

**DECLARATION OF COVENANTS, EASEMENTS  
AND RESTRICTIONS RUNNING WITH THE LAND**

This Declaration made this 9<sup>th</sup> day of June, 1995 by KENNETH M. ROBERTS AND SANDRA J. ROBERTS, PATSY R. DESANDRE AND DAVID L. DESANDRE, MARSHALL B. ROBERTS, JERRY G. ROBERTS AND ROBERTA F. ROBERTS, hereinafter referred to collectively as MALCOLM'S POINT, INCORPORATED (the "owner and developer"), with its usual place of business at 4485 Cadiz Road, Hopkinsville, Kentucky 42240.

**W I T N E S S E I H T H A T:**

**WHEREAS**, MALCOLM'S POINT INC. is the owner of real property described in Article II of this Declaration and desires to create thereon a Single Family Cluster Residential Subdivision to be known as "MALCOLM'S POINT", with a Public Way, and access and utility easements, facilities and services for the benefit of the owners of such property and the owners of lots situated within the property; and,

**WHEREAS**, the Owner desires to provide for the preservation and maintenance of the Public Way and Common Facilities and to this end desires to subject said property to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each of which is for the benefit of said property, and each lot contained therein and each owner thereof; and,

**WHEREAS**, the Owner intends to create by this instrument an unincorporated association called "MALCOLM'S POINT ASSOCIATION " for the purpose of exercising the aforementioned powers; the efficient preservation administration, the administering and enforcing the covenants and restrictions contained herein and the collecting and disbursing any assessments and charges hereinafter created; and,

**NOW, THEREFORE**, the Owner hereby declares that said property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, rights, easements, charges and liens hereinafter set forth which by this declaration shall be deemed to be a grant thereof and which shall hereafter run with the land.

**ARTICLE I**

**DEFINITIONS**



Section 1. The following words when used in this Declaration or any supplemental Declaration shall (unless the context shall prohibit) have the following meanings:

- (a) "Association" shall mean and refer to the MALCOLM'S POINT ASSOCIATION hereby created.
- (b) "Common expenses" shall mean the costs and expenses necessary to maintain, repair, replace and operate the common facilities and to perform the terms and provisions of this Declaration as further defined in Article V, Section 9.
- (c) "Common facilities" shall mean and refer to those areas of land and facilities on the Property intended to be devoted to the common use and enjoyment of the owners, including without limitation, public ways, open space lots, conservation easements, easements, pedestrian walkways, boat docks and related facilities, and access and utility easements, facilities and services.

Mail: *John*  
LODGED FOR RECORD  
AT 10:51 A. M  
JUN 16 1995  
REL. FEE 65.00 TAX N/A  
SPRING COUNTY  
V. H. THOMAS, CLERK  
BY *John B.*

- (d) "Developer" shall refer to the current and original owner, Malcolm's Point, Inc.
- (e) "Lot" shall mean and refer to any parcel of land which is a part of the Property, as defined in Article II of this Declaration.
- (f) "Member" shall mean and refer to all those owners who are members of the Association as hereinafter provided in Article V, Section 2.
- (g) "Owner" shall mean and refer to the record-holder of legal fee simple title, whether one or more persons or entities, to any lot, excluding mortgagees unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (h) "Residential Lot" shall mean and refer to any parcel of land, including the building now or hereafter erected thereon, intended for use as Residential use as shown in the Plan described in Article II.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located: between Canton Blue Springs road easterly of the project locus; southerly by Treetop Trail and an existing drive way; westerly by Lake Barkley; and northerly by Lake Barkley or Malcolm's Cove so-called and also northerly again by Dogwood Drive to the beginning at the Canton Blue Springs road. The real property is more particularly bounded and shown in the Deed dated January 11, 1993 to Kenneth M. Roberts and Sandra J. Roberts, his wife, Patsy R. DeSandre and David L. DeSandre, her husband, Marshall B. Roberts, a single man, and Jerry G. Roberts and Roberta F. Roberts, his wife, and recorded in Deed Book 156, Page 352, Trigg County Court Clerk's Office. See also Plat Book B, Page 5, Trigg County Courthouse.

## ARTICLE III

### PROPERTY RESTRICTIONS AND EASEMENTS

Section 1. Public Way. The Public Way to be constructed on the Property, shall serve more than one lot and is designated on the Plat as "MALCOLM'S POINT ROAD, SOUTH RIDGE ROAD, BRIDGE POINT ROAD, CHANNEL RIDGE ROAD, WEST COVE ROAD, MALCOLM'S COVE ROAD, EAST COVE ROAD". Each lot on the Property shall enjoy appurtenant to said lot an easement for the benefit of and in common with all owners to use said public ways for all purposes for which roads and streets are used in the State of Kentucky, Trigg County, and in the town of Canton. The maintenance repair and improvements of the above referenced roads or public ways, shall be performed by Trigg County and The Association as may be applicable. Said way shall remain as public. The costs of such maintenance, repair and improvements shall be a common expense and shall be allocated and assessed to each Member of the Association in the same manner as other common expenses as set forth in Article V, Sections 9, 10, and 11. Said maintenance, repairs and improvements regarding the public ways shall be undertaken by the Association only on a emergency basis and when the county fails to perform. No parking of motor vehicles is to be permitted on the public way.

Section 2. Access and Utility Easements. The access and utility

easements constructed on the Property, and serving more than one lot are designated on the Plat as Easements ("Access and Utility Easements"). Except as hereinafter limited, appurtenant to each lot on which a portion of any of said Access and Utility Easements are located shall be an easement for access and utilities for the benefit of and in common with the owner or owners of the other lots set forth below, for the purposes stated herein and for all purposes for which easements, roads and streets are used in the State of Kentucky.

The maintenance, repair and improvements of any of said Easements shall be performed and paid for by the owner, or owners, whose lot is benefited by the Easement which is maintained, repaired or improved.

Section 3. Utility Facilities and Service. Utility facilities and services shall include, without limitation, the pipes, ducts, cables, wires, conduits, lines, including those for cable television, and other equipment located along the private way into which the owners of one or more lots may connect to obtain gas, sewer, water, electricity or telephone service to and for their lot. Each owner shall have the benefit of an easement in common with all other lots to connect into and to use said utility facilities and services to and for his lot and the buildings to be constructed thereon. The Association shall maintain, repair and replace the utility facilities and services and have the right of access to each lot and the buildings thereon to inspect the utility facilities and services, to maintain, repair and replace them or any part thereof, and to remove any connection there to which may damage such utility facilities and services or be in violation of any governmental code, law or regulation, unless said utility has assumed responsibility. The cost of such maintenance, repair and replacements shall be a common expense and shall be allocated and assessed to each Member in the same manner as other common expenses as set forth in Article V, Sections 9, 10, and 11.

