BK: 08371 PG: 0561/0585 #:0138 56.00
JUDITH A GIBSON REG OF DEEDS MECK NC
FILED FOR REGISTRATION 11/22/95 10:53

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MALLARD WOODS

THIS DECLARATION is made this 22 day of November, 1995, by MALLARD CREEK PROPERTIES, INC., a North Carolina corporation, referred to in this instrument as "Developer."

STATEMENT OF PURPOSE

Developer is the owner of that certain parcel of land which is known as Mallard Woods located in Mecklenburg County, North Carolina, more particularly described on Exhibit A attached hereto (the "Property").

It is in the best interest of Developer, as well as to the benefit, interest and advantage of each person or other entity later acquiring any property in Mallard Woods that certain covenants, conditions, easements, and restrictions governing and regulating the use and occupancy of the same be established, fixed and set forth and declared to be covenants running with the land in order to provide for the preservation of the values and the desirability and attractiveness of the real property in Mallard Woods.

DECLARATION

In consideration of the premises and for the purposes stated, Developer hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions (all of which are collectively referred to in this instrument as "restrictions" or "Declaration"), which restrictions shall be construed as covenants running with the land and shall be binding on all parties having any right, title or interest in the described Property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Drawn by and Mail to:
William H. Trotter, Jr.
Lancaster & Trotter
1515 Mockingbird Lane, Suite 414
Charlotte, North Carolina 28209

ARTICLE I: DEFINITIONS

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

(1.1.) "Association" shall mean Mallard Woods Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

(1.2.) "Board of Directors" shall mean the current board of directors of the Association.

(1.3.) "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Mallard Woods, but excluding those having such interest merely as security for the performance of an obligation.

(1.4.) "Properties" shall mean the Property and such real property as may subsequently be brought within the jurisdiction of the Association.

(1.5.) "Common Area" shall mean all easements and/or real property acquired by the Association in Mallard Woods for the common use and enjoyment of members of the Association lying within the boundaries of the Property. Common Areas, with respect to the Property subject to this Declaration, shall be shown on the plats of Mallard Woods recorded in the Mecklenburg County Public Registry and designated thereon as "Common Area" or "Common Area Easement" or "Landscape Easement".

(1.6.) "Lot" shall mean any numbered plot of land to be used for residential purposes shown upon any recorded subdivision plat of the Property subject to this Declaration.

(1.7.) "Developer" shall mean and refer to Mallard Creek Properties, Inc., and its successors and assigns and to any person, firm or corporation which shall hereafter become vested with title, at any given time, to two or more undeveloped lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Mallard Creek Properties, Inc., shall be a Developer during such period of time as said party is vested with title to two or more lots so long as said lots are undeveloped, developed but unconveyed, or improvements constructed thereon are unoccupied; but only during such period.

(1.8.) "Person" shall mean a natural person, as well as a corporation, partnership, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

(1.9.) "Mallard Woods" shall mean the Property.

(1.10.) "FHA and VA" shall mean and refer to the Federal Housing Administration, U.S. Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

(2.1.) The Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Without further assent or permit, Developer hereby shall also have the right within seven (7) years from the date of this Declaration, exercisable from time to time, to subject other real property within the area described on Exhibit B attached hereto in order to extend the scheme of this Declaration to other property to be developed as part of Mallard Woods Subdivision and thereby bring such additional properties within the jurisdiction of the Association (provided that the FHA and VA determine that the annexation of such area is in accord with Developer's General Plan of Development of Mallard Woods Subdivision as previously approved by them, if such determination and approval are necessary).

(2.2.) Any addition of real property subjected to this Declaration shall be made by filing of record one or more supplemental declarations in respect to the property to be then made subject to this Declaration, and the jurisdiction of the Association shall thereby then extend to such property and subject such additional property to the assessment provided in this instrument for a just and proportionate share of the Association's expenses. Each supplemental declaration may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained herein, as determined by the Developer, that may be necessary to reflect the different character of the added properties.

