessary or useful for the operation of the Association or the accomplishment of its purposes, or that the Association incurs in exercising its powers or performing its duties under the Community Documents, the Act, or other applicable law;

(c) Expenses declared to be Common Expenses by the Community Documents or by the Act;

(d) Expenses agreed upon as Common Expenses by vote of a majority of the Votes cast by Unit Owners at a meeting at which a quorum is present.

(e) Expenses incurred by the Association for electricity, gas, water, sewer, telecommunication, and other utility charges not billed by the provider to individual Units; and

(f) Such reserves as may be established by the Association, whether held in trust or by the Association, including, but not limited to, reserves for Maintenance, Repair, Replacement, or addition to the Common Elements, to those portions of the Units for which the Association is responsible, and to any other real or personal property acquired or held by the Association.

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

Section 1.9 – Common Interest Community

Brookside of Middlebury, which is hereinafter referred to as the “Community”.

Section 1.10 – Community Documents

This Declaration and the Survey attached hereto and the certificate of incorporation, the Bylaws, and the Rules of the Association, as any of the foregoing may be amended from time to time. Any exhibit, schedule, or certification accompanying a document is a part of that document.

Section 1.11 – Damaged or Destroyed

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

Section 1.12 – Declaration

This document, including any amendments.

Section 1.13 – Director

A member of the Executive Board.

Section 1.14 – Executive Board

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

Section 1.15 – Improvements

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

Section 1.16 – Limited Common Elements

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

Section 1.17 – Lots or Homesite Lots

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

Section 1.18 – Maintain, Repair, and Replace

To Maintain, Repair, and Replace (or to perform Maintenance, Repair, and Replacement) is the act of addressing and correcting deterioration, decay, wear and tear, and obsolescence to any portion of the Property which has not suffered Damage or Destruction.

Section 1.19 – Manager

A Person engaged by the Association to perform management services for the Community and the Association.

Section 1.20 – Notice and Comment

The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

Section 1.21 – Notice and Hearing

The right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

Section 1.22 – Person

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

Section 1.23 – Property

The land, all Improvements, easements, rights, appurtenances, and any other interests in real property that have been submitted to the provisions of the Act by this Declaration as amended from time to time.

Section 1.24 – Rules

Rules for the use of Units and Common Elements and for the conduct of Persons within the Community, adopted by the Executive Board pursuant to this Declaration and its Bylaws.

Section 1.25 – Security Interest

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

Section 1.26 – Sewer Use Agreement

The Agreement between the Town of Middlebury Water Pollution Control Authority and Baker Residential Limited Partnership filed with this Declaration as **Schedule A-6**.

Section 1.27 – Special Assessment

Any Common Expense Assessment assessed against all of the Units that is not adopted in the same resolution as the budget for the overall operation of the Community that has been adopted in accordance with Section 17.5 of this Declaration. Special

Assessments include amendments to the current budget and assessments which, by their terms, become part of the budget once adopted.

Section 1.28 – Survey

The survey attached to this Declaration as **Schedule A-3**. The mylar of the Survey was filed on the Middlebury Land Records with the Original Declaration and was amended by surveys filed with the First through Fourth amendments to the Original Declaration that are referenced on Page 1 of this Declaration. The reduced version of the Survey attached hereto represents the final version of the Survey that was filed with the Fourth Amendment to the Declaration, and reflects the Community as fully developed, subject to the rights reserved by the Original Declarant that are described therein.

Section 1.29 – Unit

A physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in Section 4.3 of this Declaration. Homesite Lots are a type of Unit. Reference to a Unit or Lot in this Declaration shall be inclusive of all buildings and improvements located on such Unit or Lot, if any, but the definition of Unit or Lot is not changed by such inclusion.

Section 1.30 – Unit Owner

A Person who holds legal title to a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. A Unit Owner is also a Homesite Lot Owner.

Section 1.31 – Votes

The votes allocated to each Unit as shown on **Schedule A-2**.

All other terms set forth in the Community Documents, unless the context requires otherwise, shall have the meanings ascribed to them in the Act.

ARTICLE II

Name and Type of Common Interest Community and Association

Section 2.1 – Common Interest Community

The name of the Common Interest Community is Brookside of Middlebury.

Section 2.2 – Association

The name of the Association is Brookside of Middlebury Association, Inc. It is a nonstock corporation organized under the laws of the State of Connecticut.

ARTICLE III Description of Property

The Community is situated in the Town of Middlebury, Connecticut and is located on the real property described in **Schedule A-1**.

ARTICLE IV Number of Units, Identification, and Boundaries

Section 4.1 – Number of Units

The Community contains one hundred and twenty six (126) Units.

In the Original Declaration the declarant of the Community, Baker Residential Limited Partnership (the “Declarant”), reserved the right to add an additional twenty-five (25) Units to the Community on the land described in **Schedule A-5** if circumstances permit and all zoning approvals and other governmental approvals are obtained. This right will expire on December 10, 2023.

Section 4.2 – Identification of Units

All Units are identified by number and are shown on the Survey.

Section 4.3 – Unit Boundaries

The boundaries of each Unit created by this Declaration are located and described as follows:

- (a) For the purpose of this Declaration and for the purposes of defining the boundaries, the following terms have the following meanings:
 - (i) Ground Surface Boundary: The existing ground surface of those areas of a Homesite Lot within the Perimeter Boundaries.
 - (ii) Subsurface Horizontal Boundary: A horizontal plane lying 25 feet below the Ground Surface Boundary and bounded by the Perimeter Boundaries.
 - (iii) Perimeter Boundaries. Boundaries of a Homesite Lot which extend upward and downward from the Ground Surface Boundary and are shown on the Survey.
 - (iv) Subsurface Vertical Boundaries: Perimeter Boundaries of a Homesite Lot which intersect and are bounded by the Ground Surface Boundary and the Subsurface Horizontal Boundary.

(v) Upper Horizontal Boundary: A horizontal plane located one hundred (100) feet above the Ground Surface Boundary of a Homesite Lot, extended to an intersection with the Perimeter Boundaries of the Unit.

(vi) Vertical Boundaries: Perimeter Boundaries and Subsurface Vertical Boundaries. No vertical boundary subdivides any land.

(b) Boundaries: Each of the Units shall be a Homesite Lot. Each Homesite Lot shall comprise a volume of air space which may contain a residence and other Improvements. Typical Homesite Lot boundaries are shown in the drawing entitled "Typical Homesite Lot Boundaries" attached as **Schedule A-4**. Each Homesite Lot is bounded by its Upper Horizontal Boundary, Subsurface Horizontal Boundary, and Vertical Boundaries.

(c) Inclusions: Except as set forth in Section 4.3(d), each Homesite Lot shall include the spaces and improvements lying within the boundaries described above.

(d) Exclusions: All parts of the sewer system or any detention or drainage basins or structures, or any and all chutes, pipes, wires, conduits or other improvements and all laterals for sewer, water, gas, electric, phone, cable and other utilities which may now, or in the future, service the residence, all of which are located outside of the residence running through any part of the Lot or Limited Common Elements located beneath the Lot, for the purposes of furnishing utility, access and similar services to the Lot, other Lots or the Common Elements are not part of the Homesite Lot, but are Limited Common Elements allocated specifically to the Lot indicated. All of the foregoing located within the residence are part of the Lot.

(e) Inconsistency with Survey. If this definition is inconsistent with the Survey, then this definition shall control

(f) To the extent that driveways and/or front walks (not sidewalks) servicing one Unit (the "Serviced Unit") cross over and encroach upon the land area of another Unit (the "Burdened Unit"), an easement is hereby automatically created in favor of the Serviced Unit over the Burdened Unit on which the driveway and/or front walks encroach. The Serviced Unit owner shall be responsible for the repair, maintenance and upkeep of the driveway and/or front walks, including that area encroaching on the Burdened Unit.

(g) There are walking trails throughout the Property and to the extent that any walking trail crosses over or encroaches on any Unit, an easement is hereby created in favor of all Unit Owners to utilize that portion of the Unit constituting the walking trail,

(h) Various improvements such as, but not limited to, parking spaces along the road, sidewalks, utility transformers, mail stations, signs, street light poles and various other items assigned or related to the construction, care and maintenance of the residential Community may have been placed on a Unit. In such case, an easement is hereby

automatically created in favor of the Association, which shall be responsible for the Maintenance, Repair and Replacement of any such Improvement.

ARTICLE V

Limited Common Elements

The following portions of the Common Elements are Limited Common Elements assigned to the Unit identified:

All of the exclusions referenced in Section 4.3(d) above and indicated as Limited Common Elements are, in fact, Limited Common Elements,

The internal area of an individual mailbox assigned to a Unit is a Limited Common Element for such Unit. However, the mailbox structure itself, in a configuration with other mailboxes is a Common Element, Accordingly, any damage done to the physical mailbox or the group of mailboxes is the responsibility of the Association as a Common Element.

ARTICLE VI

Maintenance, Repair, and Replacement

Section 6.1 – Common Elements

The Association shall Maintain, Repair and Replace all of the Common Elements, but not the Limited Common Elements, which are required by this Declaration to be Maintained, Repaired or Replaced by the Unit Owners. The exception to the foregoing are those structures or areas located within Limited Common Elements that are not specifically assigned to a Unit and are not intended to benefit one Unit in particular, which structures and areas include, but are not limited to: mailboxes, parking areas adjacent to the roadways (but not parking areas in driveways servicing specific Units), signs, walking paths, sidewalks, which are designated for common usage and not to be used as to any specific Unit.

Section 6.2 – Units and Limited Common Elements

Each Unit Owner shall Maintain, Repair and Replace at his or her own expense, all portions of his or her Unit, including the residence and other Improvements situated therein and the Limited Common Elements associated with such Unit. Such Maintenance, Repair and Replacement shall include, but not be limited to, lawn maintenance and landscaping, snow removal, leaf removal and all aspects of home maintenance. In the event a Unit Owner fails to Maintain, Repair and Replace the foregoing, the Association, after Notice and Hearing to the Unit Owner and approval by a two-thirds (2/3) vote of the Executive Board, shall have the right to enter upon the Unit to Maintain, Repair and the foregoing and also to correct drainage problems. All costs related to such Maintenance, Repair and Replacement may be assessed against the Unit and its Unit Owner as a Common Expense.

Section 6.3 – 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 conditions 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 is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 6.4 - Repairs Resulting From Negligence

Each Unit Owner shall reimburse the Association for any damages to any other Unit or to the Common Elements or Limited Common Elements of others caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements in or to his or her Unit. The Association shall be responsible for damage to Units or Limited Common Elements of others caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements.

ARTICLE VII

Subsequently Allocated Limited Common Elements

The Executive Board of the Association, without need for a membership vote, is hereby authorized to create, to assign, and to reassign Limited Common Elements, by amendments to this Declaration, provided that any reassignment shall be made only with the prior written consent of the Unit Owner or Owners whose Unit or Units are affected.

ARTICLE VIII

Allocated Interests

Section 8.1 – Allocation of Interests.

The table showing Unit numbers of each Unit and their Allocated Interests is attached as **Schedule A-2**. These interests have been allocated in accordance with the formulas set out in this Article VIII.

Section 8.2 – Formulas for the Allocation of Interests.

The Allocated Interests for each Unit have been calculated by applying the following formulas.

(a) Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on an equal share. Each of the 126 Units will have a 0.793651% share in the Common Interest Community.

(b) Liability for Common Expense. The percentage of liability for Common Expenses allocated to each Unit is based on an equal share. Each of the 126 Units will have a 0.793651% share in the Common Expenses. Nothing in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Section 17.2 of this Declaration.

(c) Votes. Each Unit in the Community shall have one (1) equal Vote. Any specified percentage, portion, or fraction of Unit Owners, unless otherwise stated in the Community Documents, means the specified percentage, portion, or fraction of all of the Votes as shown in **Schedule A-2**.

In the Original Declaration the Declarant reserved the right to add an additional twenty-five (25) Units to the Community. In the event that the Declarant exercises this right, the formulas set forth above will be used in reallocating interests.

ARTICLE IX

Restrictions on Use and Occupancy and Alienation

Section 9.1 – Use and Occupancy Restrictions for the Units and Common Elements.

The following use restrictions apply to all Units and to the Common Elements:

(a) Each Unit is restricted to residential use as a one-family dwelling including customary home occupation in accordance with the Planning, Zoning and Building laws, rules and regulations of the Town of Middlebury and/or its agencies including, but not limited to, the Water Pollution Control Authority, not requiring regular visits from the public or unreasonable levels of mail, shipping, trash or storage. No sign indicating commercial or professional uses may be displayed outside a Unit. "Dwelling" shall mean a building capable of providing complete living quarters including a complete kitchen and bathroom facilities. "Family" shall mean one or more persons related by blood, marriage or adoption living together as a single housekeeping unit, including foster children and/or domestic help, but not including paying guests, boarders or roomers. A group of not more than four unrelated persons keeping house together shall be considered a family.

(b) In the event that a driveway or walkway servicing a Unit (Serviced Unit) is located, in whole or in part, on the Lot of another Unit (Burdened Unit), then and in that event, an easement is hereby automatically created in favor of the Serviced Unit over the Lot of the Burdened Unit. The Serviced Unit shall have the right, at its cost, to repair and maintain (but not enlarge), the driveway or walkway over the Burdened Unit.

(c) Trucks, commercial vehicles, trailers, recreational vehicles and boats may not be parked in the Community unless parked in garages with the doors fully closed. Provided, however, that SUV's, vans and pickup trucks weighing less than 3 tons may be parked outside of garages. Vehicles with commercial advertising must be parked in garages or the advertising must be covered.

(d) Unit Owners may not modify the exterior appearance of their residences (including, but not limited to, making additions thereto, adding screened-in porches or enclosed decks, adding or modifying outdoor lighting, changing the color of the paint thereon), replacing windows and exterior doors and installing awnings, canopies and enlarging or otherwise modifying decks and patios except that decks and patios may be repainted in the same color as currently exists) without the prior written approval of the Executive Board. Such approval may be reasonably conditioned or denied. Storm and screen doors may be installed if they meet the specifications set forth in the Rules of the Association.

(e) Unit Owners may not erect, alter or place any structures or Improvements on or within their Units (including, but not limited to, accessory buildings, sheds, fences, fire pits, vegetable gardens, play sets, outdoor lighting, hot tubs, , banners, awnings, basketball courts, flag poles, or fountains) without the prior written approval of the Executive Board. Such approval may be reasonably conditioned or denied. The following Improvements are expressly prohibited on or within Units and shall not be approved by the Executive Board: trampolines, ice rinks, above or in-ground swimming pools, accessory buildings, sheds, tree houses, dog runs, clothes lines, basketball courts, gazebos and window air conditioner units.

(f) Unit Owners may not make any landscaping alterations in or to their Units which alter the shape and size of existing planting beds, add new planting beds and/or which alter the grade of the Lot without the prior written approval of the Executive Board. Such approval may be reasonably conditioned or denied.

(g) The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.

(h) Rules Affecting the Use and Occupancy of Units. Except as required or permitted by other provisions of the Declaration, the Association may adopt Rules that affect the use or occupancy of Units only to:

- (i) Implement a provision of the Declaration;
- (ii) Regulate any behavior in or occupancy of a Unit which violates the Declaration or adversely affects the use and enjoyment of other Units or the Common Elements by other Unit Owners; or
- (iii) Restrict the leasing of a Unit to the extent that the Rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans on units in common interest communities or regularly purchase such mortgages.

(i) The Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the Property.

(j) There shall be no obstructions of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Executive Board, except as herein expressly provided. Each Unit Owner shall be obligated to maintain his or her own Unit and keep it in good order and repair.

(k) Nothing shall be done or kept in any Unit or the Common Elements which will increase the rate of insurance of the Units or the Improvements thereof beyond the rates applicable for residential units without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on any of the Units or the Improvements thereof or which would be in violation of any law. No waste shall be committed in the Common Elements.

(l) No noxious or offensive activities shall be carried on in the Units or in the Common Elements, nor shall anything be done therein either willfully or negligently which may be or become an annoyance or nuisance to the other owners or occupants.

(m) Nothing shall be done to any Unit, or on or in the Common Elements which will impair the structural integrity of any building or which will structurally change any building.

(n) No industry, business, trade, occupation or profession of any kind, be it commercial, religious, educational or otherwise may be conducted, maintained or permitted on any part of the Property except as permitted in Subsection (a) hereof. No vehicles of any kind, other than an automobile, including campers, trailers, boats, motorbikes and motorcycles, may be parked or stored on any part of the Property, except in an area specifically designated therefor, if any, except those vehicles temporarily on the Property for purposes of servicing the Property itself or one of the Units. No use or practice shall be permitted on the Property, which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction hereof shall be observed. For purposes of this Subsection (j), all motor vehicle laws of the State of Connecticut will apply to the private drives of the Property and all operators of any vehicles of any kind, including but not limited to minibikes, snowmobiles, trailers, go-carts and the like, must be licensed.

(o) No equipment, fill, construction material, or debris shall be deposited, placed or stored in any regulated area or watercourse, on any Unit or Common Element, including Limited Common Elements, as per the General Provisions of Middlebury Conservation Commission.

(p) The Property is subject to a Declaration of Covenants and Conservation Restrictions dated May 6, 2003 and recorded in Volume 199 at Page 1084 of the Middlebury Land Records. A copy of said Declaration is attached hereto as **Schedule A-7**.

(q) The Executive Board shall have the power to make such rules and regulations as may be necessary to carry out the intent of these use restrictions and as deemed desirable by the Executive Board.

Section 9.2 - Restrictions on Alienation

(a) A Unit may not be conveyed pursuant to a time-sharing plan as defined under Chapter 734b of the Connecticut General Statutes.

(b) A Unit may not be leased or rented for a term of less than twelve (12) months, without the express written consent of the Executive Board. All leases and rental agreements shall be in writing and subject to the requirements of the Community Documents and the Association. Any lessee or tenant shall, in all respects, be subject to the terms and conditions of this Declaration, the Bylaws, and any rules and regulations adopted hereunder.

Section 9.3 - Tenants

If a tenant of a Unit Owner violates the Declaration, Bylaws or Rules and Regulations of the Association, in addition to exercising any of its powers against the Unit Owner, the Association may: (a) after providing Notice and Hearing to the tenant and the Unit Owner, levy reasonable fines against the tenant or Unit Owner or both for the violation; and (b) enforce any other rights against the tenant for the violation which the Unit Owner as landlord could lawfully have exercised directly against the Unit Owner, including any right to bring a summary process action under Chapter 832 of the Connecticut General Statutes. The rights granted under this Subparagraph (b) may only be exercised if the tenant or Unit Owner fails to cure the violation within ten (10) days after the Association notifies the tenant and Unit Owner of that violation pursuant to the procedures for Notice and Hearing.

Unless the lease otherwise provides, this Section 9.3 does not:

- (i) Affect rights that the Unit Owner has to enforce the lease or that the Association has under other law; or
- (ii) Permit the Association to enforce the lease to which it is not a party except to the extent that there is a violation of the Declaration, Bylaws, or Rules and Regulations.

Section 9.4 - Affordability Plan

Various Units in the Community are subject to an Affordability Plan adopted in accordance with Connecticut General Statutes Section 8-30(g) to provide "Affordable Housing" as part of the Community. The Affordability Plan restricts the future conveyancing and transferring of the Units in the Community that are subject to the Affordability Plan. The Affordability Plan is more particularly referenced in Article XXV hereof.

ARTICLE X
Easements and Licenses

Section 10.1 – Easements and Licenses

All easements or licenses appurtenant to the Community or to which the Community is presently subject are recited in **Schedule A-1** to this Declaration.

Section 10.2 - Sewer Use Agreement

Pursuant to the Sewer Use Agreement included as **Schedule A-6** herein, the Association, as successor to the Property, has agreed to the provisions contained therein.

Section 10.3 - Polomski Easement

Reference is made to a sewer easement from an adjoining property owner, Polomski, as grantor for the benefit of the Property as grantee recorded in Volume 182 at Pages 552 of the Middlebury Land Records.

Section 10.4 - Baker Residential Easement

Reference is made to a sewer easement from an adjoining property owner, Baker Residential Limited Partnership, as the Burdened Owner for the benefit of the Property as the Benefited Owner, recorded in Volume 195 at Page 45 of the Middlebury Land Records.

ARTICLE XI
Allocation and Reallocation of Limited Common Elements

Section 11.1 - 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 provisions of this Declaration. The allocations shall be made by amendment to this Declaration.

Section 11.2 - Reallocation of Depicted Limited Common Elements.

Limited Common Elements depicted on the Survey may be reallocated by an amendment to this Declaration pursuant to this Article. Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The persons executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Act, shall record it. The amendment shall contain words of conveyance and shall be recorded and indexed in the names of the parties and the Community.

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

ARTICLE XII
Additions, Alterations, and Improvements

Section 12.1 – Additions, Alterations, and Improvements by Unit Owners

A Unit Owner:

- (a) May make any Improvements or alterations to the interior of his or her residence located on the Unit.
- (b) As set forth in Section 9.1 (d), may not change the appearance of the residence or the Common Elements without the written permission of the Executive Board.
- (c) As set forth in Section 9.1 (e) and (f), may not erect, alter or place any structures or Improvements on or within their Units or make certain landscaping alterations without the written permission of the Executive Board.

Section 12.2 – Approval by Executive Board of Certain Additions, Alterations and Improvements by Unit Owners

- (a) A Unit Owner shall submit a written Architectural Exterior Alteration Application to the Executive Board to request approval to do anything that is otherwise prohibited or regulated under Section 9.1 and 12.1. The Executive Board shall answer any request for such approval, after Notice and Hearing to the applicant within sixty (60) days after it receives the Request. Failure to answer within such time shall not constitute consent by the Executive Board to the proposed action.
- (b) In acting on any request made under Subsection 12.2(a), the Executive Board shall observe the requirements and limitations or all applicable laws, ordinances and regulations, including, but not limited to the Federal Fair Housing Amendments Act of 1988.
- (c) The Executive Board may establish time limits and impose conditions on its approval of a request under Subsection 12.1(a). These may include, but are not limited to, the following:
 - (i) That the addition, alteration or Improvement be made by contractors holding particular licenses or certifications, having

particular qualifications, or having specified levels of insurance coverage.

- (ii) That the Unit Owner obtain and pay for all necessary permits and other governmental approvals for the addition, alteration or improvement.
 - (iii) That the work be done in a specified manner or only during specified times.
 - (iv) That the addition, alteration or improvement be completed by a certain deadline.
 - (v) That the Unit Owner Maintain, Repair and Replace the addition, alteration or improvement or reimburse the Association for the costs of Maintenance, Repair and Replacement.
 - (vi) That the approval and the conditions imposed on the approval be incorporated in a written agreement, signed on behalf of the Association and by the Unit Owner and recorded on the land records of every town in which a portion of the Common Interest Community is located.
- (d) The Association may require the Unit Owner to pay an application fee, at the time the application is made or at such later time as the Executive Board determines or both, to reimburse the Association for its costs in considering and acting on the application including, but not limited to, recording charges and the reasonable fees of attorneys and design professionals.
- (e) In the absence of a recorded agreement to the contrary, any addition, alteration or improvement installed by a Unit Owner will be Maintained, Repaired and Replaced by the Unit Owner at the expense of the Unit Owner. If the Unit Owner fails to Maintain, Repair or Replace the improvement or alteration, the Association may, in addition to any other remedies available under the Community Documents or the Act, and after Notice and Hearing:
- (i) Perform the needed Maintenance, Repair or Replacement and assess the cost of the work against the Unit, or
 - (ii) Remove the addition, alteration or improvement, restore the affected portions of the Property to their original condition and assess the cost of the restoration against the Unit.

- (f) The Executive Board may grant approval for a type or class of modifications or installations by adopting a Rule, after Notice and Comment.
- (g) The Executive Board may establish forms and procedures for the making and processing of requests under this Section.
- (h) Nothing in this Section shall be deemed to require the Executive Board to approve or disapprove any particular request. Neither shall the approval or disapproval of any prior request require the Executive Board to approve or disapprove any other request at a later date.

Section 12.3 – General Provisions Relating to Additions, Alterations and Improvements by Unit Owners

(a) Unit Owners shall apply to any governmental authority necessary for a permit to make any additions, alterations or Improvements in or to their Units. No work shall be commenced or done by a Unit Owner until the Unit Owner provides the Executive Board with a copy of such permit. When work has been completed for which the Town of Middlebury requires the Unit Owner to obtain a Certificate of Occupancy, the Unit Owner shall provide the Executive Board with a copy of such Certificate upon completion of the work.

(b) All additions, alterations or Improvements to the Units and Common Elements shall not, except pursuant to prior approval of 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.

Section 12.4 – Additions, Alterations, and Improvements by Executive Board

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

ARTICLE XIII
Relocation of Boundaries between Adjoining Units

The boundaries between adjoining Units may be relocated by an amendment to this Declaration on application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a reallocation between their Units or their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocations and prepare an amendment that identifies the Units involved, states the reallocation and indicates the Association's consent. The amendment shall be executed by those Unit Owners and contain words of conveyance between them, and the approval of all holders of Security Interest in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in

the name of the grantor and the grantee, and in the grantee's index in the name of the Association. The Association shall prepare and record Surveys necessary to show the altered boundaries between adjoining Lots, and their dimensions and identifying numbers. The applicants shall pay for the costs of preparation of the Amendment and Survey and their recording.

ARTICLE XIV

Amendments to Declaration

Section 14.1 – Amendment – Generally

Except in cases of amendments that may be executed by the Association as provided under Section 11.2, or by certain Unit Owners under Article XIII of this Declaration and except as otherwise provided in the Act or in this Declaration, this Declaration, including the Survey, this Declaration may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the Votes in the Association are allocated.

Section 14.2 – Limitation on Challenges

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

Section 14.3 – Recording and Execution of Amendments

Every amendment to this Declaration shall be recorded on the land records of each town in which any portion of the Community is located and is effective only on recording. An amendment, except an amendment pursuant to Article XIII of this Declaration, shall be indexed in the name of the Community and the Association as grantees and in the name of the parties executing the amendment as grantors.

Section 14.4 – When Unanimous Consent Required

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

Section 14.5 – Notice to Unit Owners of Amendments to the Declaration

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

Section 14.6 – Consent of Holders of Security Interests

Amendments are subject to the consent requirements of Article XVI of this Declaration.

