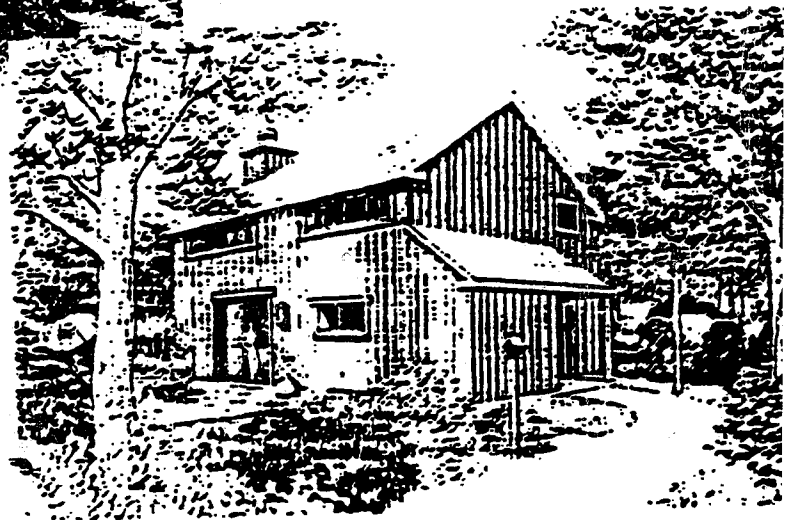


## POND PLACE

## PRESENTATION PACKAGE





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for

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## INTRODUCTION

The Pond Place Community is a unique common interest community in which the inhabitants share ownership and lifestyle. The documents creating this unique community, establishing its government, and delineating the legal relationships among the inhabitants are necessarily complex. Full understanding of the operations of the community would require a careful reading of all of the documents included in this Pond Place Presentation Package and the Building Guide and Rules and Regulation which are in a separate booklet. This narrative is only a brief overview, which provides a basic description of the structure of the community and its operations.

**Overview of the Pond Place Community:** Pond Place consists of 210 individual homes called Dwellings (see Article I of the Declaration for the definition of Dwellings and all other terms). These Dwellings are individually owned and consist of a residence and any garages, sheds, or improvements associated with the residence. The Dwellings are clustered on the Pond Place Land, which totals approximately 70 acres. Pond Place also includes large open areas, a pond and recreational facilities, including tennis courts and picnic areas.

Each Dwelling is surrounded by a small yard, which is devoted to the use of that Dwelling. This area is called an Exclusive Use Area. Those portions of Pond Place, which are not Dwellings or Exclusive Use Areas are called Common Areas. The plantings, roads, driveways, drainage systems and other man-made improvements located in the Common Areas are referred to as the Common Improvements.

**Ownership of Pond Place:** Each of the Dwellings is individually owned. The remainder of Pond Place - the Common Areas and the Common Improvements - is owned in common. The individual ownership right in Pond Place is called an Undivided Interest. There are 210 Undivided Interests, one for each Dwelling. The right to maintain a Dwelling in Pond Place and to use the Exclusive Use Area surrounding the Dwelling derives from the ownership rights to the Undivided Interest. In other words, to own a Dwelling at Pond Place, a person must have rights to the Undivided Interest.

Some of the owners of Dwellings own an Undivided Interest. They are called Owners, because they actually own the Undivided Interest and the right to have a Dwelling on the Pond Place Land. Other owners of Dwellings lease an Undivided Interest. They are called Leaseholders because they lease an Undivided Interest and have been assigned the right to have a Dwelling in Pond Place under a Ground Lease.

Homeowners can determine if they are Owners or Leaseholders by looking at the documents received at their closing. If one received a Warranty Deed for a Dwelling and an Undivided Interest, they are an Owner. If one received a Warranty Deed for their dwelling and a Ground Lease assigning an Undivided Interest, they are a Leaseholder. Samples of these two documents are included in this Presentation Package.

## Introduction

**Pond Place Association, Inc.:** For the purposes of the day-to-day operations of Pond Place, there is almost no difference between the status of a Leaseholder and the status of an Owner. The basic difference is that the Leaseholder must pay its landlord, known as the Lessor, a monthly rental and must comply with the terms of the Ground Lease and the Standard Ground Lease Covenants recorded on the Avon Land Records. Ground Leases were offered by the original developer so that purchasers could pay for the Undivided Interest over the Lease term of 50 years. At the end of the lease term, the Leaseholder would own the Undivided Interest. The Ground Lease also provides that the Leaseholder can "buy out" the Lease before the expiration of the Lease term and become the Owner of the Undivided Interest. This "buy out" provision and the buy out amount are in the Standard Ground Lease Covenants.

Owners and Leaseholders both own Dwellings and possess an Undivided Interest in Pond Place from which they derive rights. One important right is membership in the Pond Place Association, Inc., the non-stock Corporation, which is responsible for the overall management, maintenance and operation of Pond Place. Owners and Leaseholders make up the entire Membership of the Association.

The original Pond Place developer had membership rights in Pond Place Association but is no longer involved with the community and their rights are no longer exercised. However, because of the difficulties in amending some of the Pond Place Documents, references to the rights of the developer continue to appear in the documents.

Each Owner or Leaseholder of an Undivided Interest has one vote in the Association for each Undivided Interest. If the Undivided Interest is owned or leased by two or more persons, they share the vote. The Association is governed by a Board of Governors, the board members of which are elected by the Members (Owners and Leaseholders). The Board appoints Officers, including a President, Vice-President, Secretary and Treasurer. The Board can also appoint committees to perform some of its designated powers.

**Maintenance Responsibilities:** In Pond Place, the Members are responsible for maintaining and repairing their Dwellings and their Exclusive Use Areas and for managing their individual affairs. The Association is responsible for maintaining and repairing the Common Areas and Common Improvements and for managing the affairs of the Pond Place Community.

**Common Expense and Common Charges:** To collect funds to perform its responsibilities and to pay the Common Expenses of Pond Place, the Association levies assessments against its Members. The assessments are called Common Charges and are paid annually on July 1st. Each year, the Board adopts a Budget for the operation of the Community. The total amount of the Budget is used to circulate the amount of Common Charges due from each Member. If a Member does not pay the Common Charges, the Association can suspend the Member's use of the Common Areas, impose interest on late payments, bring a court action for collection, or place a lien on the Member's Dwelling and Undivided Interest, which can then be foreclosed.

**Rules and Regulations:** The Association functions as the government of Pond Place, and, as such, is charged with the enforcement of the restrictions and regulations that appear in the Pond Place Documents. These restrictions and regulations are found in the Pond Place Declaration, in the Bylaws and in the Rules and Regulations. These restrictions and regulations apply to all Members, their families, their tenants and their guests. These restrictions and regulations apply to the Common Areas and to the Dwellings and Exclusive Use Areas. Some of the topics addressed by the restrictions and regulations include the commercial or business use of Dwellings, pets, parking, motor vehicles, use of tennis courts and picnic areas, noise, and behavior constituting nuisance. Each Member should review these restrictions and regulations carefully and make sure that all family members, tenants and guests are familiar with the content of the restrictions and regulations.

**Building Guide:** The Association is responsible for the overall appearance of Pond Place. To ensure consistency and to retain Pond Place's park-like ambience, the Association administers stringent controls on maintenance, repairs, alterations and improvements to Dwellings and Exclusive Use Areas. Maintenance standards for stains, painting, decks, patios and landscaping are contained in the Building Guide. Any Member who wishes to change the exterior appearance of his or her Dwelling or the improvements in his or her Exclusive Use area must seek approval from the Design Review Committee. The application process for approval is outlined in the Building Guide.

**Tax District:** For the financial benefit of Members, many of the responsibilities of the Association have been delegated to the Tax District. Under present federal income tax law, Common Charges paid to a common interest community like Pond Place are ordinarily not tax deductible even though the services that the community performs using the Common Charges may be similar to types of services performed by a town or municipality. In an attempt to make a portion of the payments made by members for Pond Place services deductible under federal income tax law, Pond Place was organized as a Tax District. A Tax District is a statutorily defined subdivision of a town created for the purpose of administering local affairs. As a "sub-municipality", the Pond Place Tax District has the power to impose taxes and to perform services that could be performed by a municipality. Recent statements by the Internal Revenue Service have brought into question the deductibility of taxes paid to a Tax District. It is recommended that before you claim an income tax deduction for payments made to the Tax District, that you contact your accountant or tax consultant to discuss the risks of claiming the Tax District payments as a deduction.

**Tax District Ordinance and the Payment of Taxes:** The Tax District was created by the Tax District Ordinance. Under the Tax District Ordinance, each Member is a taxpayer and a voter in the Tax District and, as such, can participate in the Tax District Meeting. Members, as well as all residents of the District who are 18 years of age or older and also registered voters in the Town of Avon, may elect the Tax District's Board of Directors and its officers as well as approve its annual budget.

## Introduction

Each May, the voters meet to establish the Tax District budget, set the tax rate and levy the tax. The tax levied is payable in semiannual installments, due on the first day of July and the first day of January. Non-payment of taxes results in the same penalties as non-payment of property taxes due to a town or municipality.

**Tax District Lease and the Tax District's Responsibility:** So that the Tax District has control over the Common Areas and Improvements of Pond Place, the Association leases them to the Tax District. Under the Lease, the Tax District is assigned the Association's responsibility for the maintenance and control of the Common Areas and Common Improvements. The Tax District raises funds to perform these functions through the levying of taxes, but can also issue bonds and borrow money to make capital improvements.

**Tax District Administrative Regulations:** Because the Tax District is charged with enforcing certain restrictions and regulations under its agreement with the Association, it has adopted the Tax District Administrative Regulations. These Regulations are the same as the Rules and Regulations adopted by the Association and apply to all of Pond Place.

**Conclusion:** The Pond Place Documents should answer most questions concerning the operation of Pond Place. At the end of this Presentation booklet is an index that indicates the page and subject of each and every Article and sub-section of the documents in this booklet. Since the Board of Governors are empowered to amend the Building Guide and the Rules & Regulations/Administrative Regulations from time to time, they are published in a separate booklet so that they could be amended without having to re-publish the documents in this Presentation booklet, which may not be amended by the Board of Governors. The Pond Place Documents are legal documents and, as such, are technical and may be difficult to understand quickly. The Boards or the Management Company may be consulted for assistance in understanding and interpreting them.

This edition of the Pond Place Presentation Documents was reformatted for publication on May 1, 2002.

## DECLARATION

### OF COVENANTS, EASEMENTS RESERVATIONS AND TENANCIES IN COMMON

This Pond Place Declaration was made in 1977 and amended in 1982 by James E. Speich, then President of the Pond Place Association, and recorded in Volume 100, on Page 40, of the Avon Land Records. All amended sections are in italics. These amendments were enacted to accommodate the creation of the Pond Place Tax District, a body politic and corporate, which was organized to provide services permitted under Section 7-326 of the Connecticut General Statutes to property or portions of property, and to citizens, located or residing within the boundaries of Pond Place. In order to provide the proper delegation of authority, from the Association to the Tax District, to perform those services, these amendments had to be adopted.

THIS DECLARATION made this \_\_\_\_ day of \_\_\_\_\_, 1977, by THE FIP HOMES COMPANY, a Connecticut corporation with an office and principal place of business in the Town of Farmington; County of Hartford and State of Connecticut ("Declarant").

#### WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in the town of Avon, County of Hartford and State of Connecticut more particularly bounded and described as set forth in Schedule A which is attached hereto and made a part hereof and desires to create and develop thereon a planned residential community, to be known as Pond Place, with permanent recreational areas and facilities, common open spaces and other common use facilities; and

WHEREAS, the Declaration desires to provide for the continued maintenance of the natural beauty and value of said real property and to assure a high quality of development for all land which is or will be subject to this Declaration and to promote the recreational interests, health, safety and social welfare of the Leaseholders and Owners of the Dwellings to be developed on said real property; and

WHEREAS, in order to accomplish said objectives, the Declarant desires to subject the real property described in Schedule A to certain covenants, restrictions, easements, charges and liens as more particularly set forth herein, each and all of which are for the benefit of said property and the Owners of the Dwellings and Undivided Interests thereon; and to provide for a system of ownership and rights of occupancy for the persons who will be Owners of the Land of an Undivided Interest as tenants in common' and fee owners in whole of certain Dwellings thereon, and as an appurtenance to said ownership interest reserve an exclusive right to locate said Dwellings in certain locations on the Land; and

WHEREAS, the Declarant deems it desirable for the efficient presentation of the values and amenities in said community that an agency be created to administer and enforce the covenants and restrictions set forth therein, to maintain, administer and improve the Land, to collect and disburse the Common Charges provided for herein and to act as agent and attorney-in-fact for the Owners in exercising their rights and interests in common maintenance, enforcement, management, collection of common charges and assessments, payment of common expenses and distribution of common benefits and profits, and therefore has created POND PLACE ASSOCIATION, INC. a Connecticut non-stock corporation for that purpose.



## Declaration

NOW, THEREFORE, THE FIP HOMES COMPANY does hereby declare that the real property described in Schedule A is and shall be held, occupied, improved, transferred and conveyed subject to the covenants, restrictions, easements, charges and liens and other terms hereof ("covenants and restrictions" or "Declaration") all of which are declared and agreed to be in furtherance of a uniform scheme for the development and operation of Pond Place, to enhance and protect the nature and desirability of Pond Place and to mutually benefit each of the Dwellings located and to be located on the real property subject to this Declaration, and to create mutual equitable servitudes upon each of the Dwellings and Undivided Interests in favor of each and every other Dwelling and Undivided Interest and to create reciprocal rights and privity of contract and estate between all persons acquiring, owning or leasing an interest in any Dwelling or Undivided Interests including the Declarant. The covenants, restrictions and other terms hereof shall run with the land be covenants real, and be a burden and benefit to all persons acquiring, owning or leasing an interest in any Dwelling or Undivided Interest, including the Declarant, and their grantees, heirs, devisees, administrators, executors, successors and assigns. AND FURTHERMORE the ownership of the real property described in Schedule A is now incrementally divided into separate Undivided Interests in tenancy-in-common with appurtenant rights and obligations as hereinafter described; to be exercised through Pond Place Association Inc. as agent and attorney-in-fact for the Owners thereof.

## ARTICLE I – DEFINITIONS

As used in this Declaration, the following terms shall have the meanings set forth below:

1. Assessments. Charges against ownership interests pursuant to Article V, Section 2 for expenses other than those included in Common Charges.
2. Association. Pond Place Association, Inc. a Connecticut, non-stock corporation at Avon Connecticut, established to manage, maintain and operate Pond Place and act as agent and attorney-in-fact for the Owners of Undivided Interests, and its members in the pursuit of their common interests and mutual health, welfare and safety.
3. Board of Governors. The Board of Governors of the Pond Place Association, Inc., as it may be from time to time constituted pursuant to the certificate of incorporation, Bylaws or law. It shall be the board of directors as defined under the Connecticut non-stock corporation law.
4. Bylaws. The Bylaws of Pond Place Association, Inc.
5. Common Areas. All land subject to this Declaration other than areas set aside as Exclusive Use Areas by the Association, pursuant to Article XV of the Bylaws.
6. Common Charges. The charges assessed against each Undivided Interest representing a portion of the Common Expenses of the operation of Pond Place.
7. Common Expenses. The expenses described in Article V, Section 2, which are to be shared by all Leaseholders and Owners.
8. Common Improvements. Indigenous plantings, roads, pipes, ducts, cables, ponds, recreation facilities, driveways, walk and bicycle ways, drainage and utility systems, structures and other man-made or planted or maintained elements or improvements on the Land which are not a Dwelling.

Declaration

( Article I )

9. Declaration. This Pond Place Declaration of Covenants, Easements, Restrictions and Tenancies in Common as the same may be amended from time to time.
10. District. Pond Place Tax District, a body politic and corporate organized for the purpose of providing services permitted under Section 7-326 of the Connecticut General Statutes to citizens residing and to property or portions of property situated in Pond Place, the boundaries of which are described on Schedule A to the Declaration.
11. District Common Properties. Portions of Land and Common Improvements over which the District agrees by acceptance of a lease, conveyance, license, or otherwise, to assume jurisdiction, management, regulation, or maintenance, and as defined and limited in such lease, conveyance, license or otherwise executed by both the Association and the District and approved by the Members and mortgagees in accordance with Article III, Section 2(b) of the Declaration.
12. Dwelling. The residential structure or structures and all other improvements on the Land, which are owned by an Owner. The Dwelling shall include garages, sheds, patios, fences, paving, landscaping and other real property improvements, but shall exclude indigenous plants, pipes, ducts, cables and other facilities serving other Dwellings and the Land. Every Undivided Interest includes a right to place and maintain a Dwelling on the Land in a location substantially as designated on the map described in Schedule A as it may be supplemented by the Developer. Two buildings, which are physically connected and designed as separate, independent residences shall constitute two Dwellings, but shall share the real property improvements described above. Such buildings shall at all times remain under single ownership. All of the improvements of Pond Place are divided into "Common Improvements" or "Dwelling", which are mutually exclusive terms. A Dwelling shall exclude and be bounded by those elements or man-made improvements or portions thereof devoted to common benefit of more than one dwelling, or designated for maintenance by the Association, excluding without limitation:
  - a. drives from their terminus of commonly traveled ways across and parallel to commonly traveled portions;
  - b. parking areas devoted to visitors;
  - c. storm water drainage systems serving more than one Dwelling down stream from single Dwelling leaders or connectors;
  - d. water pipes, up flow from turn-off valves within dwellings, electrical ducts and cables from the meter box outward, sidewalks to the edge of the common pathways extended across, and parallel to the way of common travel;
  - e. plantings which are not indigenous to the area, but are included with Exclusive Use Areas;
  - f. sewer pipes laterals from the residence down stream, reserving access to dwellings for clean-outs necessary to clean common sewers;

**Declaration**

**( Article I )**

- g. all riparian rights to ponds and streams adjoining or included within Exclusive Use Areas, and real property improvements of every kind and nature intended for common use of more than one Dwelling.

Maintenance of Common Improvements shall be the responsibility of the Association. Indigenous plants, originally part of the Land before construction, and natural or self-sown successors thereof shall be Common Improvements. Owners may clear such plants as necessary for construction and maintenance of dwellings.

13. Exclusive Use Area. That portion of Pond Place devoted to the exclusive use of a member of Pond Place Association, Inc. as a privilege of his Membership, pursuant to Article XIV of the Pond Place Bylaws. Exclusive Use Areas shall be personal property as a corporate rights, and shall be defined by a map or plan established by corporate resolution pursuant to said Article XIV. The use of the Land of Pond Place shall be divided by said corporate resolution into use areas called Exclusive Use Areas and Common Areas, which are mutually exclusive. Common Improvements may cross Exclusive Use Areas and Dwellings may encroach into Common Areas, as their terms are defined.
14. Extra Cost. Additional charges and costs attributable to ownership of an Undivided Interest imposed by a Ground lease on a Leaseholder.
15. Ground Lease. A lease of the Land, initially for a period of fifty years, originally from the Developer as Landlord, which lease is recorded on the Land Records of Avon. Upon the Voluntary Termination of the lease, the Lessee shall have the right of reversion in the Undivided Interest, together with the right to occupy the Land, and shall be an Owner.
16. Involuntary Termination. Expiration of the term of a Ground Lease as a result of a default by the Leaseholder in any of Leaseholder's obligations under the lease.
17. Land. All of Pond Place as described in Article II but excluding Dwellings now or hereafter erected thereon.
18. Leasehold. An estate in an Undivided Interest held under a Lease.
19. Leaseholder. The owner of a Dwelling under the terms of an effective Lease, which assigns the ownership rights necessary for Membership in Pond Place Association, Inc. A Leaseholder shall be a Member.
20. Member. A person who is a member of the Pond Place Association, Inc., a Leaseholder, or Owner of an Undivided Interest, but the lessor under a Ground Lease shall not be a member unless he also owns the Leasehold or occupancy right. Upon Involuntary Termination of a Ground Lease, the Leaseholder shall not be a Member, although he may retain ownership of a Dwelling.

## Declaration

21. Notice and Opportunity to be Heard. In the event of a matter affecting an individual Member a written notice shall be mailed to the Member at the address appearing on the records of the Association, so that it may be received prior to the day of the hearing, and an open hearing before the Board of Governors, an officer, or a committee or designated representative of the Board shall be held at which the Member or his representative may be heard, and other evidence taken (either written only, or oral, or in such form as the Board designates in the notice). Such evidence shall be considered in the decision, without in any way binding the decision makers. In the event of a matter affecting the membership generally, notice shall be distributed generally - which may be by newsletter prior to the day of the hearing and evidence taken as above. Such evidence shall be considered in the decision, without in any way binding the decision makers. The decision shall be distributed in the same form as the notice, and given in writing to the affected Member.
22. Owner. The owner of fee simple title to an Undivided Interest. Ownership rights may be assigned or leased, in whole or in part, but without physically subdividing the Dwelling or Exclusive Use Area.
23. Person. Any entity capable of holding an interest in land under the laws of the State of Connecticut.
24. Pond Place. The planned open space residential community to be developed and subjected to this Declaration, including Dwellings, Land, all improvements thereon and all the collective interests and real estate in the project.
25. Pond Place Association, Inc. A Connecticut non-stock corporation whose members are Leaseholders or Owners of Undivided Interests and which has the powers set forth in Article IV, Section 1.
26. Rules and Regulations. The rules and regulations promulgated by the Association for the use of Pond Place, made and promulgated by The Board of Governors pursuant to the Bylaws.
27. Undivided Interest. The fee simple estate in a 1/210 Undivided Interest as tenant in common in and to the Land, (but not the Dwellings) containing approximately 70 acres. Each Undivided Interest shall include the perpetual, irrevocable right to place and maintain a Dwelling on the Land in a location substantially as now and hereafter designated by the Developer in the Plan for Pond Place on file in the Land Records at Avon.
28. Voluntary Termination. Expiration of the term of a Ground Lease as a result of either (a) the passing of the full 50-year term, or (b) the acceleration of payment of rent by the Leaseholder as provided in the Ground Lease.

## ARTICLE II – PROPERTY SUBJECT TO THIS DECLARATION

The real property located in the Town of Avon, County of Hartford and State of Connecticut, which is described in Schedule A, which is attached hereto and made a part hereof, shall be held, transferred, sold, conveyed and occupied subject to this Declaration. The Property will consist of 210 Dwellings on approximately 70 acres of land.

### ARTICLE III – OWNERSHIP OF THE LAND

**Section 1. Ownership.** Subject to the provisions of Section 2, every Owner shall have an undivided fee simple ownership interest as tenant-in-common in and to the Land, which shall include the rights (1) to pass and repass across the Land not restricted to the use of individual Dwellings by special resolution of the Board of Governors, (2) to prevent the encumbrance of the Land, and (3) to exercise all other rights and interests in the Land as limited herein consistent with their Undivided Interests as tenants-in-common. All such rights shall be exercised pursuant to the common purpose of maintenance, recreation and common benefit of the Owners of Undivided Interests, their tenants, invitees and guests, all as limited and herein set forth.