Notwithstanding the foregoing, an easement is hereby granted to BARKLEY LAKE WATER DISTRICT for the inspection, repair and maintenance of the water main located in the public way shown on the Plan. Except as otherwise provided by law, the cost of said inspection, repair and maintenance by the Barkley Lake Water District pursuant to this Easement shall not be assessable against the Association or its Members.

Section 4. Drainage Easements. Each owner shall have the benefit of and be subject to a drainage easement appurtenant to his lot and in common with all other lots for the natural drainage of water from the private way shown on the Plat.

In addition each lot shall have the benefit of and be subject to an appurtenant easement in common with all other lot owners and with the Association to use the easements shown on the Plan and to provide for the maintenance, repair, construction and operation of any and all drainage structures and utilities now or hereafter placed on said easement areas or Public Way.

Said maintenance, repair, construction and operation of said drainage facilities and all drainage structures appurtenant thereto shall be the responsibility of the Association and it shall bear all costs thereof as a common expense which shall be allocated and assessed to each Member in the same manner as other common expenses as set forth in Article V, Sections 9, 10 and 11.

Section 5. Conservation Restriction. Over certain portions of Parcels 57, 58 and 59 including all wetland areas and all land areas below the 378 CONTOUR LINE as shown on the Definitive Subdivision plans for MALCOLM'S POINT SUBDIVISION. These areas shown on the "PLAN", and as collectively referred to as the "Subject Premises", shall be subject to a conservation restriction-easement

which is an easement appurtenant to each lot owned by Member, for the benefit of and in common with all other such members and the Board of Managers of the Association ( the "Conservation Easement " ). The terms of the Conservation Easement are as follows:

A. The Subject Premises shall be held, with the provision for the construction of the second phase of the subdivision process, and conveyed in their natural, scenic and open condition, for the protection of natural environmental systems and wildlife in the area subject to the following restrictions.

- (1) No building, asphalt driveway, road, billboard, or other advertising display, mobile home, tower, or other temporary or permanent structure shall be constructed, placed or permitted to remain on the Subject Premises.
- (2) No soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated, dredged or removed from the Subject Premises in such a manner as to affect the surface thereof, except for customary drainage control, or ditching activities relating to mosquito and other insect control.
- (3) No soil, refuse, trash, solid waste, other than brush or stumps, petroleum products, hazardous materials, vehicle bodies or parts, rubbish, debris, junk, waste or other substances or material whatsoever shall be placed, stored, dumped or permitted to remain on the Subject Premises.
- (4) No trees, grasses or other vegetation shall be destroyed or removed except for (a) ditching activities as provided in subparagraph (2) above, and (b) clearing of shrubbery, and other vegetation for the purposes limiting the spread of disease, removing harmful or nuisance vegetation, or drainage control.
- (5) No use, at this time, shall be made of the Subject Premises except residential as to be determined by the Owners in a subsequent phase of this subdivision process, meanwhile the land shall remain predominantly in its natural condition, which purposes shall only be carried on or permitted which is not detrimental to the natural drainage or is detrimental, to wildlife, to flood control, water conservation, erosion control, soil conservation or is otherwise wasteful of the natural resources of the Subject Premises.

B. The Conservation Easement shall, insofar as is permitted by law, be perpetual, (except for additional subdivision by the Developer) and to that end may be extended by the Association at such times or in such manner permitted or required by law for its continued enforceability. No lot owner shall be liable for any breach of the provisions of this Conservation Restriction except as occur during his or her ownership thereof.

The care, maintenance and preservation of said Open Space Easement shall be performed by the Association, and the cost thereof shall be a common expense of its Members and shall be allocated and assessed to each Member in the same manner as other common expenses as set forth in Article V, Sections 9, 10 and 11. The Association shall enforce the Conservation Easement, and the costs of said enforcement, including legal fees, shall be a Special Assessment Assessed in the same manner as other Special Assessments as provided in Article V, Sections 9, 10 and 11.

## ARTICLE IV

### USE RESTRICTIONS

Section 1. Use. All lots are to be used for residential purposes only. No shade trees shall be cut nor shall there be additional clearing, filling or grading of any lot or lots except with the written permission of the developer until the Developer ceases to own five (5%) percent of the Residential Lots or until twenty (20) years following the conveyance of the first such lot, whichever is sooner, or the Board of Managers of the Association thereafter.

In addition the following activities are restricted on all lots.

- (a) No horses or livestock shall be retained within the Property. Except for parcels 57 and 58.
- (b) No owner of a lot, shall alter, disturb, or fill any natural drainage system in existence or constructed in accordance with the Plans without the prior written consent of the Board of Managers for Malcolm's Point Association.
- (c) No house trailer, disabled vehicle, truck, or camper is permitted to be kept on a lot for more than thirty (30) days without the written approval of the Board of Managers.

Section 2. Zoning. The Property, and the lots located thereon are, and shall be conveyed subject to the applicable zoning and building by-laws and regulations of Trigg County, if any.

Section 3. Nuisance. No nuisance may be commenced or maintained on any lot. Until the Developer ceases to own five (5%) percent of the Residential Lots or until Twenty (20) years following the conveyance of the first lot, whichever is sooner, the Developer, any lot owner, and the Association thereafter, may take whatever steps it deems appropriate to remove such nuisance, and the costs of such removal, including reasonable attorney's fees, shall be a Special Assessment upon the owner of the lot on which such nuisance occurred.

Section 4. Site and Architectural Approval. No building or structure, or change, modification or alteration thereof, or accessory structure thereto or fences, exterior walls, poles, flood lights, antennas or other fixtures visible from neighboring property shall be erected or placed upon any lot without the plans therefore being first approved in writing by an instrument, or by the Board of Managers of the Association thereafter. The Developer of the Association, as the case may be, shall approve or disapprove said plans by endorsement thereon within thirty (30) days of submission, unless such time is extended in writing by the applicant for such approval. Upon the expiration of said thirty (30) day period without approval or disapproval by the Owner or the Association as the case may be, said plans shall be deemed to be approved. Said plans shall be comprised of a) a complete set of building plans and specifications, and b) information regarding the specific materials and colors to be utilized for such portion of the exterior of the structure. Said submission shall be accompanied by a written representation executed by all owners of the lot for which approval is sought stating that all work shall be conducted in accordance with the plans submitted.

The erection of any approved structure or fixture on any lot, including any post-construction site cleaning and landscaping once begun, shall be completed within eighteen months after the issuance of a building permit, approval of the plans by the Developer or the Association, as the case may be, or the

commencement of construction , whichever is the later. Extensions required by labor strikes, casualties, governmental actions or for other good causes shown may be approved upon written request to the Developer or the Association thereafter. Upon completion of all work, the owner of the lot shall make a written request to the Developer, or the Association, as the case may be, for a Certificate of Completion. In the event that the Developer or the Association fails or neglects to issue such Certificate within thirty (30) days after such written request, the owner of the lot may record an Affidavit of Compliance with the Association reciting the facts of completion and compliance with the previously approved plans and the lapse of time since the giving of notice to the Developer, or the Association. Such Affidavit shall be conclusive upon all persons after thirty (30) days from date of recording in the same fashion as a Certificate of Completion.

