

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

OF

MALLARD LAKES AT MCKINNEY

95- 0093627

NOTICE:

EACH OWNER OF A LOT SUBJECT TO THIS DECLARATION MUST
COMPLY WITH SECTION 4 (h) HEREOF PRIOR TO ANY RESALE
OF THE LOT.

UNOFFICIAL

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration") is made this ____ day of December, 1995, by MALLARD LAKES, L.P., a Texas limited partnership (herein called the "Declarant"), for itself, its successors, grantees and assigns, other than the purchasers of a Lot.

Section 1. Submission to the Declaration.

(a) Declarant hereby submits the land consisting of 215± acres located in the City of McKinney (the "City"), Collin County, Texas, and more fully described on Exhibit "A" attached hereto and incorporated herein by this reference, together with the buildings and improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto (the "Property"), to the terms, conditions and provisions of this Declaration.

(b) Declarant may subject additional land (the "Supplemental Property") to this Declaration by the filing of record of a supplementary declaration of covenants, conditions and restrictions (the "Supplementary Declaration") which describes such Supplemental Property and subjects the Supplemental Property to this Declaration. The filing for record of such a Supplementary Declaration shall immediately extend the jurisdiction, functions, duties and membership of the Association to the Supplemental Property described therein, provided, however, no Assessments shall be applied to any Lot within the Supplemental Property until the Lot has been conveyed by Declarant to an Owner.

(c) A Supplementary Declaration may contain such additions to or modifications of the terms and conditions of this Declaration as Declarant deems necessary to reflect the character and intended development of the Supplemental Property, provided, however, in no event shall any such Supplementary Declaration revoke, modify, or add to the provisions of the Declaration affecting the Property described herein.

Section 2. Purpose of Declaration. The purpose of this Declaration shall be to protect and enhance the value of the Property by appropriate means, including, without limitation, to provide a uniform plan for the use and development of the Property, to create an Architectural Review Committee (hereinafter defined), and to establish a mechanism for the operation and maintenance of the Community Facilities (hereinafter defined).

Section 3. Definitions. The following terms when used herein and in the By-Laws (hereinafter defined) shall have the meanings ascribed to them by this Section 3.

(a) "**Architectural Review Committee**" shall mean those individuals selected in accordance with this Declaration, who shall administer the use restrictions and other aspects of this Declaration regarding the design and appearance of the residences and other improvements constructed or installed on any Lot. (The Architectural Review Committee is hereinafter sometimes referred to as the "Committee.")

(b) **"Assessments"** shall mean those sums payable by the Owners to defray the Common Expenses and for other purposes, all as more fully described in Section 8 hereof. Each Assessment shall be separate and payable by the Owner of the Lot against which the Assessment is levied.

(c) **"Association"** shall mean Mallard Lakes at McKinney Homeowners Association, Inc., a Texas non-profit corporation, being an association of all Owners and the Declarant, while it owns a Lot subject to this Declaration.

(d) **"Board of Directors"** shall mean those individuals, chosen pursuant to the By-Laws, who shall manage and administer the business affairs and operation of the Association on behalf of the Members.

(e) **"By-Laws"** shall mean the governing rules and procedures for the operation of the Association.

(f) **"Common Expenses"** shall mean the expenses incurred by or on behalf of the Association, including, without limitation, the costs of operation, maintenance and management of the Community Facilities, the payment of taxes and other levies on the Community Facilities, and the establishment of a reserve fund for periodic maintenance, repair and replacement of the Community Facilities.

(g) **"Common Receipts"** shall mean the funds collected from Owners as Assessments and receipts designated as common by the provisions of this Declaration and the By-Laws.

(h) **"Common Surplus"** shall mean the excess of all Common Receipts over all Common Expenses.

(i) **"Community"** shall mean the development known as Mallard Lakes, which includes the Property.

(j) **"Community Facilities"** shall mean those open space areas and recreation facilities shown on Exhibit "B" attached hereto and incorporated herein, and all other facilities which the Association may hereafter own, acquire or construct. It is expressly understood by the parties hereto that these facilities may not be fully in place or operational at the time of purchase of any Lot, and that the nature and extent of the Community Facilities is subject to change.

(k) **"Lot"** shall mean any separate and subdivided parcel of land upon the Property which is intended for residential use and is shown as an enumerated building lot on the filed and recorded Plat, and all structures which are or will be erected thereon, excluding any Community Facilities.

(l) **"Members"** shall mean Class A and Class B Members of the Association, as these terms are defined in the By-Laws.

(m) "Owner" shall mean the record owner of fee simple title to any Lot upon the Property, excluding those persons having an interest merely as security for the performance of an obligation and excluding the Declarant. Multiple Owners of a single Lot shall together be deemed one Owner for purposes of this Declaration and the vote for such Lot shall be exercised as such multiple Owners, among themselves, determine but in no event shall more than one vote be cast with respect to a particular Lot.

(n) "Plat" shall mean the Final Subdivision Plat, approved by the City of McKinney which has or is about to be recorded in the Real Property Records of Collin County, Texas.

Section 4. Applicability; Establishment of Association; Membership.

(a) This Declaration shall be applicable to the Property. All Owners of Lots and their tenants, guests, or invitees, and any other persons who shall be permitted to use the Community Facilities, shall be subject to this Declaration, the By-Laws and any rules and regulations promulgated by the Board of Directors.

(b) The Association is being formed and shall operate for the benefit of the Members. The purpose of the Association shall be to promote the health, safety and welfare of the Members and to protect and enhance the value of the Property and the duties of the Association shall include, but not be limited to:

(i) providing for the operation and maintenance of the Community Facilities in a clean and orderly manner;

(ii) collecting and disbursing the Assessments and managing the financial affairs of the Association;

(iii) enforcing any and all covenants, restrictions, easements and other provisions of this Declaration;

(iv) such other responsibilities as are necessary to carry out the purposes of this Declaration and the Association; and

(v) entering into such contracts and agreements as are necessary to carry out the duties set forth herein and in the By-laws.

(c) All Owners, upon acceptance of the deed to their Lots, shall become Members of the Association and shall be obligated to pay all Assessments levied by the Association. Membership in the Association shall be limited to the Owners of Lots subjected to this Declaration and the Declarant. Except as set forth herein, the affairs of the Association shall be governed by the By-Laws.

(d) There shall be two classes of Members in the Association: Class A Members and the Class B Member.

(i) Class A Members shall be all Owners. Class A Members shall be entitled to one (1) vote for each Lot they own in the Community.

(ii) The Class B Member shall be the Declarant who shall have four votes for each Lot in the Property which the Declarant owns or on which it reserves the right to build a house. Class B membership shall be converted to one vote for each Lot in the Property which the Declarant owns or on which it reserves the right to build a house upon the "Membership Conversion Date" (herein so called), which shall occur upon the expiration of seven (7) years from the initial recordation of this Declaration. Notwithstanding anything else set forth herein or in the Bylaws, the Bylaws shall provide that the Declarant shall have the right to appoint a majority of the Board of Directors until such time as the Declarant conveys the last Lot which it owns in the Community.

(e) Notwithstanding any other provision of this Declaration or the By-Laws, no action shall be taken or adopted by the Association which would in any way affect any of the rights, privileges, powers or options of the Declarant (including, but not limited to, development of the Property or the marketing program of the Declarant) without the prior written approval of the Declarant.

(f) Only those Class A Members in good standing and entitled to vote shall be considered in determining whether, as to Class A Members, a quorum is present at a meeting of the Association or for determining the percentage of Class A Members voting on a matter. A Class A Member shall be deemed to be "in good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all Assessments made or levied against him or against his Lot by the Board of Directors as hereinafter provided, together with all interest, costs of collection, attorneys' fees, penalties and other expenses, if any, properly chargeable to him or against his Lot, at least ten (10) days prior to the date fixed for the annual or special meeting and has not violated any of the covenants and conditions contained in this Declaration, the By-Laws or rules and regulations.

