



**CORRECTED SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
MALLARD POINT TOWNHOMES PHASES II, III AND IV**

This Corrected Supplemental Declaration, made this 2nd day of March, 2000, by Mallard Point Corporation, a Virginia corporation, hereinafter called "Developer";

W I T N E S S E T H :

WHEREAS, a Supplemental Declaration dated September 7, 1999, recorded in the Clerk's Office of the Circuit Court of Pulaski County, Virginia, as Document #995083, Mallard Point Corporation, a Virginia Corporation, subjected certain real property more particularly herein described to easements, restrictions, covenants and conditions prescribed therein for the purpose of enhancing and protecting the value, desirability and attractiveness of the aforesaid property; and,

WHEREAS, certain lines/paragraphs were mistakenly left out and certain words were misspelled; and

WHEREAS, Mallard Point Corporation, wishes to correct said errors; and

WHEREAS, ARTICLE XIII, Section 13 of the Declaration provides that "the Developer reserves the right to unilaterally amend the Declaration"; and

WHEREAS, the Developer has complied with all the required terms of ARTICLE XIII of the Declaration; and,

NOW THEREFORE, the Developer wishes to correct the Supplemental Declaration of Covenants, Conditions and Restrictions of Mallard Point Townhomes Phases II, III and IV of record in the aforesaid Clerk's Office as Document #995083, as regards to the real property located in the Ingles Magisterial District of Pulaski County, Virginia, as described in Exhibit A attached hereto and made a part hereof (herein after known as the "Property");

DECLARATION

NOW, THEREFORE, the Developer hereby declares the Property is and shall be held, transferred, sold, conveyed, occupied and used subject to the provisions of the Corrected Supplemental Restrictions hereinafter set forth, for and during the period of time hereinafter specified.

**ARTICLE I
DEFINITIONS**

The following words when used in this Declaration or any supplemental hereto (unless the context shall prohibit) shall have the following meanings:

- (a) "Affiliate" shall mean a person or entity related to or affiliated with the Developer and includes, but is not limited to, a joint venture, partnership or corporation in which the Developer or any of its stockholders have an interest.
- (b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.
- (c) "Assessment" shall mean and refer to a Member's share of the Common Expenses from time to time assessed against a Member by the Association in the manner herein provided.

(d) "Association" shall mean and refer to The Mallard Point Homeowners Association, its successors and assigns.

(e) "Association Property" shall mean and refer to the real property owned by the Association described in Exhibit A, attached hereto.

(f) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(g) "Common Areas" shall mean all portions of the Property owned by the Association for the common use and enjoyment of the owners.

(h) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of the Declaration.

(i) "Common Maintenance Areas" shall mean the areas to be maintained by the Association which shall include all Association Property and the exterior of all Lots and buildings thereon. The exterior to be maintained shall include all shrubbery, grass, wooded areas, sidewalks, decks, railings, door bells, if any, door lights, window screens, if any, exterior railings, exterior steps or stairs, patios, porches, outside walls (excluding glass), outside trim, and roofs.

(j) "Declaration" shall mean and refer to the Supplemental Declaration of Mallard Point, as the same now exists or may be hereafter amended.

(k) "Developer" shall mean and refer to Mallard Point Corporation, a Virginia corporation, and any successors or assigns.

(l) "Lot" or "Lots" shall refer to any or all of the townhome lots with dwellings and improvements thereon, designated Phase II, recorded in Plat Cabinet 1, Slide 263, Page 1, and PHASES III & IV, recorded in Plat Cabinet 1, Slide 266, Page 4 in the Circuit Court Clerk's Office of Pulaski County, Virginia.

(m) "Member" shall mean and refer to all those Members who are members of the Association as provided in Article II, Section 1 of this Supplemental Declaration.

(n) "Mortgage" shall mean and refer to any mortgage, deed of trust or similar instrument encumbering a Lot as security for the performance of any obligation.

(o) "Occupant" shall mean and refer to any person, including, without limitation, any guest, invitee, tenant, lessee or family member of a Member, occupying or otherwise using or visiting in a Townhome.

(p) "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Townhome, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

(q) "Property" shall mean and refer to the real property described on Exhibit A, which includes all Townhomes, Association Property, and common areas.



**ARTICLE II
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot shall be a Member of the Association, provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member, unless and until such person or entity has succeeded to such Owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two (2) classes of voting membership:

(a) **Class A.** Class A members shall be all Lot Owners (with the exception of the Developer) and shall be entitled to one (1) vote for each Lot owned when more than one person holds an interest in any Lot, all persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B.** The Class B member shall be the Developer, or affiliate of Developer, and shall be entitled to one vote per lot not conveyed to a Class A member, multiplied by the number representing the total number of lots in the Mallard Point Community, plus one additional vote, so that the Developer shall retain a majority vote until it conveys the last lot to a Class A member. *The Class B membership shall cease and terminate at such time that the Developer has conveyed the last Lot to a Class A member, but shall terminate in any event 10 years from date of recordation hereof.*

**ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Description. The real property subject to this Declaration is all that property located in the County of Pulaski, Virginia, as described in Exhibit A attached hereto and made a part hereof.

Section 2. Additions to the Property by the Association. Additional land may be annexed to the Property by the Association pursuant to the vote of two-thirds (2/3) of the Class A membership and the assent of the Class B membership, if any, at a meeting duly called for such purpose. Such annexation shall not be effective without the filing for record in the Circuit Court Clerk's Office, Pulaski County, Virginia, of a supplemental declaration with respect to such additional land together with a plat showing the newly annexed land.

Section 3. Additions to the Property by Developer. Notwithstanding the provisions of Section 2 of this Article III, if, while the Developer is a Class B member, the Developer should develop additional lands contiguous to or in the proximate vicinity of the Property, such additional lands may be annexed to the Property at any time prior to the expiration of fifteen (15) years after the date of this Declaration *without the assent of the Class A members by filing for record in the aforesaid Clerk's Office a supplemental declaration* with respect to such additional land. **THE RIGHT TO ANNEX PROPERTY AS PROVIDED FOR IN THIS SECTION 3 OF ARTICLE III, OR THE RIGHT TO CONTRACT THE DEVELOPMENT PURSUANT TO SECTION 7 HEREOF, MAY BE ACCOMPLISHED BY A UNILATERAL ACT OF THE DEVELOPER OF ITS SUCCESSORS OR ASSIGNS AND WITHOUT ANY CONSENT OR CONCURRENCE OF THE CLASS A MEMBERS OF ANY OTHER PERSON OR ENTITY OWNING PROPERTY OR HOLDING PROPERTY AS SECURITY WITHIN THE DEVELOPMENT IN EXHIBIT A OR ANY AMENDMENT THERETO.**



Section 4. Mergers. The Association may merge or consolidate with other similar associations or corporations. Such merger shall be accomplished in accordance with the By-laws of the Association, this Declaration and the laws of the Commonwealth of Virginia.