Within thirty (30) days of the recording of this Declaration, the Developer shall establish by a recorded instrument executed by the Owner, the design criteria which govern the approvals or disapprovals of plans under this Section 4.

Said proposed buildings or structures shall also conform with the following standards:

- (a) All terms and conditions of said Subdivision Approval as recorded with said Deeds shall be complied with.
- (b) Commonwealth of Kentucky State Building Code applicable to residential uses as may be applicable.

Section 5. Erosion Control. Conservation practices for control of soil erosion shall be utilized during all construction, reconstruction, repair and maintenance of the property. Erosion control conservation practices shall include but not be limited to utilizing mulch, hay bales, sod and other materials to eliminate erosion. The Association shall be responsible for enforcing this restriction of the use of the Property for the purpose of preventing soil erosion and conserving and preserving the property.

## ARTICLE V

### MALCOLM'S POINT ASSOCIATION

#### BY-LAWS

Section 1. Organization. Developer hereby creates an unincorporated association to be known as the MALCOLM'S POINT ASSOCIATION. (the "Association") for the purpose of performing and enforcing the terms of this Declaration and for the purpose of managing and maintaining the common facilities and easements hereinafter described in a perpetual manner. The succeeding provisions of this Declaration shall constitute the by-laws of the Association.

Section 2. Members. The owners of all Residential Lots shall be members of the Association ("Members"). There shall be one vote for each lot owned by a Member. Members shall be entitled to cast one vote for the lot which they own. If any lot is owned by more than one person, all such persons shall be Members of the Association. However, said Members shall only be entitled to cast the one vote allocated to the lot owned by them. In the event that more than one person is the owner of a lot and such owners are unable to agree how to cast the vote allocated to their lot, then in such event, the vote allocated to said lot shall not be considered in the determination of the matter then under consideration by the Members of the Association.

In the event that there is a subdivision change which might modify the number of building lots, the maximum number of votes that could be cast by the Members of the Association shall be modified accordingly.

In the event that there is more than one owner of a lot, their obligations shall be joint and several. If a Member shall hold record title to more than one Residential Lot, such owner shall be treated as a separate Member for each lot having one vote for each lot.

Section 3. Board of Managers. The Association shall be governed by a Board of Managers (the "Board") which will consist of five (5) Members. Board members shall be elected by a majority vote at the Annual Meeting, provided, however, until Developer ceases to own five (5%) percent of the Residential Lots or until twenty (20) years following the conveyance of the first such lot, whichever is sooner, the Board shall consist of the Developer's Appointees. The term of a member of the Board shall commence upon the filing by the Board of a certificate with the Developer stating the name and address of the member or members of said Board.

After the first election of Board members from among the Members, Board members shall serve for two (2) year terms, but may be removed for any or no reason by a vote of two-thirds of the Members of the Association. At the time of such removal, the Association shall elect a new Board member to serve for the remainder of the unexpired term. In the event of such removal, or upon the death or resignation of such Board member, the remaining Board members shall file a certificate with said Developer which confirms the removal, death, or resignation and names the new member or members of the Board. In the event that a member of the Board sells his lot, his term on the Board shall automatically expire upon the recording of a deed conveying said lot. In the event of a removal, death, resignation or automatic termination, the remaining members of the Board are authorized to act during such interim period, and the signatures of a majority of the remaining members of the Board shall be sufficient to bind the Association until said certificate is duly filed with the Developer. In all other circumstances the signatures of a majority of the members of the Board is required to bind the Association, except as otherwise provided in this Declaration at Article V, Section 10.

Section 4. Officers. The Board shall elect from their number at each annual meeting of the Board or at any special meeting of the Board, a President, a Treasurer and a Clerk, each of whom shall serve in such capacity until respective successors are elected.

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Board, and the Association and shall have all the general powers and duties which are incidental to the office of president of a corporation organized under the Business Corporation Law of the Commonwealth of Kentucky.

The Treasurer shall take the place of the President and perform his duties whenever the President shall be absent or unable to act and shall have all the general powers and duties which are incidental to the office of treasurer of a corporation organized under said Business Corporation Law of the Commonwealth of Kentucky.

The Clerk shall keep the minutes of all meetings of the Board and of the Association and shall have all the general powers and duties which are incidental to the office of Clerk of a corporation organized under said Business Corporation Law of the Commonwealth of Kentucky.

Section 5. Annual Meeting. Annual meetings of the Association shall be held on the first Monday of July of each year. Special meetings of the Association and the meetings of the Board shall be held at any time provided that notice of such meetings is given in writing and mailed to the members of the Association or to the Board, as the case may be, not less than 10 days prior to said meeting, provided, however, that notice may be waived in writing by all persons entitled to vote at any such meeting. All notices of meetings shall contain a brief description of the matters to be considered thereat, unless amendments to this Declaration, the By-Laws of the Association or the Rules and Regulations of the Association are to be considered, in which event said amendments shall be set forth in their entirety in said notice. All annual meetings and special meetings of the Association shall be held at any convenient place acceptable to the Board.

Section 6. Voting. Subject to the limitations discussed at Section 2 of this Article V, each Member or some person designated in writing by such Member to act as proxy on his or their behalf shall be entitled to cast the vote allocated to the lot owned by such Member at any annual or special meeting. Any or all Members may be present at any meeting and may vote or take any action either in person or by proxy. The presence in person or by proxy of a majority of the lots owned by Members shall constitute a quorum for all meetings. Any action to be taken by the Association may be taken without a meeting if all Members entitled to vote on the matter consent to the action by a written instrument filed with the records of the Association. Such consent shall be treated for all purposes as a vote at a meeting.

Section 7. Amendments. Except as provided in Article V, Section 22 (k), these By-Laws of the Association and any Rules and Regulations adopted by the Association and this Declaration may be modified or amended by a majority vote of the number of votes eligible to vote under this Declaration at a meeting duly held and called for such purpose, provided, however, until Developer ceases to own five percent (5%) of the Residential Lots or until twenty (20) years following the conveyance of the first such lot, which ever is sooner, these By-Laws may not be amended or modified without the Developer's written consent. A written instrument setting forth the terms of any such Amendment shall be signed by majority of the Members entitled to vote and recorded with Trigg County Court Clerk's Office.