ARTICLE III: PROPERTY RIGHTS

(3.1.) Every Owner shall have a nonexclusive right of enjoyment in and to the Common Area Easement which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration, including but not limited to the following:

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for any

infraction of the Association's published rules and regulations, if any;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area Easement to any public agency, authority, utility or individual for such purposes and subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area Easement without the assent of the membership if such easements are requisite for the convenient use and enjoyment of the Property.

ARTICLE IV: MEMBERSHIP AND VOTING RIGHTS

(4.1.) Every Owner of a Lot shall be a member of the Association and subject to assessment. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

(a) Class A. Class A members shall be all Owners with the exception of Developer and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such 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 vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership; or

(ii) When the Developer voluntarily relinquishes majority control of the Association by a duly recorded instrument; or

(iii) Seven years from the date of this Declaration.

(4.3.) During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment, is paid. In the event of violation by a member of any rules or regulations established by the Board of Directors, such member's voting rights may be suspended by the board after a hearing. Such hearings shall only be held by the board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the board or the committee thereof. During any period in which a member shall be in default in the payment of any quarterly, special or other periodic assessment levied by the Association or in violation of any rules or regulations established by the Board of Directors, such member shall be subject to a fine imposed by the Board of Directors which shall be the personal obligation of the person who is the Owner of such Lot at the time when the fine was levied.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1.) The assessments levied by the Association shall be used: (a) to provide funds for maintenance, upkeep, landscaping and beautification of the Common Area Easement in Mallard Woods as shown on recorded plats; (b) for the payment of monthly electric and water bills and any other expenses resulting from the maintenance or beautification of the Common Area Easement or maintenance of the subdivision street lights; (c) to provide for the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful and the employment of security personnel; and (d) to provide any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the Property which the Association shall decide to provide.

(5.2.) The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in said Deed, is deemed to covenant and agree to pay to the Association;

(a) Quarterly assessments ("Quarterly Assessments") for the purposes specified above in the amount hereinafter set forth; and

(b) Special assessments ("Special Assessments") for the purposes specified above as may be approved by the members, to be established, and collected as provided herein.

(5.3.) In order to secure payment of the Quarterly and Special Assessments and such charges as may be levied by the Association against any Lot, together with interest, costs of collection, reasonable attorney's fees and fines established by Board of Directors, all such costs shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment, together with interest, fines, late charges, costs of collection and reasonable attorney's fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligation.

(5.4.) The assessments, charges and liens created under this Article shall not apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessments shall again accrue on such Lot. Any Lot which Developer may hereafter designate for common use as part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.5.) The maximum Assessment shall be $80.00 on each Lot due and payable to the Association on a quarterly basis (or less frequent basis as set by the Board of Directors) to begin the month following the activation of the Association by Developer and prorated as necessary. The Developer may, at its election, however, postpone in whole or in part the date on which the assessment shall commence provided that the Developer maintains the Common Area Easement for which no assessment is being collected during the period of such postponement. In addition to the above, each Owner must pay at the closing on each Lot the sum of $20.00,

the equivalent of one-quarter of dues, as a contribution to the working capital fund of the Association.

(5.6.) From and after January 1 of the year immediately following the activation of the Association, the maximum Quarterly Assessment may be increased each year by the Board of Directors without a vote of the membership by an amount not more than the greater of: (1) the percentage increase of the level of the Consumer Price Index for Urban Wage Earners and Clerical Workers, US City Average-All Items (1967=100) published by the Bureau of Labor Statistics of the United States Department of Labor or (similar statistical standards) over the level for the preceding calendar year or (2) five percent (5%) above the maximum Quarterly Assessment for the previous year. From and after January 1 of the year immediately following the activation of the Association, the maximum Quarterly Assessment may be increased above the percentage increase which the Board of Directors may authorize pursuant to the preceding sentence without a vote of the membership by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors may fix the Quarterly Assessment at an amount not in excess of the maximum herein provided.