Section 5. Other Additions. Upon approval in writing of the Association pursuant to a vote as provided in Section 2 of this Article III, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association, may file for record in the aforesaid Clerk's Office a supplemental declaration so effecting the same together with a plat of survey describing the property added.

Section 6. Effect of Annexation. In the event that any additional lands are annexed to the Property pursuant to Section 2, Section 3 or Section 5 of this Article III:

(a) Such additional lands shall be considered within the definition of the Property for all purposes of this Declaration or amendments thereto; and

(b) All voting of each class of the membership of the Association, and all voting by the Owners hereunder, shall be aggregated, it being intended that (i) any voting requirements need not be fulfilled separately for the real property described in a supplemental declaration, and (ii) any Class B member shall have a majority of the votes of the Association as described above.

Section 7. Contraction of the Property. At any time and from time to time as long as the Developer or any of its successors or assigns owns any portion of the Property, the Developer shall have right to remove portions of the Property and the Common Areas from the plan of development and the covenants, conditions and restrictions set forth in this Declaration by filing for record in the aforesaid Clerk's Office a supplemental declaration with respect to such land together with a plat of survey describing the land withdrawn from the development and describing the remaining lands retained within the development. Upon the filing of such supplemental declaration, the land described therein shall not be included as a portion of the Property or the Common Areas for any purpose whatsoever and the Unit Owners and the Association shall have no rights or interest therein.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owner's Easements of Enjoyment. Subject to the provisions of Section 4 of this Article IV, every member shall have a right and easement of enjoyment in and to the Association Property and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to suspend the enjoyment rights of any Member in the recreational facilities for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(b) The right of the Association to charge reasonable admission and other fees for the use of the Association Properties; and

(c) The right of the Developer so long as Developer owns any property as defined herein or any Lot and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Association Property and Common Areas for the installation, relocation, replacement, maintenance and inspection of the lines and appurtenances for public or private water, sewer, septic tanks, drainage, gas, electricity, telephone, cable television, and other utilities even after title has passed to a Purchaser; and

(d) The right of the Association to adopt rules and regulations governing the use by the Members of the Association Property.

Section 3. Delegation of Use. Any Member may delegate his rights of enjoyment of the Association Property and facilities to the members of his family, tenants, or contract purchaser (and members of the family of any tenant or contract purchaser) who reside on the Property or to such other persons as may be permitted by the Association.

Section 4. Obligations of the Association. The Association shall :

(a) Operate and maintain, for the use and benefit of all Members of the Association, all Association Property, easements and facilities and all Common Maintenance Areas.

(b) Maintain, reseed and mow the grass and replace all dead or destroyed landscaping in the Association Property and Common Maintenance Areas.

(c) Maintain and operate the Association Property and Common Maintenance Areas.

(d) Hire a professional manager to perform all functions of operation and management of the Association Property and Common Maintenance Areas on behalf of the Association if deemed necessary by the Board of Directors.

(e) Require any destroyed improvements on Association Property and Common Maintenance Areas, and any landscaping and decorative items to be reconstructed in substantially the same architectural, engineering, design, including paint colors, and in substantially the same manner as originally constructed.

(f) Prohibit any unnecessary additional improvements or alterations on Association Property and Common Maintenance Areas. This provision shall not apply to Developers.

(g) Prohibit any construction, painting or landscaping (which term shall be defined in its broadest sense including grass, fences, hedges, vines, trees and the like) whatsoever, other than to substantially maintain or reconstruct any improvement installed by Developer on Association Property and Common Maintenance Areas.

(h) Refuse to substantially change any original architectural landscape or decoration designs, provided however, the Developer shall have the absolute right without the permission of the Association to change the architectural landscape or decorative design to any extent whatsoever and/or make additional improvements to the Association Property and Common Maintenance Areas even after conveyance to a Class A Lot Owner without the permission of the Association or Lot Owner so long as Developer owns any lot as defined herein.

Section 5. Reservation of Developer's Rights in Common Areas. Notwithstanding any provision hereof to the contrary, Developer reserves unto itself, its successors and assigns the



right to use designated boat slips, any docks, tennis courts, beach area and other common areas. Developer retains the rights under this section whether or not Developer, its successors or assigns are a unit owner or a member of the Association.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. The Developer, for itself and its successors or assigns, and for each Member, hereby covenants, and each lot owner by acceptance of a deed or other transfer document therefor, whether or not it shall be so expressed in such deed or other transfer document, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements and operating, repair and replacement reserve funds, such assessments to be fixed, established and collected as hereinafter provided.
- (c) An initial assessment upon purchase of a Lot as a contribution to the reserve account.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Member's successors in title (other than as a lien on the land) unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and in particular for the maintenance of the Association Property and Common Maintenance Areas and for services and facilities devoted to this purpose and related to the use and enjoyment of the Association Property and Common Maintenance Areas, including, but not limited to, the payment of taxes and insurance thereon and repair and replacement, for the cost of labor, equipment, materials, management and supervision thereof, *and for operating reserve funds, and reserve funds for repair and replacement* of the Association Property and Common Maintenance Areas and facilities thereon.

Section 3. Basis and Maximum and Annual Assessments.

(a) An initial payment of \$295.00 for each Townhome lot that has a three bedroom unit and \$264.00 for each Townhome lot that has a two bedroom unit, in addition to all assessments, shall be payable to the initial Owner other than the Developer, at the closing of the sale of each Lot. Commencing with the conveyance of the first Lot from the Developer to an Owner and until changed by the Board of Directors as herein provided, the annual assessment imposed upon each Member of the Association shall be at a rate determined by the initial Board of Directors of the Association. The annual assessment may be collected monthly or quarterly as the Association may determine and may be increased as hereinafter provided in Section 4 of this Article V. Developer shall pay no annual or special assessments while Developer is a Class B Member.



(b) The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year in an amount equal to or below the maximum annual assessment set forth in Section 3(a), as the same may be increased pursuant to Section 4 of this Article V; provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such assessments at an amount sufficient to maintain and operate the Association Property and facilities and to provide reserves for the operating, repair and replacement of the Association Property and facilities.

Section 4. Change in Maximum of Annual Assessments. The Board of Directors of the Association may, without a vote of the Members of the Association, prospectively increase the maximum of the annual assessments (fixed by Section 3(a) hereof) to an amount which is twenty-five (25%) above the annual assessments for the previous year. The Association may prospectively increase the maximum of the assessments above the amount permitted pursuant to the preceding sentence, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 5. Determination of Annual Assessments.

(a) Fiscal Year. The fiscal year of the Association shall consist of the twelve-month period commencing on January 1 of each year and terminating on December 31 of that year.

