

**MALLARD BAY  
PROPERTY OWNERS ASSOCIATION, INC**

**DECLARATIONS, PROTECTIVE COVENANTS,  
AND ARCHITECTURAL GUIDELINES**

**Of record in the Office of the Clerk of the Circuit Court of  
Northumberland County, Virginia, as Instrument no. 200909000351.**

THIS AMENDMENT OF DECLARATION, made this 18th day of October, 2008, by the Mallard Bay Property Owners Association, Inc., a Virginia Corporation, herein sometimes referred to as the "Association".

**WITNESSETH:**

WHEREAS, the Association consists of all owners of real property located in the Wicomico Magisterial District, Northumberland County, Virginia, within the subdivision known as Mallard Bay, pursuant to a DECLARATION ("The Declaration") dated April 15, 1988, by and between the Bay Company, a Virginia Corporation, and Mallard Bay Property Owners Association, Inc., a Virginia Corporation, and of record in the Northumberland County Circuit Court Clerk's Office in Deed Book 280, at page 268, and amended by majority vote of the aforesaid property owners on October 16, 1999, of record in the Northumberland County Circuit Court Clerk's Office in Deed Book 458, at page 381.

WHEREAS, the Mallard Bay subdivision consists of lots 1-169, and common areas including roads, boat ramp, yacht club, pool, well sites, tennis courts, piers, lakes and dams, and fresh water pumping site (the Property) as shown on a plat of survey made by Tomlin and Keyser, C.L.S., dated March 31, 1988, entitled "Mallard Bay", Sheets 1, 2, 3, and 4, and "Mallard Bay LPZ/ Joint Driveways" Sheets 1, 2, and 3, all of which are herein cumulatively referred to as "Plat", which Plat is recorded in the Clerk's Office of the Circuit Court of Northumberland County, Virginia, in Plat Book 6, at page 11 and which Plat is by this reference made a part hereof.

WHEREAS, certain easements, protective covenants and conditions were in said Declaration, hereinabove over those set forth below. These easements, protective covenants and conditions were to run with the real property herein described to be binding on all members of the Association, the Association thereby accepting the responsibilities and duties imposed on it by the easements, protective covenants and conditions set forth therein; and

WHEREAS, pursuant to paragraph 36 of said Declaration, on October 18, 2008 the aforesaid property owners duly voted on amending certain easements, protective covenants and conditions contained in the Declaration, and certain amendments were approved by a majority vote of the owners in accordance with Paragraph 36 of the Declaration and said easements, protective covenants and conditions are to henceforth read as follows:

**MEMBERSHIP IN ASSOCIATION**

Every person or entity who owns any interest (other than a security interest) in lots 1 through 169 of Mallard Bay shall be a member of the Association.

The Association's membership will be made up of all the owners of interest in lots 1 through 169. When more than one (1) person holds an interest in any lot, all such persons shall be members, but in no event shall more than one (1) vote be cast with respect to any (1) lot or for any group of lots which are subject to a single Annual Association Assessment.

## PROPERTY RIGHTS

Every member shall have a right and easement to enjoyment in and to the common areas and roads shown on the Plat for ingress and egress from his lot to VSR 642 and to the common areas. The Association shall have the right to limit the number of guests of members that use the common areas, to borrow money to improve and maintain the dredged boat ramp area, common areas, piers, roads and any improvements related thereto; the right to suspend the voting rights and use of the common areas for any period during which any assessment against the lot remains unpaid; and the Association shall be in charge of the general policing and control of the roads and common areas. The members' easement of enjoyment created hereby shall be subject to the rights of the Association: A) to establish reasonable rules and to charge reasonable admission and other fees for the use of the common areas by members and guest of members and the right of the Association to suspend the right of a member to use any portion of its facilities for any period during which any assessment against his lot remains unpaid for more than sixty (60) days after the due date; B) to suspend the right of a Member to use any portions of its facilities for a period and assess charges against any member for any other infraction of this Declaration or any rules and regulations which remain uncorrected after the last day of the period established for correction by the Association, such period to be stated in a notice to the member together with a statement of the infraction complained of and the manner of its correction; C) to mortgage any or all of the facilities constructed on the common area for the purposes of improvements or repair to Association land or facilities and the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association. The member shall be given an opportunity to be heard and to be represented by counsel before the Board of Directors ("Board") or as specified in the governing documents, before any charges for an infraction of the governing documents may be imposed, or to appeal the suspension of rights to use any portion of the facilities for nonpayment of assessments. Notice of a hearing other than an appeal shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the Association at least fourteen days prior to the hearing. The amount of any charges assessed shall not exceed fifty dollars for a single offense or ten dollars per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot. Appeal of suspended rights may be heard at any monthly board meeting upon notice to the Board in writing requesting the opportunity to be heard.

Any member may delegate his right of enjoyment to the common areas and facilities to the members of his family and to his guest subject to such general regulations as may be established from time to time by the Association. In the event any common area is damaged or destroyed by a member or any of the member's lessees, guests, invitees, licensees, agents or members of their families, the member does hereby authorize the Association to repair such damaged area. The Association shall repair the damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as they may have been modified or altered subsequently by the Association in the discretion of the Association. Costs of such repairs shall become a Special Assessment upon the lot of such member.

