

**MASTER DECLARATION
OF DEEP BOTTOM POND
IN WEST TISBURY
COUNTY OF DUKES COUNTY
MASSACHUSETTS
RESERVATIONS AND RESTRICTIONS**

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MASTER DECLARATION OF DEEP BOTTOM POND
IN WEST TISBURY, COUNTY OF DUKES COUNTY, MASSACHUSETTS
RESERVATIONS AND RESTRICTIONS

This Master Declaration of DEEP BOTTOM POND made this 20th day of September, 1990, by Peter C. Hoover, Trustee of DEEP BOTTOM POND TRUST under a Declaration of Trust dated January 2, 1990, duly recorded with the Dukes County Registry of Deeds in Book 546, Page 205, (hereinafter called the Declarant), being the record owner of approximately 196.8 acres of land situated in the Town of West Tisbury, County of Dukes County, Massachusetts, hereinafter more particularly described and specified, WITNESSETH that:

WHEREAS, the Declarant intends to create a residential community on the subject premises, together with appropriate facilities and amenities therein including but not limited to public and private ways for circulation and access to residence areas, utility services, and areas of trees, fields and ponds; and

WHEREAS, in furtherance thereof it is desired to establish common and mutual covenants, conditions, reservations and restrictions, and an association of property owners (hereinafter referred to as the "Deep Bottom Pond Owners' Association" or the "Association") to administer the same;

NOW THEREFORE, the Declarant (which hereinafter shall include his successors and/or assigns) hereby declares, provides and covenants as follows:

ARTICLE I
SUBJECT PROPERTY

The land situated within West Tisbury, County of Dukes County, Commonwealth of Massachusetts, more particularly described as being all of the land described and shown on a certain plan of land entitled "Plan of Land in West Tisbury, Mass., MAGID PROPERTY, May 1, 1986, Scale: 1" = 100', Dean Swift, Reg'd Land Surveyor, Vineyard Haven, Mass." Total area 196.8 Acres revised through May 21, 1987 duly recorded with Dukes County Registry of Deeds in West Tisbury Case File No. 365, including any and all resubdivisions thereof, specifically, however, excluding therefrom Parcel B

(approximately 13.14 acres) shown on said plan, to which plan reference is hereby made for a more particular description. There may also be included hereafter such parcels of land as may be so designated by the Declarant in his sole discretion.

ARTICLE II
LAND CLASSIFICATIONS
PROPERTY USE AND RESTRICTIONS

SECTION 2.01 Land Classifications

The land within DEEP BOTTOM POND is hereby divided into the following use classifications:

A. Residence Areas

Referring to the parcel designations Lots 1 through 85 inclusive, contained within the subject premises described and shown on the plan referred to in Article I hereinabove, each of the said parcels being so numbered and referred to hereinafter as the Residence Lots.

B. Common Areas

Referring to the parcels designations Parcels A, C, D, E and F contained within the subject premises described and shown on the plan referred to in Article I hereinabove, (or to be hereinafter designated by the Declarant in his sole discretion) each of the said parcels being so lettered and referred to hereinafter as “Common Areas.”

C. Vehicular Access Areas

Referring to Terry Farm Road, Terry Farm Lane and South Terry Farm Road contained within the subject premises described and shown on the plan referred to in Article I hereinabove, each of said ways being so named and referred to hereinafter as “Vehicle Access Areas”. The Declarant reserves the right to change the names of said ways to Pond Road, Pond Lane, and South Pond Road, respectively, or to any other names approved by the Town of West Tisbury.

SECTION 2.02 Residence Areas: Permitted Uses and Restrictions

Each Residence Lot shall be for the exclusive use and benefit of the owner or owners thereof, subject, however, to all of the following limitations and restrictions:

A. Residential Use

No buildings or other structures of any kind shall be erected, placed or allowed to stand on a Residence Lot except a single family residential dwelling house as permitted under applicable law, together with accessory buildings and structures normally appurtenant to such a dwelling situated in West Tisbury as permitted under applicable law except, however, guest houses shall be prohibited. No garage shall be used for the storage of heavy commercial vehicles or construction equipment. No business activities of any nature shall be conducted upon any Residence Lot, and no advertising signs shall be displayed thereon, except that a lawyer, physician, architect or dentist residing in a dwelling house thereon may maintain therein an office for his professional use and may display a small professional nameplate. Nothing herein shall be deemed to prevent the leasing of a Residence Lot from time to time by the owner thereof subject to all of the provisions of this Declaration.

B. Animals

No pets or other animals or birds shall be kept or maintained on any Residence Lot of such type or in such number as to be noisome or offensive, and no such pet, animal or bird shall be allowed to pass onto or enter land in Deep Bottom Pond other than the Residence Lot of the owner thereof unless such pet, animal or bird is suitably leashed, caged or otherwise controlled.

C. Improvements and Alterations

No buildings or fences or other structures of any kind or additions thereto or driveways shall be erected, placed or allowed to stand upon any Residence Lot until the size, plans, specifications and locations thereof shall have been approved in writing by the Approval Committee provided for in Article III hereof. No loam, sand, gravel, or other soil material, except that resulting from customary landscaping or from construction permitted and approved hereunder, shall be removed from Deep

Bottom Pond. The erection of any approved structure on a Residence Lot, once begun, shall be carried forward to completion with reasonable diligence. Temporary buildings or structures used during the construction of a dwelling on a Residence Lot shall be removed immediately after the completion of construction. No tree(s) greater than 4” in diameter shall be removed or altered until plans identifying the specific tree(s) to be affected, shall have been approved in writing by the Approval Committee.