(5.7.) In addition to the Quarterly Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Association members who are voting in person or by proxy at a meeting duly called for this purpose.

(5.8.) Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence in person or by proxy of members entitled to cast fifty-one percent (51%) of all the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. This process of reducing the quorum to two-thirds (2/3) of the previously required quorum may be continued until a quorum is present at the meeting.

(5.9.) From the date on which the Quarterly Assessments commence on a Lot until the date on which the Lot is sold by the Developer to a purchaser, the Developer shall be liable for Quarterly Assessments at a rate which is one-third of the rate otherwise payable unless the Developer has elected not to activate the Association and has maintained the Common Area Easement as provided herein. If the Association has been activated, the first Quarterly Assessment shall be adjusted according to the number of days remaining in the calendar quarter when filed. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the Quarterly Assessment against each Lot and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's Quarterly Assessment shall be the fixed amount for the following year. Written notice of any change in assessment rate shall be sent to every Owner after activation of the Association by the Developer. The Quarterly Assessments shall be due and payable quarterly on the first day of each month of each quarter of the year and the due dates for the payment of Special Assessments shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid to date.

(5.10.) Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge as determined by the Board of Directors of the Association and/or bear interest from the due date at an annual rate of eight percent (8%) but in no event above the then maximum legal rate and to the extent allowed by law. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorney's fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area Easement or abandonment of his Lot.

(5.11.) The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any

Lot which is subject to any first mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

(5.12.) Upon the sale of a Lot by Developer, the purchaser shall pay to the Association at the closing of the sale that amount of money that is equal to that portion of the Quarterly Assessment attributable to the balance of the quarter in which the closing takes place and shall also pay at closing that amount equal to one Quarterly Assessment as a contribution to the working capital fund of the Association. Any Special Assessment made before, but falling due after, the date of closing of the sale of a Lot by Developer shall be paid in full to the Association by the purchaser at the closing of the sale.

ARTICLE VI: USE RESTRICTIONS

(6.1.) Residential Use. All Lots shall be used for single family residential purposes only and subject to the following restrictions. No structure shall be erected, altered, placed or permitted to remain on any Lot other than a single-family dwelling not to exceed three and one-half (3 1/2) stories in height and a private garage for each unit for not more than three (3) cars and other accessary structures customarily incidental to the use of the Lot.

(6.2.) Building Line Requirements. No building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded maps of the Property. No building shall be located nearer any side Lot line than the applicable zoning ordinance shall allow. Minimum setback lines which may be shown on any recorded plat of the Property are not necessarily intended to create uniformity of setbacks; they are meant primarily to avoid overcrowding and monotony. It is intended that setbacks may be staggered where appropriate so as to preserve the trees and other natural vegetation, and to insure each Owner the greatest benefit and enjoyment of his/her Lot. Any deviation from the building line requirements not in excess of ten (10) percent thereof shall not be construed as a violation of the

building line requirements as long as such deviation does not violate any local ordinance, including, but not limited to, zoning.

(6.3.) <u>Animals and Pets</u>. No animals, livestock or poultry of any kind shall be raised, bred, pastured, or maintained on any Lot except generally accepted household pets, which may be kept thereon for the sole pleasure and use of the occupants but not for any commercial use or purpose and no more than three (3) pets over the age of six (6) months shall be permitted at any time. Birds shall be confined in cages. In no instance shall household pets become a nuisance to other Owners, or infringe upon the property rights of other Owners.

(6.4.) <u>Signs</u>. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale," which sign shall not exceed two feet by three feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot. Notwithstanding the above, the Developer may erect and place permanent and temporary signs on or above any unsold Lot. Developer shall also have the right of ingress, egress and regress over the aforesaid Lots in order to maintain and replace any such signs until 100% of the Lots have been sold.