The Association reserves the right to grant drainfield easements, well sites, driveway and road easements and utility easements over, along, across and under the Property. A Landscape Preservation Zone ("LPZ") has been designated on the Plat hereto. The Association or the

Architectural Review Committee shall establish restrictions for the areas so designated and scenic easements in order to protect natural streams, water supplies, and areas; to maintain and enhance the conservation of natural and scenic resources; to promote the conservation of soils, wetlands, woodlands, beaches, tidal marshlands, wildlife, game and migratory birds; to enhance open areas and open spaces; and to afford and enhance recreational opportunities, preserve historical sites, and implement generally the Plat. No clearing, grading, tree removal, or any construction activity may take place in the LPZ without prior written consent of the Architectural Review Committee. The Association hereby reserves the right of access upon such designated areas for the establishment and maintenance of improvements thereto. The riparian rights of each and every owner are subordinated to the restrictions imposed on the LPZ, whether or not so stated in any deed of conveyance.

Any pier extending from the common areas, except for piers constructed by individual lot owners and extending into Flyway Lake and Eagle Lake, shall be a part of the common area and shall be constructed, controlled, owned and governed by the Association. Annual rent shall be charged the members leasing Association slips and paid to the general fund of the Association to be used to construct and maintain the slips and piers and for other Association purposes. The Association shall have and retain exclusive right, without limitation, to lease the Association slips. No lease shall be issued by the Association to any person or entity not an owner of a lot on the Property. Upon sale of a lot the lease rights shall revert to the lessor. The Association reserves the right to make application to expand its piers and slips if there is demonstrated need for such action. Private piers extending into Flyway Lake and Eagle Lake shall be constructed and maintained by the lot owner to which they are contiguous and title and ownership of such pier shall transfer with the title to the lot.

A set of general rules and standards for the Property having been adopted, titled "Architectural and Site Development Standards" for the residential community of Mallard Bay, at Mallard Bay dated April 15, 1988, which is incorporated herein by reference and are attached hereto as Attachment A and apply to the development and use of the Property. These guidelines may be periodically amended by the Association or the Architectural Review Committee.

The Association reserves the right to file Supplemental Declarations to correct typographical and other minor errors in this Declaration or the Plat.

### **ASSESSMENTS**

Each owner, including owners of contiguous lots, by acceptance of a deed for the property agrees to pay the Association an annual assessment of Three Hundred Fifty Dollars (\$350.00) per lot per year due in full on January 1 of each year. Owners of not more than three contiguous lots (qualifying lots) may merge those contiguous lots and thereafter be assessed for only one consolidated lot as long as the combined lots have only one residence. Owners of record of contiguous lots as of the date of enactment of these Covenants shall have five years to consolidate "qualifying lots." Assessments are set at \$350.00 per year and will be set annually thereafter at the same amount or an amount determined by a positive vote of at least a majority of owners of all lots in the Association. Votes may be cast in person or by proxy at an annual meeting of the Association or at another meeting called specifically for that purpose.

The Association, in addition, shall have the power if necessary, to make additional assessments for construction, maintenance and improvements as deemed appropriate for the roads and common areas as stated in the Virginia Property Owners Association Act.

The Association shall notify each owner of the annual lot assessments and of any special or additional assessments in advance of the due date. If the Association has not received payment of the full amount of the annual assessments owed by the last day of January in the year that they are due, a \$50.00 late fee will be applied to the annual dues on February 1. In addition, from February 1 thereafter, interest at the annual rate of twelve percent (12%) compounded annually shall be applied to the amount of annual assessments outstanding. All assessments, together with the late fee, interest, costs of collection and reasonable attorney's fees actually incurred in connection therewith shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made. Each such assessment, together with the late fee, interest, costs of collection and reasonable attorney's fees actually incurred in connection therewith shall be the personal obligation of the person who was the owner of such lot at the time the assessment fell due. The Association may, if an assessment is outstanding for more than six (6) months, bring an action at law against the owner personally obligated to pay the same.

### **ORGANIZATION AND DUTIES OF ASSOCIATION**

The Association shall be governed by the majority vote of its members. A Board of Directors shall be elected by the membership in accordance with the bylaws.

The Association shall hold the common areas and the roads for the exclusive benefit of members of the Association and for the promotion of the recreational development of Mallard Bay. The Association shall be charged with the duties of maintaining, improving, repairing, developing and protecting the common areas and roads and shall pay all taxes and expenses in connection with the common areas and roads (including furnishings and equipment related thereto) and shall have all powers consistent and necessary therewith. The Association shall be responsible for and act as agent for owners and members of the Association with respect to all matters including rights and obligations involving the common areas, roads, any improvements and facilities thereon, drainage and utility easements and roads within the subdivision and shall be sole agent for all negotiations and agreements in connection therewith including without limitation, the right and obligation to convey to the Virginia Department of Highways and Transportation fee simple interest in and to such roads.

### **PROTECTIVE COVENANTS**

1. Each lot is designed for single family residential use only. Commercial and business activities shall not be permitted within Mallard Bay except private offices contained totally within the permitted building and not requiring additional parking. Any other use must be approved by the Board of Directors. A guest suite or like facility may not be rented except as part of the entire premises including the main dwelling. One accessory building may be constructed prior to start of the main residence with a written agreement stating that the construction of the main residence will start within 24 months, will be of the same color and materials and will be maintained the same as required for permanent residence. Compliance with the Association's requirements is not a substitute for compliance with the county building, zoning and subdivision regulations, and each

owner is responsible for obtaining all necessary approvals, licenses and permits as may be required prior to commencing any construction.

