

**DECLARATION OF
THE HERITAGE AT BUCKINGHAM IN AVON
A PLANNED COMMUNITY**

BUTLER AVON, LLC, a Connecticut limited liability company with a mailing address of 501 Merritt 7 - Penthouse, Norwalk, Connecticut 06851, does hereby submit the property in the Town of Avon, Connecticut, described in Exhibit A-1 attached hereto and made a part hereof (the "Property"), to the provisions of the Common Interest Ownership Act Chapter 828 of the Connecticut General Statutes, as amended, for the purpose of creating The Heritage at Buckingham in Avon.

**ARTICLE I
DEFINITIONS**

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

- 1.1 *Act.* The Common Interest Ownership Act (Chapter 828) of the Connecticut General Statutes, as amended.
- 1.2 *Allocated Interests.* The undivided interest in the Common Expense liability, and Votes in the Association, allocated to the Units in the Common Interest Community. The Allocated Interests are described in Article IX of the Declaration and shown on **Exhibit A-2**.
- 1.3 *Association.* The Heritage at Buckingham in Avon 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.
- 1.4 *Bylaws.* The Bylaws of the Association as they may be amended from time to time.
- 1.5 *Common Elements.* All portions of the Common Interest Community other than the Units. It is anticipated that the Common Elements will consist of all streets created on the property other than those streets which may be dedicated to the Town of Avon as public streets. The Common Elements will also include Parcel No. 5980030 as shown on the map referred to in Exhibit A-1 which is intended to become a Health Club/Community Center and shall also include Parcel No. 5980034 as shown on the map referred to in Exhibit A-1 which property is to be developed as a green area. The Common Elements will also include certain areas for gardens as shown on the Survey. Title to the Common Elements will be in the Association.
- 1.6 *Common Expenses.*
- 1.6.1 Expenses of administration, maintenance, repair or replacement of the Common Elements;
- 1.6.2 Expenses declared to be Common Expenses by the Instruments or by the Act;
- 1.6.3 Expenses agreed upon as Common Expenses by the Association; and
- 1.6.4 Reasonable reserves, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

- 1.7 *Common Interest Community.* The Real Property described in Exhibit A-1, subject to this Declaration.
- 1.8 *Declarant.* Butler Avon, LLC, a Connecticut limited liability company or its successor as defined in Subsection 47-202(12) of the Act.
- 1.9 *Declaration.* This document, including any amendments.
- 1.10 *Development Rights.* Any right or combination of rights reserved by a Declarant in the Declaration to:
 - 1.10.1 Add real property to the Common Interest Community;
 - 1.10.2 Create units, common elements or limited common elements within a common interest community;
 - 1.10.3 Subdivide units or convert units into common elements;
 - 1.10.4 Withdraw real property from a common interest community;
 - 1.10.5 Create and dedicate to the Town of Avon certain public streets.
 - 1.10.6 Modify and/or adjust boundary lines of Units.
 - 1.10.7 Create and grant easements to public utility companies, state and/or local municipalities, agencies, commissions and boards.
- 1.11 *Director.* A member of the Executive Board.
- 1.12 *Eligible Mortgagee.* A mortgagee given certain rights to receive notice, approve amendments and take the actions provided in Article XVIII of the Declaration.
- 1.13 *Executive Board.* The Board of Directors of the Association pursuant to Chapter 600 of the Connecticut General Statutes.
- 1.14 *Improvements.* Any construction or facilities existing or to be constructed on the land included in the Common Interest Community, such as buildings, trees, shrubbery, streets, wires, pipes, light poles, paving, detention ponds and storm, sanitary and drainage sewage systems.
- 1.15 *Instruments.* The Declaration, Survey and Plans recorded and filed pursuant to the provisions of the Act, and the Bylaws. Any exhibit, schedule or certification accompanying an Instrument is a part of that Instrument.
- 1.16 *License Agreement.* That Agreement executed by and between The Heritage at Buckingham at Avon Association, Inc. and The Village at Buckingham at Avon Association, Inc. setting forth the rights, duties and obligations of the members of each Association with respect to the maintenance, use and payment of expenses to maintain the health club/community center, community green area and the community gardens.
- 1.17 *Limited Common Elements.* A portion of the Common Elements allocated by the Declaration or by the operation of Subsection (2) or (4) of Section 47-221 of the Act for the exclusive use of one or

more but fewer than all of the Units. The Limited Common Elements in this Common Interest Community are described in Article VI of the Declaration.

- 1.18 *Majority or Majority of Unit Owners.* The Owners of more than 50% of the Votes in the Association. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Instruments, means such percentage, portion or fraction in the aggregate of such portion of Votes.
- 1.19 *Manager.* A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.
- 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. These provisions are set forth in Section 24.1 of the Declaration.
- 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. These provisions are set forth in Section 24.2 of the Declaration.
- 1.22 *Person.* An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, limited liability company or other legal or commercial entity.
- 1.23 *Plans.* Intentionally Omitted.
- 1.24 *Property.* The land, all Improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Act by this Declaration.
- 1.25 *Rules.* Rules for the use of Units and Common Elements and for the conduct of persons within the Common Interest Community, adopted by the Executive board pursuant to the Bylaws.
- 1.26 *Security Interest.* An interest in real property or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.
- 1.27 *Special Declarant Rights.* Rights reserved for the benefit of a Declarant to (A) complete improvements indicated on surveys and plans filed with the Declaration; (B) exercise any Development Right; (C) maintain sales offices, management offices, signs advertising the Common Interest Community, and models; (D) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real property which may be added to the Common Interest Community; or (E) appoint or remove any officer of the Association or any master association or any Executive Board member during any period of Declarant control.
- 1.28 *Survey.* The maps filed as Exhibit A-3 to this Declaration.
- 1.29 *Unit.* A parcel of land sometimes hereinafter referred to as a "Parcel" designated as a numbered Parcel as shown on the map described in Exhibit A-3 attached hereto for the exclusive use and

enjoyment by a Unit Owner which will permit the Unit Owner to develop the Parcel and enjoy the same in all manners not otherwise prohibited by this Declaration or by the laws and regulations of the Town of Avon. It is a physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which have been described in Section 4.3 of this Declaration.

