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PRESENTED
FOR
REGISTRATION

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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

MAY 12 8 59 AM '86

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MALLARD TRACE

CHARLES E. CROWDER
REGISTER OF DEEDS
MECKLENBURG CO. N.C.

FILE FOR JUDICIAL REGISTRATION
John Crosland Company
P. O. Box 11231
Charlotte, NC 28221

DAVE BYS
PERRY PATRICK PARKER & HICKLEY

THIS DECLARATION, made on the date hereinafter set forth by John Crosland Company, a North Carolina corporation, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described in Section 1 of Article II of this Declaration, which real property is a portion of a residential development known as Mallard Trace; and

WHEREAS, Declarant desires to insure the attractiveness of the individual lots and community facilities within this portion of Mallard Trace and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the said property and to provide for the maintenance of the subdivision entrance, landscaped islands located in the street rights-of-way located within Mallard Trace, and land in the street right-of-way of Mallard Creek Road and a maintenance easement along Mallard Creek Road; and, in order to accomplish these objectives, deems it advisable to subject the real property described in Section 1 of Article II, together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth; and

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in Mallard Trace and the residents' enjoyment of the specific rights, privileges and easements in the community properties that an organization be created to which will be delegated and assigned the powers of maintaining easement areas, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Developer has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Mallard Trace Homeowners Association.

NOW, THEREFORE, the Declarant declares that the real property described in Section 1 of Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the real property (except as provided in Article V, Section 9 hereafter) and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Mallard Trace Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

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<>	17.00
CASH	17.00

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Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having such interest in a lot solely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the "Existing Property" described in Article II, Section 1 hereof and any additions thereto, as are or shall become subject to this Declaration and any Supplementary Declaration under the provisions of Article II hereof.

Section 4. "Maintenance Easement" shall mean and refer to any easement designated "Maintenance Easement" on any plat of the property described on Schedule A attached hereto and duly recorded in the Mecklenburg Public Registry in accordance with the provisions of this Declaration. The "Maintenance Easement" shall be in favor of the Association and shall be for the maintenance of subdivision signs, fences, landscaping at the subdivision entrances and landscaped islands in the road rights-of-way and landscaping and maintenance of portions of the rear yards abutting Mallard Creek Road.

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown upon any recorded subdivision map of the Properties, with the exception of any streets or easements shown on any recorded map. In the event any lot is increased or decreased in size by resubdivisions, through recordation of new subdivision plats, any such newly platted lot shall thereafter constitute a lot for the purposes of this Declaration.

Section 6. "Declarant" shall mean and refer to John Crosland Company and those of its successors and assigns, if any, to whom the rights of Declarant hereunder are expressly transferred hereafter, in whole or in part, and subject to the terms and conditions as the Declarant may impose.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in Mecklenburg County, North Carolina and is shown on map recorded in Map Book 21 at Page 325 in the Office of the Register of Deeds for Mecklenburg County.

This property shall be herein referred to as "Existing Property".

Section 2: Additions to Existing Property. Additional property may be brought within the scheme of this Declaration and the jurisdiction of the Association in the following ways:

(a) Additional land within the area described in the metes and bounds description attached hereto as Schedule A and incorporated herein by reference may be annexed to the Properties by Declarant and brought within the scheme of this Declaration and

within the jurisdiction of the Association, in future stages of development, without the consent of the Association or its members; provided, however, that said annexations, if any, must occur within ten (10) years after the date of this instrument.

(b) Additional residential property (and common area), outside of the area described in the aforementioned SCHEDULE A may be annexed to the Properties and brought within the scheme of this Declaration and the jurisdiction of the Association with the consent of the members entitled to at least two-thirds (2/3) of the votes appurtenant to all Class A lots and at least two-thirds (2/3) of the votes appurtenant to all Class B lots, if any, as herein-after defined in Article III, Section 2. The Association may participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes as the Association, thereby adding to the Association, or to a surviving homes association, the properties, rights and obligations of the non-profit corporation with which it merges or consolidates. Any such merger or consolidation shall have the assent of the members as provided above in this subsection (b), and no such merger or consolidation shall revoke, change or add to any of the provisions of this Declaration except as herein provided.

(c) The additions authorized under Subsection (a) and (b) shall be made by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessment for their just share of the Association's expenses. Said Supplementary Declarations may contain such complementary additions and modification of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect only the different character of the added properties and as are not inconsistent with the provisions of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the lots. There shall be two classes of lots with respect to voting rights:

(a) Class A Lots. Class A lots shall be all lots except Class B lots as the same are hereinafter defined. Each Class A lot shall entitle the Owner(s) of said lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any lot, all such persons shall be members and the voting rights appurtenant to said lot shall be exercised as they, among themselves, determine.

