

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
APPLICABLE TO PHASE ONE OF
MALLARD COVE

The Developer, as the owner of real property in Winchester, Clark County, Kentucky, known as "Mallard Cove" as described in Plat Book ____ at page _____, in the Clark County Court Clerk' s Office and all subsequent amendments and additions thereto, (the "Property"), being desirous of (i) insuring the best use and the most appropriate development and improvement of each building site on the Property; (ii) protecting the owners of lots in Mallard Cove (the "Owners") against such improper use of surrounding building sites and homes as will depreciate the value of the Property; (iii) preserving, so far as practicable, the natural beauty of the Property; (iv) guarding against the erection thereon of poorly designed or proportioned structures or improvements, or structures or improvements built of improper or unsuitable materials; (v) maintaining harmonious color schemes; (vi) insuring the highest and best development of the Property; (vii) preventing haphazard and inharmonious improvement of building sites; (viii) securing proper setbacks from streets and adequate free spaces between structures; and (ix) in general providing adequately for a high quality of improvement in the Property, thereby enhancing the value of investments made by purchasers of homes herein, does hereby declare and establish the following restrictions, conditions, and protective covenants which shall run with the land, and are hereby made an obligation upon each person or other entity subsequently acquiring title to, or any interest in, any portion of the Property, or accepting conveyance thereof; the same shall be subject to these restrictions, conditions, and protective covenants and shall be entitled to all the benefits thereof.

ARTICLE 1

Section 1.1 SINGLE FAMILY RESIDENTIAL. The property shall be improved and used only for single family residential housing only. Any structure shall be set back a minimum of 30 feet from the street; and ten (10') feet from the side lot line and/or as required by the Developer. Additionally, all such structure shall comply with all applicable codes of Clark County or otherwise relating to set back.

Section 1.2 USE VIOLATION. Any use not specified in Section 1.1, or which constitutes a nuisance or which is noxious or offensive for the reason of the emission or creation of unreasonable fumes or noise, or may be or become an annoyance or nuisance because of unsightliness is hereby prohibited, and is subject to the penalties described herein and in the local zoning ordinance or other pertinent local codes and ordinances of Clark County, Kentucky.

ARTICLE 2

APPROVAL OF IMPROVEMENTS

Section 2.1 DEFINITION OF IMPROVEMENTS. Improvements shall include, but are not limited to: the building or erection of structures and additions to structures, driveways, fences, walls, hedges, landscaping, mass planting, poles, lighting, trees, and other accessory structures of any types.

Section 2.2 APPROVAL OF CONSTRUCTION PLANS. The Developer shall approve all house plans prior to commencement of construction. No construction activity of any kind, including excavation or lot clearing, shall begin until Developer has approved construction plans in writing. Additionally, no building, fence, wall, structure or other improvements shall be erected or placed on any lot until the construction plans, specifications and a plan showing the grade elevations (including rear, front and side elevations) and location of the structure, fence, wall or improvement, the type of exterior material and the driveway shall have been approved in writing by Developer, and one complete set of the plans and specifications shall be delivered to and may be retained by the Developer. The detailed plans and specifications shall include all details of construction and materials. The color of the trim, brick, or stone to be used on the exterior, and the style of roof shingles may be submitted to the Developer for approval prior to the commencement of said work on that part of the house after the original plans are approved but shall also be approved in writing. All required approval or rejection shall be made by the Developer or his representative in writing within seven (7) days after receipt of the plans and other information required.

Section 2.3 APPROVAL OF LANDSCAPE PLANS. In addition to the construction plans referred to in Section 2.2, a landscape plan shall be submitted to the Developer for approval in writing, which plan shall show the trees, shrubs and other plantings then existing or to be planted on the lot. Each landscape plan to be approved by the developer.

- a. Landscaping shall be completed within thirty (30) days of occupancy of the residence unless otherwise extended by Developer for cause.
- b. No existing living tree shall be cut or removed without prior written approval from the Developer.
- c. No hedge shall be planted on any lot unless its placement and planting are approved in writing by the Developer.
- d. Owners shall maintain their yards, hedges, plants and shrubs in a neat and trimmed condition at all times.
- e. No lawn ornaments of any kind will be permitted in front or side yards or in yards facing streets.