(6.5.) <u>Nuisances</u>. No offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereof which is or may become an annoyance or nuisance, as determined by the Board of Directors, to any other Owner. No Lot or right-of-way shall be used in whole or in part for storage of rubbish of any type whatsoever or for the storage of any property or thing that will cause such Lot or right-of-way to appear unclean, untidy or unsightly; nor shall any substance, thing or material be kept upon any Lot or right-of-way that will emit a foul odor or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding Lots. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by governmental and other similar garbage and trash removal service units but such deposits shall only be permitted upon the specific day of pick up as determined by governmental and other similar garbage and trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds or underbrush or to maintain and

to repair the main dwelling, outbuildings, sheds, garages and other similar structures on each Lot in a manner satisfactory to the Board of Directors, the Board of Directors may, through its agent or representative, five days after posting a notice on such Lot or mailing a notice to the Owner thereof at his property requesting the Owner to comply with the requirements of this paragraph, enter and remove all such unsightly objects, debris or other vegetation at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by the Board of Directors in the enforcement of this paragraph promptly upon demand. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to the Developer while constructing residences upon any Lots.

(6.6.) Clotheslines, Garbage Cans, Etc. All clothes lines, garbage cans, lawnmowers, stored materials, wrecked unlicensed or inoperable vehicles, and similar equipment shall be kept in an enclosed structure or adequately screened by planting or fencing, as determined by the Board of Directors, so as to conceal the same from the view of neighboring Owners and to conceal the same from the view in front of the residence. Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any Lot.

(6.7.) Antennas. No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Lot. Radio and television antennas not exceeding seven and one-half (7½) feet in height above the roofline of the residence and dishes or disks not exceeding three (3) feet in diameter and not visible from the street in front of the residence shall be allowed to be attached to the structure of the residence only.

(6.8.) Walls, Fences and Hedges. Walls and fences are permitted as long as both sides of such structures are constructed of identical materials and identical designs. For masonry walls, no exposed concrete block will be permitted. Hedges shall be maintained in a neatly trimmed and clean condition on both sides. All walls, fences, and hedges shall comply with all local ordinances and shall not be located within setbacks or site triangles as described herein or shown on record maps of the Property.

(6.9.) Pools. Pools shall be permitted upon Lots but such pools must be located directly behind the residence of each Lot, screened from view by a six-foot privacy fence, and be at least twenty (20) feet from both side Lot lines and the rear Lot line of each Lot.

(6.10.) Driveways and Parking Areas. Only driveways and parking areas constructed of concrete, asphalt or brick shall be permitted upon any Lot.

(6.11.) Vehicles, Boats and Trailers. No vehicles, boats, trailers, recreational vehicles or similar items shall be allowed to remain upon any Lot unless they are parked upon driveways, constructed of concrete or brick.

(6.12.) Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shed, tent, garage, carport, or any other structure of a similar nature shall be used as a residence, either temporarily or permanently. Provided, however, this paragraph shall not be construed to prevent the Developer from using sheds or other temporary structures during construction for such purposes as Developer deems necessary. Provided, further, this paragraph shall not be construed to prevent Owners from constructing a permanent detached garage, carport, or utility shed, not to exceed 20 feet by 20 feet in area, if constructed of materials similar to those used in the residence located upon such Lot, if located behind the rear wall of the residence for such Lot, if constructed in conformity to and in harmony with existing structures and residences located within the immediate area, and if not located within any easements reserved to the Developer or utility companies or shown on any recorded plat for Mallard Woods. In addition, one commercially manufactured metal building no larger than 10' x 10' shall be permitted upon a Lot if not located within any easements reserved to Developer or utility companies and if located behind the rear wall of the residence for such Lot.

(6.13.) Basketball Goals and Mailboxes. Basketball goals shall be permitted if placed a minimum of twelve feet (12 ft.) behind the concrete curb into such Lot and placed outside of the recorded public right-of-way. All goals and surrounding areas are to be maintained in a neat and orderly condition so as not to create a nuisance as described in Section 7.5. No stone or masonry

mailbox structures are permitted. All mailboxes are to be constructed of break-away materials as approved by the North Carolina Department of Transportation, such as 4" x 4" wooden posts or small diameter metal posts.