(g) In the event a Member shall lease or permit another to occupy his dwelling in accordance with the provisions of this Declaration, the tenant or occupant shall be permitted to enjoy the Community Facilities but shall not vote in the affairs of the Association, except when the Member shall, by prior written notice to the Association, authorize the tenant or occupant to exercise the proxy vote of the Member.

(h) Every lawful transfer of record of fee simple title to a Lot shall include membership in the Association and, upon making this transfer, the previous Owner's membership shall automatically terminate and the Association shall not be required to give any notice of such termination. The previous Owner shall notify the Association in writing of such a transfer and the Association shall have no obligation to recognize a new Owner unless and until the Association has received such notification; provided, however, any failure of such previous

Owner to so notify the Association shall not prevent the automatic termination of the membership of the previous Owner and the commencement of membership of the new Owner. Except as otherwise expressly provided, membership in the Association may not be assigned or transferred without the transfer of legal title to a Lot and any attempt at assignment or transfer thereof shall be void and of no effect.

Section 5. Construction, Turnover, Management, Operation, Maintenance and Dedication of the Community Facilities. Declarant may, at any time after establishment of the Association, transfer to the Association, and the Association shall accept, ownership of any Community Facilities which Declarant desires to convey to the Association, including those Community Facilities which are intended to contain improvements. Upon substantial completion of the improvements located on any improved portion of the Community Facilities, the Declarant may transfer to the Association and the Association shall accept ownership of such improved Community Facilities. For purposes of this Section 5, substantial completion shall mean the date when the Community Facilities are sufficiently complete so that they can be used for the purposes intended, and all required permits, if any, have been obtained. After transfer by the Declarant, the management, operation and maintenance of the Community Facilities shall be the responsibility of the Association, which responsibilities the Association may delegate in whole or in part to a professional manager or agent, which may be the Declarant or an affiliate or subsidiary of the Declarant. Notwithstanding anything else set forth herein, the Declarant reserves the right to dedicate any of the Community Facilities to the municipality or any public body or utility, provided that such entity accepts all responsibility for the management, operation and maintenance of the dedicated Community Facilities.

Section 6. Owners' Easement of Enjoyment. Every Owner shall have the non-exclusive right of ingress, egress and regress over and the right of enjoyment in and to the Community Facilities in common with all other Owners, which right shall be appurtenant to each Lot and shall pass with title to every Lot, subject to (a) the right of the Association to establish rules and regulations governing use of the Community Facilities, (b) the easements and other rights and interests described elsewhere in this Declaration, and (c) the Owner's obligation to pay the Assessments.

Section 7. Easements

(a) All of the Property shall be subject to those easements for the present and future installation and maintenance of electric service, master and cable television service, telephone service, water service, storm water and sanitary sewage service, gas service and other utility services, and the facilities and appurtenances necessary to the same as are shown on the recorded plat of the Property or as are determined by mutual agreement of the Association and any utility or other service provider to be necessary. These easements shall run in favor of the Declarant, the Association and the entity or entities owning or operating the utilities. The Declarant and the Board of Directors shall have the right to grant additional utility easements in connection with the supply of utilities to the Community; provided, however, the Declarant and the Board of Directors shall, in granting any such easements, seek to minimize the effect of any such easement on the portion of any Lot used or likely to be used for residential construction;

and further provided, however, neither the Declarant nor the Board of Directors shall be under any obligation to incur any additional cost, delay, or inconvenience to the Association, the Declarant or to other Owners in so minimizing the impact of any such easement.

(b) The Association and its agents and employees shall have the irrevocable right and easement of access to each Lot as may be necessary from time to time or at any time for the inspection, maintenance, repair or replacement of any of the Community Facilities accessible therefrom, or to abate any violation of this Declaration or any rules or regulations of the Association or any violation of any laws or orders of any governmental authorities having jurisdiction over the Property. The cost of the repairs, maintenance or replacement made pursuant to this Section 7 for the sole benefit of any Lot shall be chargeable to the Owner of such Lot. The cost of any repairs, maintenance or replacement made to the Common Facilities or for the benefit of the Association or the Property shall be considered to be Common Expenses.

(c) The Declarant reserves the right to use the Community Facilities for the ingress and egress of itself, its agents and employees, for purposes of marketing and construction or maintenance of Lots. The Declarant shall also have the right, until the conveyance of the last Lot it owns in the Community, to maintain construction and sales offices, specialty lighting, specialty fencing and signs on the Community Facilities. The Declarant shall have an easement to enter upon any portion of the Property to change or alter the grading or to correct any construction errors made by Declarant or contractors employed by or on behalf of Declarant. The rights reserved for the Declarant by this Section 7(c) shall remain in effect for one (1) year after the Declarant has conveyed the last Lot in the Property. This Section 7(c) shall not be amended without the prior written consent of the Declarant.

(d) All of the easements described in this Declaration shall run with the land and inure to the benefit of and be binding upon the Declarant, the Association, each Owner and each tenant, occupant or other person having any interest in any Lot or in the Community Facilities.

(e) The Declarant and the Association shall, except in the event of an emergency, seek to minimize the impact on any Owner of the use by Declarant and the Association of the easements described in this Section 7, including, whenever reasonably practicable, limiting the use of said easements to normal business hours and by seeking to avoid, to the extent reasonably possible, any impact on any building constructed on any Lot; provided, however, neither the Declarant nor the Association, the Declarant shall be under any obligation to incur any additional cost, delay, or inconvenience to the Association, the Declarant or to other Owners in so seeking to minimize the impact of use of such easements.

Section 8. Owners' Assessment Obligation. Each Owner, by acceptance of the deed or other conveyance of the fee simple interest to any Lot, in whole or in part, whether or not it shall be so expressed in his deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (in addition to any other charges or costs levied by the Association pursuant to this Declaration) all Assessments levied by the Association, including, but not limited to the following: (a) regular Assessments due and payable on a semi-annual basis based upon the

budget of the Association; (b) special Assessments fixed, established and collected from time to time as provided in this Declaration; (c) any other charges or Assessments for what may be determined from time to time by the Association to be Common Expenses; and (d) any interest charges, attorneys' fees, penalties or fines levied by the Board of Directors for non-payment of Assessments or for non-compliance with the terms and provisions of this Declaration, the By-Laws or any rules or regulations created by the Board of Directors. The Association shall use the Common Receipts for payment of the Common Expenses, to carry out the powers and duties of the Board of Directors as set forth in the By-Laws, and for such other purposes as are consistent with this Declaration and the By-Laws. The Association also shall have the right to assess charges (herein referred to as "Limited Charges") against any one or more Lots to provide services which are exclusively for such Lots, including, but not limited to, the repair and maintenance of the Lot after the Owner has failed to maintain or repair his Lot. No Owner may exempt himself from payment of any Assessment by waiver of the use or enjoyment of the Community Facilities or by abandonment of the Lot owned by him or by setoff or counterclaim.

Section 9. Schedule of Payment. Except as otherwise provided in this Declaration, the schedule for the time of payment of and the amount of any Assessments to be paid by the Owners shall be established at the discretion of the Board of Directors, provided that all regular and special Assessments shall be declared by the Board of Directors and made due and payable on a regular basis. The failure of the Board of Directors to formally declare any regular Assessment shall result in the regular Assessment for the immediately preceding year being the regular Assessment applicable to and due and payable for the next year. Notwithstanding the foregoing, and excepting the first year in which the Association levies an Assessment, the regular Assessment for any calendar year may not exceed in total that for the immediately preceding year by more than thirty percent (30%) except upon approval of such increase by an affirmative vote of the Members as provided in Article V of the Bylaws.