D. Temporary Occupancy

No trailer, mobile home, camper, temporary building or structure of any kind, shall be used for a residence, either temporarily or permanently.

E. Storage

No trailer, mobile home, commercial vehicle, non-operative or unregistered vehicle, light construction equipment, camper, boat, permanent tent or similar structure or equipment, shall be stored, kept, placed or maintained upon any Residence Lot or upon any Vehicular Access Area unless the same is garaged. Provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Approval Committee.

F. Nuisances

No rubbish, debris, dead trees or heavy brush of any kind shall be placed or permitted to accumulate upon any Residence Lot which will or may render the same or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Residence Lot, Common Area or Vehicular Access Area and no activity shall be conducted or maintained which is or may be offensive or detrimental to any other Residence Lot in the vicinity thereof or to its occupants.

G. Repair of Buildings

No building or structure upon any Residence Lot shall be permitted to fall into disrepair, and such building and structure shall at all times be kept in good condition and repair.

H. Trash Containers and Collection

Trash, rubbish and garbage shall be kept in covered containers which shall be stored inside a structure or properly screened and/or enclosed so as not to be visible from any Residence Lot, Common Area or Vehicular Access Area. The collection of said containers shall be directly from the structure and/or the screened/enclosed area.

I. Clothes Drying Facilities

No outside clothes lines or other outside facilities for drying or airing clothes shall be erected or maintained on any Residence Lot if it is visible from other Residence Lots, Common Areas or Vehicular Access Areas.

J. Lighting

Upon completion of a residential dwelling, a free-standing electric light shall be installed by the owner on a post adjacent to the junction of the driveway and access road or such alternative lighting as approved by the Approval Committee. Said light shall be equipped with an automatic timing device so as to turn the said light on at dusk and off at dawn.

K. Restrictions on Further Subdivision

No Residence Lot shall be further subdivided. No portion of any Residence Lot nor any easement or license shall be conveyed by any owner without the prior written approval of the Approval Committee.

L. Signs

No signs shall be erected or maintained on any Residence Lot except:

1. Such signs as may be required by law;
2. A residential identification sign having a total face area not larger than seventy-two (72) square inches;
3. During the time of construction of any building or other improvements, one job identification sign not larger in area than three (3) square feet;
4. Professional signs permitted pursuant to Section 2.02A above.

M. Access Limitation

No direct vehicular access shall be permitted to or from any Residence Lot or Common Access Area onto Deep Bottom Cove Edgartown-West Tisbury Road, Tiah's Cove Road, or Scrubby Neck Road.

N. Green Belt Areas

1. A 100' "green belt" (no build) shall border along the Massachusetts State Highway pursuant to West Tisbury Planning Board Covenant dated May 18, 1987.

2. The deeds to Lot Nos. 1 through 9, and Lots Nos. 32 through 42, shall contain the "green belt" restriction that no residential dwelling construction, lawn or garden, shall be permitted within 100' of the rear lot lines as noted on the plan referred to in Article I hereinabove.

3. A "green belt" area shall exist and be maintained contiguous to the rear boundary lines of Lots Nos. 17 through 27, inclusive, and Lots Nos. 30 through 32, inclusive, as shown on the plan referred to in Article I hereinabove, and shall extend from said boundary lines one hundred feet (100') into *said* lots to a line parallel to said rear boundary lines, which area so designated as the "green belt" area shall forever remain in its natural, vegetated and scenic condition and the construction or placing of any above ground buildings or other vegetation in said area shall be prohibited, but this shall not prevent the placing of wells, septic systems or other underground support systems. Said "green belt" restriction shall be contained in the deeds to said Residence Lots pursuant to the Green Belt Covenant dated May 6, 1986 duly recorded with the Duke County Registry of Deeds in Book 447, Page 583.

O. Regulatory Restrictions and Conditions

The Martha's Vineyard Commission and the Town of West Tisbury have imposed the following restrictions and conditions on the Residence Lots:

1. Deep Bottom Cove Road shall not be used for- vehicular access to Residence Lots;
2. West Tisbury Board of Health shall approve all well and septic system placements prior to installation;

3. Residence Lots shall be bounded with concrete monuments at all changes of property line direction and at the point where the property line intersects the road;
4. Residence Lots shall be used as single-family residences only, guest houses are prohibited;
5. Leaching fields shall be used in conjunction with individual septic systems, unless waived by the West Tisbury Board of Health;
6. No more than 20 percent of any Residence Lot shall be lawn or garden.

P. Residence Lot Easements – Meadow/Pond Area

The Residence Lot Owners shall have an appurtenant perpetual right and easement over a strip of land ten (10') feet in width on the rear portion of any Residence Lot which abuts Common Area - Parcel A, which ten (10') foot easement shall run contiguous and parallel to the existing meadow fence constructed by the Declarant pursuant to Section 2.05D Meadow/Pond Area, which section shall govern the use and operation of the easement established hereby.