(6.14.) Minimum Square Footage. Single family dwellings shall contain not less than a minimum of 1100 square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings.

(6.15.) Side Setbacks. No building shall be located nearer than six (6) feet on one side and six (6) feet on the other side of an interior Lot line except that detached garages or carports located on the rear of the residence may be erected not closer than five feet to the interior side line, provided, no structure shall be erected on any easement described within this document. For the purpose of this covenant, eaves, steps, and uncovered porches or terraces shall not constitute a part of any building, provided, however, that this exception shall not be construed to permit encroachment upon an adjacent Lot or upon any easement shown on recorded maps or plats or described within this document. Provided further that the Zoning Ordinance for Mecklenburg County, North Carolina, as amended from time to time, shall prevail if a conflict shall arise between this Declaration and the Zoning Ordinance requirements. No solid fence, wall or similar obstruction shall be permitted within the building setback line or sight triangles shown on the recorded maps.

(6.16.) Waiver. Developer reserves the right, but shall not be obligated, to waive in writing any violation of the designated and approved building location lines on either side Lot line, horizontal measurement only, provided that such violation does not exceed 10% of the applicable requirements and provided such violation does not violate any local ordinance, including, but not limited to, zoning.

(6.17.) Subdivision of Lots. No Lot shall be subdivided by sale or otherwise so as to reduce the total lot area shown on the recorded maps or plats, except by and with the written consent of Developer and in compliance with local ordinances.

(6.18.) Corner Lots. Any single family dwelling erected on a Lot other than a corner Lot shall face the street on which the

Lot abuts, and on corner Lots single family dwellings may be erected so as to face the intersection of the two streets on which the Lot abuts.

(6.19.) Fire. In the event any home or structure within this subdivision is destroyed or partially destroyed by fire, act of God, or as a result of any other act or thing, said damage must be repaired and the improvement reconstructed within 12 months after such damage or destruction.

ARTICLE VII: EASEMENTS

(7.1.) General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of surveys upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot which will interfere with rights and use of any and all easements shown on said recorded plat.

(7.2.) Utility and Drainage. An easement on each Lot is hereby reserved by Developer for itself and its successors and assigns along, over, under and upon a strip of land ten (10) feet in width over, under and along the rear lot lines of all Lots shown on recorded plats, and easements five (5) feet in width over, under and along the front and side lot lines of all Lots shown on recorded plats, in addition to such other easements as may appear on a recorded subdivision plat for Mallard Woods. The purpose of these easements shall be to provide, install, maintain, construct and operate drainage facilities now or in the future and utility service lines to, from or for each of the Lots. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements except for party walls located on a portion of the side line or lines of a Lot. The easement area of each and all improvements in it shall be maintained continuously by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Developer or the Board of Directors may exercise the right to remove obstructions in such easements upon Owner's failure to do so at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by the Developer or the Board of Directors

in the enforcement of this paragraph promptly upon demand. For the purpose of this covenant, Developer reserves the right to modify or extinguish the herein reserved easements along any Lot lines when in its sole discretion adequate reserved easements are otherwise available for the installation of drainage facilities and/or utility service lines. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Developer; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Developer.

(7.3.) Control of Signs. Developer shall have the right to place permanent and temporary signs of any size or shape on unsold Lots until one hundred percent (100%) of the Lots have been sold.

(7.4.) Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, police and security guards employed by Developer or the Board of Directors and all similar persons to enter upon the Properties or any portion thereof, in the performance of their respective duties.

ARTICLE VIII: DEVELOPER'S RIGHTS

(8.1.) Transfer of Rights. Any and all of the special rights and obligations of the Developer may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation or enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the public records of Mecklenburg County, North Carolina.