Section 10. Lien for Assessments; Personal Obligation. All Assessments and Limited Charges chargeable to any Lot, including all fines, fees, charges, late charges, interest and costs of collection thereof (including attorneys' fees), and penalties levied for non-compliance with this Declaration, the By-Laws and any rules and regulations of the Association shall constitute a lien against the Lot in favor of the Association and shall also be the personal obligation of the Owner who was the Owner of the Lot at the time when the Assessment or Limited Charge became due. This lien shall be effective from and after the time the Assessment or Limited Charge becomes due and shall be evidenced by the recording in the public records of the county in which the Community is situate of a claim of lien stating the description of the Lot, the name of the record Owner and the date when the Assessment or Limited Charge became due. This claim of lien shall include only those sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the Association. Such lien shall be secondary and subordinate to the lien of any first mortgage or deed of trust held by or on behalf of any Institutional Lender (hereinafter defined), or any tax lien, on any Lot and the improvements thereon, provided, however, such subordination shall apply only to the assessments which were due and payable prior to the public or private sale of such property pursuant to the mortgage, deed of trust or tax lien. Such sale shall not relieve a Lot from any assessment thereafter becoming due. Upon full payment of all sums secured by the lien and payment of a

preparation fee, the party making payment shall be entitled to a recordable satisfaction of lien to be recorded at his sole expense. As used herein, the term "Institutional Lender" shall mean a state or federally chartered savings bank, savings and loan association, commercial bank or trust company, an insurance company, a mortgage banking company, a commercial finance company, a college or university, a welfare, pension or retirement fund or system of a state or municipality or of a corporation or other entity whose shares are listed on the New York Stock Exchange or NASDAQ or any other nationally recognized stock exchange, or a real estate investment trust or other entity, any of which is at the time applicable hereto regularly involved in the business of making mortgage loans and is authorized to do business in Texas.

Section 11. Effect of Non-Payment of Assessments.

(a) Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at a rate to be determined by the Association, and the Association may assess fines, late charges and costs of collection (including attorneys' fees) in addition to the interest charged hereunder; provided, however, in no event shall the interest rate so charged exceed the Maximum Lawful Rate. As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by the Association in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits the Association to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the payment of Assessments due pursuant to this Declaration. As used herein, the term "Charges" shall mean all fees and charges, if any, contracted for, charged, received, taken or reserved by the Association in connection with the transactions relating to this Declaration which are treated as interest under applicable law or are judicially determined to constitute interest.

(b) Notwithstanding anything in this Declaration to the contrary, if at any time interest at the rate established by the Association, together with any Charges, exceeds the Maximum Lawful Rate, then the rate of interest payable hereunder, together with all Charges, shall be limited to the Maximum Lawful Rate.

(c) Interest charged in connection herewith shall be computed on the basis of a 365 or 366 day year, as the case may be, and shall accrue on the actual number of days any Assessment or other amount due hereunder is outstanding.

Section 12. Method of Enforcing Collection of Assessments. Any Assessment charged against a Lot may be enforced by a lawsuit brought by the Board of Directors on behalf of the Association in an action at law or equity against the Owner personally obligated to pay the same, or by foreclosing upon the lien described in Section 10 hereof against the Lot, or both, and the Association may, additionally or alternatively, seek whatever other remedy is available at law or in equity, including, without limitation, non-judicial foreclosure, in accordance with Texas law. In addition, upon the non-payment of any Assessment, the Association shall have the right to revoke the rights of an Owner in the Association, including the right to vote and the right to use of the Community Facilities; provided the Association shall provide written notice of this

revocation and an opportunity for the defaulting Owner to be heard before the Board of Directors. The decision of the Board of Directors shall be final. The Association shall have the right to reject any partial payment of an Assessment and to require full payment thereof or, in the alternative, to accept a partial payment of an Assessment (provided, however, no such acceptance of a partial payment shall (i) relieve the Owner from the obligation to pay the full amount of the Assessment or (ii) waive any enforcement rights of the Association).

Section 13. Unpaid Assessment at the Time of Execution Sale Against a Lot. In the event that title to a Lot is transferred by sheriff's sale pursuant to execution upon any lien against the Lot, the Board of Directors may give notice in writing of any unpaid Assessment, which is a charge against the Lot but has not been reduced to a lien, to the sheriff and the sheriff shall pay the Assessment of which he has notice out of the proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay, but prior to any distribution of the balance to the former Owner against whom the execution issued. The purchaser at the sheriff's sale shall not be personally liable for unpaid Assessments in respect to such Lot which became due prior to the sheriff's sale of the Lot. To protect its right to collect unpaid Assessments which are a charge against a Lot, the Board of Directors may, on behalf of the Owners, purchase the Lot at sheriff's sale; provided this action is authorized by the affirmative vote of a majority of the Board of Directors. If the Association does so purchase, the Board of Directors shall thereafter have the power to sell, convey, mortgage or lease the purchased Lot to any person whatsoever.

Section 14. Responsibility for Payment of Assessments Upon Transfer of a Lot. Upon the transfer of a Lot, other than a transfer described in Section 13 or Section 15 of this Declaration, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments and Limited Charges which are charges against the Lot as of the date of transfer. This joint and several liability shall be without prejudice to the right of the grantee to recover from the grantor the amount of any such unpaid Assessments; provided, however, that any person who shall have entered into a written agreement to purchase a Lot shall be entitled to obtain a written statement from the Treasurer, the Manager, or any authorized agent of the Association setting forth the amount of unpaid Assessments charged against the Lot, and if the statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Lot after transfer thereof shall be liable for the payment of the amount in excess of the unpaid Assessments shown on the statement.

Section 15. Mortgage Foreclosure. If a Lot is acquired as a result of foreclosure or deed in lieu of foreclosure of a first lien mortgage or deed of trust thereon, the acquirer of title, its successors and assigns, shall not be personally liable for the share of Common Expenses or other charges by the Association pertaining to the Lot or chargeable to the former Owner which accrued prior to acquisition of title. The unpaid charges shall, however, continue to be a personal obligation of the former Owner.

Section 16. Declarant's Assessment Obligations. Neither the Declarant nor any affiliate of the Declarant, nor any transferee of the Declarant which acquires Lot(s) for the purpose of constructing and selling houses thereon and not for use by such transferee as a

residence (a "Builder/Owner") shall be liable for any charges or Assessments levied by the Association against Lots owned by the Declarant or any affiliate of the Declarant or any Builder/Owner; provided, however, the exemption from Assessments for any Builder/Owner shall apply only during the first twelve (12) months in which the Builder/Owner owns a Lot and, upon the expiration of such twelve (12) month period, the Builder/Owner shall become obligated to pay all Assessments thereafter levied against the Lot.

Section 17. Owners' Negligence. Each Owner shall be obligated to reimburse the Association for any expenses incurred by the Association in repairing or replacing any part or parts of the Community Facilities damaged by such Owner's act, omission or negligence or by the act, omission or negligence of such Owner's tenants, agents or guests promptly upon receipt of the Association's statement therefor.

Section 18. Surplus Funds; Ability to Borrow.

(a) Any Common Surplus of the Association remaining after payment of or provision for Common Expenses, including payments to the Association's reserve fund, may be used by the Association as determined by the Board of Directors. The Association shall not be obligated to spend, in any fiscal year, all sums collected through Assessments levied in such year and the Association may carry forward any such Common Surplus, or, at the sole discretion of the Board of Directors, all or a part of such Common Surplus may be credited to the Owners to reduce their future Assessments.