- 1.30 *Unit Owner.* The Declarant or other person who owns a Unit but does not include a person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created by the Declaration.
- 1.31 *Votes.* The votes allocated to each Unit as shown on Exhibit A-2.

ARTICLE II

NAME AND TYPE OF COMMON INTEREST COMMUNITY AND ASSOCIATION

- 2.1 **Common Interest Community.** The name of the Common Interest Community is The Heritage at Buckingham in Avon. The Common Interest Community is a Planned Community.
- 2.2 **Association.** The name of the Association is The Heritage at Buckingham in Avon Association, Inc. It is a nonstock corporation organized under the laws of the State of Connecticut.

ARTICLE III

DESCRIPTION OF LAND

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

ARTICLE IV

MAXIMUM NUMBER OF UNITS; BOUNDARIES

- 4.1 **Number of Units.** The Common Interest Community presently contains 5 Units. The Declarant may create an additional 245 Units on the land described in Exhibit A-3, Exhibit A-4 and on unspecified land which may be added to the Common Interest Community by Declarant. Therefore, the Common Interest Community may contain a maximum of 250 Units if all the land set forth herein is added to the Common Interest Community.
- 4.2 **Identification of Units.** All Units are identified by Parcel Number and are shown on the map described in Exhibit A-1.
- 4.3 **Boundaries.** The vertical boundaries of the Units are the planes formed by the upward extension to the heavens and the downward extension through the earth of the Unit lines shown on the map described in Exhibit A-1.

ARTICLE V

LIMITED COMMON ELEMENTS

- 5.1 **Limited Common Elements.** Limited Common Elements are all of those portions of the Common Elements, the use of which is reserved and designated for the exclusive use of a Unit including, but not limited to, utility connections running from the street to each Unit.

ARTICLE VI
MAINTENANCE, REPAIR AND REPLACEMENT

- 6.1 **Common Elements.** The Association shall maintain, repair and replace all of the Common Elements. Additionally, all proposed public roads, sewer pumping stations and water pumping stations shall be maintained by the Association until accepted by the Town of Avon or the Unionville Water Company. With regard to the maintenance, repair and replacement of the Health Club/Community Center, the Green and the Garden Areas, it is anticipated that the Association will grant to a Common Interest Community known as The Village at Buckingham in Avon located adjacent to the Common Interest Community created by this Declaration, a license to use and enjoy those portions of the Common Elements for an initial term of twenty (20) years. In the event such a license is granted, the licensee will reimburse a portion of the cost of maintenance, repair, replacement and subsidy of the Health Club/Community Center and the Green based upon a ratio of the respective Units in this Common Interest Community as it relates to the number of units in The Village at Buckingham in Avon.
- 6.2 **Units.** Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit.
- 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 condition threatening a Unit or the Common Elements or Limited Common Elements.
- 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 caused intentionally and negligently.

ARTICLE VII
SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

- 7.1 The Declarant does not anticipate that there will be subsequently allocated Limited Common Elements.

ARTICLE VIII
DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

- 8.1 **Reservation of Development Rights.** The Declarant reserves the following development rights:
 - 8.1.1 The right to add Units, Common Elements and Limited Common Elements in the location shown as "Development Rights Reserved in Shaded Area" on the Survey.
 - 8.1.2 The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated "Development Rights Reserved in Shaded Area" on the Survey for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the land designated "Development Right Reserved in Shaded Area" on the Survey. The Declarant also reserves the right to grant easements to public utility companies, state and/or local municipalities, agencies, commissions or boards and to convey Improvements within those easements anywhere in the Common Interest Community for the above-mentioned purposes. If the Declarant grants any such easements, Schedule A shall be amended to include reference to the recorded easement.

- 8.1.3 The right to add real property to the Common Interest Community as described in Exhibit A-4.
- 8.1.4 The right to modify and/or adjust boundary lines of Units.
- 8.1.5 The right to add unspecified real property to the Common Interest Community pursuant to Connecticut General Statutes Section 47-241.
- 8.1.6 The right to subdivide units or convert units into common elements.
- 8.1.7 The right to withdraw real property from the common interest community.
- 8.1.8 The right to create and dedicate to the Town of Avon certain public streets.

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

- 8.2.1 The Development Rights may be exercised at any time but not more than ten (10) years after the recording of the initial Declaration;
- 8.2.2 Not more than two hundred twenty-five (225) additional Units may be created under the Development Rights;
- 8.2.3 The quality of construction of any buildings and other Improvements to be created on the Property shall be consistent with the quality of those constructed pursuant to this Declaration as initially recorded;
- 8.2.4 All Units and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Units and Common Elements created under this Declaration as initially recorded;
- 8.2.5 No Development Rights may be exercised unless approved pursuant to Section 18.5 of this Declaration.
- 8.2.6 Phasing of Development Rights. No assurances are made by the Declarant regarding the portions of the areas shown as "Development Rights Reserved in this Area" on the Survey as to the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

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

- 8.3.1 To complete improvements indicated on surveys and plans filed with the Declaration;
- 8.3.2 To exercise any Development Right reserved in this Declaration;
- 8.3.3 To maintain sales offices, management and warranty offices, signs advertising the Common Interest Community, and models;

- 8.3.4 To use easements through the Common Elements for the purpose of making improvements within the Common Interest Community;
- 8.3.5 To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.
- 8.3.6 To create, construct and dedicate public streets to the Town of Avon.
- 8.4 **Models.** As long as the Declarant is a Unit Owner or retains Special Declarant Rights, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit, sales office or construction/warranty office.
- 8.5 **Construction; Declarant's Easement.** The Declarant reserve the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in the Declaration.
- 8.6 **Signs and Marketing.** The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales activities, in manner as will not unreasonably disturb the rights of Unit Owners.
- 8.7 **Association or Executive Board Actions Subject to Declarant's Approval.** Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant control, but in that event the Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.
- 8.8 **Declarant's Personal Property.** The Declarant reserves the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove, (promptly after the sale of the last Unit) from the Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.
- 8.9 **Declarant Control of the Association.**
 - 8.9.1 Subject to Subsection (b): There shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of: (1) sixty (60) days after conveyance of sixty (60) percent of the Units that may be created to Unit Owners other than a Declarant; (2) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or (3) two (2) years after any right to add new Units was last exercised. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the