**Section 2. Limitation on Ownership Rights.** The Undivided Interest described herein as to be granted to the Owners shall be subject to the following, which rights are deemed to be for the mutual benefit of all Owners and to facilitate the orderly development and administration of Pond Place.

- a. The right of the Association, as provided in its by-laws or in this Declaration, to suspend the enjoyment of rights of any Member for any period during which any payment of Common Charges is past due by thirty (30) days and any period not to exceed thirty (30) days for violations of published Rules and Regulations of the Association as found by a vote of the Board of Governors, except that in no event shall the use of roads for ingress and egress from a Dwelling to a public street, use of utility facilities or use of an Exclusive Use Area be prohibited, and to levy a special individual charge as an additional assessment in the amount of up to \$10 for each offense or day of offense for such infractions as may occur, including past due common charges, as well as specific damages. No such action may be taken against a Member unless the Member has been given Notice and Opportunity to be Heard.
- b. *The right of the Association, upon the affirmative vote of seventy-five percent (75%) of the membership and the written consent of seventy-five percent (75%) of the first mortgages (based upon one vote for each mortgage owned), to grant easements, leases and encumbrances on and across the Land and Common Improvements in furtherance of the development of Pond Place and for the benefit of the occupants thereof, including without limitation, the dedication or transfer of all, or any part, of the Land and Common Improvements to a public agency, authority or utility, including, without limitation, a tax district organized under Chapter 105 of the Connecticut General Statutes, provided that such agency assures to the extent lawful, the performance of the obligations and duties of the Association related to the portion of Land and Common Improvements so dedicated or transferred.*
- c. The right of the Association by action of the Board of Governors, to impose upon and grant access over, under and across the Land and Common Improvements, such recordable easements, rights licenses, interests and title to pipes and ducts for public utilities or other public purposes consistent with their intended use and to grant rights, licenses, concessions, and leases for the purpose of fulfilling the general plan of development and providing services and facilities as it deems to

## **Declaration**

### **( Article III )**

be in the best interests of, and necessary and proper for the Members, and the right to designate and grant Exclusive Use Areas as provided in Article XIV of the Bylaws.

- d. The obligations of any Members to promptly repair at such Member's expense any damage or destruction to any portion of Pond Place. If such Member neglects or refuses to cause the necessary repair to be made, the Board of Governors may do so and charge the reasonable expense thereof as a Common Charge against such Member's Undivided Interest and Dwelling.
- e. The limits and restrictions on the right of any co-tenant to partition as provided in Article IX.
- f. Such rights and restrictions reserved to the Association, the Owners or the Members as described in this Declaration or its Bylaws, including designation of Exclusive Use Areas pursuant to Article XIV of the Bylaws.
- g. The right of each Owner to locate his Dwelling in the location as described in Schedule A, and to locate accessory and appurtenant buildings and improvements in the vicinity of the principal building as shown on said map, and to restrict and prevent entry within such Exclusive Use Area, except along, through or in connection with Common Improvements. The placing by a Member of any portion of a Dwelling beyond the boundaries of the area designated as such Member's Exclusive Use Area by resolution of the Board of Governors, shall be subject to the prior approval of the Design Review Committee, and such portion of a Dwelling shall be maintained, repaired and replaced in the same manner as a Common Improvement.

### **Section 3. Maintenance.**

- a. In addition to maintenance of the Common Improvements and those elements necessary for access to or maintenance and safety of Common Improvements, the Association shall provide exterior maintenance upon the Land which is on Exclusive Use Area limited to: replacement, snow plow and care for driveways, whether jointly shared by Dwellings or not pursuant to standards established by the Board of Governors in a Management Contract or by resolution, but shall not provide for trees, shrubs, grass, landscaping, rear yard maintenance, gardens, equipment, or structures and fixtures installed or established by the Owner at his own expense. If an Owner or any member of his family, guest, invitee or otherwise damages any Common Improvement, he shall be responsible for the cost of repairs. Custom extra landscaping items, installed or built as a variation of the standard item as Common Improvements may be maintained by the Association pursuant to a separate agreement, which may involve an extra cost, which will be added to the maintenance Assessments. Services may also be provided to Dwellings at extra cost by mutual agreement.
- b. If in the reasonable judgement of the Board of Governors, any condition persists within or emanates through an Exclusive Use Area, which may cause damage to, interruption of service to, access to, overloading or surcharging of,

## Declaration

facilities maintained as Common Improvements, Common Areas or other Dwellings, or if such condition may be a nuisance, so dilapidated, disordered, deteriorated or so unsightly as to seriously affect the value and enjoyment of surrounding portions of Pond Place, then following Notice and Opportunity to be Heard, the occupant may be ordered to abate such objectionable condition and, if he refuses to do so, the Association may cause its agents to undertake whatever action is necessary to limit or modify such objectionable condition at the cost and expense of the Owner, and may take such other enforcement actions as it deems necessary.

- c. *The Association's duties and powers under this Section may be delegated to, and assumed by the District, in accordance with Article I, Section 6, of the Bylaws.*

## ARTICLE IV – POND PLACE ASSOCIATION, INC.

Section 1. Purpose. The Developer has established the Pond Place Association, Inc. under the Nonstock Corporation Act of the State of Connecticut

- a. to act as agent and attorney-in-fact of the Owners, coupled with an interest represented by its agency relationship with all co-tenants, and other considerations including the mutual benefit of the co-tenants to manage the affairs at Pond Place for the mutual benefit, health, welfare and pleasure of the co-tenants, as herein described,
- b. to operate Pond Place,
- c. to operate, maintain and improve the Common Areas and Common Improvements and the water and sewer laterals, drainage, utility lines, and such portions of the Land as it may be obligated to maintain hereunder, and such other property or improvements as the Members may designate,
- d. to administer and enforce the covenants and other provisions of this Declaration, including the determination, assessment and collection of Common Charges,
- e. to own such property and interests therein as may be in furtherance of the corporate purposes,
- f. to establish by resolution of the Board of Governors pursuant to Article XIV of the Bylaws, and set aside Exclusive Use Areas for the benefit of Dwellings and their owners
- g. to act as agent and attorney-in-fact in administering the rights of its Members and Owners as tenants-in-common as defined therein; and
- h. to engage in any lawful act or activity for which corporations may be formed under the Nonstock Corporation Act of the State of Connecticut in furtherance of the above purposes and the recreational interests and health, safety and social welfare of its Members.

## Declaration

**Section 2. Membership.** Every Owner or Leaseholder to whom membership rights have been assigned shall, by acceptance of his deed or lease of an Undivided Interest, thereby become a Member of the Association and only such Owners or Leaseholders may be Members. There shall be no more than one membership per Undivided Interest. Membership shall continue as long as a Member holds such an Undivided Interest. Ownership of an Undivided Interest merely as security for an obligation shall not make the holder thereof a Member. Each Member shall abide by, observe, and perform every provision and act required of him under this Declaration and the certificate of incorporation and by-laws of the Association. All or part of the rights of Membership may be assigned to tenants, family members, or guests, in a writing communicated to the Association, provided the assignee assumes the obligations with the Member/Assignor.

**Section 3. Voting Rights.** Members shall be all Owners of Undivided Interests. Members shall be entitled to one vote for each Undivided Interest in which they hold the interests required for membership by Section 2. When more than one Person holds such Undivided Interest all such Persons shall be Members, and the vote for such Undivided Interest shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Undivided Interest. A vote cast or consent given by a co-holder of a membership shall be deemed cast or given unless another co-holder shall object prior to the vote.

**Section 4. Shares.** For purposes of dissolution or distribution of assets only, Members shall be deemed to own one equal share of the assets of the Association for each Undivided Interest, which they respectively hold.

## ARTICLE V - COVENANTS TO PAY COMMON CHARGES AND ASSESSMENTS

**Section 1. Liability for Common Charges and Assessments and Creation of Lien.** The Developer, for each Undivided Interest owned by it, hereby covenants, and each Member by acceptance of a deed for any interest therein or by entering into a lease covering the same, whether or not expressly stated in said deed or lease, shall be deemed to covenant and agree to pay to the Association, promptly when due, any and all Common Charges, Assessments, additional Assessments, Special Assessments and other charges from time to time assessed against his Undivided Interest and Dwelling pursuant to this Declaration and the by-laws of the Association. Such Common Charges, Assessments and other charges, together with interest and costs of collection as herein provided, shall be a charge and a continuing lien upon the Undivided Interest and the Dwelling owned by the Member against which the same or any of them are levied. Further, such Common Charges, Assessments and other charges, together with interest thereon and costs of collection as herein provided, shall be the personal obligation of each person who was a Member at the time the same fell due and the joint and several obligation, if more than one person was then a Member. All payments required under this Declaration shall be payable without deduction, abatement, counterclaim or offset. No Member may exempt himself from or claim a reduction in or enjoyment of any portion or portions of the Land or by removal or abandonment of his Dwelling.



## Declaration

### ( Article V )

**Section 2. Common Expenses.** The Board of Governors shall annually establish a budget of expenses, which it deems necessary or desirable to incur, in order to carry out the purposes of the Association. Such expenses may include, without limitation, financing, operating, repair, restoration, services and facilities devoted to, landscaping and maintenance of Land and Common Improvements and portions of Dwellings, which the Association is obligated to maintain, maintenance and snow and ice removal from roads, walks, driveways and common parking areas, utility, sewer and water charges for facilities of the Pond Place Association, Inc., if any, insurance as required by the Bylaws, expenses for the operation and management of the Association (including legal, management and accounting fees), reserves for maintenance replacement and repair of the Common Improvements, which must be replaced on a periodic basis, but in excess of annual basis, taxes, if any, on the Association, and any other expense as is deemed by the Board of Governors to be necessary or appropriate to the operation of the Association and in furtherance of its purposes.

The Board of Governors shall pay real property taxes on the Undivided Interests promptly when due. The funds required to make such payments will be collected as a separate Common Charge and held in escrow in a separate account for the benefit of Members who have paid such funds, so that the payment of taxes will be attributable to those Members. In the event such funds are inadequate to pay the taxes, the first Common Charges or general assessments collected shall be used to pay the balance of the taxes, and a special assessment shall be levied to reimburse the Association for such payment. The tax account shall be clearly separated and designated as a trust or escrow account for the benefit of Members and may not be used for the payment of general expenses. Members may individually, or collectively through the Association as their agent, contest or challenge the validity, amount or assessment of property taxes; however, in no event shall such taxes be allowed to become a lien after they are due and payable.

Capital Reserves may be billed separately and accounted for in a separate fund for the benefit of Members to avoid attributing collection as income to the Association, until spent, without affecting the lien and obligation for such payments.

The Board of Governors shall assess Common Charges against each Undivided Interest and Dwelling in an amount determined by dividing the Common Expenses by the number of Undivided Interests and Dwellings (both existing and proposed). The method of assessment of Common Charges (but not fractional interest) may be changed by resolution of the Members. The Common Charges shall be paid in such monthly or other periodic installments as the Board of Governors shall determine. The budget may be amended from time to time and the Common Charges appropriately adjusted.

## Declaration

### ( Article V )

Section 3. Special Assessments for Capital Improvements. The Board of Governors, in addition to the assessment of Common Charges, may levy a special assessment on each Undivided Interest and Dwelling to defray, in whole or in part, any unusual or unanticipated expenses or for the construction of any capital improvements, provided that any such construction of a capital improvement, which would result in an expenditure greater than \$100 multiplied by the total number of Undivided Interests owned or leased by persons other than the Developer, shall require the unanimous vote of the Board of Governors and the approval of two-thirds (2/3) of the membership attending a meeting called for the purpose of considering the same. The amount of the Assessment against each Undivided Interest and the time for payment shall be determined in the same manner as the amount of the Common Charges against each Undivided Interest.

Section 4. Special Assessment for Certain Liens and Obligations. Upon the recording of a lien against the Land caused by a claim by virtue of the act or omission of an Owner or Member, which affects the Undivided Interests of other Owners, the Association shall promptly cause said lien to be released, bonded or otherwise discharged of record, and the Association shall have a lien against the Dwelling and Undivided Interest of the Owner or Member causing such lien, as security for the repayment of any and all costs and expenses, including attorney's fees, interest for the cost of borrowing, and other costs connected with the discharge, release, bond or other action in defense of such claim or lien. This lien shall be a Common Charge against the Undivided Interest and Dwelling of the Owner or Member causing said lien.

The first Common Charges or general assessments collected shall be used to pay or reimburse the costs of releasing, bonding or otherwise discharging said lien, second to the priority of the tax reserve account under Section 2 hereof.

Section 5. Effect of and Remedies of Association for Non-Payment. If any Common Charge, Assessment or other charge assessed pursuant to this Declaration and the certificate of incorporation and by-laws of the Association is not paid when due the same shall be delinquent and shall, together with interest and costs of collection, including reasonable attorney's fees, thereupon become a continuing lien on both the Undivided Interest and the Dwelling, and be a personal obligation of the then Member, his heirs, devisees, personal representatives, successors and the assigns. Any amount due the Association hereunder not paid within thirty (30) days after the due date shall bear interest at the rate of twelve (12%) per cent per annum from the due date until collected, and the Association may retain an attorney to commence legal proceedings against the person or persons personally liable therefore, or to foreclose the lien against the Undivided Interest and Dwelling, and there shall be added to such amount, all costs and attorney's fees incurred, regardless of whether any legal action is taken or a judgment obtained.

## Declaration

**Section 6. Subordination of Lien.** The Lien for the assessment hereunder shall be subordinate to the lien of a first mortgage on the Undivided Interest (including a leasehold interest therein) and any security interest related thereto, provided Assessments have been paid at the time of the placement of such first mortgage pursuant to a certificate presented pursuant to Section 7 of this Article. Such subordination shall apply only to Assessments, which have become due and payable prior to a sale or transfer of title to such property pursuant to a decree of foreclosure or any proceeding in lieu of foreclosure. Such sale or transfer of title shall not relieve such property or purchasers thereunder from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment. The term "Assessment" shall include Common Charge.

**Section 7. Certificate.** Upon request of any Member or his mortgagee, any officer of the Association shall issue a certificate stating the amounts then due the Association, which certificate shall be conclusive evidence of payment of any amounts previously coming due which are not shown therein as being paid.

**Section 8. Activities of the District; Effect on Budget.** *In the event that the District assumes any of the duties and activities of the Association, as provided in the Declaration and Bylaws, then the budget established under this Article need not provide for such activities.*

## ARTICLE VI - USE, PURPOSES AND RESTRICTIONS

**Section 1. Restrictions.** The use of each of the Dwellings and Land is hereby restricted as follows:

- a. Dwellings and the Land shall be used for residential purposes only and shall not be used for any industry, trade, business or profession of any sort except for home professional pursuits without employees or regular visits by the public.
- b. No garage shall be leased separately from the remainder of the Dwelling to anyone other than a Member.
- c. Dwellings and the Land shall be maintained in a neat and attractive manner and kept in good repair. The exterior walls, doors, windows and roofs shall remain free and clear of all signs, banners, awnings, canopies, shutters, or other obstructions, unless approved under Article VII. Antennas for television and normal radio reception may be placed on the roof of a Dwelling only with the prior written consent of the Board of Governors.
- d. Automobiles and other personal use motor vehicles used in the ordinary course of daily living shall be parked within designated parking areas only. Roads shall be kept free and clear of all parked vehicles, except in such visitor or recreation facility parking areas as may be provided, and then only on a temporary basis.
- e. All Land except that which may be assigned exclusively to a Dwelling, shall be maintained, developed and improved only for recreational and common uses and for roads, utilities, drainage systems, directories, and administrative

## **Declaration**

### **( Article VI )**

purpose and common parking areas all as the Board of Governors shall determine. The open space portions of the Land shall be used only for walking, fishing, cross-country skiing, picnicking, swimming, boating, tennis and similar recreational activities.

- f. Any walks laid out in the Pond Place Development shall be used for walking, cycling and other similar activities and shall not be used for snowmobiles, motorcycles or other motorized vehicles.
- g. All uses of Dwellings, and Land by Leaseholders, Occupants and others shall at all times be subject to the by-laws of the Association and Rules and Regulations promulgated by the Board of Governors, as amended from time to time.
- h. All Common Improvements shall be used solely for the purpose for which they were intended, and in accordance with the Rules and Regulations for such use.

**Section 2. Buffer Area.** A permanent thirty five (35) foot side yard setback buffer area shall be maintained along the boundaries of Pond Place as shown on the map referred to in Article II, as it may be supplemented. Dwellings as originally established by the Developer may be maintained in the Buffer Area subject to side yard and setback lines and the zoning regulations of Avon, and the architectural guidelines of Article VII. All existing landscape within such buffer shall be maintained in a natural state, subject to sound forestry practice including elimination of poison ivy and weeds as may be desirable at the option of the Association or as the Dwelling Owner of an Exclusive Use Area encroaching on the Buffer area may desire, and except: the above Dwellings, and such paths, access drives, entrance signs, fences, gates, utility and drainage systems as may be necessary or desirable for the maintenance, security, safety or use of Pond Place. Except for permissible structures above, no structures, buildings or other improvements shall be erected within the Buffer area. Except pursuant to good forestry practice no living trees having a height of six (6) feet or more and/or having a caliper trunk dimension of ground level of six (6) inches or more shall be destroyed or removed, except within five (5) feet of pathways within utility or drainage rights of way and such distance from access roads as may provide for safe sight distances.

This Section 2 of Article VI may not be amended unless an instrument signed by the first selectman of Avon or his successor, approving such amendment, shall be recorded with such amendment.

**Section 3. Enforcement.** The Association shall have the following rights, following Notice and Opportunity to be Heard, with respect to violations of this Article:

- a. To maintain legal or equitable proceedings to enjoin or abate such violations and obtain other appropriate relief;
- b. To enter upon any portion of the Land or Dwelling for the purpose of making inspections or of correcting any condition likely to result in a violation of this Article and to abate, remedy or correct such violations at the expense of the

## Declaration

responsible party or parties, such expenses to be collected as a Common Charge assessed against the Undivided Interest and Dwellings, provided that, except in the event of any emergency as determined by the Board of Governors such entry shall be made at a reasonable time and with reasonable advance notice.

## ARTICLE VII - DESIGN REVIEW AND RIGHTS OF APPROVAL

Section 1. General. No construction of the exterior of a permanent structure of any sort, including without limitation, fences and walls or other improvements, or clearing or excavation shall be permitted and no alterations to the exterior of any Dwelling shall be permitted without the prior written approval of the plans and specifications by the Association. Such approval shall not be unreasonably withheld if said proposed structure, improvement, alteration, excavation or clearing is located on an Exclusive Use Area and is harmonious in external design and location with the character of the Pond Place development. Nothing herein shall prohibit a Member from repairing, reconstructing, or refinishing any structure or improvement in accordance with the original design or latest approved plans therefore. Buffer areas as determined in Article VI; Section 2 shall be additionally restricted as contained therein.

### Section 2. Approval Procedure.

- a. Any proposed construction, alteration, clearing, or excavation that is subject to approval under this Article shall be submitted to the Design Review Committee of the Association established under Section 3 of this Article for approval on behalf of the Association in such form and manner as said Committee shall by published regulation prescribe. Prior to submitting an application for approval to the Design Review Committee the prospective applicant shall obtain a copy of the Building Guide, which the Design Review Committee shall maintain, which summarizes factors relevant to the external design and construction of acceptable improvements in the Pond Place Development. The prospective applicant may and shall be encouraged to meet with the Design Review Committee for a preliminary discussion of the proposed construction, alteration, excavation or clearing.
- b. The application shall include such plans and specifications for the proposed work as the Design Review Committee may from time to time request, including, unless specifically not required by said Committee or clearly not relevant to the application, the following:
  1. An acknowledgment by the application of the receipt of the current Building Guide;
  2. Identification of the affected portion of the Land and ownership interests;
  3. Identification of the applicant's architect, engineer, general contractor or other professional consultant(s), if any;
  4. Description of the setting, exterior design, elevations and other specifications of the proposed construction, alteration, excavation or clearing;
  5. The anticipated construction schedule.

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**( Article VII )**

- c. The application shall as a condition of approval pay a reasonable plan review fee as determined by the Design Review Committee but not more than Fifty Dollars (\$50) and any fees incurred by said Committee for reasonable and unnecessary professional consultations required by it in the review of the application.
- d. Within thirty-five (35) days after receipt of a complete application, the Design Review Committee shall render its decision in writing to the applicant specifying the reasons for any denial of the application. If no decision is rendered within said time, the application shall be deemed to be approved.
- e. The Design Review Committee shall be notified of the completion of the approved construction, alteration, excavation or clearing and shall within sixty (60) days of such notice make an inspection thereof to determine whether it was carried out in substantial compliance with the approval. If the Design Review Committee finds that there is substantial non-compliance with the approval, it shall within five (5) days so notify the applicant specifying the items required to be done to cure the non-compliance. Should the applicant fail to cure the non-compliance within sixty (60) days after the date of notification, the Design Review Committee shall notify the Board of Governors. Thereupon, the Board of Governors shall, after Notice and Opportunity to be Heard, take appropriate measures to cure the non-compliance and any expense incurred shall be paid by the applicant and collected in the same manner as a Common Charge. Failure of the Design Review Committee to notify the applicant of any non-compliance as set forth above shall be deemed to be a determination that there has been substantial compliance with the approval and the applicant shall be entitled to a certificate to that effect. In any event, if no notice of non-compliance has been recorded on the land records of the town of Avon within 180 days of completion of construction, this Article will be deemed to have been fully complied with, and no action may be commenced by the Board or any Member under this Article.
- f. The Design Review Committee shall make available to applicants the current Building Guide adopted as a Rule of the Board of Governors, which, following notice and hearing, may modify or supplement the same from time to time. The Building Guide shall set forth minimum standards for construction, alteration, excavation and clearing which standards shall include the following:
  - 1. Except to the extent reasonably necessary for any construction, alteration, excavation or clearing, as a part of any approved plan,
    - a. No excavation or fill that would be visible from neighboring property shall be created or installed in any Exclusive Use Area;
    - b. No change in the natural or existing drainage patterns for surface waters shall be affected within Pond Place;
    - c. No living tree having a height of six (6) feet or more and/or having a caliper truck dimension at ground level of six (6) inches or more shall be destroyed or removed;

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- d. All construction, alterations, excavation and clearing shall be commenced within one (1) year from the date of approval of the proposed work by the Association;
  - e. Construction of all foundations, exterior surfaces, excavation and clearing shall be completed within one (1) year after commencing such work; and
  - f. Siting of structures shall be carried out to insure preservation of natural landforms and vegetation patterns as much as possible.
2. All exterior surfaces of fences, screens, sheds, and similar structures and improvements or alterations shall be constructed of materials, which shall be consistent in kind, and quality with those of the existing structures.
  3. Nothing in these standards shall be construed to limit or affect the rights of Owners to plant or construct and maintain drainage and utility systems, gardens, supplementary indigenous plantings, lawns, and access ways, and improvements required by virtue of exceptional difficulty or unusual hardship created by the unique characteristics of a dwelling site.