2. The minimum square feet of heated living area for any proposed new construction received by the Architectural Review Committee after December 31, 2008 shall be 1750 sq. ft., 1500 sq. ft., or 1250 sq. ft. as determined by lot number. Living area shall not include basements, garage, carport, porches and decks. The lot numbers and corresponding required square footage are set forth in Attachment B affixed to the Declaration and by this reference made a part hereof. The Architectural Review Committee may make an exception to these limitations when it finds that such exception is necessary to make building practicable on a particular lot.

3. No building, addition, wall, fence or other structure shall be commenced, erected, maintained, improved, altered, made or done without prior written approval of the Architectural Review Committee as to placement, landscaping and design pursuant to the guidelines established in the Architectural Guidelines. All applications and notices shall be sent to the Chairman of the Architectural Review Committee. Written notice of the decision of the Architectural Review Committee shall be sent to the applicant. An applicant may appeal a decision of the Architectural Review Committee by submitting a written request to the Board of Directors.

4. Nothing herein shall be deemed to prevent a member from leasing to a single family, subject to all of the provisions of this Declaration, provided that the term of any such lease shall not be less than two (2) weeks in duration.

5. Subject to such limitations as may from time to time be set by the Association or the Architectural Review Committee, generally recognized common house pets such as dogs, cats, may be kept and maintained provided such pets are not kept or maintained for commercial purposes. No pets may be kept on any lot not improved with a residence. All pets must be kept under the control of their owner when they are outside and must not become a nuisance to other residents. If any pets are declared a nuisance by the Association, or the Architectural Review Committee, they shall be removed from the property within thirty (30) days after written request to do so. Dog houses, runs or pens are permitted with Architectural Review Committee approval for design, location and screening.

6. One sign, not to exceed 24" x 18", shall be permitted per lot per exposed side, including but not limited to FOR SALE OR RENT, for public view in addition to the standardized name, address and lawn signs. This clause does not apply to construction signs which are addressed under Article VII.

7. Antennas designed to receive direct broadcast satellite service that are one meter or less in diameter, antennas designed to receive video programming services via multipoint distribution services that are one meter or less in diameter or diagonal measurement, and antennas designed to receive television broadcast signals must be installed in the least visually intrusive place possible, preferably in the backyard of the property. All antennas and satellite dishes must be screened from view if possible, but in no case will such screening impair its installation, maintenance or use.

8. Permanent clothes line or other exterior clothes drying apparatus are prohibited.

9. No structure, pool or other facility shall be constructed or maintained so that it shall be heated or cooled by an alternative energy source including, but not limited to, active or passive solar energy or by wind driven electrical generators, which shall involve the construction or erection of any separate structure or unusual architectural feature or features without the prior written approval of the Architectural Review Committee.

10. All motor vehicles, including, but not limited to, motorcycles, motor bikes and golf carts, shall be operated only on paved roadways and other designated roadways as specified by the Association. Except on such designated roadways, no such vehicle shall be driven or maintained on any of the common areas. The operation of all terrain vehicles or other unlicensed vehicles designed for off road use, any unlicensed vehicle capable of speeds in excess of 25 miles per hour, or any vehicle which makes excessive or offensive noise, is not permitted anywhere in Mallard Bay.

11. No tennis courts shall be constructed or maintained on any lot, except as may be approved on a case by case basis by the Architectural Review Committee, but in no instance shall they be lighted.

12. In areas designated "Landscape Preservation Zone" (LPZ) as shown on the Plat, no trees, bushes, or shrubs may be removed regardless of size, and no permanent structures to include houses, decks, gazebos, patios, pools, garages, posts, boat ramps, and the like may be erected or located without the prior approval of the Architectural Review Committee. It is recognized that drainfields, utilities, piers, retaining walls and driveways may need to be installed in the LPZ with prior approval of the Architectural Review Committee.

13. Driveways to the lakes and The Great Wicomico River are prohibited. Nothing herein shall prevent the Association from obtaining additional piers or slips for the Property.

14. Reasonable rules and regulations concerning the use of the common areas, LPZ and conduct of the members and their families, guests, tenants, agents and invitees to the property may be made, amended and revoked from time to time by the Association. Copies of rules and regulations and all amendments thereto shall be furnished by the Association to all members upon request.

15. Private swimming pools will be permitted upon approval of plans and specifications by the Architectural Review Committee.

16. Trash cans and exterior heat pump compressors, air conditioners, and other heating and air conditioning equipment shall be screened from public view in a manner acceptable to the Architectural Review Committee and shown on the plans. Electrical meters must be on the side or rear walls and painted to match siding or screened with shrubs.

17. The owners are responsible for maintaining their respective lots in a clean and neat appearance prior to, during and after construction of any structure thereon. An adequately sized trash container shall be placed on lots during construction. All construction material must be stored solely on the respective lots. Trash and construction debris shall be removed as required by

the Architectural Review Committee. Any damage to road base or shoulders shall be repaired by the member. Grass shall be mowed consistent with the provisions set forth in the Protective Covenants. The Association reserves the right to landscape, forest and maintain the Association Landscape Maintenance Areas (except for joint driveways to be located thereon) of lots 62, 63, 64, 65, 66 and 67 as shown on the Plat.

