

**DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS
APPLICABLE TO UNITS 2 AND 3, INCLUSIVE,
OF PHASE I OF THE MALLARD POINT SUBDIVISION**

AS SHOWN BY PLAT OF RECORD IN
PLAT CABINET SHEETS 390-390, INCLUSIVE,
IN THE OFFICE OF THE SCOTT COUNTY COURT CLERK

*2800
THIS DECLARATION, made and entered into on this the 18th day of July, 1985, by MARIC DEVELOPMENT CORPORATION, a Kentucky corporation, with principal offices located at 117 West Second Street, in Lexington, Kentucky 40507, hereinafter referred to as "Developer," and MALLARD POINT OWNERS ASSOCIATION, INC., a Kentucky nonprofit corporation, hereinafter referred to as "Association," the current mailing address of which is in c/o Developer, at its address specified above.

WITNESSETH:

THAT WHEREAS Developer is Owner of all of the real property hereinafter listed and/or described in Section 2.01; and,

WHEREAS, in the beneficial interests of the Developer and future owners of such real property, it is desirable to subject such real property to, and impose upon the present and future owners thereof, their heirs, personal representatives, successors and assigns, certain easements, restrictions, conditions, limitations, reservations, obligations and covenants, in order to assure the beneficial, harmonious and attractive development, improvement, and maintenance of the aforesaid real property, and in order to prevent certain uses and modifications thereof which might tend to diminish the value or be detrimental to its future development and maintenance; and,

WHEREAS, Developer has incorporated, under the laws of the Commonwealth of Kentucky, a nonprofit corporation known as "MALLARD POINT OWNER'S ASSOCIATION, INC." for the purpose of maintaining and administering the common areas and facilities, administering and enforcing the provisions of this Declaration, and collecting and disbursing assessments and charges as hereinafter provided; and,

WHEREAS, the Developer desires to reserve unto itself, and to the "Association," the discretion to review and approve certain aspects relating to development, improvement, use, and maintenance of the aforesaid real property and improvements thereon, if any, and alterations to such improvements, and certain uses to be permitted or prohibited thereon, all as is hereinafter more specifically set forth;

NOW, THEREFORE, the Developer declares that the real property hereinafter designated and/or described in Section 2.01, located in Scott County, Kentucky, and such additions thereto as may hereafter be added as permitted herein, is and shall be held, transferred, sold, conveyed, occupied, and used, subject to the following protective easements, restrictions, conditions, limitations, reservations, covenants, obligations, and agreements, each and all of which are hereby declared to be covenants running with the land:

ARTICLE I

DEFINITIONS

As used in this Declaration, the words set forth below shall have the meaning hereinafter designated, unless the context shall clearly require a different meaning:

Section 1.01. "Association" shall mean and refer to "MALLARD POINT OWNERS ASSOCIATION, INC.," a nonprofit Kentucky corporation, incorporated pursuant to the provisions of KRS Chapter 273. No Articles of Incorporation, Bylaws, or amendments to either, shall be adopted by the Association which shall conflict with the provisions of this Declaration, as the same may be hereafter amended.

Section 1.02. "Lot" shall mean and refer to any of the Lots shown upon the final record plat of the property hereinafter described in Section 2.01; any subdivided portions or consolidations of such Lots which shall have been approved by Developer and/or the Association, as hereinafter set forth; and, any additional property made subject to these Declarations, pursuant to the provisions of Section 2.02. In the event of an authorized subdivision or consolidation of any original Lots (and/or previously authorized subdivided or consolidated Lots), as herein provided, the resulting Lot(s), and

the Owner(s) thereof, shall in all respects be treated as if the resulting Lot(s) was an original separate Lot, and the Owner(s) of which shall be considered to be the Owner(s) of only the resulting Lot(s), with all of the rights, privileges, obligations, restrictions, limitations, covenants, and obligations applicable thereto, and not Owner(s) of the separate component Lots consolidated or prior Lot subdivided.

Section 1.03. "Owner" shall mean and refer to the Owner of record, whether one or more persons or entities, of an interest in any Lot as herein defined; provided, however, the term "Owner" shall not mean or refer to any lessee or mortgagee, unless such mortgagee acquires fee simple title pursuant to a foreclosure action, or any proceeding or conveyance in lieu of foreclosure.

Section 1.04. "Member" shall mean and refer to each of those Owners who are members of the Association as hereinafter provided in Section 3.01.

Section 1.05. "Property" or "Properties" shall mean and refer to all of the Lots hereinafter designated (or as may be created by authorized subdivision and/or consolidation thereof), together with such further Lots as may hereafter be made subject to this Declaration pursuant to the provisions of Section 2.02.

Section 1.06. "Street(s)" and "right(s) of way" shall mean and refer to those areas designated and/or shown on the final record plat of Phase I said Development in Plat Cabinet Sheets 380-390, INCLUSIVE, as streets and rights of way, and any extensions thereof and/or additions thereto as may be made subject to this Declaration as hereinafter provided in Section 2.02.

Section 1.07. "Common areas" shall mean and refer to those areas to be devoted to the common use and benefit of the Owners of the properties (subject, however, to the provisions hereinafter set forth), and any additions thereto as may be made subject to this Declaration as hereinafter provided in Section 2.02.

ARTICLE II

DESCRIPTION OF PROPERTY

Section 2.01. EXISTING PROPERTY. The real property which is and shall be subject to this Declaration is located in Scott County, Kentucky, and is more particularly described as follows:

- BEING all of:
- Lots 1-7, Block A, Unit 2;
 - Lots 1-12, Block B, Unit 2;
 - Lots 1-33, Block A, Unit 3;
 - Lots 1-8, Block B, Unit 3;
 - Lots 1-13, Block C, Unit 3;
 - Lots 1-13, Block D, Unit 3;
 - Lots 1-18, Block E, Unit 3;
 - Lots 1-15, Block F, Unit 3;
 - Lots 1-17, Block G, Unit 3;
 - Lots 1-19, Block H, Unit 3;

inclusive, of Phase I of the MALLARD POINT subdivision, together with the streets and rights of way areas, dam, lake, and designated park areas, all as set forth and shown in the final record plats prepared by Walter L. Bowman, Registered Land Surveyor of Mayes, Sudderth, and Etheredge Engineers, Inc., R.L.S. No. 1804, for MARIC DEVELOPMENT CORPORATION, dated the 26 day of July, 1985, and filed of record in the Office of the Scott County Court Clerk, in Plat Cabinet Sheets 380-390, INCLUSIVE; and,

BEING a part of the same property conveyed to MARIC DEVELOPMENT CORPORATION, a Kentucky corporation, by Deed dated the 3rd day of August, 1984, from THOMAS J. BURGESS II, a single man, and LOUISE BURGESS, a widow, which Deed is of record in the Office of the Scott County Court Clerk, in Deed Book 158, Page 642, as corrected in that Deed of Correction, dated the 12th day of July, 1985, of record in the aforesaid Clerk's Office in Deed Book 162, Page 348.

Section 2.02. ADDITIONS TO EXISTING PROPERTY. So long as Developer shall be the fee simple Owner of at least one Lot subject to this Declaration (whether originally described in Section 2.01 or subsequently added pursuant to the provisions of this Section) additional real property may become subject to this Declaration upon the execution by the Developer of a recordable instrument reciting approval of the proposed addition; provided, however, that at such time as Developer shall not be the fee simple Owner of any of the Lots subject to this Declaration (whether originally described in Section 2.01 or subsequently added pursuant to the provisions of this Section), the Association shall thereafter solely exercise this right to subject additional property to this Declaration by executing a recordable instrument reciting approval of the proposed addition. Upon approval of either the Developer or Association, as hereinabove provided, the Owner of the additional property shall record a supplementary declaration of covenants and restrictions with respect to the additional property, subjecting the same to the provisions of this Declaration. Such supplementary declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and only such as are not inconsistent with this Declaration. Except as herein provided, no such supplementary declaration shall revoke, modify, or add to the covenants and restrictions established by this Declaration as applicable to the property described in Section 2.01, or subsequently added pursuant to the provisions of this Section.