**ARTICLE XV
Termination**

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

**ARTICLE XVI
Mortgagee Protection**

Section 16.1 – Introduction

This Article establishes certain standards and covenants 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 Community Documents, but in the case of conflict, this Article shall control.

Section 16.2 – Supplemental Definitions

As used in this Article and elsewhere in this Declaration, the following terms shall have the following meanings:

(a) “Eligible Insurer” shall mean an insurer or guarantor of a first Security Interest in a Unit that has notified the Association in writing, of its name and address, that it has insured or guaranteed such Security Interest, and the identification of the Unit on which it has insured or guaranteed such Security Interest. Such notice shall be deemed to include a request that the Association give the Eligible Insurer the notices and other rights described in this Article.

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

(c) “Material Adverse Action” shall mean any amendment to the Declaration or any action of the Executive Board or the Association that is of a material adverse nature to holders of first Security Interests in a Unit, including, but not limited to, any of the following:

- (i) Abandonment, partition, subdivision, encumbrance, sale, or transfer of any Common Elements, other than the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements;
- (ii) Any change in the procedures that protect the interest of a holder of a first Security Interest when handling any losses or proceeds from condemnation, destruction, or liquidation of all or part of the Community, or from termination of the Community;
- (iii) Any change in the Unit Owner's interest in or obligations to the Community in order to levy assessments or charges, to allocate distribution of homeowner's insurance proceeds or condemnation awards, or to determine Unit Owner's interest in the Common Elements;
- (iv) Changes in the priority of liens for assessments made against the Units;
- (v) Reductions in reserves for Maintenance, Repair, and Replacement of Common Elements (other than use of reserves for the purpose for which the reserve as established);
- (vi) Responsibility for Maintenance, Repair, and Replacement of the Common Elements;
- (vii) Reallocations of interests in the Common Elements or rights to their use, except reallocation made under Article XI of this Declaration;
- (viii) Redefinition of any Unit boundaries (except that when only boundaries between adjoining Units are involved, then only the approval of the Unit Owners of such Units and the holders of all Security Interests in such Units is required);
- (ix) Conversion of Units into Common Elements or of Common Elements into Units;
- (x) Expansion or contraction of the Community, or the addition, annexation, or withdrawal of property to or from the Community, except as otherwise provided in this Declaration;
- (xi) Imposition of any restrictions on the leasing or rental of Units;
- (xii) Imposition of any restrictions on a Unit Owner's right to sell or transfer a Unit; and

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

Section 16.3 – Consent Required

(a) No Material Adverse Action may be taken by the Association or by the Executive Board or shall be effective until approved by Eligible Mortgagees holding Security Interests in more than fifty percent (50%) of the Units that are subject to Security Interests held by Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration).

(b) The approval or consent of any Person holding a Security Interest in a Unit of any Material Adverse Action shall be deemed granted if a refusal to consent in a record is not received by the Association within sixty (60) days after the Association delivers notice of the proposition requiring consent to the holder of the Security Interest or mails the notice to such holder by certified mail, return receipt requested. The Association may rely on the last-recorded Security Interest of record in delivering or mailing notice to the holder of such Security Interest.

(c) Unless otherwise expressly provided, wherever in this Declaration the request, approval or consent of a specified percentage of holders of Security Interests on Units is required, it shall mean the request, approval, or consent of holders of first Security Interests in Units which, in the aggregate, have allocated to them such specified percentage of Votes in the Association when compared to the total allocated to all Units then subject to first Security Interests.

Section 16.4 – Notice of Certain Actions or Events

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community (for this purpose material includes a condemnation or property loss greater than ten percent (10%) of the annual Common Expense budget) or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

(b) Any delinquency or default in the payment of Common Expense Assessments owed by an Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of holders of first Security Interests on Units.

Section 16.5 – Other Mortgagee Rights

(a) The Association shall permit any Eligible Mortgagee or Eligible Insurer to inspect the books and records of the Association during normal business hours on the same terms as Unit Owners.

(b) A majority of the holders of first Security Interests on Units may require professional management of the Community.

Section 16.6 – Financial Statements

(a) The Association shall provide any Eligible Mortgagee or Eligible Insurer, which submits a written request, with a copy of the most recently available annual financial statement of the Association.

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

Section 16.7 – Enforcement

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

Section 16.8 – Attendance at Meetings

Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

ARTICLE XVII
Assessment and Collection of Common Expenses

Section 17.1 – Apportionment of Common Expenses

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

Section 17.2 – 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 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 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 a Unit Owner, the Association may, after Notice and Hearing, assess that expense exclusively against such Unit Owner's Unit.

(e) Fees, charges, late charges, fines and interest charged against a Unit Owner or the occupant of a Unit pursuant to the Community Documents and the Act are enforceable as Common Expense Assessments against the Unit or Units owned by such Unit Owner.

(f) Any charges assessed against a Unit in connection with additions, alterations, or improvements applied for or approved under Section 12.2 of this Declaration.

(g) All reasonable attorney's fees and costs incurred by the Association in collecting past due common charges, assessments and other sums due from a Unit Owner, with or without the commencement of a foreclosure action or other legal proceedings, or incurred in representing the Association in any foreclosure actions brought against a Unit Owner in which the Association is named as a defendant, shall be added to and included in the amount due to the Association from the Unit Owner as a Common Expense.

(h) All reasonable attorney's fees and costs incurred by the Association in enforcing the provisions of the Declaration, the Bylaws, and the Rules or any applicable law, ordinance, or regulation relating to the Common Interest Community against a Unit Owner or a tenant or other occupant of a Unit, with or without the commencement of litigation, arbitration, mediation, administrative proceedings, or hearings before the Executive Board, may be assessed against the Unit and its Unit Owner as a Common Expense:

(i) by the Executive Board after Notice and Hearing; or

(ii) as awarded by a court or arbitration.

(i) Costs incurred by the Association to perform any Maintenance, Repair and Replacement required in this Declaration to be performed by a Unit Owner may be assessed against the Unit and its Unit Owner as a Common Expense after Notice and Hearing to the Unit Owner and approval by two thirds (2/3) vote of the Executive Board.

Section 17.3 – Liens and Lien Foreclosures

(a) The Association has a statutory lien on a Unit to the maximum extent, for the maximum amount, and with the maximum priority permitted by the Act and other applicable law from time to time.

(b) This Section does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the Association.

(c) This Section does not prohibit actions against Unit Owners to recover sums for which the Association has a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(d) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(e) Subject to the provisions of Subsection 17.3(f), the Association's lien may be foreclosed in like manner as a mortgage on real property.

(f) The Association may not commence an action to foreclose a lien on a Unit under this Section unless:

(i) The Unit Owner, at the time the action is commenced, owes a sum equal to at least two (2) months of Common Expense assessments based on the periodic budget last adopted by the Association pursuant to Section 17.4 of this Declaration;

(ii) The Association has made a demand for payment in a written or electronic communication as required by the Act;

(iii) The Executive Board has either voted to commence a foreclosure action specifically against that Unit or has adopted a standard policy that provides for foreclosure against that Unit; and

(iv) The Association has complied with any other provisions of the Act relating to the commencement of an action to foreclose its lien.

(g) 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 52-504 of the Connecticut General Statutes to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments based on a periodic budget adopted by the Association pursuant to Section 17.4 of this Declaration.

(h) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under the Act. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

(i) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due or in such other order as the Executive Board may determine, notwithstanding any designation or other indication from the Unit Owner as to how the payment is to be applied.

(j) Every aspect of a foreclosure, sale, or other disposition under this Section, including the method, advertising, time, date, place, and terms, shall be commercially reasonable.

Section 17.4 – Budget Adoption, Rejection, and Approval

(a) The Executive Board, at least annually, shall adopt a proposed budget for the Common Interest Community for consideration by the Unit Owners.

(b) Not later than thirty (30) days after the adoption of a proposed budget, the Executive Board shall provide to all Unit Owners a summary of the budget, including a statement of the amount of any reserves, and a statement of the basis on which such reserves are calculated and funded. Simultaneously, the Executive Board shall set a date not less than ten (10) days or more than sixty (60) days after providing the summary for either a meeting of the Unit Owners or a vote by ballot without a meeting to consider approval of the budget. If, at that meeting or in the vote by ballot without a meeting, Unit Owners holding a majority of all of the Votes in the Association vote to reject the budget, the budget is rejected; otherwise the budget is approved. The absence of a quorum at such meeting or participation in the vote by ballot without a meeting shall not affect rejection or approval of the budget. If a proposed budget is rejected, the budget last approved by the Unit Owners continues until Unit Owners approve a subsequent budget.

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

(a) The Executive Board, at any time, may propose a Special Assessment.

(b) Not later than thirty (30) days after adoption of a proposed Special Assessment, the Executive Board shall provide to all Unit Owners a summary of the Special Assessment. If such Special Assessment, together with all other Special Assessments, including emergency Special Assessments, proposed by the Executive Board in the same calendar year, do not exceed fifteen percent (15%) of the Association's last adopted periodic budget for that calendar year, the Special Assessment is effective without approval of the Unit Owners. Otherwise, the Executive Board shall set a date not less than

ten (10) days or more than sixty (60) days after providing the summary for either a meeting of the Unit Owners or a vote by ballot without a meeting to consider approval of the Special Assessment. If, at such meeting or in the balloting, Unit Owners holding a majority of all of the Votes in the Association vote to reject the Special Assessment, the Special Assessment shall be rejected; otherwise the Special Assessment shall be approved. The absence of a quorum at such meeting or participating in the vote by ballot without a meeting shall not affect the rejection or approval of the Special Assessment.

(c) Special Assessments as proposed by the Executive Board may be payable in installments, may be payable over periods in excess of one (1) year and may provide for lump sum prepayment at a discount. If a special assessment is adopted to repay a loan to the Association, the assessment resolution may provide for the adjustment of the assessment when and if the loan payments are adjusted in accordance with the terms of the loan.

(d) Notwithstanding the provisions of Subsection 17.5(b), if the Executive Board determines by a two-thirds (2/3) vote that a Special Assessment is necessary to respond to an emergency:

- (i) the Special Assessment becomes effective immediately in accordance with the terms of the vote;
- (ii) notice of the Special Assessment must be provided promptly to all Unit Owners; and
- (iii) the Executive Board may spend the funds paid on account of the Special Assessment only for the purposes described in the vote.

Section 17.6 – Certificate of Payment of Common Expense Assessments

The Association on request made electronically or in writing shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid Common Expense Assessments against the Unit. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner. The Executive Board may, from time to time, establish a fee for the preparation of the statement.

Section 17.7 – Payment of Common Expense Assessments

(a) All Common Expenses assessed under Section 17.4 of this Declaration shall be due and payable monthly.

(b) All other Common Expenses shall be due and payable on the first day of the month following the month in which they are assessed or charged unless other payment terms are established by the Executive Board in the resolution adopting the assessment.

Section 17.8 – Acceleration of Common Expense Assessments

In the event of default by any Unit Owner in the payment of any Common Expense Assessment levied against the Unit for a period of ten (10) days after the payment is due, the Executive Board may, after Notice and Hearing, require all unpaid assessments for the pertinent fiscal year to be immediately due and payable and, at a later date, to reverse such a requirement.

Section 17.9 – No Waiver of Liability for Common Expenses

Unit Owners may not exempt themselves from liability for payment of the Common 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 17.10 – 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 such successor agrees to assume the obligation and the Association is provided with written proof of the assumption.

Section 17.11 – Capital Contribution.

Upon the resale of each Unit, each new purchaser of a Unit shall pay to the Association, at the time of closing, a capital contribution in an amount equal to two (2) months' Common Charges applicable to the Unit as of the date of the closing as a contribution to the working capital of the Association. In the event such contribution is not paid, such amount may be collected by the Association in the same manner as Common Expense Assessments. The contribution will provide the Association with sufficient capital to pre-pay its bills, to maintain its credit, to pay unforeseen Common Expenses, to provide for the long-term financial viability of the Association and the value of the Unit or for any other purpose deemed necessary or appropriate by the Executive Board.

ARTICLE XVIII

Association Borrowing and Assignment of Future Income

Section 18.1 – Notice of Proposed Borrowing

At least fourteen (14) days before the closing of any loan to the Association, the Executive Board shall:

(a) Disclose in a written or electronic communication to all Unit Owners the amount and terms of the loan and the estimated effect of such loan on any Common Expense Assessment; and

(b) Afford the Unit Owners a reasonable opportunity to submit written or electronic comments to the Executive Board with respect to such loan.

Section 18.2 – Approval of Assignment of Future Income

The Association may borrow money and assign its right to future income as security for a loan only provided:

(a) The loan transaction and the assignment have been approved by the Executive Board;

(b) Unit Owners holding a majority of all of the Votes in the Association vote in favor of or agree to the assignment; and

(c) The Association has complied with the requirements of Section 18.1 of this Declaration.

ARTICLE XIX

Persons and Units Subject to Documents; Rules and Enforcement

Section 19.1 – Compliance with Community Documents

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

Section 19.2 – Compliance with Laws

All Unit Owners, tenants, holders of Security Interests, and occupants of Units shall comply with all laws, ordinances, and governmental regulations applicable to the Common Interest Community or the activities of Persons within the Common Interest Community.

Section 19.3 – Adoption of Rules

(a) The Executive Board may adopt, amend or repeal Rules only after Notice and Comment.

(b) Rules concerning the Common Elements, including Limited Common Elements, may regulate any conduct, condition, or activity, including use and occupancy.

(c) Rules concerning the Units may regulate any conduct, condition, or activity that is not use and occupancy.

(d) Rules concerning the Units may also regulate the use and occupancy of a Unit only to the extent permitted by Subsection 9.1(d) of this Declaration.

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

Section 19.4 – Notice to the Unit Owners of Changes to Rules

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

Section 19.5 – Limitation on Challenges

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

Section 19.6 – Certification of Rules

Amendments to the Rules that have been duly adopted shall be prepared and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 19.7 – Abatement and Enjoinment of Violations by Unit Owners

The violation or breach of any provision of the Community Documents shall give the Association the right, after Notice and Hearing except in case of an emergency, in addition to any other rights set forth in this Declaration:

(a) To enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any Improvement, thing, or condition (except for additions or alterations of a permanent nature that may exist therein) that creates a danger to the Common Elements or other Units contrary to the intent and meaning of the provisions of the Community Documents, and the Association shall not thereby be deemed liable for any manner of trespass;

(b) To bring appropriate legal proceedings, either at law or in equity, to enjoin, abate, or remedy the continuance of any such breach; or

(c) To bring appropriate legal proceedings, either at law or in equity, for specific performance of the Community Documents.

Section 19.8 – Suspension of Privileges for Non- Payment or Breach

(a) If a Unit Owner fails to pay any Common Expense Assessment, the Executive Board, after Notice and Hearing, may suspend any right or privilege of the Unit Owner and all occupants of the Unit, except as provided in Subsection 19.9(c), until such assessment is paid.

(b) If a Unit Owner or occupant of the Unit violates or breaches any provision of the Community Documents, the Executive Board, after Notice and Hearing, may suspend any right or privilege of the Unit Owner and all occupants of the Unit, except as provided in Subsection 19.9(c), for a period not to exceed the longer of thirty (30) days or until the breach is cured.

(c) The suspension of any right or privilege under this Section:

(i) Shall not deny a Unit Owner or other occupant of a Unit access to the Unit or the Limited Common Elements appurtenant to the Unit;

(ii) Shall not suspend a Unit Owner's right to vote or participate in meetings of the Association;

(iii) Shall not prevent a Unit Owner from seeking election as a Director or officer of the Association;

(iv) Shall not permit the Association to withhold services provided to a Unit or a Unit Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any Person; and

(v) Shall not take effect until ten (10) days after the Executive Board notifies the Unit Owner of its decision to suspend the use of the Common Elements.

ARTICLE XX
Insurance

Section 20.1 – Coverage

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

Section 20.2 – Property Insurance

Property insurance will cover all personal property owned by the Association for an amount equal to its replacement cost. The insured shall be “Brookside of Middlebury Association, Inc.” for the use and benefit of the individual Unit Owners.

Insurance policies carried pursuant to this Section shall provide all of the following:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner’s interest in the Common Elements or membership in the Association.

(b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of the Unit Owner’s household.

(c) No act or omission by any Unit Owner, unless acting within the scope of the Unit Owner’s authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

(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 sixty (60) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

Section 20.3 – Liability Insurance

Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than one million dollars (\$1,000,000), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

Insurance policies carried pursuant to this Section shall provide all of the following:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner’s interest in the Common Elements or membership in the Association.

(b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of the Unit Owner’s household.

(c) No act or omission by any Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

(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 sixty (60) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

Section 20.4 – Fidelity Insurance

Fidelity insurance shall be obtained for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The insurance policy shall name the Association as the insured and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the policy is in force and in no event less than the sum of three (3) months' assessments plus reserve funds. The insurer may not cancel or refuse to renew the policy until sixty (60) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

Section 20.5 – Unit Owner Policies

Each Unit Owner must obtain property insurance and liability insurance with regard to the Unit Owner's Unit, Lot, Improvements and Limited Common Elements. Evidence of such insurance shall be submitted to the Executive Board upon the request of the Executive Board. However, the failure of the Executive Board to request evidence of such insurance shall not create any liability on the part of the Association.

Section 20.6 – Workers' Compensation Insurance

The Executive Board shall obtain and maintain workers' compensation insurance to meet the requirements of the laws of the State of Connecticut.

Section 20.7 – 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 as well as other individuals typically covered under such policies. The insurance shall, as far as reasonably available, include such coverage as is necessary to satisfy the Association’s duty of indemnification to its officers and Directors.

Section 20.8 – Other Insurance

The Association may carry such other insurance as the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9 – Premiums

Insurance premiums for insurance carried by the Association shall be a Common Expense.

ARTICLE XXI
Damage to or Destruction of Property

Section 21.1 – Restoration

(a) Any portion of the Property for which insurance is required under Section 47-255 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, which is Damaged or Destroyed shall be restored promptly by the Association unless:

- (i) The Common Interest Community is terminated;
- (ii) Restoration would be illegal under any state or local statute or ordinance governing health or safety; or
- (iii) Eighty percent (80%) of the Unit Owners, including every Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

(b) The Association, acting through the Executive Board, and not the Unit Owner or Unit Owners of affected Units, shall have the exclusive authority to select, contract with, direct, retain, and replace all contractors and vendors for all activities to restore any portion of the Property that has been Damaged or Destroyed for which funds of the Association or insurance proceeds payable to the Association are used or to be used.

Section 21.2 – Cost

The cost of restoring Common Elements and Limited Common Elements which are the responsibility of the Association in excess of insurance proceeds shall be a Common Expense assessed against all Units.

Section 21.3 – Plans

The Property that must be restored shall be restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, Unit Owners holding a majority of all of the Votes in the Association, and more than fifty percent (50%) of Eligible Mortgagees.

Section 21.4 – Restoration of Less Than the 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 distributes, the insurance proceeds attributable to Common Elements that are not rebuilt shall be distributed to the Association.

Section 21.5 – Insurance Proceeds

The insurance trustee, or if there is no insurance trustee, then the Association, shall hold any insurance proceeds in trust for the Association and Unit Owners. The proceeds shall be disbursed first for the restoration of the damaged Property, and the Association and Unit Owners are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely restored, or the Community is terminated.

Section 21.6 – Certificates by the Executive Board

An insurance trustee, if any, may rely on the following certifications in writing made by the Executive Board:

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

Section 21.7 – Certificates by Attorneys

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

ARTICLE XXII

Rights to Notice and Comment and to Notice and Hearing

Section 22.1 – Notice and Comment

Before the Executive Board amends the Bylaws or the Rules, whenever the Community Documents require that an action be taken after Notice and Comment, and at any other time the Executive Board determines it is in the interest of the Association to do so, the Association shall give notice to the Unit Owners at least *ten (10)* days before the date on which the Executive Board will act. . The notice shall include:

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

Section 22.2 – Notice and Hearing

- (a) The procedures set out in this Section 22.2 shall be followed:
 - (i) Whenever the Community Documents require that an action be taken after Notice and Hearing; and
 - (ii) Before the Association brings an action or institutes a proceeding against a Unit Owner, except if the action is brought to prevent immediate or irreparable harm or to foreclose a lien for an assessment attributable to a Unit or fines imposed against a Unit Owner.
- (b) The hearing must be held during a regular or special meeting of Executive Board.
- (c) Not less than ten (10) business days prior to the hearing, the Association shall send written notice of the hearing to the Unit Owner and to any other parties the Association considers appropriate.

- (i) The notice shall be sent to the affected Unit Owner by certified mail, return receipt requested, and by regular mail.
 - (ii) The notice shall be sent to any other parties in any manner permitted by the Bylaws.
 - (iii) The notice given under this Subsection 22.2(c) shall be in addition to any other notice of the meeting of the Executive Board required to be given by Association.
- (d) The notice shall include the following:
- (i) The date, time, and place of the hearing;
 - (ii) A description of the alleged violation or the nature of the claim against the Unit Owner;
 - (iii) Instructions as to how the Unit Owner can participate in the hearing and present the Unit Owner's position; and
 - (iv) An explanation of the consequences of not participating in the hearing.
- (e) At the hearing, the Unit Owner shall have the right, personally or through a representative, to present information orally, in writing, or both, subject to reasonable rules of procedure established by the Executive Board to assure a prompt and orderly resolution of the issues. The Executive Board may also receive information from anyone else who, in the opinion of the Executive Board, will assist it in making a decision. The hearing shall not be conducted as a formal trial. All information presented shall be considered in making a decision but shall not bind the decision makers.
- (f) The Executive Board shall make its decision and send notice of its decision within thirty (30) days after the conclusion of the hearing. Notice of the decision shall be sent to the Unit Owner by certified mail, return receipt requested, and by regular mail.

Section 22.3 – 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 XXIII
Executive Board

Section 23.1 – Powers and Duties

The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws, or the Act. The Executive Board acts only pursuant to the procedures set out in the Declaration, the Bylaws, the Association's certificate of incorporation, and the Act. The activities of the Association are administered by its officers and designated agents in performing their authorized functions. The Executive Board shall have, subject to the limitations contained in this Declaration and 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 power to do the following:

- (a) Except as limited by Subsection 23.2(d), shall adopt and may amend Bylaws, and may adopt and amend Rules;
- (b) Shall adopt and may amend budgets, may adopt and amend Special Assessments, and may invest funds of the Association;
- (c) May collect assessments for Common Expenses from Unit Owners;
- (d) May hire and discharge managing agents;
- (e) May hire and discharge employees, agents other than managing agents, and independent contractors;
- (f) May institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Common Interest Community, subject to the limitations placed on the Association's authority to institute and maintain proceedings alleging construction defects set out in Section 47-261f of the Act;
- (g) May make contracts and incur liabilities;
- (h) May regulate the use, Maintenance, Repair, Replacement, and modification of Common Elements;
- (i) May cause additional improvements to be made as a part of the Common Elements;
- (j) May acquire, hold, encumber, and convey in its own name any right, title, or interest to real property or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 47-254 of the Act;

- (k) May grant easements through or over the Common Elements, for any period of time including permanent easements;
- (l) May grant leases, licenses, and concessions through or over the Common Elements for a term of no more than one (1) year;
- (m) May impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements described in Subsections 47-221(2) and (4) of the Act, and for services provided to Unit Owners;
- (n) May impose charges or interest or both for late payment of assessments and, after Notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, and the Rules of the Association;
- (o) May impose reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates required by Section 47-270 of the Act, or statements of unpaid assessments;
- (p) May provide for the indemnification of its officers and Directors and maintain directors' and officers' liability insurance;
- (q) Subject to Subsection 47-261e (e) of the Act and Article XVIII of this Declaration, may assign its right to future income, including the right to receive Common Expense Assessments;
- (r) May exercise any other powers conferred by this Declaration or the Bylaws;
- (s) May exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- (t) May exercise any other powers necessary and proper for the governance and operation of the Association;
- (u) Subject to the limitations set out in Subsection 19.9(c), may suspend any right or privilege of a Unit Owner who fails to pay an assessment;
- (v) By resolution, establish one or more committees that are composed only of incumbent Directors, which committees may be authorized to exercise the power of the Executive Board to the extent specified by the Executive Board in the resolution establishing such committee. All such committees must maintain and publish notice of their actions to the Executive Board and otherwise comply with applicable provisions of the Bylaws; and
- (w) By resolution, establish one or more committees that are not authorized to exercise the power of the Executive Board that are composed of such individuals as may

be specified in the resolution establishing such committee. All such committees must maintain and publish notice of their actions to Unit Owners and the Executive Board and otherwise comply with applicable provisions of the Bylaws.

Section 23.2 – Executive Board Limitations

The Executive Board may not act on behalf of the Association:

- (a) To amend this Declaration;
- (b) To terminate the Community;
- (c) To elect Directors, except that the Executive Board may fill vacancies in its membership until the next meeting at which Directors are elected; or
- (d) To determine the qualifications, powers and duties, or terms of office of Directors.

Section 23.3 – Board Discretion

(a) In addition to any other discretion the Executive Board has under applicable law, the Executive Board may determine whether to take enforcement action by exercising the Association's power to impose sanctions, by commencing an action for a violation of the Community Documents, or by commencing or defending any other action or proceeding relating to the rights, powers, or obligations of the Association, which may include a determination of whether to compromise any claim for unpaid assessments or other claim made by or against the Association. The Executive Board does not have a duty to take enforcement or other action if it determines that, under the facts and circumstances presented:

- (i) The Association's legal position does not justify taking any or further action;
- (ii) The covenant, restriction, or Rule being enforced is, or is likely to be construed as, inconsistent with law;
- (iii) Although a violation may exist or have occurred, it is not so material as to be objectionable to a reasonable Person or to justify expending the Association's resources; or
- (iv) It is not in the Association's best interests to take enforcement action.

(b) The Executive Board's decision under Subsection 23.3(a) not to take action under one (1) set of circumstances does not prevent the Executive Board from

taking action under another set of circumstances, except that the Executive Board may not be arbitrary or capricious in taking enforcement action.

ARTICLE XXIV Condemnation

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 XXV Affordability Plan

Eight (8) of the Units in the Community have been designated as "Affordable Housing" as defined by Connecticut General Statutes Section 8-30(g). The specific Units designated as Affordable Homes are as set forth in the Affordability Plan which is attached hereto and made a part hereof as **Schedule A-8**.