Association or Executive Board as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

- 8.9.2 Not later than sixty (60) days after conveyance of one-third of the Units that may be created to Unit Owners other than a Declarant, at least one (1) member and not less than one-third of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.
- 8.9.3 Except as otherwise provided in Subsection 8.10, not later than the termination of any period of Declarant control the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.
- 8.9.4 Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Unit Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.
- 8.10 **Limitations on Special Declarant Rights.** Unless sooner terminated by a recorded instrument executed by the Declarant, any Special Declarant Right may be exercised by the Declarant so long as the Declarant is obligated under any warranty or obligation, owns any units or any Security Interest on any Units, or for twenty-one (21) years after recording the Declaration, whichever is sooner. Earlier termination of certain rights may occur by statute.

**ARTICLE IX
ALLOCATED INTERESTS**

- 9.1 **Allocation of Interests.** The table showing Unit numbers 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 IX. These formulas are to be used in reallocating interests if Units are added to the Common Interest Community.
- 9.2 **Formulas for the Allocation of Interests.** The interests allocated to each Unit have been calculated on the following formulas:
 - 9.2.1 Undivided interest in the Common Elements. The percentage of interest in the Common Elements allocated to each Unit is based upon the total number of Units divided into 100.
 - 9.2.2 Liability for the Common Expenses. The percentage of liability for Common Expenses allocated to each Unit is also based upon the total number of Units divided into 100.
 - 9.2.3 Votes. Each Unit in the Common Interest Community shall have one equal Vote.

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

- 10.1 **Use and Occupancy Restrictions.** Subject to the Special Declarant Rights reserved under Article VIII, the following use restrictions apply to all Units and to the Common Elements:
 - 10.1.1 Each Unit is restricted to residential use as a single family residence except for home professional pursuits not requiring regular visits from the public or unreasonable levels of mail, shipping, trash or

storage requirements. A single family residence is defined as a single housekeeping Unit, operating on a nonprofit, noncommercial basis, by its occupants, cooking and eating with a common kitchen and dining area, with no more overnight occupants than two (2) per bedroom.

- 10.1.2 The use of Common Elements is subject to the Bylaws and the Rules of the Association.
- 10.1.3 For any period during which any Common Expense assessment remains unpaid or, after Notice and Hearing, for any period not to exceed Thirty (30) days, for any infraction of its published Rules, the Executive Board may suspend the right to use Common Elements not necessary to give access to a public street.
- 10.1.4 At such time as any person becomes an owner of a Unit, immediately upon such person's acceptance of delivery of a deed granting and conveying such Unit, or any portion of or interest in said Unit, such person shall be deemed to be a party to this Declaration and shall be conclusively presumed to have assumed all of the obligations and burdens set forth in this Declaration. The presumption that all parties have assumed all of the obligations and burdens created by this Declaration shall be as conclusive as if such party had executed this Declaration and any amendments to it, immediately upon such party's receipt of a deed conveying any portion of any interest in a Unit to such party.

Each person now or hereafter owning a Unit shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to such Unit owned, which accrue during the period of such ownership, but such liability shall terminate upon conveyance by such party of his ownership interest in such Unit.

- 10.1.5 No building, structure, or in ground swimming pool shall be erected, placed or altered on any of the above described Units until the Declarant has issued its approval. Approvals herein shall be required, without limitation, for any building location, exterior design, specifications, site plan, grading plan, lighting plan, landscaping plan and color schemes for any building or facility, driveway, swimming pool, tennis court, basketball court, flag pole, gazebo, patio, deck, reflecting pool, fountain, walkway, garden, kennel, dog run, fence, wall, sign, banner, awning, canopy, free standing mail boxes or the like. No exterior color scheme shall be applied to any building or structure without similar prior approval. In the event that any governmental authority requires any alterations to the plans and specifications approved by the Declarant, the alteration shall be submitted to and must be approved by the Declarant prior to the commencement of any construction. Said approval shall be given in writing by the Declarant to the owner of said Unit within thirty (30) days of the submission of said plans to the Declarant. The owner of said Unit may not transfer title to said Unit or any interest therein (except a construction mortgage) unless and until there has been recorded on the land records of the Town of Avon a certificate signed by the Declarant to the effect that (i) said plans for said Unit were approved by the Declarant and (ii) that the structure, building or swimming pool on said Unit was built in accordance with said plans.

In determining whether or not to approve any and all plans, location, specifications and/or color schemes, the Declarant, its designated agents or representatives, shall consider whether the external design and general quality of such plans are in conformity and harmony with the existing standards of the neighborhood, including consideration of the suitability of the proposed structure and of the materials of which it is to be built, the Unit upon which it is to be erected, the effect of the structure as planned on the outlook from adjacent or neighboring Units and such other factors as may be consistent with the purposes of the restriction herein contained. Notwithstanding the foregoing, wooden chimneys are prohibited, all roofs shall be architectural asphalt shingles and the use of siding known as "Texture 111" or any siding comparable to "Texture 111" is expressly prohibited.

Notwithstanding anything contained herein to the contrary, if the Declarant shall no longer exist or shall be unable to exercise its duties under the approval process set forth herein under this Paragraph, then any and all requests for approval of plans shall be submitted to an Architectural Design Review Committee designated in writing by Declarant or the Executive Board. Thereafter, it shall be the responsibility of said Committee to review and approve any plans submitted and to provide the owner of a Unit with a certificate noting said approval.