(b) Class B Lots. Class B lots shall be all lots owned by Declarant which have not been converted to Class A lots as provided in paragraphs (1) or (2) below. The Declarant shall be entitled to three (3) votes for each Class B lot owned by Declarant.

The Class B lots shall cease to exist and shall be converted to Class A lots:

(1) When the total number of votes appurtenant to the Class A lots equals the total number of votes appurtenant to the Class B lots; provided, that the Class B lots shall be reinstated with all rights, privileges and responsibilities of such Class, if, after conversion of the Class B Lots to Class A lots hereunder, additional land containing lots is annexed to the existing property pursuant to Article II above, thus making the Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur); or

(2) On December 31, 1991,

whichever event shall first occur.

When the Class B lots cease to exist and are converted to Class A lots, Declarant shall have the same voting rights as other owners of Class A lots.

ARTICLE IV

MAINTENANCE EASEMENTS

The Association, its successors and assigns, shall have a "Maintenance Easement" over those portions of the Lots adjacent to Mallard Creek Road, designated "Maintenance Easements" on the recorded maps for Mallard Trace. The Maintenance Easement shall be for the purpose of installation and maintenance of subdivision entrance signs, fences, and landscaping located within the Maintenance Easement Area. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such areas other than those initially installed by Declarant without the Association's prior written approval. Association shall at all times have the right of access for its employees, agents and subcontractors over the Maintenance Easement for the purpose of installing, maintaining, repairing and replacing the subdivision entrance signs and fences and for the purpose of landscaping, planting, mowing and maintaining the area within the Maintenance Easement. Association shall also maintain the landscaped island located in the road right-of-way at the entrance to Mallard Trace from Mallard Creek Road.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot in Use by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such property at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid assessment charges are not the personal obligation upon such Owner's

successors in title unless expressly assumed by the successors in title, the unpaid assessment charges continue to be a lien upon the property against which the assessment has been made.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Properties, the enforcement of these Covenants and the rules of the Association, and in particular for the improvement, and maintenance of the Properties and providing the services and facilities devoted to this purpose and related to the use and enjoyment of any Maintenance Easements, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purposes, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of the Maintenance Easement Areas including the subdivision entrance signs, fences and landscaping in the Maintenance Easement Areas and landscaped islands in road rights-of-way.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall not be in excess of \$96.00 per Class A Lot and \$32.00 per Class B Lot, except as otherwise provided herein.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 12% of the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased without limitation if such increase is approved by no less than two-thirds (2/3) of the votes appurtenant to each class of lots (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

(c) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair, replacement of and additions or improvements to capital improvement(s) upon any Maintenance Easement Areas.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the sixty (60) days in advance of the meeting. At the first such

meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes appurtenant to each Class A lot and Class B lot shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Date: Certificate of Payment. The annual assessment provided for herein shall commence as to all recorded Lots on January 1, 1987 and on January 1 of each following year. The amount of the assessment for the year shall be based on the status of the Lot (Class A or Class B) as of January 1 of each year. The first annual assessment shall be subject to the limit of the "maximum annual assessment" set forth in Section 3 of this Article and shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each lot and at least fifteen (15) days before January 1 of each year shall send written notice of each assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Notwithstanding Sections 1 and 7 hereof, the Declarant may, at its election, postpone, in whole or in part, the date on which the assessment shall commence provided that the Declarant maintains the Maintenance Eement Areas for which no assessment is being collected during the period of such postponement.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a minimum rate of twelve (12%) percent per annum or at the rate established by the Board of Directors at the beginning of the fiscal year of the Association, whichever is less. The association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a lot. Sale or transfer of any lot shall not affect any assessment lien. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the

Laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI

USE RESTRICTIONS

Section 1. Land Use. All lots shall be used for residential purposes only, except that the Declarant or its assigns may maintain models and sales offices on the Properties and the Home Builders Association of Charlotte or its assigns may conduct Homearama and erect temporary facilities for Homearama.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes.

ARTICLE VII

EASEMENTS

Easements for installation and maintenance of driveway, walkway, parking area, water line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat. Further, easements ten feet in width for such purposes are reserved over, under and through and along the rear lot lines of all lots shown on recorded plats, and easements five feet in width for such purposes are reserved over, under and through and along all side lot lines of all lots shown on recorded plats, as well as temporary easements five feet in width along the front lot lines for construction, maintenance and repair purposes. In the event it is determined that other and further easements are required over any lot or lots in locations not shown on the recorded plat and not along rear or side lot lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a lot or lots to be affected thereby, the written assent of the Owner or Owners of such lot or lots and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, 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 or by any Owner to enforce any

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covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of 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 or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period. This Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than ninety (90%) percent of the lots, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the lots. Any amendment must be properly recorded. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment".