18. All driveways leading from any main roads must use concrete culverts of sufficient diameter to meet the Virginia Department of Highways and Transportation's standards. Joint driveways shall be constructed with a minimum clearing and the driving surface of the joint driveway shall generally be 12 to 15 feet in width unless a larger width is approved by the Architectural Review Committee. The maintenance of joint driveways shall be shared equally by those lot owners with access to their lots over the joint driveways. Where a joint driveway is shown on any lot, such joint driveways shall be the only driveway constructed to the lots to which they lead and to which they are intended to serve.

19. The use of camping vehicles is not permitted.

20. No house trailers or mobile homes may be placed on any lot.

21. No unfinished exterior cinder block construction shall be permitted.

22. No lot can be further subdivided except in the case of an entire lot being merged with an adjoining lot or lots, or the creation of roadways by the Association.

23. No part of any lot or improvement thereof shall be used for any purpose or manner which will be injurious or offensive to a residential neighborhood.

24. All trash and garbage shall be kept from public view. Unlicensed vehicles shall not be kept outside on the property. All sites shall be maintained in a neat and orderly appearance, including periodic cutting of grass. The Association shall automatically have the right to cut the grass on any site once said grass exceeds a height of twelve (12) inches. The reasonable cost for the cutting of the grass that has reached the height of twelve (12) inches and any related costs associated with the billing for said action shall become the responsibility of the respective lot owner.

25. A thirty (30) foot utility easement is adjacent to all roads and a ten (10) foot utility easement is reserved on both sides of all property lines except for the boundary lines of the river and lake lots along the water's edge unless specifically noted on the Plat. Drainage easement areas are reserved as shown on the Plat and easements of way are reserved over the common areas for the installation and maintenance of utilities, remote drainfield lines and sites, wells and water lines.

26. The sole residential water source for all lots is to be the development's central water system. Each lot shall be subject to the terms and conditions of that certain Deed and Water Service Agreement between The Bay Company, Sydnor Hydronics, Inc. and Reco Industries, Inc., dated March 7, 1988, to be recorded simultaneously herewith which includes an obligation to pay a connection fee and periodic water bills.



27. The house, garage and deck on each lot shall generally be placed entirely within the building area (and not within the LPZ) shown on the Plat, and the front, rear and side yard setbacks shall be in compliance with the respective Northumberland County Zoning Ordinances. Wherever there is a difference and/or conflict between minimum standards, dimensions or provisions specified herein with other applicable building codes, the most restrictive and/or highest standards will prevail.

28. The exterior of all houses and other structures, and the driveways on all lots must be completed in accordance with plans and specifications approved by the Architectural Review Committee within 12 months after construction of same shall have commenced, except that extensions may be granted by the Architectural Review Committee where such completion is made impossible or would result in great hardship to the owner or builder. In the event any structure or landscaping is damaged or destroyed during or after construction, the member shall make every reasonable effort to rebuild the structure or landscaping to its original condition as rapidly as possible, or, in any event, within twelve (12) months of the date damage occurs.

29. No docks, piers, gazebos, moorings, slips, shoreline erosion control devices or similar structures may be erected on or adjacent to any lot, except with the approval of the Architectural Review Committee. Boathouses and commercial boating activities shall not be permitted.

30. The Association or any member thereof shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Architectural Review Committee or any member to enforce any covenant or restriction herein contained shall in no event be deemed waiver of the right to do so thereafter.

31. Invalidation of any one of these covenants, by judgment or court order, shall in no way affect any of the other provisions which shall remain in full force and effect.

32. In the event an owner fails to maintain, repair or restore the premises as required by the Protective Covenants, the Association shall notify the owner in writing of the Association's intent to provide the necessary maintenance, repair or restoration at the owner's sole cost and expense. Such notice shall set forth with reasonable particularity the maintenance, repair or restoration deemed necessary. The owner shall have fifteen (15) days within which to complete such maintenance, repair or restoration, or in the event that such maintenance, repair or restoration is not capable of completion within a fifteen (15) day period, to commence such work which shall be completed within a reasonable time as determined by the Association. If the owner does not undertake the necessary maintenance, repair or restoration in the manner described herein following notice, the Board of Directors of the Association by a 2/3 vote shall have the right to enter upon said property to perform the necessary maintenance, repairs or restoration or to remove any offending materials or objects. Such action shall not be deemed as a trespass and the cost incurred by the Association or its designees for such maintenance, repair, restoration or removal shall be added to and become a part of the assessment to which the owner is subject and shall become a lien against the property.

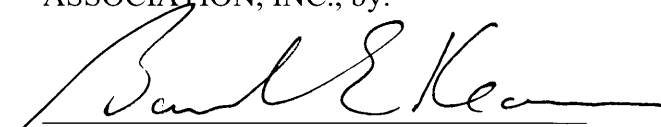
33. Campers and recreational vehicles may not be parked on residential lots but may be parked but not occupied in parking areas designated for such purposes by the Association subject to space, availability and the possible payment of a fee to the Association. Construction vehicles shall be permitted on a lot during the period of construction of a dwelling unit. The prolonged repairing of vehicles of any kind shall not be permitted at Mallard Bay. One trailered boat may be parked on each lot with a residence, located and screened from the road and lake as approved by the Architectural Review Committee. No vehicle shall remain in Mallard Bay unless it has current state license plates, county tags and a current inspection sticker.