- 10.1.6 No Unit shall be used for the purpose of commercial breeding of animals and no swine, fowl, goats, cattle, horses or sheep may be kept or maintained on any Unit.
- 10.1.7 Automobiles used in the ordinary course of daily living shall be parked only on Units. No trucks, boats, trailers, vans or recreational vehicles shall be parked on Units or on the property except in an enclosed garage.
- 10.1.8 Garage doors shall be kept closed when not in use.
- 10.1.9 Nothing contained herein shall be construed to prevent the construction of utility structures such as water pumping stations, transformer stations, oil pumping stations or the use of any Unit or building by the Declarant for the purpose of developing and improving said Units, buildings, houses thereon, or for storage or office purposes.
- 10.1.10 No noxious or offensive use, trade or activity shall be carried on upon any Unit or building located thereon, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
- 10.1.11 No trailer, tent or shack shall be erected on the Units, nor shall any structure of any temporary character be used as a residence.
- 10.1.12 No clothesline pole shall be erected or used upon any Unit nor shall clotheslines be attached to any trees or any portion of the dwelling house or garage.
- 10.1.13 No sign of any kind shall be displayed to the public view on any Unit except one professional sign of not more than one and one-half square feet or signs used by a builder to advertise the property during the construction and sales period.
- 10.1.14 Each Unit Owner shall be responsible for the maintenance and care of his Unit and the buildings situated thereon. The Declarant and/or the Association shall establish standards for the maintenance, care and upkeep of the Unit and the buildings situated thereon. In the event a Unit Owner shall fail to comply with the standards for upkeep and maintenance of the Unit or the buildings situated thereon as established by the Declarant and/or the Association, the Association shall have the right, duty and obligation to perform the maintenance, repair and upkeep on said Unit and buildings in order that the same shall be maintained in accordance with the standards established by the Declarant and/or the Association. The cost of such work done by the Association shall be an assessment imposed against said Unit and such assessment shall be paid by the Unit Owner within ten (10) days after the same is assessed by the Association. Such an extraordinary assessment shall be a lien against the Unit and may be foreclosed in the same manner as a mortgage.
- 10.1.15 The Declarant reserves to itself its designated agents and representative the right to execute and deliver to the Town of Avon or to declare for the benefit of any Unit whatever drainage or other easements may be required by the Town or for the benefit of any Unit provided that the easement

shall not unduly interfere with the use and enjoyment of any Unit including but not limited to, the buildings and structures situated on the Lots and any systems such as driveways, sewer or water systems servicing the structures, and further provided that the areas affected by the easements shall be restored to their original condition.

- 10.1.16 Easements are hereby reserved for electricity, gas, telephone service, water and sewer as they may be required, and any authorized cable television company, or the successors or assigns of such companies. The Declarant reserves the right to execute and deliver to such companies whatever standard easements are required in connection with the installation of utilities and/or cable services.
- 10.1.17 No living tree having a height of eight (8) feet or more and/or having caliper trunk dimensions, measured at two (2) feet above ground level, of six (6) inches or more shall be destroyed, moved or removed without authorization and approval of the Executive Board of the Association or such Architectural Design Review Committee as may be created by said Association and empowered to grant such approval, subject, however, to the following exceptions and conditions:
- 10.1.17.1 The foregoing shall not apply to the Declarant during the course of the development of The Heritage at Buckingham in Avon.
- 10.1.17.2 Approval by the Declarant or the Executive Board of the Association of the location of a structure or facility upon a lot (which shall include, without limitation, any building, driveway, swimming pool, tennis court, basketball court, flag pole, gazebo, patio, deck, reflecting pool, fountain, walkway, garden, kennel, dog run, fence, wall, sign, banner, awning, canopy or the like) shall, in the absence of specific language to the contrary, be deemed to include approval to remove trees only as necessary to accommodate and construct such structure or facility.
- 10.1.17.3 The Executive Board of the Association shall have the right to assess any Unit Owner \$1,500.00 for any tree removed in violation of this subparagraph 10.1.17 and at its option, may enter such Unit and replace any such trees removed at the Unit Owner's sole cost and expense. In accordance with Article XIX herein, the Executive Board shall have the right to lien said Unit for all fines, costs and expenses.
- 10.1.18 All areas designated "Restricted Forest Preserve Area" as shown on the Survey shall be left in their present natural state and shall not be disturbed in any way including, but not limited to, the cutting of trees, brush or other vegetation or the change of grade by fill or excavation. There shall exist, however, a limited right to remove dead vegetation from said areas. Notwithstanding the foregoing, such "Restricted Forest Preserve Area" may be disturbed by the Declarant for the purpose of installation of roads and utilities.
- 10.1.19 The Declarant shall construct a health club/community center, community green area and a community garden area within The Heritage in accordance with the approvals of the Town of Avon Planning and Zoning Commission. The health club shall be operated by the Association until such time as the Association, by two-thirds vote of all members, votes to change the use of the health club to any use that may be allowed under the Town of Avon's neighborhood business zone district. The Association may, by a two-thirds vote of all members, vote to operate this building as a Community Store, all as set forth in the approval of the Avon Town Planning and Zoning Commission. By virtue of a license agreement, Unit Owners of the Village at Buckingham in Avon (a Common Interest Community located north of Buckingham Road) will be authorized to use the community gardens, community green and health club/community center, together with Unit Owners of the Heritage. Said License Agreement provides for payment by the Unit Owners of The Village

to the Heritage at Buckingham in Avon Association, Inc. for the use, repair, replacement, maintenance and subsidy of these amenities.

10.2 Restrictions on Alienation.

10.2.1 A Unit may not be conveyed pursuant to a time sharing plan as defined under Chapter 734b of the Connecticut General Statutes;

10.2.2 A Unit may not be leased or rented for a term of less than sixty (60) days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association.

**ARTICLE XI
EASEMENTS AND LICENSES**

All easements or licenses to which the Common Interest Community is subject are listed in **Exhibit A-1** to the Declaration.

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

Intentionally Omitted.

**ARTICLE XIII
ADDITIONS, ALTERATIONS AND IMPROVEMENTS**

13.1 **Additions, Alterations and Improvements by Unit Owners.** All additions, alterations and improvements by a Unit Owner shall be made in accordance with the provisions of Article X.

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

14.1 **Application and Amendment.** Subject to Zoning and Subdivision Regulations of the Town of Avon, the boundaries between adjoining Units may be relocated by an amendment to the Declaration on application to the Association by the owners of those Units. If the owners of the adjoining Units have specified a reallocation between their Units of their allocated interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, The Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment shall be executed by those Unit Owners, contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and grantee, and in the grantee's index in the name of the Association.