(b) Preparation and Approval of Budget. Each year on or before December 1, the Board of Directors shall adopt a budget containing an estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair and replacement of the improvements, and the cost of materials, insurance premiums, services, supplies and other expenses and the rendering to the Lot Owners of all related services. Such budget shall also include such reasonable amounts as the Board of Directors consider necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board of Directors shall send to each member a copy of the budget, in a reasonably itemized form which sets forth the amount of the common expenses payable by each Member, on or before December 15 preceding the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Member's assessment as hereinbefore provided.

(c) Reserves. The Board of Directors shall build up and maintain an adequate reserve for working capital and contingencies, and an adequate reserve for replacement of all facilities on the Association Property and Common Maintenance Areas which shall be collected as part of the annual assessment as hereinbefore provided. All funds accumulated for reserves shall be kept in a separate bank account, segregated from the general operating funds, and, if the Board of Directors deems it advisable, funds accumulated for each type of reserve shall be kept in a separate bank account, identified by reference to the specific category of reserve. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except where an emergency requires an expenditure to prevent or minimize loss from damage to, or deterioration of, the Association Property and Common Maintenance Areas, reserves accumulated for one purpose may not be expended for any other purpose unless approved by the Member's Association. If the reserves are inadequate for any reason, including non-payment of any Owner's assessment, the Board of Directors may at any time levy a further assessment in accordance with the provisions

hereof, and which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors determines the Association may lose its tax exempt status due to such balance, the balance shall be returned on an equal basis to all members who are current in the payment of all assessments due to the Association.

(d) Effect on Failure to prepare of Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt the annual budget of adjusted budget for any fiscal year shall not constitute a waiver or release in any manner of a Member's obligation to pay his assessment as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each member shall continue to pay the assessment at the then existing rate established for the previous fiscal period in the manner such payment was previously due until notified otherwise.

(e) Accounts. Except as otherwise provided, all sums collected by the Board of Directors with respect to assessments against the Members may be commingled into a single fund, but shall be held for each Member in accordance with his votes in the Association.

Section 6. Special Assessments for Capital Improvements and Operating Reserves. In addition to the annual assessments authorized by Section 3 of this Article V, the Association may levy in an assessment year a special assessment (which must be fixed at one uniform rate for each Lot: applicable to that year only, for the purpose of defraying in whole or in part, the cost of any reconstruction, repair or replacement of a capital improvement upon the Association property and Common Maintenance Areas, including the necessary fixtures and personal property related thereto, and for operating the Association Property and Common Maintenance Areas, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Developer shall not pay any assessments, annual, special or capital, while Developer is a Class B Member of the Association.

Section 7. Date of Commencement of Annual Assessments: Due Date. The annual assessments as to any Lot shall commence on the conveyance of such Lot from the Developer to an Owner and shall be due and payable thereafter on the first day of each calendar month thereafter. The due date of any special assessment under Section 6 hereof shall be fixed in the resolution authorizing such assessment. Developer shall not pay any assessments, annual, special or capital, while Developer is a Class B Member of Association.

Section 8. Duties of the Board of Directors. In the event of any change in the annual assessment as set forth herein, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be open to inspection by any Member. Written notice of the assessment shall thereupon be sent to every Member subject thereto. The Association shall, upon demand at any time, furnish to any member liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment



has been paid, or the amount of any unpaid assessment. A reasonable charge may be made by the Association for the issuance of such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Non-payment of Assessments Remedies of Association. Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge, not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment of installment thereof not paid when due, shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then if not paid within ten (10) days after written notice is given to the Member to make such payment, the entire unpaid balance of the assessment for that year may be accelerated at the option of the Board of Directors and be declared due and payable in full, and foreclosure proceedings and/or other legal proceedings may be instituted to enforce such lien. Such notice shall be sent by regular first class mail, to the Member both at the address of the Lot or at any other address or addresses the Member may have designated to the Association in writing, specifying the amount of the assessments then due and payable, together with authorized late charges and interest accrued thereon. Any assessment or portion thereof, together with authorized late charges, and interest accrued thereon. Any assessment or portion thereof, together with authorized late charges, not paid when due shall bear interest from the date of delinquency until paid at twelve percent (12%) per annum, or the maximum rate allowed by law, whichever is greater. The Board of Directors may suspend the voting rights of the Member or the rights of the member and his Occupants to use the recreational facilities of the Property during the period in which any assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Member as aforesaid, and the Association may bring an action at law against the member personally obligated to pay the same or foreclose its lien against such Member's Lot, in which events late charges, interest and costs of collection shall be included in such lien or claim, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Lot, and reasonable attorney's fees in the amount of 25% of the total claimed. All payments on account shall be applied first to the aforesaid costs of collection, then to late charges, then to interest, and then to the assessment lien first due. All late charges and interest collected shall be credited to the Common Expense Fund. Each Member vests in the Board of Directors the right and power to bring all actions against him personally for the collection of such assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The board of Directors acting on behalf of the Association, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the lot, Common Maintenance Areas or Association property. The lien for assessments shall lapse and be of no further effect as to assessments or installments thereof, together with late charges and interest applicable thereto, first becoming due and payable more than three (3) years prior to the date upon which the notice contemplated in this Section 9 is given or more than three (3) years prior to the institution of suit therefor if suit is not instituted within ninety (90) days after the giving of such notice.

Section 10. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage on the Lot. Sale



or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot by foreclosure of any first mortgage on the Lot, or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. No Alienation of Lots. No Member shall be permitted to convey, mortgage, hypothecate, sell, lease, give, or devise his Lot unless and until he (or his personal representative) shall have paid in full to the Association all unpaid assessments against his Lot, except as otherwise specifically provided herein. The Association shall promptly furnish to any Member or his devisee or personal representative) requesting the same in writing pursuant to this Section, a recordable statement certifying whether or not such Member is then obligated for any outstanding assessments previously levied against such Lot and the amount, if any, then outstanding. In the event that the Lot is subject to outstanding expenses previously levied against such Lot, the statement shall certify any waiver of, or failure or refusal to exercise, the right of the Association to prevent the disposition of such Lot, in all cases where the Association allows such disposition. Failure or refusal to furnish promptly such a statement in such circumstances shall make the above-mentioned prohibition inapplicable to any such disposition of the Lot. Any such statement shall be binding on the Association and every Member.

Section 12. Access Road Maintenance. Each unit shall pay to Cunningham Enterprises a road maintenance fee to maintain and repair the access roads to Mallard Point.

Section 13. Exempt Property. The following properties subject to this Declaration shall be exempted from the assessment, charges and liens created herein:

- (a) All Association Properties; and
- (b) All Lots owned by the Developer, while Developer is a Class B Member of this Association.
- (c) Notwithstanding any provision hereof to the contrary, Developer shall pay both annual and special assessments on any unit that it may own two years after a certificate of occupancy is issued by Pulaski County for such unit.