34. Boats on the lakes may not exceed 16 feet in length and 5 feet in width. In order to preserve the tranquility of the lakes, boat motors will not be permitted; however, electric trolling motors are acceptable.

35. Mallard Bay is a wildlife sanctuary and no hunting shall be permitted on the property.

36. The covenants and restrictions of this Amendment of Declaration shall run with the land and shall be binding upon all lot owners, including their invitees, heirs, successors and assigns and all persons or entities having or acquiring any right, title, or interest in said real property or any part thereof, and inuring to the benefit of each owner thereof. Any amendment to these covenants and restrictions shall be made only upon the agreement of the then lot owners of record of a majority of the lots subject to and in accordance with the Membership in Association provisions of the Declaration.

MALLARD BAY PROPERTY OWNERS  
ASSOCIATION, INC., by:

  
\_\_\_\_\_  
President

STATE OF VIRGINIA

COUNTY OF Lancaster, TO WIT:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of February 2009, by Barret E. Kean, President of Mallard Bay Property Owners Association, Inc., a Virginia Corporation, on behalf of the corporation.

BARBARA F. ROUNTREY  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #114153  
My Commission Expires 3-31-2012

My commission expires: \_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

## **ATTACHMENT "A"**

### **ARTICLE I, PURPOSE AND INTENT**

The following restrictions are established for the enhancement of property values for the residential community of Mallard Bay through the controlled development of harmonious architectural styles and appealing home sites. This community is and will be enhanced by strict adherence to controls, restrictions and guidelines established by the Bay Company and various consultants in order to implement the master plan. Development controls will enhance the quality of environment for our community and accelerate potential increase in property values.

### **ARTICLE II, MASTER PLAN CONCEPT**

Mallard Bay has been carefully master planned in order to achieve the following objectives:

- (a) Establish a collector road network to facilitate traffic movements throughout the community. This network provides convenient access between the residential communities and the Virginia State Route 642. Through the design process, unnecessary traffic has been eliminated from the neighborhood streets.
- (b) Design a layout for both collector roads and neighborhood streets, the visual experience throughout the community and each home site will be enhanced for residents and visitors to Mallard Bay.
- (c) Capitalize on the natural topography and vegetative features of the land. For example, lots that are adjacent to the lakes and river are buffered by a setback requirement, so that the shoreline remains in a natural and visually appealing state.
- (d) Construct a pedestrian trail system for walking and bicycling. This will provide for increased safety, quiet areas to observe nature, as well as allow for easy access to residential facilities.
- (e) Develop recreational amenities and community facilities for the enjoyment of the members. This will allow everyone to pursue those activities that they enjoy the most. In addition, some of these facilities have been logically separated from the residential communities while retaining them in a convenient and readily accessible location.
- (f) Appoint an Architectural Review Committee to strictly enforce the architectural and site development restrictions.

### **ARTICLE III, DEFINITIONS**

- (a) Association – legal entity called Mallard Bay Property Owners Association, Inc. established among the lot owners to administer Common Areas, architectural and other controls at Mallard Bay.
- (b) Builder – an individual or organization, properly licensed by the Commonwealth of Virginia as a general contractor, constructing an individual house or houses in Mallard Bay. The Architectural Review Committee and the Mallard Bay Property Owners Association retain the right to accept or reject each builder.
- (c) Common Areas – Those areas within Mallard Bay that are owned by the Mallard Bay Property Owners Association.

- (d) Architectural Review Committee – a committee established initially by the Developer and subsequently by the Board of Directors, comprised of design professionals and/or others for review of all architectural design, construction plans, site development and maintenance for the residential community of Mallard Bay.
- (e) Developer – is the organization, which is subdividing land, building roads, utility lines, lakes and providing the recreation facilities at Mallard Bay.
- (f) Lot Owner – is an individual or individuals that own a lot in Mallard Bay.

#### **ARTICLE IV, ARCHITECTURAL REVIEW COMMITTEE**

**Membership:** The Architectural Review Committee consisting of at least three individuals will be appointed by the Board of Directors. The members of the committee may be altered by the Board of Directors in accordance with the by-laws of the Association.

**Procedures:** The Architectural Review Committee is empowered to administer and enforce the architectural style and site development restrictions included herein. All construction on individual lots and Common Areas to be included in the Mallard Bay residential community shall be reviewed by the Architectural Review Committee. Lot owners and builders desiring to construct any improvement in Mallard Bay shall submit two (2) copies of each set of plans to the Chairman of the Architectural Review Committee. Members of the Architectural Review Committee may meet formally or informally to discuss compliance of the submissions with the restrictions of this subdivision. Three weeks will be allowed for the review of site and construction plans. At the end of the three-week period the Architectural Review Committee may:

- (a) approve the plans in writing;
- (b) deny approval of the plans in writing;
- (c) approve the plans subject to certain conditions or suggested changes;
- (d) give written notice of a two week extension of time to review the plans.

When revisions are required, amended plans should be resubmitted within three weeks for final approval prior to the commencement of site clearing or any construction activity.