- f. No dirt is to be removed from Development without Developers consent.

Section 2.4 MINIMUM REQUIREMENTS. All houses constructed shall include the following:

- a. All roof pitches shall be a minimum of 8 feet rise to twelve (12) feet of run (8'/12).
- b. The residence shall include the following minimum heated square footages (Exclusive of porches, basements, attics and garages):
 - (1) 1 story - 1,200 square feet; 1.5 story - shall contain a minimum of 2,200 square feet of which at least 1,200 shall be on the ground floor; 2 story - shall contain a minimum of 2,200 square feet of which at least 1,200 shall be on the ground floor.
 - (2) Split entrances or foyers are prohibited.
 - (3) In computing total square footage, finished basements, garages, porches and unheated areas shall not be included.

ARTICLE 3

BUILDING CONSTRUCTION

Section 3.1 MATERIALS PERMITTED. The exterior building material of all structures shall extend to ground level and shall be either brick, stone, brick veneer or stone veneer or a combination of same. Developer recognizes that the appearance of other exterior building materials (such as wood, stucco or some vinyl siding) may be attractive and innovative and reserves the right to approve, in writing, the use of other exterior building materials. All roof shingles shall be of architectural design with minimum specification standards of 300 pound asphalt and 235 pound fiberglass. All exterior materials and roof shingles, shall be approved by the Developer in writing. Fireplaces shall be masonry fireplaces, unless otherwise approved in writing by Developer.

Section 3.2 APPURTENANCES, IMPROVEMENTS AND OTHER PERMANENT STRUCTURES. No appurtenance, improvement or other permanent structure shall be constructed or placed on any lot without prior written approval from the Developer. Such permanent structures include, but are not limited to, pools, fences, gazebos, storage facilities and/or tennis courts. No exterior alterations of any existing building may be permitted without the prior approval of the Developer. No second story additions are permitted. No additional windows, platforms, etc., which may invade the privacy of adjacent dwellings are permitted. The following requirements are applicable to such appurtenances, improvements and other permanent structures:

- a. GARAGES, SIDEWALKS: All lots shall have at least a two car garage. Garages, as structures, are subject to prior plan approval. No carport shall be constructed on any lot. All driveways must be

paved with concrete and must be completed before occupancy. All detached garages must be of same design and material as home. All sidewalks to be installed by lot purchaser prior to occupancy, and must meet ADA standards and comply with all codes of Clark County for size, set back and slope.

- b. FENCES: No fence, wall or barrier of any nature may extend beyond the rear corner of the residence. All fences are subject to prior written plan approval by Developer. No wire or chain link fences are permitted.
- c. FLASHING, VENTS, LOUVERS, ETC.: The roof pipes, vents, louvers, flashing and utility equipment shall be painted to match the surface from which they project, or pursuant to a color scheme approved in writing by the Developer.
- d. SWIMMING POOLS: All swimming pools shall be in-ground pools. There shall be no above-ground pools permitted. The construction of swimming pools must be approved in writing by the Developer prior to the commencement of construction. Drainage, fencing, placement and lighting plans shall be included in the construction design plan submitted to the Developer for approval. There shall be no increase in drainage to other properties permitted as a result of construction nor shall there be an increase in drainage to other properties during such construction. No swimming pool shall extend beyond the rear corner of the residence.
 - (1) No lighting of a pool or other recreation area will be installed without the approval of the Developer, and if allowed, will be designed so as to buffer the surrounding residences from all lighting.
- e. TENNIS COURTS: No tennis court shall be constructed without prior approval of the Developer. Any tennis court approved by the Developer shall not extend beyond the rear corner of the residence. Drainage, fencing, placement and lighting plans shall be included in the construction plan submitted to the Developer for approval. There shall be no increase in drainage to other properties as a result of construction nor during the construction of the tennis court.
- f. No playground, athletic or recreational equipment or facilities of any type whether permanent or movable shall be used, erected or placed in front of or on the side yard of any residence and any such equipment must be approved in writing by the Developer. No basketball goals shall be erected without approval of the Developer in writing. Written request for basketball goals must be accompanied by a plan showing the location of the proposed installation. Only locations at the backs of the houses will be considered. No front or side yard locations will be permitted. The basketball goal shall be at least twenty (20) feet from the property line.