**Section 3. Design Review Committee.** The Board of Governors shall appoint a Design Review Committee to administer the provisions of this Article on behalf of the Association consisting of three (3) Members to be chosen by and to serve at the pleasure of the Board of Governors. In selecting members of the Design Review Committee, the Board of Governors shall attempt as far as practicable to select at least one member with a background in the building industry. The Design Review Committee shall establish reasonable procedural rules for the conduct of its business. The procedural rules of the Design Review Committee shall be subject to the approval of The Board of Governors. No compensation shall be paid to the members of the Design Review Committee unless authorized by the Board of Governors. No member of the Design Review Committee or the Association shall be liable to any Member for damage, loss or prejudice suffered or claimed on account of actions taken by said Committee, except in cases of gross misconduct or fraud.

## ARTICLE VIII - CONDEMNATION

**Section 1. Partial Taking Without Direct Effect on Dwellings.** If part of Pond Place shall be taken or condemned by any authority having the power of eminent domain, such that no Dwelling is taken, all compensation and damages for an account of the taking of the Land and Common Improvements, exclusive of compensation for consequential damages to certain affected Dwellings, shall be payable to the Association as trustee for all Members, owners and mortgagees according to the loss or damages to their respective interests in such Land. The Association, acting through the Board of Governors, shall have the right to act on behalf of the Members and Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Land, without limitation on the right of the Members and Owners to represent their own interests. Such proceeds shall be used in accordance with the provisions of the Bylaws. Nothing herein is to prevent Members and Owners whose Dwellings are specially affected by the taking or

## **Declaration**

condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Dwellings, exclusive of damages relating to the Land and Common Improvements. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Undivided Interests without such allocation, the award shall be divided between affected Owners and the Trustee as the interests may appear by agreement or if no agreement, arbitration in accordance with the Construction Industrial rules of the American Arbitration Association.

Section 2. Partial or Total Taking Directly Affecting Dwellings. If part or all of Pond Place shall be taken or condemned by any authority having the power of eminent domain, such that any Dwelling or part thereof is taken, the Association shall have the right to act on behalf of the Owners with respect to Land and Common Improvements, as in Section 1 of this Article, and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Dwelling so affected.

## **ARTICLE IX - WAIVER OF PARTITION**

Each Owner, by receipt of title or possessory interest in an Undivided Interest, whether mentioned in the deed or not, specifically waives any and all rights to partition of the Land and Common Improvements and with respect to other Undivided Interests, that he may have by law or otherwise, to the maximum extent permitted by law. The nature of the interests received for purposes of partition, is hereby deemed to be that of a joint venture and incapable of partition in kind or by sale; and petition for partition shall be deemed a request for sale of the individual interests of the petitioner, without affecting title or ownership interests in the other Undivided Interests. In the event such a petition is to be granted, partition shall be in kind, with division of the Land into lots co-terminus with the exclusive Use Areas, together with undivided easements of enjoyment in common with all other Owners over the Common Areas for the mutually beneficial purposes of the Owners, and subject to the continued payment of Common Charges and Assessments for the maintenance and use thereof. The division of the Land into Undivided Interests is deemed to be reasonable and necessary for the establishment and full common utilization of the Land and Dwellings, amenities, roads, ducts, pipes, and other infra-structure supporting the Dwellings and Common Areas formed by the Owners as a single joint venture for the purposes outlined herein, and for the period of this Declaration; and each Undivided Interest, together with its appurtenant Membership in the Association, and title to the Dwelling is designed to be freely alienable and useable for residential purposes without affecting other interests.

## **ARTICLE X - MORTGAGE STATUS**

A mortgagee acquiring title to an Undivided Interest by foreclosure or by deed in lieu of foreclosure shall continue to be considered by a mortgagee as well as the Owner of such Interest until such time as a document evidencing an intent to merge the legal



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and equitable interests is executed by the mortgagee and is recorded in the land records.

### **ARTICLE XI - LAND AND DWELLINGS SUBJECT TO DECLARATION, BY-LAWS, AND RULES AND REGULATIONS**

All present and future Owners, Members, Leaseholders, occupants, tenants, mortgagees and users of Undivided Interests and Dwellings and users of the Land shall be subject to and shall comply with the provisions of this Declaration, the By-laws adopted by the Association and any Rules and Regulations adopted by the Board of Governors.

**ARTICLE XII** - [This article has been deleted. It no longer applies.]

### **ARTICLE XIII - PARTY WALLS, PARTY FENCES**

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Dwellings upon Pond Place and placed on the dividing line between the Dwellings shall constitute a party wall and each fence or divider constructed on the line between Exclusive Areas shall constitute a party fence, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and party fences, and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall and party fence shall be shared by the Owners who make use of the wall in proportion to such use. The party walls shall be maintained to preserve their integrity under the requirements of the State of Connecticut Basic Building Code. No structure changes or attachments can be made to the party wall with submission of plans, and the obtaining of permits therefore from the Building Inspector of the Town of Avon and the Board of Governors of the Association. Copies of such plans shall remain on file in the records of the Association.

Section 3. Preservation of Party Wall Integrity. The party walls shall be maintained to preserve their integrity. Certain penetrations of the wall, including vents, pipes and electrical connections have been described in the building plans on file in the Building Official's office of the Town of Avon. Easements for such penetrations are permitted under Article VII; however, no additional structural attachments, penetrations or changes can be made to any party wall without submission of plans, and the obtaining of permits therefore, as applicable, from the Building Inspector of the Town of Avon and the Board of Governors of the Association, or their successors. Copies of such plans shall remain on file in the records of the Association.

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**Section 4. Destruction by Fire or Other Casualty.** If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, or enclose their property using the party fence, they shall contribute to the cost of restoration thereof in proportion to such use-without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rules of law regarding liability of negligent or willful acts or omissions and pursuant to Article XV of the Bylaws.

**Section 5. Waterproofing.** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements. If by design, the party wall is exposed to the elements, the Owner sheltered by such portion of such wall shall bear the cost of maintenance of such party wall.

**Section 6. Right to Contribution Runs with Title.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to title and shall pass to such Owner's successors in title; however, any lien right for such contribution shall be subordinate to the lien of a first mortgage.

## **ARTICLE XIV - AMENDMENT**

*This Declaration may be amended by the affirmative vote of seventy-five (75%) percent of the membership and the written consent of seventy-five (75%) percent of the first mortgagees (based on one vote for each mortgage owned.)*

## **ARTICLE XV - ENFORCEMENT**

The Association or any Member may enforce the provisions of this Declaration by any proceeding at law or in equity against any person or persons violating or attempting to violate the same either to restrain a violation or to recover damages, or both, and to enforce any lien created by these covenants. Any forbearance or failure of enforcement in one instance shall not be deemed to be a waiver of the right to enforcement thereafter.

## **ARTICLE XVI - DURATION**

The provisions of this Declaration, as amended from time to time, shall run with and bind the Land and be enforceable as set forth herein for a term of thirty (30) years from the date of record of this Declaration on the Avon Land Records. After said term said provisions shall be automatically extended for further periods of twenty (20) years unless otherwise specified by a record instrument containing the prior written approval of at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) and seventy-five percent (75%) of the membership.

**ARTICLE XVII - MISCELLANEOUS**

**Section 1. Notices.** Any notice required to be sent to any Owner, Member or occupant under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears on the records of Association at the time of such mailing.

**Section 2. Interpretation.** The provisions of this Declaration shall be construed under the laws of the State of Connecticut. The provisions hereof shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of a planned open space residential community.

**Section 3. Invalidity.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the balance of the Declaration, which shall remain in full force and effect.

**Section 4. Gender and Number.** The use of the masculine gender herein shall be deemed to include the feminine and neuter gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

**Section 5. Voting.** Whenever Leaseholders or Owners are to vote on any matter affecting this Declaration, such voting shall be conducted by them as Members of the Association and in accordance with the provisions of the By-laws of the Association.

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**SCHEDULE A**

A certain piece or parcel of land situated in the Town of Avon, County of Hartford, State of Connecticut, containing approximately 70 acres, on the southerly side of West Main Street, bounded and described as follows:

Beginning at a monument on the southerly side of West Main Street at the northeasterly corner of the land now or formerly of Lee Zacchera; then running

S 69°02'48" E, 508.26 feet; then S 69°00'37" E, 52 feet; then S 69°59'50" W, 150.75 feet; then S 16°23'22" W, 35.44 feet; then N 79°06'52" W, 105.90 feet; then S 78°26'23" W, 89.82 feet; then S 51°10'12" W, 157.89 feet; then S 65°06'45" W, 106.93 feet; then S 38°42'55" W, 161.48 feet; then S 01°18'07" E, 44.01 feet; then S 09°05'25" E, 75.95 feet; then S 12°11'01" E, 180.06 feet; then S 32°20'06" E, 129 feet; then S 63°56'07" E, 102.41 feet; then S 13°06'33" E, 74.95 feet; then S 17°41'27" W, 78.76 feet; then S 65°48'25" W, 710.38 feet; then N 88°11'15" W, 23.63 feet; then N 89°05'00" W, 43.11 feet; then N 84°51'18" W, 491.40 feet; then N 85°41'05" W, 160.77 feet; then N 86°03'31" W, 77.79 feet; then N 86°03'31" W, 39.87 feet; then N 84°59'31" W, 368.74 feet; then N 84°38'32" W, 298.42 feet; then N 03°54'18" E, 320.67 feet; then N 05°23'19" E, 24.03 feet; then N 01°57'10" E, 122.962 feet; then N 79°13'53" W, 33.06 feet; then N 83°38'28" W, 65.41 feet; then N 00°58'44" W, 35.77 feet; then N 36°29'23" E, 39.90 feet; then N 19°57'10" W, 53.19 feet; then N 24°46'36" W, 102.84 feet; then N 29°04'06" W, 93.40 feet; then S 88°50'03" W, 160.15 feet; then N 32°39'00" W, 241.43 feet; then N 40°08'11" W, 100.24 feet; then N 36°16'01" W, 391.82 feet; then S 85°36'24" E, 20.70 feet; then S 84°07'54" E, 96.69 feet; then S 84°26'54" E, 223.53 feet; then S 85°47'54" E, 207.44 feet; then S 86°05'24" E, 355.26 feet; then S 83°55'54" E, 194.24 feet; then S 85°31'54" E, 200.41 feet; then S 86°12'54" E, 72.55 feet; then S 86°12'21" E, 310.76 feet; then S 86°11'01" E, 46.26 feet; then S 83°09'07" E, 130.86 feet; then S 85°50'43" E, 132.80 feet; then S 85°36'08" E, 849.98 feet; then N 20°54'12" E, 190.86 feet to the place of beginning.

Said premises are shown on a map entitled "Map of Pond Place Owned by The FIP Homes Company Avon, Connecticut, Scale: 1" = 40', August, 1977, Hodge Surveying Association, P.C." which map is on file in the office of the Avon Town Clerk.

## BYLAWS

These Bylaws of the Pond Place Association, Inc. were adopted by unanimous vote of the Members in Farmington, Connecticut in September, 1977 and were amended in 1982 by James E. Speich, then President of the Pond Place Association, and recorded in Volume 100, on Page 40, of the Avon Land Records. All amended sections are in italics. These amendments were enacted to accommodate the creation of the Pond Place Tax District, a body politic and corporate, which was organized to provide services permitted under Section 7-326 of the Connecticut General Statutes to property or portions of property, and to citizens, located or residing within the boundaries of Pond Place. In order to provide the proper delegation of authority, from the Association to the Tax District, to perform those services, certain amendments had to be adopted.

### ARTICLE I - GENERAL

Section 1. Name. The name of the Corporation is the Pond Place Association, Inc. (herein the "Association").

Section 2. Offices. The Association shall establish and maintain a registered office in the State of Connecticut and may have other offices, either within or without the State of Connecticut, as the Board of Governors shall deem necessary.

Section 3. Definitions. The definitions of words and terms contained in Article I of the Declaration shall apply to those words and terms as used herein.

Section 4. Responsibilities. The Association shall have the responsibility of administering and operating Pond Place in accordance with the Declaration, these By-Laws, and Rules and Regulations adopted hereunder, including without limitation the determination, assessment and collection of Common Charges, the maintenance and repair of the Land, enforcing the provisions of the Declaration, these By-Laws and the Rules and Regulations, and acting as agent and attorney-in-fact for the Owners of Undivided Interests as tenants in common for the purposes of administering the co-tenancy only.

Section 5. Seal. The seal of the Association shall be circular in form and shall bear the words "Corporate Seal". The Secretary may change the inscription thereon at his pleasure.

Section 6. Assumption of Duties by District. *To the extent that, and for so long as, the District assumes and performs the duties and purposes of the Association as defined in the Declaration and Bylaws, the Association need not so perform such duties and purposes. To that end the Association may, actively, by its Board of Governors, delegate to the District the Association's power and rights to maintain, manage, and operate the District Common Properties and may further delegate the Association's powers to regulate the Land, Common Improvement, and Dwellings, to the extent that the District may lawfully accept such powers and rights and does so accept them in an instrument of lease, conveyance, license, or transfer of District Common Properties.*

## ARTICLE II - MEMBERS

Section 1. Membership. The only members of the Association shall be all Owners of Undivided Interests and Leaseholders to whom membership rights have been assigned by the Lease of any Undivided Interest. Except as otherwise provided by law, the Association shall only recognize a membership right based upon a lease or notice of lease, assignment or notice of assignment thereof (or a deed, conveying an Undivided Interest) which is recorded in the Avon Land Records even though it may have other notice thereof. Voting shall be in accordance with Article IV, Section 3 of the Declaration. There shall be no more than one membership per Undivided Interest.

Section 2. Annual Meetings. Annual meetings shall be held between May 1 and September 30 in each calendar year at a date, place and time determined by the Board of Governors for the election of Governors under these By-Laws and to transact such other business as may properly come before the meeting. The date of the annual meeting shall be set by the Board, and notice given at least ten (10) days but less than fifty (50) days prior to such meeting.

Section 3. Special Meetings. Special meetings of the members for any purpose or purposes may be called by the Board of Governors and shall be called by the President or Secretary of the Pond Place Association, Inc. at the request in writing of a majority of the Board of Governors or of members entitled to cast at least ten percent (10%) of the votes that all members are entitled to cast at such meeting. Such request shall state the purpose or purposes of the proposed special meeting. Upon written request of any person who has called a special meeting it shall be the duty of the Secretary to fix the time of the meeting, which shall be held not more than sixty (60) days after the receipt of the request. If the Secretary shall neglect or refuse to fix the time of the meeting, the person or persons calling the meeting may do so. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Place. All annual meetings of members and all special meetings of members called by the Board of Governors shall be held at such place within the State of Connecticut as may be fixed by the Board of Governors and as shall be stated in the notice of the meeting or in a duly executed waiver thereof. All special or other meetings of members called at the request of the members or by any other person or persons shall be held at the office of the Pond Place Association, Inc.

Section 5. Quorum. Except as otherwise required by the laws of the State of Connecticut, the Articles of Incorporation, the Declaration, or these By-Laws, the members present in person or by proxy shall constitute a quorum at such meeting of the members.

## Bylaws

### ( Article II )

**Section 6. Voting.** Voting of the members shall be on the following basis: Members shall be all those Owners of Undivided Interest or Leaseholders to whom membership rights have been assigned with the exception of the Developer. Members shall be entitled to one vote for each Undivided Interest in which they hold the interests required for membership by Article IV, Section 2 of the Declaration. Where one member is the sole holder of the interest required for membership, such member shall cast the vote attributable to such membership. Where more than one member shall be co-holders of the Undivided Interest, the vote attributable to such Undivided Interest shall be cast as all such members shall decide among themselves or, if they are unable to agree, then each co-holder shall have a fractional vote based on his proportionate share of Undivided Interest. A vote cast or consent given by a co-holder of a membership shall be deemed cast or given for the whole membership interest unless another co-holder shall object prior to the tabulation of the vote or consent.

**Section 7. Acts of Members.** Except as otherwise required by law or the Declaration the vote at a meeting of Members duly held at which a quorum is present, the decision of the majority of the votes that the members present at such meeting are entitled to cast shall be the act of the Members.

**Section 8. Proxies.** Each Member may authorize another person or persons to act for him by proxy. Every proxy shall be executed in writing by the member or by his duly authorized attorney in fact and filed with the Secretary of the Pond Place Association, Inc. prior to the call to order of the meeting in which it is to be exercised. A proxy shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the Secretary of the Pond Place Association, Inc. No unrevoked proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided therein, but in no event shall a proxy be voted on after three (3) years from the date of its execution. A proxy shall not be revoked by the death or incapacity of the maker unless before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of the Pond Place Association, Inc. A co-holder casting a vote at a meeting will be deemed to have received the proxy of the other co-holder of his share, unless objection is received from such other co-holders prior to the tabulation of the vote.

**Section 9. Shares.** For purposes of dissolution, or distribution of assets only, Members shall be deemed to own one equal share of the assets of the Association for each Undivided Interest in which they respectively hold interest required for membership.

### ARTICLE III – BOARD OF GOVERNORS

Section 1. Number. Commencing with such first annual meeting and thereafter the number of directors shall be seven (7).

Section 2. Power and Duties. The Board of Governors shall have the power and duties necessary for the administration of the affairs of the Association and the governing of the Pond Place development and may do all such acts and things as are not by law or these By-Laws directed to be exercised by the Members. In addition to the duties imposed by these By-Laws or resolutions of the Members of the Association, the Board of Governors shall be responsible for the following:

- a. Operation, care, upkeep and maintenance of the Common Improvements and such duties with respect to the Land and Dwellings as provided in the Declaration;
- b. Determination of a budget for Common Expenses which it deems necessary or desirable in carrying out the responsibilities of the Association; including payment of taxes on the Land, and establishing reasonable reserves, for the benefit of the Members.
- c. Determination, levying, assessment and collection of Common Charges, Assessments and other obligations of Members under the terms of the Declaration;
- d. Employment and dismissal of personnel necessary for the maintenance and upkeep of the Common Areas and or the performance of other obligations of the Association;
- e. Adoption and amendment of rules and regulations covering the details of the operation of the Pond Place development and the use of the Land, Dwellings and Common Improvements.
- f. Purchasing, leasing, mortgaging or in any way dealing with money, claims, accounts and property in furtherance of its corporate purpose; and as agent and attorney-in-fact for Members and Owners, dispose of assets held in common.
- g. Enforcing in any manner permitted under the Declaration or law of all of terms, covenants and provisions of the Declaration, the By-Laws, and the Rules and Regulations;
- h. The maintenance and upkeep of water and sewer pipes on the Land up to the water shutoff tap, and the sewer connection to the common arterial sewer and the performance of such other duties with respect to the Land and Dwellings as may be required of it by the Members;
- i. Employment of a management agent to perform such duties and services as the Board may designate and at a compensation to be established by the Board;



## Bylaws

### ( Article III )

- j. Opening bank accounts, obtaining loans and undertaking any and all bank transactions for the corporate purposes, and designating signatories required thereof;
- k. Granting of licenses over, under or upon the Common Areas and leasing, subleasing or entering into agreements including concession agreements for all or part of the Common Areas for the benefit of Members;
- l. Obtaining and maintaining insurance on Pond Place including Land, acting as trustee for the receipt and disbursement of proceeds for the benefit of Members, Owners, and mortgagees as their interest may appear.
- m. Levying assessments for capital reserves in the name of, and for the benefit of Members, accounting for the reserves separately until expended for their purpose, and at their option designating a Trustee to further avoid intermingling with the income of the Association;
- n. Leasing or otherwise acquiring the right to use, exclusively or in common with others, recreational and other facilities for the benefit of Members, and acquiring, repairing, improving and restoring the Common Areas;
- o. Appoint, remove at pleasure all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bonds as it may deem sufficient or expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, Officer or Governor in any capacity whatsoever.
- p. Exercising the powers of the Association as irrevocable agent and attorney-in-fact, coupled with an interest for the mutual benefit and enjoyment of the Members, to administer the operation and management of Pond Place including the levying of liens, improving the tenancy in common, and undertaking all the rights and duties permitted by law or herein for a tenant-in-common in a joint venture for the purposes outlined above.
- q. All other acts necessary or desirable for the sound and efficient management of the Association.

**Section 3. Election and Term of Office.** Appoint one Governor pursuant to the Certificate of Incorporation. At subsequent annual meetings of members, successors shall be elected for the Governors whose terms expire in such year to hold office for a two (2) year term.

**Section 4. Vacancies.** Vacancies in the Board of Governors shall be filled by vote of a majority of the remaining Governors at any duly called special or regular meeting even though the remaining Governors may be less than a quorum and such Governor so elected shall fill the unexpired term of the Governor whom he replaces.

## Bylaws

### ( Article III )

**Section 5. Compensation.** Governors, as such, shall not receive any stated salary for their services, but, by resolution of the Board expenses of attendance, if any, may be allowed for attendance of Governors elected by the members at each regular or special meeting of the Board. However, nothing herein contained shall be construed to preclude any Governor from serving the Pond Place Association, Inc. in any other capacity and receiving compensation therefore.

**Section 6. Qualifications.** Each Governor shall be a natural person of full age who shall be a resident of the State of Connecticut and a member of the Pond Place Association, Inc or designee of a Corporate Member.

**Section 7. Removal of Governors.** Any Governor (except designee of the Developer) elected by the Members may be removed with or without cause at a special meeting of members of the Pond Place Association, Inc. called for the purpose. Any Governor elected by the Members may be removed for cause by the Board of Governors at a regular or special, meeting following notice and Opportunity to be Heard by such Governor.

**Section 8. Regular Meetings.** The Board of Governors may hold regular meetings, either within or without the State of Connecticut, without notice at such time and place as shall be determined by the Board.

**Section 9. Special Meetings.** Special meetings of the Board of Governors may be called by the President or the Secretary and, at the written request of any two (2) Governors, shall be called by the Secretary. Written notice of each special meeting of Governors, stating the time and place thereof, shall be delivered to each Governor, personally, by mail or by telegraph, at least three (3) days before the day named for such meeting. Any special meeting of the Board of Governors shall be held at such time and place as shall be stated in the notice of the meeting.

**Section 10. Quorum and Voting.** At all meetings of the Board of Governors a majority of the whole Board of Governors shall be necessary and sufficient to constitute a quorum for the transaction of business and the acts of a majority of the Governors present at any meeting at which a quorum is present shall be the acts of the Board of Governors except to the extent that the Declaration requires a greater number. If a quorum shall not be present at any meeting of the Board of Governors, the Governors present at any meeting of the Board of Governors, the Governors present thereat may adjourn the meeting from time to time, without further notice other than announcement at the meeting, until a quorum shall be present.

**Section 11. Use of Conference Telephone and Similar Equipment.** One or more persons may participate in a meeting of the Board of Governors or of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participants in a meeting pursuant to this Section of the By-Laws shall constitute presence in person at such meeting.

## Bylaws

### ( Article III )

Section 12. Governors employed by Developer. [This section has been deleted. It no longer applies.]

Section 13. Compensation. No member of the Board of Governors shall receive any compensation from the Association for acting as a Governor.

Section 14. Fiscal Year. The Board of Governors shall establish a fiscal year.