(b) The Association may, pursuant to the By-laws, borrow such funds as may be necessary to perform the duties of the Association. The Declarant may, at any time prior to the Membership Conversion Date, provide to the Association by means of a loan or otherwise (and upon such terms and conditions as are mutually acceptable to the Association and the Declarant) such funds as the Declarant, in its sole determination, desires to provide; provided, however, the Declarant shall not be under any obligation to loan or to otherwise make funds available to the Association.

Section 19. Transfer of Lots. An Owner may transfer all of his fee ownership in the Lot (which must include his membership in the Association) at any time to any other person, and it shall not be necessary to secure the prior consent of the Association, Board of Directors or any other Owner; provided, however, the transferring Owner shall comply with the requirements of this Declaration, including, without limitation, Section 4(h), 14, and 20 hereof. Any such transfer shall encompass the entire Lot, and, except for a replat undertaken by Declarant prior to the transfer of a Lot to any Owner, no lot may be subdivided into or sold as smaller lots.

Section 20. Mandatory Disclosure to Lot Purchaser.

(a) An Owner who sells or otherwise makes a voluntary transfer of his Lot shall provide to his successor in title, at such Owner's expense, a current copy of this Declaration, the By-Laws, all rules and regulations promulgated by the Association, any amendments to the foregoing and any other covenants, conditions or restrictions and related documents (the

"Applicable Documents") which may apply to the Lot. Within fifteen (15) business days of receiving a request for copies of the Applicable Documents from the Owner, the Association shall furnish to the Owner copies of the Applicable Documents to provide to the purchaser. Within thirty (30) business days after the execution of an agreement for the sale of the Lot by the Owner, the Owner shall submit to the Association a certificate signed by the purchaser which certifies that the purchaser has received copies of the Applicable Documents.

(b) Upon the sale of a Lot, the selling Owner shall furnish to the purchaser a certificate issued by the Association, no later than forty-eight (48) hours prior to the transfer of ownership, containing the following information:

- (i) a statement of the current Assessments and Limited Charges payable and any past due Assessments and Limited Charges due and payable from the selling Owner;
- (ii) a statement of any other fees payable by the selling Owner;
- (iii) a statement of any special Assessments for capital expenditures currently proposed or adopted by the Association for the current and next two succeeding fiscal years, if these have been determined;
- (iv) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified project;
- (v) a copy of the most recent regularly prepared balance sheet and income and expense statement, if any, of the Association; and
- (vi) a copy of the current operating budget of the Association.

The Association shall fully cooperate in the preparation of this information certificate to a selling Owner within fifteen (15) days after it is requested in writing by the Owner. Provided that the Association makes a reasonable, good faith effort to provide the information, the Association shall not be liable for any errors or omissions in the information certificate. An Owner providing this certificate to a purchaser is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate. A purchaser shall not be liable for any unpaid Assessments greater than those set forth in the certificate. The Association shall have the power to assess all costs of preparation of the certificate to the selling Owner and require payment thereof prior to the delivery of the certificate to the selling Owner.

Section 21. Insurance and Indemnification.

(a) Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Facilities and any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, agents and employees, the Committee and all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered

good, sound insurance coverage for properties similar in construction, location, and use to the Property. Such insurance may include, by way of example, and not in limitation:

(i) Insurance against loss or damage of Improvements by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value of the Improvements, excluding foundation and excavation costs as determined annually by the insurance carrier;

(ii) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Facilities; and

(iii) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

(b) Insurance Proceeds. The Association and the Members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required herein, remaining after satisfactory completion of such repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Facilities.

(c) Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Section 8 of this Declaration to cover the deficiency.

(d) Indemnification. Neither the Declarant nor any officer or director of the Association nor any member of the Committee shall be liable to any Owner or any person claiming by or through any Owner or otherwise for any act or omission in the performance of the duties of such Declarant or officer or director of the Association, or member of the Committee except only if such act or omission shall be judicially declared to constitute fraud or intentional and willful misconduct. The Association shall and does hereby agree to indemnify the Declarant, members of the Committee and the officers and directors of the Association jointly and severally against all claims, demands, actions and proceedings and all expenses in connection therewith arising from the good faith exercise of their duties pursuant to this Declaration.

Section 22. Use Restrictions. The following restrictions shall apply to each Lot in the Community, which restrictions may not be amended or revoked without Declarant's consent until such time as Declarant conveys the last Lot in the Community owned by Declarant:

(a) Residential Purposes. Each Lot shall contain not more than one single-family dwelling unit and shall be used for residential purposes only; provided, however, that Declarant and any Builder/Owner shall have the right to maintain construction or sales offices, signs, specialty fencing, specialty lighting and other displays, and to otherwise use any Lot for the purposes of construction and sales of Lots in the Community, for so long as Declarant or the

Builder/Owner holds title to the Lot. As used in this Subsection 20(a), the term "residential purposes" shall mean use and occupancy as a detached single-family dwelling, which use may include, as an accessory to the residential use, a home occupation having the following characteristics:

- (i) being a business, occupation, or profession conducted strictly and solely within the dwelling unit by a resident thereof; and
- (ii) employing only members of the immediate family residing with the dwelling; and
- (iii) having no external evidence of the occupation detectable outside the residential structure, including, without limitation, no advertising signs or displays, noise, smoke, dust, fumes, glare, vibration, electrical or telephone transmission disturbance or storage of materials or equipment;
- (iv) having no separate entrance for business use, no traffic or parking of vehicles evidencing conduct of a business, and not including any on-premises sales to or regular visits by members of the general public; and
- (v) the location and nature of which use has been specifically approved by the Board of Directors.

All uses shall comply with the Performance Standards (as set forth in the City zoning code) and any other nuisance regulations contained in the City zoning code. In the event of any conflict between the provisions of this Section 22 and any applicable City ordinance or regulation, the more restrictive provision shall control.

(b) No Nuisances. No noxious or offensive activity shall be carried on upon a Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No trash, garbage, metal, scrap or other waste may be placed or stored upon a Lot, except in sanitary containers approved by the Committee and used in compliance with municipal requirements.

(c) No Trailers, Campers, etc. No trailer, boat, camper-topped truck or other camping vehicle, bus, mobile home or other recreational vehicle, hovercraft, aircraft, commercial vehicle or unlicensed vehicle may be placed, constructed or stored on a Lot at any time, either temporarily or permanently, unless located within a completely enclosed garage which is an accessory to the single-family dwelling unit on the Lot; provided, however, this prohibition shall not apply to construction vehicles temporarily parked and being used in construction of a residence upon a Lot.

(d) No Livestock and Poultry. No livestock, including, without limitation, cattle, horses, sheep, pigs, poultry, bees or reptiles of any kind shall be kept or bred on any Lot. Only such animals as are normally considered to be household pets shall be permitted on a Lot,

provided all such animals shall be properly tagged for identification and shall be restrained or confined within the Owner's residence or Lot and shall be no more than the number established by City ordinance. Notwithstanding the foregoing, the Declarant may use other property owned by the Declarant, including Supplemental Property, adjacent to or in the vicinity of the Property for agricultural use, including livestock.

(e) No Signs. No signs of any kind shall be displayed to the public view on any Lot or inside the dwelling, except that not more than one real estate sign indicating that a Lot is for sale or for rent, may when applicable be placed on a Lot provided that the design, specifications and content of such sign shall have been approved in advance and in writing by the Committee.

(f) Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved in Section 7 hereof. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct, redirect or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in 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.