Upon a merger or consolidation of the Association with another association, in compliance with the provisions hereinafter set forth, its properties, rights, and obligations may be transferred, in compliance with all applicable laws, to the merged or consolidated association, which merged or consolidated association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon other properties administered by the merged or consolidated association. No such merger or consolidation, however, shall of itself effect any revocation, change, or addition to the covenants, rights, obligations, and/or restrictions established by this Declaration, as applicable to the property described in Section 2.01, or subsequently added pursuant to the provisions of this Section.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION ADMINISTRATION BY BOARD

Section 3.01. MEMBERSHIP. Each and every person or entity who or which is the Owner of record of an interest in any Lot which is subject to this Declaration (whether an original Lot, or authorized subdivided or consolidated Lot, or any additional Lot made subject hereto pursuant to Section 2.02) shall be a member of the Association; provided, however, any person or entity who or which holds an interest merely as a lessee or as security for the performance of an obligation shall not be a member.

Section 3.02. VOTING RIGHTS. All members of the Association shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. If there shall be more than one (1) Owner of any Lot, the vote allocated to such Lot shall be collectively cast by the Owners thereof as they shall determine among themselves, provided no more than one (1) vote may be collectively cast by the Owners of any individual Lot.

If a Lot is owned by one (1) person, his or her right to vote shall be established by his or her record title to such Lot. If a Lot is owned by a corporation, a partnership, or association, the person entitled to cast the vote for the Lot shall be designated by a certificate of appointment signed by the President and Secretary thereof (in case of a corporation or association) or an authorized general partner (in case of a partnership). If a Lot is jointly owned by more than one (1) person, such Owners shall, in writing, designate an individual who shall be entitled to cast the vote on behalf of the Owners of the Lot of which he is a part Owner. Such written designations shall remain in force until such authorizations shall have been revoked, amended, or otherwise changed in a writing delivered to the Association. No Owner shall be eligible to vote or to be elected an Officer or member of the Board of Directors of the Association who is not current in payment of assessments for common expenses and other debts or obligations to the Association.

Section 3.03. QUORUM FOR ANY AUTHORIZED ASSOCIATION ACTION. Unless otherwise specifically provided herein, the quorum required for any Association action authorized herein shall be the presence at any meeting of members, in person or by proxy, entitled to cast ten (10%) percent of all the votes of the membership. If

a quorum is present, the affirmative vote of not less than fifty-one (51%) percent of the votes represented (in person or by proxy) at the meeting shall be the act of the Association.

Section 3.04. MANAGEMENT BY BOARD OF DIRECTORS. The affairs and business of the Association shall be managed by a Board of Directors (herein referred to as the "Board"), which shall exercise such powers and perform such duties and lawful acts as are specified by this Declaration, and the Articles of Incorporation and Bylaws of the Association. The composition, powers, duties and responsibilities of the Board are set forth in the Articles of Incorporation and Bylaws of the Association.

ARTICLE IV

EASEMENTS AND PROPERTY RIGHTS

Section 4.01. MEMBERS' EASEMENTS OF USE AND ENJOYMENT. Every member shall have a right and easements for the reasonable use and enjoyment of the streets (which includes the right of ingress and egress) and the park and lake areas designated on the aforesaid final record plats, subject to the provisions of this Declaration, any amendments and/or supplements thereto, and any rules and regulations promulgated by the Association governing the exercise of such rights and easements; and, such easements shall be appurtenant to and pass with the title to every Lot. Every member shall have the right to extend the rights and easements of enjoyment vested in him under this Article to each of his tenants and to each member of his family who resides with said member, his non-commercial guests and invitees, and to such other persons as may be permitted by the Developer and/or Association. The rights and easements of use and enjoyment created by Section 4.01 shall be subject to:

- (a) The right of the Developer (or the Association, at such time as the Association shall be the record Owner of the same) to borrow money for the purpose of acquiring, improving, and maintaining the designated streets, rights of way, park and lake areas, and dam, and to maintain and/or execute a mortgage or mortgages on each of the said areas as security for such loan(s);
- (b) The right of the Developer and/or Association to take such steps as are reasonably necessary to protect any such areas against foreclosure;
- (c) The right of the Developer (so long as it shall retain legal title thereto) to transfer any part or all of the common areas to any public or governmental entity which is authorized by law and willing to assume the responsibilities for the ownership, care and maintenance of the same;
- (d) The right of the Association to dedicate or transfer such part or all of the common areas to which it may have received legal title to any public or governmental entity or other entity authorized by law and willing to assume the duties and responsibilities of the Association with regard thereto, subject, however, to such conditions as may be imposed by the members; provided, however, that no such dedication or transfer shall be effective unless a recordable instrument signed by members entitled to cast fifty-one (51%) percent of the votes of the membership has been executed, agreeing to the terms of the dedication or transfer, and provided further that written notice of the proposed dedication or transfer is mailed to every member at least sixty (60) days in advance of obtaining any member's signature to such an instrument; and,
- (e) All other provisions of this Declaration, as the same may be hereafter amended and/or supplemented.

The grant of rights to use of the lake or any other common areas, as herein set forth, shall not be construed to grant any rights with regard to, or allow access to, any undeveloped or developed lands owned by Developer, for any purpose, and any unauthorized presence on such land shall be deemed a trespass thereon.

Any provisions of this Declaration to the contrary notwithstanding, neither the Developer nor the Association shall enter into any agreement or effect any conveyance or mortgage, which shall prevent the reasonable use of the streets, or impede the use of any designated lake and park areas, by the members, or other authorized persons, except for such temporary periods as may be necessary for utility or road installation, paving, repair or maintenance, and then in such a manner as to minimize disruption of the reasonable use thereof by all authorized persons.

ARTICLE V**DUTIES OF THE ASSOCIATION**

Section 5.01. COMPLIANCE WITH PROVISIONS OF DECLARATION, ARTICLES OF INCORPORATION, BYLAWS, AND RULES AND REGULATIONS. Each Owner shall comply with the provisions of this Declaration, and the Articles of Incorporation and Bylaws of the Association, as the same may be lawfully amended and/or supplemented from time to time, and with the rules and regulations from time to time adopted and/or amended by the Association; and, failure to comply with any such provision, rule or regulation shall be grounds for an action for recovery of sums due, damages, specific performance, and/or injunctive relief. All present or future Owners, tenants, future tenants, or any other person(s) who might own or be granted the use of any Lot, in any manner, are subject to the provisions of this Declaration, Articles of Incorporation, Bylaws, and the rules and regulations promulgated by the Association; and, the acceptance of a Deed to any Lot, or rental of or presence upon any Lot or common area, or the mere act of occupancy of any Lot or improvements thereon, shall signify that the provisions of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations of the Association are hereby accepted and ratified by all parties concerned.