Section 15. Fiscal Affairs. It shall be the duty of the Board of Governors:

- a. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such is requested in writing by one-fourth (1/4) of the membership.
- b. To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed.
- c. As more fully provided in Article V of the Declaration.
  1. To fix the budget and amount of the assessment against each Undivided Interest for each assessment period at least thirty days in advance of such date or period and, at the same time;
  2. Cause to be prepared a roster of the Members, Lessors of Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member or his designee, and, at the same time;
  3. Cause to be sent written notice of each assessment to every member or Owner subject thereto.
  4. *In the event that the District assumes any of the duties and activities of the Association, as provided in the Declaration and Bylaws, then the budget need not provide for such activities.*
  5. To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

Section 16. Fidelity Bonds. The Board of Governors shall maintain fidelity bonds to cover against dishonest acts on the part of governors, officers, employees and agents of the Association handling or responsible for Association funds, in amounts sufficient to provide protection which is in no event less than one and one-half times the estimated annual Common Charges and Assessment. The premiums on such bonds shall be a Common Expense.

Section 17. Duties and Powers Exercised by District Board of Directors. *To the extent that, and for so long as, the District Board of Directors exercises duties of the Board of Governors need not exercise such duties. The District shall have such powers as conferred upon it by law, and the Board of Governors may concurrently exercise the powers granted hereunder with the District. To the extent that, and for so long as,*

## Bylaws

*District Common Properties are maintained, operated, cared for and kept up by the District, and the financial requirements therefore are fulfilled, the Board of Governors need not undertake powers and duties to that end. The Board of Governors may not lease, convey, hypothecate or grant concessions over, the District Common Properties to the extent such grants are inconsistent with the grants made to the District in the instrument of lease, conveyance, license or transfer thereto pursuant to Article I, Section 6 of the Bylaws.*

*Section 18. Rules and Regulations. To the extent that District Common Properties are regulated by ordinance of the District or regulations issued pursuant to such ordinance and for so long as District Common Property is lease, owned or licensed by the District, and with respect to District Common Property only, the Rules and Regulations of the Association may not be inconsistent with the ordinances or such regulations of the District.*

## ARTICLE IV - NOTICES

Section 1. Delivery of Notices. Notices to Governors and Members shall be in writing and may be delivered personally, by mail, or telegraph. Notice by mail or telegraph is given by sending a copy thereof by first-class mail, postage prepaid, or by telegram, charges prepaid, addressed to a Member at his address appearing on the books of the Association, or to a Governor to such address or any other address supplied by him for the purpose of notice. If the notice is sent by mail or telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or deposited with a telegraph office for transmission to such person.

Section 2. Waiver of Notices. Whenever notice is required to be given to any Member or Governor by any statute, the Articles of Incorporation of these By-Laws, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice. Attendance of a person at a meeting of members or the Board of Governors, or consenting to the minutes thereof by signature thereon in the records of the Association, as the case may be, shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any meeting of Governors need be specified in any written waiver of such meeting. In the case of a special meeting of members of the Association, such waiver of notice shall specify the general nature of the business to be transacted.

Section 3. Notice of Meetings. Written notice of each meeting of members of the Association stating the place, date and hour thereof and, in the case of a special meeting of members, specifying the purpose or purposes thereof, shall be given to each member of record entitled to vote thereat, at his address as it appears on the records of the Association, not less than seven (7) nor more than fifty (50) days prior

## Bylaws

### ( Article IV )

to the meeting, except that where the matter to be acted on is an amendment of the Articles of the Incorporation, Declaration, Bylaws, division of Pond Place, conversion of the Association into a business corporation under the laws of the State of Connecticut, a voluntary dissolution or winding up of the Association, or sale, encumbrance, hypothecation, or division of the Land, such notices shall be given not less than ten (10) nor more than fifty (50) days prior to the meeting, and a copy of the notice sent to all mortgagees on the records of the Association, and all Lessors of Members under a lease.

Section 4. Modification of Proposal Contained in Notice. Whenever the language or a proposed resolution is included in a written notice of a meeting, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

Section 5. Exception to Requirement of Notice. Wherever any notice or communication is required to be given to any person under the provisions of these By-Laws and communication with such person is then unlawful, the giving of such notice or communication to such person shall not be required and there shall be no duty to apply for a license or other permission to do so. Any action or meeting, which shall be taken or held without notice or communication to any such person shall have the same validity as if such notice or communication had been duly given. If the action taken is such as to require the filing of any document with respect thereto under any provision of law or any agreement or other instrument, it shall be sufficient, if such is the fact and if notice or communication is required, for the Secretary to attest therein that notice or communication was given to all persons entitled to receive notice or communication except such person with whom communication was unlawful.

Section 6. Consents. Any action required by Connecticut General Statutes, Chapter 600, the Articles of Incorporation, the Declaration, or these By-Laws to be taken at any annual or special meeting of members of the Association, or the Board of Governors or any action which may be taken at any annual or special meeting of such members or the Board of Governors may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the Members or Governors, as the case may be, who would be entitled to vote at a meeting for such purpose and shall be filed with the Secretary of the Association, except, notwithstanding the foregoing, no amendment or change or provisions of these By-Laws shall be effective unless adopted at a meeting of members or the Board of Governors held in accordance with the provisions of these By-Laws. Such consents may be included in deeds, leases or other instruments executed by such Member and copies of such instruments in the records shall be sufficient for filing.

## ARTICLE V - OFFICERS

Section 1. Executive Officers. The executive officers of the Association, shall be a President, a Treasurer, and a Secretary, each of whom shall be elected annually by the Governors at their first regular meeting following the annual meeting of members, and shall hold office at the pleasure of the Board. The President and Secretary shall be natural persons of full age. The Treasurer may be a corporation, but if a natural person, shall be of full age. An officer need not be a Governor of the Corporation. Any person may hold two or more offices. All vacancies occurring in any of the above offices shall be filled by the Governors at a regular meeting or at a special meeting called for that purpose. Any officer may be removed with or without cause by the Board of Governors.

Section 2. Subordinate Officers. The Board of Governors may appoint such other officers and agents, including Vice-Presidents, Assistant Secretaries and Assistant Treasurers, with such powers and duties as it shall deem necessary or appropriate. All such officers or agent shall hold office at the pleasure of the Board of Governors.

Section 3. Authorities and Duties. All officers, as between themselves and the Association, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in these By-Laws, or, to the extent not so provided, as may be prescribed from time to time by the Board of Governors.

Section 4. Salaries. The salaries or other compensation of all employees and agents of the Association may be fixed by the Board of Governors. However, the Board of Governors may delegate to one or more officers or employees authority to employ and to fix the salaries or other compensation of any such employees or agents.

Section 5. The President. The President shall be the chief executive and administrative officer of the Pond Place Association, Inc. He shall have primary responsibility for the active management and general conduct of the business, operations and day-to-day affairs of the Association, subject to the control of the Board of Governors, and shall see that all orders and resolutions of the Board are carried into effect. He shall preside at all meetings of the Governors and Members. The President shall have power to sign on behalf of the Association, bonds, notes, deeds, mortgages, and any and all contracts, agreements and instruments of a contractual nature pertaining to matters which arise in the normal conduct and ordinary course of the business of the Association, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Association; and he shall perform such duties as the Board of Governors from time to time prescribe.

## Bylaws

### ( Article V )

**Section 6. The Secretary.** The Secretary shall attend all meetings of the Board of Governors and all meetings of the members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and special meetings of the Board of Governors, and shall perform such other duties as may be prescribed by the Board of Governors or the President, under whose supervision he shall be. He shall keep in safe custody the seal of the Association, and, when authorized by the Board of Governors affix the same to any instrument requiring it and, when so affixed, it may be attested by his signature or by the signature of the Treasurer or an Assistant Secretary or Assistant Treasurer. He shall keep in safe custody such books and papers of the Association, as the Board may direct and shall perform all other duties incident to the office of the Secretary.

**Section 7. Assistant Secretaries.** The Assistant Secretaries, if any, in order of their seniority, shall in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board of Governors shall prescribe.

**Section 8. The Treasurer.** The Treasurer shall have the care and custody of the corporate funds, and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements. Such records shall be available for examination by any members during regular business hours. In accordance with the actions of the Board assessing Common Charges against the members, the Treasurer shall keep an accurate record of such assessments and of the payment thereof by each member. The Treasurer may also furnish the certifications required under Section 6 of Article V of the Declaration, but in the absence of the Treasurer any officer or the manager may issue such certificate following examination of the books of the corporation to determine its accuracy. The Treasurer shall deposit all moneys and other valuable affects in the name and to the credit of the Association, in such depositories as may be designated by the Board of Governors. The Treasurer shall disburse the funds of the Association, as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Governors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. In case of his death, resignation, retirement or removal from office all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association shall be delivered to his successor.

**Section 9. Assistant Treasurers.** The Assistant Treasurers, if any, in the order of their seniority, shall in the absence or disability of the Treasurer perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Governors may prescribe.

## ARTICLE VI - COMMITTEES

Section 1. Designation; Powers. The Board of Governors shall, by resolution passed by a majority of the whole-Board, designate from among the Members the Design Review Committee as required under Article VII of the Declaration to administer the provisions of said Article and may appoint from among the Members one or more committees that shall exercise, such powers and authority as shall be provided in any such resolution, except to the extent and with respect to the matters for which authority is absolutely denied to such committees under Connecticut General Statutes, Chapter 600, or the Articles of Incorporation or these By-Laws. The Board of Governors may designate one or more Members as alternate members of any such committee who may replace any absent or disqualified member or members at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member to act at the meeting in the place of any such absent or disqualified member.

Section 2. Tenure and Reports. Each such committee shall serve at the pleasure of the Board of Governors. It shall keep minutes of its meetings and report the same to the Board.

Section 3. Membership and Termination. Members of all committees shall hold such office at the pleasure of the Board of Governors, which may change the membership of or terminate the activities of any committee at any regular meeting of the Board, except the Design Review Committee may not be terminated.

Section 4. Subcommittees. With the exception of the Design Review Committee, (but then only as to those functions that are governed by Article VII of the Declaration), each committee shall have power to appoint a subcommittee from among its membership or with approval of the Board of Directors consisting of additional Members, and may delegate to any such subcommittee any of its powers, duties and functions.

Section 5. Duties. It shall be the additional duty of each committee to receive complaints from members, on any matter involving Association functions, duties, and activities within its field of responsibility. It shall consider such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented. Each committee shall present an annual report of its activities to the Board of Directors for inclusion in the annual report.



## ARTICLE VII - INDEMNIFICATION

Section 1. Indemnification. The Association, shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of fact that he is or was a Governor, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, where he had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, termination of any action, a plea of nolo contendere (or its equivalent), shall not of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful.

The Association, shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association, to procure a judgment in its favor by reason of the fact that he is or was a Governor, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the Superior Court of Hartford County, or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Superior Court or such other court shall deem proper.

To the extent that Governor, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article, or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under this Article (except as provided in the preceding paragraph or unless ordered by a Court) shall be made by the Association, only as authorized in the specific case upon a determination that indemnification of the Governor, officer, employee or agent is proper in the circumstances because he has met the applicable standards of conduct set forth above. Such determination shall be made by the Board of Governors by a majority vote of a quorum consisting of governors who were not parties to such action, suit or proceeding, or if such quorum is not obtainable, by the membership.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association, in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Governors in the specific case upon the receipt of an undertaking by or on behalf of the governor, officer, employee or agent to repay such amount unless it shall ultimately be determined the he is entitled to be indemnified by the Association, as authorized in this Article VII.

## **ARTICLE VIII – OPERATION OF THE PROPERTY**

**Section 1. Common Charges.** Prior to the commencement of each fiscal year of the Association, the Board of Governors shall prepare a budget of estimated Common Expenses for the ensuing year pursuant to Article V of the Declaration and determine the assessment for Common Charges against each Undivided Interest. Unless the members shall by resolution provide otherwise, the Common Charge to be assessed against each Undivided Interest shall be an amount determined by dividing the total Common Expenses by the number of Undivided Interests covered by the Declaration as of the commencement of the fiscal year.

The Board of Governors shall advise all Members promptly in writing, of the amount of Common Charges payable by each of them, respectively, as determined by the Board of Governors, as aforesaid, and shall furnish copies of each budget on which such Common Charges are based to all Owners and to their mortgagees upon request. The Common Expenses shall include among other things:

- a. the cost of repairs and maintenance to the Common Areas and appurtenant interests;
- b. all insurance and bond premiums on all policies of insurance required to be or which have been obtained by the Board of Governors pursuant to the provisions of Article III and Article XII herein; provided.
- c. such amounts as the Board of Governors may deem proper for the improvement and operation of Pond Place, including without limitation an amount for its working capital, and sums necessary to make up any deficit in the Common Expenses for any prior year;
- d. expenses incurred in leasing or otherwise acquiring the right to use either exclusively or in common with others, recreation or other facilities for the benefit of Members;

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- e. In the event that the Internal Revenue Code requires that amounts held as general operation reserves, or reserve funds for replacements, be considered as taxable income, the Board shall, in a timely manner, establish a trust fund for such reserve amounts with a trustee and shall separately bill Owners for such amounts and as collected, pay over to such Trust such amounts as agent of the Owners. The trustee, as agent of the Owners, shall pay to the Board such amounts, and at such times, as the Board determines will be reasonably necessary to pay for repair and replacement of capital equipment, structures and improvements on the Common Areas, not exceeding the amounts accumulated in such Reserve Trust Fund. Payments to the Reserve Trust Fund shall be considered Common Expenses and contributions to working capital and the assessment therefore, Common Charges. The Board shall enter into an agreement with the Trustee indemnifying him and hold him harmless to the extent permitted by law from any claims in connection with his administration by the Trust.

Section 2. Payment of Common Charges. All Owners shall be obligated to pay the Common Charges assessed by the Board of Governors monthly or at such other time or times as the Board of Governors shall determine. The Board may authorize Common Charges to be collected by a mortgagee of one or more Undivided Interests.

Section 3. No Waiver of Liability for Common Expenses. No Member may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Undivided Interest or Dwelling or removal of his Dwelling.

Section 4. Non-Liability After Conveyance. No Owner shall be liable for the payment of any part of the Common Charges assessed against his Undivided Interest subsequent to a sale.

Section 5. Successor's Liability for Common Charges. A person who acquires an Undivided Interest shall be liable for, and the Undivided Interest conveyed shall be subject to a lien for, any unpaid assessments against the Undivided Interest, but not in excess of the amount set forth in a statement provided under Article V, Section 7 of the Declaration.

Section 6. Default in Payment of Common Charges. In the event of the default of any Member in paying to the Association the Common Charges as determined and levied by the Board of Governors, such Members shall be obligated to pay interest at the rate of twelve percent (12%) per annum on such Common Charges from the due date thereof until collected, together with all expenses, including attorneys and collection fees and costs incurred by the Association in any proceeding brought, or activity taken, to collect such unpaid charges. The Board of Governors shall take such other action as is permitted by the Declaration as it deems appropriate of the collection of any and all payments due from each Member under the Declaration and

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these Bylaws. Whenever any Common Charge, Assessment or other payment levied against an Undivided Interest becomes delinquent the Treasurer shall notify the President and the Board of Governors of such fact. Upon receipt of such notice the President shall execute and cause to be recorded on the Avon Land Records a notice of lien on the Undivided Interest and Dwelling setting forth the amount due and specifying the nature of the delinquent payment with a copy to the Member's mortgagee as may appear of record and cause Notice and Opportunity to be Heard given to the Member. Upon receipt of such notice, the Board of Governors, at its next meeting, shall consider the matter and following the hearing, may by majority vote suspend the use of all or any portion of the Land, not necessary for access, health or safety, by the Owner or Leaseholder of such Undivided Interest for a period of time up to thirty (30) days pursuant to Article III, Section 2(a) of the Declaration if it feels such action would be an aid to the collection of such delinquent payment.

Section 7. Foreclosure of Liens for Unpaid Common Charges. In any action brought by the Association to foreclose a lien on an Undivided Interest and Dwelling because of any unpaid Common Charges, the Owner shall be required to pay reasonable rental for the use of his Undivided Interest and Dwelling from the date of non-payment of Common Charges and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association acting on behalf of all Owners, shall have power to purchase such Undivided Interest and Dwelling at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant thereto (other than of the election of members of the Board of Governors), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the liens securing the same.

Section 8. Maintenance, Repair and Replacement.

- a. The Association shall maintain, repair and replace all of the Common Improvements and Land outside Exclusive Use Areas, and any portion of a Member's Dwelling beyond the boundaries of such Member Exclusive Use Area, as provided in Article III, Section 2(g) of the Declaration. In the event that such maintenance, repair or replacement was caused by the negligence or misuse of an Owner, such expense shall be charged to such Owner.
- b. Each Owner shall maintain, repair and replace, at his own expense, all portions of his Dwelling and Exclusive Use Area, except the portions thereof to be maintained, repaired or replaced by the Association. Each Owner shall be responsible for damages to any other Exclusive Use Area, Dwelling, or to the Land caused intentionally negligently, or by his failure to properly maintain, repair, or make replacements to his Dwelling or Exclusive Use Area.

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#### Section 9. Additions, Alterations, or Improvements by Board of Governors.

Whenever, in the judgment of the Board of Governors, the Land shall require additions, alterations or improvements costing more than seven thousand five hundred (\$7,500.00) dollars, which are not to be at the expense of an individual Owner for his own benefit, and the make of such additions, alteration, or improvements shall have been approved at annual or special meetings of the Members and upon the prior written approval of at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) and seventy-five percent (75%) of the membership following Notice and Opportunity to be Heard, the Board of Governors shall proceed with such additions, alterations or improvements and shall assess all Owners for the cost thereof as a Special Assessment pursuant to Article V, Section 3 of the Declaration, including applicable financing costs. Any additions, alterations or improvements costing less than the limit provided in such Section may be made by the Board of Governors without further approval of the Members or any mortgagees of the Undivided Interests, and the costs thereof will constitute part of the Common Expenses.

Section 10. Additions, Alterations, or Improvements by Owners. No Owner shall make any structural addition, alteration or improvement on or to any building, Dwelling or Common Improvement, nor shall he paint or otherwise decorate or change the appearance of any portion of the exterior of any Dwelling, without prior written approval of the Design Review Committee, pursuant to the Declaration, Article VII. Planting or landscaping of an Exclusive Use Area in any individual style is exempt from such approval, provided growing materials which are natural to the area and Pond Place, which are not diseased, neglected, nor impinge on other Exclusive Use Areas or the Common Areas, are used in such landscaping. Any fabricated item extending above the surface of the earth and permanently attached to a structure or the earth, shall be considered a structural addition. Paving materials are not.

Section 11. Water, Gas and Sewer Charges. Each Owner shall thereafter be required to pay the water, gas and sewer charges pertaining to his Dwelling. Such charges may be separately metered or may be determined in accordance with an engineering determination by the Board of Governors and billed in accordance therewith. The water and sewer services supplied to the Common Improvements shall be billed separately and the Association shall pay such bills as a Common Expense.

Section 12. Electricity. Electricity shall be supplied by the public utility company serving the area directly to each Dwelling, its exterior walls and doors, and any Common Improvements, the exclusive use of which is reserved to such Dwelling, through a separate meter, and each Owner shall be required to pay the charges for such meter. The electricity serving the remaining Common Improvements shall be metered separately, and the Association shall pay all charges for such meters as a Common Expense.

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**Section 13. Right of Access.** Each Owner shall grant a right of access to his Exclusive Use Area and the Dwelling thereon to the Association, for the purpose of making inspections or for the purpose of correcting any condition originating in his Exclusive Use Area or Dwelling or Common Improvements, or for the purpose performing installations, alterations or repairs to the mechanical or electrical services or other Common Improvements in his Exclusive Use Area, provided that requests for entry are made in advance and that any such entry be at a time reasonably convenient to the Member. In case of an emergency, such right of entry shall be immediate, whether the Member is present at the time or not.

**Section 14. Enforcement.** The Board of Governors shall take such action as permitted under the Declaration as it deems appropriate to enforce each and every provision of the Declaration, Bylaws, or Rules and Regulations. Whenever it shall come to the attention of the Board of Governors that a member shall have violated any published rule or regulation of the Association, the Board may, following Notice and Opportunity to be Heard, by a two-thirds (2/3) vote suspend such member's use of the Common Areas pursuant to Article III, Section 2(a) of the Declaration for a period of time up to thirty (30) days, and take such additional actions to enforce the provisions violated, as may be permitted by the Declaration and Bylaws.

**Section 15. Rules and Regulations.** Following Notice and Opportunity to be Heard with respect to the whole membership, written notice of any rules and regulations or amendments thereof which have been promulgated by the Board of Governors shall be given to Members as promptly as possible after the adoption of the same.

**Section 16. Operation of District Common Properties.** *To the extent that, and for so long as, the District maintains, repairs, and replaces the District Common Properties, the Association need not provide for such maintenance, repair, or replacement. In the event that the instrument of lease, conveyance, grant, or license of the District Common Properties to the District provides for the accumulation of reserves for replacement of the deteriorated or depreciated or depreciable capital assets of the Association so conveyed, and the terms of the instrument thereafter terminate the District's rights to the District Common Properties, then the reserve funds shall be deemed to be held in trust for the benefit of the Owners and Leaseholders in proportion to their Undivided Interests and leasehold, respectively. To the extent that the District maintains casualty insurance on the District Common Properties, and following a casualty chooses not to restore, then the insurance proceeds in payment for the casualty shall be deemed to be held for the benefit of the Owners and Leaseholders and their mortgagees and shall be distributed pursuant to Article XIII of the Bylaws.*

## ARTICLE IX – USE OF PROPERTY

The use of any part of the real property subject to the Declaration as the same may be amended, by any Member and all other persons authorized to do so shall be at all times subject to the jurisdiction of the Association, the Declaration, these Bylaws, and such Rules and Regulations as may be prescribed and established by the Board of Governors, specifically:

- a. The Dwellings shall be used for residential purposes only, except for home professional pursuits without employees or regular visits by the public.
- b. Garages shall be used for the storage of motor vehicles and other miscellaneous storage purposes. Such use shall be in a neat and clean manner consistent with their purposes as residential garages accessory to home ownership.
- c. The Common Areas shall be used only for the purposes for which they are intended.
- d. No nuisances shall be allowed on the Land, nor any use or practice which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Land by its residents.
- e. No immoral, improper or offensive or unlawful use shall be made of the Land or any part thereof, and all valid laws, zoning ordinances and regulations of all Governmental bodies having jurisdiction thereof shall be observed. Provisions of the Law, orders, rules, regulations or requirements of any Governmental agency having jurisdiction thereof relating to any portion of the Land shall be complied with, by and at the sole expense of the Owners or the Board of Governors, whichever shall have the obligation to maintain or repair such portion of the Land.
- f. No transient tenants may be accommodated.

## ARTICLE X - AMENDMENTS

Section 1. Power to Amend. Except with respect to Article XIV, Exclusive Use Areas, these Bylaws may be amended by the affirmative vote of seventy-five (75%) percent of the Members and the written consent of seventy-five (75%) of the first mortgagees (based on one vote for each mortgage owned.)