(g) Fences, Pools, Tennis Courts, Storage Buildings, Additions, Clotheslines. All fences shall be sturdily constructed, and shall not exceed six (6) feet in height. The location, design and specifications of all fences and any alterations thereto are subject to the review and approval of the Committee, as set forth in Section 23(g) hereof, and shall be constructed of wrought iron only. Privacy fences around in-ground pools may be constructed of cedar and shall not exceed six (6) feet in height. No Owner shall erect or permit to be erected on any Lot any other type of fence or any in-ground pool, tennis court or other outdoor game court, storage shed or other exterior building, addition or improvement, without the prior written consent and design approval of Declarant until such time as Declarant no longer owns a Lot in the Community, and thereafter without the prior written consent and design approval of the Committee. No stockade fence or similar solid fence or any other structure that blocks one's view will in any way prohibit unencumbered view of the Property will be permitted. Under no circumstances may any fences, hedges or mass plantings of any type be erected or planted in front of the front building line of the dwelling on a Lot. No clothesline or other apparatus for the drying of clothes or any above-ground pool may be constructed or installed on any Lot. Each Owner shall act to insure that the Property and each Lot remain open to light and air. The grading of any Lot shall not be changed in any manner that will cause an adverse effect on any adjacent Lots.

(h) Sight Distances at Intersections. No wall or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. No tree shall be permitted to remain within the distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight lines. In the event any

applicable law, ordinance or regulation imposes a more restrictive requirement for maintaining site distances at intersections, then the more restrictive requirement shall govern.

(i) No Exterior Television and Radio Towers or Antenna. All television or radio antennas shall be located in the attic of the main residential structure on a Lot, except that a satellite dish not to exceed 24 inches in diameter may be located on a Lot provided such satellite dish is completely screened from view from any front yard or public street. No other radio or television tower, pole, satellite dish, antenna or similar structure shall be erected on any part of any Lot or dwelling, including but not limited to radio or television mast antennas.

Section 23. Architectural Review Committee.

(a) Composition. The Committee shall be composed of three (3) individuals or business entities selected and appointed by Declarant until the Membership Conversion Date. From and after the Membership Conversion Date the members of the Committee shall be appointed by the Board of Directors. Each member of the Committee shall serve for a term of three (3) years and may be reappointed for a maximum of two (2) additional terms. The members of the Committee shall appoint a Chairman from among their number. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor to serve any unexpired term. Each member of the Committee shall be generally familiar with residential and community development design matters and knowledgeable about the Declarant's and the Association's concern for a high level of taste and design standards within the Property.

(b) Address. The address of the Committee shall be the address of the principal office of the Association. A current list of the names, qualifications and business addresses of the members of the Committee shall be maintained on file at such principal office.

(c) No Compensation; Expenses. The members of the Committee shall receive no compensation for their services as members thereof but shall be reimbursed by the Association for bona fide out-of-pocket expenses incurred by them in the performance of their duties as members of the Committee, provided, however, the payment of compensation to any person who is also a member of the Committee for services rendered to the Association or the Declarant in any other capacity shall not be prohibited hereby. Expenses of the Committee shall be included in the Common Expenses.

(d) Meetings. The Committee shall meet at the convenience of the members thereof and as often as necessary in order to transact its business and perform its functions. A majority of the Committee shall constitute a quorum for the transaction of its business. At any time at which a quorum of the Committee is present, a majority of those members of the Committee present shall decide any question brought before the meeting.

(e) Purpose. The Committee shall function as the representative of the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best

efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Property.

(f) No Liability. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct) arising out of services performed pursuant to this covenant.

(g) Matters Subject to Review. The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property. No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications and a plot plan have been submitted to and approved in writing by a majority of the Committee as to:

(i) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets;

(ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;

(iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon; drainage arrangement;

(iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

(h) Submission of Plans and Specifications. Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The application shall identify and state the address of the Owner or designated representative of the Owner who should receive any notices under this Section 23(h) (such Owner or designated representative being hereinafter referred to as the "Applicant"). The Committee is authorized to request the submission of samples of proposed construction materials. If the Committee deems the plans and specifications submitted to be insufficient for it to render a decision, the Committee may return such plans to the Applicant with instructions for submission of a complete application. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Applicant. If found not to be in compliance with this Declaration, one set of such plans and specifications shall be returned marked "Disapproved," accompanied by a reasonable statement of items found not to comply with this Declaration. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's determination of approval or disapproval (i) shall be made at the sole discretion of the Committee, and (ii) shall be

delivered to the Applicant in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of submission of a completed application, then such plans shall be submitted to the Board of Directors. If the Board of Directors fails to approve or disapprove such plans and specifications within fifteen (15) days after submission thereof, then the Committee and Association approval shall be presumed. Neither the Committee, the Declarant nor the Board of Directors or any architect, agent, representative or employee thereof, shall be responsible or liable in any respect for any defect in plans and specifications submitted, revised or approved in accordance with the foregoing provisions or for any structural or other defects in any work done pursuant to or in accordance with any such plans and specifications approved by the Committee.

(i) Rules and Regulations. The Committee shall maintain on file current rules and regulations which shall be readily available to the Owners and prospective Members of the Association.

Such rules and regulations shall include among other things:

- (i) any land use restrictions recorded against the Property;
- (ii) the general criteria by which construction, site, design, and landscape plans shall be evaluated;
- (iii) the procedure by which plans and specifications shall be submitted to the Committee for approval;
- (iv) any other information which the Committee considers helpful or relevant in evaluating and/or expediting approval or disapproval of plans and specifications; and
- (v) the general plan of development for the Property.

(j) Supplemental Bulletins. The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design and use of private property. Such bulletins shall supplement this Declaration and are incorporated herein by reference.

Section 24. Compliance and Default.

(a) The Board of Directors shall have the power to adopt, amend and enforce compliance with any reasonable rules and regulations relative to the operation, use and occupancy of the Lots and the Community Facilities consistent with the provisions of this Declaration. Any rules and regulations adopted or amended by a resolution duly approved by the Board of

Directors in accordance with the By-Laws shall be binding upon all Owners and occupants of Lots.

(b) Failure of an Owner to comply with any provision of this Declaration or the By-Laws or any rules and regulations adopted pursuant thereto shall entitle the Association to the remedies provided in this Declaration and also to the following relief, none of which shall be exclusive of any other remedies:

(i) Suits: Failure to comply with the terms of this Declaration, the By-Laws and any rules and regulations adopted pursuant thereto, as they may be amended from time to time, shall entitle the Association to sue for the recovery of damages or for injunctive relief, or both. The relief shall not be exclusive of other remedies provided at law or in equity.

(ii) Costs and Attorneys' Fees: In any proceeding arising because of an alleged failure of an Owner to comply with the terms of this Declaration, the By-Laws and any rules and regulations adopted pursuant thereto, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees; provided, however, that no costs or attorneys' fees may be recovered against the Board of Directors in any action unless the court shall first expressly find that the Board of Directors acted in bad faith.

(iii) No Waiver of Rights: The failure of the Declarant, the Association or the Board of Directors to enforce any covenant, restriction or other provision of this Declaration, the By-Laws or any rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

Section 25. Complaint and Hearing Procedure; Actions by Owners. No Owner or occupant shall have the right to object, challenge or commence any suit at law or in equity or take any other action under any act, power or authority now in force or hereafter to be enacted except after following procedures established by the Board of Directors by rule or regulation consistent with the provisions of the By-Laws.

Section 26. Amendments.

(a) Subject to the other provisions of this Declaration relative to amendment, this Declaration may be amended in the following manner:

(i) Before Any Conveyances: Prior to the transfer of any Lot by the Declarant to an Owner other than a Builder-Owner, the Declarant may amend this Declaration in any legal fashion which the Declarant may deem appropriate. After the first such transfer of title to an Owner, the terms of the following Subsection shall apply.