SECTION 2.03 Residence Areas: Construction of Improvements and Alterations

A. Application for Approval of Improvements and Alterations

Any owner of a Residence Lot proposing to make any improvement which, under Section 2.02 hereof, requires the prior written approval of the Approval Committee shall apply for approval by delivering to the Approval Committee a written application describing the nature of the proposed improvement together with the following documents and information as are pertinent, in such number of copies as the Approval Committee may require:

1. A plot plan of the affected property showing the location of existing and proposed improvements and alterations including the driveways and walkways;
2. Floor plans;
3. Drawings showing all elevations;

4. A description of exterior materials and colors, with color samples;
and
5. The owner's proposed construction schedule.

B. Basis for Approval of Improvements and Alterations

The Approval Committee shall, after consideration of the items set forth in the foregoing sub-paragraph A and such other matters as it deems necessary, grant the requested approval if the Approval Committee determines that:

1. The proposed improvement or alteration conforms to the provisions of this Declaration, the restrictions herein set forth and the Approval Committee Rules as defined in Section 3.04 in effect at the time the application for approval was submitted; and
2. The proposed improvement or alteration is reasonably compatible with the standards of the Deep Bottom Pond community and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of external design with existing structures and as to location with respect to vegetation, topography, finished grade, and views, if any, from other buildings and building sites on Residence Lots; and
3. The proposed improvement or alteration complies with all applicable laws, specifically including the Zoning By-Laws and Building Code requirements of the Town of West Tisbury.

The standards as to reasonable compatibility and harmony of the initial proposed improvements shall be at the sole discretion of the Declarant.

C. Certificate of Approval

All approvals given under the foregoing Paragraph B shall be in writing, provided, however, that any such application for approval which has not been acted upon within thirty (30) days from the date of submission thereof to the Approval Committee shall be deemed approved, and a Certificate to that effect signed by any member of the Approval Committee or the President or Secretary of the Deep Bottom Pond Owners' Association, Inc. shall be conclusive evidence of such approval. One set of plans as finally approved shall be retained by the Approval Committee as a

permanent record. An application shall be deemed duly submitted at such time that all requisite documents pursuant to the foregoing sub-paragraph A and information have been actually received by the Approval Committee.

D. Proceeding with Work

Upon receipt of approval from the Approval Committee or upon the lapse of thirty (30) days without action as provided in sub-paragraph C of this Section 2.03, the owner of the Residence Lot shall, as soon as practicable, commence and diligently proceed with the construction, refinishing, alterations and excavation in accordance with the owner's proposed construction schedule set forth in the documents accompanying his application for approval. Notwithstanding the foregoing, no construction shall commence in the months of June, July or August unless this restriction is waived by the Approval Committee.

E. Failure to Complete Work

In the event that the construction, reconstruction, refinishing, or alteration of any improvement is not completed within a reasonable time, or having been completed does not comply with the approval therefore given by the Approval Committee, the Approval Committee shall report the matter to the Board of Directors of the Association, and the Board, after a hearing, may direct the owner to remedy the non-compliance or remove the improvement. If the owner does not comply with the order of the Board within the time period set forth in the order, the Board may either remove the non-complying improvement or remedy the non-compliance and the owner shall reimburse the Deep Bottom Pond Owners' Association, upon demand, for all reasonable expenses incurred in connection therewith.

SECTION 2.04 Vehicular Access Areas: Permitted Uses and Restrictions

The fee title to the Vehicular Access Areas shall remain in the Declarant until (a) the expiration of three (3) years after the date of the execution of the first Purchase and Sale Agreement by which a Residence Lot is sold by the Declarant, or (b) the date on which thirty (30%) percent of the Residence Lots have been sold, whichever of said (a) or (b) shall first occur, and thereupon the Declarant shall convey all of the same to the

Association. Said streets and ways shall in any event and at all times be subject to a permanent appurtenant easement for the benefit of all owners of Residence Lots in common with others lawfully entitled thereto, and to use the same for all purposes for which streets and ways are now or may hereafter customarily be used in the Town of West Tisbury. All maintenance, repair and improvements of said streets and ways (including snow removal) shall be done by the Association and the cost thereof shall be included in the expenses of the Deep Bottom Pond Owners' Association subject to assessment pursuant to Section 5.02 hereof.

SECTION 2.05 Common Areas; Permitted Uses, Construction of Improvements and Alterations

A. Conveyance of Common Areas

The Declarant shall convey the Common Areas and Easements, if any, and the facilities thereof and thereon to the Association, and shall so convey the same on or before (a) the expiration of three (3) years after the date of the execution of the first Purchase and Sale Agreement by which a Residence Lot is sold by the Declarant, or (b) the date on which thirty (30%) percent of the Residence Lots have been sold, whichever of said (a) or (b) shall first occur. At such time that Declarant conveys Common Area - Parcel A, Declarant has the right to reserve certain rights, which may include among others, the right to convey portions of Parcel A to Residence Lots abutting Parcel A for the purpose of conforming to any further federal, state, municipal or the like, rule or regulation, that would seek to limit the use of any such abutting Residence Lot without unreasonably affecting the use of the Meadow Area or Pond Area for recreation/conservation. Common Areas shall be used for outdoor recreation and conservation purposes only. No improvement, excavation or work which in any way alters any Common Area from its natural or existing state on the date such area was conveyed to the Association shall be made or done except within the restrictions and limitations of this Section 2.05.