- g. AIR CONDITIONING AND UTILITY AREAS: Air conditioners, utility equipment and utility meters, except water meters shall be at the rear of the residences, unless otherwise approved in writing by the Developer. Any other location shall be screened from view by landscaping and/or permanent fences of solid materials and will be located as far from property lines as reasonably possible.
- h. MAILBOXES: All mailboxes are to be brick to match the house.
- i. SATELLITE DISHES: No satellite dishes, television, radio or other receiving tower or dish may be erected or placed on any lot without complying with the specifications, size and location adopted by the developer. Satellite dishes shall only be installed on the back roof or back side of the house or in the back yard. No front yard or side yard locations are permitted. The satellite dish shall be at least five (5) feet from any property line. When installed in the yard, the maximum height shall be six (6) feet. The eighteen inch gray satellite dish is preferred in order to preserve a good and consistent appearance of the neighborhood. Other sizes not to exceed one meter that comply with law may also be permitted, but for the good of the neighborhood are discouraged. Notwithstanding anything in this Subsection to the contrary, a satellite dish may be placed in a location other than the back, only if, placement in conformity to this Subsection would not permit reception of an acceptable quality signal. If the installer determines that any feasible installation in compliance with the covenants will not permit reception of an acceptable quality signal, the installer must provide homeowner with a statement that certifies that no location within the area which this Section allows, would allow for an acceptable quality signal. If the installer or the homeowner falsely states that an acceptable quality signal is not available by placement in conformity to this Subsection would not permit reception of an acceptable quality signal. If the installer determines that any feasible installation in compliance with the covenants will not permit reception of an acceptable quality signal, the installer must provide homeowner with a statement that certifies that no location within the area which this Section allows, would allow for an acceptable quality signal. If the installer or the homeowner falsely states that an acceptable quality signal is not available by placement in compliance with this Subsection, the homeowner will be responsible for all costs of enforcing compliance with this Subsection including, but not limited to, the cost of testing and determining that an acceptable quality signal was available, attorney's fees and any other costs incurred in the enforcement of this Subsection.
- j. CLOTHES LINES; No outside clothesline shall be erected or placed on any lot.

- k. SIGNS: No signs of any kind shall be displayed on any lot, with the exception of For Sale or For Rent signs (which shall not be greater in size than three (3) square feet) and signs deemed acceptable or necessary by the Developer.
- l. TEMPORARY STRUCTURES: No temporary structures shall be permitted on any lot with the exception of temporary tools sheds and/or field offices used by builders and/or Developer and approval in writing by the Developer; any such sheds or offices shall be removed when the construction or development has been completed.
- m. LIGHTING: No exterior lighting, including recreational and/or security lighting, shall be installed or maintained on any lot on which light is found to be objectionable by the Developer. Upon being given notice by the Developer that any exterior light is objectionable, the owner of the lot on which same is located will immediately remove said light or have it shielded in such a way that is no longer objectionable.
- n. OUTDOOR WIRING: No lines, wires or other devices for the communication or transmission of electric current of power, including telephone, television, and radio signals, shall be constructed, placed or maintained anywhere in or upon the lots, except for the electric, telephone and other utility and sewer service placed on public utility easements by the Developer, unless these shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved improvements. Electrical transformers and junction boxes should be properly screened where possible. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved improvements.