Section 5.02. DUTIES. The Association shall in all reasonable ways act to promote the health, safety and welfare of the Owners, which duties shall include, without limitation:

- (a) Enforcement of the provisions of this Declaration;
- (b) Procurement, maintenance, repair or replacement of the streets right of way, dam, dam service areas, and designated lake, park, and any other common areas, access control (guard) buildings and equipment, security vehicles, boats and other security equipment and devices; maintenance and snow removal equipment, including (without limitation) tractors, mowers, mowing attachments, scraper blades, tools, etc.; and, any sanitary sewer lines (at much time as any shall be owned by or become the responsibility of the Association), street signs, street lights, and storm sewer lines, if any, ditches, culverts, etc., which may be located along, under, within or upon the streets and rights of way, or which are used in common by the Owners;
- (c) Snow removal from the streets;
- (d) Procurement of fire hydrants and payment of all rental fees therefore;
- (e) Care and maintenance of any existing cemeteries within the Mallard Point Development;
- (f) Construction, maintenance and repair of shelters for school children awaiting pick up by school buses, and/or to provide for such busing;
- (g) Payment of all taxes and special assessments levied by any governmental taxing authority on the streets, rights of way, dam, and designated lake, park, or any other common areas; and,
- (h) Procurement of liability insurance policies covering use of the streets, rights of way, dam, and designated lake, park, or any other common areas.

Section 5.03. CERTAIN FURTHER DUTIES OF THE ASSOCIATION. The Association shall prepare and keep a roster of the properties and regular and special assessments and charges applicable thereto, which shall be kept in the office of the Association and shall be available for inspection by any Owner.

The Association shall, upon demand at any time, furnish to any Owner liable for any regular or special assessment a certificate in writing, signed by any Officer or other responsible member of the Association, setting forth whether said assessment or assessments have been paid and whether there are any other unpaid charges against the Owner's Lot. Such certificate shall be conclusive evidence of payment of any assessments and/or charges therein stated to have been paid.

Section 5.04. REGULATORY POWER/ADOPTION PROCEDURE FOR RULES AND REGULATIONS. The Association may adopt and amend rules and regulations for the use and enjoyment of the common areas which shall bind the members. Written

notice of any meeting to consider proposed rules and regulations, or any amendments thereto, shall be given in writing to all members at least twenty (20) days in advance and such notice shall set forth the time, place, and purpose of the meeting.

Anything in this Declaration to the contrary notwithstanding, no rules or regulations shall be adopted, altered or amended by the Association which will be discriminatory in effect or application, unless the discriminatory effect or application may be reasonably required by and related to natural conditions of any Lot not common to all other Lots. Further, the Association shall adopt (or selectively alter or rescind) no rules or regulations which will have the effect of selectively conferring benefits upon any one or more Owners and not in common to all Owners, unless the same may reasonably be related to natural conditions of any Lot not common to all other Lots. No rules adopted by the Association shall affect, or in any way diminish or limit, the rights of Developer herein set forth or reserved.

Section 5.05. TREASURER. The Treasurer of the Association, to be a person elected annually by the members of the Association, shall maintain a detailed account of all receipts and expenditures of the Association, as well as the maintenance and repair expenses of the streets and rights of way, dam, and designated lake and park areas, and any and all other expenses and/or liabilities incurred by or on behalf of the Association. All Association accounting records, invoices, vouchers, cancelled checks, etc., shall be available for examination by the members at any and all reasonable times. The Treasurer shall be bondable, and a bond for the faithful performance of his or her duties shall be procured at the expense of the Association in an amount not less than the amount of Association funds for which he or she may become responsible.

Section 5.06. ANNUAL ACCOUNTING. All financial books and records of the Association shall be kept in accordance with good accounting practices and procedures, on a calendar year basis, beginning (with the exception of 1985, which shall be a short year) on the first day of January in each year and ending on the last day of December of such year; and, the books of the Association shall be audited at least once each year by an auditor designated by the Association, and who or which is not a member of the Association. The report of such audit shall be made available to the members of the Association, and to any holder of a first mortgage on any Lot, upon written request. Any Owner shall have the right to demand a certified audit of all of the books and records of the Association; and, if there is any substantial change resulting therefrom, the expense of such audit shall be borne by the Association. If, however, there is no substantial change, the expense of the audit shall be borne by the Owner(s) requesting same. "Substantial" as used herein shall mean an aggregate of sums in excess of ONE THOUSAND (\$1,000.00) DOLLARS.

Section 5.07. INDEMNIFICATION OF BOARD MEMBERS AND OFFICERS. Every officer of the Association and member of its Board shall be indemnified by the Association against all expenses and liabilities, including attorneys fees, reasonably incurred by and/or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Board member or officer, or any settlement thereof, whether or not he is or was a Board member or officer at the time such expenses and/or liabilities are incurred, except in such cases wherein the Board member or officer is adjudged guilty of willful nonfeasance or willful malfeasance in the performance of his duties; provided that, in the event of a settlement without trial or binding arbitration, the indemnification herein shall apply only when the Association, upon recommendation of the Board, has approved such settlement and reimbursement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and not exclusive of, all other rights to which each Board member or officer may be entitled. The Board shall be authorized to procure policies of insurance to protect the Association, Board, and officers and directors thereof, against errors, omissions, and/or other liability arising from their status or the performance of their duties, the costs of which shall be deemed common expenses of the Association.

Section 5.08. ALTERATIONS, ADDITIONS AND IMPROVEMENTS. Whenever, in the judgment of the Board, the common areas shall require additions, alterations or improvements, or equipment, machinery, boats, vehicles, services and/or supplies are needed, costing in excess of TEN THOUSAND (\$10,000.00) DOLLARS, the making of such additions, alterations or improvements, or purchase or procurement of the same, shall first be approved by the Association. Thereafter, the Board shall proceed with such additions, alterations or improvements, and/or purchases using the replacement reserve, to the extent available, and shall assess as needed all Owners for the costs thereof as a common charge. Any additions, alterations, improvements, equipment, etc. costing TEN THOUSAND (\$10,000.00) DOLLARS or less may be purchased, procured and/or made by the Board without approval of the Association, and the cost thereof shall constitute part of the Association's common expenses.

Section 5.09. FURTHER RIGHTS OF ASSOCIATION. At such time as Developer shall own less than Twenty (20%) percent of the Lots subject to this Declaration, or Seven (7) years from the date hereof, whichever shall last occur, or at such earlier time as Developer may waive its rights hereunder, the Association shall thereupon have the right to withdraw water from the lake, or otherwise draw down the water level of the lake, to a level not less than five (5) feet below its normal pool level at the 905 foot elevation, at any time(s), and from time to time, in its sole and absolute discretion, whether for the purpose of sale of such water, or for any other purpose which Association, in its sole and absolute discretion, may deem necessary, convenient, advisable or desirable; provided, however, that until such time, the Developer, and its authorized successors and assigns, and thereafter the Association, may lower the level of the lake, even to the extent of completely draining it, in the event such lowering shall be deemed necessary for purposes of dam maintenance, or in order to respond to any emergencies; and, the Developer and/or Association shall not be liable to any person or other entity in any manner whatsoever for any loss or damage to any person(s) or entity(ies) as a result of the use or exercise by Developer and/or Association of the rights, powers and authority reserved and granted in this Section.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Developer, for each Lot owned by it within the properties subject to this Declaration, hereby covenants, and each future Owner of any Lot (or authorized subdivided or consolidated Lots), by acceptance of a deed therefor, whether or not it may be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- (a) Regular assessments to cover common expenses;
- (b) Special assessments for capital improvements to the streets and rights of way, dam, designated lake and park areas, sanitary sewer and/or water lines, if any shall be owned or acquired by the Association; storm water retention area(s) and run-off ditches and culverts; security and maintenance equipment, facilities, and other equipment and/or improvements; such assessments to be fixed, established, and collected from time to time as hereinafter provided; and,
- (c) Other charges and assessments provided for in these Declarations.

The regular and special assessments and charges, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a continuing lien upon the Lot and improvements thereon against which each such assessment or charge is made, levied, or assessed, and shall also be the personal obligation of the Owner(s) of such property at the time when the assessment falls due or charge is effected.