B. Limitation on Construction

No person other than the Declarant or the Association shall construct, reconstruct, refinish, alter or maintain any road or improvement upon, or shall make

or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, or other vegetation from any Common Area or Easement, if any. The Association shall have the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings and to construct, reconstruct, refinish, alter and maintain any recreational facility or improvement on any portion of the Common Areas. However, only structures or improvements enhancing the natural recreational amenities of Deep Bottom Pond shall be constructed or allowed on or within the Common Areas.

C. Tennis Area

The Declarant shall cause to be constructed at his sole expense two (2) tennis courts and appurtenances thereto, if any, within Common Area Parcel C contained within the subject premises described and shown on the plan referred to in Article I hereinabove. Construction of said tennis courts shall be completed within twenty-four (24) months from the date hereof. The design and specifications of said tennis courts shall be at the sole discretion of the Declarant.

The Residence Lot owners shall have the appurtenant perpetual right and easement to use said tennis courts. The said use of the tennis courts shall be consistent with the appropriate rules and regulations to be established by the Deep Bottom Pond Owners' Association. The cost of maintenance, repair and operation of the said tennis courts shall be included in the expense of the Deep Bottom Pond Owners' Association subject to assessment pursuant to Section 5.02.

D. Meadow/Pond Area

The Declarant has caused to be constructed a fenced Meadow Area and Pond Area within Common Area - Parcel A for recreation/conservation. The Pond Area is also to serve as a drainage retention area and is to be used in conjunction with a fire hydrant to be owned and operated by the Town of West Tisbury for fire protection.

The Residence Lot owners shall have the appurtenant perpetual right and easement to use the Meadow/Pond area. The use of same shall be consistent with the appropriate rules and regulations to be established by the Deep Bottom Pond Owners' Association. The cost of maintenance, repair and operation of the Meadow and Pond shall be

included in the expense of the Deep Bottom Pond Owners' Association subject to assessment pursuant to Section 5.02.

E. Foot Path Areas

The roads, so called, referred to as "Jim Green Road" and "Scrubby Neck or Watcha Road" contained within the subject premises described and shown on the plan referred to in Article I hereinabove, are hereby designated as foot paths. The Residence Lot owners shall have the appurtenant perpetual right and easement to use the foot paths, subject to, however, that whatever rights presently exist in said roads, shall continue. The cost of maintenance repair and operation of the foot paths shall be included in the expense of the Deep Bottom Pond Owners' Association subject to assessment pursuant to Section 5.02.

F. Declarant's Plans and Specifications

The Declarant shall from time to time file with the Approval Committee such plans and specifications as the Declarant may have for the purpose of maintaining a permanent record of improvements or alterations on any portion of the Common Areas.

SECTION 2.06 Utilities

The Declarant has entered into a certain Transmission Agreement with Terry Farm Trust (hereinafter referred to as the "Trust") dated October 1, 1990, duly recorded with the Dukes County Registry of Deeds in Book 547, Page 204, which Agreement grants Residence Lot owners the right to tie into the transmission lines owned by the Trust subject to certain conditions and covenants related to the tie-in, installation, and transmission of electricity, telephone and cable television, if available. In conjunction with the Transmission Agreement, the Declarant has entered into a certain Utilities Easement with Terry Farm Trust dated October 1, 1990, duly recorded with said Registry of Deeds in Book 547 Page 206 which grants the Trust a right and easement over certain portions of the Residence Lots, Vehicular Access Areas and Common Areas in order to maintain, repair and service the lines for the transmission of electricity, telephone, and cable television, if available.

The Subject Property is subject to an Easement between Terry Farm Trust and Commonwealth Electric Company and New England Telephone dated March 5, 1990, recorded in Book 537, Page 003 of the Dukes County Registry of Deeds, to install and maintain transmission lines and related equipment on a strip of land ten (10') feet in width abutting the private ways described and shown on the plan referred to in Article I hereinabove. The location of the utility easement over the Common Areas is to be established by the installation of said transmission lines.

ARTICLE III APPROVAL COMMITTEE

SECTION 3.01 Organization, Power of Appointment and Removal of Members

A. Committee Composition

The Approval Committee shall consist of three (3) members.

B. Initial Members

The Declarant shall forthwith appoint the three (3) initial members.

C. Terms of Office

The terms of office of the initial members of the Approval Committee shall expire on the date on which thirty (30%) percent of the Residence Lots have been sold (by entry of Purchase and Sale Agreement whether or not the closing or settlement thereunder has then been completed). After the expiration of such initial terms, the terms of the Approval Committee members first appointed thereafter shall be for such periods of three (3) years or less as specified by the Board of Directors, in order that such terms shall expire on December 31 in three (3) successive years. Thereafter the term of each Approval Committee member appointed shall be for a period of three (3) years or until his successor shall have been appointed. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term.

D. Appointment and Removal

The right to appoint and remove all members of the Approval Committee shall be vested solely in the Board of Directors acting on behalf of the Association, provided, however, that no member may be removed from the Approval Committee except by the vote or written consent of four-fifths of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be the Secretary of the Association identifying the new member appointed to the Approval Committee and the member whose membership on the Approval Committee has terminated.

E. Resignations

Any member of the Approval Committee may at any time resign from the Approval Committee by giving written notice thereof to the Board.

SECTION 3.02 Duties

It shall be the duty of the Approval Committee to consider and act upon any and all applications for improvements or alterations submitted to it pursuant to Section 2.03 hereof, to inspect newly completed improvements and alterations, to adopt Approval Committee rules, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by the provisions of this Declaration.