**ARTICLE VI
PROTECTIVE COVENANTS**

Section 1. Utility Easements. Each Lot Owner shall have an easement in common with the Owners of all other Lots to use all pipes, wires, ducts, cables, conduits, public utility lines and other elements located on any of the other Lots and serving his Lot. Each Lot shall be subject to an easement in favor of the Owners of all other Lots to use the pipes, ducts, cables, wires, conduits and public utility lines of any nature.

Section 2. Easement of Access. Developer, every Member and personnel of the Association shall have an easement of access over and across any Association Property and Common Maintenance Areas, and such easement shall be appurtenant to and pass with the title to every Lot. Any member may delegate his right of access to the Association Property and Common Maintenance Areas to the members of his family, tenants, or contract purchasers (and members of the family of any tenant or contract purchasers) who reside on the Property, or to such other persons as may be permitted by the Association. This easement of access shall include an easement to rebuild or repair any improvements.



Section 3. Encroachment. To the extent that an improvement located on any lot encroaches on any other Lot or Association Property, either by any reason of deviation from the subdivision plat of the Property or by reason of settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. Each Lot and the Association Property shall be subject to an easement for encroachments created by construction and overhangs as designed or constructed by the Developer. A valid easement for said encroachments, and for the maintenance of same so long as they stand, shall and does exist. In the event that any building is partially or totally destroyed and then rebuilt, the owners of the Lot so affected agree that encroachments on parts of the adjoining Lots or Association Property due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. This easement shall not apply to cases of willful and intentional misconduct of the parties responsible for said encroachments.

Section 4. Facilitate Sales. All Lots shall be subject to an easement in favor of Developer or any affiliate thereof to use any Association Property or Common Maintenance Areas for Management offices or sales offices or sale promotions until such time as Developer or any affiliate thereof conveys title to all property as defined herein. Developer reserves the right to relocate the same from time to time within the Association property and Common Maintenance Areas. Developer reserves the right to maintain on the Association Property, any lot or Common Maintenance Areas such advertising signs and banners which may be placed in any location on the property and which signs may be relocated or removed, all at the sole discretion of Developer. This easement to facilitate sales shall continue in full force and effect until Developer is no longer a Class B Member and shall include such areas even after title has passed to such Owner.

Section 5. Party Walls. Each wall that is constructed as a part of any Town home Lot and placed on the dividing line between two or more Lots shall constitute a party wall. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Lot Owners affected by such wall. If a party wall is destroyed or damaged, the wall shall be restored in accordance with the provisions hereof and the cost of restoration shall be paid for first by any insurance proceeds and the balance shared equally by the affected Lot Owners, but subject to the right of any such Owner to call for a larger contribution for the others under any rule of law regarding liability for negligent or willful acts or omissions. To the extent not inconsistent with the provisions of this Section, the law of Virginia regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**ARTICLE VII
RESTRICTIVE USE AND OWNERSHIP**

Section 1. Units in the development shall be occupied by one family only, unless written permission of the Association is given for a deviation of this restriction.

Section 2. For the purposes of this Article, "family" shall be defined to mean one or more persons occupying a single dwelling unit and living and cooking together as a single housekeeping unit, all of which shall be persons related to the others by blood, marriage or adoption, and no one of which persons shall be a roomer, boarder or lodger, for compensation.

Section 3. Without the expressed written consent of the Association, no units in the development shall be leased for periods of less than three months.

Section 4. No unit in the development shall be owned by more than three natural persons who are not members of the same family as defined in Article VII, Section 2, above. No unit in the development shall be owned by any partnership, corporation, trust, land trust, estate, or other entity in which more than three natural persons who are not members of the same family, as defined above, have any interest whatsoever.

Section 5. Owners and Guests May Occupy Unit. Notwithstanding any provision hereof to the contrary, a unit may be occupied by the owners of a unit and their guests.

ARTICLE VIII
INSURANCE

Section 1. Authority to Purchase.

(a) All insurance policies relating to the Association Property shall be purchased by the Board of Directors. Neither the Board of Directors nor the Managing Agent nor the Developer shall be liable for failure to obtain any coverages required by this Article VIII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from an insurance company having the qualifications set forth in subsection (d) of this Section of if, in the opinion of the Board of Directors, such coverage is prohibitively, expensive.

(b) Each such policy shall provide that:

(i) The insurer waives any right to claim by way of subrogation against the Developer, the Association, the Board of Directors, the Managing Agent or the Members, and their respective agents, employees, guests and, in the case of the Members, the members of their households;

(ii) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Member (including his invitees, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and without sixty (60) days having elapsed after such a demand without a cure of the defect.

(iii) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors and Managing Agent and, in the case of physically damage insurance, to all Mortgagees of the Lots.

(c) The Developer, so long as it shall own any Lot, shall be protected by all such policies as a Member.

(d) All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and holding a rating of "AAA", or better, by Best's Insurance Reports and a policyholder's rating of "A" or better. Physical damage policies be in form and substance acceptable to the Mortgagee of the Lots.

Section 2. Fire and Extended Coverage.

(a) All Lot Owners shall be responsible for securing policies of fire and extended coverage, vandalism, malicious mischief, windstorm, debris removal, and water damage endorsements, for the structure on each individual Lot, in an amount equal to 100% of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation



(such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage). All such policies shall be approved by the Board of Directors of this Association and the Board of Directors shall be a named party as their interests may appear.

(b) Copies of all policies and any renewals shall be filed with the Board of Directors of this Association.

Section 3. Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for Officers) and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Officers, the Managing Agent, each Member and the Developer against any liability to the public or to the Members (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the any Property within the Mallard Point Community. Additionally, such policy shall insure liability to the public or the members (their invitees, agents and employees) arising out of, or incident to the ownership and/or use of any lot or Association property. Such insurance shall be issued on a comprehensive liability basis and shall contain: (a) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; (c) host liquor liability coverage with respect to events sponsored by the Association; (d) deletion of the normal products exclusion with respect to events sponsored by the Association; and (e) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a member because of negligent acts of the Association or of another Member. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Section 4. Other Insurance. The Board of Directors shall obtain and maintain:

(a) Worker's compensation insurance if and to the extent necessary to meet the requirements of law;

(b) Such other insurance as the Board of Directors may determine or as may be requested from time to time by a majority of the Members.

Section 5. Insurance Trustee.

(a) All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Members, their Mortgagees and the Developer, as their interest may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed Twenty-Five Thousand Dollars then all such proceeds shall be paid in trust to such lending institution in the general vicinity of where the Property is located with trust powers as may be designated by the Board of Directors (which Trustee is herein referred to as the Insurance Trustee). If such proceeds do not exceed Twenty-Five Thousand Dollars then all such proceeds shall be paid to the Board of Directors to be applied pursuant to the terms of Article VII.

(b) The Board of Directors may enter into an Insurance Trust Agreement with the Insurance Trustee which shall provide that the Insurance Trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form or



contents of the policies, the correctness of any amounts received on account of the proceeds of any insurance policies nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purpose elsewhere stated in these By-Laws for the benefit of the insured and their beneficiaries thereunder.