ARTICLE 4

MAINTENANCE DURING CONSTRUCTION

During construction, builders shall be responsible for the following:

Section 4.1 BUILDING MATERIALS: Stockpiling of any earth or building materials shall not be allowed within drip line of existing trees. Cutting, filling or any ground disturbance shall not be allowed within the drip line of existing trees. All debris, including, but not limited to, trees, branches, trimmings, clippings, rocks and roots, resulting from the clearing of a lot shall be promptly removed from the subdivision. If such debris is not promptly removed, the Developer shall have the right to re-enter the property for the purpose of removing such debris at the expense of the owner of the Lot. No construction material or equipment or debris shall be placed on any Lot, other than the Lot on which a

structure is being built, whether said Lot is vacant, in any stage of construction or completed and whether or not adjoining the construction site. Run off and erosion shall be controlled on site during construction while the site is disturbed. All excess dirt shall be deposited on other lots as directed by Developer. No dirt shall be removed from the development unless approved by the Developer.

Section 4.2 DAMAGE TO DEVELOPMENT. Anyone cutting into or tunneling under or damaging in any manner the streets, sidewalks, or road serving the development and anyone damaging or in any way altering or affecting any storm sewer, shall repair and restore the sewer, streets, sidewalks, or roads to their original condition, all at such person's own risk and expense, including but not limited to builders and owners. This paragraph shall not be construed as a grant of permission or consent by the Developer and shall not create any liability on the Developer.

Section 4.3 NO TEMPORARY STRUCTURE. No building or structure of a temporary character, including but not limited to, any trailer, mobile homes, modular home, basement, tent, shack, garage, barn or other building shall be used upon any lot in the development at any time as a residence, either temporarily or permanently; nor shall any trailer, tent, shack, barn or mobile or modular home be used and/or maintained upon any lot in the development at any time, either temporarily or permanently. Temporary tool sheds and/or field offices used by builders and/or developers shall be permitted but shall be removed when the construction has been completed.

ARTICLE 5

UTILITIES

Section 5.1 UNDERGROUND. Any and all utility lines or wires for communications or for transmission of electrical current outside of any residence or building will be constructed, placed and maintained underground. All other utility conduits shall similarly be constructed, placed and maintained underground.

ARTICLE 6

DRAINAGE

Drainage of each lot shall be in conformity with the general drainage plan of the subdivision.

ARTICLE 7

EASEMENTS

Section 7.1 UTILITY EASEMENTS. Easements for installation and maintenance of utilities may be reserved over each lot by deed or as shown on plat. Within these easements, no structure, planting or other material shall be placed or prevented to remain which may damage or interfere with the

installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area of each lot and all improvements on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 7.2 OPEN SPACE EASEMENTS. The Developer has included within its plan open space easements, for the enhancement of property and for the benefit of all property owners. The common open space easements may be used for locating utilities.

Section 7.3 OPEN SPACE AREA MAINTENANCE. The Mallard Cove Homeowners Association, Inc., more particularly described in Article 8 hereof shall maintain the common area plantings, landscape elements, ornamental street and stop signs, the street lamps, medians, entrances, drainage areas, the cemetery and such other supplementary areas as are deemed necessary the Association. The Association shall also pay for any utility charges for the street lights and for any common areas.

Section 7.4 TITLE TO OPEN SPACE AREAS. The Association shall have the right to dedicate or transfer all or any part of the open space area to any public or governmental entity or other entity authorized by law to assume the duties and responsibilities of said Association, subject, however, to such conditions as may be imposed by their members. Such dedication or transfer should not be effected until approved by a majority of the members entitled to vote after all members have been mailed a written notice of said intent sixty (60) days in advance of such meeting.

ARTICLE 8

HOMEOWNERS ASSOCIATION/ASSESSMENTS

Section 8.1 ASSOCIATION ESTABLISHED: After the completion of construction and sale of 70% of the homes in the neighborhood, The Articles of Incorporation of Mallard Cove Homeowners Association, Inc. ("Association"), which may be amended from time to time, will be recorded in the office of the Clark County Clerk in Winchester, Kentucky, and shall take effect at said time.