SECTION 3.03 Meetings and Compensations

The Approval Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent to any two regular members, at a meeting or otherwise, shall constitute the act of the Approval Committee unless the unanimous decision of the Approval Committee is specifically required by any provision of this Declaration. The Approval Committee shall keep and maintain a written record of all actions taken. Members of the Approval Committee shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Approval Committee functions, but shall not be entitled to compensation unless specifically authorized by the Board.

SECTION 3.04 Approval Committee Rules

The Approval Committee may, from time to time, adopt, amend and repeal by unanimous vote rules and regulations to be known as "Approval Committee Rules." A copy of the initial rules are attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 3.05 Approval Committee Certificate of Compliance

Within thirty (30) days after written demand is delivered to the Approval Committee by any owner of a Residence Lot, the Approval Committee shall deliver to the owner a certificate in recordable form executed by one of its members, certifying (with respect to such Residence Lot) that as of the date thereof either (a) all improvements made and other work done upon or within said Residence Lot complies with the provisions of this Declaration and plans and specifications approved thereunder; or (b) such improvements or work do not comply, in which event the certificate shall also identify the noncomplying improvements or work and set forth the nature of such non-compliance. All persons shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, the Declarant, and all Owners of Residence Lots, and those claiming or deriving any interest by, through or under them.

SECTION 3.06 Liability

Neither the Approval Committee nor any member thereof shall be liable to the Association, any owner of a Residence Lot, or to any other party, for any damage or loss suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property; or (d) the execution, recording or filing of a certificate pursuant to Section 3.05 hereof, whether or not the facts therein are correct. This provision shall

not be construed to relieve the Approval Committee or any member thereof from individual liability for actions not conducted in good faith.

ARTICLE IV

DEEP BOTTOM POND OWNERS' ASSOCIATION

SECTION 4.01 Organization of the Association

The Deep Bottom Pond Owners' Association, Inc. (herein referred to as the Association) is a non-profit Massachusetts corporation, organized under provisions of Chapter 180 of the Massachusetts General Laws, charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the provisions of this Declaration. The terms of office of the initial members of the Board of Directors of the Association shall not in any event extend beyond (a) the expiration of three (3) years after the date of the execution of the first Purchase and Sale Agreement by which a Residence Lot is sold by the Declarant, or (b) the date on which thirty (30%) percent of the Residence Lots have been sold, whichever of said (a) or (b) shall first occur.

SECTION 4.02 Membership: Qualifications, Rights and Duties

The owner or owners, from time to time, of each Residence Lot shall be members of the Association, and one Membership shall be appurtenant to each Residence Lot. The qualifications of such Membership and the rights, duties, privileges and liabilities of members shall be as set forth in this Declaration and in the By-Laws of the Association.

SECTION 4.03 Voting

A. Each Membership (i.e., each Residence Lot) shall be entitled to one vote, regardless of the number of owners of such Residence Lot, provided, however, that:

1. Each Membership shall be held and exercised as a unit and shall not be

divided among several owners of any Residence Lot. To that end, whenever any Residence Lot is owned of record by more than one person, the several owners of such Residence Lot shall (a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the right appertaining to such Residence Lot hereunder, and (b) notify the Secretary of the Association of such designation by a notice in writing signed by all of the record owners of such parcel. Any such designation shall take effect upon receipt by the Secretary and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Secretary may designate anyone such owner for such purposes; and

2. From and after (a) the expiration of three (3) years after the date of the execution of the first Purchase and Sale Agreement by which a Residence Lot is sold by the Declarant, or (b) the date on which thirty (30%) percent of the Residence Lots have been sold, whichever of said (a) or (b) shall first occur, the voting power of the Declarant, regardless of how many Residence Lots the Declarant then and thereafter owns, shall be limited to a number of votes which is no greater than one (1) less than the number of votes to which owners of Residence Lots other than the Declarant are then and thereafter from time to time entitled.

SECTION 4.04 Duties of the Corporation

The Association shall have the obligation, subject to and in accordance with the provisions of this Declaration, the Articles and the By-Laws to perform the following duties for the benefit of the Owners of Residence Lots.

A. Operation of Vehicular Access Areas

To operate and maintain or provide for the operation and maintenance of the streets and ways.

B. Payment of Taxes

To pay all real and personal property taxes and assessments levied upon any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association.

C. Public Service

To contract for or provide (to the extent adequate services are not provided by a public authority) such buildings and grounds maintenance, snow plowing service, and other services and facilities of a public or quasi-public nature as may be deemed necessary or desirable for the effectuation of the purposes of this Declaration. In providing such facilities and services, the Association may contract with or delegate its duties to any entity organized for such purposes.

D. Insurance

To obtain and maintain in full force and effect such insurance as the Board shall deem necessary to protect the Association from loss by reason of fire or other casualty and from liability for personal injury and property damage and to obtain and maintain such fidelity and other bonds as the Board shall deem appropriate to protect to Association.

E. Other

To carry out the duties of the Association as set forth in this Declaration, the Articles and the By-Laws.

SECTION 4.05 Powers and Authority of the Association

The Association shall have all of the powers of a non-profit corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, the Articles and the By-Laws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing provisions, the Association shall have the following power and authority at any time:

A. Assessments

To levy assessments on the owners of Residence Lots, and to receive and collect payment of such assessments, in accordance with the provisions of Article V hereof.