Section 6. Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent for each Member, each Mortgagee, other named insured and their beneficiaries and any other holder of a lien or other interest in the Association to adjust and settle all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases upon the payment of claims.

**ARTICLE IX
REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY**

Section 1. Restoration. In the event of damage to, or destruction of, all or any of the improvements on any Lot or the Association Property or Common Maintenance Areas as a result of fire or other casualty, the Board of Directors of the Association and/or Lot Owners shall cause and supervise the prompt repair and substantial restoration of such improvements including landscaping in accordance with the plans and specifications under which the improvements *were originally constructed. The Board of Directors and/or Lot Owner shall proceed towards reconstruction of such improvements* as quickly as practicable under the circumstances and shall obtain funds for such reconstruction from the insurance proceeds and any special assessments that may be necessary after exhaustion of reserves for the repair and replacement of such improvements.

**ARTICLE X
MORTGAGES**

Section 1. Notice to Board of Directors. A Member who mortgages his Lot shall notify the Association of the name and address of his mortgagee.

Section 2. Notice of Unpaid Assessments for Common Expenses. The Association, whenever so requested in writing by a mortgagee of a Lot, shall promptly report any then unpaid assessments for Common Expenses due from or any other default by, the Member of the mortgaged Lot.

Section 3. Notice of Default. The Association, when giving notice to any Member of a default in paying an assessment for common expenses or any other default, shall send a copy of such notice to each holder of a mortgage covering such Member's Lot whose names and address has theretofore been furnished to the Association. Further, the Association shall send such mortgagees written notice of any default by such member which has not been cured within thirty (30) days after the delivery of such Owner of the first notice relating to such default.

**ARTICLE XI
COMPLIANCE AND DEFAULT**

Section 1. Relief. Each Member shall be governed by, and shall comply with, all the terms of the Declaration, and the rules and regulations promulgated by the Association and any amendments of the same. A default by a Member shall entitle the Association, acting through its Board of Directors or through its agent, to the following relief:



(a) Legal Proceedings. Failure to comply with any of the terms of the Declarations, and the rules and regulations shall be grounds for relief which may include, without limiting the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for herein including reasonable attorneys fees, or any combination thereof, and any other afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, its agent, or, if appropriate, by an aggrieved Member. The Association and/or any Member shall be responsible for Developer's costs and reasonable attorneys fee in the event an unsuccessful action is brought against Developer for any reason whatsoever.

(b) Additional Liability. Each Member shall be liable for the expense of all maintenance, repair or replacement to Association Property and Common Maintenance Areas rendered necessary by his act, neglect or carelessness of any member of his family or his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of any insurance carried by the Association. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its right of subrogation.

(c) Costs and Attorneys' Fees. In any proceeding arising out of any alleged default by a Member, the Association shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the court. The Association and/or any Member shall be responsible for Developer's reasonable attorneys fee and costs in the event an unsuccessful action is brought against Developer.

(d) No Waiver of Rights. The failure of the Association, the Board of Directors, or of a Member to enforce any right, provision, covenant, or condition which may be granted by the Declaration, or the rules and regulations, shall not constitute a waiver of the right of the Association, the Board of Directors or the Member to enforce such right, provision, covenant, or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors, or any Member pursuant to any term, provision, covenant or condition of the Declaration, or the rules and regulations shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by the Declaration or the rules and regulations, or at law or in equity.

(e) Abatement and Enjoyment of Violations by Owners. The violation of any rule or regulation adopted by the Association, or the breach of any provision of the Declaration, shall give the Association or Agent, the right, in addition to any other rights *set forth herein or at law to enjoin, abate or remedy by* appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

ARTICLE XII
RULES REGULATIONS AND RESTRICTIONS

The Association Property, including all improvements comprising a part hereof, shall be subject to the rules and regulations set forth as follows:

Section 1. No more than two motor vehicles per Lot Owner shall be allowed on the lots outside of the garage at any time.

Section 2. No improper, offensive or unlawful use shall be made of any Lot or any part thereof. No owner shall permit or



suffer anything to be done or kept in or on his Lot, which will (a) increase the rate of or cause the cancellation of insurance on the Lot, (b) obstruct or interfere with the rights of other occupants of Mallard Point, (c) be a nuisance to those occupants, or (d) interfere with the peaceful possession or proper use of any other property in Mallard Point.

Section 3. To preserve the architectural appearance of the Lots, no construction, painting or other changes of any nature whatsoever shall be commenced or maintained by any nature whatsoever shall be commenced or maintained by any owner other than Developer without the approval of the Board of Directors with respect the exterior of any structure or any other portion of the Lot whether appurtenant thereto or not. An owner may make improvements and alterations with in his structure; provided, however, that no owner shall make any structural alterations or remove any portion thereof or make an additions hereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of that structure or any other structure; nor shall any owner impair any easement without first obtaining the written consent of the Association and that of the owner or owners and their mortgagees for whose benefit such easement exists. No alteration of original landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like), or change in the exterior of any Lot or Common Maintenance Areas, including color, except as made by the Developer, even after a Lot is sold, will be permitted without the approval of the Board of Directors and/or Developer shall have the right without notice to remove any alteration and restore the original alteration or landscaping at the Owner's expense. Said expenses shall be a lien, as is herein defined, on such Owner's Lot.

Section 4. Any lot owner who rents his lot to a lessee(s) shall deliver to the Association a written statement designating the name or names of those persons entitled to use the lot, together with a written covenant from that party of these parties in favor of the Association stating that there will be full compliance with all the terms and provisions of this Declaration, the Articles and By-Laws and all rules and regulations adopted hereunder. In the event that such covenants are violated, the aforesaid owner shall cause such party of parties to vacate the lot and, in the event that such party or parties do not vacate the lot, the Association shall take whatever measures are necessary to have the party or parties removed from the lot and shall assess the owner for any costs or attorney's fees caused by such measures. No lease term on any lot shall be for a period less than three (3) months.

Section 5. The design, type, location, size, intensity (wattage) and color of all exterior lights shall be maintained as installed by Developer unless Developer approves any alteration or unless approved by the Board of Directors.

Section 6. No animal, other than common household pets, shall be kept or maintained in any Lot or thereabout, and no more than two (2) common household pets shall be kept or maintained in any structure. Common household pets shall not be kept, bred, or maintained for commercial purposes. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Lot. Pets shall be under leash or under control when walked or exercised on any portion of the Lot. No pet shall be allowed to become a nuisance. The Board of Directors shall conclusively determine, in its sole and absolute discretions, whether, for the purposes of this Section 6, a particular pet is permitted or such pet is a nuisance, and shall have the right to require the Owner of a particular pet to remove such pet from the Lot if such pet is found to be a nuisance or to be in violation of these restrictions.