ARTICLE XXVI Miscellaneous

Section 26.1 – Captions

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

Section 26.2 – Number and Gender

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

Section 26.3 – Waiver

No provision contained in the Community Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 26.4 – Invalidity

The invalidity of any provision of the Community Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and in such event, all of the other provisions of the Community Documents shall continue in full force and effect.

Section 26.5 – Conflict

The Community Documents are intended to comply with the requirements of the Act and the Connecticut Revised Nonstock Corporation Act. In the event of any conflict between the Community Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Community Document, this Declaration shall control.

Brookside of Middlebury Association, Inc.


Kristie Weidemier


Dwight Harris

By: 
Matthew S. Gilchrist, its President

STATE OF CONNECTICUT

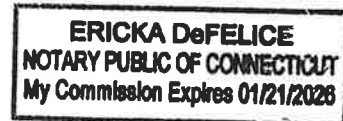
COUNTY OF NEW HAVEN

)
) ss. SOUTHBURY May 14, 2021
)

Personally appeared, Matthew S. Gilchrist, President Brookside of Middlebury Association, Inc., a Connecticut corporation, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, and the free act and deed of such corporation, before me.



Notary Public



SCHEDULE A-1

All that certain piece or parcel of land together with the any improvements thereon situated on the westerly side of Christian Road and the northerly side of Kissewaug Road in the Town of Middlebury, County of New Haven and State of Connecticut and shown on a certain map entitled "Overall Plan Phase Map Phase I Brookside Christian Road, Middlebury, Connecticut" Scale 1"=150' January 13, 2004" Prepared by Robert Green Associates, L.L.C., Surveyors and Engineers, 6 Old Waterbury Road, Terryville, Conn. 06786 and filed on the Middlebury Land Records on January 26, 2004 at 2:35 p.m. in Maps/Volume 33, Page 19.

Together with the Sewer Easement from Richard and Holly Polomski in favor of Phoenix Land, LLC dated September 4, 2002 and recorded in Volume 182 at Page 545 of the Middlebury Land Records.

SCHEDULE A-1 - (Continued)

Said premises and the property described in Schedule A-1 hereof are subject to the following:

1. Any and all provisions of any federal, state or municipal ordinances, regulations or rules or public or private law, inclusive of zoning, inland wetlands, building and planning laws, rules and regulations, Planning Commission and Conservation Commission conditions of approval and variances from said regulations and other limitations of use imposed by governmental authority.
2. Taxes of the Town of Middlebury, including taxes resulting from any reassessment or reallocation from the creation of the Common Interest Community or the issuance of a Certificate of Occupancy for any Unit in the Community, which become due and payable after the date of the delivery of the deed for each specific Unit to a purchaser.
3. Public improvement assessments, and/or unpaid installments thereof, due the Town of Middlebury.
4. Such facts as an accurate survey and/or inspection of the premises might reveal.
5. Easements, restrictions, covenants and encroachments as of record may appear, or as disclosed by an inspection of the subject premises.
6. Conditions imposed by the Planning Commission of the Town of Middlebury, pursuant to its approval of the Community and conditions and restrictions imposed by the Water Pollution Control Authority of the Town of Middlebury and the Middlebury Conservation Commission.
7. Notes, notations and easement as shown on the Survey of the Property.
8. The right to create restrictions and/or to grant easements for any and all purposes over the Property, Common Elements, Limited Common Elements and Units, and in furtherance thereof to construct and convey Improvements within those easements, for utilities, and for purposes of vehicular or pedestrian access and for any other purpose for the benefit of the Common Interest Community and for the benefit of any area in which a Development Right is reserved, regardless of whether such right is exercised or such real property subject to Development Rights is made a part of the Common Interest Community.
9. The right to grant conservation easements to the Town of Middlebury, the Association or other entities over the Common Elements, Limited Common Elements and Units, and to convey Improvements within those easements.
10. The right to enter into and/or modify agreements with Town of Middlebury and/or its agencies including, but not limited, to the Water Pollution Control Authority and the

Conservation Commission regarding the maintenance of drainage structures such as storm water detention basins or ditches, and conservation areas, and the maintenance of sewer lines and infrastructure and the creation and funding of monetary accounts for such purpose which will be binding on the Association.

11. The right of the Declarant to exchange a portion of the Property for an approximately equal portion of adjoining real estate to correct an encroachment on the Property.
12. The right of the Declarant to enter into an agreement with the appropriate parties to allow school buses to enter and create stops on the Property.
13. Riparian rights of others in and to any stream or brook crossing said premises.
14. Conditions contained in the Declaration of Covenants & Conservation Restrictions as required by the Conservation Commission and attached to the Declaration as Schedule A-7.

**SCHEDULE A-2
TABLE OF INTERESTS**

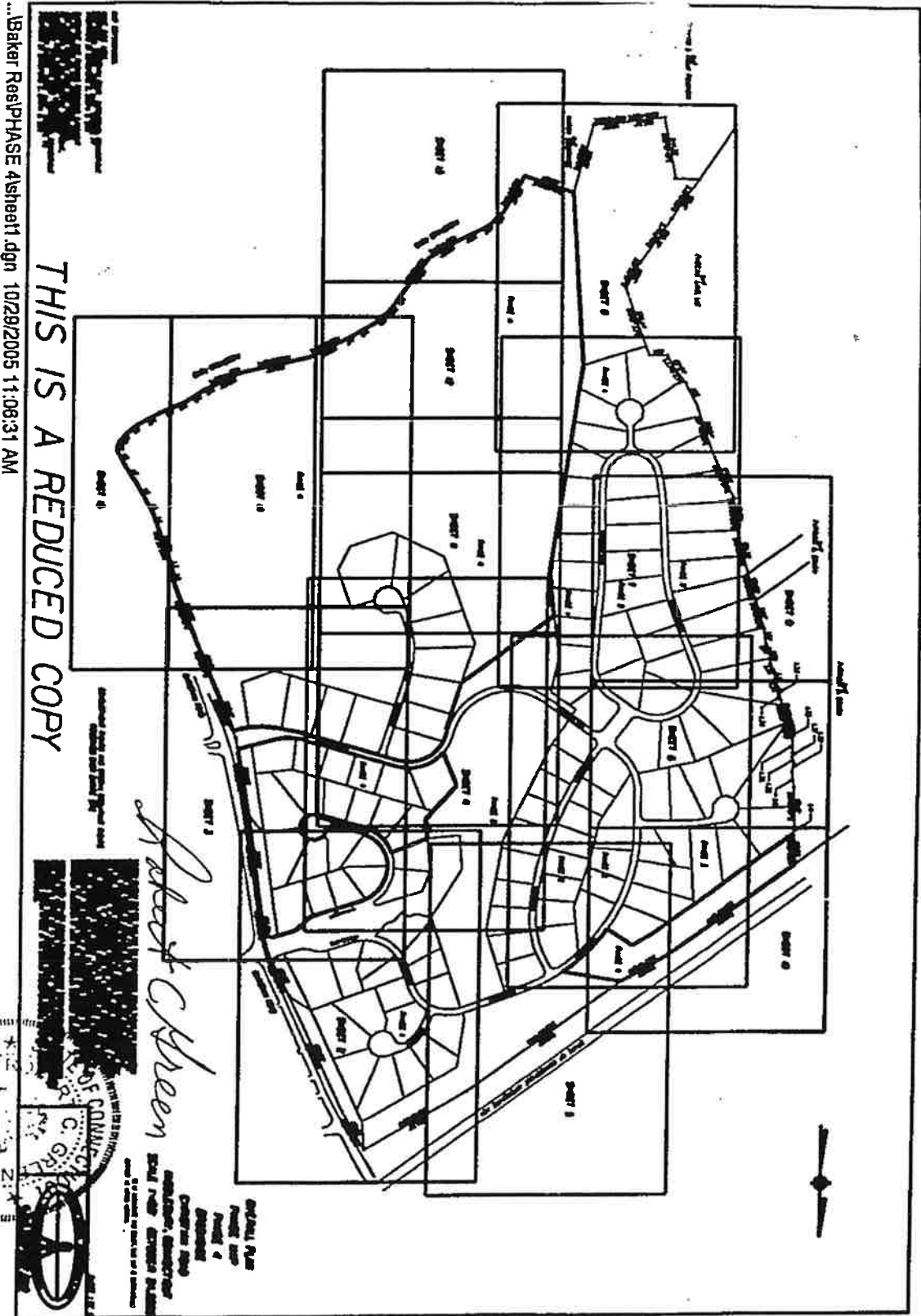
BROOKSIDE Phase 1 & Phase 2 & Phase 3

<u>Phase</u>	<u>Unit #</u>	<u>Street Address</u>	<u>Vote</u>	<u>Undivided Interest in Common Element</u>	<u>Common Charge Assessments</u>
3	0001	17 Brookside Drive	1	0.793651%	0.793651%
3	0002	20 Brookside Drive	1	0.793651%	0.793651%
3	0003	19 Brookside Drive	1	0.793651%	0.793651%
3	0004	22 Brookside Drive	1	0.793651%	0.793651%
3	0005	21 Brookside Drive	1	0.793651%	0.793651%
3	0006	24 Brookside Drive	1	0.793651%	0.793651%
3	0007	23 Brookside Drive	1	0.793651%	0.793651%
3	0008	26 Brookside Drive	1	0.793651%	0.793651%
3	0009	28 Brookside Drive	1	0.793651%	0.793651%
3	0010	30 Brookside Drive	1	0.793651%	0.793651%
3	0011	2 Plymouth Lane	1	0.793651%	0.793651%
3	0012	4 Plymouth Lane	1	0.793651%	0.793651%
3	0013	6 Plymouth Lane	1	0.793651%	0.793651%
3	0014	8 Plymouth Lane	1	0.793651%	0.793651%
3	0015	10 Plymouth Lane	1	0.793651%	0.793651%
3	0016	12 Plymouth Lane	1	0.793651%	0.793651%
3	0017	14 Plymouth Lane	1	0.793651%	0.793651%
3	0018	16 Plymouth Lane	1	0.793651%	0.793651%
1	0019	34 Independence Circle	1	0.793651%	0.793651%
1	0020	19 Independence Circle	1	0.793651%	0.793651%
1	0021	36 Independence Circle	1	0.793651%	0.793651%
1	0022	21 Independence Circle	1	0.793651%	0.793651%
1	0023	23 Independence Circle	1	0.793651%	0.793651%
1	0024	25 Independence Circle	1	0.793651%	0.793651%
1	0025	27 Independence Circle	1	0.793651%	0.793651%
1	0026	29 Independence Circle	1	0.793651%	0.793651%
1	0027	31 Independence Circle	1	0.793651%	0.793651%
1	0028	33 Independence Circle	1	0.793651%	0.793651%
1	0029	35 Independence Circle	1	0.793651%	0.793651%
1	0030	37 Independence Circle	1	0.793651%	0.793651%
1	0031	39 Independence Circle	1	0.793651%	0.793651%
1	0032	41 Independence Circle	1	0.793651%	0.793651%
1	0033	43 Independence Circle	1	0.793651%	0.793651%
1	0034	32 Independence Circle	1	0.793651%	0.793651%
1	0035	30 Independence Circle	1	0.793651%	0.793651%
2	0036	28 Independence Circle	1	0.793651%	0.793651%
2	0037	17 Independence Circle	1	0.793651%	0.793651%
2	0038	26 Independence Circle	1	0.793651%	0.793651%
2	0039	15 Independence Circle	1	0.793651%	0.793651%
2	0040	24 Independence Circle	1	0.793651%	0.793651%
2	0041	13 Independence Circle	1	0.793651%	0.793651%
2	0042	22 Independence Circle	1	0.793651%	0.793651%
2	0043	11 Independence Circle	1	0.793651%	0.793651%

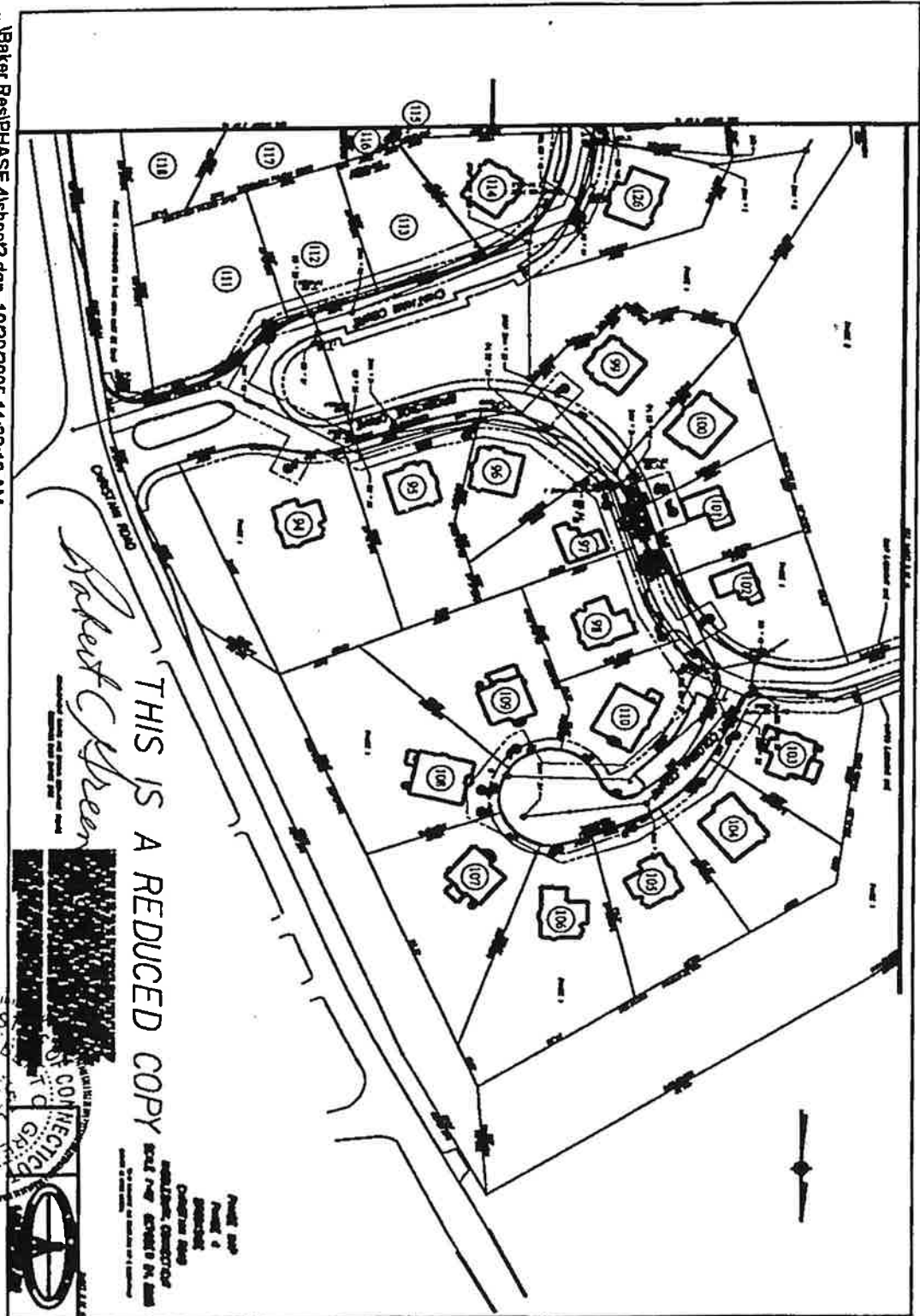
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2	0048	16 Independence Circle	1	0.793651%	0.793651%
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2	0054	10 Independence Circle	1	0.793651%	0.793651%
2	0055	8 Independence Circle	1	0.793651%	0.793651%
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3	0060	3 Stonington Court	1	0.793651%	0.793651%
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3	0062	7 Stonington Court	1	0.793651%	0.793651%
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3	0064	8 Stonington Court	1	0.793651%	0.793651%
3	0065	6 Stonington Court	1	0.793651%	0.793651%
3	0066	4 Stonington Court	1	0.793651%	0.793651%
3	0067	2 Stonington Court	1	0.793651%	0.793651%
2	0068	18 Brookside Drive	1	0.793651%	0.793651%
2	0069	16 Brookside Drive	1	0.793651%	0.793651%
2	0070	14 Brookside Drive	1	0.793651%	0.793651%
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2	0074	11 Brookside Drive	1	0.793651%	0.793651%
2	0075	9 Brookside Drive	1	0.793651%	0.793651%
2	0076	1 Nantucket Way	1	0.793651%	0.793651%
2	0077	3 Nantucket Way	1	0.793651%	0.793651%
2	0078	2 Nantucket Way	1	0.793651%	0.793651%
2	0079	5 Nantucket Way	1	0.793651%	0.793651%
2	0080	4 Nantucket Way	1	0.793651%	0.793651%
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1	0096	6 Brookside Drive	1	0.793651%	0.793651%
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3	0124	6 Chatham Court	1	0.793651%	0.793651%
1	0125	4 Chatham Court	1	0.793651%	0.793651%
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Schedule A-3-1



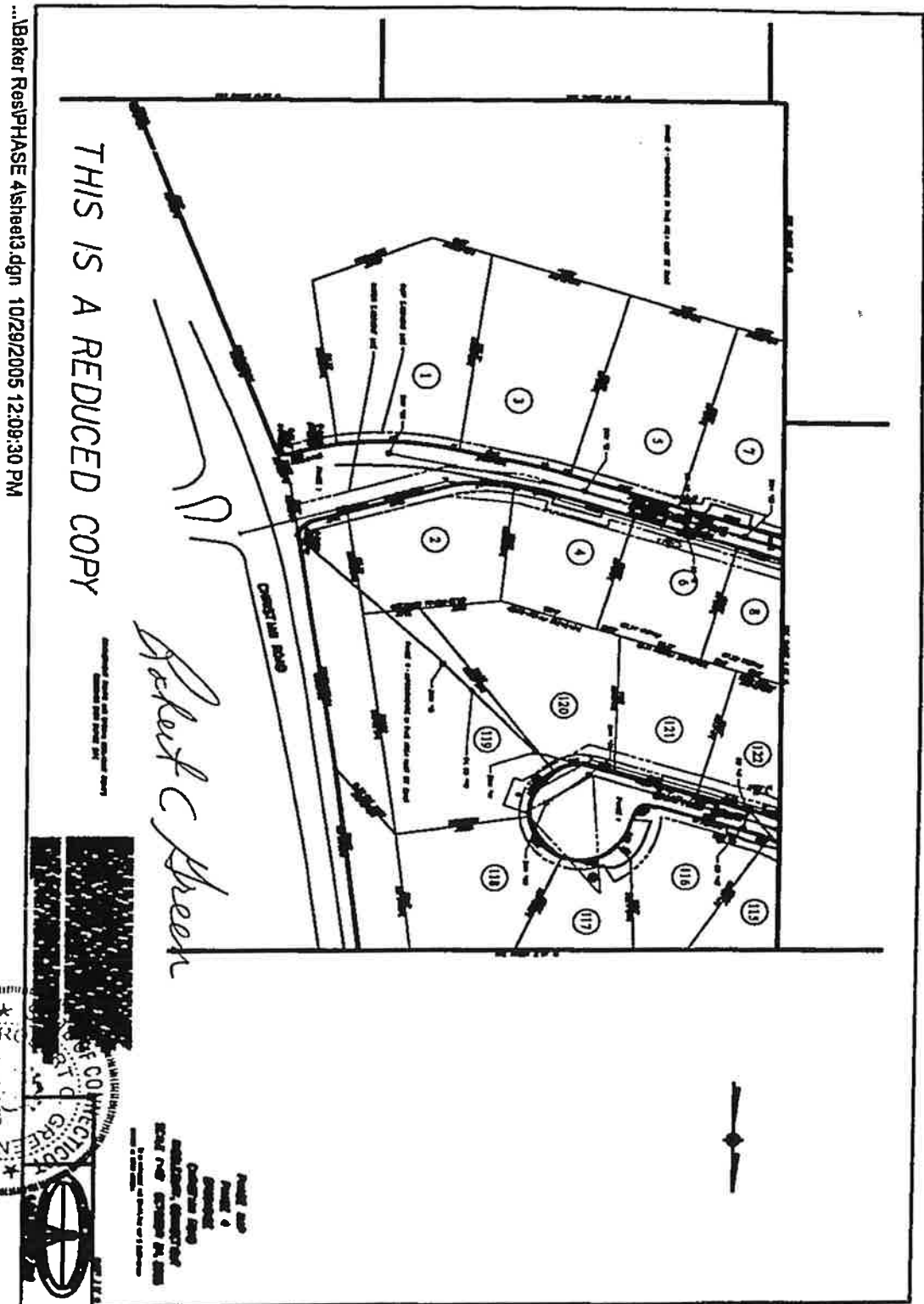
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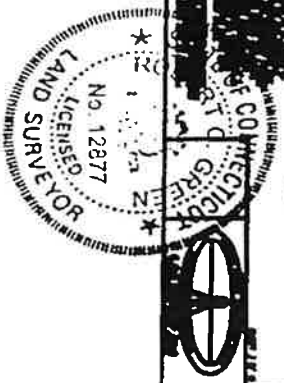
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Schedule A - 3 - 3



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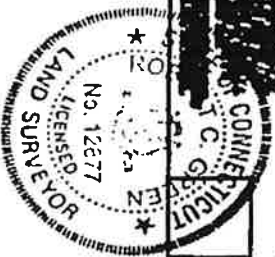
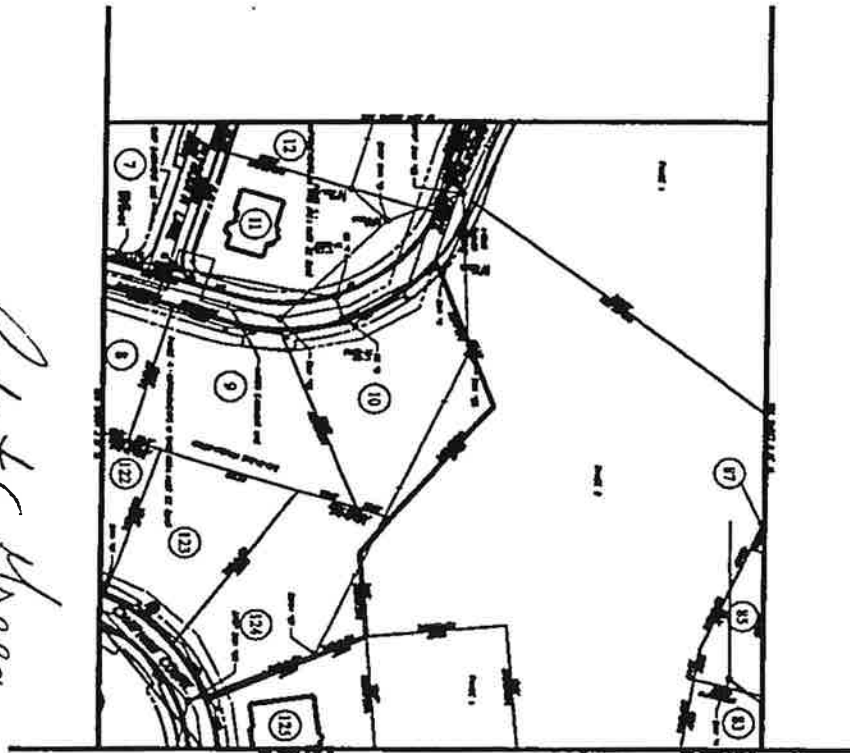


Robert C. Green
Professional Engineer
No. 12877
State of New York
Professional Engineer