Section 6.02. REGULAR ASSESSMENTS/PURPOSE. The regular assessments levied by the Association shall be used primarily for the payment of common expenses, accomplishing those duties listed or contemplated in Section 5.02 above, and such other purposes as the Association shall deem necessary and appropriate to fulfill the purposes of this Declaration. "Common expenses," in general, shall include, but not necessarily be limited to, the cost of maintenance, repair or replacement of streets and rights of way, dam, and designated lake and park areas (all herein referred to as "common areas"); trash and garbage removal from such areas; electricity, water, sewer and other utility services to such areas; the expenses of administration and management, including but not limited to management fees; casualty and liability insurance premiums; service contracts; purchase, lease, and maintenance of vehicles, boats, and other equipment necessary in the provision of security services and maintenance within the development; professional fees; expense reimbursement; and, employee salaries. Common expenses may also include such amounts as the Board may deem proper for the operation and maintenance of the Association, including, without limitation, amounts for working capital, for operating reserves, for reserve funds for replacements, staff salaries, equipment and supplies, postage and to make up any deficit(s) in the common expenses for any prior year or other period.

Section 6.03. BASIS OF MAXIMUM REGULAR ASSESSMENTS. At each annual meeting, the Association shall fix and determine the amount deemed necessary to provide for the costs of administration and common expenses in the following calendar year, and shall equally divide and assess that amount against all Lots subject to this Declaration (whether originally described herein, or subsequently made subject hereto pursuant to Section 2.02) on a monthly, bimonthly or quarterly basis. To assist the

Association in determining such amount, the notice of the annual meeting mailed to Owners shall be accompanied by an estimated budget prepared and approved by the Board. Until the first annual meeting, regular assessments shall be based upon a budget prepared by the Developer, and said budgetary amount shall be fixed and equally divided among and assessed against each Lot subject to this Declaration.

After the Association shall have held its first annual meeting, the amount of the periodic regular assessment will be set by a vote of the members, as hereinafter provided; as well as the frequency of payment (i.e., monthly, bimonthly or quarterly), but in no event shall payment be less frequent than quarterly. The amount and frequency of payment of any regular assessment shall be automatically extended unless by changed vote of the members, at any annual meeting, or at a special meeting of the Association duly called for this purpose, at which a quorum is present, written notice of which shall be sent to all members at least twenty (20) days in advance, setting forth the time, place, and purpose of the meeting.

Section 6.04. NOTIFICATION OF REGULAR ASSESSMENTS. The Board shall advise the voting member of the Association for each Lot subject to this Declaration promptly, in writing, of the amount of the regular assessments payable with respect to his, her, or its Lot, and shall, upon any Owner's written request, furnish a copy of each budget up on which such regular assessments are based to such Owner.

Section 6.05. PAYMENT OF REGULAR ASSESSMENTS. Lot Owners shall pay to the Association, in advance, on the first day of every calendar period for which the same shall be due, the regular assessment which shall be established by the Developer and/or Association for his, her, or its Lot(s).

Section 6.06. PAYMENT OF LIEN AFTER TRANSFER. Upon the voluntary sale or conveyance of a Lot, there shall be paid or provided from the sales proceeds, or by the grantee, an amount sufficient to satisfy any unpaid portion of any regular and/or special assessment(s) and/or other charges due and payable to the Association as of the date of conveyance. Any purchaser or lender in connection with any such sale, or conveyance shall be entitled to a statement furnished by the Board setting forth, in detail, the amount of any unpaid assessments and/or charges owed by the seller, or borrower, and such purchaser or lender shall be entitled to rely on such statement and shall have no liability for, nor shall the Lot be encumbered with, an amount of unpaid assessments and/or charges greater than that shown in said statement. Upon an involuntary sale through foreclosure of a deed of trust, mortgage or encumbrance having a preference, a purchaser thereunder shall not be liable for any assessments and/or charges as became due subsequent to the recording of such foreclosed deed of trust, mortgage or encumbrance, and prior to his purchase of the same.

No Owner shall be liable for the payment of any part of the common charges assessed against his Lot subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of this Declaration) of such Lot.

Section 6.07. CHARGES FOR BREACH. This Declaration, and the Articles of Incorporation and Bylaws of the Association, impose certain duties and conditions upon the Owners of the Lots subject to this instrument. In the event there is any breach by any Owner, or such Owner's family, lessees, and/or guests, invitees, agents, sublessees and/or employees thereof, of any provision of this Declaration, or the Articles of Incorporation, Bylaws or other rules and regulations promulgated by the Association, and if any such breach, or action to remedy or cure the same or enforce such provisions, shall require an expenditure by the Association and/or Developer (including expenditures for court costs and reasonable attorneys fees), the Association and/or Developer may levy a charge for the full amount of such expenditures against the Lot and the improvements of the said Owner(s), which charges shall also be the personal obligation of such Owner(s) and shall constitute a lien against the Lot and improvements of said Owner(s). Such charges shall be payable in full ten (10) days from the date such Owner is notified of the levy of such charge.

Section 6.08. EFFECT OF NON-PAYMENT OF ASSESSMENTS AND/OR CHARGES. In the event that any regular or special assessment and/or charge is not paid within ten (10) days from the due date thereof, there shall be a late payment charge added to each such assessment and/or charge in the amount of FIVE (\$5.00) DOLLARS for each month, or fractional part of a month, that each such assessment and/or charge remains unpaid. In addition, and upon any assessment and/or charge being past due for more than thirty (30) days from the due date thereof, the Association, at its option, may serve written notice on the Lot Owner who is delinquent, that if full payment of such assessment(s) and/or charge(s), plus any late payment charges, are not made within ten (10) days from the date of receipt of the notice of delinquency by the Lot Owner, there shall become immediately due and payable to the Association

(and the same may be collected in the same manner as any other obligation due the Association) the amount of assessments and/or charges in arrears, plus late payment charges thereon, plus the total amount of assessments that would become otherwise due and payable from said Lot Owner for the succeeding twelve (12) months from the date of the notice to the Lot Owner. The amount of such accelerated payments for any fiscal year of the Association for which a budget and assessments have not been officially adopted shall be calculated at the same amount as the assessments due for the then present fiscal year or portion thereof. Any amounts required to be prepaid by the Lot Owner shall be subject to subsequent adjustment by the Association as appropriate to correspond to the actual assessments thereafter becoming due from said Lot Owner.

The Association shall have the right and duty to take all appropriate actions and steps to collect any assessments and/or charges which shall remain unpaid for a period of more than thirty (30) days from the due date thereof, in addition to the actions described hereinabove, including the institution of litigation to recover a money judgment for the same, together with late payment charges thereon, and the reasonable expenses of collection, including reasonable attorneys' fees, without foreclosing or waiving the lien hereinabove provided. The lien for unpaid assessments and/or charges may be enforced and foreclosed in such manner as may from time to time be provided by the laws of the Commonwealth of Kentucky for the foreclosure of mortgages.

Section 6.09. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien provided for herein shall be inferior only to liens for taxes and assessments lawfully imposed by governmental authority against such Lot, and all sums unpaid on bona fide deeds of trust, mortgages or other encumbrances recorded prior to the due date of the particular assessment and/or charge, or recorded after receipt of a written statement from the Board that the payments on said lien were current, or that there was no charge, fine, and/or penalty due and owing, as of the recordation date of such deed of trust, mortgage instrument, or other encumbrance. Such subordination shall also apply to the assessments and/or charges which have become due and payable prior to a sale or transfer of such property pursuant to a judgment and order of sale in a foreclosure action, or any other bona fide proceedings or conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments and/or charges thereafter becoming due, nor from the lien of any such subsequent assessment or charge.

ARTICLE VII.