Section 7. Except as the Board of Directors may otherwise provide, no truck, weighing more than one ton, commercial vehicles, recreation vehicles, motor homes, motorcycles, campers, boats or boat trailers may be parked in any driveway or upon any Association Property or Lot. Non-commercial vans with not more than four wheels may be parked in parking areas if they are for their personal use of an Owner. No car covers shall be allowed and no unlicensed vehicles or vehicles with expired inspection stickers shall be allowed. No repair work or washing of any type of motor vehicle shall be conducted on Association Property or any Lot other than very minor repairs, notwithstanding the foregoing, a moped or a motorized bicycle may be kept in a structure, provided that same is not visible to the public.

Section 8. No awning, shades, or other items shall be attached to, hung or used on the exterior of any window or door of a structure or on the exterior of any building. All shades, drapery linings and other window treatments visible from the exterior of a structure on any window or door shall be white or off-white. No screen or storm door shall be permitted on any window or doors other than those installed by Developer. No foil, window tinting or other sun shielding materials or devices shall be permitted upon any glass surfaces. Outside clothes lines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of any Lot, nor shall any plants, decorative items, pottery, furniture, clothing, rugs, or any other items be hung or placed on any portion of any lot, or inside any structure where such items can be seen from any portion of any Lot. All glass surfaces, windows and doors, shall be cleaned and maintained in a clean state inside and outside by the Owner. Nothing herein contained shall prohibit lawn furniture or rear patios, and rear decks. In the event any storm door is approved by developer as an extra for any Townhome Unit, such storm door shall be maintained in a proper state of repair by and at the sole expense of such unit owner. If such storm door is not properly maintained, the Association may maintain such door and charge the repair thereof to the Owner.

Section 9. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of any Lot, except in containers specifically designated for such purpose by Developer; nor shall any odors be permitted, so as to render any portion of the property unsanitary, unsightly, offensive, or detrimental to persons using or occupying other Lots. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes which have been approved by Developer or Board of Directors, shall be located, used, or placed on any Lot.

Section 10. Unless installed by Developer, no owner shall install any electrical or telephone wire, television antenna, radio antenna, satellite dish, air conditioning unit, or other machine anywhere on any structure of any Lot in such a fashion that it is visible anywhere outside such structure unless approved by the Board of Directors.

Section 11. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the lots, it shall be expressly permissible for Developer, its contractors, agents, employees, assigns and representatives to maintain and carry on at the Development such facilities and activities as in the sole opinion of the Developer as may be reasonably required, convenient or incidental to the completion and sale of Lots, including without limitation, business offices, signs, model units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically



the right to use the Lots owned by Developer and models and as offices for the sale of the Lots and related activities.

Section 12. A Lot Owner shall not display on any structure or Lot, inside or outside, an advertisement, poster, a "For Sale" or "For Rent" sign, or any other type of sign. If the Lot is for sale or rent, an owner can only display a sign that reads "Open" or "Open House", and the face of such sign may not exceed six square foot, and such sign can only be displayed while the Owner of the Unit or the Owner's agent is present, but not more frequently than once in seven days and not more than six hours continuously but in any event, not while Developer owns any Lots. Notwithstanding the foregoing, the Developer shall be entitled to place such signs and banners of such size and design as Developer determines upon any structure or any lot, even after title to such Lot has been conveyed by the Developer.

Section 13. The Board of Directors shall, at the request of the mortgagee of any Lot, report any delinquent assessments and fines due from the owner of such Lot.

Section 14. No nuisances shall be allowed upon the Properties nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Properties by its residents.

Section 15. Employees of the Association shall not be required to leave any Lot by any owner at any time for any purpose. No owner or resident shall direct, supervise, or in any manner attempt to assert any control over the employees of the Association.

Section 16. Regulations and fines promulgated by the Board of Directors or any committee established by the Board of Directors concerning the use of the Properties shall be observed by the members and their family, invitees, guests and tenants; provided, however, that copies of such regulations are furnished to each member prior to the time the said regulations become effective.

Section 17. No flammable, combustible or explosive fluid or chemical substance shall be kept in any structure except such as are required for normal household use, and except for a portable gas barbecue grill, if permitted by the County of Pulaski. No owner shall permit or suffer anything to be done or kept in his structure which will increase the rate of insurance as to other Lot owners or as to their Lots or to the Association as to the Common Properties.

Section 18. No person shall be permitted to use the Common Properties or the recreational facilities located thereon except in accordance with the rules and regulations established by the Association's Board of Directors.

Section 19. No owner shall make or permit any disturbing noises or do or permit anything to be done on any Lot which will interfere with the rights, comforts, or conveniences of other owners.

Section 20. No individual water supply system shall be permitted on any Lot, except for irrigation purposes on which a irrigation system shall be operated by the Association as provided in the Declaration.

Section 21. The sidewalks, entrances, passages, stairways, and all areas must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises; nor shall carriages, bicycles, motorbikes, mopeds, wagons,

shopping carts, chairs, benches, tables, or any other object of similar type and nature by stored in such areas.

Section 22. No solar panels shall be erected on any structure.

Section 23. No Lot and improvements thereon shall be used for any purpose other than residential purposes, except for sales, models and offices by the Developer and as provided in this Declaration unless otherwise approved by the Board of Directors. No structure shall be permitted on any Lot which replaces the original structure and improvements constructed by the Developer unless such structure and improvements is the same as the original structure destroyed or removed unless approved by the Board of Directors.

Section 24. No auxiliary building or structure or the like or swimming pool which is detached from a structure and not originally constructed by the Developer as part of the original improvements to the Lot shall be permitted on a Lot.

Section 25. Developer reserves in favor of Developer and the Association, and the authorized agents of each, the right of access to any unit in case of emergency and such entry shall be immediate, whether the Lot Owner is present at the time or not.

Section 26. The personal property of all owners shall be stored within their structures or, if applicable, within storage areas assigned to Lot Owners unless contrary storage arrangements are approved by the Board of Directors.

Section 27. All roads, driveways and parking areas shall be maintained and controlled by the Association. No vehicle may unnecessarily block parking spaces and the Association shall have the absolute right to assign parking spaces as it deems proper in its sole discretion. No unlicensed motor vehicle, moped, or other motorized vehicle shall be kept, stored, operated or maintained on any lot, common area, parking area, driveway, or roadway.

Section 28. It shall be the responsibility of each property owner to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such property. No outside burning of wood, leaves, trash, garbage of other refuse shall be permitted on any Property. There shall be no outdoor trash accumulation except in or at those facilities established by the Developer for that purpose.

Section 29. No trees, shrubs, or other vegetation, including but not limited to gardens and flowers, may be removed or planted without the written approval of Developer. The Developer reserves the right to plant trees and other vegetation on any residential lot even after it has been conveyed if in the judgment of Developer such planting services the overall best interest of the property.

Section 30. Each townhome shall be assigned a numbered boat slip and shall have an easement for reasonable access to such boat slips. The use of such boat slip shall be subject to rules and regulations that may be from time to time adopted by the Association.