Section 8. Powers and Duties of the Association. The Association shall have all the general powers and duties which are incidental to a corporation organized under the Business Corporation Law of the Commonwealth of Kentucky. Subject to and in accordance with this Declaration, and the By-Laws of the Association, the Association through its Board of Managers shall also have the following duties to be performed for the benefit of the Members of the Association:

(a) To maintain, operate, repair and replace and regulated all of the common facilities described in this Declaration and all improvements of whatever kind and for whatever purpose contained therein, including but not limited to the following:

- (1) To maintain the public ways and easements unless maintained by Trigg Fiscal Court or utility district shown on the Plat as described at Article III, Section 10 hereof;
- (2) To provide for trash pick-up for all lots;
- (3) To provide street lights for the public way as may be required;
- (4) To regulate the activities on the Subject Premises pursuant to



the Conservation Easement at Article III, Section 5, and to otherwise enforce said Conservation Easement. To permit subdivision of parcels 57 and 58 in a subsequent phase of the subdivision process.

- (5) To obtain permits from the U.S. Army Corps of Engineers to construct and maintain a private boat dock facility and any and all related activities which are not inconsistent with local, state, or federal laws.
- (6) The Association is responsible for enforcing the rules and regulations of the LAKE BARKLEY SHORELINE MANAGEMENT PLAN as developed by the U.S. Army Corps of Engineers, Nashville District Office, in a document dated December 1992 and as may be amended. The Association is also responsible for the following:
  - (a) Applying for a "Community Dock" under the "Association of Multiple Family Developments" as a community dock permit for a CLUSTER HOME DEVELOPMENT.
  - (b) The Association acknowledges that the maximum number of slips allowed shall be determined by allotting one slip per 65 lineal feet of available shoreline suitable for placement of individual docks. For the record, there is 2,919.83 lineal feet of shoreline owned by the Malcolm's Point, Inc., in Malcolm's cove so-called which is suitable for dockage. The Association will, however, request a maximum of 16 slips for PHASE I of this project. When PHASE II of MALCOLM'S POINT SUBDIVISION becomes a reality, an additional permit totaling not more than an additional 16 slips will be submitted for permitting to the Corps. Therefore, the Association herein agrees to limit the total number of slips to 32: 16 to owned by PHASE I Malcolm's Point, Inc.; and 16 to be owned by PHASE II Malcolm's Point Inc. Also for the record, the shoreline distance of 2,919.83' within the COVE can support a maximum of 44 individual docks by a standard subdivision.
  - (c) The Association shall develop procedures consistent with the "Shoreline Management Plan" for utilization by members, routine maintenance, and removal of inoperable or ineligible vessels, and re-assignment of slips.
  - (d) Boat dock space for each lot owner is not possible. The Association shall assign dock slips on a nondiscriminatory "first come - first assigned basis". See Section 8 (d).
  - (e) The Association may operate and maintain a Courtesy Float(s) for temporary day use.
  - (f) The Association may establish Aids to Navigation

and No-Wake areas, electrical lighting and equipment, pipelines; and steps, paths, walkways and the like as regulated by the U.S. Army Corps of Engineers.

- (g) The Association may obtain permits for dredging, shoreline erosion control, and for fish attractors as may be applicable.

(b) To enforce the terms and conditions contained in this Declaration and provide for the perpetual life of this Declaration by renewing same under Business Corporation Law of the Commonwealth of Kentucky.

(c) To assess each Member for his proportionate share of the common and special expenses.

(d) The Association shall establish and maintain a waiting list for the assignment of boat docking slips. This list shall be on a nondiscriminatory "first come-first assigned basis" subject to the following conditions;

- (1) Only lot owners are eligible to be on the waiting list.
- (2) Lot owners must own a boat within 7 days after the assignment of a slip.

Dock slips shall be offered to the first lot owner on the list. That person shall have the right to pass up their opportunity for a slip, without losing their place on the list. In cases where the first eligible candidate elects to pass, the slip shall be offered to the next person on the list and so on until someone accepts. The dock slip is then assigned to that person. A copy of the current waiting list will be made available to any member upon request.

Slips shall remain assigned to a lot owner until that member forfeits their dock privilege for one or more of the following reasons;

- (1) Member ceases to own a boat or a lot.
- (2) Member fails to pay the annual dock fee on time.
- (3) The slip remains unoccupied for a period in excess of 30 consecutive days during the months of May thru October. (unless temporary vacancy is approved in advance by the Association)
- (4) Member fails to maintain their boat and the dock area around their boat in a manner acceptable to the Association.
- (5) Member creates any type of nuisance or disturbance not acceptable to the Association.
- (6) Member voluntarily relinquishes their dock privilege in writing to the Association.

In the event of forfeiture, the lot owner may place their name on the bottom of the waiting list and be eligible for reassignment when their name is on top of the list. Dock space MAY NOT be rented, leased, licensed, sold, transferred, or otherwise reassigned by the Member.

All rules relating to boat docks are subject to approval and or modification by the U. S. Army Corps of Engineers.

Section 9. Common Profits and Common Expenses. The Members shall be liable for the common expenses and entitled to the common profits of the Association in an amount equal to the proportionate share of such common expenses and common profits allocated to the lot owned by such Members. The proportionate share of such common expenses and common profits allocated to such Member shall from time to time, be the fraction, the numerator of which shall be the number 1 and the denominator of which shall be the number of Members of the Association.

Until all Residential Lots, located on the Property, have been conveyed by the Developer, the Developer shall be liable for and shall pay to the Association, the Developer's proportionate share of the total common charges assessed to the members, unless the Developer agrees with the Board that the assessment of common expenses shall not commence upon the conveyance of the first such lot and the Developer agrees to provide necessary maintenance to the property during the initial period of operation of the development. In the absence of such an agreement, the Developer's proportionate share shall be a fraction the numerator of which is the number 56 minus the number of Residential Lots conveyed by Developer and the denominator of which is the number 56. The Board of Managers determination regarding the amount of the assessment shall be conclusive.

Common Expenses shall include, without limitation, the following:

- (a) all costs relating to the operation, care, upkeep, repair and maintenance of the common facilities, including, without limitation, common charges with respect to the public way, or trash collection unless paid by Trigg Fiscal Court or other utility district, the community boat dock(s) and walkways, the maintenance area, the pond, the shoreline, the Conservation Easement, and any other common facilities assessed by the Board.
- (b) all insurance premiums for the master policy for the Association property, fidelity bonds for the Board and its agents and employees, any other insurance purchased to protect the Board and such other insurance as the Board may deem necessary and appropriate;
- (c) the amount that the Board shall deem necessary and appropriate for the working capital of the Association, for an operating reserve for expenses, a reserve fund for replacements, and any charges for deficits from previous operating years; and
- (d) all expenses relating to the Board's enforcement and administration of the Subdivision Approval and this Declaration.

In addition, the Board shall have the power to assess Members a proportionate share of the total amount required to perform special services or establish user fees or penalties which affect some but not all Members on account of the terms of this Declaration or by vote of the Board or Association ("Special Assessment"). With respect to payment and collection of such a Special Assessments, the provisions of this Section 9 and Sections 10 and 11 of Article III with respect to Members shall be deemed to also apply to the extent provided by law.