**Authority to Waive Requirements:** The Architectural Review Committee has the sole authority to waive the requirements set forth herein, but may do so only when the intent and quality required of the design elements at Mallard Bay are satisfied. The waiver of specific requirements shall be at the sole discretion of the Architectural Review Committee. Any such waiver will in no way be considered as a waiver of any of these covenant requirements for any future request and does not set a precedent for future request.

**Indemnification:** The Architectural Review Committee is indemnified against and shall be held harmless by the Association and each lot owner for any legal action caused by errors, omissions or delays caused by its deliberations. Each lot owner acknowledges that the Architectural Review Committee is not responsible for engineering, designing or constructing structures and each lot owner agrees for their respective lot to indemnify and hold the Architectural Review Committee harmless from any liability for any such responsibilities.

## **ARTICLE V, SUBMISSION REQUIREMENTS**

**Local Code and Ordinance Compliance:** No architectural or site restrictions contained herein alleviate builders or lot owners within Mallard Bay from compliance with local, state and federal regulations governing development or construction. In the event of conflict between restrictions contained herein and government regulations, the more restrictive shall apply.

**Schematic Design:** Initially, two (2) sets of plans to include floor plans, elevations and site plans shall be submitted to the Chairman of the Architectural Review Committee for approval.

**Final Architectural Design:** Once schematics are approved, two (2) sets of the final architectural plans and details shall be submitted to the Chairman of the Architectural Review Committee for action. These drawings shall be at a minimum scale of  $\frac{1}{4}'' = 1'0''$ .

**Final Site Design:** Two (2) sets of the final site plan, at a scale of  $1'' = 20'$  for all sites requesting a variance and a minimum of  $1'' = 40'$  for all others, shall be submitted to the Chairman of the Architectural Review Committee. At a minimum, each site plan will indicate the LPZ zones, front, side and rear yard setbacks, the footprint of all buildings, septic system, driveways, walks, mailbox location and a rough landscaping plan (landscaping plan will show how and where trees and shrubs removed for parking, driveways and septic systems in the LPZ are replaced.) No additional trees will be removed for the installation or storage of modular homes.

**Material Selections:** In conjunction with the final architectural and site designs as outlined above, the builder or lot owner shall submit samples of all exterior colors and materials to be included in the proposed construction.

## **ARTICLE VI, ARCHITECTURAL REQUIREMENTS**

**Massing:** Thoughtful design and continuity of architecture are important. Two story "boxes" are prohibited and simple square forms are less common than "T" or "L" shapes. Porches, decks, cupolas and balconies are welcomed features. Both hipped and gabled roof forms can be appropriate.

**Roof Pitch:** The recommended minimum roof pitch shall be 6' in 12' for one story houses and 7.5' in 12' for two story houses, except that flat roof or lesser pitches will be considered only when they are part of outstanding architectural design. As departures from the norm, they will be reviewed in context of the total design of the house, its relationship to surrounding houses and to its site.

**Fenestration:** Windows in the traditional architecture of the area are usually double-hung sash, rather than casements or awning type windows, as used in contemporary architecture. Their proportion is most often twice as high as wide and the dimensions are generous, a typical size is about 3' wide by 5'6" height. A variety of windows may be appropriate. Windows grouped in twos, threes or bays, or smaller windows in some areas, may give a welcome design charm. Consideration should be given to the overall exterior balance of the house in the placement of

windows. Window screens, storm windows and storm doors must be anodized bronze, white or painted to complement the trim or body of the house.

Detail: Exterior architectural detail including trim and siding shall comply with the architectural theme of design. A basic design may be inappropriate if consideration is not given to such details as trim around windows and doors, at eaves or gables of roof, porch columns, railings or steps. Such consideration does not imply that very elaborate decorative elements are required; however, builders and lot owners should discuss this issue with the Architectural Review Committee in conjunction with the schematic design approval.

Materials: The following materials are recommended:

- (a) Foundations and walls constructed of masonry block (parged), brick, stucco and stone. Open pier foundation construction shall be screened.
- (b) Exterior walls constructed of beaded siding, horizontal siding, vertical board and batten, brick, unlaminated wood or vinyl. Vinyl siding shall have a minimum nominal thickness of 44 mils.
- (c) Exterior trim made of wood. Wood trim may be covered with prefinished breakmetal or vinyl.
- (d) All roofs should be constructed of wood shingles, slate, Hendericks tile, standing seam metal, or textured asphalt (architectural) or fiberglass. In addition, roof materials (including shingles, shakes, slate and Hendericks tile, metal or other materials) must be of a texture, color and weight that will comply with the community's architectural theme for the home.
- (e) Paint or stain of complementary color must be applied to all wood homes. Natural wood siding and semi-transparent stains are generally discouraged. If the Architectural Review Committee approves a semi-transparent stain, the Builder must adhere to the manufacturer's procedures and specifications for the installation and application of the stain. Colors of houses adjacent to or across the street from one another should be differentiated; however, exceptions may be approved in certain circumstances by the Architectural Review Committee. It is recommended that the exterior colors for all homes are limited to earth tones to blend with nature and avoid bright and jarring colors. The Architectural Review Committee must approve all exterior colors. In the event that unauthorized painting or staining occurs, the Architectural Review Committee has the authority to require the repainting or staining of a house. This will ensure the color coordination of the community and protect the investment of all lot owners.