Section 31. The Association, Developer or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions and covenants imposed hereby. Failure by the Association, Developer, or by any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, *and invalidation of one or more of the restrictions, conditions, covenants, or reservations herein shall not affect the right to enforce the remaining*



restrictions. The Association and/or any Lot Owner shall be responsible for Developer's reasonable attorneys fee in the event an unsuccessful action is brought against the Developer.

Section 32. Each Lot and the Common Areas shall be occupied and used in compliance with the Rules and Regulations which may be promulgated and changed by the Board of Directors. Copies of the Rules and Regulations and changes thereto shall be furnished by the Board of Directors to each Lot Owner.

ARTICLE XIII
ARCHITECTURAL CONTROL

Section 1. Prior to the occupancy of the building or structure on any property, proper and suitable provisions shall be made for the disposal of sewage by means approved by the Declaration/Developer.

Section 2. Prior to the occupancy of a residence on any property, provision for water, electricity and gas shall be made by means approved by Developer. All property owners will be charged by appropriate authority for water, electricity or other utility usage. Developer may elect to have such charges paid through association dues.

Section 3. (a) The Developer reserves unto himself, his successors, agents and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric service, community antenna television and telephone poles, wires, cables, conduits, drainage ways, sewers water mains and other suitable equipment for conveyance and use of electricity, telephone service, gas, sewer, water, drainage or other public conveniences or utilities on, in or over those portions of such property as may be reasonably required for utility line purposes. These easements and rights expressly include the right to cut any trees, bushes, shrubbery, *make any gradings of the soil, or to take any other similar* action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Developer further reserves the right to locate wells, pumping stations, siltation basins and tanks within mallard Point in any open space or on any property designed for such use on any applicable plat of said property, or to locate same upon any property with the permission of the owner of such property. Such rights may be exercised by any licenses of Developer, but these reservations shall not be considered an obligation of Developer to provide or maintain any such utility service.

(b) Following the installation of any utility apparatus or other improvement on any property pursuant to the provisions of this paragraph, Developer shall restore such property as nearly as is reasonably possible to its condition immediately prior to such installation.

(c) Developer reserves the right and easement over the entire development to conduct those activities as are reasonably incident to the development of Mallard Point, including but not limited to, sale activities, construction and maintenance.

Section 4. Developer reserves the right to limit the use of any common areas of amenities. There shall be no outdoor parties or social gatherings on or in any of the common areas without the written permission of the Developer or the Association after Developer ceases to be a Class B member of the Association under Article II, Section 2 (b), hereof.

Section 5. The use of private roads in mallard Point shall be subject to rules and regulations established and modified from time to time by Developer. All roads and driveways in Mallard



Point with the exception of those ultimately accepted into the state highway system in the Development will be private and shall be maintained by the Association.

Section 6. No vehicle shall be allowed to be operated on any road or trail or common area not shown and designated as a passageway of vehicles on a recorded subdivision plat without the written consent of Developer or the Association after Developer ceases to be a Class B member of the Association under Article II, Section 2. (b), hereof.

Section 7. Whenever Developer is permitted by these covenants to correct, repair, reconstruct, clean, preserve, maintain, clear out or do any action on any property or on the easement areas adjacent thereto, entering property and taking such actions shall not be deemed a trespass. For the purpose of taking such action, Developer reserves an alienable easement of ingress and egress.

Section 8. Developer and its agents have the right and easement to enter upon any property for the purpose of mowing, removing, clearing, cutting or pruning underbrush or weeds or other growth which in the opinion of Developer detracts from the overall beauty of safety for Mallard Point. Developer and its agents may likewise enter upon such property to remove any trash which has collected or to abate a threat to Mallard Point from pollution. Such entry shall not be made until ten (10) days after the owner of the property has been notified in writing of such work, and unless such owner fails to perform the work within said ten (10) day period. The provisions in this paragraph shall not be construed as an obligation on the part of the Developer to mow, clear, cut or prune any property, to provide garbage or trash removal services, or to provide water pollution control on any privately owned property. In the event of emergency, entry may be made immediately without notice. Developer's rights under this paragraph shall be assignable.

Section 9. In addition, Developer reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement and right on, over and under any property to dispense pesticides and take other action which in the opinion of Developer is necessary or desirable; and to cut firebreaks and conduct other activities which in the opinion of Developer are necessary or desirable to control fires on any property, or any improvements thereon.

Section 10. It is the intent of Developer to maintain and enhance (or to convey subject to open space restrictions to the Association) certain areas which Developer designates as "Common Areas", "Recreational Areas", "Open Space Areas" or "Private Open Space Areas" on plats filed or to be filed for record in the Office of the Clerk of the Circuit Court of Pulaski County, Virginia, by Developer. Utility easements, drain fields and other utility areas may be located within such areas. It is the further intent and purpose of these restrictions and covenants to protect, to maintain and enhance the conservation of natural and scenic resources, to enhance the value of abutting and neighboring properties and to implement generally the Plan for development. This planned development will be developed in construction PHASES. Each phase may have subphases. Prior to the conveyance of any unit, the Developer, will submit to record in the Clerk's Office for the Circuit Court of Pulaski County a plat depicting not only the unit or lot but depicting common areas, open space areas, private open space areas or recreational areas. The Developer warrants and covenants that it will convey to The Mallard Point Owners' Association, Inc., as its land all such platted common, recreational or open areas prior to or contemporaneously with the completion of the development as provided for herein in other sections.



Section 11. Developer expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of said open space, in a manner not inconsistent with the provisions of this Declaration.

Section 12. Developer further reserves the right to convey "Common Areas", "Recreation Areas", "Open Space Areas" and "Private Open Space Areas" to the Association. Such conveyance shall be made subject to the provisions of this Article. As an appurtenance to such conveyances, the Association shall have all of the powers, immunities and privileges reserved unto Developer in this part and all other parts of this Declaration as well as all of Developer's obligations with respect thereto.

Section 13. Developer reserves in each instance the right to unilaterally amend this Declaration and add additional restrictive covenants in respect to lands conveyed in the future in Mallard Point, or to limit therein the application of these covenants. The right to add additional restrictions or to limit the application of these covenants shall be reasonably exercised and shall not operate to materially alter the use or value of any property already conveyed by Developer without the written consent of the owner thereof. This right to unilaterally add, or limit restrictive covenants shall terminate at such time as Developer relinquishes control of The Mallard Point Owners' Association, Inc., according to the Articles of Incorporation or the By-Laws thereof.