INSURANCE

Section 7.01. PUBLIC LIABILITY INSURANCE. The Association shall obtain a comprehensive policy of public liability insurance covering the streets and rights of way, dam, designated lake and park areas, and other common areas, hereinabove described, and insuring the Association, its Board, Officers, employees, and members, for and against all damage or injury in, upon, and/or to such areas, or caused by the negligence of the Association, its Board, Officers, employees, contractors, or any of its members, their employees, invitees, guests, family members, or agents, and such policy shall have at least a ONE MILLION AND NO/100THS (\$1,000,000.00) DOLLARS per person limit, with regard to bodily injury, a TEN MILLION AND NO/100THS (\$10,000,000.00) DOLLARS limit per occurrence, and a FIVE MILLION AND NO/100THS (\$5,000,000.00) DOLLARS minimum property damage limit. These amounts may be adjusted by the Board from time to time to provide for inflation and as the needs of the Association may require. Such coverage shall also afford protection against:

- (a) a loss or damage by fire, vandalism, malicious mischief, windstorms, explosions, water damage, and other hazards covered by the standard extended coverage endorsements;
- (b) leaks, rupture, collapse, or other failure of the dam; and,
- (c) such other risks as shall be customarily covered with respect to projects similar in construction, location and use.

All liability insurance shall contain cross liability endorsements to cover liabilities of the Association as a group, the Board, each Officer or employee of the Association, and each individual Owner. Workmen's compensation insurance shall be obtained when necessary to meet the requirements of law. In addition to the foregoing, the Board shall obtain such additional insurance coverage as it may, in its sole discretion, deem advisable, taking into consideration inflationary factors, other changes in value, and changes in the Associations duties, responsibilities, and/or liability exposure.

Premiums for all insurance procured hereunder shall be a common-expense of the Association. Each policy may contain reasonable deductible provisions as the Board may approve; and, the costs of all such insurance obtained shall be included in the amount of the regular assessments, as hereinabove provided.

All such insurance coverages obtained by the Association shall be written in the name of the Association, for the respective benefit of the Association, Officers, Directors and Lot Owners, as their interests may appear. All such policies shall be written with companies licensed to do business in the Commonwealth of Kentucky; and, exclusive authority to adjust losses under policies in force obtained by the Association shall be vested in the Board; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. The provisions of such insurance shall be without prejudice to the right of each Owner to insure his own Lot for his own benefit, but such insurance shall not diminish the liability of the insurance carrier with whom contracts of insurance have been made by the Association on behalf of all Owners.

Section 7.02. LIMITATIONS. Any insurance obtained pursuant to the requirements of this Article shall be subject to the following provisions:

- (a) The insurance carried by the Association shall be primary; and, in no event shall the insurance coverage obtained and maintained pursuant to the requirements of this Article be brought into contribution with insurance purchased individually by any of the Owners, and any "no other insurance" or similar clause in any policy obtained by the Association, pursuant to the requirements of this Article, shall exclude such policies from consideration.
- (b) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Owners, the Association, the Board, each officer of the Association, and their respective agents, employees, or invitees, and a waiver of any of the defenses based upon co-insurance or invalidity arising from the acts thereof.
- (c) Each of the policies of insurance obtained by the Association shall contain the following provisions:
 - (i) that they may not be cancelled, invalidated or suspended on the account of the conduct of any one or more of the individual Owners;
 - (ii) that they shall not be cancelled, invalidated, or suspended on the account of the conduct of any Officer or employee of the Association, without a prior demand in writing that the Association cure the conduct of such Officer or employee, with appropriate time to effect such cure; and,
 - (iii) that if the Association fails to cure the conduct of an officer or employee within the allotted time, the policies may still not be cancelled or substantially modified without at least ten (10) days prior written notice to the Board.

Section 7.03. ASSESSMENTS IF INSURANCE IS INADEQUATE. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the costs to repair or replace the damaged property in as good a condition as it was before the casualty. Such costs may include professional fees and premiums for such bonds as the Board may require. If the insurance proceeds are not sufficient to defray such estimated costs, special assessments shall be made equally against each Lot subject to this Declaration (whether originally described herein, or subsequently made subject hereto, pursuant to Section 2.02), in sufficient amounts to provide funds to pay such estimated costs. If at any time during reconstruction and repair, or upon the completion of reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made equally against all of the Lots subject to this Declaration, in sufficient amounts to provide funds for the payment of such costs.

ARTICLE VIII

REGULATIONS OF USE

Section 8.01. USE. The Lots shall be used for single-family residential use only; and, not more than one (1) single family dwelling shall be built on one (1) Lot. There shall be no "home occupation" (or other similar use) involving sale of goods and/or services at the dwelling or on the Lot.

Section 8.02. BUILDING DIMENSIONS. No residential building shall be constructed or permitted to remain upon any Lot unless the same shall be constructed of wood, brick, masonry, stone or other material approved by Developer, and unless such building shall have the following minimum square feet of living area (which shall not include garages, carports, porches, terraces, or unfinished basement areas, even though the same may be an integral part of the residential building) for the respective building categories:

- (a) One story building: 1650 square feet of living space on the ground level floor;
- (b) Two story building: 900 square feet of living space per floor for each ground level and second story floors;
- (c) One and one-half story building: 1650 square feet of living space for combined first and second story floors; and,
- (d) Split level, split foyer, or other type of residential building (not otherwise described above): 1650 square feet of living space for combined floors.

A residential building shall not be constructed or permitted to remain upon any Tract unless the same shall have an attached two-car garage or attached two-car carport ("attached" being defined as a contiguous and integral part of the main dwelling).

Section 8.03. CONSTRUCTION PLAN APPROVAL. Prior to the beginning of construction of any improvements upon a Lot (defined as the beginning of any excavations, grading or placement of building improvements), including without limitation the construction of any docks, ramps, or similar structures, and prior to any reconstruction and/or repair of damaged improvements thereafter, there shall be submitted to the Developer, in writing, the following:

- (a) Plans, specifications (in compliance with all applicable building codes), and elevations, of all buildings or improvements to be constructed, reconstructed, or repaired, including a description of all exterior building and roofing materials;
- (b) Plot plan showing the proposed location and dimensions of all buildings, driveways, porches, patios and terraces, docks, or other improvements, the approximate location of existing trees, all applicable front, side and rear Lot lines and easements, floor level elevations, and all utility lines of every type (which shall be installed underground from the tap on or connection point to the residence or other approved structure served);
- (c) A plan showing steps which will be taken to prevent erosion and sediment runoff into the lake during the entire period until construction is completed and the Lot sodded and/or seeded;
- (d) a copy of the building permit obtained from the appropriate Scott County authority, with regard to the proposed construction or reconstruction; and, any residential construction upon any Lot to which sewage service lines do not extend shall include a septic system approved by the Scott County Health Department, or any successor to it.

No such construction, reconstruction, and/or repair shall be commenced until the written approval of the Developer of the aforesaid plans and specifications, shall be obtained. Approval of such plans and specifications may be withheld by the Developer (or Association) and modifications demanded as a condition of approval, if the Developer shall determine that the proposed improvements or location(s) of the same violate any provision of this Declaration; or will not match the high standards set by the Developer for the development, or existing within the development, in terms of style and construction materials used; or if the plans concerning erosion and sediment runoff prevention are deemed inadequate. No plans or specifications shall be approved if it

shall be determined by the Developer that the proposed construction will be substantially similar to that erected or proposed to be erected (and already approved) on any other Lot within 3 Lots (on either side) of the Lot for which approval is requested, or if the same are inappropriately located or positioned upon the Lot. Further, if after construction of any building or other improvement, any proposed alterations or changes to the building or improvement or plot plan (as previously approved) are desired, the plans for such changes and/or alterations shall be submitted to the Developer in writing, and the Developer shall have the right to approve or disapprove, at its sole discretion, the proposed alterations or changes.