## ARTICLE XI - MORTGAGES

Section 1. Notice to Association. An Owner who mortgages his Undivided Interest or Dwelling or the mortgagees shall notify the Association of the name and address of the mortgagee. The Association shall maintain such information in a book entitled "Mortgagees".

Section 2. Statement of Common Charges. The Association, whenever so requested in writing by an Owner, a prospective Owner, a mortgagee, or by a prospective mortgagee, shall promptly report any then unpaid Common Charges due from, or any other default by, the Owner of the mortgaged interest.

Section 3. Notice of Default. The Association, when giving notice to an Owner of a default in paying Common Charges or other default, shall send a copy of such notice to each such Owner's mortgagee if the name and address of such mortgagee has previously been furnished to the Association.

Section 4. Examination of Books. Each Member and a mortgagee of an Undivided Interest shall be permitted to examine the books of account of the Association at a reasonable time on business days.

Section 5. Special Payments by Mortgagees. Mortgagees of Undivided Interests may jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Land and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Land, and mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement may be reflected in an agreement, irrevocable by the Association, in favor of all mortgagees in Pond Place, and a certified copy of such agreement will be made available to any mortgagee upon request. Amendment of this provision shall not affect agreements previously executed, or revoke agreements on behalf of mortgagees holding certified copies thereof.

## ARTICLE XII - INSURANCE

Section 1. Coverage. To the extent available, the Association shall obtain and maintain insurance coverage as set forth in Section 2, 3 and 4 hereof. All insurance affecting Common Areas shall be governed by the provisions of this Article. Premiums of insurance obtained by the Association shall be a Common Expense.

Section 2. Physical Damage. Common Improvements and all of the personal property owned by the Association shall be to the extent available insured, for the benefit of the Association, the Owners and Members and mortgagees of Dwellings or as their interests may appear, against risks of physical damage as follows:

- a. Amounts. As to real property, the insurance shall be for an amount equal to not less than one hundred (100) percent the insurable value, based on replacement cost of such property subject to physical damage; as to personal



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property, for an amount equal to its actual cash value. Prior to obtaining any insurance on real property under this Section, and at least annually thereafter, the Board of Governors shall obtain an appraisal from a qualified appraiser for the purpose of determining the replacement cost of such real property.

- b. Risks Insured Against. The insurance shall afford protection against loss or damage by reason of:
  - 1. Fire, wash-out and other perils normally covered by extended coverage;
  - 2. Vandalism and malicious mischief;
  - 3. Such other risk of physical damage as from time to time may be customarily covered with respect to buildings and improvements similar in construction, location and use as those on the Land, including, without limitation, builder's risk coverage for improvements under construction; and
  - 4. Such other risks of physical damage as the Board of Governors may from time to time deem appropriate.
- c. Other Provisions. The insurance shall include, without limitation, the following provisions:
  - 1. Waivers by the insurer of rights of subrogation, other than those based on fraud or criminal acts, against the Association, the Owner and Members;
  - 2. That the insurance shall not be affected or diminished by reason of any other insurance carried by any Owner, Member or mortgagee of a Undivided Interest.
  - 3. That the insurance shall not be affected or diminished by any act or neglect of any Owner of, or any occupants or Owners by any improvements when such act or neglect is not within the control of the Association;
  - 4. That the insurance shall not be affected or diminished by failure of any Owner or Member or occupants or owners of any improvements to comply with any warranty or condition when such failure to comply is not within the control of the Association;
  - 5. Such deductible as to loss, but no coinsurance features, as the Board of Governors in its sole judgment deems prudent and economical;
  - 6. That the insurance may not be cancelled or substantially modified (except for the addition of property or increases in the amount of coverage) without at least thirty (30) days prior written notice to the named insured, and to all mortgagees of Undivided Interests.
  - 7. Adjustments of loss shall be made with the Board of Governors of the Association;
  - 8. Proceeds for losses shall be payable to the Board of Governors for the benefit of the Owners, Members and mortgagees at their interest may appear;
  - 9. The named insured shall be the Association for the benefit of the Owners and members of Pond Place Association, Inc.

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- d. Evidence of Insurance. Certificates of insurance signed by an agent of the insurer together with copies of all endorsements thereto and proof of payment of premiums, shall be delivered to all mortgagees of Dwellings at the times such policies are issued and at least ten (10) days prior to the expiration of any then-current policies.

Section 3. Liability Insurance. The Board of Governors shall obtain and maintain public liability insurance for bodily injury and property damage in such limits as the Board of Governors may from time to time determine, insuring the Association, the Board of Governors, the Manager, if any, (at the discretion of the Board of Governors), and each Member or Owner with respect to his liability arising from ownership, maintenance or repair of Pond Place which is the responsibility of the Association including, without limitation, liability arising from construction operations. Such liability insurance shall also cover cross-liability claims among Members and the Association. The Board of Governors shall review such limits at least annually. The insurance provided under this Section shall include, without limitation, the following provisions:

- a. That the insurance shall not be affected or diminished by any act or neglect of any Owner or Member or any occupants or owners of any improvements when such act or neglect is not within the control of the Association;
- b. That the insurance shall not be affected or diminished by failure of any Owner or Member or occupants or owners of any improvements to comply with any warranty or condition when such failure to comply is not within the in control of the Association; and
- c. Waivers by the insurer of rights of subrogation, other than those based on fraud or criminal acts, against the Association and the Owners or Members.

Section 4. Workmen's Compensation Insurance. The Board of Governors shall obtain and maintain Workman's Compensation Insurance to meet the requirements of the laws of the State of Connecticut.

Section 5. Other Insurance. The Board of Governors is authorized to obtain and maintain such other insurance as it may from time to time deem appropriate.

Section 6. District Common Properties Insurance. *To the extent that, and so long as, the District maintains casualty insurance on the District Common Properties fulfilling the requirements of this Article, the Association need not maintain such insurance.*

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**ARTICLE XIII - DAMAGE TO OR DESTRUCTION OF PROPERTY**

Section 1. Duty to Repair or Restore. Any portion of Land and Common Improvements damaged or destroyed shall be repaired or restored promptly by the Association, except as provided in Section 4, 5 and 7 of this Article.

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**Section 2. Estimate of Cost.** Promptly after damage to or destruction of any Common Improvement, and thereafter as it deems advisable, the Board of Governors shall obtain reliable and detailed estimates of the cost of repair and restoration. The Board of Governors may retain the services of an architect to assist in the determination of such estimates and in the supervision of repair and restoration.

**Section 3. Collection of Construction Funds.** Construction funds may consist of insurance proceeds, condemnation awards, proceeds of assessments against Owners or Members, payments by Owners or Members for damage to or destruction of Dwellings, and other funds received on account of or arising out of injury or damage to the land.

- a. **Insurance Proceeds.** The Board of Governors shall adjust losses under physical damage insurance policies of the Association to the extent available. Such losses shall be payable in accordance with Article XII, Section 2(c)(8) herein.
- b. **Condemnation Awards.** Condemnation awards shall be payable in accordance with Article VIII of the Declaration, and such Lease terms as may be in existence.
- c. **Assessments of Owners.** If there is damage or destruction of Common Areas, and the insurance proceeds and/or condemnation awards received by the Association are insufficient to effect the necessary repair and restoration thereof, the Association may levy a special assessment against each member and each Member shall pay such assessment to the Board of Governors on the date specified in the resolution authorizing the same.

**Section 4. Plans and Specifications.** Any repair or restoration must be either substantially in accordance with the architectural and engineering plans and specifications for the original improvements, or according to plans and specifications approved by the Board of Governors and by a majority of the Members and the holders of first mortgages encumbering seventy-five percent (75%) of the Undivided Interests subject to mortgages.

**Section 5. Disbursement of Construction Funds.** The Board of Governors shall deduct from the construction funds its actual costs, and expenses and shall disburse the balance in the following manner:

- a. **Damage or Destruction.** In the event of damage or destruction of the Common Improvements the Board of Governors shall apply such balance to pay directly, and to reimburse the Association for the payment for, the costs of repair or restoration of such Common Improvements including the cost of temporary repairs of the protection of such Dwellings and properties pending the completion of permanent repairs and restoration, and if an architect has been retained by the Board of Governors, upon presentation of an architect's

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certificate stating that the work represented by any such payment has been completed satisfactorily.

- b. Contribution by Owner. General expenses of administration, such as costs, expenses and fees, shall be charged against the Association's construction fund. All portions of such payment by Members and Owners not expended as herein provided shall be refunded to the Members, Owners and the mortgagees of their Undivided Interests as their interests may appear.
- c. Surplus Funds. If, after payment of all repair and restoration, and the refund of any excess payments pursuant to Subsection (b) of this Section, there remains any surplus fund, such fund shall be paid to Members and Owners in proportion to their contributions resulting from assessments levied against them pursuant to Section 3(c) of this Article; provided, however, that no Owner or Member shall receive a sum greater than that actually contributed by him. Any surplus remaining after such payments shall be paid to the Association and shall be part of its general income; except that to the extent such surplus consists of condemnation awards for the taking of units described in Article VIII of the Declaration, it shall be paid to the Members and Owners in the proportion in which such awards were originally made.

Section 6. Determination not to Repair or Restore. If there is substantial total destruction of all of the improvements on Pond Place and 3/4 of the Owners of Undivided Interests vote not to proceed with repair or restoration, and upon prior written approval of at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) and seventy-five percent (75%) of the Owners of the Undivided Interest, any balance of construction funds, after the refund of any payments by Owners pursuant to Subsection (b) of Section 5, shall be disbursed in accordance with the interest of the Owners in Common Areas as listed in Article III of the Declaration, and in accordance with diminution of the fair market value of the buildings on their respective Undivided Interest and Dwellings resulting from such destruction as determined by arbitration. In the event of dispute as to the fact of substantial total destruction, that issue shall be submitted to arbitration in accordance with the rules of the American Arbitration Association.

Section 7. Certificates. The Association may rely on the following certifications:

- a. By the Board of Governors. The Board of Governors shall pass resolutions certifying to the following matters:
  - 1. Whether or not damaged or destroyed property is to be repaired or restored.
  - 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.
- b. By Attorneys. The Board of Governors shall obtain, in the event that any payments are to be made to a Member, an Owner or mortgagee, an Attorney's Certificate of Title based upon a search of the Land Records from

the date of the recording of the original Declaration stating the name of the Owner or Member and the mortgagees.

*Section 8. District Restoration of Damaged Common Properties. To the extent that damage to District Common Properties is restored or repaired by the District, the Association shall not have the duty to so repair or restore. If the District shall not repair or restore District Common Properties and the Association concurs in such non-restoration pursuant to a vote of its Members as provided herein, payment shall be made to the Owners and Leaseholder and their mortgagees by the District (or its insurers) for the insurable loss incurred, pursuant to this Article.*

#### **ARTICLE XIV – SPECIAL BY-LAW WITH RESPECT TO ESTABLISHMENT OF EXCLUSIVE USE AREAS**

Section 1. Establishment of Exclusive Use Areas. The Board of Governors by resolution prior to conveyance of any Undivided Interest and Dwellings may establish Exclusive Use Areas of the Land in the vicinity of and around Dwellings to be conveyed. There shall be one Exclusive Use Area for each Dwelling or for each two physically connected Dwellings, and it shall be of such size and shape to encompass all improvements constituting the Dwelling and such additional Land as may be necessary and desirable to provide for the private use and enjoyment of related portions of the Land to the exclusive benefit of such Dwelling occupants. The size, shape and layout of Exclusive Use Areas shall be totally within the discretion of the Board of Governors in existence at the time of the resolution. The Exclusive Use Areas shall be designated on a map which shall remain on file in the records of the Association.

Section 2. Character of Exclusive Use Areas. Exclusive Use Areas shall be considered a corporate right and privilege as a part of the membership in the Association, shall be a license to use real property but shall not be real property, and shall be personal to the member. However, such membership is automatically an appurtenance of the ownership of an Undivided Interest and may not be separated from such interest although may be assigned in a lease of such interest. The Exclusive Use Area may be used by the member (or his assignee) of the Undivided Interest to which his Dwelling location is assigned in his instrument of conveyance, for the limited purpose of locating, managing, maintaining, altering, expanding and improving a Dwelling, and for other activities and uses ancillary to residential use of such Dwelling. The Member may exclude all other persons from the Exclusive Use Area, and entry thereon without such Member's consent shall be considered trespass, except entry by the Association or its agents for purposes permitted in the Declaration or Bylaws. The Exclusive Use Area shall be subject to use, maintenance, repair, alteration, location, passage over, under and through the same, by Common Improvements and persons using Common Improvements for purposes for which they were intended. Subject to covenants and restrictions of the Declaration and Bylaws, the Member shall be responsible for occupancy, landscaping, maintaining and preserving his Exclusive Use area, except for such elements for which the Association is responsible to regulate or maintain. Landscaping, maintaining and preserving such Exclusive Use Area shall be deemed for the sole benefit of the member thereof, and any mechanics lien for such work done shall attach only to the Undivided Interests in the Exclusive Use Area not assigned hereunder shall be retained by the collective Owners of the Land.

**Section 3. Amendment.** Amendment or revocation of this Article XIV of the Bylaws or of a Resolution establishing the Exclusive Use Areas shall be only by a vote of ninety percent (90%) of the membership, the written consent of the holders of all mortgages on the Land, and if the amendment affects the size, shape, or layout of less than all of the Exclusive Use Areas, by the written consent of the Owners and Members directly affected.

## **ARTICLE XV - RECORDS**

**Section 1. Records.** The Association shall keep detailed records of the actions of the Board of Governors, minutes of meetings of the Board of Governors, minutes of the meetings of the Members, names of the Owners, members and mortgagees, a copy of current, as built, plans and specifications for the buildings, utility lines and structures consisting of Common Improvements, and financial records and books of account for Pond Place, including chronological listing of receipts and expenditures, as well as a separate account for each Undivided Interest which, among other things, shall contain the amount of each assessment of Common Charges against such Undivided Interest, the date when due, the amount paid thereon, and the balance remaining unpaid. Unless the Member or Owner notifies the Association of change in ownership, the Association may rely on the names of Owners and Members appearing on the municipal tax assessor's list as of the last municipal assessment date.

**Section 2. Statement.** A written report and statement summarizing all receipts and expenditures of the Association shall be rendered by the Board of Governors to all Owners at least annually.

**Section 3. Annual Report.** In addition to the annual statement referred to above, an Annual Report of the receipts, expenditures and current financial statement of the Association, prepared but not necessary audited, by a certified public accountant, shall be rendered by the Board of Governors to all Members after the end of each fiscal year.

**Section 4. Examination of Records.** Each Owner, Member and mortgagee shall be permitted to examine the books of account of the Association at reasonable times on business days, but not more than once a month.

## **ARTICLE XVI – MISCELLANEOUS PROVISIONS**

**Section 1. Record Date.** The record date for determination of members of record entitled to notice of or to vote at any meeting of members shall be at the close of business on the day next preceding the day in which notice is to be given, or if notice is waived, the day next preceding the day on which the meeting is held. In the case of actions to be taken by written consent or dissent of members without meeting, the record date shall be the date such consent or dissent is received by the Association.

**Section 2. Checks.** All checks or demands for money and notes of the Association, shall be signed by such officer or officers or such other person or persons as the Board of Governors may from time to time designate.

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**Section 3. Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Governors.

**Section 4. Tort Liability.** Each Owner and member shall be deemed to have released and exonerated each other Owner and member and the Association, and the Association shall be deemed to have released and exonerated each Owner and Member, from any tort liability other than that based on fraud or criminal acts to the extent to which such liability is satisfied by the proceeds of insurance carried by and Owner, Member or by the Association.

**Section 5. Notices.** All notices hereunder shall be sent by mail to the Association at this office, Pond Place, Avon, Connecticut, to Owners' or Members' Dwelling or to such other address as may have been designated by such Owner or Member from time to time in writing to the Association; to mortgagees at their addresses as designated by them from time to time in writing to the Association. All notices from or to the Association shall be deemed to have been given when mailed, except notice of changes of address, which shall be deemed to have been given when received.

**Section 6. Captions.** The Captions herein are inserted as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provisions thereof.

**Section 7. Gender.** The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, the use of singular shall be deemed to include the plural, when the context so requires.

**Section 8. Nonapplicability of Rule of Eiusdem Generis.** The rules of eiusdem generis shall not be applicable to limit a general statement following or referable to an enumeration of specific matter to matters similar to the matters specifically mentioned.

**Section 9. Invalidity.** Invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

**Section 10. Conflict.** These Bylaws are set forth to comply with the requirements of the Nonstock Corporation Act, and the Declaration. In the event of any conflict between these Bylaws and the provision of such Act or of the Declaration, the provisions of such Acts, or of the Declaration, as the case may be, shall control. In the event of conflicts between amendments to the Bylaws and the Declaration or between amendments to the Bylaws and amendments to the Declaration, the latest amendment shall control.

**Section 11. Waiver.** No restriction, condition, obligation, or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violations or breaches thereof which may occur.

## **GOVERNING ORDINANCE**

### **OF THE POND PLACE TAX DISTRICT**

#### **ARTICLE I - THE ORDINANCE**

##### Section 1.1. General.

- a. This Ordinance, adopted pursuant to Chapter 105 of the General Statutes of Connecticut (the "General Statutes"), provided for the administration of the local affairs of the Pond Place Tax District (the "District").
- b. Matters of administration of local affairs not provided for by applicable provisions of the General Statutes or of the Connecticut Special Acts shall be governed as provided in this Ordinance.

#### **ARTICLE II - THE DISTRICT**

Section 2.1. Purposes. The purposes for which the District was formed, and in furtherance of which it is authorized to act (but only if and to the extent so authorized in a lease or conveyance of property to the District), include the following: To extinguish fires; to light streets; to plant and care for shade and ornamental trees; to construct and maintain roads, sidewalks, crosswalks, drains and sewers; to appoint and employ watchmen or police officers; to construct, maintain and regulate the use of recreational facilities to plan, lay out, acquire, construct, reconstruct, repair, maintain, supervise, operate, regulate and manage a flood control or erosion system or a community water system; to collect garbage, ashes and all other refuse matter in any portion of the District and provide for the disposal of such matter. (ref: Conn. Gen. Stat. §7-326.)

Section 2.2. Powers. In addition to all statutory and constitutional powers and authority granted to the District, the District shall have all powers incident to the management of its property, government and affairs, for all purposes not prohibited by law, including but not limited to the right to enter into contracts with providers of management or related services and to wind up its affairs in the event that the rights granted and duties undertaken in a lease or conveyance of property to the District are terminated.

#### **ARTICLE III – DISTRICT MEETING**

Section 3.1. Legislative Body. The legislative body of the District shall be the District meeting, and this body shall possess all powers conferred on the District under this Ordinance and by the laws and constitution of the State of Connecticut, except as such powers may from time to time be lawfully delegated to the Board of Directors of the District (hereinafter referred to as the "Board") or to other proper persons or entities.

##### Section 3.2. Meetings.

- a. The annual meeting of the voters of the District shall be held in the month of May in each year, at such place, date and time as the Board may specify, to adopt a budget, approve contracts, and transact other business as may properly come before the meeting.



## Governing Ordinance

- b. Special meetings of the District may be called as necessary from time to time by the President, or by any three of the Directors, to transact such business as may be duly designated in the notice of the meeting. (Ref: Conn. Gen. Stat. §7-327[a].)
- c. At least ten days before each annual or special meeting of the District, a notice signed by the President or by any three of the Directors shall be posted at the location within the District designated for such purpose in Section 9.2 hereof, and a copy of such notice shall be mailed first class, postage prepaid to all voters of record. Such notice shall state the date, time and place of the meeting and the business to be transacted. (Ref: Conn. Gen. Stat. §7-327[a].)
- d. A quorum for the transaction of business at any meeting of the District shall be fifteen (15) voters, and if fifteen (15) voters are not present at such meeting from time to time, the President, or in his absence, the Vice-President, may adjourn the meeting from time to time until at least fifteen (15) voters are present. All meetings of the District where a quorum is present may be adjourned from time to time by a majority of the voters present and voting on the question. (Ref: Conn. Gen. Stat. §7-327[a].) Except as otherwise herein provided, all questions arising at any meeting of the District shall be decided in accordance with standard parliamentary practice.
- e. Unless otherwise required by this Ordinance, substantive actions of the District shall be by majority vote of those present and voting. At any annual or special meeting, the voters may, by majority vote of those present and voting, discontinue any purposes for which the District is established or undertake any additional purposes, which the District is legally authorized to undertake. (Ref: Conn. Gen. Stat. §7-327[a].) At any annual or special meeting, the voters may, by a two-thirds (2/3) vote of those present and voting, adopt a proposal not inconsistent with governing provisions of the General Statutes to amend this Ordinance, except Article VIII hereof, which may be amended by majority vote of those present and voting. Such amendments shall be duly presented in accordance with the provisions of Section 9.3 hereof.

## ARTICLE IV - OFFICERS AND DIRECTORS

Section 4.1. Board of Directors. The Board shall consist of eight (8) members: the President, the Vice-President, the Clerk and five (5) Directors. The maximum number of members of the Board who may be members of the same political party shall be five (5). (Ref: Conn. Gen. Stat. §7-327[a], §9-167[a].)

### Section 4.2. Responsibilities of the Board.

- a. Except as otherwise provided by law or by this Ordinance, the Board shall be responsible for the management of the affairs of the District, and shall possess all powers proper, incidental or convenient with respect to these responsibilities, including without limitation all powers and authority conferred on the Board by this Ordinance and by the laws and constitution of the State of Connecticut.

**Governing Ordinance**

**( Article IV )**

- b. The Board shall be responsible for the carrying out of the acts, policies and ordinances of the District meeting, except where the District meeting otherwise designates, and shall maintain an adequate set of books and records reflecting the affairs of the District.

Section 4.3. Meetings of the Board. A meeting of the Board may be called by the President or by any two of the Directors upon not less than two (2) days written or oral notice, which notice may be waived in writing. Five (5) Directors shall constitute a quorum, and substantive actions of the Board shall be by majority vote of those present and voting. Any of the Directors may participate in a meeting of the Board by telephone. If all the Directors consent in writing to any action taken or to be taken by the Board such action shall be as valid as though it had been taken at an authorized meeting of the Board.

Section 4.4. Elections of Officers and Directors. The Officers and Directors shall be elected each year at the annual meeting of the District and shall serve for a term of one year or until their successor is elected, whichever is later. At least ten days before such meeting at which elections are to be held the Clerk shall send to each voter via first class mail, postage prepaid an announcement of such elections, stating the time, date and place at which the elections are to be held and the positions to be filled, and providing each voter an opportunity to place names in nomination. Additional nominations shall be accepted at the annual meeting. Elections shall be held in the following order: President; Vice-President; Clerk; Treasurer; Directors.

Section 4.5. Vacancies. Vacancies on the Board or among the Officers shall be filled for the duration of the unexpired term by a majority vote of the remaining Directors.