Section 8.2 LOT OWNERS: Every owner of a lot in Mallard Cove by acceptance of a deed for any lot, or by other ownership thereof agrees to accept membership in and does thereby become a member of the Association. Such owner and member shall abide by the Association's Declarations, Bylaws, rules and regulations; shall pay the assessments levied by the Association when due, and shall comply with decisions of the Association's Board of Directors.

Section 8.3 OBJECTS AND PURPOSE: The objects and purpose of the Association shall be set forth in its Articles of Incorporation and Declaration of the Mallard Cove Homeowners Association, Inc., and

shall be to promote the social welfare and serve the common good and general welfare of its members and shall include, unless such obligations are otherwise assumed by any municipal or governmental agency having jurisdiction thereof, the maintenance and repair of the landscape easements, ornamental street lights, signs, stop signs, street medians, entrances, drainage and common areas, including any parks within the development and other areas deemed necessary in Mallard Cove as are shown on the aforesaid plats. The Association shall maintain and be responsible for all utility charges used for the street lights and any common areas.

Section 8.4 ASSESSMENTS: Each purchaser of a lot in the development shall pay upon purchase without proration an initial assessment of \$200.00 to the Association and shall on the 17th day of June, of each year thereafter pay a similar assessment as may be set by directors of the Association. Such assessment shall not exceed the sum of \$250.00 per year unless approved by 70% of the owners of lots in The Mallard Cove. The assessments due to the Association shall be a lien against the lot, enforceable by the Association but shall be subordinate to the lien of any first mortgage on the lot and shall be enforceable by foreclosure or otherwise. The Developer is not obligated to pay such assessments for lots owned by the Developer.

ARTICLE 9

VEHICLES

No trailer, truck, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot any time unless said vehicle is housed in a garage or basement; no inoperable automobile shall be parked on any lot or street, unless housed in a garage; and no operable vehicle shall be parked on any street in the subdivision for a period in excess of twenty-four (24) hours in any one calendar year.

Any and all routine automobile maintenance shall be conducted within close proximity to the garage entrance. No such routine maintenance shall be permitted on residential streets or on portions of driveways within close proximity to the residential street.

ARTICLE 10

DISPOSAL OF TRASH

No lot shall be used as a dumping ground for rubbish, trash or garbage, and any and all such waste shall be kept in suitable sanitary containers. No vacant lot shall accrue trash, rubbish or debris at any time. Grass and/or shrubbery clippings, dead shrubs, leaves or any other debris shall be disposed of in appropriate waste receptacles. Dumping of said materials on any other lot is strictly prohibited. Developer reserves the right to remove any trash from lots at the expense of the owner of the lot

and/or at the expense of the individual who violates this section. Garbage cans, and other similar items on any lot, shall be located or screened so as to be concealed from view from the street and in keeping with the neighborhood.

ARTICLE 11

GARDENS

Vegetable gardens or cultivation must be confined to the rear of the lot and shall be no more than fifty (50) feet from the rear line. Vegetable gardens or cultivations will not be permitted until after the erection of a residence. No vegetable gardens shall be planted or extended nearer the street than therear yard of any residence.

ARTICLE 12

FIREWOOD STOCKPILING

Any and all firewood stockpiles shall be placed so as to not detract from the aesthetic appearance of the lot when viewed from any vantage point. If a firewood stockpile is to be covered, that covering shall be of a heavy non-plastic material and shall be dark green, olive drab or black in color and securely tied down to prevent disturbance by wind.

ARTICLE 13

ANIMALS

No pets, other than the traditional domestic animals in this geographic area (i.e. dogs, cats, birds) shall be housed or kept on any lot. No pets, including traditional domestic animals, shall be kept for any commercial or breeding purposes. Pets shall always be under the control of the owner within an enclosed area and not permitted to run upon other lots unless on a leash.