This obligation upon Owners to submit, and the right of the Developer to approve, plans and specifications, alterations, or changes hereinabove set forth, shall continue but with the exception that the Board shall have the right to approve or disapprove the same at such time as Developer shall not retain legal title to any Lot subject to this Declaration (whether originally described herein, or subsequently made subject to this Declaration, pursuant to Section 2.02), or at such earlier time as Developer may expressly assign this right to the Association. The approvals of the Developer or Board as provided above shall be valid only if construction, reconstruction, improvement, or repairs are begun in accordance thereto within a reasonable time, but in no event more than one (1) year from the date of such approvals. If construction has not begun within said time, then such approvals shall lapse and reapproval by the Developer or Board, as the case may be, shall be required prior to the beginning of such construction or repair.

Section 8.04. LANDSCAPING. Upon completion of the construction of building improvements on each Lot, the front, side and rear yards shall be finely graded and seeded, or otherwise similarly planted in full, excepting only driveways, parking areas, sidewalks, walkways, patios, terraces, porches, and (when instituted and maintained by the actual residential occupant of the building) garden areas; and, all reasonable steps shall at all times be taken by each Lot Owner to prevent soil erosion from occurring upon his Lot. Further, no substantial number of trees shall be removed or cut (except dead or diseased trees), unless the approval of the Developer is obtained in writing, or the Board approves the same in writing after Developer's approval rights have terminated, as provided in Section 8.03 above.

Section 8.05. RESTRICTIONS. The Association may, from time to time, impose certain restrictions as to the use of the properties and common areas, or abolish, amend, or modify any such restrictions and/or the restrictions herein set forth, but only by an affirmative vote of the members of the Association holding seventy (70%) percent or more of the voting rights in the Association. The initial specific restrictions and prohibitions applicable to the properties, which may hereafter be abolished, supplemented, modified and/or amended by the Association, as provided in this Section, are as follows:

- (a) No fence shall be constructed or permitted to remain on any Lot along, or within fifty (50) feet of the normal pool (905 foot elevation) of the lake, unless the same shall be a stone or brick wall. Any standard fencing material (with the exception of barbed wire or electrified fencing) may be used along the side boundaries of each Lot to within fifty (50) feet of the 905 foot elevation of the lake. There shall be no fencing along the roadway boundary of any Lot other than 4 plank black wood fencing or brick or stone walls. No fence or wall, however, shall be more than six (6) feet in height.
- (b) No mobile homes, travel trailers, or immobile vehicles shall be permitted on the properties. This shall not be construed to prohibit self propelled recreational vehicles and motor homes from being permitted on the properties, so long as the same are not used while located thereon.
- (c) There shall be no camping on any of the Lots; and, no Lots shall be used for any immoral, offensive, unlawful, or improper purpose(s). Owners, occupants, and users of each Lot shall exercise care to avoid creating unnecessary noise (through the use of loud speakers or amplifiers or otherwise) which may disturb the peace, quiet, and serenity of the Development, or disturb other Lot Owners, occupants, and/or users. No nuisances shall be allowed on any Lot, nor shall any noxious or offensive use, activity, or practice be allowed which is a source of annoyance to occupants of other Lots, or which interferes with the peaceful possession or proper use of any other Lot by its occupants, or the proper use of common areas.

- (d) No person shall use or permit any use of the common areas in any manner which would render insurance thereon void or voidable, or result in an increased premium therefore.
- (e) No gas, fuel oil, or other holding tanks of any type, or exterior laundry or clotheslines, which are visible from any other Lot, streets, rights of way, dam, park, or lake areas, shall be erected, placed, or permitted to remain on any Lot.
- (f) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs, cats or other household pets, provided such pets are not kept, bred, or maintained for commercial purposes. All such household pets as may be permitted shall be kept within an enclosed area on each Lot and not permitted to run or stray upon any other Lot, or upon any street, right of way, dam, or park or lake areas.
- (g) Unless otherwise approved by the Developer or Association, as herein provided, no buildings or structures of a temporary character, including, but not limited to, storage huts, trailers, tents, shacks, barns or other such structures shall be constructed or permitted to remain upon any Lot, unless reasonably necessary during construction.
- (h) No sign of any kind shall be displayed on any Lot except one sign per Lot, not more than four (4) square feet in total surface area, for advertising the property for sale or rent, or identifying the Owner thereof, except as hereinafter provided and reserved by Developer in Section 10.01. Further, no Owner, occupant, or user of any Lot, nor any other person, shall post any advertisements or signs of any kind in or about the Development, except those which may be expressly approved by the Developer or Board, in writing. All signs shall be professionally prepared.
- (i) Due to the unsightliness created and possible annoyance to other residents, no dismantling and repairing of motor vehicles, boats or machinery, or parts thereof, of any type, shall be permitted outdoors on the Lots, or streets, rights of way, dam, park, or lake areas.
- (j) Except as may be otherwise provided herein, or as specified on any record plat, no buildings or structures of any type or nature shall be erected within any flooding, drainage, or utility easements, or within fifteen (15) feet of any common boundary line of any other Lots, or within thirty (30) feet of any property lines along the streets, rights of way, dam, park, or conservation areas, with the exception of approved docks.
- (k) Docks shall be constructed only of natural wood, and shall be unpainted. Docks shall not exceed 12 feet by 12 feet, and shall have no railing. Access ramps to docks, if wooden, shall be natural wood only (unpainted). If metal, such access ramps shall be painted black. Only Developer approved floatation blocks may be used for dock construction and no barrels or other unapproved floatation materials may be used. No raised or diving platforms shall be constructed. All docks are to be completely flat. Diving boards shall be permitted, although the same shall remain unpainted and not raised. There shall be no rope, cable, or other swings, within fifty (50') feet of the lake. There shall be no houseboats or any boats in excess of sixteen (16) feet allowed on the lake, and no boat shall be propelled by any engine or motor with a rated capacity in excess of ten (10) H.P., except for boats maintained by the Developer or by the Association (for the official use of security and maintenance personnel).
- (l) No gardens may be maintained or crops grown, unless located at least fifteen (15) feet away from any boundary of the Lot and at least fifty (50) feet away from the line marking the 905 foot elevation of the lake, and provided that the same shall not be visible from the streets and rights of way, lake, dam or park areas, or any other Lot.
- (m) No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing which will cause such Lot to appear in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or noxious odors.

Garbage and refuse from the properties shall be deposited within cans, screened from view from other Lots, streets, rights of way, dam, park, and lake areas; and, dumping or burning of any trash, waste or debris, of any type whatsoever, with the exception of wood, logs, charcoal, and brush, shall be prohibited upon or within any Lot, streets, rights of way, dam, park, or lake areas.