Upon taking title to their lot, all Members shall contribute in advance an amount not to exceed two (2) months estimated common expenses to provide a working capital fund, and to maintain said fund as required by the Board. Said

capital fund shall be administered in accordance with Section 22 (E) of this Article V. Members shall thereafter contribute in advance on the first day of every month, or at such other time as the Board shall determine, an amount equal to said monthly estimated common expense.

The Board shall, prior to January of each calendar year, determine the common expenses expected to be incurred during such calendar year together with reasonable provisions for contingencies and reserves, and taking into account any undistributed common profits for prior years. The Board shall promptly render statements to the members for their proportionate share. Such statement shall state the amount due, the amount paid and the balance, if any. Amounts due shall be paid within thirty (30) days after the same are rendered. Overpayment shall be credited to the next years assessment. In the event that the Board shall determine during any calendar year that the assessment so made is less than the common expenses actually incurred or in the reasonable opinion of the Board likely to be incurred, the Board shall make a supplemental or special assessment or assessments and render a statement thereof in the manner aforesaid, and such statements shall be payable and take effect as aforesaid. The Board may in its discretion provide for payments of statements in monthly or other installments. The amount of any such statement, together with interest thereon, if not paid when due, at a rate equal to the Bank of Cadiz & Trust Co. bank prime rate or the equivalent thereof established by said Bank, or if none, the Kentucky statutory rate, shall constitute a lien on the lot of the Members assessed for such common expenses as provided in Section 11 of this Article V.

The Board may at any time or times distribute common profits among owners in such proportions. The Board may, to such extent as they deem advisable, set aside common funds of the Association as reserve or contingent funds, and may use the funds to set aside for reduction of indebtedness or other lawful capital purposes or for the repair, rebuilding, maintaining or restoration of any of the common facilities.

The Board may request, demand, collect, receive and receipt for all such amounts and take such action in its own name and in the name of the Association as may, in its reasonable judgement, be required to collect any amounts due from the Members including, but not limited to, legal action to foreclose any lien created by this Declaration.

Section 10. Statement and Status of Common Expenses. The Board shall upon a reasonable request issue certificates suitable for recording, indicating that no payments are due to the Association with respect to any common expense, and that the rights to use the Association property have not been suspended. Said certificates may be executed by only one member of the Board of Managers, and shall be conclusive as to the facts stated therein.

Section 11. Lien for Common and Special Expenses. Each assessment pursuant to this Declaration, made upon a Member shall constitute and remain a charge and lien upon such Member's lot and the buildings thereon from the date of the assessment until paid in full, and shall also constitute a personal debt to the Association of the Member who is the owner of such Residential Lot on the date of the assessment. Such charge, lien or personal debt may be enforced or collected by the Board by any available process including without limitation, foreclosure of the charge or lien against the Residential Lot. All costs and expenses incurred by the Board in enforcing or collecting any assessment, including interest, costs, reasonable attorney's fees, shall be paid by the Member responsible for the assessment and shall constitute a further lien or charge on said Residential building a personal debt of said Member. Notwithstanding the above provisions, such charge and lien shall be junior to each bona fide first mortgage to

a recognized mortgage lending institution or to the Developer outstanding upon such Residential lot on the date of the assessment, whether the mortgage be given before or after this Association takes effect and its provisions become restrictions and servitude upon such land, but foreclosure of the mortgage shall not impair the power of the Board thereafter to make further assessments upon such land nor otherwise impair such restrictions and servitude thereon.

If any assessments is not paid when due, such assessments shall bear interest as stated in Section 9 of this Article V from the due date until paid in full. If any assessment is not paid in full thirty (30) days after its due date, the Board may in addition to the other rights herein reserved, after written notice to the Member, and a hearing before the Board on a date specified in such notice, which date shall not be less than 10 days after the date of said notice, suspend the exercise of all rights to use the property given by this Declaration to the owner or owners of the Residential Lot so assessed including without limitation, the right to use common facilities, until that sum shall have been paid in full, provided, however, the Association may not suspend the rights of the Member to use those portions of the Property which constitute ways and roads necessary for access to and from such Residential Lot to and from the public roads adjacent to "MALCOLM'S POINT" residential area at their option, the Board may accelerate the payment of its reasonable estimate of common expenses for the twelve (12) month period following a default and such sum shall serve as security for the payment of future common and special expense obligations. In the event of the suspension of any rights of a Member pursuant to the provisions of this Section 11, such suspension shall cease and such rights of use appurtenant to the said Residential lot shall automatically be reinstated when the hold or a bona fide first mortgage, to a recognized lending institution or to Owner, comes into possession of the Residential Lot described in said mortgage pursuant to the remedies provided in said mortgage, foreclosure of mortgage, or deed (or assignment) of foreclosure, or when any other person comes into possession of such Residential Lot as purchaser at a foreclosure sale.

Enforcement of a lien for unpaid common expenses is made through foreclosure proceedings, shall be in accordance with the provisions of the General Laws of Kentucky, it being understood and agreed by the owner and all persons taking title to any Residential Lot, their successors and assigns, that the lien for common expenses shall be deemed to be a mortgage under said law. This provision for foreclosure shall be a covenant that runs with the land defined as the lots on said Plan for the benefit of all owners, their successors and assigns.

Section 12. Rules and Regulations. The Association is authorized and directed and may adopt from time to time rules and regulations for the administration of the common facilities in accordance with and to effect the terms and provisions of the Declaration as the same may be amended from time to time. Any rules and regulations adopted by the Association and any amendments thereto shall be given to the members at least ten (10) days prior to their effective date and all Members, their lessees, tenants and guests upon the Property shall at all times comply with said rules and regulations.

Section 13. Enforcement of Declaration. Owner, its successors and assigns, the Members, owners and the Association shall be entitled, jointly and severally, to maintain equitable or legal proceeding to enjoin, abate or obtain appropriate relief in respect of any and all breaches of the terms, covenants and conditions of this Declaration and to enforce the terms, covenants and conditions of this Declaration. The provisions of this Declaration may be enforced by any proceedings in law or equity that is appropriate against any person violating or attempting to violated the same, either to restrain violation or to recover damages against his property to enforce any lien created by this Declaration. Failure to

enforce any provision of this Declaration on one or more occasions shall not be deemed a waiver of the right to do so thereafter in any event.

Section 14. Liability of Board of Managers. All persons extending credit to or contracting with or having any claim against the Association hereunder shall look only to the property owned by the Association for any such contract or claim, so that neither the Board nor the owners shall be personally liable therefor. No member of the board hereunder shall be liable to the Association or to the owners for the default of any other member of the Board or for leaving property in the hands of another member of the Board, or for any error of judgement or law on his own part, but shall be liable only for his own willful default. Any member of the Board hereunder shall be reimbursed in full for any loss or expense incurred or suffered by him or his estate as a result of his acting on the Board hereunder, excluding only such loss or expense resulting from his own willful default.