B. Easements and Rights-of-Way

To grant easements and rights-of-way, and such fee titles as may be required by governmental agencies, utility companies, or the Declarant for the purpose of constructing, erecting, operating or maintaining (1) the streets and ways contained in the Vehicular Access Areas, and (2) pipes, lines, cables, conduits and other facilities for the provisions of electric, telephone, drainage, and other utility services in, on, under and through the Vehicular Access and Common Areas.

C. Employment of Agents

To employ a manager and such other employees as are necessary to carry out the responsibilities and duties of the Association.

SECTION 4.06 Rules

A. Rulemaking Power

Subject to the provisions of this Declaration, the Board may from time to time adopt, amend and repeal rules and regulations governing, among other things, use of Residence Areas, Common Areas, Vehicular Access Areas under the jurisdiction of the Association. Said rules may reasonably restrict and govern the use of said Areas. Said rules may also include parking restrictions and limitation, limitations upon vehicular travel, restrictions on the type or types of vehicles which may be permitted to enter or use the Vehicular Access Areas.

B. New Recordation of Rules

A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Residence Lot owner and may, but need not, be recorded or filed. Upon such mailing, other delivery or recordation

and filing, said Rules shall have the same force and effect as if they were set forth and were a part of this Declaration.

SECTION 4.07 Liability of Board Members and Manager

No Member of the Board, the manager, or other employee of the Association shall be personally liable to any Residence Lot owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, the manager or any other representative or employees of the Association or the Approval Committee, provided, however, that such actions were conducted in good faith.

ARTICLE V FUNDS AND ASSESSMENTS

SECTION 5.01 Operating Fund

The Board shall establish an operating fund for the Association into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration, the Articles and the By-Laws.

SECTION 5.02 Operation and Maintenance Assessments

A. Regular Assessments

At least thirty (30) days prior to the commencement of each fiscal year, the Board shall prepare and adopt a budget for the Association reflecting the estimate of the expenses to be incurred by the Association during such fiscal year in performing its functions under this Declaration, the Articles and the By-Laws. The estimate of expenses so determined shall be divided by the total number of Residence Lots (including those, if any, which may then be owned by Declarant) and the resulting amount shall be assessed as of the first day of such fiscal year to the owners of each Residence Lot (including the Declarant) .

B. Special Assessments

If, at any time during any fiscal year, the regular assessment proves inadequate for any reason, the Board may levy a special assessment as of such date as it may determine in the amount of such actual or estimated inadequacy, which amount shall be assessed to the owners of all Residence Lots.

C. Payment of Assessments

All assessments shall be due and payable within thirty (30) days after the date of assessment unless otherwise authorized by the Board.

D. Obligation of Owners

All owners of Residence Lots shall be liable for all assessments levied upon them pursuant to this Declaration, the Articles and By-Laws.

SECTION 5.03 Reimbursement Assessment

The Board shall levy a reimbursement assessment against any owner of a Residence Lot where, as a result of that owner's failure to comply with the provisions of this Declaration, the Articles, the By-Laws, the Rules or the Approval Committee Rules, monies are expended by the Association to cure the non-compliance. Such an assessment shall be limited to the amount so expended including reasonable attorney's fees, and shall be due and payable to the Association when levied.

SECTION 5.04 Enforcement of Assessments

Assessments levied hereunder together with interest thereon and all reasonable costs of collection thereof, including reasonable attorney's fees, shall be a charge on the Residence Lot and shall constitute a continuing lien upon said property against which such assessment is made, and shall also be the personal obligation of the owner or owners from the time the payment thereof became due.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then prime rate of interest established by the Bank of Boston plus four (4%) percent.

The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. The Association may enforce each such lien by selling any Residence Lot subject thereto, and to satisfy the same, in the manner provided by law for the foreclosure of mortgages containing a power of sale, provided that notice of the commencement of such proceedings is duly filed for recording in the Dukes County Registry of Deeds within two years of the date on which payment becomes due and so long as said assessment or any portion thereof remains unpaid.

The lien for the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Residence Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien or such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residence Lots or Owners thereof from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

MISCELLANEOUS PROVISIONS

SECTION 6.01 Amendment and Duration

A. Amendment

Except as otherwise herein expressly provided, this Declaration may be amended at any time by:

A vote adopting, or written consent to, the proposed amendment by (a) a three-fifths majority of the Board and (b) a three-fourths majority of the owners of Residence Lots. Such amendment shall not be effective until there has been filed and recorded a certificate signed by the Secretary or Assistant Secretary of the Association setting forth the amendment and the facts relating to its adoption by the Board and the Residence Lot Owners. However, no such amendment shall be adopted that substantially derogates from the original intent and purpose of this Declaration.

B. Duration of Restrictions

Subject to the provisions of paragraph A of Section 6.01 hereof, the restrictions set forth in this Declaration shall continue and remain in full force and effect in all events until thirty (30) years from this date, and may thereafter be extended and continued in full force and effect for further periods of twenty (20) years each in the manner provided in Massachusetts General Laws Chapter 184, Section 28, as it may be amended from time to time.