(ii) By Resolution: An amendment may be proposed by either the Board of Directors or by at least twenty percent (20%) of either class of Members. No proposed amendment shall be effective unless it has been affirmatively adopted by at least fifty-one percent (51%) of the votes cast by the Members. Notice of the subject matter of a proposed amendment

shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered, and shall be served upon all Owners in the manner hereinafter provided for service of notices. In addition, any proposed amendment materially affecting the maintenance obligations of the Declarant or affecting any right or obligation of the City of McKinney (the "City") shall be subject to the prior written approval of the City, which approval shall not be unreasonably withheld. Any new declaration or agreement replacing this Declaration shall afford to the City rights substantially the same as those granted in favor of the City in this Declaration.

(b) No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers or options of the Declarant at any time unless the Declarant shall join in the execution of such amendment. As long as the Declarant owns any portion of the Property, the Declarant may amend this Declaration or the By-Laws in any manner which the Declarant believes either is necessary or desirable for the development, marketing, administration or operation of the Property and will not materially adversely affect these Owners.

(c) A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by the officers of the Association with the formalities of a deed. The amendment of the Declaration shall be effective when the certificate and copy of the amendment are recorded. A copy of any amendment shall also be delivered to the City.

(d) If any amendment of this Declaration or the By-Laws is necessary in the judgment of the Board of Directors to change, correct or supplement anything appearing or failing to appear therein which is incorrect, defective or inconsistent with anything in either this Declaration or the By-Laws, or if an amendment is necessary to conform to the requirements of FNMA, FHLMC, HUD or VA or other institutional purchasers, guarantors or insurers of first mortgage liens with respect to the Community or to the requirements of the municipality in which the Property is located, the Board of Directors may at any time and from time to time effect an appropriate corrective amendment without the approval of the Owners upon receipt by the Board of Directors of an opinion from independent counsel to the effect that the proposed amendment is permitted by the terms of this sentence.

Section 27. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term not to exceed twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated, at least six (6) months before the commencement of any extension, by a vote of not less than seventy-five percent (75%) of the Members, evidence of which shall be recorded and such termination shall have been approved by the City.

Section 28. Termination By Unanimous Agreement. This Declaration may be terminated at any time by the unanimous agreement, in writing, in the form of a Deed of Revocation, executed by all of the Owners and all holders of mortgages or judgment or other liens affecting the Lots. The Deed of Revocation shall become effective upon being recorded.

Section 29. Action by City. If the Association fails to carry out its duties as specified in this Declaration and such failure results in conditions creating an imminent threat to the public health, safety or welfare, the City or its lawful agents may, after providing not less than thirty (30) days' prior written notice and opportunity to cure such conditions to both the Association and the Declarant:

- (i) remove any landscape systems, features or elements located on the Community Facilities and/or any Lots owned by Declarant that have ceased to be maintained in compliance with applicable laws or ordinances by the Association;
- (ii) perform the responsibilities of the Association if the Association fails to do so in reasonable compliance with any of the provisions of this Declaration or of any applicable City codes or regulations;
- (iii) assess the Association for reasonable and necessary costs incurred by the City in performing said responsibilities if the Association fails to do so;
- (iv) exercise directly against any Lot all lien rights as such rights are granted by the Association or are available under applicable law to the City in the exercise of its authority as a Texas municipality; and/or
- (v) avail itself of all enforcement actions granted to the Association by this Declaration or other reasonable and appropriate enforcement actions available to the City pursuant to state law or City codes and regulations.

SHOULD THE CITY EXERCISE ITS RIGHTS AS SPECIFIED ABOVE, THE ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, TO THE EXTENT OF ANY NEGLIGENCE BY THE ASSOCIATION, FROM ANY AND ALL COSTS, EXPENSES, SUITS, DEMANDS, LIABILITIES OR DAMAGES, INCLUDING ATTORNEYS' FEES AND COSTS OF SUIT, ARISING OUT OF THE SOLE OR CONCURRENT NEGLIGENCE OF ASSOCIATION AND WHICH CLAIMS ARE MADE OR INCURRED DURING ANY PERIOD WHEREIN THE CITY HAS UNDERTAKEN THE REMOVAL OF ANY LANDSCAPE SYSTEMS, FEATURES OR ELEMENTS THAT CEASE TO BE MAINTAINED BY THE ASSOCIATION OR FROM THE CITY'S PERFORMANCE OF THE AFOREMENTIONED OPERATIONS, MAINTENANCE OR SUPERVISION RESPONSIBILITIES OF THE ASSOCIATION DUE TO THE ASSOCIATION'S FAILURE TO PERFORM SAID DUTIES. Notwithstanding the foregoing, in no event shall the Association be obligated to indemnify the City for the City's sole or concurrent negligence. In addition, the City, its agents, representatives and employees shall have right of access to and over the Community Facilities and/or Lots for the purpose of maintaining, improving and preserving the same; provided; however, the City shall, to the extent practicable, seek to minimize any interference with the use and enjoyment of the Community Facilities and of the Lots due to any action taken by the City pursuant to this Section 29 of the Declaration. When the City enforces any City lien, such lien, when delinquent, may be enforced by the City by suit, judgment, and judicial or non-judicial foreclosure in accordance with Texas law.

The right and authority of the City to take action pursuant to this Section 29 shall cease and terminate when the Association shall present to the City reasonable evidence of the Association's willingness and ability to immediately resume its duties under this Declaration.

Section 30. Notice. All notices required to be served pursuant to this Declaration or the By-Laws shall be sufficient if delivered as follows:

(a) If to an Owner: to the Lot or mailed to the Owner at the Lot mailing address by regular mail;

(b) If to the Association: by certified mail, return receipt requested, addressed to

Mallard Lakes at McKinney Homeowners Associates, Inc.
c/o Toll Bros., Inc.
4010 Eider Drive
McKinney, TX 78070

or any such other location as determined by the Boarding Directors of the Association.

(c) If to the Declarant: to the business office of the Declarant by hand delivery or regular mail addressed to

Mallard Lakes, L.P.
c/o Toll Bros., Inc.
4010 Eider Drive
McKinney, TX 78070

The effective date of a notice shall be the date of delivery to the Lot or the Association's or the Declarant's in the case of actual delivery and a date five (5) days after deposit in the mail in the case of notice sent by mail.

Section 31. Severability. If any provisions of this Declaration are determined to be invalid, that determination shall not affect the validity or effect of the remaining provisions hereof, the By-Laws or any rules and regulations, all of which shall continue in effect as if the invalid provisions had not been included herein.

Section 32. Headings. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration.

Section 33. Gender; Plurals. Words of any gender used in this Declaration shall be held and construed to include any other gender; words used in this Declaration in the singular shall be held and construed to include the plural, and vice versa, as the context may require.

Section 34. Effective Date. This Declaration shall become effective when it has been duly filed of record.

Section 35. Binding Nature. This Declaration shall inure to the benefit of and shall be binding on the successors or assigns of the Declarant and the Association.

IN WITNESS WHEREOF, the Declarant has set its hand and seal the day and year first written above.

DECLARANT:

MALLARD LAKES, L.P.

By: Toll TX GP Corp, General Partner

Attest:

Jim Caton
Name: JIM CATON
Title: _____

By: Elvio P. Bruni
Name: Elvio P. Bruni
Title: ASS'T SEC.