Section 15. Reliance by Third Parties. No person dealing with the Board as shown by a certificate recorded with the Trigg County Court Clerk's office shall be bound to inquire concerning the validity of any act purporting to be done by them or be bound to see to the application of any money paid or property transferred to him or upon his order.

Section 16. Financial Records. In accordance with Section 22 of this Article V, the Board shall at all times keep proper records and accounts of the affairs of the Association which shall be open to inspection by any Member at all reasonable times. At least once a year the Board shall render a written report and financial statement. The approval by a majority of the Members of any report or financial statement by the Board or failure by said Members to approve or disapprove said report or financial statement within thirty (30) days following notice to the Members of the availability of said report or financial statement, shall be, as to all matters and transactions stated in said report or statement or shown thereby, a complete discharge of the Board and final and binding upon all owners with respect to all matters contained in said report or financial statement except for matters which are willfully misrepresented.

Section 17. Notices. Any notice required by the provisions of this Declaration to be sent to an owner or owners of any lot subject to this Declaration shall be deemed to have been properly sent, when mailed, postage paid, to last known address of the person who appears as the owner of such lot on the records of the Association at the time of such mailing.

Section 18. Interpretation. This Declaration is specifically intended to assure the fair and harmonious operation and care of the Property for the benefit of each and all the owners of the lots subject to this Declaration, therefore, this Declaration is to be liberally construed to effectuate its purpose of creating a harmonious development for the benefit of the owners and members of the Association. This Declaration shall not constitute a joint venture or a partnership and no party, member, owner or owners shall have the right to participate in the individual profits, if any, of any other party or owner arising out of the use and occupancy of the Property or any lot on the common facilities.

Section 19. Invalidity. If any provision of this Declaration or a portion of such provision or the application thereof to any person or circumstances is held invalid, the remainder of this Declaration, or the remainder of any such provision, or the application thereof, to any other persons or circumstances should not be affected thereby.

Section 20. Gender and Number. Use of the masculine gender here shall be deemed to include the feminine and neuter gender and the use of the singular shall be deemed to include the plural, and the plural, the singular, whenever the

context so requires.

Section 21. Governing Law. This Declaration shall be governed by the laws of the Commonwealth of Kentucky. The provisions of this Declaration shall be binding upon all the parties having or acquiring any right, title or interest in any of the lots shown on said plan or any part thereof and shall be for the benefit of each lot and the owners thereof and his heirs, successors and assigns. The owner or owners of any lot, including Developer, shall be fully discharged and relieved of liability under this Declaration, upon ceasing to own an interest in any lot or any part thereof and upon paying all sums and performing all obligations hereunder, in respect to such lot, to the time that his ownership interest in any such lot or part thereof and upon paying all sums and performing all obligations hereunder, in respect to such lot, to the time that his ownership interest in any such lot or part thereof is terminated. Each owner of a lot by recording or by accepting delivery of a deed to such lot subject to this Declaration agrees and covenants that the terms and conditions of this Declaration are reasonable and agrees to be bound thereby and that its terms are essential to the Plan and form of this subdivision of the Property and the use of his lot.

Section 22. FHLMC AND FNMA PROVISIONS. The following provisions have been added to assist in review of this Declaration for purposes of mortgage financing. Notwithstanding anything to the contrary contained elsewhere in this Declaration, the following provisions shall govern and be applicable insofar and for so long as the same are required in order to qualify mortgages of Residential Lots (hereafter referred to as "Units") for sale to the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association (FNMA) or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, under laws and regulations applicable thereto, to wit:

A. Priority; Assessments and Charges. Any first mortgagee of a Unit which is part of the Property and who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the Unit free of any claims for unpaid assessments or charges against the mortgaged unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments; or changes resulting from a pro rata allocation of such assessments or charges to all Units including mortgaged Unit).

B. Approval Rights. Except as provided by statute in case of condemnation or substantial loss to the Property, unless at least 75% of the first mortgagees (based upon one vote for each first mortgage owned) and owners (other than the Developer) of Units have given their prior written approval, the owners, Members, and said Board shall not be entitled to:

- (1) by act or omission, seek to abandon or terminate the association;
- (2) change the pro rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Property;
- (3) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common facilities located on the Property. The granting of easements for public utilities or for other purposes consistent with the intended use of the Property

shall not be deemed a transfer within the meaning of this clause;

- (4) use hazard insurance proceeds for losses to the Property for other than the repair, replacement or reconstruction of such improvements, except as provided by statute or common law in case of substantial loss to the property.

C. Priority; Condemnation and Insurance. No provision of any applicable By-Laws, or this Declaration shall be construed to give a Unit owner, or any other party, priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of a Unit and/or associated common facilities.

D. Assessments. Common and special expenses assessed against a Unit, with interest, costs and reasonable attorney's fees, shall become a lien upon such Unit if not paid when due in accordance with Kentucky Law. Each such assessment against a Unit shall also be the personal obligation of the Unit owner at the time the assessment fell due.

Assessment of common expenses shall commence at the time of the conveyance of the first Unit unless the Developer agrees with the Board of Managers to provide necessary maintenance of the Property without cost to the Association during the initial period of operation of the project.

E. Reserves. Common expense assessments shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Property, if any, that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. In addition, a working capital fund shall be established equal to at least two (2) months estimated common expenses for each Unit and shall be maintained in a segregated account. Each Unit's share of the working capital fund must be collected and transferred to such segregated account at the time of closing of the sale of each Unit. The contribution to the working capital fund for each unsold unit estate shall be paid to the Association at the time of conveyance of the first Unit. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditure, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amount paid into the fund are not to be considered as advance payment of regular assessments.

F. Notice to Eligible Mortgagees. Upon written request to the Board identifying the name and address of the holder, insurer or governmental guarantor and the Unit number or address, any first mortgage holder or insurer or governmental guarantor of said first mortgage (hereafter referred to as "eligible mortgage holders" and "eligible insurers or guarantors" as the case may be) will be entitled to timely written notice of:

- (a) Any condemnation loss or causality loss which affects a material portion of the lots shown on said Plan.
- (b) Any delinquency in the payment of assessments or charges owned by an owner of a Unit subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains incurred for a period of 60 days.
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action which would require the consent of a



specified percentage of eligible mortgage holders as specified in this Declaration.

G. Approvals. To the extent permitted by applicable law, eligible mortgage holders shall also be afforded the following rights:

(a) Any restoration or repair on the lots shown on said Plat after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the original plans and specifications, unless other action is approved by eligible holders holding mortgages on Units which have at least 51 percent of the votes of the Units subject to eligible holder mortgages.

(b) Any election to terminate the legal status of the Association after substantial destruction or a substantial taking in condemnation of the lots shown on said Plat must be approved in writing by eligible holders holding mortgages on Units which have at least 51 percent of the votes of such remaining Units subject to eligible holder mortgages.