SECTION 6.02 Enforcement and Non-Waiver

A. Right of Enforcement

The restrictions set forth in this Declaration are for the benefit of all the land described herein and shall run with the land. Except as otherwise provided herein, any Owner of any Residence Lot, the Declarant or the Association (irrespective of whether the Declarant or the Association then owns any of the Residence Lots) shall have the right to enforce any or all of the provisions of this Declaration, including without limitation, the restrictions herein set forth.

B. Violation of Law

Any violation of any applicable local, state or federal law or governmental regulation pertaining to the ownership, occupation or use of any property within Deep Bottom Pond is hereby declared to be a violation of this Declaration and of the restrictions herein set forth and subject to any or all of the enforcement procedures set forth in this Declaration.

SECTION 6.03 Delivery of Notices and Documents

Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of same has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested.

SECTION 6.04 Construction and Severability: Singular and Plural

A. Provisions Severable

Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provisions.

B. Singular Includes Plural

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine and neuter.

C. Captions

All captions or titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal as of the day and year first above written.

DEEP BOTTOM POND TRUST

By: _____

Peter C. Hoover, Trustee

COMMONWEALTH OF MASSACHUSETTS

Dukes County

October 12, 1990

Then personally appeared the above-named Peter C. Hoover, Trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Deep Bottom Pond Trust, before me.

Notary Public

My Commission Expires: _____

EXHIBIT “A”
ARCHITECTURAL APPROVAL COMMITTEE
DEEP BOTTOM POND
APPROVAL COMMITTEE RULES

INTRODUCTION

The following guide is intended to assist owners, their architects, builders and agents in meeting the design and construction standards required at Deep Bottom Pond. No improvements shall be made on any Residence Lot without the approval of the Approval Committee of Deep Bottom Pond (hereinafter referred to as the “Approval Committee”).

POLICY STATEMENT

The purpose for which the Approval Committee is established is to assure that improvements on the Residence Lots and the use of such improvements is in accordance with the purposes set forth in the Master Declaration of Deep Bottom Pond and in harmony with the landscape, settings and environment of the Residence Lot, surrounding Residence Lots and the improvements thereon. It is intended that the Approval Committee assist owners, their architects, builders and agents in the design and placement of improvements meeting the owner’s requirements as to space, location and cost, together with the rules and regulations of the Approval Committee.

GENERAL CONSIDERATIONS

Although the Approval Committee does not intend to require that all structures be identical or of a homogenous style, it has determined that the minimum requirements set forth in Exhibit A-1 attached hereto shall be taken into consideration in preparing plans and specifications for approval.

PROCEDURES

Preliminary Notification and Review

The Approval Committee strongly recommends that each Residence Lot Owner follow the procedures set forth below prior to submitting a written formal application with the required plans and specifications for approval. These procedures are provided to reduce the chance of such owner incurring substantial expenses for the design of improvements which will not be approved.

1. Notice of Intent. Prior to the commencement of the preparation of a written formal application and the required plans and specifications, the Residence Lot Owner should notify the Approval Committee in writing of their intention to submit a written formal application and the required plans and specifications for approval (a “Notice of Intent”). A Notice of Intent should set forth with some specificity the general type and size of the improvement to be constructed, the materials to be employed and the intended use of the improvement. Such notification should also specify the name and address of the architect, builder or contractor, if any, whom the Residence Lot Owner has retained or proposes to retain. If the Residence Lot Owner has not selected an architect, contractor or builder, the Approval Committee may be able to assist in such selection.

At the time of submission of a Notice of Intent, the Approval Committee will supply the Residence Lot Owner with a copy of a lot plan, including topographical information if such is available.

2. Site Review. After receipt and review of a Notice of Intent, the Approval Committee and the Residence Lot Owner’s architect or other representative shall physically review the proposed building site, in order that the location of the proposed improvement will be selected to take advantage of the environment of the Residence Lot while at the same time complying with all easements, rules and regulations. In this way the architect and Residence Lot Owner can acquaint themselves with the criteria

that will be employed by the Approval Committee in determining whether the plans and specifications should be approved. Such criteria will include the location of trees and vegetation and existing or potential improvements on neighboring lots.

3. Minor Improvements. In the case of minor improvements such as fences, changes in doors or windows, the Approval Committee may waive submission of a written formal application and the required plans and specifications and act on the basis of information contained in the Notice of Intent.

Written Formal Application and Required Plans and Specifications

The following are required for formal consideration by the Approval Committee of a proposed improvement unless otherwise specifically waived in writing by the Approval Committee:

1. A formal written application shall contain the following:

- (a) Name and mailing address of Applicant;
- (b) Name and mailing address of Residence Lot Owner upon which improvement is to be located;
- (c) Lot number upon which improvement is to be located;
- (d) Description of improvement and its intended use;
- (e) Name and mailing address of any architect, contractor or builder to be used by the applicant or owner;
- (f) A \$150.00 processing fee made payable to the Association; and
- (g) Any other information the applicant believes to be pertinent to the application.

2. A (scale 1" to 20') plot plan of the entire lot showing the proposed location of the improvements, walkways, driveway and noting important features such as prime vegetation and topographical features indicated at two (2) foot contours.

3. Elevations of each view of the improvement.

4. Floor plans of each level of the improvement.

5. A landscaping plan for the lot.

The above should also indicate in detail the materials which are intended to be used on exterior surfaces and the intended use or uses of the improvement.