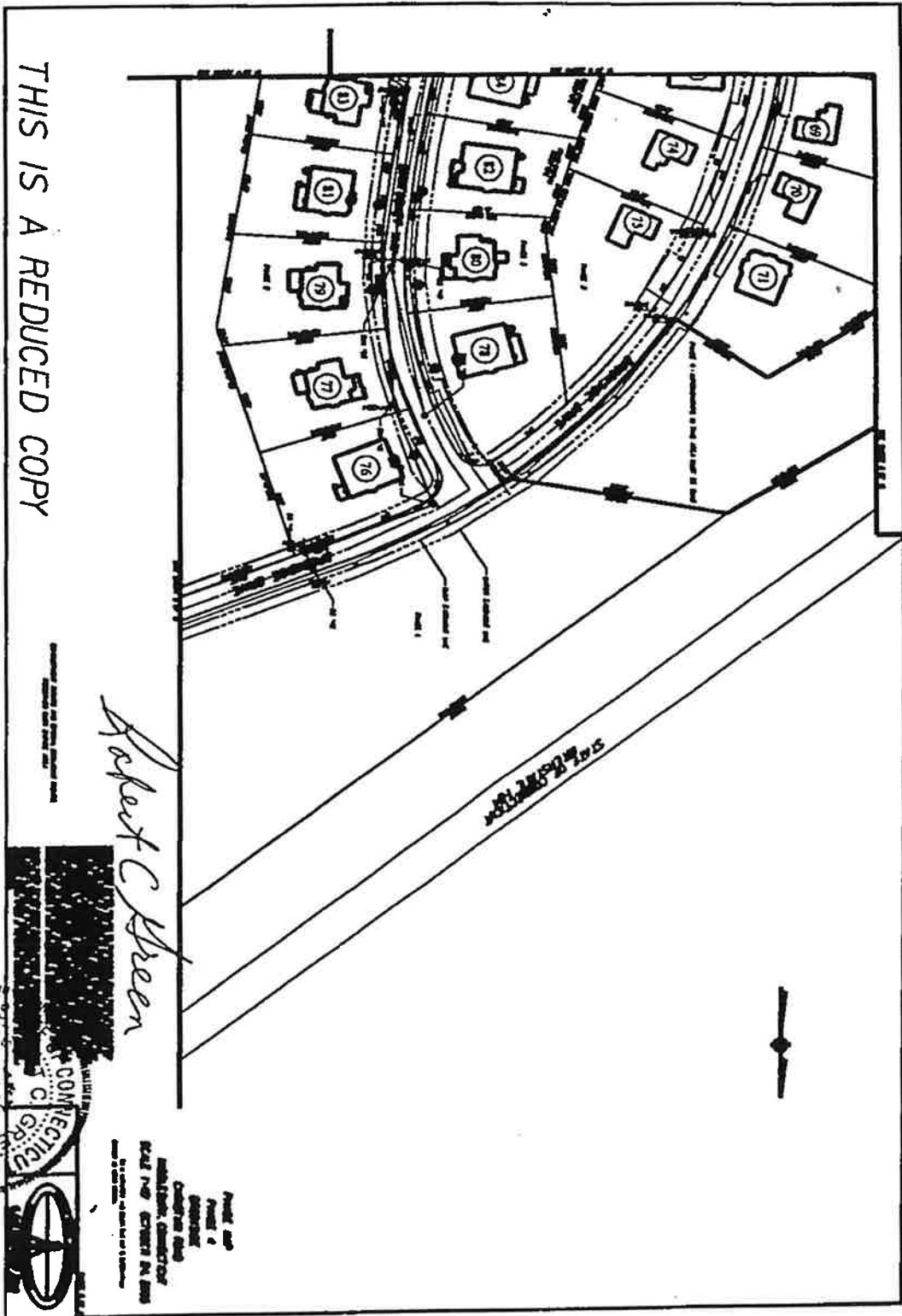
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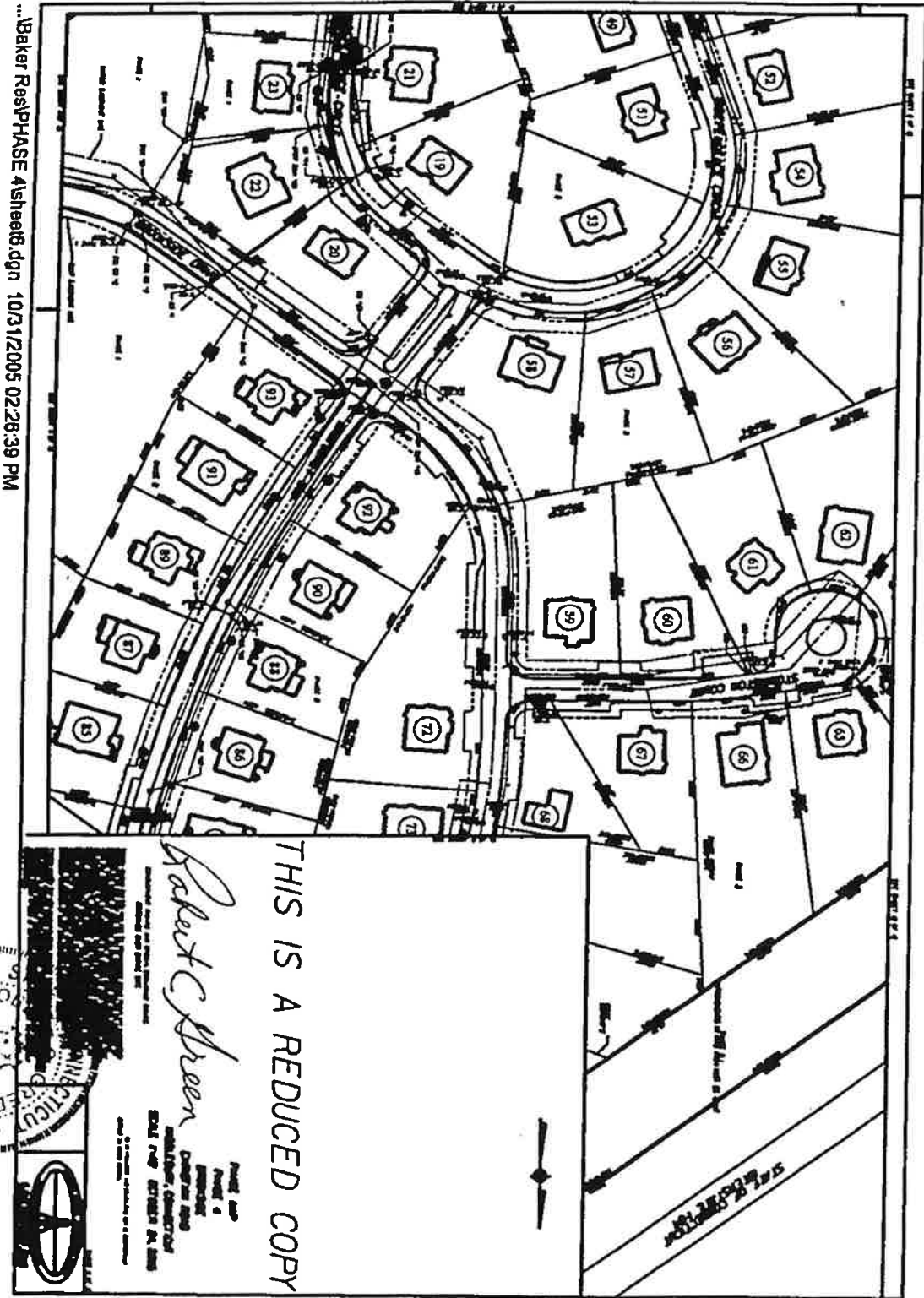
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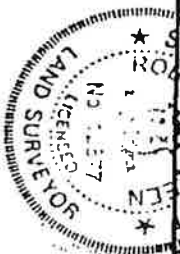
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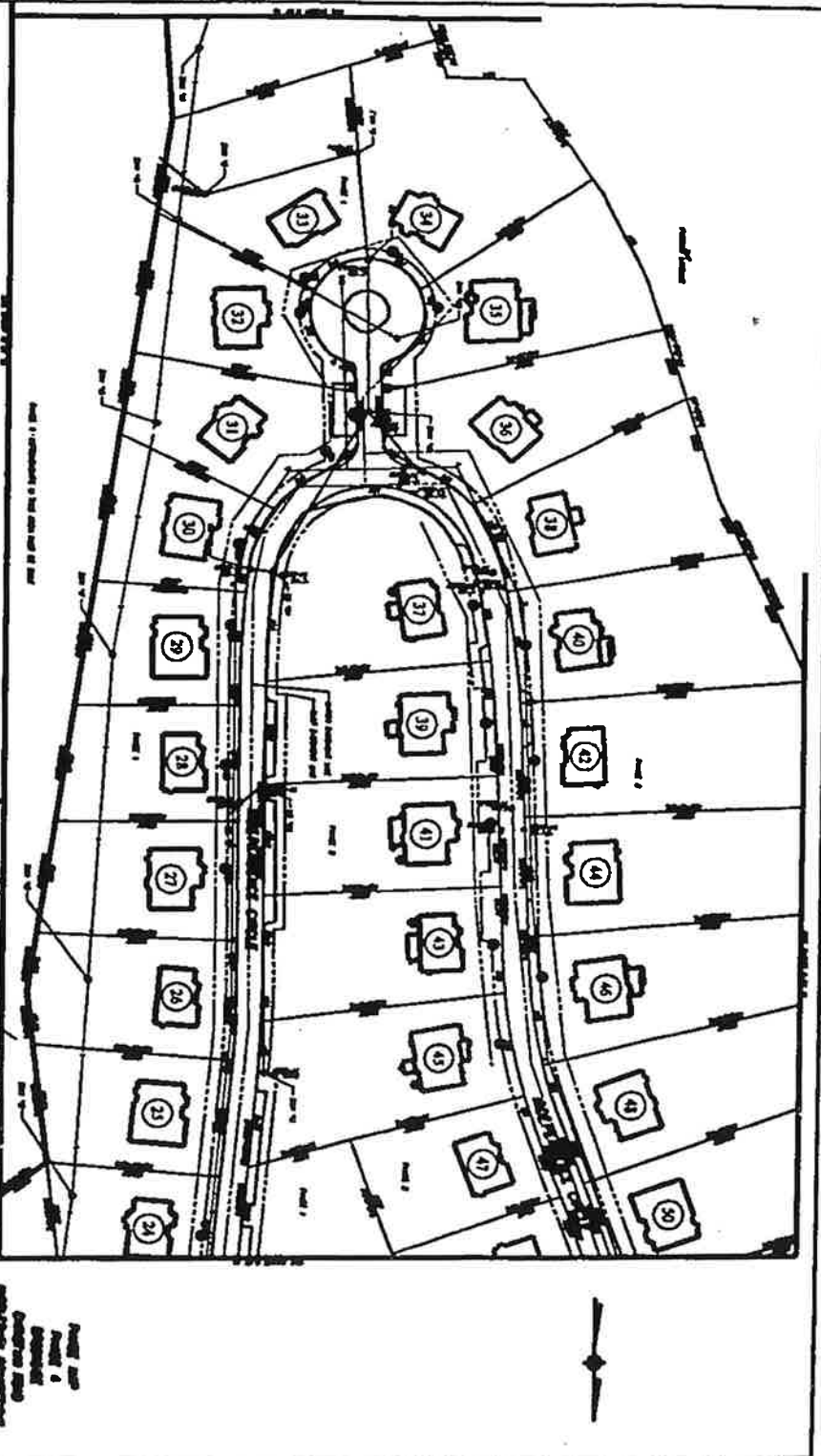
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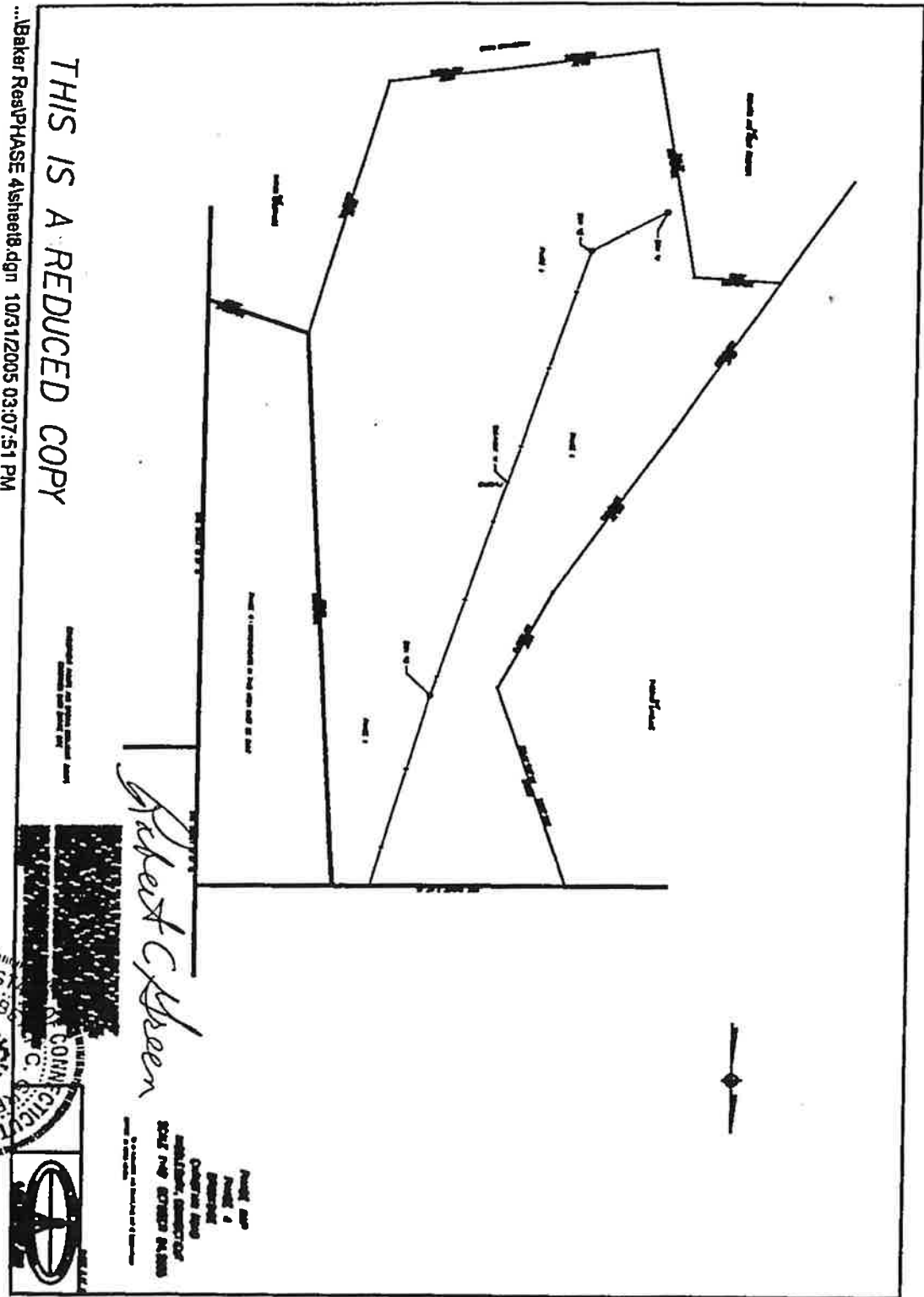
Robert C. Green

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Schedule A - 3 - 8

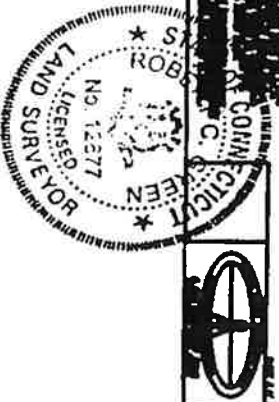


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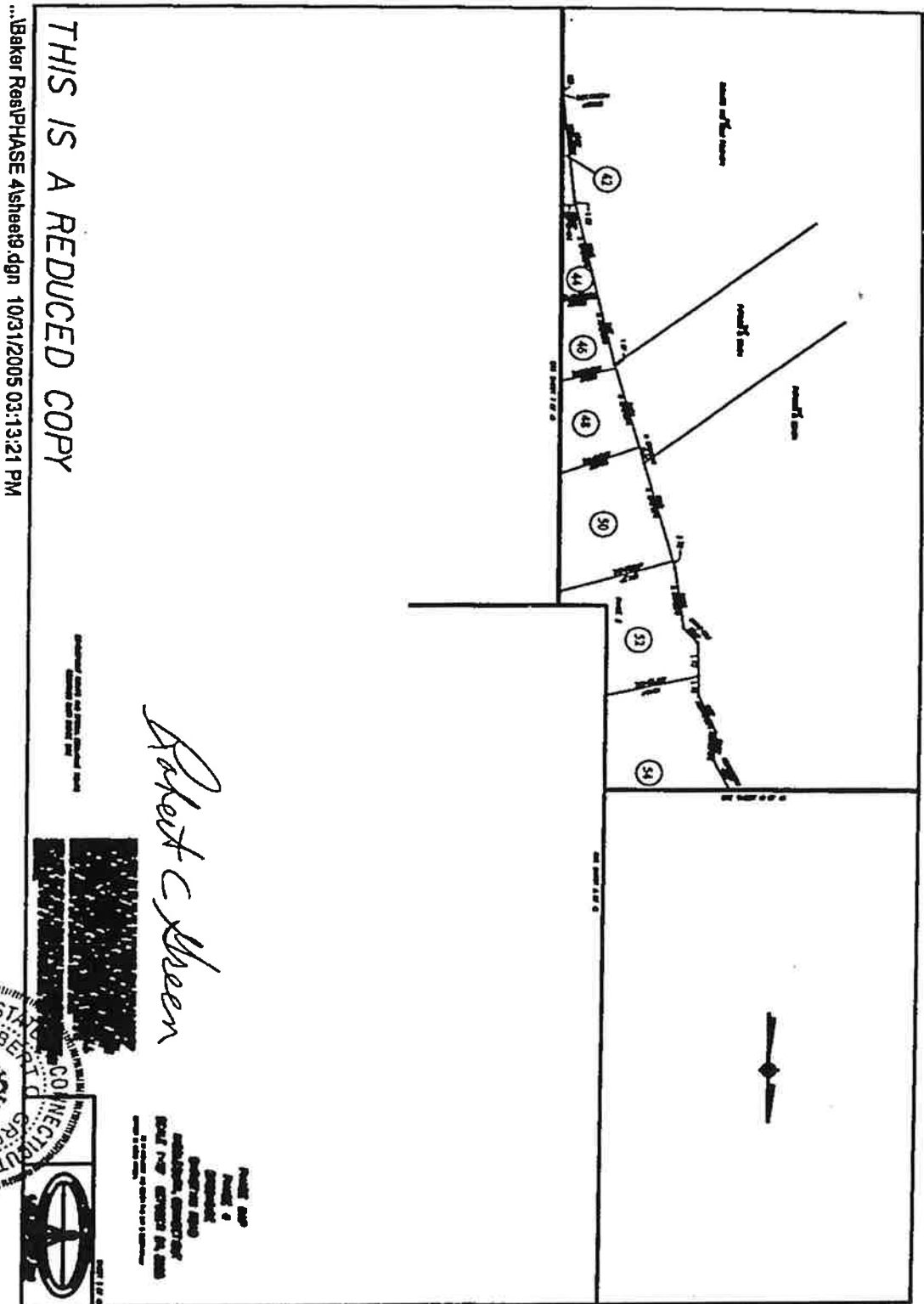
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Robert C. Keen

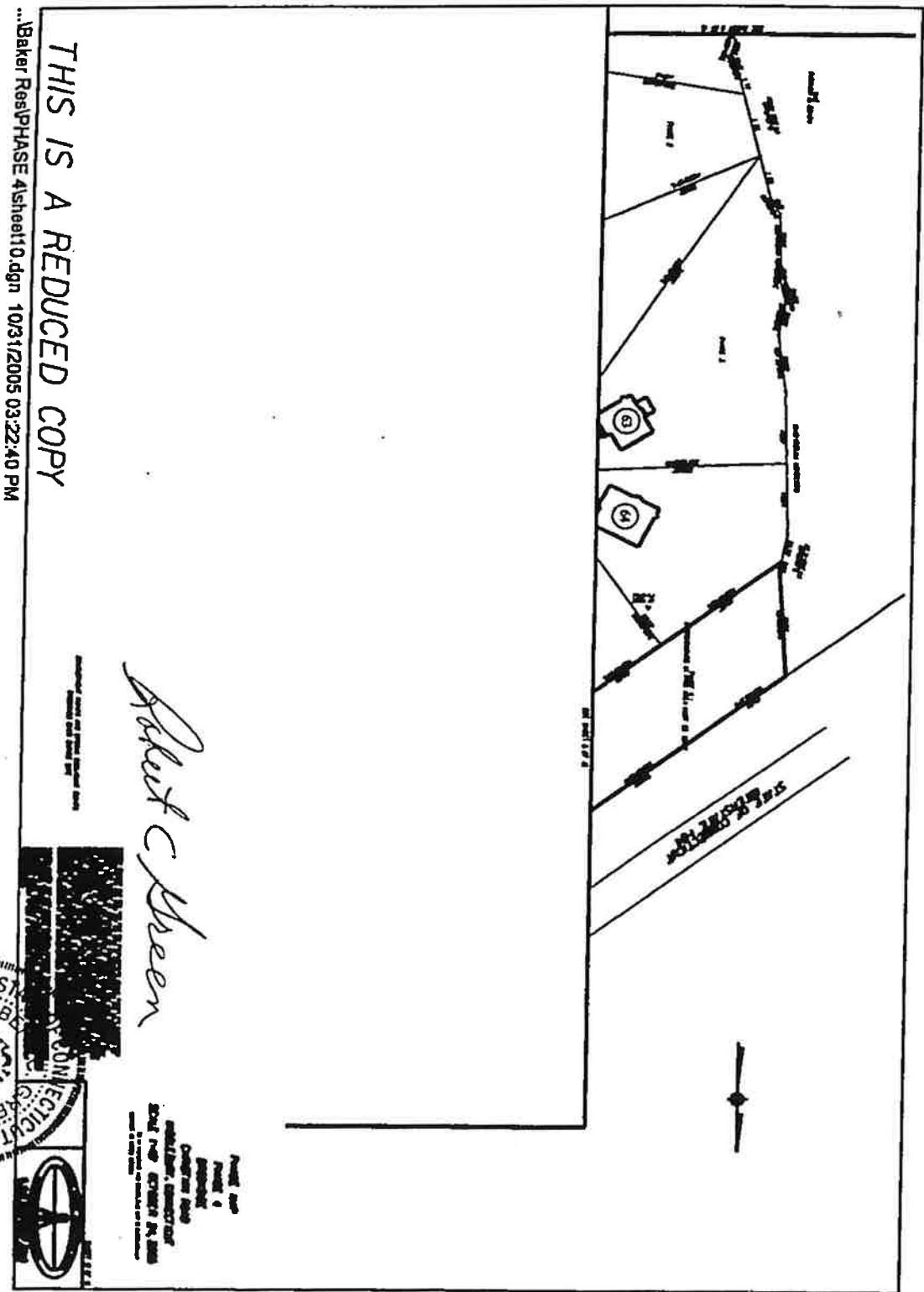
Robert C. Keen
Surveyor
No. 12877
State of Tennessee



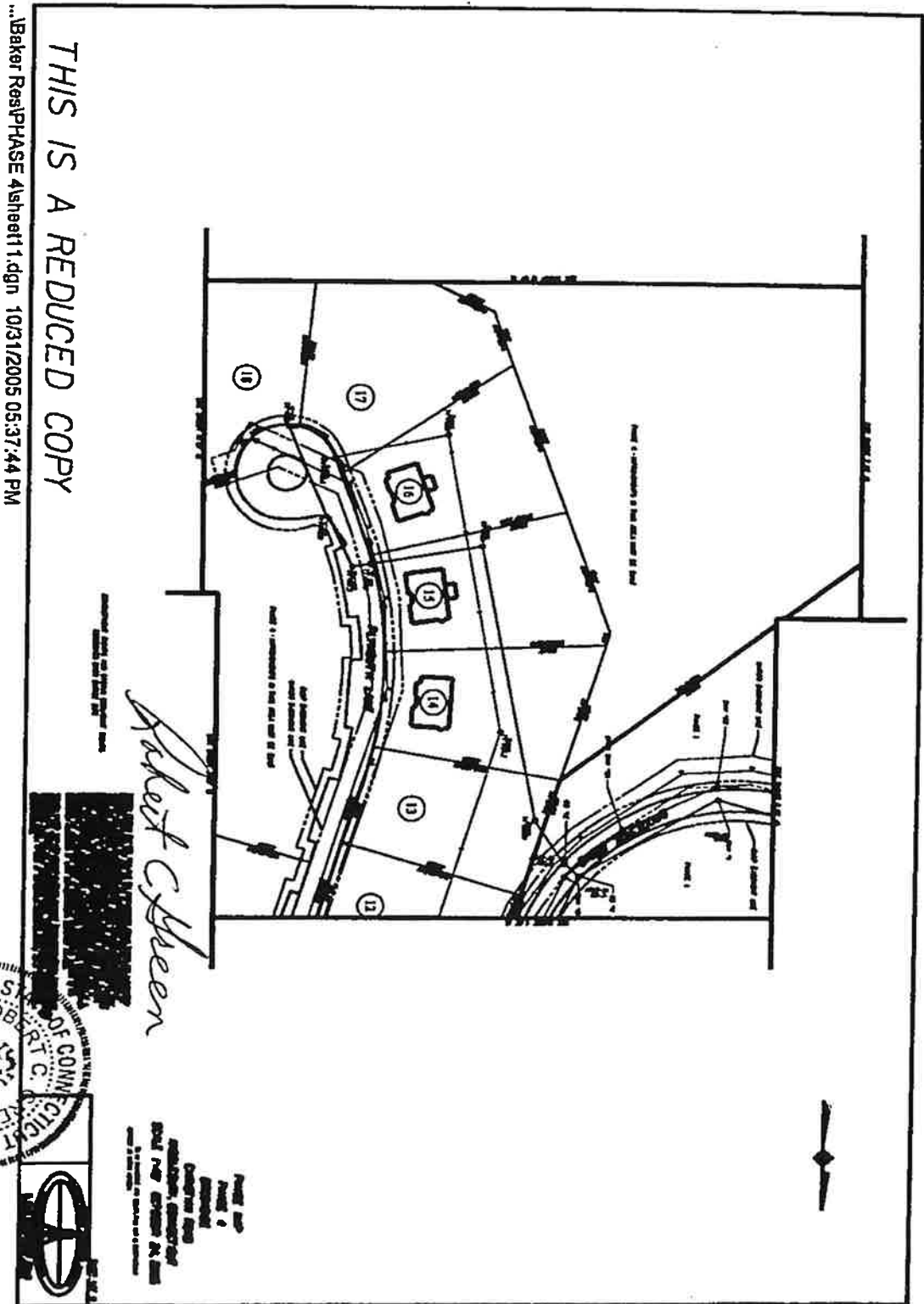
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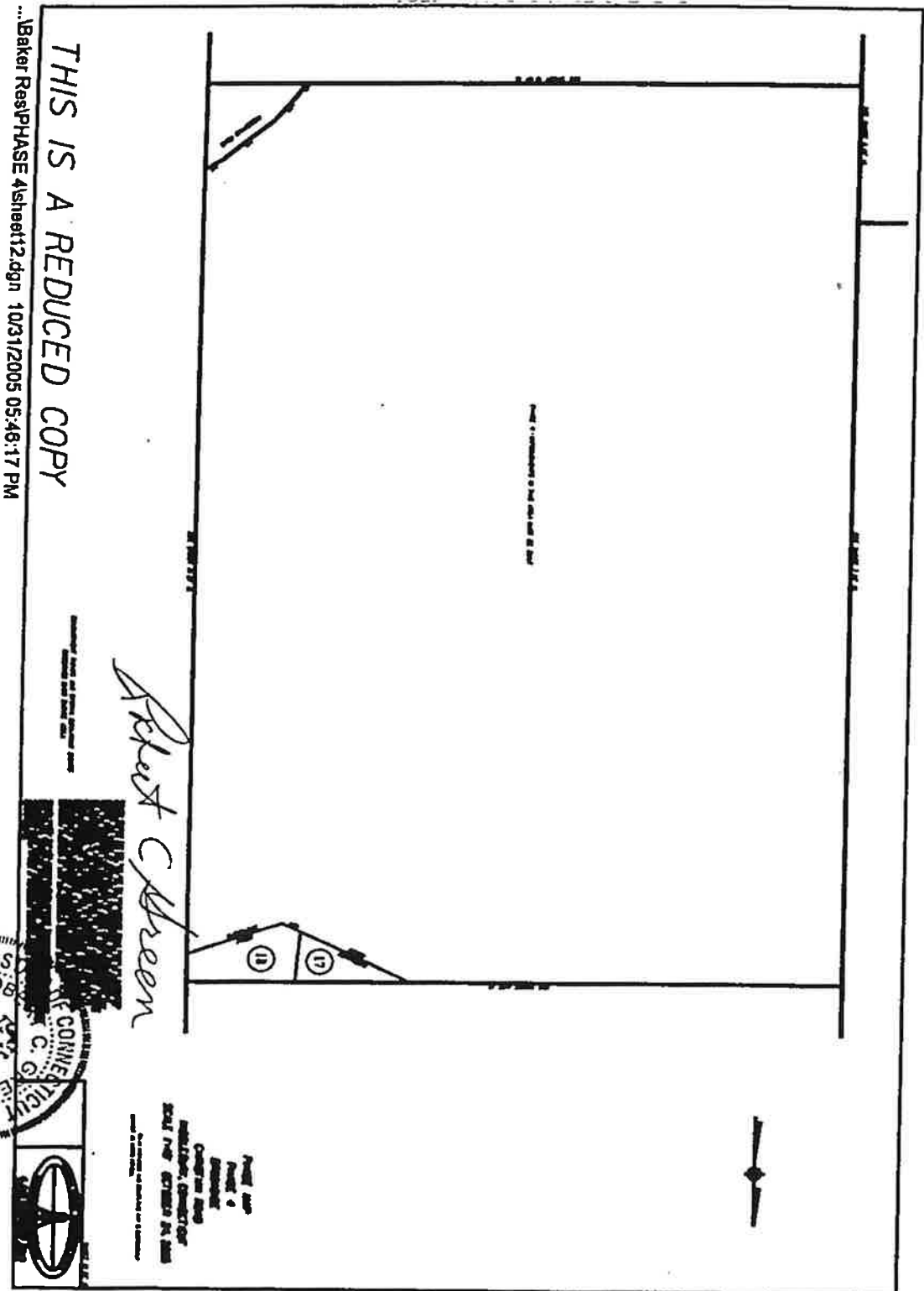
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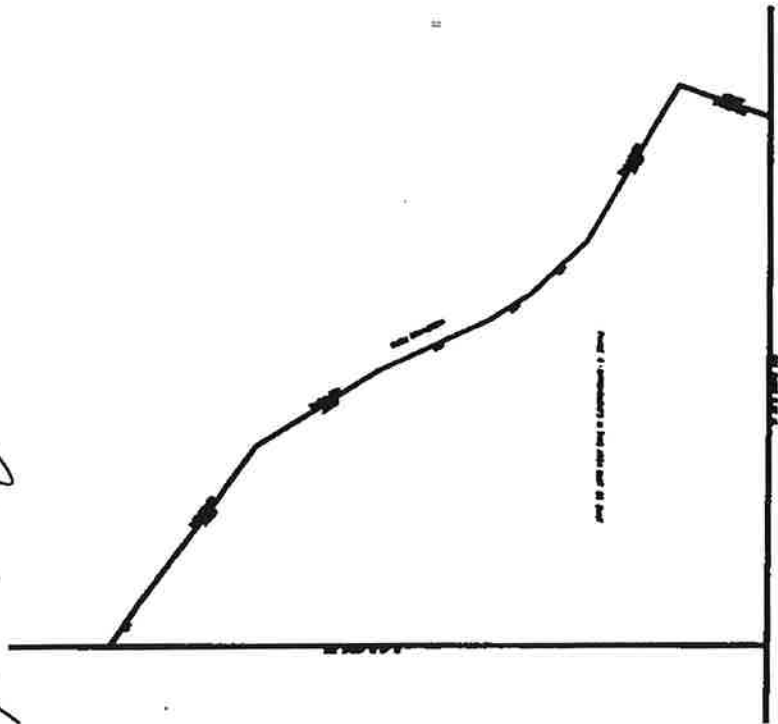
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Schedule A - 3 - 12