(c) Except as otherwise provided herein, no reallocation or interests in the Units resulting from a partial condemnation or partial destruction of a Unit or Units may be effected without the prior approval of eligible holders holding mortgages on all remaining Units whether existing in whole or in part, and which have at least 51 percent of the votes of such remaining Units subject to eligible holder mortgages.

(d) When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self management by the Board shall require the prior consent of owners of Units to which at least 67 percent of the votes under this Declaration are allocated and the approval of eligible holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to eligible holder mortgages.

H. Binding Contracts. Any agreements for professional management of the Property, or any other contract or lease may not exceed 3 years. Any such agreement shall provide for termination by either party without payment of a termination fee in ninety (90) days or less written notice.

I. Books and Records. The Board shall make available to the owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration and any other applicable rules and regulations concerning the Property and the books, records, and financial statements of the Association. "Available" means available for inspection upon request, during normal business hours or under other reasonable circumstances.

J. Financial Statement. Any holder of a first mortgage of a Unit shall be entitled upon written request (i) to receive a financial statement for the immediately preceding fiscal year free of charge or any other unaudited statement distributed to owners, (ii) to receive notices of all meetings of the owners and to designate a representative to attend all such meetings, (iii) to receive notice of any decision by the owners to make any material amendments to this Declaration and (iv) to receive notice of any action which would require consent of eligible mortgage holders. Any financial statement so requested shall be furnished within a reasonable time following such request.

K. Amendments. Except for amendments to this Declaration or termination of the Association made as a result of destruction, damage or condemnation as above set forth:

(a) the consent of owners of Units to which at least 80 percent of the votes under this Declaration are allocated and the approval of eligible holders holding mortgages on Units which have at least 67 percent of the votes of Units subject to eligible holders holding mortgages, shall be required to terminate this Association or to terminate the collection of assessments, common charges or special charges pursuant to the provisions of this Association; and

(b) The consent of the owners of the Units to which at least 67 percent of the votes under this Declaration are allocated and the approval of eligible holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to eligible holder mortgages, shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- i. Voting
- ii. Assessments, liens or subordination of such liens;
- iii. Reserves for maintenance, repair and replacement of the common facilities (or Units if applicable);
- iv. Insurance or fidelity bonds;
- v. Rights to use common facilities;
- vi. Responsibility for maintenance and repair of several portions of the lots shown of the Plat;
- vii. Expansion or contraction of the lots shown on the Plat or the addition, annexation or withdrawal of property to or from the project;
- viii. Boundaries of any Unit;
- ix. The interests of the Units;
- x. Convertibility of Units into common areas or of common facilities into Units;
- xi. Leasing of Units;
- xii. Imposition of any rights of first refusal or similar restriction on the right of a Unit owner to sell, transfer, or otherwise convey his or her Unit;
- xiii. Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of the first mortgages on Units.

(c) Any first mortgage holder that does not deliver or post to the Board a negative response within thirty (30) days of written request by the Board for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Board making reference to this section, when recorded at the Trigg County Court Clerks Office, shall be conclusive as to the facts therein set forth as to all parties and may be relied on pursuant to the provisions of this Declaration.

L. Construction. All provisions of this Declaration shall be construed so

as to qualify any such mortgages for sale to FHLMC, FNMA and such other agencies and entities herein before referred to in this Section 22.

M. Transfer of Control. Notwithstanding anything in this Declaration to the contrary, those members of the Board appointed or selected by the Developer as aforesaid shall resign no later than the earlier of the following events:

- (a) 120 days after 75% of the Units have been conveyed to Unit purchasers; and
- (b) three years following conveyance of the first Unit.

The purpose of the foregoing provision is to comply with the requirement imposed by FNMA necessitating the transfer of control of a Unit to the Unit owners as above provided. For this purpose "control" means the right of the Developer to control the Association under this Declaration or the owners in any manner or through votes allocated to Units owned by the Developer on the same basis as votes pertaining to sold Units.

N. Access. The Board shall not restrict any owner's right of ingress or egress to his or her Unit, and said right of ingress and egress shall be perpetual and appurtenant to the ownership of the Unit.

O. Insurance

A. (1) The Association shall obtain and maintain to the extent available, policies of multi peril type insurance, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value (based upon replacement cost), naming the "Board of Managers of Malcolm's Point Association as insurance trustees for the use and benefit of the Malcolm's Point Subdivision, a Residential neighborhood of the several owners and of their respective mortgagees" as the named insureds, of improvements forming a part of the Property, together with the service machinery, apparatus, equipment and the installations located in the property. Such insurance shall insure against (a) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement, and (b) all other perils which are customarily covered with respect to projects similar to construction, location and use, including all perils normally covered by the standard "all risk" endorsement where such is available. Such risks may include, but are not limited to vandalism, malicious mischief, windstorm and water damage, federal flood hazards, so-called, and boiler and machinery explosion or damage. Such insurance shall have an Agreed Amount Endorsement, or its equivalent, if applicable, or an inflation guard endorsement. Premiums for such policies shall be paid by the Association as a common expense.

(2) Such policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual owners.

(3) Loss payable shall be in favor of the Association (or insurance trustee) as a trustee for each owner and each such owner's mortgagee. Each owner and each such owner's mortgagee, if any, shall be beneficiaries under the policy according to the relevant percentage of common ownership.

(4) No such policy shall be acceptable under this Section 20 where (a)

under the terms of the insurance carrier's charter, against the trustees, borrowers, FNMA, or the designee FNMA, or (b) by the terms of the carrier's charter by-laws or policy, of directors, policyholders, or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA or the borrowers from collecting insurance proceeds.

(5) If the Property is located within an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Board shall obtain and pay, as a common expense, the premiums upon a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy, in an amount deemed appropriate, but not less than the lesser of: (1) the maximum coverage available under the NFIP for all buildings and other insurable property within any portion of the Property located within a designated flood hazard area; or (2) 100% of current "replacement cost" of all such buildings and other insurable property.

(6) The Association shall cause to be reappraised at intervals determined by the Board of Managers, the value of the buildings and all other insurable improvements forming part of the common facilities and, if necessary shall increase the amount of coverage on the aforementioned policies accordingly.

(7) The Board at their discretion may obtain other types or forms of casualty insurance; provided, however, that all such insurance shall fully insure the common facilities as provided herein.

(8) A certificate of insurance shall be issued to the owners of each Unit and the original or a certificate thereof shall upon request, be delivered to the mortgagee.