UNOFFICIAL

STATE/Commonwealth of Texas :

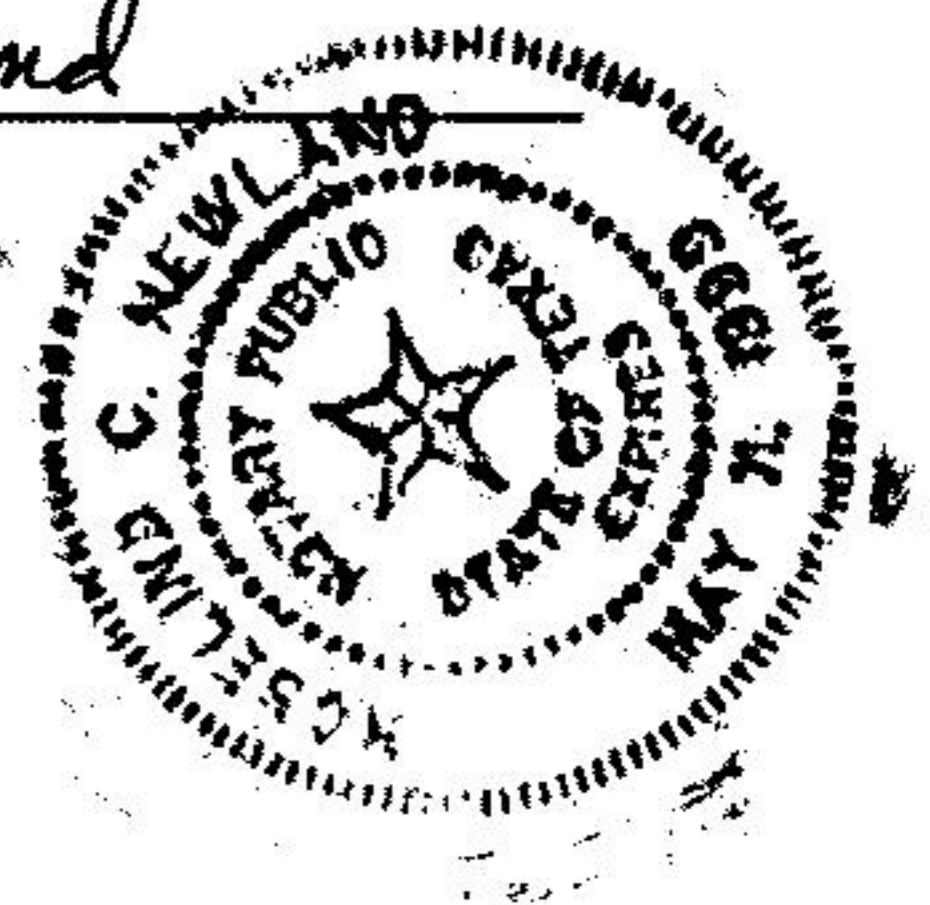
: SS.

County of Collin :

On this, this 11 day of December, 1995 before me, a notary public, personally appeared Elvio P. Bruni who acknowledged himself to be the Assist. Sec. of Toll TX GP Corp., a Texas Corporation, in its capacity as the sole general partner of Mallard Lakes, L.P., a Texas limited partnership and that he as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporate general partner of the limited partnership by himself as Assist. Sec.

In witness whereof, I hereunto set my hand and official seal.

Roselind C. Newland
Notary Public



UNOFFICIAL

**LEGAL DESCRIPTION
OF THE PROPERTY**

Unofficial

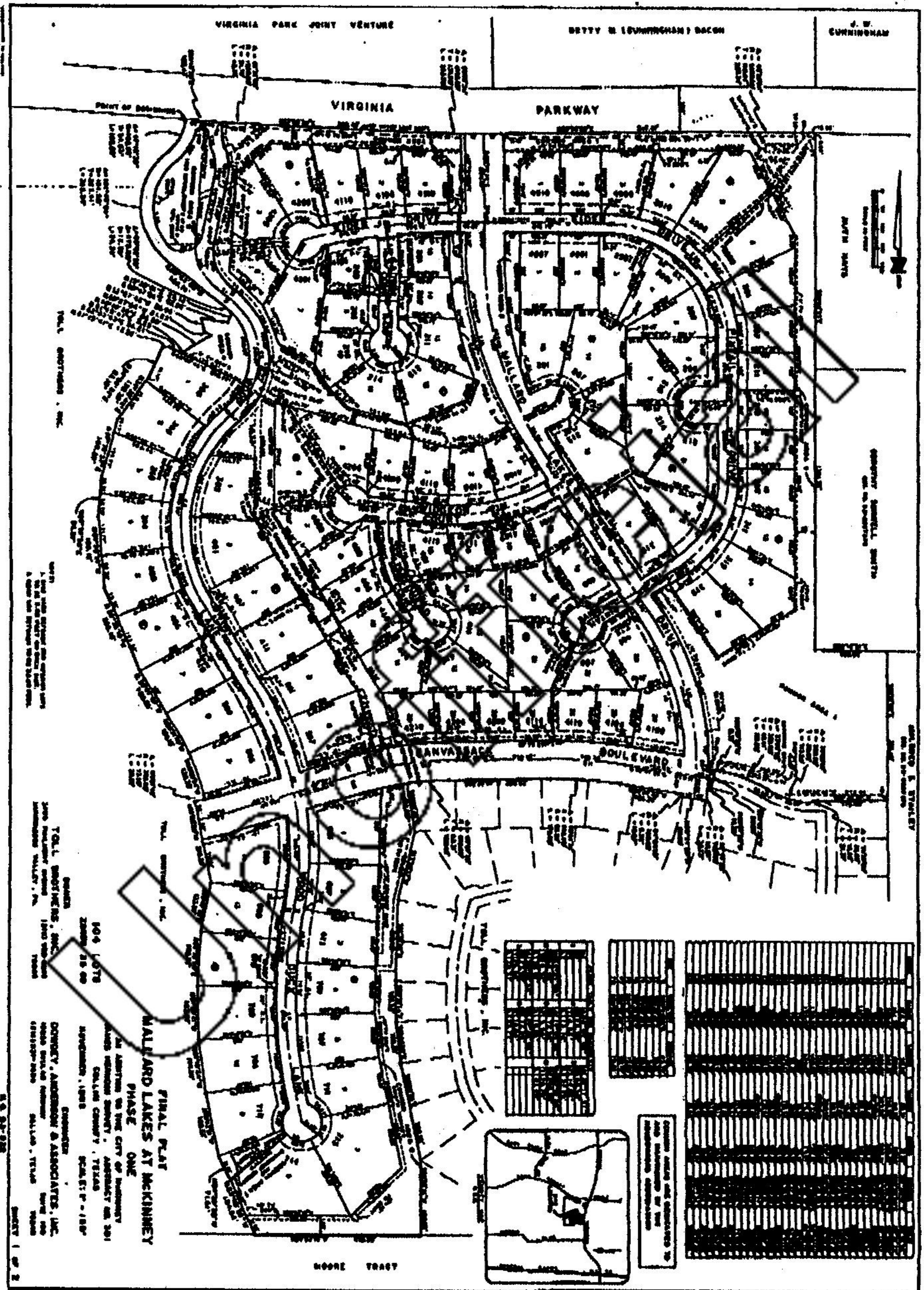
EXHIBIT "A"

~~24-~~ 27

PLAN OF COMMON FACILITIES

Unofficial

EXHIBIT "B"



TOLL, SHOOTERS, INC.
 1006 LOTS
 2000 25 00

FINAL PLAN
MALLARD LAKES AT MCKINNEY
PHASE ONE
 AS APPLICABLE TO THE CITY OF MCKINNEY,
 DALLAS COUNTY, TEXAS
 APPROVED: 1995
 SCALE: 1" = 100'
 DOWDEY, ANDERSON & ASSOCIATES, INC.
 4800 BRIDGEWAY, SUITE 200
 DALLAS, TEXAS 75244