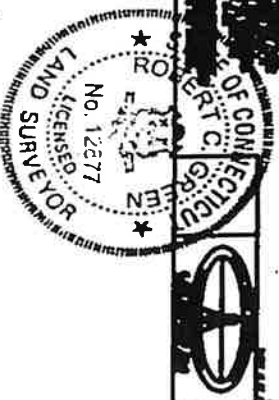
Schedule A - 3 - 13



Robert C. Green

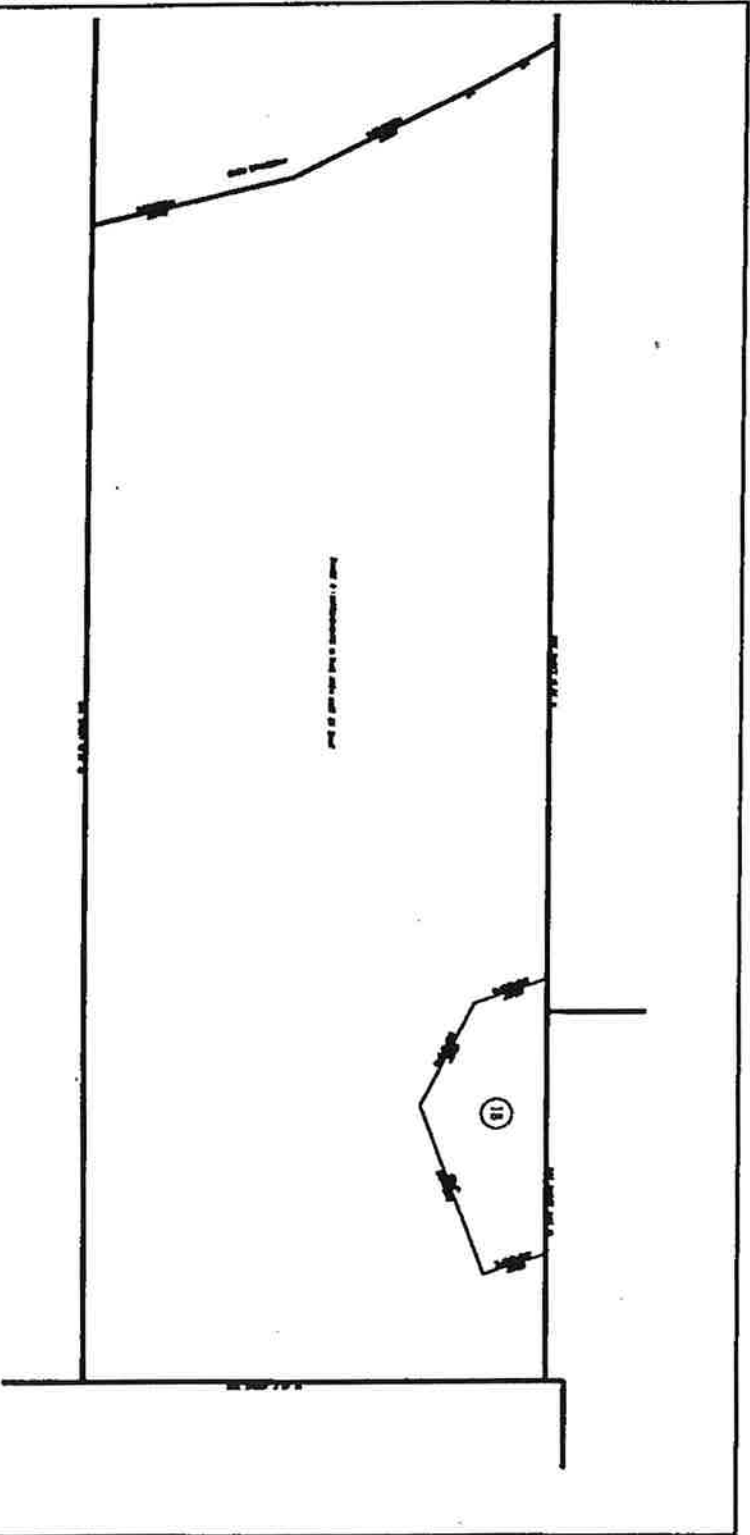
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...Baker RestPHASE 4sheet13.dgn 10/31/2005 05:54:34 PM



Printed and
signed by
Robert C. Green
Surveyor, Connecticut
Board of Surveyors in 2005
Date of Seal: 10/31/2005

Schedule A - 3 - 14

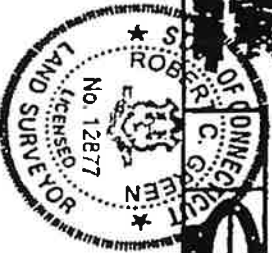


Robert C Green

Surveyed and Plotted by Robert C. Green



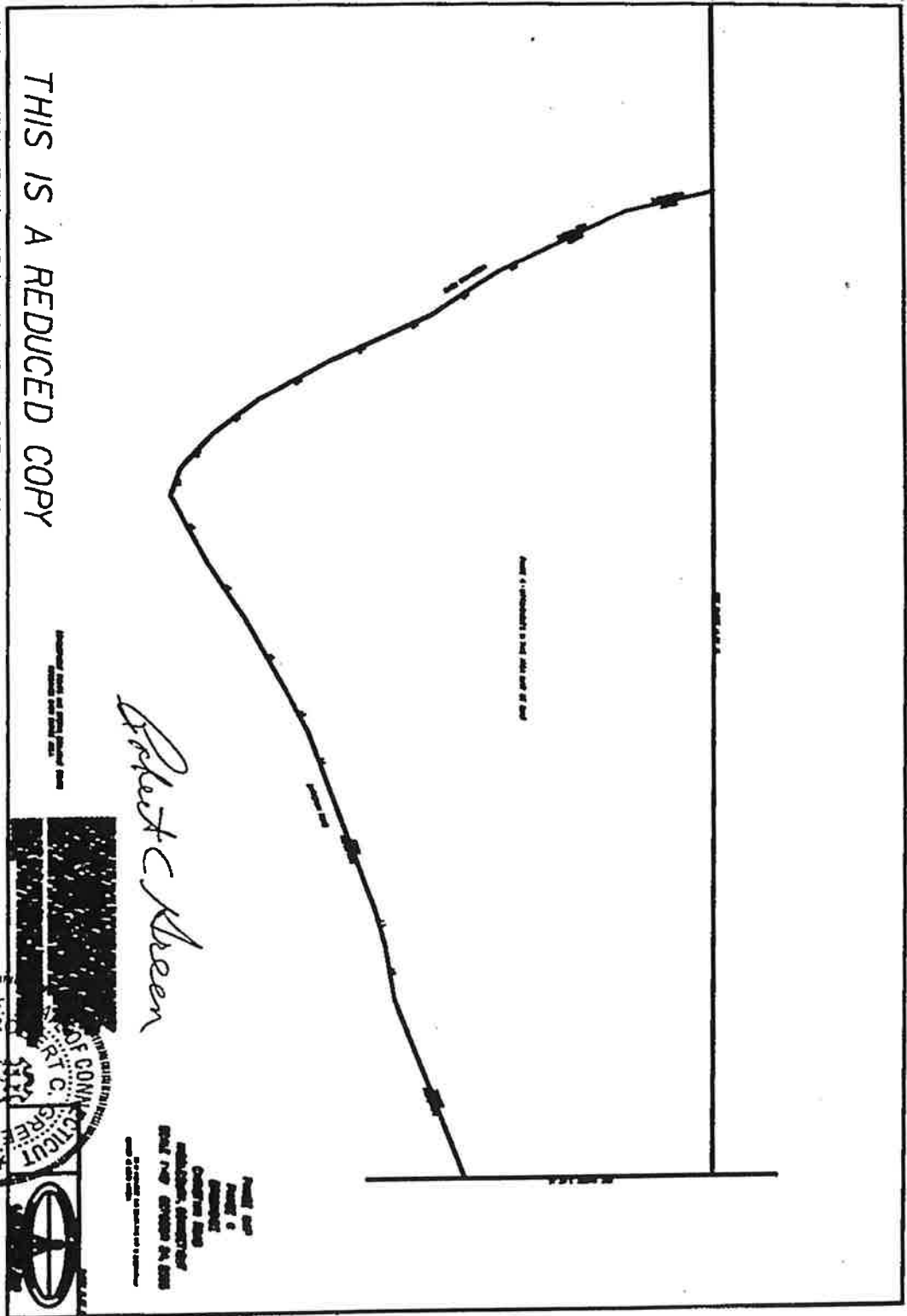
Robert C. Green
Surveyor
No. 12877
State of Connecticut
Surveyor General
Surveyed and Plotted by Robert C. Green



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Schedule A - 3 - 15



Schedule A - 3 - 16

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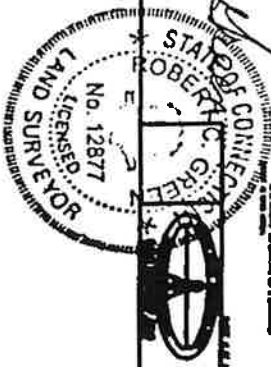
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Robert C. Grell

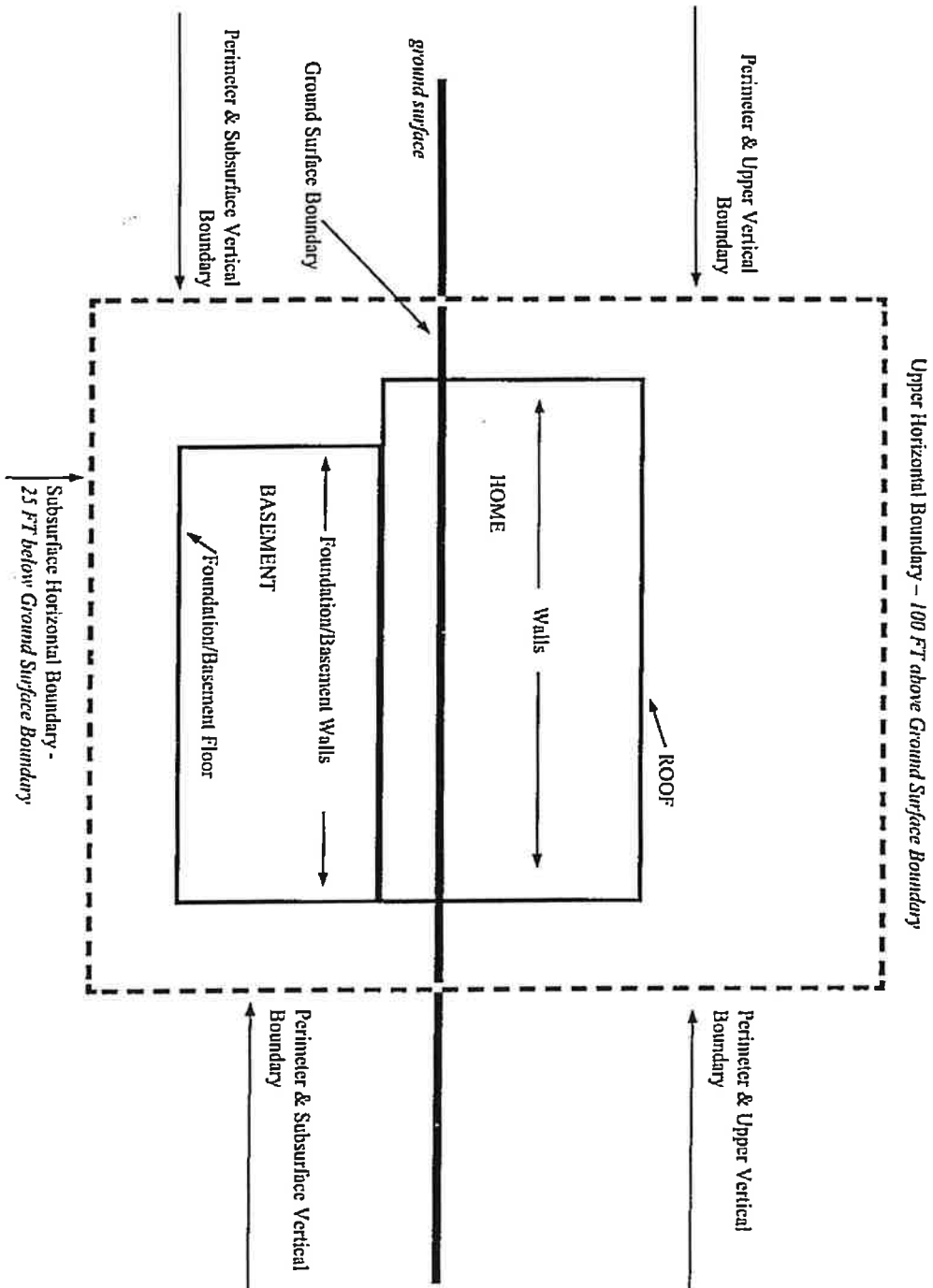


Print and
mail to:
Toll & Direct Mail
Department
Office of the
Registrar, Director
201 N. Main Street
Hartford, CT 06103

SCHEDULE "A-4"

TYPICAL HOMESITE LOT BOUNDARIES

The Lot/Unit is shown by the dashed lines
The Home is shown for illustration only



SCHEDULE A-5
LAND SUBJECT TO DEVELOPMENT RIGHTS

BROOKSIDE
LEGAL DESCRIPTION

All that certain piece or parcel of land together with any improvements thereon situated on the westerly side of Christian Road and the northerly side of Kissewaug Road in the Town of Middlebury, County of New Haven and State of Connecticut and shown as "Land of Phoenix Land, L.L.C. Vol. 155 Pg. 267 133.1159 Acres (Consists of Mullenite Tract, Hardisty Tract, Larkin Tract and Staskevicius Tract Combined Less 0.2457 Ac. To be Conveyed to and Made a Part of Polomski Parcel)" on a map entitled, "Perimeter Survey Prepared for Baker Residential Limited Partnership Property of Phoenix Land, L.L.C. Property at Christian Road & Kissewaug Road, Middlebury, CT." dated September 3, 2002 and prepared by Bradford E. Smith & Son. Said parcel can be more particularly described as follows:

Beginning at a point in the southwesterly street line of Christian Road. Said point marks the northeasterly corner of the parcel herein described and lies in the southerly line of land now or formerly of State of Connecticut Interstate 84. Thence proceeding S29°28'39"E 167.04' along the southwesterly street line of said Christian Road to a point; thence S24°11'39"E 490.23' continuing along the southwesterly street line of said Christian Road to a point; thence S25°45'18"E 159.86' continuing along the southwesterly street line of said Christian Road to a point; thence S17°50'51"E 58.00' continuing along the southwesterly street line of said Christian Road to an iron pin. Thence along the westerly street line of said Christian Road the following courses and distances: thence S07°35'30"E 352.07' to a point; thence S09°02'11"E 300.60' to a point. Thence along the southwesterly street line of said Christian Road the following courses and distances: thence S21°22'17"E 223.17' to a point; thence S21°15'27"E 172.17' to a point; thence S20°24'19"E 236.73' to a point; thence S09°33'39"E 55.85' to a point; thence S15°06'20"E 39.66' to a point; thence S19°30'36"E 128.91' to a point; thence S18°32'03"E 66.92' to a point; thence S26°20'34"E 35.84' to a point; thence S28°08'11"E 97.47' to a point; thence S31°56'48"E 65.81' to a point; thence S26°47'09"E 80.91' to an iron pin. Said iron pin marks a southeasterly corner of the parcel herein described and marks the intersection of Christian Road with Kissewaug Road. Thence S18°34'08"W 29.39' along the northwesterly street line of the intersection of Christian Road and Kissewaug Road to a point. Thence along the northerly street line of said Kissewaug Road the following courses and distances: thence S41°17'15"W 47.18' to a point; thence S51°36'34"W 57.20' to a point; thence S60°21'56"W 78.88' to a point; thence S85°04'25"W 70.53' to a point; thence S65°08'25"W 38.72' to a point; thence S56°00'05"W 79.04' to a point; thence S62°46'32"W 32.49' to a point; thence S62°44'03"W 107.55' to a point; thence S76°22'23"W 261.08' to the southeast face of a 15" twin oak with guy wire; thence S62°08'29"W 143.78' to a point; thence S61°33'28"W 36.16' to a point; thence S58°54'43"W 87.97' to a point; thence S50°35'52"W 66.62' to a point. Thence along the northwesterly

-2-

street line of said Kissewaug Road the following courses and distances: thence S39°09'47"W 37.11' to a point; thence S32°56'19"W 58.81' to a point; thence S34°55'28"W 167.04' to a point. Thence S56°41'24"W 122.77' along the northerly street line of said Kissewaug Road to a point; thence S64°02'24"W 101.67' continuing along the northerly street line of said Kissewaug Road to a point; thence S56°06'29"W 39.87' continuing along the northerly street line of said Kissewaug Road to a point; thence S45°14'57"W 66.48' continuing along the northerly street line of said Kissewaug Road to a point; thence S29°04'44"W 160.44' along the northwesterly street line of said Kissewaug Road to an iron pipe. Said iron pipe marks the easterly corner of land now or formerly of Marion Leogrande and a southwesterly corner of the parcel herein described. Thence N70°20'19"W 188.22' along the northeasterly line of land of said Marion Leogrande to a point. Said point marks the northerly corner of land of said Marion Leogrande. Thence S15°26'41"W 276.69' along the northwesterly line of land of said Marion Leogrande to a point. Said point marks the westerly corner of the land of said Marion Leogrande, a southeasterly corner of the parcel herein described and lies in the northerly street line of Kissewaug Road. Thence S83°46'00"W 112.08' along the northerly street line of said Kissewaug Road to a point; thence S82°14'25"W 153.34' to a point. Said point marks the southeasterly corner of the 10,701 S. F. parcel to be conveyed to Richard and Holly Polomski and a southwesterly corner of the parcel herein described. Thence N09°40'45"W 244.38' along the easterly line of said parcel of land to be conveyed to said Richard and Holly Polomski to a point. Said point marks the northeasterly corner of said parcel of land to be conveyed to Richard and Holly Polomski. Thence N86°43'46"W 85.72' along the northerly line of said parcel of land to be conveyed to Richard and Holly Polomski to a point. Said point marks the northwesterly corner of said parcel of land to be conveyed to Richard and Holly Polomski, a southwesterly corner of the parcel herein described and lies in the southeasterly line of other land of Phoenix Land, L.L.C. known as "The Brookside Dairies Tract." Thence N33°10'04"E 185.12' along the southeasterly line of said "Brookside Dairies Tract" to a point; thence N34°13'14"E 206.30' continuing along the southeasterly line of said "Brookside Dairies Tract" to a point; thence N27°26'57"E 112.97' continuing along the southeasterly line of said "Brookside Dairies Tract" to a point; thence N18°27'33"W 276.44' along an easterly line of said "Brookside Dairies Tract" to a fence post. Said fence post marks a northeasterly corner of said "Brookside Dairies Tract." Thence N87°54'31"W 66.55' along a northerly line of said "Brookside Dairies Tract" to a point. Thence along an easterly line of said "Brookside Dairies Tract" the following courses and distances: N33°13'23"W 127.94' to a point; thence N25°27'09"W 92.31' to a point; thence N17°46'28"W 212.04' to a point; thence N25°49'54"W 179.08' to a point; thence N05°53'25"W 121.65' to a point; thence N13°12'00"W 175.31' to a crimped iron pipe. Said iron pipe marks a northeasterly corner of said "Brookside

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Dairies Tract" and the southeasterly corner of land now or formerly of Patricia D. Bowen. Thence N16°15'56"W 106.75' along the easterly line of land of said Patricia D. Bowen to a 14" oak. Said 14" oak marks the northeasterly corner of land of said Patricia D. Bowen and the southeasterly corner of other land of said Patricia D. Bowen. Thence along the easterly line of land of said Patricia D. Bowen the following courses and distances: thence N16°15'56"W 114.11' to a 12" oak; thence N08°01'22"W 63.50' to a point; thence N41°13'40"W 20.18' to a point; thence N02°05'42"W 56.39' to a 14" twin ash; thence N24°40'50"W 41.62' to a 12" black birch; thence N03°22'15"E 29.99' to a point; thence N28°00'02"W 42.67' to a 15" ash; thence N16°31'40"E 13.93' to a 16" ash; thence N19°59'16"W 25.15' to a point; thence N14°24'27"W 135.71' to a 4" black birch; thence N31°02'21"W 19.18' to a 12" maple; thence N02°44'26"W 56.52' to a 16" yellow birch; thence N04°23'29"E 14.57' to a 14" maple; thence N15°00'08"W 24.29' to an 8" ash; thence N11°22'29"E 33.60' to a 24" twin maple; thence N07°36'38"W 60.78' to a 24" black birch; thence N01°52'56"W 151.15' to a 24" maple; thence N11°25'37"E 37.31' to 12" maple remains; thence N04°05'21"W 112.74' to iron pipe remains. Said iron pipe remains marks the northeasterly corner of land of said Patricia D. Bowen, the northwesterly corner of the parcel herein described and lie in the southerly highway line of land now or formerly of State of Connecticut Interstate 84. Thence along the southerly highway line of said Interstate 84 the following courses and distances: N53°03'33"E 80.27' to a Connecticut Highway Department monument; thence N53°03'49"E 500.03' to a Connecticut Highway Department monument; thence N58°45'48"E 201.06' to a Connecticut Highway Department monument; thence N53°03'44"E 699.95' to a monument; thence N58°58'39"E 436.33' to the point which marks the point or place of beginning

Said parcel is bounded:

- Northerly by land now or formerly of State of Connecticut Interstate 84;
- Northeasterly, Easterly and Northeasterly by Christian Road;
- Southerly, Southeasterly, Southerly and Southeasterly by Kissewaug Road;
- Southwesterly and Southeasterly by land now or formerly of Marion Leogrande;
- Southerly by Kissewaug Road;
- Westerly and Southerly by land to be conveyed to Richard and Holly Polomski;
- Northwesterly, Westerly, Southerly and Westerly by the Brookside Dairies Tract; and
- Westerly by land now or formerly of Patricia D. Bowen.

Said parcel contains 133.1159 Acres

SCHEDULE A-6

SEWER USE AGREEMENT

THIS AGREEMENT, made as of this 10th day of January, 2003, by and between the TOWN OF MIDDLEBURY, a Connecticut Municipal Corporation acting herein by its WATER POLLUTION CONTROL AUTHORITY, a duly authorized authority (hereinafter referred to as the "Town," and the Water Pollution Control Authority hereinafter referred to as the "MWPCA"), and BAKER RESIDENTIAL LIMITED PARTNERSHIP, a Connecticut limited partnership having a place of business in Pleasantville, New York (hereinafter referred to as "Baker Residential").