Continuity of Elevations: No elevation (front, side or rear) of any residence shall be of substantially inferior appearance than any other elevation of the residence. Since some houses will be viewed from both water and roads, this requires builders and lot owners to give as much attention to the design of the rear and sides of the houses as is traditionally given to the front.

## **ARTICLE VII, SITE DEVELOPMENT REQUIREMENTS**

All building on any lot including accessory buildings shall not cover more than twenty-five percent (25%) of the area of the lot. No accessory building (except guesthouses and garages) shall cover more than one hundred forty-four (144) square feet.

**Stake out Review:** Prior to beginning any clearing or construction activity, the builder or lot owner must stake out the corners of the house as well as flag other areas to be cleared and graded. A member of the Architectural Review Committee will then review the staking and flagging for compliance with the site plan that has been previously approved by the Architectural Review Committee. In the event that these activities do not comply with the approved site plan, the builder or lot owner will be enjoined from proceeding with the clearing or construction activity. The builder or lot owner can either correct the staking and flagging or resubmit an amended site plan for approval by the Architectural Review Committee.

**Erosion and Sedimentation:** Builders and Homeowners are required to comply with the "minimum criteria for erosion and sediment control" of the Virginia Erosion and Sediment Control Handbook, 1985 or subsequent edition and all building code requirements of Northumberland County.

**Storage and Construction Materials:** Only usable construction materials may be stored on a construction site. They must be neatly stacked and maintained. Discarded construction material, refuse and debris must be removed from the site weekly.

**Protection of Existing Vegetation:** No trees greater than 6" in diameter may be removed from a site without the prior approval of the Architectural Review Committee. Tree protection measures must comply with the erosion control measures. The developer intends to preserve as much of each building lot in a natural state as possible.

**Grading and Drainage:** Grading and drainage construction within the site shall not be constructed so as to visually detract from other residences. Subsurface drainage may be required where necessary, to resolve unusual surface or subsurface drainage conditions.

**Driveway and Parking Areas Layout:** Driveways and parking shall be laid out in an efficient and aesthetically pleasing manner.

**Driveway Entrances:** Recommended materials that will be considered are asphalt, concrete, brick, all weather brown gravel, exposed aggregate, concrete and gray crushed stone.

**Culverts:** Culverts shall be reinforced concrete pipe 24' long and a minimum of 15" in diameter or as required by VDOT and be covered with appropriate lawn and ground cover in order to minimize their visual impact.

**Walks and Terraces:** Walks and terraces must be constructed of materials of equal quality and compatible with the architectural materials in the house. The recommended construction materials are exposed aggregate concrete, brick masonry, flagstone, or slate set in a cement mortar

bed. Any walkway or terrace constructed of any other material must provide for appropriate edging to maintain its structural integrity. A walkway must be provided from the driveway to the front door.

**Storage Workshops, Garages, Service and Refuse Facilities:** Freestanding storage sheds, workshops, areas or any other structure located on a building lot must be designated and located as an integral part of the house and its site plan. These structures should be massed with the house and incorporate appropriate landscaping, walkways and fencing as well as be of the same architectural style, finished materials and a compatible color. These requirements also apply to gazebos, playhouses and deck railings.

**Fencing:** Fencing for dogs and children should be designed as an integral part of the house. "Accent" fencing as part of an overall landscape plan may be used in the front yard only with the prior approval of the Architectural Review Committee. Fencing of back yards should not come off the front corners of the house, but extend as nearly as possible straight back from the back corners of the house. Chain link fencing will be permitted if it is painted black (to match tennis courts) or completely screened with shrubs from the street. Fencing for a front or side yard along a street must be picket style or of a finished material and painted with a compatible color in relation to a house and its trim. Back yard fencing not visible from the street may be of treated wood posts and welded wire. Deck supports visible from the street should be 6"x6" treated wood posts or 12"x12" brick piers. 4"x4" treated wood posts may be used if they are concealed by lattice screening painted to match the colors of the house.

**Lighting:** It is recommended that all light sources be recessed, indirect, shielded or protected by plant material or architectural barriers.

**Lawns and Planting:** In general, the selection of plant material must be complementary to or in the same vernacular as the design theme established for each neighborhood.

**Wood Decks and Steps:** The flat surfaces of wood decks and steps may be constructed of unfinished salt treated wood material. All vertical elements visible from the street, such as fascia boards, risers and railings shall be painted or stained to complement the colors and materials of the house.

**Utilities:** All electric, telephone, cable and other utility services shall be placed underground.

**Piers:** Piers in the Lakes cannot exceed four (4) feet in width nor extend more than four (4) feet into the lake, nor can they be any longer than ten (10) feet, and they are not to exceed a height of eighteen (18) inches above the water level, and the pilings must be recessed under the decking or skirt boards must be installed around the edges of the pier to block view of the pilings.



Construction Signs: Only one construction sign per site is allowed. Such signs shall not exceed 24"x18". Construction signs shall be removed subsequent to substantial completion of the house.

Toilets: A portable toilet is required at all times when work is being performed on the site.

Flag Display: One flagpole per lot, not to exceed 20 feet in height from the ground, to be indicated on the site plan and approved by the Architectural Review Committee for location and type. Flags other than (1) United States, (2) State flag, (3) active branch Armed Services, (4) Military Valor, or (5) Service award of the United States may require Architectural Review Committee approval if their size or appropriateness is questioned.