14.2 **Recording Amendments.** The Association shall prepare and record surveys and plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers. The applicants shall pay for the costs of preparation of the amendment, surveys and plans and their recording.

ARTICLE XV
AMENDMENTS TO DECLARATION

- 15.1 **General.** Except as prohibited below, the Declaration, including the Survey and Plan, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven (67%) percent of the votes in the Association are allocated.
- 15.2 **Limitation of Challenges.** No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one (1) year after the amendment is recorded.
- 15.3 **Recordation of Amendments.** Every amendment to the Declaration shall be recorded in every town in which any portion of the Common Interest Community is located and is effective only on recordation. An amendment, except an amendment pursuant to Article XIV of this Declaration, shall be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of the parties executing the amendment.
- 15.4 **When Unanimous Consent Required.** Except to the extent expressly permitted or required by other provisions of the Act and the Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.
- 15.5 **Execution of Amendments.** Amendments to the Declaration required by this Act to be recorded by the Association shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association.
- 15.6 **Special Declarant Rights.** Provisions in the Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.
- 15.7 **Consent of Holders of Security Rights.** Amendments are subject to the consent requirements of Article XVIII.

ARTICLE XVI
AMENDMENTS TO BYLAWS

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

ARTICLE XVII
TERMINATION

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

**ARTICLE XVIII
MORTGAGEE PROTECTION**

- 18.1 Introduction.** This article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution of, any other provisions of the Common Interest Community, but in the case of conflict, this Article shall control.
- 18.2 Percentage of Eligible Mortgagees.** Wherever in this Article the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent by Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.
- 18.3 Notice of Actions.** The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:
- 18.3.1 Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit on which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable.
- 18.3.2 Any delinquency 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.
- 18.3.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- 18.3.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 18.4.
- 18.3.5 Any judgment rendered against the Association.
- 18.4 Prior Consent Required.**
- 18.4.1 Document Changes. Notwithstanding any lower requirement permitted by the Declaration or the Act, no amendment of any material provision of the Instruments by the Association or Unit Owners described in this Subsection 18.4.1 may be adopted without the vote of at least sixty-seven (67%) percent of the Unit Owners (or any greater Unit Owner vote required in the Declaration or the Act) and until approved in writing by at least fifty-one (51%) percent of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by the Declaration). The foregoing approval requirement does not apply to amendments effected by the exercise of any Development Right. Material includes, but is not limited to, any provision affecting:
- 18.4.1.1 Assessments, assessment liens or subordination of assessment liens;
- 18.4.1.2 Voting rights;
- 18.4.1.3 Reserves for maintenance, repair and replacement of Common Elements;

- 18.4.1.4 Responsibility for maintenance and repairs;
 - 18.4.1.5 Reallocation of interest in the Common Elements or Limited Common elements (except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees with a Security Interest on such Units must approve such action);
 - 18.4.1.6 Rights to use Common Elements and Limited Common Elements;
 - 18.4.1.7 Boundaries of Units (except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees with Security Interests on such Unit or Units must approve such action);
 - 18.4.1.8 Convertibility of Units into Common elements or Common Elements into Units;
 - 18.4.1.9 Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community;
 - 18.4.1.10 Insurance or fidelity bonds;
 - 18.4.1.11 Leasing of Units;
 - 18.4.1.12 Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Units;
 - 18.4.1.13 Establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
 - 18.4.1.14 Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the Instruments;
 - 18.4.1.15 Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
 - 18.4.1.16 Any provision that expressly benefits mortgage holders, insurers or guarantors.
- 18.4.2 Actions. Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions without the approval of at least fifty-one (51%) percent of the Eligible Mortgagees or such higher percentage as set forth herein:
- 18.4.2.1 Convey or encumber the Common Elements or any portion thereof, as to which an eighty (80%) percent Eligible Mortgagee approval is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community shall not be deemed a conveyance or encumbrance within the meaning of this clause;
 - 18.4.2.2 The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
 - 18.4.2.3 The restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Instruments;

- 18.4.2.4 Termination of the Common Interest Community as to which a sixty-seven (67%) percent Eligible Mortgagee approval is required;
 - 18.4.2.5 The alteration of any partition or creation of any aperture between adjoining Units when Unit boundaries are not otherwise being affected, in which case only the owners of Units affected and Eligible Mortgagees of those - Units need approve the action;
 - 18.4.2.6 The merger of this Common Interest Community with any other Common Interest Community;
 - 18.4.2.7 The creation of any additional improvements on any portion of the Common Elements which is subject to any Development Rights;
 - 18.4.2.8 The granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one (1) year and further excluding all extensions after the initial term of the License Agreement by and between The Village at Buckingham in Avon Association, Inc. and The Heritage at Buckingham in Avon Association, Inc.);
 - 18.4.2.9 The assignment of the future income of the Association, including its right to receive Common Expense assessments; and
 - 18.4.2.10 Any action taken not to repair or replace the property.
- 18.4.3 The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all eligible mortgagees.
- 18.5 Development Rights and Special Declarant Rights.** No Development Rights may be exercised unless all persons holding security interests in the Property which are senior to the Declaration or security interests in the Development Rights consent to the amendment.
- 18.6 Inspection of Books.** The Association shall permit any eligible mortgagee and eligible insurer to inspect the books and records of the Association during normal business hours.
- 18.7 Financial Statements.** The Association shall provide, upon written request, each eligible mortgagee and each eligible insurer with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:
- 18.7.1 The Common Interest Community contains fifty (50) or more Units; or
 - 18.7.2 Any eligible mortgagee requests it, in which case the eligible mortgagee shall bear the cost of the audit.
- 18.8 Enforcement.** The provisions of this Article are for the benefit of eligible mortgagees and eligible insurers and their successors, and may be enforced by any of them by any available means, in law, or in equity.

18.9 **Attendance at Meetings.** Any representative of an eligible mortgagee or eligible insurer may attend any meeting which a Unit Owner may attend.