WITNESSETH:

WHEREAS, Baker Residential has or will acquire certain real estate, as more particularly described in Schedule A attached hereto and made a part hereof (the "Land"); and

WHEREAS, Baker Residential intends to construct a planned residential development on the Land ("Brookside Project"), consisting of 126 single family residential units (the "Units"). The Brookside Project will be subject to the Common Interest Ownership Act, Chapter 828 of the Connecticut General Statutes, as amended, as a "condominium" within the definition of Connecticut General Statutes Section 47-202(8). The Declarant will be Baker Residential and the homeowners' association for the community will be Brookside Association, Inc. (the "Association"); and

WHEREAS, the Brookside Project will have a private sewer system to be constructed by Baker Residential in accordance with the plans and specifications (the "Plans") listed in Schedule B attached hereto and made a part hereof (the "Private Sewer System") and Baker Residential desires that the Private Sewer System be connected to and be serviced by the Town's public sewer system; and

WHEREAS, the Town is willing to allow the Brookside Project to be connected to and be serviced by the Town's public sewer system, but only on the terms and conditions of this Agreement.

NOW, THEREFORE, Baker Residential and the Town, in consideration of the terms and the conditions stated herein and other good and valuable consideration, hereby agree as follows:

1. Sewer Assessment Amount. The total sewer assessment amount for the Brookside Project is \$899,892.00 (the "Assessment"), which sum, if not sooner paid, shall be due and payable, together with any accrued and unpaid interest, on a date that is ten (10) years from the Assessment Commencement Date (as hereinafter defined), time for such full payment being of the essence. The unit sewer payment for each of the Units in the Brookside Project shall be \$7,142.00 (the "Unit Payment"). The total amount of the Assessment shall be reduced by the amount of each Unit Payment in the manner described in this Agreement.

2. Unit Payments/Releases. Baker Residential shall make a Unit Payment to the Town on the date of, and as a condition to, the issuance of a building permit by the Town of Middlebury for a Unit. From and after the Interest Commencement Date (as hereinafter defined), each Unit Payment shall be accompanied by a payment of the then accrued and unpaid interest on the balance of the Assessment, at the Interest Rate (as hereinafter defined). Baker Residential may at any time make one or more Unit Payments to the Town for specifically designated Units, in each case accompanied by a payment of the then accrued and unpaid interest, if then applicable. The Town shall provide a release, in the form attached hereto as Schedule C (a "Unit Release"), releasing each Unit for which a Unit Payment is so made from the lien of the Notice of Assessment (as hereinafter defined). The Town will also provide a full release, in recordable form, releasing the Notice of Assessment when the total Assessment and any then accrued and unpaid interest are paid in full.

3. Commencement Dates.

Baker Residential and the Town agree that the effective date for commencement of the ten (10) year assessment payment period shall be the earlier of the date that Baker Residential first connects the Brookside Project to the Town's public sewer system, or December 31, 2003 (the "Assessment Commencement Date"). The Brookside Project shall be deemed to have connected to the Town's public sewer system when (a) any part of the Private Sewer System is connected to the Town's public sewer system, (b) a house is connected to the Private Sewer System, and (c) the MWPCA gives written notice after inspection that use of the Private Sewer System for that house can commence. Effective on the date that is five (5) years from the Assessment Commencement Date (the "Interest Commencement Date"), interest shall begin to accrue, at the applicable Interest Rate, on the then balance of the Assessment.

4. Interest Rates. The Interest Rate shall be that interest rate last published on or most immediately prior to the Interest Commencement Date. The Interest Rate so determined shall be the fixed rate of interest until the Assessment is paid in full. The term "Interest Rate" shall mean the current Bond Buyer 11-Bond Index rate published in The Bond Buyer on or immediately prior to the Interest Commencement Date. If The Bond Buyer is no longer published or the above Index rate is no longer available as of the Interest Commencement Date, an interest rate index closest in character and content to The Bond Buyer 11-Bond Index, as determined by the Town, shall be used to determine the Interest Rate on or most immediately prior to the Interest Commencement Date, which rate shall be the Interest Rate effective as of the Interest Commencement Date.

5. Sewer Assessment Lien. The Town is filing, simultaneously with this Agreement, a Certificate of Notice of Lien against the Land, in the form attached hereto as Schedule D (the "Notice of Assessment "). As each Unit Payment is made, the total amount of the Assessment shall be reduced by the amount of each Unit Payment.

6. Protection of Liens. Baker Residential shall execute and deliver to the Town, from time to time on demand by the Town, all documents and shall do all such other acts and things which the Town deems reasonably necessary to protect its lien and its first priority (except as to real estate taxes on the Land), as evidenced by the recorded Notice of Assessment. Baker Residential shall pay all costs, charges and expenses including, without limitation, reasonable attorneys' fees, incurred by the Town in any foreclosure or other legal proceedings, in protecting this Agreement and the lien and its first priority, or in any other litigation arising from or connected with the protection of the rights of the Town under this Agreement.

7. Plan Approvals. The Plans for the Private Sewer System have been submitted to and approved by the MWPCA as of the date of this Agreement. Any changes to the Plans shall require the prior approval of the MWPCA, which approval shall not be unreasonably conditioned, withheld or delayed.

8. Sewer Use Charges. The sewer use charge rate applicable to residential units in the Town of Middlebury, as determined by the MWPCA from time to time for residential units, shall be the use charge rate applicable to each Unit in the Brookside Project, and shall be payable in the same manner and subject to the same terms and conditions as are applicable from time to time to other residential units in the Town of Middlebury.

9. Connection Prohibitions. Baker Residential shall only use the Land as and for the Brookside Project. Additional units shall not be constructed nor any variant uses be made of the Land, without the prior written consent of the Town, so long as the Land is connected to and serviced by the Town's public sewer system. Baker Residential shall not allow nor permit any other lands, buildings or improvements on any other lands (except for the property of Richard and Holly Polomski on the north side of Kissewaug Road) to be serviced by any part of the Private Sewer System, directly or indirectly, without the prior written consent of the Town, which may be withheld by the Town in its sole discretion. This Agreement is not intended and shall not be construed as a consent by the Town to provide sewer service to any property other

than the Land (except for the property of Richard and Holly Polomski on the north side of Kissewaug Road), including without limitation to any other properties of Baker Residential.

10. Construction Standards.

(a) No part of the Private Sewer System shall be connected to the Town's public sewer system without the prior written authorization of the Town, which authorization shall not be required to be given by the Town until all of the then applicable conditions of this Agreement are satisfied. Baker Residential shall, at its own cost and expense, provide all services, labor and materials required to construct the Private Sewer System, including as part of such work the connections to the buildings and other improvements constructed on the Land, all in accordance with the Plans. All services, labor and materials shall be provided in accordance with accepted engineering practices. The physical connection of the Private Sewer System to the Town's public sewer system shall only be made upon prior inspection and approval by the Town. Any modifications to the Plans, and any other plans and specifications the Town may reasonably request in connection with actual construction of the Brookside Project and sanitary facilities to be located therein, shall be provided to the Town for its approval in advance of commencement of construction of the subject work. Notice of commencement of the subject work shall be given to the Town at least three (3) business days prior to commencement of its construction. The Town shall also have the right to inspect the construction, from time to time, to ensure compliance with this Agreement and applicable laws. Such inspections shall be done in a timely manner so as not to unreasonably interfere with construction. Baker Residential shall not be required to uncover any subject work if the Town has received at least three (3) business days notice to inspect such work prior to its cover-up.

(b) Baker Residential, and the Association as its successor in interest, shall be responsible for maintenance, repairs and replacements of the Private Sewer System. The Declaration for the Brookside Project shall state, among other things, that: (1) the Town shall have no maintenance, repair or replacement responsibility whatsoever for the Private Sewer

System, (2) the Town reserves the right, from time to time, after its completion, to inspect the Private Sewer System in order to ensure its compliance with this Agreement and applicable federal, state and local laws, (3) in the event that Baker Residential, or the Association as its successor in interest, shall fail to perform necessary maintenance, repairs or replacements to the Private Sewer System, within thirty (30) days written notice thereof given by the Town, the Town shall have the right, at its sole option and without obligation, to make such maintenance, repairs and replacements to the Private Sewer System, in such event, any sums expended by the Town shall be repayable on demand, together with interest at the then applicable statutory rate of interest for unpaid sewer use charges, from the date of performance of such maintenance, repairs and replacements to the date of payment, and such amounts shall constitute a lien against all of the Units and the common areas of the Brookside Project, enforceable in the same manner as other Town liens for unpaid sewer use charges pursuant to applicable statutes. The Declaration shall also contain a provision whereby in effect the Association and Unit owners similarly agree to the waiver provisions in Paragraph 13 below. The Town shall have the right to enforce these obligations against Baker Residential, the Association and/or each of the Unit owners, in the Town's sole discretion; provided, however, Baker Residential shall have no further liability for the Private Sewer System, except as an owner of Units, if applicable, after (i) the Private Sewer System is completed and so approved by the Town, and (ii) all Development Rights have been exercised and control of the Association has been given to and accepted by the then Unit owners, as required by the Declaration and then applicable laws.

(c) The Town, acting by the MWPCA, shall approve the Declaration prior to its final execution and recording on the Middlebury Land Records. The scope of such review and approval of the Declaration shall be limited to the provisions of the Declaration that are relevant to this Agreement.

11. Hold Harmless. Baker Residential shall hold the Town (including the MWPCA) and their respective agents and employees harmless from all claims and demands whatsoever,

including without limitation, all costs, expenses and attorneys' fees, arising from or out of litigation or threats of litigation which occur at any time before or during a period of three (3) years from the date of recording of this Agreement on the Middlebury Land Records to prevent or attempt to prevent the Town from providing the services to the Land or from collecting the Assessment in the amounts and manner contemplated in this Agreement.

12. Land Title. Baker Residential represents that it will be, on recording of this Agreement in January 2003, the owner of the Land. This Agreement shall be recorded on the Middlebury Land Records immediately following recording of the deed to Baker Residential from Phoenix Land, LLC. The Land shall be free and clear of any liens and encumbrances as of such recording, except encumbrances permitted by the Town and as referred to in Schedule E attached hereto and made a part hereof. Any then monetary liens or encumbrances shall be subordinated to this Agreement by an agreement, in form and substance satisfactory to the Town, which agreement shall also acknowledge subordination of such interest to the lien interest of the Town, as evidenced by the Notice of Assessment.

13. Waiver of Rights. The Town has determined that it is in the best interest of the Town to support the Brookside Project, which will also include affordable housing. In consideration for the agreements of the Town contained in this Agreement, Baker Residential hereby waives and relinquishes any and all rights which it may have, by appeal or otherwise, to dispute the amount of the Assessment, the methods of payment, the lien with respect to the Assessment and its priority, the determination and applicability of the Interest Rate, the allocation of responsibility for maintenance, repairs and replacements of the Private Sewer System and the determination of effective dates with respect to any of the foregoing.

14. Sewer Easement. An important and integral part of the consideration for the Town entering this Agreement is the privilege of the Town to use a portion of the Private Sewer System to extend service to other residents of the Town of Middlebury in the future. In that regard, Baker Residential has or will execute and deliver a certain Sewer Easement to the Town, which

Sewer Easement has or will be recorded on the Middlebury Land Records. Baker Residential shall have obtained, for the benefit of the Town, subordinations from any monetary lien holders, in form and substance reasonably satisfactory to the Town. While the Town is not currently anticipating a physical extension of the Town's public sewer system, it is anticipated that the Town may in the future, at its sole expense, desire to use the Sewer Easement to connect to and thereby use a portion of the Private Sewer System, in the manner described in the Sewer Easement, to extend the Town's public sewer system to service other properties in the Town of Middlebury. Upon such use by the Town, the Town shall assume responsibility for, and ownership of, that portion of the Private Sewer System not located on the Land, all as more particularly described in the Sewer Easement.

15. Enforceability. This Agreement shall run with the Land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be binding and in favor of, enforceable by, the Town or its successors and assigns against Baker Residential, its successors in ownership of the Land and assigns. In addition to any other rights which the Town may have under this Agreement, in the event of any breach of the agreements contained herein, the Town shall have the right to exercise all of its rights and remedies, to maintain any actions or suits at law or in equity, or any other proper proceeding to cure such breach.

16. Entire Agreement. This Agreement, together with the Schedules and any other writings referred to or incorporated herein, embodies or reflects the entire agreement between the parties and there are no other agreements, understandings, representations or warranties other than those set forth in this Agreement, the Schedules, and the other writings referred to or incorporated herein.

17. Headings. The section headings of this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

18. Amendment. This Agreement may be amended only by written instrument, in recordable form, executed by Baker Residential (or the Association, if applicable) and the Town, which amendment shall only be effective upon recording on the Middlebury Land Records.

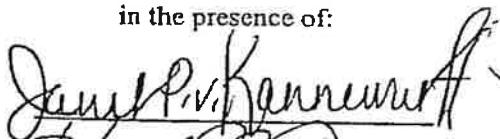
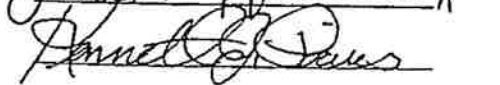
19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut.

20. Recording. At the request of Baker Residential, the MWPCA has not recorded this Agreement, and agrees not to do so, however a copy will be available in the office of the MWPCA, as stated in the Notice of Assessment.

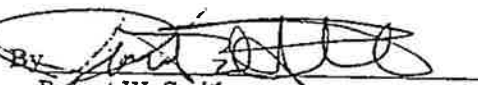
21. Successors and Assigns. This Agreement shall bind, and the benefits shall inure to, the respective successors and assigns of the parties hereto (and the Association and future Unit owners), and shall run with the Land, however this Agreement and any rights of Baker Residential hereunder are not assignable or transferable until recording of this Agreement on the Middlebury Land Records in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date and year first above written.

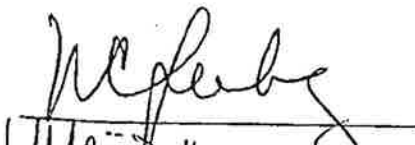
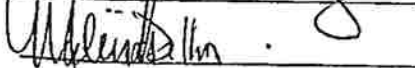
Signed, sealed and delivered
in the presence of:

MIDDLEBURY WATER POLLUTION
CONTROL AUTHORITY

By 
Robert W. Smith
Its Chairman

BAKER RESIDENTIAL
LIMITED PARTNERSHIP
By Baker Companies, Inc.
Its Managing General Partner

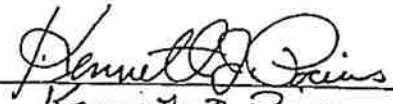



By 
Michael J. Baker
Its Vice President

STATE OF CONNECTICUT)
) ss:
COUNTY OF NEW HAVEN)

On this the 31st day of ~~December~~ ^{JANUARY}, 2003, before me, the undersigned officer, personally appeared Robert W. Smith, the Chairman of the MIDDLEBURY WATER POLLUTION CONTROL AUTHORITY, acting herein for the Town of Middlebury, and that he, as such Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said Authority by himself as such Chairman, as the free act and deed of said Authority.

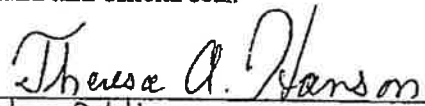
In Witness Whereof I hereunto set my hand and official seal.


Kenneth J. Pocius
Commissioner of the Superior Court

~~STATE OF CONNECTICUT)~~
 ~~) ss:~~
~~COUNTY OF NEW HAVEN)~~
^{NEW YORK}
~~WESTCHESTER)~~

On this the 6th day of ~~December~~ ^{January, 2003}, 2002, before me, the undersigned officer, personally appeared Michael J. Baker, the Vice President of Baker Companies, Inc., the Managing General Partner of BAKER RESIDENTIAL LIMITED PARTNERSHIP, duly authorized, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, as his free act and deed, and the free act and deed of said limited partnership.

In Witness Whereof I hereunto set my hand and official seal.


Theresa A. Hanson
Notary Public
Commissioner of the Superior Court

THERESA A. HANSON
Notary Public, State of New York
No. 01HA3022667
Qualified in Westchester County
Commission Expires Jan. 18, 2008

SCHEDULE A
133.1159 Acres
Christian Road & Kissewaug Road

All that certain piece or parcel of land together with any improvements thereon situated on the westerly side of Christian Road and the northerly side of Kissewaug Road in the Town of Middlebury, County of New Haven and State of Connecticut and shown as "Land of Phoenix Land, L.L.C. Vol. 155 Pg. 267 133.1159 Acres (Consists of Mullenite Tract, Hardisty Tract, Larkin Tract and Staskevicius Tract Combined Less 0.2457 Ac. To be Conveyed to and Made a Part of Polomski Parcel)" on a map entitled, "Perimeter Survey Prepared for Baker Residential Limited Partnership Property of Phoenix Land, L.L.C. Property at Christian Road & Kissewaug Road, Middlebury, CT." dated September 3, 2002 and prepared by Bradford E. Smith & Son. Said parcel can be more particularly described as follows:

Beginning at a point in the southwesterly street line of Christian Road. Said point marks the northeasterly corner of the parcel herein described and lies in the southerly line of land now or formerly of State of Connecticut Interstate 84. Thence proceeding S29°28'39"E 167.04' along the southwesterly street line of said Christian Road to a point; thence S24°11'39"E 490.23' continuing along the southwesterly street line of said Christian Road to a point; thence S25°45'18"E 159.86' continuing along the southwesterly street line of said Christian Road to a point; thence S17°50'51"E 58.00' continuing along the southwesterly street line of said Christian Road to an iron pin. Thence along the westerly street line of said Christian Road the following courses and distances: thence S07°35'30"E 352.07' to a point; thence S09°02'11"E 300.60' to a point. Thence along the southwesterly street line of said Christian Road the following courses and distances: thence S21°22'17"E 223.17' to a point; thence S21°15'27"E 172.17' to a point; thence S20°24'19"E 236.73' to a point; thence S09°33'39"E 55.85' to a point; thence S15°06'20"E 39.66' to a point; thence S19°30'36"E 128.91' to a point; thence S18°32'03"E 66.92' to a point; thence S26°20'34"E 35.84' to a point; thence S28°08'11"E 97.47' to a point; thence S31°56'48"E 65.81' to a point; thence S26°47'09"E 80.91' to an iron pin. Said iron pin marks a southeasterly corner of the parcel herein described and marks the intersection of Christian Road with Kissewaug Road. Thence S18°34'08"W 29.39' along the northwesterly street line of the intersection of Christian Road and Kissewaug Road to a point. Thence along the northerly street line of said Kissewaug Road the following courses and distances: thence S41°17'15"W 47.18' to a point; thence S51°36'34"W 57.20' to a point; thence S60°21'56"W 78.88' to a point; thence S65°04'25"W 70.53' to a point; thence S65°08'25"W 38.72' to a point; thence S56°00'05"W 79.04' to a point; thence S62°46'32"W 32.49' to a point; thence S62°44'03"W 107.55' to a point; thence S76°22'23"W 261.08' to the southeast face of a 15" twin oak with guy wire; thence S62°08'29"W 143.78' to a point; thence S61°33'28"W 36.16' to a point; thence S58°54'43"W 87.97' to a point; thence S50°35'52"W 66.62' to a point. Thence along the northwesterly

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street line of said Kissewaug Road the following courses and distances: thence S39°09'47"W 37.11' to a point; thence S32°56'19"W 58.81' to a point; thence S34°55'28"W 167.04' to a point. Thence S56°41'24"W 122.77' along the northerly street line of said Kissewaug Road to a point; thence S64°02'24"W 101.67' continuing along the northerly street line of said Kissewaug Road to a point; thence S56°06'29"W 39.87' continuing along the northerly street line of said Kissewaug Road to a point; thence S45°14'57"W 66.48' continuing along the northerly street line of said Kissewaug Road to a point; thence S29°04'44"W 160.44' along the northwesterly street line of said Kissewaug Road to an iron pipe. Said iron pipe marks the easterly corner of land now or formerly of Marion Leogrande and a southwesterly corner of the parcel herein described. Thence N70°20'19"W 188.22' along the northeasterly line of land of said Marion Leogrande to a point. Said point marks the northerly corner of land of said Marion Leogrande. Thence S15°26'41"W 276.69' along the northwesterly line of land of said Marion Leogrande to a point. Said point marks the westerly corner of the land of said Marion Leogrande, a southeasterly corner of the parcel herein described and lies in the northerly street line of Kissewaug Road. Thence S83°46'00"W 112.08' along the northerly street line of said Kissewaug Road to a point; thence S82°14'25"W 153.34' to a point. Said point marks the southeasterly corner of the 10,701 S. F. parcel to be conveyed to Richard and Holly Polomski and a southwesterly corner of the parcel herein described. Thence N09°40'45"W 244.38' along the easterly line of said parcel of land to be conveyed to said Richard and Holly Polomski to a point. Said point marks the northeasterly corner of said parcel of land to be conveyed to Richard and Holly Polomski. Thence N86°43'46"W 85.72' along the northerly line of said parcel of land to be conveyed to Richard and Holly Polomski to a point. Said point marks the northwesterly corner of said parcel of land to be conveyed to Richard and Holly Polomski, a southwesterly corner of the parcel herein described and lies in the southeasterly line of other land of Phoenix Land, L.L.C. known as "The Brookside Dairies Tract." Thence N33°10'04"E 185.12' along the southeasterly line of said "Brookside Dairies Tract" to a point; thence N34°13'14"E 206.30' continuing along the southeasterly line of said "Brookside Dairies Tract" to a point; thence N27°26'57"E 112.97' continuing along the southeasterly line of said "Brookside Dairies Tract" to a point; thence N18°27'33"W 276.44' along an easterly line of said "Brookside Dairies Tract" to a fence post. Said fence post marks a northeasterly corner of said "Brookside Dairies Tract." Thence N87°54'31"W 66.55' along a northerly line of said "Brookside Dairies Tract" to a point. Thence along an easterly line of said "Brookside Dairies Tract" the following courses and distances: N33°13'23"W 127.94' to a point; thence N25°27'09"W 92.31' to a point; thence N17°46'28"W 212.04' to a point; thence N25°49'54"W 179.08' to a point; thence N05°53'25"W 121.65' to a point; thence N13°12'00"W 175.31' to a crimped iron pipe. Said iron pipe marks a northeasterly corner of said "Brookside

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Dairies Tract" and the southeasterly corner of land now or formerly of Patricia D. Bowen. Thence N16°15'56"W 106.75' along the easterly line of land of said Patricia D. Bowen to a 14" oak. Said 14" oak marks the northeasterly corner of land of said Patricia D. Bowen and the southeasterly corner of other land of said Patricia D. Bowen. Thence along the easterly line of land of said Patricia D. Bowen the following courses and distances: thence N16°15'56"W 114.11' to a 12" oak; thence N08°01'22"W 63.50' to a point; thence N41°13'40"W 20.18' to a point; thence N02°05'42"W 56.39' to a 14" twin ash; thence N24°40'50"W 41.62' to a 12" black birch; thence N03°22'15"E 29.99' to a point; thence N28°00'02"W 42.67' to a 15" ash; thence N16°31'40"E 13.93' to a 16" ash; thence N19°59'16"W 25.15' to a point; thence N14°24'27"W 135.71' to a 4" black birch; thence N31°02'21"W 19.18' to a 12" maple; thence N02°44'26"W 56.52' to a 16" yellow birch; thence N04°23'29"E 14.57' to a 14" maple; thence N15°00'08"W 24.29' to an 8" ash; thence N11°22'29"E 33.60' to a 24" twin maple; thence N07°36'38"W 60.78' to a 24" black birch; thence N01°52'56"W 151.15' to a 24" maple; thence N11°25'37"E 37.31' to 12" maple remains; thence N04°05'21"W 112.74' to iron pipe remains. Said iron pipe remains marks the northeasterly corner of land of said Patricia D. Bowen, the northwesterly corner of the parcel herein described and lie in the southerly highway line of land now or formerly of State of Connecticut Interstate 84. Thence along the southerly highway line of said Interstate 84 the following courses and distances: N53°03'33"E 80.27' to a Connecticut Highway Department monument; thence N53°03'49"E 500.03' to a Connecticut Highway Department monument; thence N58°45'48"E 201.06' to a Connecticut Highway Department monument; thence N53°03'44"E 699.95' to a monument; thence N58°58'39"E 436.33' to the point which marks the point or place of beginning

Said parcel is bounded:

Northerly by land now or formerly of State of Connecticut Interstate 84;
Northeasterly, Easterly and Northeasterly by Christian Road;
Southerly, Southeasterly, Southerly and Southeasterly by Kissewaug Road;
Southwesterly and Southeasterly by land now or formerly of Marion Leogrande;
Southerly by Kissewaug Road;
Westerly and Southerly by land to be conveyed to Richard and Holly Polomski;
Northwesterly, Westerly, Southerly and Westerly by the Brookside Dairies Tract;
and
Westerly by land now or formerly of Patricia D. Bowen.

Said parcel contains 133.1159 Acres

Together with a certain Sewer Easement from Richard Polomski and Holly Polomski to Phoenix Land L.L.C. dated September 4, 2002, and recorded in Volume 182, Page 545 of the Middlebury Land Records (within which a portion of the Private Sewer Easement will be located).

Schedule B

PRIVATE SEWER SYSTEM

The private sewer system shown and designated on a certain Preliminary/Final Development Plan entitled "Brookside, Christian Road, Middlebury, Connecticut" consisting of sixty-nine (69) sheets originally dated May 30, 2001 and bearing various revision dates for subsequent revisions, the latest being October 3, 2002, said sheets, commencing with C-2, being listed on pages 2 and 3 of this Schedule B, entitled "Drawing Package", all made by DYMAR, Professional Engineering, Planning, Surveying & Development Services, of which sheets C-2, C-3, C-5, C-6 and C-8G are to be recorded on the Middlebury Land Records.

It is understood that the sheets contained in the Drawing Package describe in detail the entire Brookside project, of which the private sewer system is only one part. It is further understood that the Landscape Drawings, sheets L-1 through L-7 do not deal with the private sewer system.

Schedule C

UNIT RELEASE

**RELEASE OF CERTIFICATE OF NOTICE OF
INSTALLMENT PAYMENT OF ASSESSMENT OF BENEFITS**

KNOW ALL MEN BY THESE PRESENTS: THAT the Town of Middlebury, by and through the Middlebury Water Pollution Control Authority, does hereby release and discharge Lot ____, which is located within the common interest community known as "**Brookside**", as described in the Declaration dated _____ and recorded in Volume _____ at Page _____ of the Middlebury Land Records, from a certain Certificate of Notice of Installment in the name of Baker Residential Limited Partnership, which Certificate was recorded in Volume _____, Page _____ of the Middlebury Land Records.