## **ARTICLE VIII, MAINTENANCE REQUIREMENTS**

Post Construction: After review and approval of construction by the Architectural Review Committee, no structure shall be altered, modified or expanded without the written approval of the Architectural Review Committee.

Right of Mallard Bay Property Owners Association to Intercede: Any lot, site or structure which fails to comply with high standards of maintenance and appearance are subject to action by the Mallard Bay Property Owners Association. Where maintenance and appearance standards are not acceptable, Mallard Bay Property Owners Association may intercede at the lot owner's cost and maintain such a site or structure.

Standard of Appearance: Guidelines for appearance and maintenance shall be reviewed and modified from time to time by the Architectural Review Committee or by the Mallard Bay Property Owners Association. The Mallard Bay Property Owners Association is empowered with the legal right to enforce appearance standards by special assessment, property liens and the right to enter private property for the purpose of bringing such property into conformance.

**MALLARD BAY**  
**ATTACHMENT "B"**

**INDEX**

**R RIVER FRONT**  
**RV RIVER VIEW**  
**L LAKE FRONT**  
**LV LAKE VIEW**  
**PV POND VIEW**

**1,750 SQUARE FEET**

**LOT ACREAGE CLASS**

28	3.19	R
30	2.2	R
31	1.42	R
44	1.43	R
45	.82	R
46	1.46	R
47	.86	R
48	1.22	R
49	.92	R
108	1.44	R
109	.66	R
110	.65	R
111	.91	R
112	.97	R
113	.97	R
114	1.39	R
115	1.45	R
116	1.01	R
117	.84	R

**LOT ACREAGE CLASS**

118	.65	R
119	.58	R
120	.78	R
125	1.88	R
126	1.70	R
134	3.52	R
135	1.44	R
136	1.19	R
137	.99	R
138	1.51	R
143	.83	R
144	.88	R
145	.88	R
146	1.15	R
147	1.17	R
148	.57	R
149	.57	R
150	2.91	R

**ATTACHMENT "B" CONTINUED**

**1,500 SQUARE FEET**

<b>LOT</b>	<b>ACREAGE</b>	<b>CLASS</b>	<b>LOT</b>	<b>ACREAGE</b>	<b>CLASS</b>
14	.503	PV	87	.53	L
15	.63	PV	88	1.066	L
29	1.167	RV	92	.669	I
32	1.327	RV	93	.747	I
43	1.198	RV	94	.916	LV
50	1.45	RV	95	.54	L
51	1.19	LV	96	.77	L
52	.80	L	97	.601	I
53	.63	L	98	.553	I
54	.81	L	99	.767	I
55	1.08	L	100	1.03	L
56	1.09	L	101	.79	L
57	1.89	L	102	.63	L
58	1.33	L	103	.77	L
59	.71	LV	104	.68	L
60	1.65	L	105	.63	L
61	1.63	L	106	.54	L
62	1.51	L	107	.881	RV
63	2.35	L	121	.520	I
64	1.95	L	123	1.262	I
65	2.01	I	124	.802	I
71	.94	L	127	.970	RV
72	.76	L	128	1.049	I
73	.59	L	129	1.117	I
74	.60	L	130	.508	I
75	.76	L	131	.548	I
77	.80	L	132	.776	I
78	.91	L	133	.929	I
80	.752	PV	139	.56	RV
81	.719	I	140	.951	RV
82	.959	PV	142	.864	RV
85	1.01	L	151	1.046	RV
86	.73	L	152	2.071	RV

**ATTACHMENT "B" CONTINUED**

**1,250 SQUARE FEET**

<b>LOT</b>	<b>ACREAGE</b>	<b>CLASS</b>	<b>LOT</b>	<b>ACREAGE</b>	<b>CLASS</b>
1	1.086	I	41	1.183	I
2	1.428	I	42	1.317	I
3	.704	I	66	1.624	I
4	3.025	I	67	1.081	I
5	3.584	I	68	2.006	I
6	2.784	I	69	1.016	I
7	1.495	I	70	.807	I
8	1.816	I	76	.569	I
9	1.028	PV	79	.752	I
10	1.308	I	83	.739	I
11	1.54	I	84	.723	I
12	2.037	I	89	.534	I
13	.633	I	90	.647	I
16	.986	I	91	.96	I
17	3.191	I	122	.886	RV
18	.905	I	141	1.275	I
19	.579	PV	153	1.452	RV
20	.576	PV	154	1.643	I
21	.554	PV	155	1.247	I
22	.682	PV	156	.924	PV
23	3.636	I	157	.856	PV
24	2.702	I	158	1.433	PV
25	2.922	I	159	5.40	I
26	1.188	I	160	1.219	PV
27	3.659	I	161	1.277	PV
33	1.175	I	162	.91	I
34	.985	I	163	.969	I
35	1.052	I	164	1.018	I
36	1.251	I	165	.879	I
37	.678	I	166	1.212	I
38	1.013	I	167	1.183	I
39	.832	I	168	.963	I
40	.944	I	169	1.719	I

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 NORTHUMBERLAND ON  
 FEBRUARY 11, 2009 AT 04:00PM

LINDA L. BOOTH, CLERK  
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