(8.2.) Developer's Consent to Amendments. These Covenants, Conditions and Restrictions may not be amended without the express written consent of the Developer until 100% of Lots have been sold; provided, however, the rights contained in this paragraph shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording by Developer of a written statement that all sales activity has ceased.

ARTICLE IX: GENERAL PROVISIONS

(9.1.) Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any Lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration.

(9.2.) Duration. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each.

(9.3.) Amendments and Termination. This Declaration may be amended or terminated during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter may be terminated by an instrument signed by not less than seventy-five percent (75%) of the Owners. Provided, however that the Developer may amend this Declaration to correct minor and clerical errors, as determined by the Developer, without approval of Owners and should the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) subsequently delete any of their requirements which necessitate certain provisions of this Declaration or make any such requirements less stringent, the Developer, without approval of Owners, may amend this Declaration to reflect such changes. Any such amendment or termination shall not be effective until an instrument evidencing such change has been filed of record in the Mecklenburg County Public Registry.

(9.4.) Enforcement. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Developer or Board of Directors, or, in the proper case, by an aggrieved Owner. Any failure by Developer, Board of Directors or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidation of any covenant, condition or restriction or other provision of this Declaration shall not

affect the validity of the remaining portions thereof which shall remain in full force and effect.

(9.5.) Notwithstanding the above paragraph, in the event the Developer, its successors and assigns has arranged for or provided purchasers of Lots with FHA insured or VA mortgage loans, then as long as any Class B Lot exists, as provided herein, the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, other than the property described in Article II hereof, deeding, mortgaging, or dedicating of common area to persons other than the Association, and amending this Declaration.

(9.6.) <u>Headings</u>. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

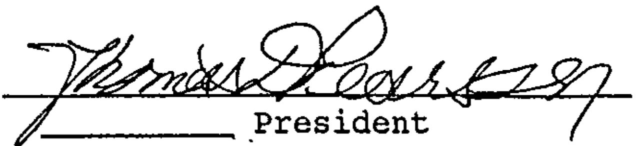
(9.7.) <u>Unintentional Violation of Restrictions</u>. In the event of an unintentional violation of any of the foregoing restrictions with respect to any Lot, the Developer, Board of Directors or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend, or release any portion of the foregoing restrictions as the same may apply to that particular Lot.

(9.8.) <u>Severability</u>. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed under seal on the day and year first above written.

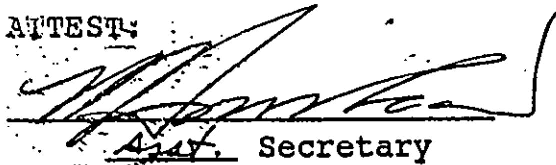
MALLARD CREEK PROPERTIES, INC.

[CORPORATE SEAL]



By:________________
_________ President

ATTEST:



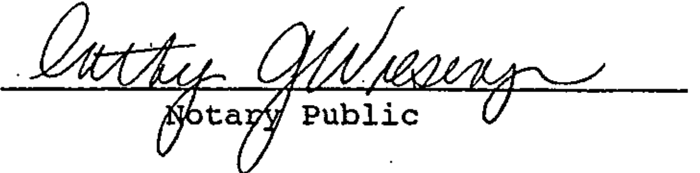
____
Asst. Secretary

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 16 day of November, 1995, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Thomas D. Pearson, who, being duly sworn, says that he is ________ President of MALLARD CREEK PROPERTIES, INC. and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that he signed and sealed said instrument on behalf of said corporation by its authority duly given. And the said PRESIDENT THOMAS D PEARSON acknowledged said instrument to be the act and deed of said corporation.

WITNESS my hand and seal this 16 day of November, 1995.



Notary Public

My Commission Expires: March 3, 1996

EXHIBIT A

BEING all of MALLARD WOODS, Map 1, as shown on plat thereof recorded in Map Book 27 at Page 147 of the Mecklenburg Public Registry.