IN WITNESS WHEREOF, the Middlebury Water Pollution Control Authority, acting herein by its Chairman has hereunto set its hand and seal this _____ day of _____, 200__.

Signed, sealed and delivered
in the presence of:

**TOWN OF MIDDLEBURY, acting by
and through the Middlebury Water
Pollution Control Authority**

By: _____
Robert W. Smith
Its Chairman

STATE OF CONNECTICUT)
) ss.
COUNTY OF NEW HAVEN)

On this the ____ day of _____, 200__, before me personally appeared Robert W. Smith, who acknowledged himself to be the Chairman of the Middlebury Water Pollution Control Authority, signer of the foregoing instrument, and acknowledged the same to be his free act and deed as such Chairman and the free act and deed of the Middlebury Water Pollution Control Authority.

In witness whereof, I hereunto set my hand.

Commissioner of the Superior Court
Notary Public
My Commission Expires: _____

Schedule D

CERTIFICATE OF NOTICE OF INSTALLMENT
PAYMENT OF ASSESSMENT OF BENEFITS
BROOKSIDE

The undersigned Treasurer of the Town of Middlebury, in the County of New Haven, State of Connecticut, hereby certifies that as of _____, 2002, an installment payment plan in favor of the Town of Middlebury was in effect for payment of an assessment of benefits for the installation of sewer service with respect to certain property of Baker Residential Limited Partnership, located at Christian and Kissewaug Roads, as more particularly described in Schedule A attached hereto, which property was a portion of the land conveyed to Baker Residential Limited Partnership by a certain Warranty Deed dated _____, 2002 and recorded in Volume _____, Page _____ of the Middlebury Land Records (the "Land").

The notice of such assessment of sewer benefits herein certified is to Baker Residential Limited Partnership, the total principal amount of which is \$899,892.00 due to the Town of Middlebury, together with the legal interest, fees and charges thereon, if any, in the manner and as described in a certain Sewer Use Agreement by and between Baker Residential Limited Partnership and the Town of Middlebury (acting by the Middlebury Water Pollution Control Authority), dated as of _____, 2002 (the "Sewer Use Agreement"), and payment of the same became due on said date, and may be paid in installment payments in accordance with the provisions for such payments contained in the Sewer Use Agreement, a copy of which has been recorded in the Middlebury Land Records and is also on file in the offices of the Middlebury Water Pollution Control Authority, 1212 Whittemore Road, Middlebury, Connecticut.

This certificate is filed pursuant to Section 7-253 of the Connecticut General Statutes, as amended.

The property assessed is:

The Land, as more particularly
described on the foregoing
Warranty Deed.

TOWN OF MIDDLEBURY

Treasurer

Received _____, 2002 At _____ M.

Vol. _____, Page _____.

Schedule E

PERMITTED ENCUMBRANCES

1. Relinquishment of all rights of access directly to and from the relocation of Route U.S. 6-Interstate Route I-84 as contained in a Quit Claim Deed from Edward Prasauckas and Boleslovas a/k/a Benjamin Prasauckas to the State of Connecticut dated March 11, 1964 and recorded April 28, 1964 in Volume 60 at Page 729 of said Land Records. (Affects Hardisty Tract)
2. Right of Way for sanitary sewer, to pass and repass and reservation from Uniroyal, Inc. to the Town of Middlebury dated July 7, 1969 and recorded August 28, 1969 in Volume 68 at Page 91 of said Land Records as corrected in Volume 69 at Page 768 of said Land Records.
3. Right to discharge water and slope rights as set forth in Certificate of Taking dated January 15, 1962 and recorded January 18, 1962 in Volume 58 at Page 102 of said Land Records. (Affects Hardisty Tract)
4. Notes and notations as shown on Map Nos. 25-26, 25-27, 25-37, 25.38 and 10-39, all of which are on file in the Middlebury Town Clerk's Office.
5. Possible rights of others in and to:
 - a) dirt roads and paths shown on survey filed as Map, Volume 10 at Page 45 of said Land Records.
 - b) old wagon road as shown on survey filed in Volume 10 at Page 49 of said Land Records.
6. Riparian rights and easements of others to and over brook, and this policy does not insure any riparian rights or easements in favor of the owner of the premises herein. (Affects Hardisty, Mullenite, and Brookside Dairies Tracts)

SCHEDULE A-7

BROOKSIDE OF MIDDLEBURY Declaration of Covenants and Conservation Restrictions

WHEREAS, Baker Residential Limited Partnership, a Connecticut limited partnership ("Baker") owns certain property located in the Town of Middlebury, County of New Haven and State of Connecticut, more particularly described on Schedule A-1 attached to the Declaration (the "Property"); and

WHEREAS, the Preliminary/Final Development plan of the Property as proposed in accordance with Section 22 of the Middlebury Zoning Regulations provided that the Property be subjected to the covenants and restrictions herein contained to promote the purposes and objectives of the PRD Regulations as they relate to the Property and, particularly, to preserve, conserve and protect water quality, tree cover, wetlands and watercourses and other environmentally noteworthy features and resources of the Property.

NOW THEREFORE, Baker does hereby publish, declare and impose the following covenants and restrictions on the Property in favor of, and enforceable by the Town of Middlebury and the Homeowners Association provided for in Section 7 below which are intended to and shall be deemed to be a "Conservation Restriction" within the meaning of Sections 47-42a through 47-42c of the Connecticut General Statutes, as amended, to the date hereof:

1. No septic systems shall be constructed, placed or installed on the Property.
2. Unless specifically (and in each case) approved by the Middlebury Conservation Commission, and subject to the issuance of any other necessary governmental approvals, filling or excavation, mining, drilling or removal of topsoil, sand, gravel, rock, minerals or other earth materials, the construction of driveways or roadways and any changes in the natural topography of the Property is prohibited. The foregoing, however, does not apply to the private roads to be constructed as shown on the Preliminary/Final Development plan, to homes to be constructed, to driveways serving homes, or to the installation of utilities, or to drainage facilities, or to other improvements shown on the Preliminary/Final Development Plan.
3. Proper sedimentation and erosion control acceptable to the Middlebury Conservation Commission shall be maintained during all construction activities on the Property. No portion of the Property shall be regraded unless appropriate measures acceptable to the Middlebury Conservation Commission are taken and maintained to eliminate any unacceptable resulting concentration of drainage or runoff. Appropriate ground cover shall be provided as soon as practicable in any disturbed areas.
4. Use of sand and salt on the streets and individual driveways on the Property shall be limited to that reasonably required for safety.

5. Use of pesticides, herbicides and other chemicals for lawn and grounds care shall, to the extent reasonably practicable, be limited to those that will not have a material deleterious effect on wetlands and watercourses on the Property unless otherwise approved by the Middlebury Conservation Commission where warranted by special circumstances.

6. No use, activity or operation that is defined as a "Regulated Activity" under the Inland Wetlands & Watercourses Regulations of the Town of Middlebury or otherwise regulated under any law, statute, ordinance or regulation of similar import shall be conducted within the "Regulated Area" on the Property except after obtaining any necessary license, permit or approval from the government authority having jurisdiction and then only in conformity with such license, permit or approval. The location and dimensions of the current wetlands and watercourses that are located on the Property and the fifty-foot buffer from the limits of each that constitutes the current regulated area under the Inland Wetlands & Watercourses Regulations are shown on the Preliminary/Final site Development Plans for the Property that are on file with the Middlebury Planning & Zoning Commission.

7. Not later than the first conveyance by Baker of a home in the PRD, Baker, or the then owner of the Property, shall create a non-stock, nonprofit corporation under the laws of the State of Connecticut to act as the homeowner's association for the PRD (hereinafter the "Association"). All persons, firms or corporations having an ownership interest in the PRD shall, so long as such interest is maintained, be members of the Association. When established, the Association shall, by its bylaws and other relevant documents, in addition to other duties which may be imposed on it, have the right and responsibility to enforce compliance with these restrictions and shall be responsible for proper maintenance of the common areas, the water quality basin, and the private streets, among other things, to prevent to the extent reasonably possible, deterioration of such facilities and streets from adversely impacting wetland and watercourse areas on the Property. The Association shall be vested with all requisite legal authority to carry out its duties hereunder, expressly including the authority to finance such activities by having the ability to borrow money and to make assessments against its members and their respective interests in the PRD, which assessments may be collected by legal action and/or the placing and foreclosing of liens on members for such assessments.

8. The land shown on the Preliminary/Final Development Plan which is designated "Open Space" shall either be (1) deeded to the Association or (2) conveyed in undivided interests to the unit owners in the PRD and, except for improvements shown on the Preliminary/Final Development Plan, shall (a) remain in its natural, scenic and unspoiled condition and (b) be held and used solely as a natural area preserved for conservation, scientific, educational, natural and aesthetic purposes. The Open Spaces may be landscaped, but otherwise shall remain in their natural state, except for walking trails and emergency access and any facilities and improvements shown on the Preliminary/Final Development Plan. The foregoing, however, shall not prohibit the cutting of dead trees for firewood or other trees for control of fire, insects and disease, and maintaining views from houses; nor shall it prohibit maintenance, construction, reconstruction or repair of stone walls, fences, walking trails, and such improvements or cutting as may be necessary for safety purposes or incidental to the maintenance, preservation and sound management of open space, pond wetlands or forested land, which shall be permitted on the areas designated as Open Space.

9. Except as set forth below, no buildings, structures, billboards or signs may be constructed or erected in the areas designated as "Open Space" on the Preliminary/Final Development Plan. Notwithstanding the foregoing, buildings or structures as shown on the Preliminary/Final Development Plan and informational or street signs shall be permitted.

10. As used herein the term "Middlebury Conservation Commission" means not only the Middlebury Conservation Commission as presently constituted and empowered but also includes any successor governmental agency having similar jurisdiction.

11. Baker reserves for itself, its successors and assigns and their respective successors in title to the Property or portions thereof all rights in and to the Property or portions thereof that are not inconsistent with the restrictions and covenants herein contained.

12. Subject to compliance with applicable law and, in particular, the Middlebury Zoning Regulations, and subject to the issuance of any necessary approvals of governmental agencies, the terms and conditions of these covenants and restrictions may be modified, clarified or supplemented by written agreement of the Town of Middlebury and the Association (or prior to the time the Association is formed, Baker) recorded on the Middlebury Land Records.

IN WITNESS WHEREOF, Baker has caused this Declaration of Covenants and Restrictions to be executed this 6th day of May, 2003.

Signed, sealed and delivered in the presence of:

By: Baker Residential Limited Partnership
by Baker Companies, Inc., Its General Partner

Joseph P. Conlan
[Signature]

[Signature]

SCHEDULE A-8

AFFORDABILITY PLAN

BROOKSIDE AT MIDDLEBURY

CHRISTIAN ROAD

MIDDLEBURY, CONNECTICUT

INTRODUCTION

Pursuant to the terms and conditions of the Middlebury Planning and Zoning Commission's (the "Commission") approval of an affordable housing complex located on Christian Road, Middlebury, Connecticut, and known as Brookside, Baker Residential Limited Partnership ("Developer") hereby submits the premises described in **Schedule A** annexed to this Affordability Plan.

Under this plan, eight (8) of the homes of the Community will be designated as "Housing Opportunity Homes" that will meet the criteria for "affordable housing" as defined in Connecticut General Statutes ("C.G.S.") Section 8-30g and as may have been subsequently amended prior to June 1, 2001. This Affordability Plan describes how the regulations regarding affordability will be administered.

AFFORDABILITY PLAN

I. Homes Designated for Affordable Housing

Eight (8) of the homes of the Community will be designated as affordable housing, as defined by C.G.S. Section 8-30g. The specific homes designated as affordable housing (to be called "Housing Opportunity Homes") shall be as set forth in **Schedule B** attached hereto.

II. Forty (40) Year Period

The Housing Opportunity Homes shall be designated as affordable housing units for forty (40) years. The forty (40) year affordability period shall be calculated separately for each Housing Opportunity Home, and the period shall begin on the date of conveyance of such Housing Opportunity Home from the Developer or its successors or assigns to an eligible purchaser, as hereinafter defined.

III. Pro-Rata Construction

To the extent possible, the Housing Opportunity Homes shall be built on a *pro rata* basis as construction of the Community proceeds. It is the Developer's intent, therefore, to build and offer for sale the market rate homes and the Housing Opportunity Homes in accordance with the proposed construction and phasing schedule in **Schedule G** attached.

IV. Nature of Construction of Housing Opportunity Homes and Market- Rate Units.

Within the Community, model homes ("Model Homes"), as more fully depicted and described in **Schedule C** attached hereto, shall be the basic models for market-rate homes. The Housing Opportunity Homes shall be similar to the Model Homes, although they may be smaller in size, and shall be, at a minimum, constructed in conformance with the architectural design and materials specified in **Schedule C**. However, nothing in this Affordability Plan shall prohibit the purchaser of a market-rate home from finishing a unit differently from the Model Homes or from utilizing materials different from those used in the Model Homes.

V. Entity Responsible for Administration and Compliance

This Affordability Plan will be administered by the Planning & Zoning Commission, Middlebury, Connecticut, or its designees, successors and assigns ("Administrator"). The Administrator shall submit a status report to the Town on compliance with this Affordability Plan annually on or about January 1. Notwithstanding any of the above, the Developer will serve as the Administrator for the initial sales and will be responsible for administering the Plan including all costs associated.

VI. Notice of Initial Sale of Housing Opportunity Homes

Except as provided in Section IX hereof, the Administrator shall provide notice of the availability of each Housing Opportunity Home for purchase from the Developer (the "Notice of Initial Sale"). Such notice shall be provided, at a minimum, by advertising at least two times in a newspaper of general circulation in the Town. The Developer shall bear the cost of such advertising. The Administrator shall also provide such notice to the Commission, the Town of Middlebury, and the Middlebury Board of Education. Such notice shall include a

description of the available Housing Opportunity Home(s), the eligibility criteria for potential purchasers, the Maximum Sale Price (as hereinafter defined), and the availability of application forms and additional information. All such notices shall comply with the federal Fair Housing Act, 42 U.S.C. Section 3601 et seq. and the Connecticut Fair Housing Act, C.G.S. Sections 46a-64b, 64c (together, the "Fair Housing Acts").

VII. Purchaser Eligibility

The eight (8) homes shall be offered for sale to families whose income is less than or equal to eighty percent (80%) of the area or statewide median income, whichever is less. The area and statewide median income shall be as determined by the U.S. Department of Housing and Urban Development ("HUD").

VIII. Application Process

A family or household seeking to purchase one of the Housing Opportunity Homes ("Applicant") must complete an application to determine eligibility. The application form and process shall comply with the Fair Housing Act.

A. Application Form

The application form shall be provided by the Administrator and shall include an income pre-certification eligibility form and an income certification form. In general, income for purposes of determining an Applicant's qualification shall include the Applicant family's total anticipated income from all sources for the twelve (12) month period following the date the application is submitted ("Application Date"). If the Applicant's financial disclosures indicate that the Applicant may experience a significant change in the Applicant's future income during the twelve (12) month period, the Administrator shall not consider this change unless there is a reasonable assurance that the change will in fact occur. The Applicant's income need not be re-verified after the time of initial purchase. In determining what is and is not to be included in the definition of family annual income, the Administrator shall use the criteria set forth by HUD and listed on **Schedule D**, attached.¹

B. Applicant Interview

The Administrator shall interview an Applicant upon submission of the completed application. Specifically, the Administrator shall, during the interview, undertake the following:

1. Review with the Applicant all the information provided on the application.
2. Explain to the Applicant the requirements for eligibility, verification procedures, and the penalties for supplying false information.

¹ See 24 C.F.R. 813.106. Federal regulations are subject to change, and it is the intent of this Affordability Plan to follow HUD regulations with respect to income certification, as such regulations may be amended from time to time.

3. Verify that all sources of family income and family assets have been listed in the application. The term "family" shall be as defined by the Zoning Regulations of the Town of Middlebury.
4. Request the Applicant to sign the necessary release forms to be used in verifying income. Inform the Applicant of what verification and documentation must be provided before the application is deemed complete.
5. Inform the Applicant that a certified decision as to eligibility cannot be made until all items on the application have been verified.
6. Review with the Applicant the process and restrictions regarding re-sale.

C. Verification of Applicant's Income

Where it is evident from the income certification form provided by the Applicant that the Applicant is not eligible, additional verification procedures shall not be necessary. However, if the Applicant appears to be eligible, the Administrator shall issue a pre-certification letter. The letter shall indicate to the Applicant and the Developer that the Applicant is income eligible, subject to the verification of the information provided in the Application. The letter will notify the Applicant that he/she will have thirty (30) days to submit all required documentation.

If applicable, the Applicant shall provide the documentation listed on **Schedule E** attached hereto, to the Administrator. This list is not exclusive, and the Administrator may require any other verification or documentation, as the Administrator deems necessary.

IX. Prioritization of Applicants for Initial Sale

If, after publication of the Notice of Initial Sale as described in Section VI hereof, the number of qualified Applicants exceeds the number of Housing Opportunity Homes, then the Administrator shall establish a priority list of applicants based on a "first come, first served" basis, subject to the applicant's income pre-certification eligibility and the preferences as established in this Section IX. The Housing Opportunity Homes will then be offered according to the applicant's numerical listing. In the event the Community is built in phases, the same procedure shall be held for each phase.

X. Maximum Initial Sale Price

Calculation of the maximum initial sale price ("Maximum Initial Sale Price") for a Housing Opportunity Home, so as to satisfy C.G.S. Sections 8-30g and 8-39a, shall utilize the lesser of the area median income data for the Town or the statewide median income as published by HUD as in effect on the day a purchase and sale agreement is accepted by the owner of the Housing Opportunity Home ("Owner"). The Maximum Initial Sale Price shall be calculated as follows:

Example of Calculation of Sales Price for a family earning less than 80% of Median Income:	Sample Computations based on FY 2003 data
1. Determine the lower of area or statewide median income for a family of four (4):	\$68,800
2. Determine the adjusted income for a family of Six(6) by calculating 116% of item 1:	\$79,808
3. Calculate 80% of item 2:	\$63,846.80
4. Calculate 30% of item 3 representing the maximum portion of a family's income that may be used for housing:	\$19,153.92
5. Divide 4 by twelve (12) to determine the maximum monthly outlay:	\$1,596.16
6. Determine by reasonable estimate monthly expenses including real estate taxes (\$359.66), homeowner's association assessments (\$70), utilities (\$105), and insurance (\$40):	\$ 574.66
7. Subtract item 6 from item 5 to determine the amount available for mortgage principal and interest:	\$1,021.50
8. Apply item 7 to a reasonable mortgage term (such as 30 years) at a reasonably available interest rate (6.00% for the sample calculation) to determine the mortgage amount:	\$170,378
9. Assume 20% down payment:	\$ 42,594
10. Add items 8 and 9 to determine MAXIMUM SALES PRICE:	\$212,972

XI. Principal Residence

Housing Opportunity Homes shall be occupied only as an Owner's principal residence. Other than the rights that the Developer shall have to lease the Housing Opportunity Homes, leasing of Housing Opportunity Homes by the Owner shall be prohibited.

XII. Requirement to Maintain Condition

All Owners are required to maintain their homes. The Owner shall not destroy, damage or impair the home, allow the home to deteriorate, or commit waste on the home. When a Housing Opportunity Home is offered for re-sale, the Administrator shall cause the home to be inspected.

XIII. Resale of a Housing Opportunity Home

An Owner may sell his Housing Opportunity Home at any time, provided that the Owner complies with the restrictions concerning the sale of homes as set forth in this Affordability Plan and in the deed attached hereto as **Schedule F** (the "Statutory Warranty Deed"). If the Owner wishes to sell, the Owner shall notify the Administrator in writing by certified mail, return receipt requested. The Administrator shall then work with the Owner to calculate a Maximum Resale Price, as set forth in this **Section XIII**. The Administrator shall publish notice of the availability of the home in the same manner as was followed for the initial sale. The Owner shall pay for the cost of Advertising. The Administrator shall bring any purchase offers received to the attention of the Owner.

The Maximum Resale Price shall mean the Initial Sale Price of a Housing Opportunity Home ("Base Price") as adjusted by the Resale Index ("Index") and as may be further adjusted defined below. The Index shall mean the calculated percentage of change in the median income for a household of four in the State of Connecticut using the income guidelines as published by HUD. Said measure shall be calculated from the time of the Previous Sale to the time of the Resale. The Base Price shall be multiplied by the Resale Index to establish the maximum Resale Price which may be further adjusted by the addition of reasonable costs of the sale, as approved by the Administrator.

The Owner may hire a real estate broker or otherwise individually solicit offers, independent of the Administrator's action, from potential purchasers. The Owner shall inform any potential purchaser of the affordability restrictions before any purchase and sale agreement is executed by furnishing the potential purchaser with a copy of this Affordability Plan. The purchase and sale agreement shall contain a provision to the effect that the sale is contingent upon a determination by the Administrator that the potential purchaser meets the eligibility criteria set forth in this Plan. Once the Owner and potential purchaser execute the purchase and sale agreement, the potential purchaser shall immediately notify the Administrator in writing. The Administrator shall have thirty (30) days from such notice to determine the eligibility of the potential purchaser in accordance with the application process set forth in **Section VIII** above. The Administrator shall notify the Owner and the potential purchaser of its determination of eligibility in writing within said thirty (30) day period. If the Administrator determines that the potential purchaser is not eligible, the purchase and sale agreement shall be void, and the Owner may solicit other potential purchasers. If the Administrator determines that the potential purchaser is eligible, the Administrator shall

provide the potential purchaser and the Owner with a signed certification, executed in recordable form, to the effect that the sale of the particular Housing Opportunity Home has complied with the provisions of this Affordability Plan. The owner shall bear the cost of recording the certification.

XIV. Enforcement

A violation of this Affordability Plan or the Deed Restrictions shall not result in a forfeiture of title, but the Commission shall otherwise retain all enforcement powers granted by the C.G.S., including Section 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect the property and to examine the books and records of the Administrator to determine compliance of Housing Opportunity Homes with the affordable housing regulations.

XV. Deed Restrictions

The Deed Restrictions shall be included in each deed of a Housing Opportunity Home during the forty (40) year period in which the affordability program is in place to provide notice of the affordability restrictions and to bind future purchasers. The Deed Restrictions include a right of first offer that shall apply to the first conveyance of the Housing Opportunity Home following the expiration of the forty (40) year affordability period. Furthermore, the Deed Restrictions will provide that the Town of Middlebury retains a right of first refusal to purchase the home for 90 days after the property is listed for sale, during the forty (40) year affordability period.

XVI. Binding Effect

This Affordability Plan shall be binding on the successors and assigns of the Developer.

IN WITNESS WHEREOF, the Developer hereto has hereunto set its hand and seal on
this _____ day of _____, 20_____.

Witnessed by:

BAKER RESIDENTIAL LIMITED PARTNERSHIP
BY BAKER COMPANIES, INC.,
ITS GENERAL PARTNER

By: _____

Duly Authorized

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

The foregoing instrument was acknowledged, before me, this _____ day of
_____, 20____ by _____ of
BAKER COMPANIES, INC., THE GENERAL PARTNER OF BAKER RESIDENTIAL LIMITED
PARTNERSHIP, as his free act and deed and the free act and deed of said Limited
Partnership.