When submitting the written formal application and the required plans and specifications, the Residence Lot Owner should indicate the date on which the construction is anticipated to commence. The Approval Committee will at all times endeavor to accommodate such owner in reviewing the written formal application and the required plans and specifications, however, it can only do so if the Residence Lot Owner and their architect cooperate fully to supply all the necessary information. In any case, the Approval Committee will act within thirty (30) days after the written formal application and required plans and specifications have been submitted unless the applicant requests an extension of time in writing.

The Review Process

The preliminary review process commences with the submission of a Notice of Intent and proceeds with the Site Review by the Approval Committee and the Residence Lot Owner or their agent. Thus, Residence Lot Owners who avail themselves of the preliminary process facilitate speedy formal review of their plans and specifications. When the written formal application and the required plans and specifications have been submitted, the Approval Committee will delegate the initial review process to one of its members, agents or employees. The ultimate decision, however, will be made by the Approval Committee.

If the plans and specifications are inadequate or contain unacceptable design features, the Approval Committee will notify the applicant as soon as possible of the modifications it requires for approval. In addition to requesting changes or additional information, the Approval Committee may advise the applicant to request an extension of the thirty (30) day period by which the Approval Committee must act to avoid the Approval Committee disapproving the plans and specifications as submitted. If an applicant is dissatisfied with the decision of the Approval Committee, he may request a

rehearing before the Approval Committee. Decisions of the Approval Committee are final and subject only to review by the Board of Directors of the Association.

Written Approval

When the Residence Lot Owner's plans and specifications have been approved, the Approval Committee will so notify the applicant in writing.

Construction

Construction of an improvement must be commenced within eighteen (18) calendar months from the date of the Approval. If construction is not commenced within such period the Approval Committee's approval will expire, and it will be necessary for the Residence Lot Owner to re-submit the plans and specifications to the Approval Committee. If the circumstances warrant, the Approval Committee may extend the period of time for which the construction may be commenced; however, a Residence Lot Owner must seek such extension in writing and state the reasons for doing so.

At such time that construction has commenced, it shall progress orderly and diligently without unreasonable interruption unless delayed by "Acts of God" and/or other unusual circumstances beyond the control of the owner.

The Approval Committee may, from time to time, inspect an improvement which is under construction to assure that it complies with the approval of the plans and specifications. If the Approval Committee finds that construction does not conform to the approved plans and specifications, it may order that construction be halted and/or that changes be made. However, it is the Residence Lot Owner's obligation to assure that improvements comply with approved plans and specifications and not the Approval Committee's.

Certificate of Compliance

When construction of an improvement has been completed the Approval Committee shall, on written request by the Residence Lot Owner, issue a Certificate of Compliance which shall be in recordable form. Such certificate shall identify the improvement and the Residence Lot upon which it is located and state that the location

of and the use or uses thereof, have been approved and that such improvement conforms to the plans and specifications submitted therefore.

EXHIBIT "A-1"

I. Appearance

- (a) The design of proposed improvements shall be harmonious with the existing approved improvements in Deep Bottom Pond;
- (b) Designs such as log cabins, "California" ranches, A-frame and Modern, specifically, shall not be allowed.
- (c) The minimum main roof pitch shall be 6/12;
- (d) No metal or block chimneys shall be exposed;
- (e) The maximum height of any roof (ridge) shall not exceed 30 feet from mean natural grade; and
- (f) No dwelling shall be designed with roof decks, widow's walks or similar roof structures.
- (g) Electric meters shall be attached to the improvement and adequately screened with shrubbery.

II. Location

- (a) Improvements shall be located in such a manner so as not to unreasonably interfere with views and/or use of other Residence Lots and/ or Common Areas.
- (b) All dwellings and buildings shall have a minimum road set back of 60 feet.
- (c) Improvements shall be located so as to take advantage of natural amenities, including existing vegetation.
- (d) All disturbed ground cover shall be planted, seeded, mulched, wood chipped or otherwise properly landscaped.

III. Materials

- (a) Emphasis should be placed on the use of natural wood materials for siding and trim. Roofing shall be GAF TIMBERLINE, Class A, Architectural Asphalt Shingles, SLATE BLEND COLOR, or if no longer manufactured or unavailable, an approved substitute.
- (b) All dwellings shall be built on foundations constructed of continuous poured concrete or blocks with a finished smooth exterior surface where exposed.
- (c) No mill (raw or unfinished) aluminum, tin or other such silver-toned materials shall be exposed.

IV. Private Areas

- (a) Decks, patios and other such outside living areas shall be screened with only the use of natural materials and/or vegetation.
- (b) Boundary or peripheral fences or walls shall be prohibited. However, fences or walls of natural material, such as stone or wood, may be approved for safety or landscaping purposes along pools, private areas, driveways, walks or steep grades.

V. Exterior Colors and Siding

- (a) All exterior trim shall be white except for approved traditional New England accent colors or tones for doors. All side walls shall be approved natural light (earthen) colors or tones.
- (b) Clapboard siding shall be the predominant siding for the front (road) elevation.

VI. Driveways

- (a) Driveways joining or intersecting a paved road shall be constructed with a paved asphalt or concrete apron having a minimum depth of ten (10') feet from the said paved road. *

*Note: Revised ARC policy change, page A-8, Exhibit “A-1”, Section VI (a): as per ARC meeting, July 2006, driveway aprons shall include choice of cobblestone material and minimum depth requirement has been changed to four feet (4’).