ARTICLE 14

OWNER'S OBLIGATION TO MAINTAIN PROPERTY

The owner and occupant of each lot shall maintain its lawn in a first-class manner; and at no time during or after construction shall any trash, dirt, clipped weeds, grass or debris of any type be placed, wasted or deposited on any lot (vacant or otherwise) by the owner, occupant, his, her or its constructor or subcontractors or others. In default thereof, the Developer or their assigns, may enter such lot to cut grass and/or weeds and/or remove any debris and/or perform any other appropriate maintenance work, and collect its costs of labor and material, plus 25% from the owner and occupant of such lot. Any

such waste shall be kept by the owner in sanitary conditions.

ARTICLE 15

DIVISION OF LOTS AND ACCESS

There shall be only one building per lot. No additional subdivision of any lot shall be made without the written consent of Developer and any appropriate governmental bodies; further, no more than one (1) building shall be built on any lot; however, this restriction shall not include pool house, gazebo or similar structures which have been approved by the Developer. Two or more lots may be combined for a single dwelling when approved by the Developer.

ARTICLE 16

NUISANCE AND CHANGE

No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be donethereon which is or may become an annoyance or a nuisance to others in the development or the surrounding neighborhood.

ARTICLE 17

LAKES WITHIN THE DEVELOPMENT

Within the property which Developer intends to develop as various phases of the Mallard Cove, their currently exists certain ponds or lakes. These lakes shall be available for use only by the owners of lots which abut each particular lake. The owners of lots abutting each particular lake shall be responsible formaintaining the lake and keeping same in clean, neat and orderly fashion and removal of rubbish or trash therefrom. Each owner of a lot abutting the lake shall have use thereof, however, no motor boat of any type shall be used on any of the aforesaid lakes and no rowboat, paddle boat or other boat exceeding 14 feet in length shall be used thereon.

ARTICLE 18

OWNER'S UPKEEP OBLIGATION PRIOR TO COMPLETION

Each owner of a lot upon which construction of a residence has not yet been completed is obligated tomaintain the lot prior to completion of construction in accordance with all of the provisions referred to herein.

ARTICLE 19

ENFORCEMENT

Section 19.1 COVENANTS. The restrictions, conditions and protective covenants contained

herein may be enforced in law or in equity by the Developer, the Homeowners Association, each Owner and any subsequent purchaser or owner of any portion of the Property subject to the restrictions, conditions and protective covenants described herein.

The Developer, Mallard Cove Homeowners Association, and any Owner or any subsequent purchaser or owner of any portion of the Property, shall not have any liability in law or in equity to any other Owner or purchaser of any portion of the Property for failure to enforce the restrictions, conditions and protective covenants contained herein.

Section 19.2 BINDING NATURE. The restrictions, conditions and protective covenants contained herein shall be binding upon and inure to the benefit of the Developer and of the successors, assigns, heirs, and grantees of the Developer and each Owner.

Section 19.3 LIABILITY. The Developer, his successors or assigns, shall not be liable in damages to anyone submitting plans to them for approval, or to any Owner affected by these restrictions, by reason of mistake in judgment, negligence or nonfeasance arising out of or, in connection with, the approval or disapproval or failure to approve any plans or for enforcing or failing to enforce any of the provisions of these restrictions. Each Owner waives any and all claims against the Developer, as a result thereof. Every person who submits plans to the Developer for approval agrees, by submission of such plans, and every Owner agrees, by acquiring title thereto or an interest therein, not to bring any action, proceeding or suit against the Developer, any assignee or an Association. In case of conflict between plan review and covenants herein contained, these covenants shall govern the rights and obligations of the parties.

Section 19.4 PROPERTY TO BE PURCHASED "AS IS." Except for the warranties of title to be included in the Developer's instruments of conveyance of property within Mallard Cove, the Developer does not, by the execution and recordation of these restrictive covenants, and the Developer shall not, by the execution and delivery of any other document, agreement, or instrument executed and delivered in connection with the closing of a particular sale, make any warranty, expressed or implied, of any kind of any nature whatsoever, with respect to any property within Mallard Cove, and all such warranties are hereby disclaimed. Without limiting the generality of the foregoing, THE DEVELOPER MAKES, AND SHALL MAKE, NO EXPRESSED OR IMPLIED WARRANTY OF SUITABILITY OR FITNESS OF ANY OF THE PROPERTY IN "MALLARD COVE" FOR ANY PURPOSE, OR AS TO THE MERCHANTABILITY, VALUE, QUALITY, CONDITION OR SALABILITY OF ANY SUCH PROPERTY. The sale of property in Mallard Cove by the Developer to any builder or other owner shall be "AS IS" and "WHERE IS."