- (n) Vehicles belonging to members of the Association, members of their families, their tenants and guests shall be parked in such manner as to neither impede nor prevent ready access along the streets and rights of way. No tractors or trailers shall be permitted to be parked in any area that may be visible from the streets, rights of way, lake, park areas, or any other Lot. No parking along the streets and rights of way shall be permitted in any manner whatsoever, nor may "pull-off" areas be prepared within the rights of ways by any Owner.
- (o) All driveways shall be constructed either of blacktop or concrete and must be completed prior to occupancy of any residential dwelling unit on any Lot.
- (p) No persons other than Owners of residential Lots in the Mallard Point development, lessee/occupants, and their non-commercial guests or invitees, and members of their families, shall be permitted access to or use of the lake through such Lot. All guests, invitees, and non-resident family members using the lake or park areas must be accompanied by their Owner or lessee/occupant host, or be subject to ejection. All Owners or lessee/occupants of non-lakefront Lots subject to this Declaration, their non-commercial guests or invitees, and members of their families, shall be permitted access to the lake only through designated park areas, and shall not trespass on private lands, developed or undeveloped.
- (q) Lakefront Lot Owners shall have the right to control up to fifty (50) feet of the surface of the lake linearly extending from the 905 elevation boundary of their Lot, or if fifty (50) feet is not available, one half the distance to the other side of the shoreline, but not more than fifty (50) feet. This right shall not be exercised in any manner as to inhibit in any way ingress and egress within any portion of the lake, and no lakefront Lot Owners shall rope or block off, by fence, floatation rope, line, or any other device, in any area of the lake for personal use.
- (r) No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of any Lot, nor shall any oil, natural gas, petroleum, asphalt, or hydrocarbon products or minerals, including coal, of any kind shall be produced or extracted therefrom. Further, no commercial mining or quarrying activities of any type or nature whatsoever shall be permitted on any such Lot, and there shall be no drilling of any type or nature whatsoever upon any Lot.
- (s) There shall be no dumping on any Lot, nor any dumping or discharge of any type or nature whatsoever into the Lake from any Lot, or common area, with the exception of run off rain water only. Except in cases of emergency for combating fire, or as is otherwise provided herein, no water shall be withdrawn from the lake in any manner.
- (t) No TV or radio antennas over thirty-nine (39) feet high, at their fully extended measurement from ground level shall be permitted; and, all TV and/or radio antennas must be attached to a residence, and be either roof mounted or tower mounted. No detached antennas of any type will be permitted. Further, there shall be no satellite dishes or receiving stations, permitted on any Lot. Radio transmitting (short wave, etc.) will be permitted subject to FCC regulations; provided, however, that such transmissions or equipment do not disrupt other TV, radio or telephone reception or transmission within the Development.
- (u) There shall be no hunting, discharging of firearms, B.B. guns, bows, cross-bows, or other projectile weapons within or upon any Lot or common area, except by maintenance and security personnel, in the performance of their duties.

- (v) There shall be no solicitation (including, without limitation, door to door sales) of any type within the residential area of the Development, except as may be expressly authorized by the Developer or Board.
- (w) No above ground swimming pools shall be constructed, placed, or maintained on any Lot unless the same shall be screened from view from the streets, rights of ways, lake and park areas, and any other Lot. All materials used for such screening shall first be approved by Developer (or thereafter by the Association, as provided in Section 8.03, above).
- (x) No go-carts, "three wheelers," or "off-road" vehicles of any type shall be driven or operated upon the streets or rights of way or within the designated park or other common areas.

In the use of his Lot, streets, rights of way, lake, and park areas, each Owner, occupant, user, lessee or sublessee of any Lot, or any guest, invitee or licensee thereof, shall obey and abide by all valid laws, ordinances, zoning and other governmental rules and regulations affecting the same, the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and all applicable rules and regulations adopted by the Association. The common areas shall be used only for the furnishing of the services and facilities expressly provided herein, and for which they are reasonably suited.

Section 8.06. OWNER'S/OCCUPANT'S OBLIGATION OF MAINTENANCE AND REPAIR. Each Owner and all occupants and/or users of any Lot shall be responsible for the care, upkeep, and maintenance of his Lot(s); and, each shall perform his responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners and/or occupants.

Each Owner, occupant, and/or user shall promptly report to the Board, or its duly authorized agent, any condition, defect or need for repairs, the responsibility for the remedying of which is the Association's. Each Owner, occupant, and/or user shall reimburse the Association for any expenditures incurred in repairing or replacing any common area, facility or improvement, damaged through his fault or negligence, or through that of his agent, employees, invitees, lessees, sublessees, or others who may be acting on his behalf or under his authority. Such reimbursement shall be paid within thirty (30) days of written notice from the Board that such reimbursement is due.

Section 8.07. LEASING OF LOTS. Any Owner of a Lot may lease said Lot and/or the improvements located thereon, provided that:

- (a) The Owner shall notify the Board of the identity of the lessee, and of all persons authorized to occupy the leased Lot, the effective commencement and ending dates of the lease, and any other information deemed necessary or advisable by the Board;
- (b) Any such lease shall be consistent with, and direct the lessee's (and all other persons using or coming upon the said Lot with lessee's permission) compliance with the provisions of this Declaration, Articles of Incorporation and By-Laws of the Association, and with such rules and regulations as may be promulgated from time to time by the Association; and,
- (c) The Board shall have the power, in the event of continuing violation of the provisions of this Declaration, Articles of Incorporation, Bylaws of the Association, and/or rules and regulations of the Association, to terminate a lease or sublease of any Lot and/or to bring summary proceedings to evict the tenant in the name of the Lessor or Sublessor.

ARTICLE XI

GENERAL PROVISIONS

Section 9.01. DURATION. The easements, covenants, restrictions, limitations, reservations, obligations and agreements set forth in this Declaration shall run with and bind the land described in Section 2.01 (and such additional lands as may be made subject to this Declaration pursuant to Section 2.02) above, and shall inure to the benefit of and be enforceable by the Developer, Association, and/or the Owner of any Lot subject to this Declaration (whether originally described herein, or subsequently made subject to this Declaration, pursuant to Section 2.02), their respective legal representatives, heirs, successors, and assigns, unless changed or amended as herein

provided, for a term of thirty (30) years, from and after the date hereof after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless amended as hereinafter provided in Section 9.04.

Section 9.02. NOTICES. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 9.03. ENFORCEMENT. The provisions of this Declaration, and rules and regulations of the Association, as the same may be from time to time amended, shall be enforceable by the Association, which shall have the right, in common with the Developer and with each Owner of any Lot(s) to individually and/or collectively enforce the same, pursuant to the provisions hereof. Enforcement of the provisions of this Declaration, the Articles of Incorporation and/or Bylaws of the Association, or rules and regulations promulgated by the Association, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate the same, either to enjoin, restrain, abate, and/or remedy such violation; to recover damages and/or charges from the responsible Owner(s) and or violators, and/or against the land, to enforce any lien created by these covenants; and, failure by the Developer, Association, or any Owner to enforce any any of the same shall in no event be deemed a waiver of the right to do so thereafter, which right(s) shall continue undiminished in any manner.

Section 9.04. AMENDMENT. Any provisions of these covenants may be amended or changed in whole or in part by an instrument signed by the Owners of record of Lots subject to this declaration authorized to vote seventy (70%) percent of the authorized votes of the Association; provided, however, that no such instrument of amendment or change shall be effective unless made and recorded at least thirty (30) days in advance of the effective date of such amendment or change, and unless written notice of the proposed amendment or change is sent to every Owner at least sixty (60) days in advance of the meeting at which any such proposed amendment or change is to be considered. Anything in this Declaration to the contrary notwithstanding, no amendment or change shall be made in any provisions of Sections 2.02, 5.09, 8.01, 8.02, 8.03, 8.04, 9.01, 9.03, 9.04, 10.01, and 10.02 of this Declaration unless and until the written consent of the Developer has been first obtained; provided, however, that this requirement shall end, at such time as Developer shall own no Lot subject to this Declaration (whether originally described herein; or subsequently made subject to this Declaration pursuant to Section 2.02), or at such time as Developer shall relinquish such right in writing, whichever shall first occur.

Section 9.05. SEVERABILITY. Invalidation of any one of these covenants or restrictions, or portion thereof, by court order or judgment shall in no way affect any other provisions, or portions thereof, which other provisions and portions shall remain in full force and effect.