Section 4.6. President. The President shall be the chief executive officer of the District and shall be a member of the Board. He shall preside at all meetings of the voters of the District and at all meetings of the Directors and at all meetings where he presides he shall vote to dissolve a tie when necessary. He shall designate the duties devolving upon each of the five (5) Directors, shall approve all bills for payment by the Treasurer and shall be, ex officio, a member of all committees and board of the District. (Ref: Conn. Gen. Stat. §7-327[b].)

Section 4.7. Vice-President. The Vice-President shall be a member of the Board and shall have all the authority, power and duties of the President whenever the President vacates his office, is absent, or from any cause is unable to perform his duties. (Ref: Conn. Gen. Stat. §7-327[b].)

Section 4.8. Clerk. The Clerk shall be a member of the Board, shall keep a record of the minutes of all meetings of the voters of the District and of the Board and shall keep at all times a list of the voters of the District. (Ref: Conn. Stat. §7-327[b].)

**Section 4.9. Treasurer.** The Treasurer shall have charge of the collection and payment of all moneys to the District, under such rules and regulations as shall be prescribed by the Board and shall prepare an annual budget as provided in Section 5.1 hereof. (Ref: Conn. Gen. Stat. §7-327[b].)

**Section 4.10. Committees.** The Board may, from time to time, establish committees as deemed appropriate to advise the Board. Each such committee shall consist of a chairman and two or more members selected from among the voters of the District and shall also include a member of the Board. The responsibilities of such committees shall be as designated by the Board.

## **ARTICLE V – BUDGET AND TAXES**

### **Section 5.1. Preparation by Treasurer.**

- a. When the preparation and review of the grand list of the Town of Avon has been completed in each year, the Treasurer shall commence forthwith to prepare a proposed annual budget for the District for the fiscal year beginning the following July 1. The Treasurer shall submit the proposed annual budget to the Board between the fifteenth (15th) and the thirtieth (30th) day of April in each year. (Ref: Conn. Gen. Stat. §§ 7-327[b] and [c].)
- b. Motor vehicles shall be exempt from any tax levied by the District on the assessed value of personal property. (Ref: Publ. Act No. 79-542.)

**Section 5.2. Review by Board.** Upon receiving the proposed annual budget from the Treasurer, the Board shall review such budget and transmit the same to the voters of the District with comments and recommendations. (Ref: Conn. Gen. Stat. §7-327[b].)

**Section 5.3. District Budget Meeting.** The voters shall meet each year on or before the thirtieth (30th) day of May to adopt the annual budget, lay the tax and fix the tax rate. (Ref: Conn. Gen. Stat. §7-327[c].) Copies of the proposed budget and the comments and recommendations of the Board shall be made available to the voters no less than five (5) days before the date of the annual or special meeting at which the budget is to be considered.

**Section 5.4. Levy of Tax.** The annual budget shall become official when approved by the voters of the District. When the District meeting has fixed a tax rate, the Clerk shall prepare a rate bill, apportioning to each owner of property in the District his proportionate share of the taxes, a copy of which rate bill, when prepared, shall be delivered to the Treasurer. (Ref: Conn. Gen. Stat. §7-328.) The tax levied by the District shall be sufficient, in addition to other estimated yearly income of the District, to pay the expenses and appropriations of the District for the current year, and also to absorb any revenue deficit of the District at the end of the preceding fiscal year.

**Section 5.5. Payment of Tax.** Taxes of the District shall be payable in four (4) equal quarterly installments, due on the first day of July, October, January and April in each year. (Ref: Conn. Gen. Stat. §12-242.) The amount of any installment remaining unpaid on the first day of the month next succeeding the month in which such installment became due, shall thereupon become delinquent and shall be subject to interest from the due date at the rate of twelve percent (12%) per annum. (Ref: Conn. Gen. Stat. §12-246.)

**Section 5.6. Special District Meeting.** In the event that the needs of the District in any year exceed the amount included in the annual budget, the Board may call a special budget meeting of the voters of the District for the purpose of approving an emergency appropriation. Notice of any such special budget meeting shall be given in accordance with the provisions of Section 3.2.C. hereof.

## **ARTICLE VI – ORDINANCES**

**Section 6.1. Adoption of Ordinances.** The District may adopt ordinances, with penalties to secure their enforcement, for the purposes of regulating the carrying out of its purposes as defined in Section 2.1 hereof. (Ref: Conn. Gen. Stat. §7-328.) Except as otherwise herein provided, the District meeting shall have the sole power to enact ordinances.

**Section 6.2. Presentation to District: Administrative Regulations by Board.**

- a. All proposed ordinances presented to the District meeting shall be presented to the Board. With each such presentation the Board shall include its recommendations regarding the proposed ordinance.
- b. Article 6.1 hereof notwithstanding, the Board may enact administrative regulations pursuant to Article VIII hereof, or any subsequent enabling ordinance, upon the affirmative vote of a majority of its members. Such administrative regulations shall be for the purposes enumerated in, and subject to the restrictions of, Article VIII and any subsequent enabling ordinance. No such administrative ordinance may enlarge or diminish the powers granted to the Board. The voters of the District may vote to rescind any such administrative regulation at any annual or special meeting.

**Section 6.3. Public Hearing.** Before any ordinance is adopted pursuant to Section 6.2.A or 6.2.B hereof, a full opportunity shall be provided for a public hearing, duly noticed, at which the voters may discuss the proposal with the Board and present their views thereon.

## ARTICLE VII – BORROWING

Section 7.1. Bonds, Notes, Certificates of Indebtedness. Subject to the provisions of the General Statutes, the District may issue notes, bonds or certificates of indebtedness and the Board may pledge the credit of the District for any money borrowed for the construction of any public works which the District is authorized by law to undertake, or for any other purpose permitted by law. (Ref: Conn. Gen. Stat. §7-328.)

Section 7.2. Approval of Borrowing. Issuance of bonds or other obligations shall require approval of the District meeting. (Ref: Conn. Gen. Stat. §7-328.) A draft of the resolution for any proposed borrowing shall be included in the notice of the annual or special meeting at which such borrowing is to be considered. Such resolution shall specify the denominations, maturity dates and other details of the proposed bonds or other obligations.

Section 7.3. Custody of Funds; Records of Borrowing. All moneys received by the Board on behalf of the District from the sale of any bonds or other obligations shall be paid to the Treasurer. The Board shall keep a record of all notes, bonds and certificates of indebtedness issued, disposed of, and pledged by the District. (Ref: Conn. Gen. Stat. §7-328.)

## ARTICLE VIII – ADMINISTRATIVE REGULATIONS, RESOLUTIONS AND ENFORCEMENT PROCEDURES

Section 8.1. Administrative Regulations. The Board may adopt administrative regulations pursuant to Section 6.2.B, following public hearing as provided under Section 6.3, for the following purposes:

- a. To prevent nuisances in the recreational property of the District, or any use or practice which is a source of annoyance to residents or which interferes with their peaceful possession and proper use by the residents, guests and invitees of Pond Place.
- b. To prohibit immoral, improper, offensive or unlawful use to be made of the recreational property of the District, and to enforce all valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereover.
- c. To limit the use of the recreational facilities and property of the District to owners, residents and voters of the District, their tenants, guests, invitees, and other members of Pond Place Association, Inc.
- d. To regulate the construction and maintenance of roads, sidewalks, crosswalks, drains and sewers, including the establishment of speed limits and other use restrictions.
- e. To adopt such fines and penalties as may be established by resolution of the Board, not to exceed \$100 per day per violation plus actual damages and costs of collection, for violation of the ordinances and regulations of the District.

**Governing Ordinance**

**( Article VIII )**

- f. To schedule and establish charges for reasonable fees and other use charges for the use of the recreational facilities which places additional burdens on the facilities or staff beyond that necessary for normal day to day activities or which offer a unique facility limited to fewer than all voters, residents and guests of the District.
- g. To prevent increases in hazard, or diminution of safety of the property and facilities of the District, and by reference to adopt the regulations of the New England Fire Underwriting Bureau for such purposes.
- h. To provide for licenses, concessions, permits, identification systems and administrative procedures to restrict access to, and use of, the property of the District to voters, residents, owners and their guests, members, or family invitees, employees of the District or its contractors, suppliers or their employees or invitees, for purposes of security, prevention of vandalism and overcrowding, operations by concessionaires, control of persons using facilities, including age, skill and other classifications related to ability, safety, health and training for such purpose and need for such use and to issue guest passes for the limited use of recreational facilities.

**Section 8.2. Administrative Resolutions.** The Board may by resolution, and without public hearing, undertake such actions, resolutions, investigations, execution of documents and delegation of powers to officers therefore, as may be reasonably necessary to effectuate the purposes of this ordinance including:

- a. Provide for internal administration, employment, and dismissal of personnel, contracting, accounting, handling of funds, obtaining and disposing of services and property of the District, entering into contracts with management and other service contractors for fulfilling the purposes of the District, and delegating thereto such administrative powers to fulfill their duties as required by such contract. No disposition of property may be in violation of property rights established by the Pond Place Declaration of Covenants, Easements, Reservations and Tenancies in Common that apply to such property. Agents and employees of the District may be appointed and removed, their compensation established and such fidelity and security bonds may be required as the Board deems prudent. Members of the Board may be employed in any capacity whatsoever.
- b. Acquire, lease, sublease, build, operate and maintain the roads, utilities, recreation parks, playgrounds, swimming pools, tennis courts, trails, parking lots, open space, commons, streets, footways, including building structures, personal property incident thereto with respect to the real property of the District within budgets established therefore by ordinance.
- c. Open bank accounts in the name of the District and designate signatories required therefore.
- d. Obtain and maintain insurance on any property which the District is authorized to utilize for District purposes pursuant to a lease or conveyance.

( Article VIII )

- e. Establish trust and appoint trustees for the accumulation of capital reserves for the benefit of the contributors thereto.
- f. Establish enforcement, collection, hearing, meeting conduct, and other procedures required for the administration of its duties.
- g. Do all things reasonably necessary to effectuate the above purpose and as permitted by law or the enabling or other ordinances of the District.

Section 8.3. Enforcement Procedures. Following notice to the affected party and opportunity to be heard by designated officers, by employee, by committee of the Board with appeal to the Board, or by the Board itself, pursuant to procedures established by resolution of the Board providing for fundamental fairness to the affected party, the Board may undertake the following actions in enforcing the administration regulations adopted under Section 8.1, and the general ordinances of the District:

- a. Suspend the right to use recreational facilities of the District not necessary for access to a highway for such period as violation of the ordinances and regulations adopted thereunder exist, and for an additional period up to 30 days.
- b. Levy such fines and penalties as may be established by resolution pursuant to Section 8.1. ~~b.e~~
- c. Commence actions to enjoin, abate, or collect damages for, such violation, or damage as may be incurred by any person within the jurisdiction of the District.

Section 8.4. Records of Regulations, Resolutions and Actions Taken Under This Section.

The District shall publish all regulations and amendments thereof passed under Section 8.1, and shall distribute copies thereof to all voters of the District, in a form that can be supplemented by additional regulations as passed and distributed, and maintained in a unified manner. No regulation shall be effective until fifteen days after distribution or mailing to such voters and electors. Periodically but at least bi-annually the regulations of the District shall be compiled and re-issued as a single code. The Code of Regulations shall have a Table of Contents by subject matter.

The District shall maintain in chronological order, a book of resolutions passed pursuant to Section 8.2, and which shall be kept available for review by voters of the District at such place as shall be established by the Board of Directors. The book of resolutions shall have an index by subject matter.

The District shall maintain in chronological order, a record of enforcement proceedings pursuant to Section 8.3, which shall be kept with the other official records of the District, and which shall be indexed by subject matter and name of the affected party.

Section 8.5. Amendment of this Article. This Article VIII may be amended by ordinance of the District by a meeting upon the affirmative vote of a majority of the voters present and voting on the question.

**ARTICLE IX – MISCELLANEOUS PROVISIONS**

**Section 9.1. Authority for Contract Expenditures.** No contract or obligation which involves an expenditure in the amount of two thousand dollars (\$2,000) or more in any one year shall be made by the Board unless the same is specially authorized by a vote of the District or is an item or part of an item in the annual District budget or in any emergency appropriation authorized pursuant to Section 5.6 hereof. (Ref: Conn. Gen. Stat. §7-328.)

**Section 9.2. District Sign Post.** Any notices or announcements required to be posted in some prominent place within the District shall be posted on the bulletin board at the Pond Place tennis court.

**Section 9.3. Amendments.** This Ordinance may be amended, as provided in Section 3.2.E hereof, upon the presentation of a proposed amendment to the District meeting by the Board. The language of any such proposed amendment shall be included in the notice of the annual or special meeting at which the proposed amendment is to be considered.

**Section 9.4. Fiscal Year.** The fiscal year of the District shall begin on July 1 in each year and end on the following June 30.



## CERTIFICATE OF INCORPORATION

### NONSTOCK CORPORATION STATE OF CONNECTICUT SECRETARY OF THE STATE

The undersigned incorporator(s) hereby form(s) a corporation under the Nonstock Corporation Act of the State of Connecticut:

1. The name of the corporation is POND PLACE ASSOCIATION, INC.
2. The nature of the activities to be conducted or the purposes to be promoted or carried out by the corporation, are as follows.
  - a. General. To promote the health, safety, welfare and recreation of the residents within the property known as "Pond Place, Avon, Connecticut" and for this purpose to:
    - (i) own, acquire, build, operate, and maintain roads, recreation parks, playgrounds, ponds, trails, parking lots, open spaces, common streets, footways, including buildings, structures, personal properties incident thereto; hereinafter referred to as "Common Improvements".
    - (ii) provide exterior maintenance for the Common Improvements, limited to the common and mutual benefit of all of the members, and the preservation of property values and the character of the whole property;
    - (iii) provide security protection;
    - (iv) maintain unkempt lands or trees;
    - (v) supplement municipal services;
    - (vi) fix assessments (or changes) to be levied against the interests in the properties;
    - (vii) enforce any and all covenants, restrictions and agreements applicable to Pond Place;
    - (viii) pay taxes, if any, on the land;
    - (ix) provide recreational facilities and services to its Members subject to the payment of fees therefore;
    - (x) to act as agent and attorney-in-fact for the owners of Undivided Interest as tenants-in-common, in managing, maintaining and operating Pond Place for the mutual benefit of the owners and leaseholders holding the interest required for membership;
    - (xi) insofar as permitted by law, to do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of the residents of the Properties; and
    - (xii) to do any and all things permitted to a nonstock corporation consistent with the above purposes under the laws of the State of Connecticut.
3. The corporation is nonprofit and shall not have or issue shares of stock or pay dividends. No part of the corporation's income shall be distributable to its members, Director or officers.

Certificate of Incorporation

4. The classes, rights privileges, qualifications, obligations, and the manner of election or appointment of members are as follows;

- a. Every person or entity who is a record owner or leaseholder of undivided interest which is subject by covenants of record to assessment by the Corporation shall be a member of the Corporation, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.
- b. The Corporation shall have two classes of voting membership:

**Class A** Members shall be all those owners of Undivided Interest within Pond Place with the exception of the Developer. Class A Members shall be entitled to one vote for each interest required for membership by Section a. When more than one Person holds such interest or interests, all such Persons shall be Members, and the vote for such interest shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Undivided Interest.

**Class B** Members shall be the Developer. The Class B member shall be entitled to three votes for each Undivided Interest developed, or designated to be developed in Pond Place in which it holds the interest required for membership by Section a, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class B membership equal the total votes outstanding in the Class A membership; or
- (ii) on January 1, 1982.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Undivided Interest in which it holds the interests required for membership under Section a.

- c. for purposes of dissolution, or distribution of assets only, Class A and B Members shall be deemed to own one share for each Undivided Interest in which they respectively hold interest required for membership.

5. **Other provisions:** The Corporation may be dissolved only with the assent given in writing and signed by the Members entitled to cast two-thirds of Class A and B of its Membership. Written notice of a proposal to dissolve, setting forth the reasons therefore and the disposition to be made of the assets (which shall be consonant with Article 6 hereof) shall be mailed to every member at least ninety (90) days in advance of any action taken.

# **Certificate of Incorporation**

6. Upon dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to by the corporation. No such disposition of association properties shall be effective to divest or diminish any right or title of any member vested in him under the recorded covenants and deeds applicable to Pond Place unless made in accordance with the provisions of such covenants and deeds.
7. This Certificate may be amended in accordance with the law, provided that the voting and quorum requirements specified for any action under any provisions of this certificate shall apply also to any amendment of such provision, and provided further that no amendment shall be effective to impair or dilute any rights of members that are governed by the recorded covenants and restrictions applicable to Pond Place (as, for example, membership and voting rights) which are part of the property interests created thereby.
8. The corporation shall exist perpetually.

**POND PLACE**  
**STANDARD GROUND LEASE COVENANTS**

Introduction: The FIP Homes Company (lessor), a Connecticut corporation having an office in Farmington, Connecticut, is the owner of certain real property known as Pond Place, situated in the Town of Avon, County of Hartford and State of Connecticut on the southerly side of West Main Street (the Land) and shown on a map entitled "Map of Pond Place Owned by The FIP Homes Company Avon, Connecticut Scale: 1" = 40' August 1977 Hodge Surveying Association, P.C." which map is on file in the office of the Avon Town Clerk.

Lessor intends from time to time to enter into leases of undivided interests in the Land with purchasers of homes at Pond Place.

These Pond Place Standard Ground Lease Covenants will be incorporated by reference into such leases (included in the document entitled "Pond Place Warranty Deed and Ground Lease") and shall have the same force and effect as if fully set forth therein.

Section 1. Extra Costs. In addition to the Rent, Leaseholder shall also pay, as the same shall become due and payable, all Impositions (as defined in paragraph 3), and all Common Charges and other charges and obligations with respect to or arising out of the ownership of the Dwelling or the Lease pursuant to the Declaration or otherwise, and any other costs, expenses, liabilities or other payments which Leaseholder under any provision of this Lease assumes or agrees to pay, and interest as hereafter provided, all of the foregoing payments collectively called Extra Costs. In the event of nonpayment of any item of Extra Costs, Lessor shall have the rights and remedies provided herein or by law in the case of nonpayment of the Rent. Interest at the Agreed Rate (as defined in paragraph 23) shall be added to any payment due hereunder not paid by the due date. At the commencement and termination of the Term, Extra Costs for the then current Lease Year shall be equitably apportioned except as otherwise provided herein.

Section 2. Payment; No Abatement. All payments to be made to Lessor hereunder shall be payable to Lessor or the person or persons designated by Lessor, at Lessor's address or the address designated by Lessor, and shall be in lawful money of the United States of America which shall be legal tender for payment of all public and private debts and dues at the time of payment. Leaseholder shall pay the Rent and Extra Costs without notice or demand and without abatement, deduction, counterclaim, set-off or defense.

Section 3. Impositions.

- a. Payment - Leaseholder shall bear, pay and discharge, on or before the last day on which payment may be made without penalty, fine or interest, all taxes, assessments, water and sewer rents, rates and charges, and other governmental or municipal excises, levies, fees, impositions and charges of every kind and nature whatsoever, general or special, ordinary or extraordinary, foreseen or unforeseen, for permanent or temporary improvements or benefits and each and every installment thereof (including all penalties, fines or interest thereon), which shall or

## Standard Ground Lease Covenants

may during the Term become due and payable or be charged, laid, levied, assessed, imposed, or become alien upon, or arise in connection with the use, occupancy, or possession of the Leasehold, the Land or the Dwelling or any part thereof, and all taxes charged, laid, levied, assessed, or imposed in lieu of or in addition to the foregoing under all present or future laws, ordinances, requirements, orders, rules or regulations of any governmental authorities now or hereafter having jurisdiction (all hereinafter called "Imposition" and any one an "Imposition"). To the extent that the same may be permitted by law, Leaseholder may apply for the conversion of any special assessment for local improvements in order to cause the same to be payable in installments, and upon such conversion Leaseholder shall promptly pay and discharge such installments as they become due and payable. Nothing herein shall be construed to require Leaseholder to pay any inheritance, estate, succession, transfer, gift, franchise, corporation income or profit tax, or capital levy that may be imposed upon Lessor, except in a case where a tax may be levied, assessed or imposed upon the income arising from the rent hereunder for the use and occupancy of the Leasehold which is actually in lieu of, or as substitute for, any Imposition, or part of any Imposition. Any Imposition applicable to a period which is partly within the Term and partly outside the the Term shall be apportioned between Lessor and Leaseholder in accordance with the respective portions of each such period except as otherwise herein expressly provided. Leaseholder shall furnish Lessor on demand within 30 days after the date when any Imposition is due, official receipts by the appropriate taxing authority, or other proof reasonably satisfactory to Lessor, evidencing the payment of such Imposition.

- b. Contest - Leaseholder shall have the right to contest or review by appropriate legal proceedings, or in such other lawful manner as it may deem suitable and, if necessary and lawful, and with the prior written consent of Lessor, in the name of Lessor, any Imposition, in which case Leaseholder shall conduct the same promptly, at its own expense, and free of any expense to Lessor. Leaseholder shall take all necessary action which would reasonably be taken by an owner in connection with any such proceedings to protect Lessor's interest in the reversionary interest and to prevent the Leasehold and Land, or any part thereof, from being sold, forfeited or otherwise impaired because of such proceedings. If there shall be any refund to Lessor with respect to any contested item based on a payment by Leaseholder, Leaseholder if not in default under this Lease, shall be entitled to the same to the extent of such payment. Leaseholder shall give Lessor prior written notice of the commencement of any such proceeding and Lessor may at its option and at its expense join in such proceedings.

### Section 4. Alterations.

- a. Right to make Alterations - Leaseholder may, from time to time at his own expense, make any alterations, excavations, replacements, repairs, changes, additions, demolitions and improvements (collectively called Alterations) within his Exclusive Use Area, but only in accordance with and subject to the terms and conditions of the Declaration.

- b. Liens as a Result of Alterations. Should Leaseholder cause any Alterations to be made, or cause labor to be performed or material to be furnished with respect to the Dwelling or the land, Leaseholder shall promptly pay for the same and neither Lessor, other Leaseholders, nor the Leasehold or Land shall under any circumstances be liable for the payment of any expenses incurred or for the value of the work done or material furnished, but all such alterations and labor and material, shall be made, furnished and performed at Leaseholder's expense and Leaseholder shall be solely and wholly responsible to contractors, laborers and materialmen furnishing and performing such labor and material. If because of any act or omission or alleged act or omission of Leaseholder, any mechanic's, laborer's, materialman's, vendor's or other lien, charge, order for the payment of money, or any other encumbrance shall be filed against the Leaseholder, the Land or any part thereof, or against Lessor or any other Leaseholder, or any financing statement, conditional bill of sale or chattel mortgage shall be filed or recorded affecting the Leasehold, Leaseholder shall promptly provide Lessor with reasonable indemnification for the full and final payment and discharge thereof and take whatever action is necessary to dismiss and discharge the same and shall take all necessary action to protect Lessor's interests. If Lessor, satisfies any such lien or claim, Lessor shall be subrogated to whatever rights such lienor or claimant may have had against Leaseholder and against Leaseholder's interest in the Dwelling, the Leasehold, the Land and Leaseholder's rights and privileges as a member of the Association.