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

19.1 **Apportionment of Common Expenses.** Except as provided in Section 19.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit A-2.

19.2 **Common Expenses Attributable to Fewer than all Units.**

19.2.1 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.

19.2.2 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.

19.2.3 Assessments to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was rendered, in proportion to their Common Expense liabilities.

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

19.2.5 Fees, charges, late charges, fines and interest charged against a Unit Owner pursuant to the Instruments and the Act are enforceable as Common Expense assessments.

19.3 **Lien.**

19.3.1 The Association has a statutory lien in accordance with Section 47-258 of the Act on a Unit for any assessment levied against that Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fines and interest charged pursuant to the Act are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

19.3.2 A lien under this section is prior to all other liens and encumbrances on a Unit except (1) liens and encumbrances recorded before the recordation of the Declaration, (2) a first or second security interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the Unit. The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of the Common Expense assessments based on the periodic budget adopted by the Association pursuant to Section 19.4 of this Article which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanic's or materialmen's liens, or the priority of lien for other assessments made by the Association.

19.3.3 Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

- 19.3.4 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within two (2) years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- 19.3.5 This section does not prohibit actions to recover sums for which subsection 19.3.1 of this section creates a lien or prohibit the association from taking a deed in lieu of foreclosure.
- 19.3.6 A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
- 19.3.7 The Association on written request shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid assessments against the Unit. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner.
- 19.3.8 The Association's lien may be foreclosed in like manner as mortgage on Real Property.
- 19.3.9 No Unit Owner may exempt himself from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made.
- 19.4 **Budget Adoption and Ratification.** Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.
- 19.5 **Ratification of Special Assessments.** If the Executive Board votes to levy a special assessment in an amount greater than fifteen (15%) percent of the current annual operating budget, the Executive Board shall submit the special assessment to the Unit Owners for ratification in the same manner as a budget under Section 19.4.
- 19.6 **Certificate of Payment of Common Expense Assessment.** The Association on written request shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid assessments against the Unit. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner.
- 19.7 **Monthly Payment of Common Expenses.** All Common Expenses assessed under Section 19.1 and 19.2 shall be due and payable monthly. The annual Common Expense liability may not be increased during the period of Declarant's control without the consent of persons entitled to cast at least eighty percent (80%) of the Votes in the Association including eighty percent (80%) of the Votes allocated to Units not owned by a Declarant or an affiliate of the Declarant.

**ARTICLE XX
RIGHT TO ASSIGN FUTURE INCOME**

Upon an affirmative majority vote of the Unit Owners in attendance at a meeting at which a quorum is present, the Association may assign its future income, including its right to receive Common Expense assessments.

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

- 21.1 **Compliance with Instruments.** All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Instruments. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Instruments are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.
- 21.2 **Adoption of Rules.** The Executive Board may adopt Rules regarding the use and occupancy of Units, Common Elements, and Limited common Elements and the activities of occupants, subject to Notice and Comment.

**ARTICLE XXII
INSURANCE**

- 22.1 **Maintaining Insurance.** Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall obtain and maintain insurance as required by the Act and the Declaration to the extent reasonably available.
- 22.2 **Property Insurance.**
 - 22.2.1 Property Insurance covering:
 - 22.2.1.1 The project facilities (which term means all real property, buildings, fixtures, equipment and any improvements and betterments which, in all cases, are part of a Common Element); and
 - 22.2.1.2 All personal property owned by the Association.
 - 22.2.2 Amounts. The project facilities for an amount equal to one hundred percent (100%) of their replacement cost at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

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

NOTWITHSTANDING ANYTHING CONTAINED HEREIN, THE ASSOCIATION SHALL NOT BE RESPONSIBLE TO MAINTAIN PROPERTY (FIRE AND OTHER HAZARD) INSURANCE ON THE HOMES OR OTHER IMPROVEMENTS WITHIN THE UNITS OR ANY IMPROVEMENTS WITHIN AREAS OF THE COMMON ELEMENTS THAT IT IS THE RESPONSIBILITY UNDER THIS DECLARATION FOR THE UNIT OWNER TO

MAINTAIN. EACH UNIT OWNER SHALL OBTAIN HIS OR HER OWN PROPERTY (FIRE AND OTHER HAZARD) INSURANCE POLICY ON THE HOMES AND OTHER IMPROVEMENTS WITHIN HIS OR HER OWN UNIT AND ANY AREAS OTHER COMMON ELEMENTS THAT IT IS THE RESPONSIBILITY UNDER THIS DECLARATION FOR THE UNIT OWNER TO MAINTAIN AND SHALL PROVIDE EVIDENCE OF SUCH INSURANCE TO THE ASSOCIATION ON AN ANNUAL BASIS.

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

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

22.2.4.1 The insurer waives its right to subrogation under the policy against any Unit Owner or member of his or her household;

22.2.4.2 No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

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

22.2.4.4 Loss shall be adjusted with the Association;

22.2.4.5 Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose and in the absence of such designation, to the Association, in either case to be held in trust for the Association, each Unit Owner and such Unit Owner's mortgagee, as their interest may appear;

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

22.3 **Liability Insurance.** The Association shall maintain liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than \$1,000,000.00 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

22.4 **Other Provisions.** Insurance policies carried pursuant to Section 22.2 shall provide that:

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

22.4.2 The insurer waives its right to subrogation under the policy against any Unit Owner or member of his household;

22.4.3 No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

- 22.4.4 If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- 22.4.5 Insurance Not Reasonably Available. If the insurance described in Section 22.3 is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.
- 22.4.6 Payment of Insurance Proceeds. All losses covered by the property policy under Section 22.2 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Article XXIII, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Common Interest Community is terminated.
- 22.4.7 Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.
- 22.4.8 Worker's Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Connecticut.
- 22.4.9 Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and Officers of the Association in such limits as the Executive Board may, from time to time, determine.
- 22.4.10 Other Insurance. The Executive Board is authorized to obtain and maintain such other insurance as it may from time to time deem appropriate.
- 22.4.11 Insurance Certificates. An insurer that has issued an insurance policy shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