Section 9.06. ENTRY ONTO PROPERTIES. In addition to the rights of access to the properties required for the exercise of the easements hereinbefore granted, the Developer and/or Board, and any contractor or other persons authorized by the Developer and/or Board, may upon giving forty-eight (48) hours prior notice to the Lot Owner (except in cases of emergency, in which event no prior notice shall be required), enter any of the Lots at any reasonable times for the purpose of inspecting such Lot(s), to ascertain whether the Lot Owner is in compliance with the terms and provisions hereof, or to determine whether measures are necessary or desirable to control or exterminate any vermin, insects, or other pests and for the purpose of taking such corrective measures as may be reasonably necessary. In case of an emergency, such right of entry shall be immediate, whether the Owner or occupant of the Lot is present at the time or not. Any damage to any Lot or the contents thereof, which shall result from any exercise by the Board of its rights access herein above set forth, shall be promptly repaired by and at the expense of the Association and the same restored to its condition immediately prior to such damage.

Section 9.07. WAIVER OF NOTICE. Whenever any notice whatever is required to be given under the provisions of this instrument, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 9.08. INFORMAL ACTION BY ASSOCIATION OR BOARD. Any action required to be taken at a meeting of the members of the Association, or its Board of Directors, may be taken without such a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Association, or its Board (as the case may be), entitled to vote with respect to the

subject matter thereof, whether done before or after the action so taken. Any such consent signed by all members of the Association, or its Board (as the case may be), shall have the same effect as a unanimous vote, and may be stated as such in any document filed with any state, federal or local agency, court, or appropriate filing office for the recording of such documents.

Section 9.09. SUBDIVISION AND CONSOLIDATION OF LOTS. There shall be no subdivision or consolidation of any Lot or Lots which are subject to this Declaration (whether the same are original, or previously authorized subdivided or consolidated, Lots) unless the subdivision or consolidation of the same shall have been first approved in writing by the Developer (or the Association, after such date as Developer shall retain no fee simple interest in any of the Lots subject to this Declaration, whether originally described herein or made subject hereto pursuant to Section 2.02, or at such time as Developer shall have relinquished such right, whichever shall first occur) and Georgetown - Scott County Planning Commissions. The Developer or Association shall not be required to approve any subdivision or consolidation of any Lot(s), and may withhold approval in its sole and absolute discretion, without liability to any person(s) or entities whatsoever. Anything in the foregoing to the contrary notwithstanding, in no event shall there be a subdivision of any Lot(s) which would result in the existence of a subdivided Lot with a total area of less than one half (1/2) acre. Anything in the foregoing to the contrary notwithstanding, no Lot not serviced by the sewage system serving other Lots in the Development shall be subdivided in any manner whatsoever.

Section 9.10. JOINT DECLARATION BY ASSOCIATION. MALLARD POINT OWNERS ASSOCIATION, INC. joins in this Declaration for the purpose of consenting to, and agreeing to perform, the duties and obligations imposed upon the Association by this Declaration.

ARTICLE X

RESERVATION OF RIGHTS BY DEVELOPER

Section 10.01. RESERVATION OF RIGHTS BY DEVELOPER. Anything in this Declaration to the contrary notwithstanding, Developer reserves unto itself, and its authorized successors and assigns, the sole, exclusive, and unrestricted rights (without being obligated to exercise the same) to:

- (a) Approve or deny approval with regard to plans and specifications for any improvements to be erected upon any of the properties;
- (b) Grant easements to public utilities and others within, over, and upon the streets, rights of way, dam, lake and park areas, and any Lots owned by Developer;
- (c) Dedicate the streets, rights of way, and any adjoining park areas (or portions thereof) to public use;
- (d) Erect and maintain conspicuous signs (of such dimensions as it shall desire) in front of any Lot or Lots which it is advertising for sale, along the U.S. Highway 25 frontage of the Development, and/or along the streets and rights of way for so long as Developer shall be the Owner of any such Lot(s).
- (e) Do and perform such acts relating to the development of the properties, streets, rights of way, lake, and park areas, as it may deem expedient, in its sole and absolute discretion, and/or as may be required by any governmental entity having jurisdiction over said properties, streets, rights of way, dam, lake and park areas; and,
- (f) Develop, improve, market, sell, and retain other lands adjoining the real property subject to this Declaration, and to grant rights to the use of the streets, rights of way, and designated park and lake areas to such others as it may, in its sole and absolute discretion, determine; the easements and rights of use and enjoyment in the streets, rights of way, and designated park and lake areas granted herein being to such extent nonexclusive.

The provisions of this Article shall not be altered or amended in any manner whatsoever without the prior written consent of the Developer, or its duly authorized successors and assigns; provided, however, the rights hereinabove reserved to Developer shall end at such time as Developer shall own less than Twenty (20%) percent of the Lots subject to this Declaration, whether originally designated herein or hereafter made

subject to this Declaration as provided in Section 2.02, above, or Seven (7) years from the date hereof, whichever shall last occur. The Owners, occupants, Association, and/or Board shall not in any way interfere with Developer's completion, development, improvement, and sale of Lots within any Phase of the MALLARD POINT DEVELOPMENT or of surrounding and/or adjoining lands; and, anything in this Declaration to the contrary notwithstanding, the Developer may make such use of unsold Lots, lake, dam, park, and other common areas, as may facilitate the development, completion and sale of such other Phases (and Lots therein) together with such other surrounding and/or adjoining lands, including but not limited to the maintenance of sales offices, the showing of the property, and prominent display of signs.

Section 10.02. TITLE TO COMMON PROPERTIES. Despite the fact that the Association shall be responsible for maintenance and repair of the same, the Developer may retain legal title to the common areas, including without limitation the streets, rights of way, dam, and designated park and lake areas; provided, however, the Developer hereby covenants that it will convey legal title to the common properties to the Association not later than at such time as it no longer retains legal title to more than Twenty (20%) percent of the Lots subject to this Declaration (whether originally described herein, or subsequently made subject to this Declaration pursuant to Section 2.02), or Seven (7) years from the date hereof, whichever shall last occur. The Developer shall have the right to transfer legal title to all or any part of the common properties to the Association prior to such time. Whenever the Developer conveys legal title to all or part of the common properties to the Association, the Association shall accept such legal title and assume sole control of the common properties so conveyed.

IN WITNESS WHEREOF, MARIC DEVELOPMENT CORPORATION and MALLARD POINT OWNERS ASSOCIATION, INC. have caused this Declaration to be executed by duly authorized Officers, on this the day and year first above written.

DEVELOPER: MARIC DEVELOPMENT CORPORATION, a Kentucky corporation

By: [Signature]
MARK S. SMITH, President

ASSOCIATION: MALLARD POINT OWNERS ASSOCIATION, INC.

By: [Signature]
MARK S. SMITH, President

STATE OF KENTUCKY
COUNTY OF FAYETTE

The foregoing Declaration was acknowledged before me by MARK S. SMITH, President of MARIC DEVELOPMENT CORPORATION, a Kentucky corporation, and of MALLARD POINT OWNERS ASSOCIATION, INC., a Kentucky nonprofit corporation, on behalf of the aforesaid Corporations, on this the 18th day of July, 1985.

My commission expires: May 16, 1986
[Signature]
NOTARY PUBLIC, STATE AT LARGE, KY

This document was prepared by:

WILLIAM C. VAN INWEGEN
KINCAID, WILSON, SCHAEFFER & HEMBREE, P.S.C.
500 KINCAID TOWERS
LEXINGTON, KY 40508

[Signature]
WILLIAM C. VAN INWEGEN

State of Kentucky
County of Scott, Sct.
I, Helen Juett, Clerk in and for the County and State aforesaid, certify that the foregoing Consent - Covenant - Restrictions was this day lodged for record at 2:47 P.M. Whereupon the same, with the foregoing and this certificate have been duly recorded in my office.
-18- Witness my hand this 18 day of July, 1985
HELEN JUETT, CLERK
By [Signature] D.C.