Section 5. Indemnity. Leaseholder shall, protect, indemnify and save harmless Lessor against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature (including interest and reasonable counsels' fees,) incurred by or on behalf of Leaseholder, or anyone claiming by, through or under Leaseholder, by reason of, or arising out of:

- a. any accident, injury or damage which shall happen in, on, about, or in connection with, the Leasehold and Exclusive Use Area or any part thereof, and any matter or thing growing out of the condition, occupation, maintenance, alteration, repair, use, non-use, or operation of the Leasehold and Exclusive Use Area or any part thereof, other than any accident, injury or damage due to the willful or negligent acts of Lessor, its employees, agents, contractors or subcontractors; and
- b. any act or failure to act by Leaseholder, its employees, agents, contractors, subcontractors, invitees, sublessees, assignees or licensees or any failure by Leaseholder to perform any of the agreements, terms, covenants or conditions of this Lease on Leaseholder's part to be performed.

In case any action or proceeding is brought against Lessor by reason of any such occurrence, Leaseholder, upon Lessor's request, will, at Leaseholder's expense, resist and defend such action or proceeding or cause the same to be resisted and defended, either by counsel designated by Leaseholder and approved by Lessor, or where such occurrence is covered by liability insurance, by counsel designated by the insurer. Nothing in this Article 5 shall require or be construed to require Leaseholder to pay any judgments against Lessor resulting from Lessor's willful or negligent acts or failures to act, or liens against the Leasehold resulting from Lessor's acts or failure to act.

To the same effect, Lessor will indemnify and hold harmless Leaseholder against and from all such acts or failures to act, demands as described above, by or on behalf of Lessor or anyone claiming by, through or under Lessor by the same reason.

**Section 6. Insurance.** Leaseholder shall, at his own cost and expense, promptly observe and comply with all terms and provisions of all insurance policies covering or applicable to the Leasehold or any part thereof, all requirements of the issuers of such policies, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters or any other body exercising similar functions.

**Section 7. Condemnation.** Leaseholder hereby assigns to Lessor any award for the taking of all or a portion of the Leasehold or the Land by exercise by any governmental authority of the power of eminent domain. After receipt of such award by Lessor, it shall be equitably divided between Lessor and Leaseholder.

In the event of a taking which does not directly affect Leaseholder's Dwelling or Exclusive Use Area, this lease shall continue in full force and effect, without diminution of rent.

In the event of a taking which directly affects Leaseholder's Dwelling or Exclusive Use Area, Leaseholder may terminate this Lease upon giving Lessor written notice within 120 days after the recording in the Avon Land Records of the notice of taking or its equivalent, such termination to be deemed an Involuntary Termination. In the absence of such termination by Leaseholder, this Lease shall continue in full force and effect, without diminution of rent.

**Section 8. Surrender upon Involuntary Termination.** The Leaseholder shall immediately upon an Involuntary Termination of this Lease, peaceably and quietly surrender and deliver to the Lessor the Leaseholder's interest in the Land free and clear of any and all liens, encumbrances, charges, exceptions, easements and restrictions placed upon the Leaseholder during the Term by any person other than the Lessor except such amendments to the Declaration as may have occurred. Any lien placed upon the Leasehold estate except the lien of an institutional first mortgage and lien in favor of Pond Place Association, Inc. shall be subordinate to the rights of the Lessor under this paragraph. No surrender to the Lessor of this Lease or of the Leasehold or any part thereof or of any interest therein by the Leaseholder shall be valid or effective unless required by the terms hereof or unless agreed to and expressly accepted in writing by Lessor. The Dwelling including all improvements, alterations, replacements, charges, additions, or other appurtenances erected, installed or affixed on or in the Dwelling by and at the expense of the Leaseholder after the commencement of the Term as well as all Leaseholder's movable fixtures and the equipment located on the Leasehold, shall be the sole and absolute property of the Leaseholder. Nothing herein contained shall be deemed to allow the Leaseholder to leave the Land at the end of the Term in a condition, which shall constitute a nuisance or hazard or be an immediate threat of becoming such.

Section 9. Lessor's Rights to Assign. The Lessor may from time to time without the consent of the Leaseholder, sell, mortgage, pledge, assign, hypothecate or otherwise encumber or alienate the rents, income and profits under this Lease, and the Lessor's contingent interest in the reversion; subject and subordinate, however, in each instance, to the terms of this Lease.

Section 10. Assignment by Leaseholder. Without the prior consent of Lessor, but provided that Leaseholder shall be in compliance with the terms of this Lease, this Lease may be assigned and transferred from time to time provided that any such assignment and transfer shall include Leaseholder's entire interest in: the Leasehold, Leaseholder's Dwelling, Leaseholder's reversionary interest and Leaseholders rights and privileges as a member of the Association. Acceptance of such assignment or transfer shall constitute an assumption by the transferee of all Leaseholder's obligations under this Lease. Upon the assignment of this Lease, the assignor shall be released from the performance of all of the obligations on the part of Leaseholder thereafter to be performed hereunder, except any obligation to hold and apply insurance or other moneys held by the assignor at the date of the assignment and any unperformed obligations which shall have matured prior to such assignment.

Section 11. Mortgages by Leaseholder.

- a. Provided Leaseholder is not in default, hereunder, Leaseholder shall have the right, from time to time, without the consent of Lessor, to grant one more or more mortgages on the leasehold estate hereby created and Leaseholder's reversionary interest, subject however to the rights reserved by Lessor as set forth in the document entitled "Pond Place Warranty Deed and Ground Lease".
- b. Leaseholder or the mortgagee shall notify Lessor of the mortgagee's name and address and shall deliver to Lessor a conformed copy of the mortgage.
- c. Provided that (1) the mortgagee is a bank, savings bank, trust company, savings and loan association, credit union, insurance company, mortgage banking company, governmental agency, mortgage insurance company or other institutional lender whose lending activities are regulated or supervised by the federal government or the State of Connecticut, (2) the mortgage is a first mortgage, and (3) the requirements set forth in subparagraph B above have been met:
  - (i) Lessor shall forward to such mortgagee a copy of each and every notice to Leaseholder regarding any default by Leaseholder.
  - (ii) Notwithstanding anything to the contrary herein or in the document entitled "Pond Place Warranty Deed and Ground Lease", the leasehold estate and the reversionary interest shall merge free of Lessor's right to reacquire the reversionary interest upon an Involuntary Termination, in any party acquiring title to the mortgaged premises by strict foreclosure or as purchaser at a foreclosure sale (but not in Leaseholder or his successors in interest redeeming in strict foreclosure), provided only that Lessor shall have been party defendant in the foreclosure action.
  - (iii) Lessor agrees that it will terminate this lease because of a default on the part of the Leaseholder only in accordance with the following provisions. Lessor shall first give the mortgagee written notice specifying the default, stating Lessor's right and intent to terminate, and setting a date, at least 120 days



after the date of the notice, whereupon Lessor shall have the right to terminate unless, within said 120 day period, the default has been cured. If within such 120 day period the mortgagee proceeds with foreclosure of its mortgage and Lessor is duly served with process, then Lessor will postpone termination of this lease for such period of time as shall be required, in the exercise of due diligence, to prosecute such foreclosure action to its conclusion. Should the default be cured prior to such conclusion, Lessor's right to terminate because of such default shall be waived.

- (iv) If this Lease is terminated for any reason, Lessor agrees that it will upon written request of the mortgagee made within thirty (30) days of the termination join with the mortgagee as leaseholder in the execution of a new lease upon the same terms and conditions as this Lease except that the term shall be equal to the balance of the term of this Lease, provided that (i) at the time that the new lease is requested, payment of all moneys required to be paid under this Lease to the date of its termination, except accrued rent, shall be tendered by the mortgagee, (ii) all other curable defaults under this Lease not curable by the payment of money shall be cured within thirty (30) days of the commencement of term of the new lease, and (iii) Lessor shall be paid all moneys that would have been due under this Lease, had it not been terminated, for the period from the date of its termination to the commencement of the term of the new lease, and Lessor's reasonable expenses in terminating this Lease and consummating the new lease. Lessor shall not be obligated to deliver possession of the Leaseholder to the new leaseholder, but Lessor shall cooperate in any proceedings brought, at the new leaseholder's expense necessary to obtain such possession.
- (v) No amendment or modification of this Lease made after the date of the mortgage shall be binding on the mortgagee without its written consent.
- (vi) The provisions of this subparagraph C are for the benefit of, and enforceable by, only those mortgagees who come within the scope of this subparagraph C, and no other.

**Section 12. Certificates.** From time to time Leaseholder at the request of Lessor or any mortgagee of Lessor, and Lessor at the request of Leaseholder or any mortgagee of Leaseholder, shall execute and deliver to the requesting party a certificate certifying:

- a. that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modification);
- b. that there exists no condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default (or, if any such condition or event exists, specifying the nature and period of existence thereof and what action the certifying party is taking or proposes to take with respect thereto);
- c. whether or not there are then existing any offsets or defenses against the enforcement of any of the provisions of this Lease (and, if so, specifying the same); and

- d. the dates, if any, to which the Rent and Extra Costs and other charges have been paid in advance.

Any such certificate shall be conclusive against the certifying party and may be relied upon by the requesting party.

**Section 13. Default by Leaseholder.**

- a. **Events of Default** - The happening of any one or more of the following events (herein sometimes called "Events of Default") shall constitute an Event of Default:
  1. failure to pay Rent or Extra Costs when and as the same shall become due and payable.
  2. failure by Leaseholder to perform or comply with any of the other covenants, agreements, terms or conditions contained in this Lease.
- b. **Termination of Lease** - If an Event of Default shall occur, Lessor may at its option, at any time thereafter, by written notice to Leaseholder specifying the default and a date, not less than thirty (30) days after the date of such notice, by which the default must be cured, terminate this Lease on or after the date specified in such notice if such default shall not then have been cured. Upon such termination, Leaseholder shall quit and surrender the Leasehold to Lessor but Leaseholder shall remain liable hereunder as hereinafter provided. At any time after such termination, Lessor, without further notice and with no liability to Leaseholder, may repossess the Leasehold, by summary proceedings, ejectment or other lawful means, and may remove Leaseholder and all other persons and any and all property from the Leasehold. Leaseholder shall pay, as Extra Costs, all costs and expenses incurred by or on behalf of Lessor (including reasonable counsel's fees) occasioned by any default by Leaseholder under the terms of this Lease.

**Section 14. Leaseholder's Obligations After Termination.** No termination of the Term of this Lease or repossession of the Leasehold shall relieve Leaseholder, or any guarantor, of any liability or obligation under this Lease, all of which shall survive any such termination or repossession. In the event of any such termination, Leaseholder shall pay to Lessor, the Rent and Extra Costs and other charges required to be paid by Leaseholder up to the time of such termination, and thereafter Leaseholder, until the end of what would have been the Term of this Lease in the absence of such termination and whether or not the leasehold or any part hereof shall have been relet, shall be liable to the Lessor for, and shall pay to Lessor, as and for liquidated and agreed current damages for Leaseholder's default, the Rent and Extra Costs and other charges which would be payable under this Lease by Leaseholder if the Term of this Lease had not been so terminated, less the net proceeds, if any, of any reletting after deducting all Lessor's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, and cost and expenses for the alteration or preparation of the Leasehold for such reletting. Leaseholder shall pay such current damages to Lessor monthly on the day on which the Rent or Extra Costs would have been payable under this Lease if the Term of this Lease had not been so terminated and Lessor shall be entitled to recover the same from Leaseholder on each such day. After such termination of the Term of this Lease, Lessor shall use reasonable efforts to relet the Leasehold or any part thereof for the account of Leaseholder, in the name of Leaseholder

## Standard Ground Lease Covenants

or Lessor or otherwise, without notice to Leaseholder, for such term or terms which may be greater or less than the period which would otherwise have constituted the balance of the Term and on such conditions which may include free rent or other concessions and for such purposes as Lessor, in its sole and uncontrolled discretion, may determine and Lessor may collect and receive the rents therefore. Lessor shall not be liable for any failure to collect any rent due upon such reletting.

Any time after such termination, whether or not Lessor shall have collected any such current damages, Lessor, at its option, shall be entitled to recover from Leaseholder, and Leaseholder shall pay to Lessor, on demand, as and for liquidated and agreed final damages for Leaseholder's default and in lieu of all such current damages beyond the date of such demand, an amount equal to the excess, if any, of the Rent and the estimated Extra Costs and other charges which would be payable under this Lease from the date of such demand (or, if it be earlier, the date to which Leaseholder shall have satisfied in full its obligation under this Article to pay current damages) for what would be the then unexpired Term of this Lease if the same had remained in effect, over the then fair net rental value of the Leasehold for the same period. If any statute or rule or law governing a proceeding in which such liquidated final damages are to be provided shall validly limit the amount thereof to an amount less than the amount above agreed upon, Lessor shall be entitled to the maximum amount allowable under each statute or rule of law.

**Section 15. Leaseholder's Waiver of Rights.** In the event of any such termination of the Term of this Lease, Leaseholder, so far as permitted by law, hereby expressly waives: any notice of re-entry or repossession; any right to restore the operation of this Lease; any right to a trial by jury in the event of summary proceedings, and the benefits of any laws now or hereafter in force exempting property from liability for rent or for debt.

**Section 16. Lessor's Performance on Behalf of Leaseholder.** If Leaseholder at any time shall fail to make any payment or perform any act required by this Lease to be made or performed by it, Lessor, following notice to Leaseholder and without waiving or releasing Leaseholder from any obligation or default under this Lease, may, but shall be under no obligation to, at any time thereafter make such payment or perform such act of the account and at the expense of Leaseholder. All sums so paid by Lessor and all costs and expenses (including reasonable counsels' fees) so incurred, together with interest thereon at the Agreed Rate from the date of payment or incurring to the date of payment, shall constitute Extra Costs and shall be paid by Leaseholder to Lessor on demand.

**Section 17. Lien on Leaseholder's Property.** Upon the occurrence of any Event of Default, Lessor shall, in addition to all other rights, have a lien, to the extent permitted by law, on the Dwelling including all property, equipment and contract rights owned by Leaseholder and located on or used in connection with the Leasehold as security for the Rent, Extra Costs or damages due and payable under this Lease. Said lien may be enforced by any appropriate action at law or in equity.

Section 18. Lessor's Remedies Cumulative. Each, right, power and remedy of Lessor provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all other such rights, powers or remedies.

Section 19. No Waiver by Lessor. No failure by Lessor to insist upon the strict performance of any provisions of this Lease or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such reach or provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 20. Quiet Enjoyment. So long as Leaseholder pays the Rent and Extra Costs and faithfully performs the agreements, terms, covenants and conditions hereof, Leaseholder shall and may, subject to the terms hereof, peaceably and quietly have, hold and enjoy the Leasehold for the Term hereby granted without molestation or disturbance by or from Lessor, or anyone acting for or through Lessor, and free of interference resulting from any encumbrance created or suffered by Lessor, or anyone acting for or through Lessor, except those matters to which this Lease is made subject.

Section 21. Notices. Whenever it is provided in this Lease that notice, demand, request or other communication shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve the same upon the other or upon a mortgagee, the same shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

- a. If to Lessor: The FIP Homes Company, Industrial Park, Farmington, CT 06032
- b. If to Leaseholder: at the address of Leaseholder's Dwelling.
- c. If to a mortgagee: at the address provided by it.

Lessor or Leaseholder may from time to time designate a different such addressee and/or address and/or an additional addressee and address by notice given as provided above. Any such notice, demand, request or other communication hereunder shall be deemed to have been given or served at the time that the same be deposited in the United States mails in the manner aforesaid. Leaseholder hereby irrevocably constitutes and appoints the entity as from time to time shall be in actual possession of the Leasehold, or any part thereof, as the agent and attorney-in-fact of Leaseholder to accept service of process in any action, suit or proceeding by Lessor relating to this Lease or the Leasehold and hereby irrevocably submits, for the purpose of any such action, suit or proceeding, to the jurisdiction of the courts of all jurisdictions in which the Leasehold is situated provided that a copy of any process shall be so mailed to Leaseholder.

**Section 22. Acceleration of Rent.** The amounts of rent, which may be prepaid by Leaseholder are shown on Schedule A.

**Section 23. Definitions and Miscellaneous.**

- a. The term "Agreed Rate", as used in this Lease means the interest rate charged to its most credit-worthy commercial borrower by the largest commercial bank in the City of Hartford, Connecticut (measured by its total deposits), as in effect from time to time, plus 3% per annum, but in no event more than the highest rate permissible under the laws of the State of Connecticut.
- b. This Lease may be executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- c. The definitions of words and terms contained in Article I of the Declaration shall apply to those words and terms as used herein.

**Section 24. Modifications.** This Lease cannot be modified or amended except by an instrument in writing executed by Lessor and Leaseholder.

**Section 25. Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Connecticut.

**Section 26. Severability.** If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

**Section 27. Headings.** The headings to Paragraphs are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

**Standard Ground Lease Covenants**

**SCHEDULE A**

**TO POND PLACE STANDARD GROUND LEASE COVENANTS**

1 \$519.11	14 \$5,634.00	27 \$7,972.92	40 \$9,042.45
2 \$1,069.63	15 \$5,885.73	28 \$8,088.03	41 \$9,095.10
3 \$1,588.01	16 \$6,122.76	29 \$8,196.42	42 \$9,144.67
4 \$2,076.09	17 \$6,345.95	30 \$8,298.48	43 \$9,141.35
5 \$2,535.66	18 \$6,556.10	31 \$8,394.60	44 \$9,235.30
6 \$2,968.38	19 \$6,753.98	32 \$8,485.08	45 \$9,276.67
7 \$3,375.83	20 \$6,940.30	33 \$8,570.29	46 \$9,315.63
8 \$3,759.50	21 \$7,115.24	34 \$8,650.51	47 \$9,352.31
9 \$4,120.73	22 \$7,280.94	35 \$8,726.05	48 \$9,386.85
10 \$4,460.87	23 \$7,436.48	36 \$8,797.15	49 \$9,419.38
11 \$4,781.13	24 \$7,582.42	37 \$8,864.13	50 \$9,450.00
12 \$5,082.69	25 \$7,729.81	38 \$8,927.18	
13 \$5,366.64	26 \$7,850.66	39 \$8,986.55	

The amounts of any prepayments not shown on this schedule will be computed in the same manner as those shown.

Warranty Deed

POND PLACE  
WARRANTY DEED

THE FIP HOMES COMPANY (Grantor), a Connecticut Corporation having an office in Farmington, Connecticut, for consideration of \$\_\_\_\_\_ paid, grants to \_\_\_\_\_ of \_\_\_\_\_ with WARRANTY OVENANTS, the following real property situated in the Town of Avon, County of Hartford and State of Connecticut.

- a. Dwelling No. \_\_\_\_\_, the principal building and garage (if any) of which are located as shown on a map entitled "Map of Pond Place Owned by The FIP Homes Company Avon, Connecticut Scale: 1" = 40' August 1977 Hodge Surveying Association, P.C.", which map is on file in the office of the Avon Town Clerk; together with the appurtenant improvements enumerated in the definition of "Dwelling" set forth in the Pond Place Declaration of Covenants, Easements, Restrictions and Tenancies in Common (Declaration) recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Avon Land Records; which has the address of \_\_\_\_\_ Pond Place, Avon, Connecticut 06001.
- b. A 1/210th Undivided Interest in a certain piece or parcel of land, but not the Dwellings (except as above described) now or hereafter erected thereon, situated in the Town of Avon, County of Hartford and State of Connecticut on the southerly side of West Main Street, (the Land), containing approximately seventy (70) acres and shown on said map.

The Grantor hereby assigns to the Grantee the rights and privileges of membership in Pond Place Association, Inc., which are appurtenant to the Undivided Interest, including the Exclusive Use Area allocated to this Undivided Interest by resolution of the Board of Governors of Pond Place Association, Inc.

The foregoing grants and assignments are made together with all of the rights and privileges, and subject to all of the covenants, easements, restrictions and obligations, set forth in the Declaration and the Bylaws of Pond Place Association, Inc. record in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Avon Land Records as they may from time to time be amended or supplemented.

The foregoing grants and assignments are also made subject to all matters of record on the date hereof.

The Grantee, by acceptance of this deed hereby expressly assumes and agrees to be bound by and to comply with all of above covenants, easements, restrictions and obligations, as well as those contained in this document; and hereby consents to and ratifies the actions taken by the Board of Governors of the Association in adopting the Bylaws of the Association and accepts the duties of the Declaration as though the Grantee had affirmatively voted for each Bylaw provision and acceptance at a duly called membership meeting, including but not limited to, all provisions with respect to the Association's right to levy and access any fines, penalties, dues or assessments as provided therein.

## **Warranty Deed**

Grantor reserves the right to install roads, sanitary and storm water sewers, walkways, ducts, cables, utility structures and drainage swales across the Land and to grant easements for the installation, use, maintenance, repair and replacement of such elements. Grantor additionally reserves temporary construction easements for as long as construction is underway at Pond Place to cross, recross and use the Land for storage, temporary construction structures, to stockpile and store equipment, building materials and soil, to erect signs, all as may be reasonably necessary or convenient to construct, repair, market and develop Pond Place.

The agreements and covenants set forth herein shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

References herein to the singular shall include the plural, and vice versa, as the context may require.

Words and terms initial-capitalized are defined in Article I of the Declaration.



**POND PLACE**  
**WARRANTY DEED & GROUND LEASE**

**ARTICLE I - DWELLING.**

THE FIP HOMES COMPANY (Grantor), a Connecticut Corporation having an office in Farmington, Connecticut, for consideration of \$\_\_\_\_\_ paid, grants to \_\_\_\_\_ of \_\_\_\_\_ with WARRANTY COVENANTS, the following real property situated in the Town of Avon, County of Hartford and State of Connecticut: Dwelling No. \_\_\_\_\_, the principal building and garage (if any) of which are located as shown on a map entitled "Map of Pond Place Owned by The FIP Homes Company Avon, Connecticut Scale: 1" = 40' August 1977 Hodge Surveying Association, P.C.", which map is on file in the office of the Avon Town Clerk; together with the appurtenant improvements enumerated in the definition of "Dwelling" set forth in the Pond Place Declaration of Covenants, Easements, Restrictions and Tenancies in Common (Declaration) recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Avon Land Records; which has the address of \_\_\_\_\_ Pond Place, Avon, Connecticut 06001 excluding, however, all Land except as hereafter described, and all indigenous plants, pipes, ducts, cable and other facilities and improvements whose use is not limited to this Dwelling.

**ARTICLE II - GROUND LEASE.**

For consideration paid, the FIP Homes Company ("Lessor") demises and leases to the purchaser(s) of the Dwelling identified in Section I hereof ("Leaseholder"), and the Leaseholder hires and takes from the Lessor, upon the terms and conditions herein set forth: A 1/210th undivided interest as tenant in common (Undivided Interest) in and to a certain piece or parcel of land, but not the Dwellings now or hereafter erected thereon, situated in the Town of Avon, County of Hartford and State of Connecticut on the southerly side of West Main Street, ("Land"), containing approximately seventy (70) acres and shown on the map referred to in Section 1 hereof.