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

- 23.1 **Duty to Repair or Restore.** Any portion of the Common Interest Community for which insurance is required under Article XXII which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (A) the Common Interest Community is terminated, in which case Section 47-237 of the Act applies, (B) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (C) eighty (80%) percent of the Unit Owners, including every owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

- 23.2 Distribution of Insurance Proceeds.** If the entire Common Interest Community is not repaired or replaced, (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, and (B) except to the extent that other persons will be distributes, (i) the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the owners of those Units and the owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interest may appear, and (ii) the remainder of the proceeds shall be distributed to all the Unit Owners or lien holders, as their interests may appear, in proportion to the Common Expense liabilities of all the Units.
- 23.3 Determination not to Repair or Restore.** If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated on the vote as if the Unit had been condemned under subsection (a) of Section 7 of the Act, and the Association promptly shall prepare, execute and record an amendment to the Declaration affecting the reallocations.
- 23.4 Certificates by the Executive Board.** A trustee, if one is appointed under the provisions of Section 22.6, may rely on the following certifications in writing made by the Executive Board:
- 23.4.1** Whether or not damaged or destroyed Property is to be repaired or restored;
- 23.4.2** The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.
- 23.5 Certificates by Attorneys.** If payments are to be made to Unit Owners or mortgagees, the Executive Board, and the trustee, if any, shall obtain and may rely on an attorney's certificate of title or a title insurance policy based on a search of the Land Records of the Town or Towns within which the Common Interest Community is located from the date of the recording of the original Declaration stating the names of the Unit Owners and the mortgagees.

**ARTICLE XXIV
RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING**

- 24.1 Right to Notice and Comment.** Before the Executive Board amends the Bylaws or the Rules, and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.
- 24.2 Right to Notice and Hearing.** Whenever the Instruments require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the

decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

24.3 **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 XXV
OPEN MEETINGS**

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

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

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

25.3.1 No action is taken at the executive session requiring the affirmative vote of Directors; or

25.3.2 The action taken at the executive session involves personnel, pending litigation, or enforcement actions.

**ARTICLE XXVI
EXECUTIVE BOARD LIMITATIONS**

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

**ARTICLE XXVII
MISCELLANEOUS**

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

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

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

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

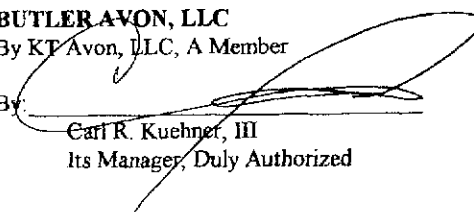
27.5 **Conflict.** The Instruments are intended to comply with the requirements of the Act and Chapter 600 of the Connecticut General statutes. In the event of any conflict between the Instruments and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other instrument, this Declaration shall control.

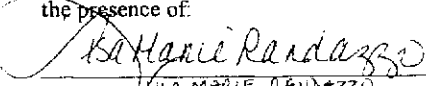
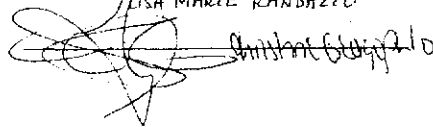
27.6 **Execution of Documents.** The President or Secretary of the Association is responsible for preparing, executing, filing and recording amendments to the Instruments.

IN WITNESS WHEREOF, the Declarant has caused the Declaration to be executed this 31st day of January, 2003.

Signed, sealed and delivered in the presence of:

BUTLER AVON, LLC
By KT Avon, LLC, A Member

By: 
Carl R. Kuehner, III
Its Manager, Duly Authorized


LISA MARIE RANDAZZO


STATE OF CONNECTICUT : January 31, 2003
COUNTY OF : Fairfield : ss: NORWALK

On this the 31st day of January, 2003, before me, LISA MARIE RANDAZZO, the undersigned officer, personally appeared CARL R. KUEHNER, III, Manager of KT AVON, LLC, who acknowledged KT AVON, LLC to be a Member of BUTLER AVON, LLC, a Connecticut limited liability company, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Manager of KT Avon, LLC.

In witness whereof, I hereunto set my hand. 

~~Commissioner of the Superior Court~~
Notary Public
My commission Expires: LISA MARIE RANDAZZO

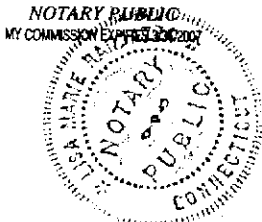


EXHIBIT A-1
(the Property)

Those certain pieces or parcels of land situated in the Town of Avon, County of Hartford and State of Connecticut designated as "Parcel #5980020, Parcel #5980022, Parcel #5980024, Parcel #5980026, Parcel #5980028," all as shown on that map entitled "THE HERITAGE AT BUCKINGHAM IN AVON UNIT PLAN PREPARED FOR BUTLER AVON, LLC EDWARDS ROAD & NEW ROAD AVON, CONNECTICUT Alford Associates, Inc. Civil Engineers Windsor, Connecticut Wilson M. Alford, Jr., P.E. & L.S. (860) 688-7288 Date: January 27, 2003 Scale 1 IN. = 40 FT. Sheet 2 Exhibit A-3 (Cont.)" which map is on file in the Avon Land Records.

Said pieces or parcels of land are subject to:

- (1) Any and all provisions of any ordinance, municipal regulation or public or private law.
- (2) Any taxes, liens, choate or inchoate, that may exist in favor of any taxing authority.
- (3) Pole Grant in favor of the Connecticut Power Company dated June 8, 1950 and recorded in Volume 32 at Page 126.
- (4) Pole Grant in favor of the Connecticut Power Company dated August 23, 1950 and recorded in Volume 32 at Page 127.
- (5) Rights of others in and to Pequot Road and the Farmington River.
- (6) Easement from Carrie Edwards to Union Electric Light and Power Company dated February 28, 1916 and recorded in Volume 15 at Page 122. Said easement is shown on a map entitled "Map of Land Owned by Conn. Sand & Stone Corp. Edward Road & New Road, Avon, Conn. Scale: 1"=200' April 1974, F.N. Whittenmore, Jr. L.S."
- (7) Easement from Carrie Edwards to The Board of Water Commissioners of the City of Hartford dated May 19, 1913 recorded in Volume 13 at Page 493. Said easement is shown on a map entitled "Map of Land Owned by Conn. Sand & Stone Corp. Edward Road & New Road, Avon, Conn. Scale: 1"=200' April 1974, F.N. Whittenmore, Jr. L.S."
- (8) Acquisition Agreement for a Public Right of Way by the Town of Avon dated June 8, 2001, and recorded in Volume 405 at Page 264 of the Avon Land Records.
- (9) Grant of Variance and Special Exception by the Planning and Zoning Commission of the Town of Avon dated July 10, 2001, and recorded in Volume 407 at Page 239 of the Avon Land Records.
- (10) Grant of Variance and Special Exception by the Planning and Zoning Commission of the Town of Avon dated July 10, 2001, and recorded in Volume 407 at Page 240 of the Avon Land Records.
- (11) Open End Mortgage and Security Agreement from Butler Avon, LLC and Butler Village, LLC to First Union National Bank in the original amount of \$13,000,000.00 dated March 18, 2002, and recorded in the Avon Land Records in Volume 425 at Page 344. Said mortgage was modified by a Modification Agreement dated February 6, 2003 and recorded in Volume 453 at Page 791 of the Avon Land Records.

- (12) UCC-1 Financing Statement from Butler Avon, LLC to First Union National Bank recorded in the Avon Land Records in Volume 425 at Page 374.
- (13) Drainage Easement to the Town of Avon, as shown on said maps.
- (14) Right to Drain to the Town of Avon, as shown on said maps.
- (15) Flowage and Drainage Easement to the Town of Avon and Homeowners Association, as shown on said maps.
- (16) Conservation Easement, as shown on said maps.
- (17) Water Line Easement to the Unionville Water Company, as shown on said maps.
- (18) Easement for Water Conduit Right-of-Way and Booster Pump Station from Butler Avon, LLC to the Unionville Water Company dated April 17, 2002 and recorded in Volume 428 at Page 991. Reference is made to a Subordination Agreement by First Union National Bank dated April 2, 2002 and recorded in Volume 428 at Page 986.
- (19) A Sewer Permit Agreement in favor of the Avon Water Pollution Control Authority dated April 22, 2002 and recorded in Volume 429 at Page 129.
- (20) Easement and Right of Way from Butler Avon, LLC to United Cable Television Services Corporation, offering services as AT & T Broadband dated April 1, 2002 and recorded in Volume 427 at Page 1275. Reference is made to a Subordination Agreement by First Union National Bank dated April 2, 2002, and recorded in Volume 427 at Page 1275.
- (21) Electric Distribution Easement from Butler Avon, LLC to The Connecticut Light and Power Company dated April 1, 2002, and recorded in Volume 427 at Page 1261. Reference is made to a Subordination Agreement by First Union National Bank dated April 2, 2002, and recorded in Volume 427 at Page 1263.
- (22) Easement from Butler Avon, LLC to Connecticut Natural Gas Corporation dated April 1, 2002 and recorded in Volume 427 at Page 1267. Reference is made to a Subordination Agreement by First Union National Bank dated April 24, 2002 and recorded in Volume 427 at Page 1266.
- (23) A Trail Easement, as shown on said map.
- (24) As to Parcel #5980020, a Stone Wall Easement, as shown on said map.
- (25) As to Parcel #5980020, a Temporary Slope Rights Easement indicated as "Temporary Slope Rights Reserved", as shown on said map.

**EXHIBIT A-2
Allocated Interests**

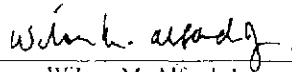
<u>Unit No.</u>	<u>Percentage Share of Common Expenses</u>	<u>Vote in the Affairs of the Association</u>
5980020	20%	1
5980022	20%	1
5980024	20%	1
5980026	20%	1
5980028	20%	1

EXHIBIT A-3
Survey

Those certain maps entitled "THE HERITAGE AT BUCKINGHAM IN AVON OVERALL COMMON INTEREST COMMUNITY SURVEY PREPARED FOR BUTLER AVON, LLC EDWARDS ROAD & NEW ROAD AVON, CONNECTICUT Alford Associates, Inc. Civil Engineers Windsor, Connecticut Wilson M. Alford, Jr., P.E. & L.S. (860) 688-7288 Date: January 27, 2003 Scale 1 IN. = 150 FT. Sheet 1 Exhibit A-3" and "THE HERITAGE AT BUCKINGHAM IN AVON UNIT PLAN PREPARED FOR BUTLER AVON, LLC EDWARDS ROAD & NEW ROAD AVON, CONNECTICUT Alford Associates, Inc. Civil Engineers Windsor, Connecticut Wilson M. Alford, Jr., P.E. & L.S. (860) 688-7288 Date: January 27, 2003 Scale 1 IN. = 40 FT. Sheet 2 Exhibit A-3 (Cont.), Sheet 3 Exhibit A-3 (Cont.), Sheet 4 Exhibit A-3 (Cont.), Sheet 5 Exhibit A-3 (Cont.)" which maps are on file in the Avon Land Records.

Certificate

I hereby certify that the above Survey contains all of the information required by Subsection 29(b) of the Common Interest Ownership Act.



Wilson M. Alford, Jr.
CT Licensed Land Surveyor No. 9344

**EXHIBIT A-4
Expansion Land**

A certain piece or parcel of land with all improvements thereon, situated in the Town of Avon, County of Hartford and State of Connecticut and being shown and designated as "REMAINING LAND OF CHARLES R. & GLADYS M. WALKER" on a map entitled "PLAN OF SUBDIVISION LAND OWNED BY Charles R. & Gladys M. Walker NEW ROAD AVON, CONNECTICUT Scale 1" = 40' - March 1984" Edward F. Reuben, Surveyor Hodge Surveying Associates, P.C., which map is filed in the Avon Land Records in Volume 1984 at Page 36.

Said piece or parcel of land contains approximately 12.39 acres.

Received February 24, 2003 At 2:45 PM.
Records in Avon
Carol J. Williams Town Clerk