Notary Public

SCHEDULE A

All that certain piece or parcel of land, together with any improvements thereon, situated on the southerly side of Interstate 84, Westerly of Christian Road and Northerly of Kissewaug Road in the Town of Middlebury, County of New Haven and State of Connecticut and shown on a map entitled, "Perimeter Survey Map Prepared for International Business Machines Corporation, Property at Christian Road, Kissewaug Road, & Benson Road, Middlebury, Connecticut Compilation Plan Land to be Added to Polomski Land, Kissewaug Rd & Benson Rd. Middlebury, CT," dated May 9, 2001 and prepared by Bradford E. Smith & Son" dated May 5, 1997 and prepared by Bradford E. Smith & Son, Woodbury, CT (Map #1); also shown on map entitled, "Perimeter Survey Showing Zone Change Property of Phoenix Land, L.L.C., Polomski & Leogrande, Property at Christian Road, & Kissewaug Road, Middlebury, CT," dated September 26, 2000 revised to December 2, 2000 and prepared by Bradford E. Smith & Son, Woodbury, CT (Map #2) and also shown on map entitled, "Compilation Plan Land to be Added to Polomski Land, Kissewaug Rd & Benson Rd. Middlebury, CT," dated May 9, 2001 and prepared by Bradford E. Smith & Son, Woodbury, CT (Map #3). Said parcel can be more particularly described as follows:

Beginning at iron pipe remains in the southerly highway line of land now or formerly of State of Connecticut Interstate 84 as shown on (Map #1). Said point marks the northeasterly corner of land now or formerly of Patricia D. Bowen and the northwesterly corner of the parcel herein described. Thence proceeding along the southerly highway line of said Interstate 84 the following courses and distances: N53°03'33"E 80.27' to a Connecticut Highway Department monument; thence N53°03'49"E 500.03' to a Connecticut Highway Department monument; thence N58°45'48"E 201.06' to a Connecticut Highway Department monument; thence N53°03'44"E 699.95' to a monument; thence N58°58'39"E 436.33' to a point. Said point marks the northeasterly corner of the parcel herein described and lies in the westerly street line of Christian Road. Thence along the westerly street line of said Christian Road the following courses and distances: S29°28'39"E 167.04' to the east face of a 36" maple; thence S24°11'39"E 490.23' to a point; thence S25°45'18"E 159.86' to a point; thence S17°50'51"E 58.00' to an iron pin; thence S09°10'03"E 155.77' to a point; thence S07°35'30"E 352.07' to a point; thence S09°02'11"E 300.60' to a point; thence S21°22'17"E 223.17' to an iron pipe; thence S21°15'27"E 172.17' to a point; thence S20°24'19"E 236.73' to a point; thence S09°33'39"E 55.85' to a point; thence S15°06'20"E 39.66' to a point; thence S19°30'36"E 128.91' to an iron pin; thence S18°32'03"E 66.92' to a point; thence S26°20'34"E 35.84' to a point; thence S28°08'11"E 97.47' to a point; thence S31°56'48"E 65.81' to a point; thence S26°47'09"E 80.91' to an iron pin. Said iron pin lies in the northwesterly side of the intersection of Christian Road and Kissewaug Road. Thence S18°34'08"W 29.39' along the northwesterly side of said intersection to a point. Thence along the northerly street line of said Kissewaug Road the following courses and distances: S41°17'15"W 47.18' to a point; thence S51°36'34"W 57.20' to a point; thence S60°21'56"W 78.88' to a point; thence S65°04'25"W 70.53' to a point; thence S65°08'25"W 38.72' to a point; thence S56°00'05"W 79.04' to a point; thence S62°46'32"W 32.49' to a point; thence S62°44'03"W 107.55' to a point; thence S76°22'23"W 261.08' to the southeast face of a 15" twin oak with guy wire; thence S62°08'29"W 143.78' to a point; thence S61°33'28"W 36.16' to a point; thence S58°54'43"W 87.97' to a point; thence S50°35'52"W 66.62' to a point; thence S39°09'47"W 37.11' to a point; thence S32°56'19"W 58.81' to a point; thence

S34°55'28"W 167.04' to a point; thence S56°41'24"W 122.77' to a point; thence S64°02'24"W 101.67' to a point; thence S56°06'29"W 39.87' to a point; thence S45°14'57"W 66.48' to a point; thence S29°04'44"W 160.44' to an iron pipe. Said iron pipe marks the northeasterly corner of land now or formerly of Marion Leogrande and a southeasterly corner of the parcel herein described. Thence N70°20'19"W 188.22' along the northeasterly line of land of said Marion Leogrande to a point. Said point marks the northwesterly corner of land of said Marion Leogrande. Thence S15°26'41"W 276.69' to a point. Said point marks the southwesterly corner of land of said Marion Leogrande and a southeasterly corner of the parcel herein described. Thence S83°46'00"W 112.08' along the northerly street line of said Kissewaug Road to a point; thence S82°14'25"W 153.34' continuing along the northerly street line of said Kissewaug Road to a point. Said point marks the southeasterly corner of land to be conveyed to Richard and Holly Polomski and a southwesterly corner of the parcel herein described and is shown on Map #3. Thence N09°40'45"W 244.38' along the easterly line of land to be conveyed to Richard and Holly Polomski to a point as shown on said Map #3. Said point marks the northeasterly corner of land to be conveyed to Richard and Holly Polomski. Thence N86°43'46"W 85.72' along the northerly line of land to be conveyed to Richard and Holly Polomski to a point as shown on said Map #3. Said point marks the northwesterly corner of land to be conveyed to Richard and Holly Polomski and a southwesterly corner of the parcel herein described. Said point also lies in the southeasterly line of the Brookside Dairies Tract marking the proposed Zone Line as shown on Map #2. Thence N33°10'04"E 185.12' along the southeasterly line of said "Brookside Dairies Tract" as shown on said Map #2 to a point; thence N34°13'14"E 206.30' continuing along the southeasterly line of said Brookside Dairies Tract to a point; thence N27°26'57"E 112.97' continuing along the southeasterly line of said Brookside Dairies Tract to a point; thence N18°27'33"W 276.44' along an easterly line of said Brookside Dairies Tract to a fence post. Said fence post marks a northeasterly corner of said Brookside Dairies Tract. Thence N87°54'31"W 66.55' along a northerly line of said Brookside Dairies Tract to a point. Thence along an easterly line of said Brookside Dairies Tract the following courses and distances: N33°13'23"W 127.94' to a point; thence N25°27'09"W 92.31' to a point; thence N17°46'28"W 212.04' to a point; thence N25°49'54"W 179.08' to a point; thence N05°53'25"W 121.65' to a point; thence N13°12'00"W 175.31' to a crimped iron pipe. Said iron pipe marks a northeasterly corner of said Brookside Dairies Tract and the southeasterly corner of land now or formerly of Patricia D. Bowen. Thence along the easterly line of land of said Patricia D. Bowen the following courses and distances: N16°15'56"W 106.75' to a 14" oak; thence N16°15'56"W 114.11' to a 12" oak; thence N08°01'22"W 63.50' to a point; thence N41°13'40"W 20.18' to a point; thence N02°05'42"W 56.39' to a 14" twin ash; thence N24°40'50"W 41.62' to a 12" black birch; thence N03°22'15"E 29.99' to a point; thence N28°00'02"W 42.67' to a 15" ash; thence N16°31'40"E 13.93' to a 16" ash; thence N19°59'16"W 25.15' to a point; thence N14°24'27"W 135.71' to a 4" black birch; thence N31°02'21"W 19.18' to a 12" maple; thence N02°44'26"W 56.52' to a 16" yellow birch; thence N04°23'29"E 14.57' to a 14" maple; thence N15°00'08"W 24.29' to an 8" ash; thence N11°22'29"E 33.60' to a 24" twin maple; thence N07°36'38"W 60.78' to a 24" black birch; thence N01°52'56"W 151.15' to a 24" maple; thence N11°25'37"E 37.31' to 12" maple remains; thence N04°05'21"W 112.74' to the iron pipe remains which marks the point or place of beginning.

Said parcel is bounded:

Northerly by land now or formerly of State of Connecticut Interstate 84;
Easterly by Christian Road;
Southerly by Kissewaug Road;
Southwesterly and Southeasterly by land now or formerly of Marion Leogrande;
Southerly by Kissewaug Road;
Westerly and Southerly by land to be conveyed to Richard and Holly Polomski;
Northwesterly, Westerly, Southerly and Westerly by the Brookside Dairies Tract; and
Westerly by land now or formerly of Patricia D. Bowen.

Said Parcel contains 133.1159 Acres

SCHEDULE B
LIST OF DESIGNATED HOUSING OPPORTUNITY HOMES

68, 69, 70, 74, 75, 97, 101, 102

SCHEDULE C

PROPOSED TYPICAL HOME FEATURES

Exterior

- Foundation plantings (as specified)
- No-maintenance vinyl siding
- Aluminum gutters and down spouts
- Exterior weather-proof electrical outlet(s)
- Weather stripped and insulated entry door (or comparable)
- Insulated sliding glass patio doors with screens (where applicable)
- Energy efficient vinyl windows
- Asphalt driveways and walks or equivalent (as specified)

Interior

- Wall to wall carpeting
- Energy efficient heating system
- Central air conditioning
- Quick recovery hot water heater
- Direct wire smoke detectors
- Easy care vinyl clad wire closet shelving
- Pre-wired telephone and cable TV outlets
- Laundry area with washer / dryer hook-ups
- Copper wiring throughout home
- Two-car garage with direct interior access
- Ground fault circuits in kitchen, bathrooms and garage
- Colonial six-panel doors (or comparable)

Kitchens

- No-wax vinyl flooring
- Laminate or traditional wood cabinets
- Gas range and oven
- Direct vent, two speed range hood
- Sound insulated, multi-cycle dishwasher
- Laminate countertops
- Stainless steel sink with single lever faucet

Bathrooms

- Full width vanity mirrors
- Single piece acrylic tubs and shower surrounds
- Laminate vanity tops
- No-wax vinyl flooring or equivalent

SCHEDULE C (CONTINUED)
PROPOSED UNIT MODELS

Affordable (Housing Opportunity Home)	<u>ESTIMATED HOME SIZE</u>
	1714 sq. ft. approximately

4 Bedrooms
2½ Baths
Living Room
Dining Room
Kitchen
Two-car Garage

SCHEDULE D

DEFINITIONS AND ELEMENTS OF ANNUAL FAMILY INCOME

1. Annual income includes, but is not limited to, the following:
 - a) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;
 - b) The net income from operations of a business or profession, before any capital expenditures but including any allowance for depreciation expense;
 - c) Interest, dividends, and other net income of any kind from real or personal property;
 - d) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic payments;
 - e) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;
 - f) Welfare assistance. If the welfare assistance payments include an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income consists of the following:
 - (1) The amount of the allowance exclusive of the amounts designated for shelter or utilities, plus
 - (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities;
 - g) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing with the Applicant (e.g. periodic gifts from family members, churches, or other sponsored group, even if the gifts are designated as rental or other assistance);
 - h) All regular pay, special pay and allowances of a member of the armed forces;
 - i) Any earned income tax credit to the extent it exceeds the income tax liability of the Applicant.
 - j) Any assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate.

2. Excluded from the definition of family annual income are the following:
 - a) Income from employment of children under the age of 18;
 - b) Payments received for the care of foster children;
 - c) Lump-sum additions to family assets, such as inheritances, insurance payments, capital gains and settlement for personal or property losses;
 - d) Amounts received that are specifically for, or in reimbursement of, the cost of medical expense for any family member;
 - e) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran in connection with education costs;
 - f) Amounts received under training programs funded by HLTD;
 - g) Food stamps; and
 - h) Temporary, nonrecurring or sporadic income (including gifts that are not regular or periodic).
3. Net family assets for purposes of imputing annual income include the following:
 - a) Cash held in savings and checking accounts, safety deposit boxes, etc.;
 - b) The current market value of a trust for which any household member has an interest;
 - c) The current market value, less any outstanding loan balances of any rental property or other capital investment;
 - d) The current market value of all stocks, bonds, treasury bills, certificates of deposit and money market funds;
 - e) The current value of any individual retirement, 401K or Keogh account;
 - f) The cash value of a retirement or pension fund which the family member can withdraw without terminating employment or retiring;
 - g) Any lump-sum receipts not otherwise included in income (ie., inheritances, capital gains, one-time lottery winnings, and settlement on insurance claims);
 - h) The current market value of any personal property held for investment (ie., gems, jewelry, coin collections); and

i) Assets disposed of within two (2) years before the Application Date, but only to the extent consideration received was less than the fair market value of the asset at the time it was sold.

4. Net family assets do not include the following:

- a) Necessary personal property (clothing, furniture, cars, etc.);
- b) Vehicles equipped for handicapped individuals;
- c) Life insurance policies;
- d) Assets which are part of an active business, not including rental properties; and
- e) Assets that are not accessible to the Applicant and provide no income to the Applicant.

SCHEDULE E

DOCUMENTATION OF INCOME

The following documents shall be provided, where applicable, to the Administrator to determine income eligibility:

1. Employment Income

Verification forms must request the employer to specify the frequency of pay, the effective date of the last pay increase, and the probability and effective date of any increase during the next twelve (12) months. Acceptable forms of verification (of which at least one must be included in the Applicant file) include:

- a) An employment verification form completed by the employer.
- b) Check stubs or earnings statement showing Applicant's gross pay per pay period and frequency of pay.
- c) W-2 forms if the Applicant has had the same job for at least two years and pay increases can be accurately projected.
- d) Notarized statements, affidavits or income tax returns signed by the Applicant describing self-employment and amount of income, or income from tips and other gratuities.

2. Social Security, Pensions, Supplementary Security Income, Disability Income

- a) Benefit verification form completed by agency providing the benefits.
- b) Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only when award letter cannot be obtained.)
- c) If a local Social Security Administration (SSA) office refuses to provide written verification, the Administrator should meet with the SSA office supervisor. If the supervisor refuses to complete the verification forms in a timely manner, the Administrator may accept a check or automatic deposit slip as interim verification of Social Security or SSI benefits as long as any Medicare or state health insurance withholdings are included in the annual income.

3. Unemployment Compensation

- a) Verification form completed by the unemployment compensation agency.
- b) Records from unemployment office stating payment dates and amounts.

4. Government Assistance

a) All Government Assistance Programs. Agency's written statements as to type and amount of assistance Applicant is now receiving, and any changes in assistance expected during the next twelve(12) months.

b) Additional Information for "As-paid" Programs: Agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount the Applicant may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the Applicant's grant.

5. Alimony or Child Support Payments

a) Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.

b) A letter from the person paying the support.

c) Copy of latest check. The date, amount, and number of the check must be documented.

d) Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.

6. Earned Income Tax Credit

a) For credits applied in one lump sum against tax liability, use income tax return (IRS Form 1040 or 1040A).

b) For credits applied through regular salary paychecks, use IRS Form W-5 (Earned Income Credit Advance Payment Certificate).

7. Net Income from a Business

The following documents show income for the prior years. The Administrator must consult with Applicant and use this data to estimate income for the next twelve (12) months.

a) IRS Tax Return, Form 1040, including any:

(1) Schedule C (Small Business)

(2) Schedule E (Rental Property Income)

(3) Schedule F (Farm Income)

- b) An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)
- c) Audited or unaudited financial statement(s) of the business.
- d) A copy of a recent loan application listing income derived from the business during the previous twelve (12) months.
- e) Applicant's notarized statement or affidavit as to net income realized from the business during previous years.

8. Recurring Gifts

- a) Notarized statement or affidavit signed by the person providing the assistance. Must give the purpose, dates and value of gifts.
- b) Applicant's notarized statement or affidavit that provides the information above.

9. Scholarships, Grants, and Veterans Administration Benefits for Education

- a) Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next twelve (12) months. To the extent the amount of assistance received is less than or equal to actual educational costs, the assistance payments will be excluded from the Applicant's gross income. Any excess will be included in income.
- b) Copies of latest benefit checks, if benefits are paid directly to student. Copies of canceled checks or receipts for tuition, fees, books, and equipment, if such income and expenses are not expected to change for the next twelve (12) months.
- c) Lease and receipts or bills for rent and utility costs paid by students living away from home.

10. Family Assets Currently Held

For non-liquid assets, collect enough information to determine the current cash value (ie., the net amount the Applicant would receive if the asset were converted to cash).

- a) Verification forms, letters, or documents from a financial institution, broker, etc.
- b) Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- c) Quotes from a stock broker or realty agent as to net amount Applicant would receive if Applicant liquidated securities or real estate.

- d) Real estate tax statements if tax authority uses approximate market value.
- e) Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.
- f) Appraisals of personal property held as an investment.
- g) Applicant's notarized statements or signed affidavits describing assets or verifying the amount of cash held at the Applicant's home or in safe deposit boxes.

11. Assets Disposed of for Less Than Fair Market Value ("FMV") During Two Years Preceding Application Date

- a) Applicant's certification as to whether it has disposed of assets for less than FMV during the two (2) years preceding the Application Date.
- b) If the Applicant states that it did dispose of assets for less than FMV, then a written statement by the Applicant must include the following:
 - (1) A list of all assets disposed of for less than FMV,
 - (2) The date Applicant disposed of the assets,
 - (3) The amount the Applicant received, and
 - (4) The market value to the asset(s) at the time of disposition.

12. Savings Account Interest Income and Dividends

- a) Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.
- b) Broker's quarterly statements showing value of stocks or bonds and the earnings credited the Applicant.
- c) If an IRS Form 1099 is accepted from the financial institution for prior year earnings, the Administrator must adjust the information to project earnings expected for the next twelve (12) months.

13. Rental Income from Property Owned by Applicant

The following, adjusted for changes expected during the next twelve (12) months, may be used:

- a) IRS Form 1040 with Schedule E (Rental Income).
- b) Copies of latest rent checks, leases, or utility bills.

c) Documentation of Applicant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedule showing monthly interest expense).

d) Lessee's written statement identifying monthly payments due the Applicant and Applicant's affidavit as to net income realized.

14. Full-Time Student Status

a) Written verification from the registrar's office or appropriate school official.

b) School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

SCHEDULE F

STATUTORY WARRANTY DEED

BAKER RESIDENTIAL LIMITED PARTNERSHIP whose address is 485 Washington Avenue, Pleasantville, NY 10570, in consideration of the sum of _____ **DOLLARS** (\$ _____) paid, grants to _____, whose address is _____

WITH WARRANTY COVENANTS, the premises more particularly described in Schedule A annexed hereto and made a part hereof.

Signed this _____ day of _____, 20____.

Witnessed by:

BAKER RESIDENTIAL LIMITED PARTNERSHIP
BY BAKER COMPANIES, INC.,
ITS GENERAL PARTNER

By: _____

Duly Authorized

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

The foregoing instrument was acknowledged, before me, this _____ day of _____, 20____ by _____ of BAKER COMPANIES, INC., THE GENERAL PARTNER OF BAKER RESIDENTIAL LIMITED PARTNERSHIP, as his free act and deed and the free act and deed of said Limited Partnership.

Notary Public

**SCHEDULE A
TO STATUTORY WARRANTY DEED**

ALL THAT certain piece or parcel of real property situated partially in the Town of Middlebury, County of New Haven, and State of Connecticut, declared by Declaration of Brookside, a Common Interest Community, dated _____, 20____, and recorded in the Middlebury Land Records in Volume _____ at Page _____, known and designated as **Unit No. _____**, Brookside and as _____ (Street), Middlebury, Connecticut, **TOGETHER WITH** a percentage of undivided interest in the common elements as set forth in the above described Declaration of Brookside.

TOGETHER, ALSO, WITH the benefits, rights, privileges and easements, and **SUBJECT TO** the terms, conditions, agreements, covenants, restrictions, rights, reservations, easements, rules and regulations, contained in the Declaration of Brookside referred to above, as the same may hereafter be amended of record.

SUBJECT, ALSO, TO the following:

- (a) Any and all provisions of any ordinance, municipal regulation or public or private law, including, without limitation, zoning and planning rules and regulations.
- (b) Taxes and municipal charges due the Town of Middlebury, including taxes resulting from any reassessment or reallocation from the creation of the common interest community, which become due and payable after the date of the delivery of the deed. The Grantee agrees, with regard to the period subsequent to closing, that in the event any taxes relative to the Unit or the common elements conveyed therewith are billed to the Grantor, the Grantee shall be liable for the same whether said taxes are billed to the Grantor or directly to the Grantee.
- (c) Sewer use charges due the Town of Middlebury and water use charges due the Heritage Village Water Company.
- (d) Notes and notations shown on Map Nos. on file in the offices of the Middlebury Town Clerk.
- (e) The Declarant's right to grant easements to the Town of Middlebury or to public utility companies and to convey improvements within those easements anywhere in the common interest community for the purpose of furnishing utility and other services to the community.
- (f) The Declaration of Brookside to be recorded on the Middlebury Land Records prior to the recording of the first Unit deed, and any amendments thereto as of record may appear.
- (g) The right to construct utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated "Development Rights Reserved in this Area" on the

above described map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the land designated "Development Rights Reserved in this Area" on said map.

(h) The property conveyed hereby is an "affordable housing unit" as defined in Connecticut General Statutes Section 8-30g. Said property is subject to the following restrictions (the "Restrictions"):

(1) The owner of said property shall sell or transfer said property only to certain eligible families or households. A family or household whose income is less than or equal to eighty percent (80%) of the lesser of the area median income for the Town of Middlebury ("Town"), or the statewide median as determined by the Connecticut Department of Housing and the U.S. Department of Housing and Urban Development ("HUD"), shall be eligible to purchase said property. Determination of a potential purchaser's eligibility shall be made by the Administrator (as defined in that certain Affordability Plan (the "Affordability Plan") for the subdivision of which said property is a part, a copy of which plan is on file in the Town's Planning and Zoning Office).

(2) Said owner shall convey said property at a price that will preserve said property as affordable housing. Calculation of the maximum resale price ("Maximum Resale Price") for said property, so as to satisfy Connecticut General Statutes Section 8-30g, shall be calculated as follows: The Maximum Resale Price shall mean the Previous Sale Price of a Housing Opportunity Home as adjusted by the Resale Index ("Index") and as further adjusted by the addition of reasonable costs of sale, as approved by the Administrator. The Index shall mean the calculated percentage of change in the median State of Connecticut income for a household of four using the income guidelines as published by HUD. Said measure shall include the time from Previous Sale to the time of the Resale.

(3) In the event said owner desires to make said property available for sale, said owner shall notify the Administrator in writing.. The Administrator shall then provide notice of the availability of said property for purchase. Such notice shall be provided, at a minimum, by advertising at least two times in newspapers of general circulation in the Town. The owner shall bear the cost of such advertisement. The Administrator shall also provide such notice to the Middlebury Planning and Zoning Commission, the Town of Middlebury, and the Middlebury Board of Education. Such notice shall include a description of said property, the eligibility criteria for potential purchasers, the Maximum Sale Price and the availability of application forms and additional information. All such notices shall comply with the Federal Fair Housing Act, 42 U.S.C. 3601 et seq. and the Connecticut Fair Housing Act, C.G.S. Sections 46a- 64b, 64c. Said owner may hire a real estate broker or otherwise individually solicit offers, independent of the Administrator's action, from potential purchasers. Said owner shall inform any potential purchaser of the affordability restrictions before any purchase and sale agreement is executed by furnishing the potential purchaser with a copy of the Affordability Plan. The purchase and sale agreement shall contain a provision

to the effect that the sale is contingent upon a determination by the Administrator that the potential purchaser meets the eligibility criteria set forth in the Affordability Plan. Once the purchase and sale agreement is executed by said owner and the potential purchaser, the potential purchaser shall immediately notify the Administrator in writing. The Administrator shall have thirty (30) days from such notice to determine the eligibility of the potential purchaser in accordance with the application process set forth in the Affordability Plan. The Administrator shall notify said owner and the potential purchaser of its determination of eligibility in writing within said thirty (30) day period. If the Administrator determines that the potential purchaser is not eligible, the purchase and sale agreement shall be void, and said owner may solicit other potential purchasers. If the Administrator determines that the potential purchaser is eligible, the Administrator shall provide the potential purchaser and said owner with a signed certification, executed in recordable form, to the effect that the sale of the particular Housing Opportunity Home has complied with the provisions of the Affordability Plan. The owner shall bear the cost of recording said certification.

(4) Said owner shall occupy said property as said owner's principal residence and shall not lease said property.

(5) Said owner shall maintain said property. Said owner shall not destroy, damage or impair said property, allow said property to deteriorate, or commit waste on said property. When said property is offered for re-sale, the Administrator shall cause said property to be inspected.

(6) Right of First Offer during the 40 year Affordability Period.

i) During the forty (40) year period for which these Restrictions are in effect, in the event said owner desires to convey said property, said owner shall first offer said property to the Offeree (as hereinafter defined), which Offeree shall have the right to acquire said property, free and clear of all liens and encumbrances except those existing on the date of the initial conveyance of said property by Baker Residential Limited Partnership to an eligible family or household (the "Original Liens").

ii) Said owner shall give written notice (the "Transfer Notice") to the Offeree and the Administrator of his intention to convey said property. The offer price (the "Offer Price") shall be calculated promptly by the Administrator in accordance with the formula set forth in paragraph 2 of these Restrictions, basing the computations on then-current data for statewide median income. The Administrator shall provide written notice of the Offer Price to said owner and the Offeree within fifteen (15) days of the date of the Transfer Notice. The Offeree shall have forty-five (45) days from the date of the Transfer Notice to give written notice (the "Election Notice") to said owner of its election to purchase said property

for the Offer Price and free and clear of all liens and encumbrances except the Original Liens.

iii) If the Offeree shall so elect to purchase said property, the closing (the "Closing") on such purchase and sale shall take place at the offices of Offeree at 10 a.m. on the date sixty (60) days from the date of the Election Notice, or at such other place or upon such earlier date as the parties may mutually agree. At the Closing, any closing adjustments and allocation of closing costs which are then usual and customary in the Town of Middlebury for real estate closings shall be made between seller and purchaser.

iv) In the event the Offeree (i) notifies said owner that it elects not to purchase said property, (ii) does not provide the Election Notice within said forty-five (45) day period, or (iii) fails to consummate its purchase of said property, said owner shall file an affidavit on the Middlebury Land Records evidencing such event, following which said owner may sell said property in accordance with Sections 2 and 3 herein.

v) "Offeree" shall mean the Town of Middlebury.

vi) All notices required to be provided pursuant to this right of first offer shall be hand-delivered, sent by overnight courier, or mailed by certified or registered mail return receipt requested. These Restrictions shall run with the land for a period of forty (40) years from the date of initial conveyance of said property by Baker Residential Limited Partnership to an eligible family or household. After the expiration of said forty (40) year period, the Restrictions shall be of no further force and effect.

A site plan for this community was approved by agencies of the Town based in part on the condition that a defined percentage of the homes in the community would be preserved as affordable housing units. The Restrictions are required by law to be strictly enforced.

A violation of the Restrictions shall not result in a forfeiture of title, but the Middlebury Planning and Zoning Commission shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including Section 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect said property and to examine the books and records of the Administrator to determine compliance of said property with the affordable housing regulations.

(7) In the event that an institutional lender forecloses its mortgage or accepts a deed in lieu of foreclosure:

i) Nothing contained herein shall obligate an institutional lender to notify the Town of Middlebury about a pending foreclosure.

ii) In the event of the sale of a foreclosed property, any excess funds, as hereinafter defined, shall be paid to the Town of Middlebury. Excess funds shall be the total amount paid for the unit in excess of the greater of: (i) the maximum permissible resale price of said property as of the date of foreclosure sale pursuant to the provisions of these Restrictions or (ii) the amount required to satisfy said lender's mortgage, including costs of foreclosure and any payments to junior creditors out of the foreclosure sales proceeds.

iii) The Restrictions shall not apply to future sales of said property.

iv) Notwithstanding the provisions of Paragraph 7c) above, for a period of ninety (90) days after the property is listed for sale by the institutional lender, the Town of Middlebury shall have the right of first refusal, after receipt of a copy of an accepted bona fide offer, to purchase the property for cash in an amount equal to the bona fide offer. Written notice of the exercise of such right shall be given by the Town of Middlebury within 30 days of receipt of written notice of such bona fide offer, which notice shall include a copy of the offer. Should the Town of Middlebury exercise this right, a closing shall occur within forty-five (45) days of the notice of exercise. Waiver or non-exercise of the right within the required time limit shall not affect the Town's right of first refusal as to subsequent offers that take place within any ninety (90) day period following the receipt of notice of property being available for sale. The proposed buyer who has made the accepted bona fide offer shall be obligated to notify the Town of Middlebury of the existence of said offer and to obtain the waiver of the right of first refusal.

SCHEDULE G

PROPOSED CONSTRUCTION & PHASING SCHEDULE

Units in Brookside will be constructed in the following order:

<u># TOTAL MARKET RATE UNITS</u>	<u># TOTAL HOUSING OPPORTUNITY HOMES</u>
15	1
30	2
45	3
60	4
75	5
90	6
105	7
118	8

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