EXHIBIT B

Parcel 1

Beginning at a point in the centerline of Mallard Creek Road (R/W=60') situated on the easterly line of the property of Stephen W. Mowry (now or formerly, D.R. 4622-444); thence proceeding with the easterly line of the said property of Mowry and continuing with an easterly line of Clarence H. Gray (now or formerly D.R. 2046-415), S 04-14-47 E 367.42 feet to an iron; thence with an easterly line of the said property of Gray, S 38-52-47 E 298.62 feet to an iron, a common corner of the properties of Gray, Hurley C. Beard (now or formerly), Charles Armstead Stutts (now or formerly, D.R. 5176-578), David A. McBurnett (now or formerly), and Helen Lucille Hardin Morris (now or formerly); thence with the westerly line of the said property of Stutts, N 11-15-13 E 524.95 feet to an iron; thence with a new line, N 04-14-47 W 119.85 to a point in the centerline of Mallard Creek Road; thence with the centerline of Mallard Creek Road S 83-18-57 W 310.26 feet to the point and place of Beginning, and being Tract 2 containing 3.11 acres, all as shown on survey entitled Mallard Creek Road Boundary Survey, prepared by John R. Yarbrough, NCRLS dated January 19, 1995 as last revised April 4, 1995.

Parcel 2

To find the Beginning Point, commence at a point in the centerline of Mallard Creek Road (R/W=60'), the northeasterly corner of the property of Hurley C. Beard (now or formerly) and proceed with the easterly line of the said property of Beard, S 11-15-13 W 125.60 feet to an iron, the BEGINNING POINT; thence proceeding from the Beginning Point with the easterly line of the said property of Beard, S 11-15-13 W 524.95 feet to an iron, a common corner of the properties of Beard, Clarence H. Gray (now or formerly), Helen Lucille Hardin Morris (now or formerly), David A. McBurnett (now or formerly, D.R. 6770-86) and James F. Stutts (now or formerly, D.R. 3816-724); thence with the northerly line of the said property of McBurnett S 84-07-48 E 82.61 feet to an iron, the southwesterly corner of the said property of Stutts; thence with the westerly line of the said property of Stutts, N 11-15-13 E 341.47 feet to an iron; thence with new lines two courses and distances as follows: (1) N 84-04-12 W 32.81 feet to an iron and (2) N 04-14-47 W 185:52 feet to an iron, the point and place of Beginning, and being all of Tract 3 containing 0.74 acres, all as shown on survey entitled Mallard Creek Road Boundary Survey, prepared by John R. Yarbrough, NCRLS dated January 19, 1995 as last revised April 4, 1995.

Parcel 3

To find the Beginning Point commence at a point in the centerline of Mallard Creek Road (R/W=60'), the northwesterly corner of the property of Lynda Beard Jones (now or formerly, D.R. 3386-413) and proceed with the westerly line of the said property of Jones, S 08-

06-00 W 355.34 feet to an iron, the BEGINNING POINT; thence proceed from the Beginning Point with the westerly line of the said property of Jones, S 08-06-00 W 340.24 feet to an iron, the northeasterly corner of the property of David A. McBurnett (now or formerly, D.R. 6770-86); thence with the northerly line of the said property of McBurnett, N 84-04-12 W 178.07 feet to an iron, the southeasterly corner of the property of Charles Armstead Stutts (now or formerly, D.R. 5176-578); thence with the easterly line of the said property of Stutts, N 11-15-13 E 341.47 feet to an iron; thence with a new line, S 84-04-12 E 159.27 feet to an iron, the point and place of Beginning, and being Tract 4 containing 1.31 acres, all as shown on survey entitled Mallard Creek Road Boundary Survey, prepared by John R. Yarbrough, NCRLS dated January 19, 1995 as last revised April 4, 1995.