IN WITNESS WHEREOF, John Crosland Company has caused this instrument to be executed this 8th day of May, 1986.



Beth J. Anselp
Secretary

JOHN CROSLAND COMPANY

By: Douglas L. Boone
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 8th day of May, 1986, personally came before me Douglas L. Boone, who, being by me duly sworn, says that he is the Vice President of John Crosland Company, that the seal affixed to the foregoing instrument in writing is the corporate seal of the said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given.



Janice L. Bradshaw
Notary Public

My Commission Expires:
11-19-90

State of North Carolina, County of Mecklenburg
The foregoing certificate of Janice L. Bradshaw

a Notary Public of Iredell County and State of North Carolina
is ~~is~~ certified to be correct. This 12 day of May, 1986
Charles E. Crowder, Register of Deeds, By: Mary A. O'Way
DEPUTY

SCHEDULE A

BEGINNING at a point in the westerly margin of the right-of-way of Mallard Creek Road, said point being at the intersection of the northerly boundary of the property conveyed to C. R. Mowry by deed recorded in Book 2917 at Page 238 in the Mecklenburg Public Registry and said margin of Mallard Creek Road and running thence with the Mowry property S 71-10-45 W 481.94 feet to a point; thence N 79-12-17 W 132.73 feet to a point; thence N 75-00 W 290.0 feet to a point; thence S 77-33-14 W 87.99 feet to a point; thence S 17-06-34 W 113.0 feet to a point; thence S 6-07-40 E 855.76 feet to a point; thence S 70-31 W 238.0 feet to a point in the line of the property of Mecklenburg County Parks and Recreation Commission; thence with the Mecklenburg County Parks and Recreation Commission property 22 calls and distances as follows: (1) N 58-04 W 371.0 feet to a point; (2) N 26-48 W 130.0 feet to a point; (3) N 69-05-50 E 151.13 feet to a point; (4) in a northerly direction with the arc of a circular curve to the right having a radius of 215.05 feet, an arc distance of 30.10 feet to a point; (5) S 69-05-50 W 156.34 feet to a point; (6) N 15-58 W 130.54 feet to a point; (7) N 9-11 E 305.0 feet to a point; (8) N 23-59-20 E 234.13 feet to a point; (9) N 43-53 E 42.0 feet to a point; (10) N 11-41 W 159.0 feet to a point; (11) N 7-51-12 E 234.66 feet to a point; (12) N 78-56 E 72.0 feet to a point; (13) N 7-04-50 W 147.88 feet to a point; (14) N 7-51-12 E 195.0 feet to a point; (15) N 84-29-24 W 30.03 feet to a point; (16) S 7-51-12 W 165.0 feet to a point; (17) N 81-41-22 W 227.87 feet to a point; (18) S 83-02 W 99.38 feet to a point; (19) N 62-50 W 95.0 feet to a point; (20) N 42-49 W 110.0 feet to a point; (21) N 5-30-26 E 180.0 feet to a point; (22) N 47-20-30 E 116.17 feet to a point in the line of the property conveyed to Duke Power Company by deed recorded in Book 3903 at Page 557 in the Mecklenburg Public Registry; thence with the Duke Power Company property four (4) calls and distances as follows: (1) S 84-29-24 E 712.73 feet to a point; (2) N 5-31-14 E 269.91 feet to a point; (3) S 84-46-55 E 624.59 feet to a point; and (4) S 83-32-29 E 187.05 feet to a point in the westerly margin of the right-of-way of Mallard Creek Road; thence with said margin of Mallard Creek Road five (5) calls and distances as follows: (1) in a southerly direction with the arc of a circular curve to the left having a radius of 2,620.53 feet, an arc distance of 139.86 feet to a point; (2) S 2-38-31 W 33.06 feet to a point; (3) in a southerly direction with the arc of a circular curve to the left having a radius of 1,324.18 feet, an arc distance of 513.26 feet to a point; (4) S 19-33-58 E 300.24 feet to a point; and (5) S 20-00-36 E 46.67 feet to the point or place of Beginning as shown on boundary survey of Mallard Trace dated April 28, 1986 by John R. Yarbrough & Associates, Inc.