Section 14. *Developer or the Association shall not be liable to an owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an owner or such other person arising out of or in any way relating to the subject matter of any reviews, acceptance, inspections, permissions, consents or required approvals which must be obtained from Developer whether given, granted or withheld. Such shall not be conducted, given or withheld, as the case may be, unreasonably.*

Section 15. (a) The Association may become the owner not only of all common or open areas but of all private roadways and private sewer/septic or water systems located in Common Areas and not assumed by appropriate governmental agencies. In the event of transfer of ownership it shall be a primary duty of the Association to maintain such private roadways, and private sewer/septic or water systems wherever located in good working order and to repair and replace such systems or parts thereof in order to keep same in good working order. It shall, however, be the ultimate duty of each individual property and/or unit owner to maintain, repair or replace the private sewer/septic system (s) servicing his respective unit or units. In the event that a sewer/septic system services more than one unit, it shall be the joint and several obligation of the Association and each Property Owner or Unit Owner so served by a system to maintain the same. If any owner negligently fails to keep his septic system in good and proper condition and repair, he shall be responsible for repairs necessitated by such negligence; and if he does not cause *such repairs to be made in accord with the requirements of the Developer or the Association then the Developer, his successors or assigns, or the Association shall (after notice by mail addressed to the unit owner(s) given such owner(s) five (5) days to make the necessary repair) have the option to take on its own whatever action they or it deem necessary or appropriate in order to keep the property in good and proper condition and repair. The cost of taking such corrective action shall upon being incurred become a debt due and owing by the lot or unit owner to the Developer or the Association and subject to all methods of collection including those set forth herein. It is the intent of the Developer that the Association out of its general fund shall perform and be responsible for all*

routine maintenance in regard to the sewer/septic systems within Mallard Point. In the event that the Association is unable to perform such repairs then the Property Owners or Unit Owners still remain responsible therefor.

(b) Notwithstanding the above, it is the Developer's intention to establish a water system and sewer/septic system which may at the election of the Developer or the Association be transferred to an appropriate governmental, or quasi governmental agency, or other entity.

Section 16. Nothing other than grass, other vegetation or other improvements approved by Pulaski County Health Department or other appropriate agency shall be allowed over the common septic tanks and drainfield areas. Trees and other vegetation shall be planted so as to offer minimum interference with the sewer/septic system.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1. Duration and Amendment. The provisions of this Declaration run with and bind all Mallard Point Lots, and shall inure to the benefit of and be enforceable by the Association, Developer, or the Member of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by Members holding more than three-fourths (3/4) of the votes of the membership has been recorded, agreeing to terminate or change said Restrictions in whole or in part; provided, however, that no such agreement to terminate or change shall be effective unless written notice of the proposed agreement is sent to every Member at least ninety (90) days in advance of any action taken. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than ninety percent (90%) of the votes of the membership at any time until the end of the initial fifty (50) year term and thereafter by an instrument signed by the Members holding more than three-fourths (3/4) of *the votes of the membership*. *No amendment shall change* architectural, engineering, landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like) or decorative design of the Mallard Point Community as finally constructed by Developer unless same is approved by the Board of Directors.

Section 2. Consent of First Mortgagees. This Declaration contains provisions concerning various rights, priorities, remedies and interest of the mortgagees of Lots. Such provisions are to be construed as covenants for the protection of the mortgagees on which they may rely in making loans secured by the Mortgages on Lots. Accordingly, no amendment or modification of this Declaration impairing such rights, priorities, remedies or interests of a mortgagee. If there is more than one mortgagee holding Mortgages on the Lots, it shall be sufficient to obtain the written consent of the mortgagee or mortgagees holding first liens on seventy-five percent (75%) of the Lots encumbered by Mortgages. This paragraph shall not apply to or in any way be construed as a limitation upon those rights of the Developer under this Declaration which do not so adversely affect such mortgagees.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of this instrument shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member on the records of the Association at the time of such mailings.



Section 4. Assignability. Developer, its successors, and assigns, shall at all times have the right to fully transfer and assign any or all of its rights and powers under this Declaration, subject only to Developer's obligations hereunder.

Section 5. Power of Attorney. All Lot Owners hereby appoint Developer as attorney-in-fact for each Lot Owner to change and alter any Lot lines set forth on the Plat of Mallard Point Phase II recorded in Plat Cabinet 1, Slide 263, Page 1, and Plat of Mallard Point PHASES III & IV of record in Plat Cabinet 1, Slide 266, Page 4 in the Circuit Court of the County of Pulaski, Virginia, so long as Developer is a Class B Member of the Association. No Lot line changed under the provisions of this Section shall be altered if such alteration substantially reduces the value of any lot previously sold to another Owner.

Section 6. Non-Waiver. The failure of the Developer, or any Member, or their respective legal representatives, heirs, successors and assigns, to enforce any restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter as to the same violation or breach or as to such violation of breach occurring prior or subsequent thereto.

Section 7. Construction and Interpretation. The Developer, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Developer shall take into consideration the best interests of the Members to the end that Mallard Point Community shall be preserved and maintained in a high quality manner.

Section 8. Severability. All of the Covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof, is void, unlawful or unenforceable, shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, or clause or phrase thereof.

THE CORRECTIONS TO THIS SUPPLEMENTAL DECLARATION AS STATED ABOVE ARE SHOWN IN **ITALICS**.

Witness the following signatures:

MALLARD POINT CORPORATION,
a Virginia Corporation
By: C. Clarke Cunningham, III
C. Clarke Cunningham, III,
President

STATE OF VIRGINIA,
COUNTY OF MONTGOMERY, to-wit:

The foregoing Corrected Supplemental Declaration of Covenants, Conditions, and Restrictions was acknowledged before me this 2nd day of March, 2000, by C. Clarke Cunningham, III, President of Mallard Point Corporation.

My commission expires: 4/30/02

Nancy E. Vaughan
Notary Public



EXHIBIT A

All those certain tracts or parcels of land with all improvements thereon, situated in the Ingles Magisterial District of Pulaski County, Virginia, as shown and designated as Mallard Point, Phase II, as shown on a plat of survey entitled "Final Subdivision & Site Dimensional Plat MALLARD POINT, PHASE II Pulaski County, Virginia," prepared by Draper-Aden Associates, Inc., Consulting Engineers, dated 21 June, 1989, designated Plan No. T-4488-B, which said plat is of record in the Circuit Court Clerk's Office of Pulaski County, Virginia in Plat Cabinet 1, Slide 263, Page 1; and Mallard Point, PHASES III & IV, as shown on a plat of survey entitled "Final Subdivision Plat of MALLARD POINT, PHASE'S III & IV Pulaski County, Virginia," prepared by Draper-Aden Associates, Inc., Consulting Engineers, dated 29 September, 1989, designated Plan No. T-4488-C, which said plat is of record in the Circuit Court Clerk's Office of Pulaski County, Virginia in Plat Cabinet 1, Slide 266, Page 4.

INSTRUMENT #00000906
RECORDED IN THE CLERK'S OFFICE OF
PULASKI COUNTY ON
MARCH 3, 2000 AT 08:40AM
R. GLENWOOD LOCKABILL, CLERK

BY: *William M. Stephens* (DC)