Parcel 4

To find the Beginning Point commence at a point in the centerline of Mallard Creek Road (R/W=60'), the northeasterly corner of the property of Jones F. Stutts (now or formerly, D.R. 3816-724) and proceed with the easterly line of the said property of Stutts, S 08-06-00 W 355.34 feet to an iron, the BEGINNING POINT; thence proceed from the Beginning Point with the easterly line of the said property of Stutts, S 08-06-00 W 340.24 feet to an iron, the northeasterly corner of the property of David A. McBurnett (now or formerly, D.R. 6770-86); thence with the easterly line of the said property of McBurnett two courses and distances as follows: (1) S 08-04-03 W 527.85 feet to an iron and (2) S 08-08-22 W 12.22 feet to an iron in the centerline of Stoney Creek and the rear property line of Lot 26 of Homewood Acres as shown on map thereof recorded in Map Book 8 at Page 83 of the Mecklenburg Public Registry; thence with the centerline of Stoney Creek thirty-one courses and distances as follows: (1) S 43-44-54 E 14.07 feet, (2) S 11-07-28 E 140.43 feet, (3) S 17-18-15 E 139.74 feet, (4) S 05-31-17 E 93.27 feet, (5) S 67-32-55 W 23.82 feet, (6) S 11-55-34 E 22.25 feet, (7) S 31-11-36 E 29.36 feet, (8) S 40-07-13 E 27.88 feet, (9) S 82-50-31 E 10.08 feet, (10) S 69-47-21 E 45.79 feet, (11) S 00-04-38 W 18.69 feet, (12) S 53-39-57 E 36.95 feet, (13) S 11-56-47 W 62.49 feet, (14) S 10-33-13 E 48.03 feet, (15) S 25-37-38 E 22.85 feet, (16) S 00-38-42 W 27.95 feet, (17) S 31-37-06 E 20.35 feet, (18) S 03-17-41 E 19.66 feet (19) S 30-07-33 W 56.14 feet, (20) S 02-17-34 E 23.52 feet, (21) S 35-36-46 E 100.69 feet, (22) S 72-10-45 E 24.90 feet, (23) S 16-16-52 E 33.26 feet, (24) S 36-18-49 E 3.67 feet, (25) S 73-49-38 E 71.16 feet, (26) S 57-34-22 E 48.64 feet, (27) S 88-25-22 E 116.55 feet, (28) N 78-00-55 E 59.39 feet, (29) N 69-49-44 E 24.36 feet, (30) N 58-38-54 E 36.23 feet, and (31) N 68-07-28 E 15.86 feet; thence with the westerly line of the property of Mazie Grahm Taylor (now or formerly) N 24-12-59 E 802.14 feet to an iron, the westerly common corner of the property of the said property of Taylor and the property of Mildred Taylor Stowe (now or formerly, D.R. 3266-411); thence with the westerly line of the said property of Stowe N 16-04-01 W 985.51 feet to an iron, the southeasterly corner of the property of Thomas R. Carter (now or formerly, D.R. 2518-441); thence with the southerly line of

the said property of Carter, N 82-58-59 W 214.99 feet to an iron, the southwesterly corner of the said property of Carter; thence with new lines six courses and distances as follows: (1) S 16-17-52 E 18.68 feet, (2) S 09-45-05 W 117.94 feet, (3) with the arc of a circular curve having a radius of 975.00 feet (and a chord bearing of N 80-01-31 W) an arc distance of 15.00 feet (and a chord distance of 15.00 feet), (4) N 09-45-05 E 114.41 feet, (5) N 16-17-52 W 23.13 feet, and (6) N 78-26-27 W 331.42 feet to the point and place of Beginning and being Tract 5 containing 28.12 acres, all as shown on survey entitled Mallard Creek Road Boundary Survey, prepared by John R. Yarbrough, NCRLS dated January 19, 1995 as last revised April 4, 1995.

Parcel 5

BEING all of the property of Mildred Taylor Stowe (now or formerly, DR 3266-411, Tax parcel # 29-161-12).

Parcel 6

BEING all of the property of Mazie Grahm Taylor (now or formerly, 18-567, Tax parcel 29-161-09).