Section 19.5 CONSENT. Any and all rights, powers and reservations of the Developer herein contained may be assigned to any person, corporation or association which will assume the duties of the

Developer pertaining to the particular rights, powers and reservations assigns, and upon any such person, corporation, or association evidencing its consent in writing to accept such assignment and assume such duties, and to the extent of such assignment, shall have the same rights and power and be subject to the same obligations and duties as are given and assumed by the Developer.

Section 19.6 ALTERATIONS. These restrictions, conditions and protective covenants may be altered by the written agreement of the Owners of the Property representing seventy percent (70%) of the total lots subject to these restrictions. However, no restriction, condition or protective covenant shall be altered, construed, or newly enacted, which shall have the effect of preventing the Developer from completing development of Mallard Cove.

Section 19.7 BINDING PERIOD. Unless canceled, altered or amended under the provision of the paragraph above, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended, automatically for successive periods of one (1) year, unless an instrument signed by 70% of the then owners of the lots in Mallard Cove has been recorded, agreeing to change these restrictions. Failure of any owner to demand or insist upon observance of any of these restrictions, or to insist upon observance of any of these restrictions, or to proceed for observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation or the right to seek enforcement of these restrictions.

Section 19.8 FULL FORCE AND EFFECT. In the event any of the provisions hereof are held to be invalid or unenforceable, the other provisions hereof shall not be affected thereby, but shall remain in full force and effect, it being intended that the provisions thereof are severable. The term "provision" as used herein shall not be construed necessarily to mean a numbered section thereof, but may be any portion of such numbered section.

Section 19.9 DEVELOPERS RIGHT TO ALTER AND INTERPRET RESTRICTIONS. Notwithstanding anything herein contained to the contrary, the DEVELOPER retains the right to alter these restrictions insofar as same may relate to any one or more lots in the subdivision if, in the sole opinion of the DEVELOPER, the strict application of these restrictions would be unduly burdensome or inequitable as applied to such lot because of its topography, subsurface conditions or other matters beyond the control of the owner of the lot, and if alternation of the restrictions in that instance will not unduly affect adjoining lots or the subdivision as a whole. Any such alteration may be granted only in writing, signed by the DEVELOPER, and filed of record in the Office of the Clark County Clerk. Further, the DEVELOPER reserves unto itself the right to interpret these restrictions as, from time to time, may be required in

their application and enforcement; which interpretation shall be binding on all parties. At any time after two-thirds (2/3) of the lots which are subject to these restrictions have been sold, DEVELOPER may, at DEVELOPER's sole discretion, delegate the authority for interpretation and alteration of these restrictions to the home owner's association herein established.

ARTICLE 20
MISCELLANEOUS

Section 20.1 Rights. Every person who now or hereafter owns or acquires any right, title, estate or interest to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not reference to these Restrictive Covenants is contained in the instrument by which such person acquired an interest in said property.

Section 20.2 WAIVER. The failure of the Developer, the Mallard Cove Homeowners Association or any Owner to enforce any covenants herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other restriction.

Section 20.3 SUBORDINATE TO MORTGAGES. All covenants and other provisions herein contained shall be deemed subject and subordinate to all mortgages now or hereafter executed upon land subject to these covenants, and none of said restrictions shall supersede or in any way reduce the security or affect the validity of such mortgages, provided, however, that if any portion of the Property is sold under a foreclosure of any such mortgage any purchaser at such sale, and his successors and assigns, shall hold any and all property so purchased subject to all of the restrictions and other provisions of these covenants.

This Agreement and the separate provisions thereof shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the Developers have caused these Restrictive Covenants to be duly executed this 17 day of June, 2004.