SHEET 1 OF 2
 10-24-95

THENCE S. $00^{\circ}05'25''$ E., 1364.26 feet leaving the said south line of Virginia Parkway to a $\frac{1}{2}$ " iron rod found for corner;
THENCE S. $89^{\circ}16'21''$ E., 180.62 feet to a $\frac{1}{2}$ " iron rod found for corner;
THENCE S. $00^{\circ}27'02''$ E., 1562.32 feet to a $\frac{1}{2}$ " iron rod found for corner;
THENCE N. $89^{\circ}50'10''$ W., 1139.01 feet to a $\frac{1}{2}$ " iron rod found for corner;
THENCE N. $89^{\circ}53'19''$ W., 1033.22 feet to a $\frac{1}{2}$ " iron rod found for corner;
THENCE S. $89^{\circ}14'11''$ W., 1315.40 feet to a $\frac{1}{2}$ " iron rod found for corner;
THENCE N. $00^{\circ}10'46''$ E., 1632.88 feet to a $\frac{1}{2}$ " iron rod found for corner
in the center of a creek;

THENCE along said center of creek the following courses and distances;
N. $71^{\circ}13'13''$ E., 113.95 feet to a point for corner; Thence S. $55^{\circ}24'19''$ E., 167.01 feet to a point for corner; Thence N. $04^{\circ}24'02''$ W., 68.11 feet to a point for corner; Thence N. $81^{\circ}20'17''$ E., 135.41 feet to a point for corner; Thence S. $21^{\circ}24'28''$ E., 52.26 feet to a point for corner; Thence S. $76^{\circ}07'49''$ E., 80.79 feet to a point for corner; Thence N. $71^{\circ}08'46''$ E., 70.48 feet to a point for corner; Thence N. $23^{\circ}26'03''$ E., 186.31 feet to a point for corner in a conservation lake;

THENCE N. $17^{\circ}27'33''$ E., 431.15 feet to a point for corner in said lake;
THENCE N. $06^{\circ}49'43''$ W., 348.51 feet to a point for corner in said lake;
THENCE N. $83^{\circ}11'51''$ W., 212.99 feet to a point for corner in the center of a creek;

THENCE along said center of creek the following courses and distances;
S. $63^{\circ}43'11''$ W., 145.10 feet to a point for corner; Thence N. $75^{\circ}41'33''$ W., 74.26 feet to a point for corner; Thence S. $36^{\circ}48'44''$ W., 92.87 feet to a point for corner; Thence S. $88^{\circ}03'17''$ W., 60.08 feet to a point for corner; Thence N. $38^{\circ}18'56''$ E., 48.48 feet to a point for corner; Thence N. $78^{\circ}48'48''$ W., 62.44 feet to a point for corner; Thence S. $20^{\circ}51'59''$ W., 79.48 feet to a point for corner; Thence S. $14^{\circ}49'47''$ E., 27.19 feet to a point for corner; Thence S. $17^{\circ}23'49''$ W., 25.70 feet to a point for corner; Thence N. $82^{\circ}09'15''$ W., 58.58 feet to a $\frac{1}{2}$ " iron rod found for corner on the said east line of Lake Forest Drive, and being in a curve to the left running in a northerly direction and having a central angle of $03^{\circ}26'59''$ a radius of 1120.00 feet and a chord bearing of N. $01^{\circ}28'09''$ E.;

THENCE along the said east line of Lake Forest Drive, and along said curve, the following courses and distances; 67.44 feet to the end of said curve a $\frac{1}{2}$ " iron rod found for corner; Thence N. $00^{\circ}15'21''$ W., 308.26 feet to a $\frac{1}{2}$ " iron rod found for corner, and being the beginning of a curve to the right having a central angle of $01^{\circ}58'02''$ a radius of 3940.00 feet and a chord bearing of N. $00^{\circ}43'41''$ E.; Thence along said curve 135.28 feet to the end of said curve, a $\frac{1}{2}$ " iron rod found for corner; Thence N. $01^{\circ}42'42''$ E., 332.66 feet to the Point of Beginning and containing 216.746 acres of land.

BOUNDARY DESCRIPTION

BEING a tract of land situated in the James Herndon Survey, Abstract No. 391 in the City of McKinney, Collin County, Texas and being part of a 236.113 acre tract as described in a deed from John L. Hancock, Trustee, to Kenneth E. Burg et ux, dated May 26, 1966 and recorded in Volume 674, Page 159 of the Collin County Deed Records and being more particularly described as follows:

BEGINNING at a 1/4" iron rod found for corner at the intersection of the south line of Virginia Parkway (a 120 foot right-of-way) with the east line of Lake Forest Drive (a 120 foot right-of-way);

THENCE S. 77°29'19" E., 345.70 feet along the said south line of Virginia Parkway to a 5/8" iron rod found for corner;

THENCE S. 00°48'22" W., 283.50 feet leaving the said south line of Virginia Parkway to a 1/4" iron rod found for corner;

THENCE N. 81°06'38" E., 84.75 feet to a 1/4" iron rod found for corner;

THENCE S. 09°40'42" W., 45.00 feet to a 1/4" iron rod found for corner;

THENCE N. 58°55'08" E., 108.66 feet to a 1/4" iron rod found for corner;

THENCE N. 46°07'23" E., 67.04 feet to a 1/4" iron rod found for corner;

THENCE N. 21°19'54" E., 56.30 feet to a 1/4" iron rod found for corner;

THENCE S. 87°00'35" E., 120.34 feet to a 1/4" iron rod found for corner;

THENCE N. 58°38'59" E., 128.45 feet to a 5/8" iron rod found for corner on the said south line of Virginia Parkway;

THENCE along the said south line of Virginia Parkway the following courses and distances; S. 78°21'41" E., 151.94 feet to a 5/8" iron rod found for corner, and being the beginning of a curve to the left having a central angle of 08°59'54" a radius of 1360.00 feet and a chord bearing of S. 83°01'38" E.; Thence along said curve 213.59 feet to the end of said curve, a 5/8" iron rod found for corner; Thence S. 87°21'35" E., 128.74 feet to a 5/8" iron rod found for corner, and being the beginning of a curve to the right having a central angle of 81°34'09" a radius of 1000.00 feet and a chord bearing of S. 86°34'30" E.; Thence along said curve 27.39 feet to the end of said curve, a 5/8" iron rod found for corner; Thence S. 85°47'26" E., 424.54 feet to a 5/8" iron rod found for corner, and being the beginning of a curve to the left having a central angle of 01°36'00" a radius of 1560.00 feet and a chord bearing of S. 86°35'26" E.; Thence along said curve 43.56 feet to the end of said curve, a 5/8" iron rod found for corner; Thence S. 87°23'26" E., 390.45 feet to a 5/8" iron rod found for corner, and being the beginning of a curve to the left having a central angle of 03°37'34" a radius of 4160.00 feet and a chord bearing of S. 89°12'13" E.; Thence along said curve 263.28 feet to the end of said curve, a 1/4" iron rod found for corner; Thence N. 88°59'00" E., 547.41 feet to a 1/4" iron rod found for corner, and being the beginning of a curve to the right having a central angle of 02°23'51" a radius of 5669.58 feet and a chord bearing of S. 89°49'05" E.; Thence along said curve 237.24 feet to the end of said curve a 1/4" iron rod found for corner;

Return to:
Jim Caton
4010 Leiden Dr.
McKinney, Tx. 75070

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW (THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me, and was duly RECORDED, on the Official Public Records of Real Property of Collin County, Texas on

DEC 14 1995

Helen Starnes

COUNTY CLERK, COLLIN COUNTY, TEXAS



Filed for Record in:
COLLIN COUNTY, TX
HONORABLE HELEN STARNES

On 1995/12/14

At 2:59P

Number: 95- 0093627
Type : RB 73.00

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