**ARTICLE III - REVERSION.**

For consideration paid, the Lessor grants to the Leaseholder the Lessor's reversionary interest in the Undivided Interest, in FEE SIMPLE, with WARRANTY COVENANTS; upon condition, however, that upon an Involuntary Termination of this Lease, the reversionary interest in fee simple shall become vested in the Lessor. For the purposes of Section 45-97 of the Connecticut General Statutes; revision of 1958, revised to 1977, the aforesaid rights of the Lessor arising from an Involuntary Termination shall expire twenty-one (21) years after the death of the last survivor of all purchasers or leaseholders of majority age in Pond Place within the next fifteen years, or 50 years from the date hereof, whichever is sooner.

The Lessor excepts and reserves to itself, all rights to the income and profits from this Lease and from such other leases now in existence or hereafter entered into by Lessor as to other undivided interests in the Land.

## **Warranty Deed and Ground Lease**

There shall be no merger of the leasehold estate created herein with the reversionary interest by reason of the fact that the same are held by one person, firm or other entity, and except as provided in subparagraph 11C(b) of the Pond Place Standard Ground Lease Covenants, no such merger shall occur unless and until there is a Voluntary Termination of this Lease.

As the terms are used herein:

- a. an Involuntary Termination shall be the expiration of the term of this lease as a result of a default by the Leaseholder in any of its obligations under the lease;
- b. a Voluntary Termination shall be the expiration of the term of this lease as a result of either
  - 1. the passing of the full 50-year term, or
  - 2. the prepayment of all payments of rent coming due for the remainder of the term of this Lease as provided in Section VII hereof.

### **ARTICLE IV – RIGHTS OF MEMBERSHIP INCLUDING EXCLUSIVE USE AREA.**

For consideration paid, the Lessor hereby assigns to the Leaseholder the rights and privileges of membership in Pond Place Association, Inc., which are appurtenant to the Undivided Interest, including the Exclusive Use Area allocated to this Undivided Interest by resolution of the Board of Governors of Pond Place Association, Inc.

### **ARTICLE V – GENERAL RIGHTS AND OBLIGATIONS.**

The foregoing grants and assignments are made together with all of the rights and privileges, and subject to all of the covenants, easements, restrictions, and obligations, set forth in the Declaration and Bylaws of Pond Place Association, Inc. recorded in Volume \_\_\_\_, Page \_\_\_\_ of the Avon Land Records as they may from time to time be amended or supplemented.

The Leaseholder, by the acceptance of this document and by agreement with the Lessor, hereby expressly assumes and agrees to be bound by and to comply with all of such covenants, easements, restrictions and obligations, as well as those contained in this document and in the Pond Place Standard Ground Lease Covenants referred to in Section VII hereof.

The foregoing grants and assignments are also made subject to all matters of record contained in the Avon Land Records.

**ARTICLE VI – RIGHTS OF MEMBERSHIP INCLUDING EXCLUSIVE USE AREA.**

Lessor reserves the right to install roads, sanitary and storm water sewers, walkways, ducts, cables, utility structures and drainage swales across the Land and to grant easements for the installation, use, maintenance, repair and replacement of such elements. Lessor additionally reserves temporary construction easements for as long as construction is underway at Pond Place to cross, recross and use the Land for storage, temporary construction structures, to stockpile and store equipment, building materials and soil, to erect signs, all as may be reasonably necessary or convenient to construct, repair, market and develop Pond Place.

**ARTICLE VII – TERMS AND CONDITIONS OF GROUND LEASE.**

- a. Term. The term of this Lease shall commence on the date hereof and shall expire fifty (50) years after such date, unless such term be terminated sooner as set forth herein or in the Pond Place Standard Ground Lease Covenants.
- b. Rent. The Leaseholder shall pay to the Lessor during the term of this lease rent of \$50 per month, in monthly installments of \$50 each, payable on the first day of the calendar month next following the commencement of the term of this lease and on the first day of each month thereafter, for a total of 599 consecutive months. In addition, a payment of rent will be payable on the day of commencement of the term of this lease in an amount equal to \$1.67 for each day that this lease will be in effect during the then current month; and, if the term commences on a day other than the first day of a month, an additional payment of rent will be payable on the first day of the month following the 599th payment, in an amount equal to \$1.67 for each day that this lease will be in effect during that month.
- c. Acceleration of Rent. Provided the Leaseholder is not in default hereunder, the Leaseholder may prepay rent in yearly increments or multiples of yearly increments on any anniversary date of the lease, upon no less than sixty (60) days prior written notice to the Lessor. The amount of rent to be prepaid shall be as set forth in paragraph 22 of the Pond Place Standard Ground Lease Covenants.
- d. Pond Place Standard Ground Lease Covenants. Additional covenants, terms and conditions of this lease are set forth in the Pond Place Standard Ground Lease Covenants which has been recorded by the Lessor in Volume \_\_\_\_, Page \_\_\_\_ of the Avon Land Records, and which is hereby incorporated herein and made a part hereof by reference. The Leaseholder, by its execution of this document, acknowledges receipt of a copy of the Pond Place Standard Ground Lease Covenants.

**ARTICLE VIII – GENERAL.**

- a. Consent to Corporate Acts. The undersigned member(s) of Pond Place Association, Inc. hereby consents to and ratifies the actions taken by the Board of Governors of the Association in adopting the Bylaws of the Association, and accepting the duties of the Declaration as though the undersigned had affirmatively voted for each Bylaw provision and acceptance at a duly called membership meeting, including but not limited to, all provisions with respect to the Association's rights to levy and assess any fines, penalties, dues or assessments as provided therein.
- b. Designations. The designations "Lessor" and "Leaseholder" are used throughout this document for convenience, and include the named parties in all their capacities as the context may require.
- c. Successors and Assigns. The agreements, terms, covenants, and conditions set forth herein shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.
- d. Singular and Plural. References herein to the singular shall include the plural, and vice versa, as the context may require.
- e. Definitions. Words and terms initial-capitalized are defined in Article I of the Declaration.

## LEASE

### POND PLACE ASSOCIATION INC. & POND PLACE TAX DISTRICT

June 14, 1982

BY THIS LEASE AGREEMENT, POND PLACE ASSOCIATION INC., a Connecticut, nonstock corporation of Avon, Connecticut ("Association") hereby leases to the POND PLACE TAX DISTRICT, a body corporate and politic of Avon, Connecticut ("District") those certain parcels of land with building and improvements, and all replacements and improvements that may be erected on such land, as described in Section 1 of this Lease, and for the term described in Section 3.

Definitions. Definitions of terms initially capitalized, and to the extent the context requires, shall be as defined in the Pond Place Declaration of Covenants, Easement, Restrictions and Tenancies in Common, record in Volume 100, at page 40, of the Avon Land Records (the "Declaration").

#### ARTICLE I - PREMISES

The property hereby leased to the District consists of all Common Areas and all Common Improvements within the residential community known as Pond Place, the perimeter boundaries of which are described on Exhibit A, attached hereto and made a part hereof. Such Common Areas and Common Improvements are more specifically described and defined in the Declaration and are more particularly shown on a map entitled "Map of Pond Place Owned by the FIP Homes Company, Avon, Connecticut Scale 1" = 40' August, 1977 Hodge Surveying Association, P.C.", Revised as of October 19, 1978, which map is on file in the Office of the Avon Town Clerk, to which reference may be had. The property hereby leased to the District will be referred to in this Lease as the "Premises."

The Premises leased under this agreement are subject to all easements and encumbrances of record, in an "as is" condition, including the easements and rights created by the Declaration.

#### ARTICLE II – IMPROVEMENTS; MAINTENANCE

Section 2.1. Present Improvements. The Premises include all present Common Improvements, which are leased to the District in an "as is" condition, with no warranties from the Association of any kind.

Section 2.2. Future Improvements. The District shall have the right to erect any improvements it deems necessary or desirable on the Premises, which shall become Common Improvements upon each erection, and title to which shall pass to the Owners and Leaseholders as their interests may appear, upon termination of this Lease. Any single future improvement (not replacing existing improvements) costing in excess of \$7,500 shall be approved by the Board of Governors and Members of the Association,

and by the first mortgagees, as provided in Article VIII, Section 9 of the Bylaws of the Association.

Section 2.3. Maintenance. The District shall maintain all improvements leased with this agreement, and all replacements and additions, in a "like new" condition, repairing or rehabilitating all loss, damage, wear or tear, that occurs from time to time. The District may use for this purpose reserve funds of the Association assigned under Article 22 of this Lease, if any, its own reserve funds, or its own income.

The District shall assume and perform all maintenance responsibility of the Association for the Common Areas and Common Improvements, as described in the Declaration. However, it may make reasonable judgments as to maintenance schedules and standards for fulfilling its obligations under this Lease, and may hold reserve Trust funds in lieu of continuous rehabilitation.

The District shall repair all damage or injury done to the Common Improvements and Common Areas at its expense, unless the decision not to repair is approved by the Association and its first mortgagees, pursuant to the Declaration and Bylaws.

### **ARTICLE III – TERM**

Section 3.1. Principal Term. The term of this Lease shall be for 49 years, commencing July 1, 1982.

Section 3.2. Association's Option to Cancel. The Association shall have the option to cancel this Lease without cause at the end of any lease year (July 1 through June 30 upon 60 days written notice to the District prior to the commencement of such lease year.

### **ARTICLE IV – RENT**

Rent shall be in the amount of \$1 per year, and the assumption and performance of the duties, obligations, payments and responsibilities of the Association pursuant to this Lease, which are deemed additional considerations for this Lease.

As additional rent, during the term of this Lease, the District shall provide fire and extended coverage insurance for the full insurable value of the Premises, at least to the extent required by the Association under the Declaration and Bylaws.

This Lease is deemed to be absolute net, and all overhead, interest, taxes, costs, impositions, charges, expenses, liens, or other obligations with respect to the Premises shall be assumed paid by the District.

## **ARTICLE V – USE OF PREMISES: PURPOSES**

**Section 5.1. Limitations on Use.** The District may use and occupy the Premises for the benefit of the Association, the members of the Association, and other District tax payers within the District, and its and their employees, invitees, tenants, guests and members of their families, and such public officials as are required and necessary to fulfill the municipal purpose of the District, and no others.

**Section 5.2. Purposes.** The District shall use and occupy the Premises for the following purposes: to extinguish fires, to light streets, to plant and care for shade and ornamental trees, to construct and maintain roads, sidewalks, crosswalks, drains and sewers, to appoint or employ watchmen or police officers, to construct, maintain and regulate the use of recreational facilities, to plan, layout, acquire, construct, reconstruct, repair, maintain, supervise, operate and manage a flood or erosion control system or a community water system, to collect garbage, ashes, and all other refuse matter in any portion of such district and provide for disposal of such matter. The District may contract with a town, city borough or other district for carrying out such purposes, and may have the powers, not inconsistent with the general statutes, that are necessary for the accomplishment of the purposes for which it was established, including the non-exclusive additional right to regulate the activities on the Common Areas and Common Improvements, as granted to the Association under the Declarations and Bylaws of the Association, which rights are hereby assigned by the Association and assumed by the District.

## **ARTICLE VI – PERSONAL PROPERTY**

The Association hereby assigns to the District its right, title and interest in certain items of personal property, furnished, or used in the operation, maintenance and repair of the Common Areas and Common Improvements, listed on Schedule B (which may be adjusted from time to time to include all such property), for the term of this Lease. Upon termination, such property and any replacements and additions to such property as may reasonably be necessary for such furnishing, operation or maintenance shall be turned over to the Association in their present condition, together with all funds set aside under Article 22, if any.

From time to time, the Association shall be permitted, for reasonable rental or service fees paid to the District, to use maintenance equipment and improvements assigned to or owned by the District, to fulfill its obligations with respect to the Dwellings and Exclusive Use Areas under the Declaration and Bylaws of the Association. Such rental or service fees shall be no greater than the hourly costs of labor, ownership, operation and maintenance of such equipment by the District as set by the District directors in a schedule by resolution.

## **ARTICLE VII – ASSIGNMENT AND SUBLETTING**

**Section 7.1. Assignment Prohibited.** The District may not assign this Lease or any interest in this Lease, and subject to the limitations in Section 7.2 of this Article, may not sublet, underlet or permit the occupancy or use of any part of the Premises by any person other than those permitted by the use restrictions of Section 5.1.

**Section 7.2. Subleases and Concessions.** To the extent necessary for the operation of the Premises for the benefit of the persons designated in Section 5.1, the District may enter into subleases, licenses and concession agreements for the operation and use of recreational facilities, and for utility services provided such subleases, licenses and concessions are to provide services to the Members of the Association and to other District voters residing within the District, as permitted to the Association under the Declaration.

## **ARTICLE VIII – ATTORNEY FEES**

In the event of any dispute or litigation between the parties, arising from this Lease and referred to attorneys for resolution, the prevailing party shall be allowed all reasonable attorneys fees and costs expended or incurred.

## **ARTICLE IX – DEFAULT**

If the District fails or neglects to perform, meet or observe any of its obligations under this Lease and such failure or neglect continues for 60 days after written notice from the Association to the District, or if the District votes to terminate itself or fails to adopt a budget for the operations required hereunder, then the Association may lawfully declare the termination of this Lease, may re-enter the Premises or any part, may assume control and possession of the personal property leased with this agreement, and may by due process of law remove the District from possession without the prejudice to any remedies for breaches of covenants or conditions, including the collection of the cost of cure. Acceptance or forbearance of default shall not constitute a waiver.

## **ARTICLE X – NON-EXCLUSIVITY OF POSSESSION**

The District shall have non-exclusive possession of the Premises with the Association for the purposes of the fulfillment of its duties and purposes under Section 5.2 of this Lease.

The Association shall have the right to close the Premises to the public and limit access to its members, guests, invitees and employees at least one day per year upon reasonable notice to the District, to prevent any implied dedication to the public of such Premises.



## ARTICLE XI – UTILITIES AND SERVICES

The District agrees to pay for all water, fuel, gas, oil, heat, electricity, power, materials, communications systems and services which may be furnished to it or used by it in the Premises and keep the Premises free of any lien or encumbrance of any kind whatsoever created by the District's act or omission, and to the extent within its power, to prevent the cessation or disruption of such services.

## ARTICLE XII – DAMAGE OR DESTRUCTION

The District shall fulfill and assume the Association's responsibility for repair, replacement, destruction or condemnation of the Premises, pursuant to the Declaration and Bylaws. The event surplus or excess funds from insurance, condemnation or tort claims are held by the District by virtue of failure to restore the Premises or otherwise, they shall be paid to the Board of Governors of the Association for distribution to the Members.

Section 1. Estimate of Cost: Promptly after damage to or destruction of the Premises, and thereafter as it deems advisable, the Board of Directors shall obtain reliable and detailed estimates of the cost of repair or restoration. The Board of Directors may retain the services of an architect to assist in the determination of such estimates and in the supervision of repair and restoration.

Section 2. Collection of Construction Funds. Construction funds may consist of insurance proceeds, condemnation awards, proceeds of assessments, and other funds received on account of, or arising out of, such injury or damage.

- a. Insurance and Condemnation Proceeds: To the extent that damage to or destruction of the Premises is covered by insurance of the Association or the District or by a condemnation award not specifically allocated to the Owner, the proceeds of such insurance or award shall be made available for the repair or restoration. The Board of Directors or Manager shall adjust losses under physical damage insurance policies of the Association. Such losses shall be payable to the Board of Directors of the District. Condemnation awards shall be payable in accordance with the Declaration.
- b. Special Tax Assessments: If the insurance proceeds and condemnation awards are insufficient to effect the necessary repair or restoration of the Premises, such deficiency shall be budgeted for and collected as a Special Tax Assessment pursuant to the governing ordinance. Failure to collect shall be a breach of this Lease.
- c. Payments by Others: Any other funds received on account of, or arising out of, injury or damage to the Premises shall be used by the Board of Directors for repair or reconstruction.

( Article XII )

**Section 3. Plans and Specifications.** Any repair or restoration must be either substantially in accordance with the architectural and engineering plans and specifications for the original improvements, or according to the plans and specifications approved by the Board of Directors and by a majority of the voters and the holders of first mortgages encumbering seventy-five percent (75%) of the Undivided Interest subject to mortgages.

**Section 4. Disbursement of Construction Funds.** The Board of Directors shall deduct from the construction funds its actual costs and expenses, and shall disburse the balance in the following manner:

- a. **Damage or Destruction.** In the event of damage or destruction of the Premises the Board of Directors shall apply such balance to pay directly the costs of repair or restoration of such Premises, including the cost of temporary repairs for the protection of the Premises pending the completion of permanent repairs and restoration, and if an architect has been retained by the Board of Directors, upon presentation of an architect's certificate stating that the work represented by any such payment has been completed satisfactorily.
- b. **Contribution by Owners:** General expenses of administration, such as costs, expenses and fees, shall be charged against the District's construction fund. All portions of such payments by Members and Owners not expended as herein provided shall be refunded to the Members, Owners and the mortgagees of their Undivided Interests, as their interests may appear.
- c. **Surplus Funds:** If, after payment of all repair and restoration, and the refund of any excess payments pursuant to Subparagraph (ii) of this Subsection, there remains any surplus funds, such funds shall be paid to Members and Owners in proportion to their contributions resulting from assessments levied against them pursuant to Section 12(b) of this Lease; provided, however, that no Owner or Member shall receive a sum greater than that actually contributed by him. Any surplus remaining after such payments shall be paid to the District and shall be part of its general income.

**Section 5. Determination Not to Repair or Restore:** If there is substantially total destruction of all the improvements on Pond Place and 3/4 of the Owners and Leaseholders of Undivided Interests vote not to proceed with repair or restoration, and upon prior written approval of at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) and seventy-five (75%) of the Owners and Leaseholders, any balance of construction funds, after the refund of any payments by Owners and Leaseholders pursuant to paragraph (a) (ii), shall be disbursed in accordance with the interest of the Owners and Leaseholders in Common Areas as listed in Article III of the Declaration, and in accordance with the diminution of the fair market value of the buildings on their respective Undivided Interest and Dwellings resulting from such destruction as determined by arbitration. In the event of dispute as to the fact of substantial total destruction, that issue shall be submitted to arbitration in accordance with the rules of the American Arbitration Association.

**Section 6. Certificates.** The District may rely on the following certifications:

- a. **By the Board of Directors:** The Board of Directors shall pass resolutions certifying to the following matters:
  1. Whether or not damaged property is to be repaired or restored.
  2. The amount or amounts to be paid for repairs or restorations and the names and addresses of the parties to whom such amounts are to be paid.
- b. **By Attorneys:** The Board of Directors shall obtain, in the event that any payments are to be made to a Member, an Owner or mortgagee, an Attorney's Certification of Title based upon a search of the Land Records from the date of the recording of the original Declaration stating the name of the Owner or member and the mortgagees.

**ARTICLE XIII – CONDEMNATION**

In the event portions of the Premises or of the District's rights under this Lease are condemned by any public authority, this Lease will be deemed terminated for such portions as of the day prior to the day of vesting of title in the public authority.

The awards will be distributed in accordance with the requirements of the Declaration.

In the event such a taking results in a major change in the character of the Premises as to prevent the District from fulfilling its purposes hereunder, as reasonably determined by the Association, the Lease will be cancelled or terminated.

Any award shall belong to the Association, unless the Association waives its claim for the purpose of restoration or replacement of facilities condemned or taken.

**ARTICLE XIV – EXERCISE OF DUE DILIGENCE ABANDONMENT**

The District shall exercise due diligence in pursuit of its duties and obligations under this Lease. Failure to so exercise such duties, or abandonment of all or part of the Premises shall be deemed abandonment, and the Association may forthwith enter and undertake the duties and obligations required by it over such Premises, without waiving its right to damages.

**ARTICLE XV – COMPLIANCE WITH LAW AND REGULATION**

The District shall at its own costs comply with all laws, rules and order of all proper governmental authority, applicable to the Premises or the District, and comply with the regulations of the Board of Fire Underwriters regulating the casualty insurance carrier for the Premises.

#### **ARTICLE XVI – NOTICES**

Notices to the Association shall be P.O. Box 330487, West Hartford, CT 06133 and to the District at the same address.

Either party may change the notice address by giving written notification to the other at the above address.

#### **ARTICLE XVII – SUBORDINATION**

This Lease is subordinate to all rights of Member and Owners as created in the Declaration and the rights of any prior mortgage or security interest not subordinated hereto.

#### **ARTICLE XVIII – RELATIONSHIP OF PARTIES**

The relationship of the parties is strictly that of Landlord and Tenant, and the Association has no ownership in the District's enterprise, and this Lease shall not be construed as a joint venture or partnership. Where the District is fulfilling obligations of the Association, it shall be as assignee of those duties, and not as agent of the Association.

#### **ARTICLE XIX – CONFLICTS**

With respect to the Premises, regulations, and activities of the Association, where there is a conflict, the ordinances, regulations and activities of the District shall govern. In the event of such conflict, the most restrictive requirement of either the District or the Association shall prevail, unless the District determines in its discretion, and by ordinance duly enacted, that regulations or restrictions of the Association interfere with or limit its ability to perform its functions, in which event the ordinances and regulations of the District promulgated under such ordinance shall preempt jurisdiction of the Association, if such ordinance so provides.

#### **ARTICLE XX – SUCCESSORS**

All of the terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties, provided that nothing in this paragraph will permit assignment or subletting contract to Article VII.

#### **ARTICLE XXI – CONFLICT WITH DECLARATION AND BYLAWS**

To the extent that the assignment of any right or privileges under this Lease given to the Association by the Declaration of Bylaws of the Association, is limited or prohibited by the Declaration or Bylaws as they may be from time to time amended, such right or privilege shall be deemed not assigned or conveyed by this Lease.

To the extent that future amendment to the Declaration or Bylaws shall limit or reduce any contract undertaken by the District in order to fulfill its functions, the rights to fulfill the contract shall continue until the end of the term.

Notwithstanding the rights granted to the District under this Lease, no contract of the District for performance of the duties assigned to the Association under the Declaration or Bylaws may exceed the length of period of cancellation permitted under Article III unless the Association concurs and joins in such contract.

#### **ARTICLE XXII – RESERVE FUNDS; AUTHORITY TO ESTABLISH TRUSTS**

To the extent that the Association holds reserve funds for the Premises, the Board of Governors hereby delegates its duty to manage and collect such funds to the District Board of Directors and the District Board hereby accepts such delegation.

The District shall have the power and authority, at its option, to deposit such funds as it collects from its taxpayers and sets aside for the replacement of the deteriorated capital improvements conveyed with this Lease in a Capital Reserve Trust. The District, in any event, shall maintain reasonably adequate reserves as may be prudent for such replacement, pursuant to the standards of this Lease.

#### **SCHEDULE B**

Such personal property and equipment as there may be, of Pond Place Association and replacements thereof, owned by Pond Place Association, Inc. located in Avon, Connecticut.

# DECLARATION

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