B. The Association shall also obtain and maintain policies of insurance of the following kinds naming "The Board of Managers of Malcolm's Point Association as insurance trustees for the use and benefit of Malcolm's Point Residential area, and the several owners as the named insureds:

(1) Comprehensive public or general liability insurance in such amounts and forms as shall be determined by the Board of Managers with not less than a single limit of One Million Dollars (\$1,000,000) for claims for bodily injury or property damage arising out of one occurrence and with cross liability endorsement to cover liability of any insured to other insureds; such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit owner because of negligent acts of the Board or other Unit owners; such insurance shall cover all of the common facilities; the scope of coverage shall include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

(2) Workmen's Compensation and employees' liability with respect to any manager, agent, or employee of the Association, but excluding any independent agent or manager who shall furnish to the Board a Certificate of Insurance if such liability is otherwise uninsured against, it being understood that the Board may waive such requirement in any particular instance, at their discretion.

(3) Such other risks as the Board in their discretion deem it appropriate to insure.

C. The Board shall maintain blanket fidelity bonds for all members of the Board and employees of the Association and all other persons, including volunteers handling or responsible for funds of, or administered by, the Association.

Furthermore, where the Board has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be maintained for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

- (a) The total amount of fidelity bond coverage required shall be based upon best business judgement and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all Units plus reserve funds.
- (b) Fidelity bonds shall meet the following requirements:
  - (1) fidelity bonds shall name the Association an obligee;
  - (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;
  - (3) the premiums on all such bonds herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense; and
  - (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Board, to any insurance trustee, and to each servicer on behalf of FNMA.

D. Notwithstanding any of the foregoing provisions and requirements relating to Property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom such Association may enter into any insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

E. Each Unit owner hereby appoints the Board or any insurance trustee or substitute insurance trustee designated by the Board as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Board or any insurance trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Unit owners and their first mortgage holders, as their interests may appear.

F. The cost of such insurance to be obtained and maintained by the Board pursuant to this Subsection O shall be assessed to the Unit owners as common expenses at such times and in such amounts as provided in this Declaration.

G. Policies for such casualty, liability and other insurance shall provide to

the extent available: (i) that the insurer waive any right of subrogation against the Association, their agents and employees, owners, their respective employees, agents tenants and guests; (ii) that the insurance shall not be prejudiced by any act or neglect of any owners or occupants or any other person or firm ( including employees and agents of the Association ) when such act or neglect is not within the control of the Board (or owners collectively), or by failure of the Board (or owners collectively) to comply with any warranty or condition with regard to any portion of the premises over which the Board (or owners collectively) has no control; (iii) that such policies may not be cancelled or reduced without at least thirty (30) days prior written notice to the Board and all Unit Owners, and first mortgagees of the Units; (iv) if available, that the insurer shall waive any right it may have under the policy to repair or restore damage should the owners elect to terminate the Association because of such damage; (v) that notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such election may not be exercisable if in conflict with the terms of any applicable law; (vi) for recognition of any insurance trust agreement; and (vii) for waivers of any defense based upon the conduct of any insured.

23. Special Amendments. Notwithstanding any other provisions in this Declaration to the contrary, including the provisions of Section 22, the Developer reserves and shall have the right of power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration:

- (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public or quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities.
- (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering lots shown on the Plat,
- (iii) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment hereto.

In furtherance of the forgoing, a power coupled with an interest in hereby reserved and granted to the Developer to Vote in favor of, make , or consent to a Special Amendment on behalf of each Unit owner, and member of the Board as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting the Property and the acceptance thereof, shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record Special Amendments. The right of the Developer to act pursuant to rights reserved or granted under this section shall be automatically assigned by the Developer to the Board of Managers of the Malcolm's Point Association at such time as the Developer no longer holds or controls title to any Residential Lot on the Property.

WITNESS the execution hereof under seal the day and year first above written.

FOR MALCOLM'S POINT, INC:

*Kenneth M. Roberts*  
KENNETH M. ROBERTS

*Sandra J. Roberts*  
SANDRA J. ROBERTS

*Patsy R. Desandre*  
PATSY R. DESANDRE

*David L. Desandre*  
DAVID L. DESANDRE

*Marshall B. Roberts*  
MARSHALL B. ROBERTS

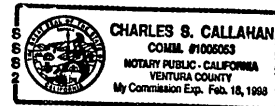
*Jerry G. Roberts*  
JERRY G. ROBERTS

*Roberta F. Roberts*  
ROBERTA F. ROBERTS

STATE OF CALIFORNIA )  
 ) SCT.  
COUNTY OF VENTURA )

Then personally appeared Kenneth M. Roberts, of Malcolm's Point Incorporated, and acknowledged the forgoing instrument to be his free act and deed, before me this 8<sup>th</sup> day of JUNE, 1995

My Commission Expires: 2/18/98

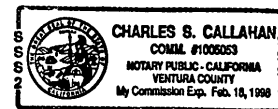


*Charles S. Callahan*  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) SCT.  
COUNTY OF VENTURA )

Then personally appeared Sandra J. Roberts, of Malcolm's Point Incorporated, and acknowledged the forgoing instrument to be her free act and deed, before me this 8<sup>th</sup> day of JUNE, 1995

My Commission Expires: 2/18/98



*Charles S. Callahan*  
NOTARY PUBLIC

STATE OF DONNA M. DESANDRE )  
 ) NOTARY PUBLIC STATE OF MICHIGAN )  
 ) MACOMB COUNTY )  
 COUNTY OF MACOMB )  
 ) MY COMMISSION EXP. JULY 7, 1998 )  
 ) SCT.

Then personally appeared Patsy R. DeSandre, of Malcolm's Point Incorporated, and acknowledged the forgoing instrument to be her free act and deed, before me this 5th day of June, 1995

My Commission Expires: 7-7-98

Donna M. DeSandre  
 NOTARY PUBLIC

STATE OF DONNA M. DESANDRE )  
 ) NOTARY PUBLIC STATE OF MICHIGAN )  
 ) MACOMB COUNTY )  
 COUNTY OF MACOMB )  
 ) MY COMMISSION EXP. JULY 7, 1998 )  
 ) SCT.

Then personally appeared David L. DeSandre, of Malcolm's Point Incorporated, and acknowledged the forgoing instrument to be his free act and deed, before me this 5th day of June, 1995

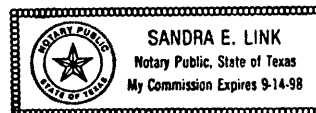
My Commission Expires: 7-7-98

Donna M. DeSandre  
 NOTARY PUBLIC

STATE OF Texas )  
 ) SCT.  
 COUNTY OF Dallas )

Then personally appeared Marshall B. Roberts, of the Malcolm's Point Incorporated, and acknowledged the forgoing instrument to be his free act and deed, before me this 9th day of June, 1995

My Commission Expires: 9/14/98



Sandra E. Link  
 NOTARY PUBLIC

STATE OF New York )  
 ) SCT.  
 COUNTY OF Nassau )

HERBERT W. FREY  
 NOTARY PUBLIC, State of New York  
 No. 4727341  
 Qualified in Nassau County  
 Commission expires December 31, 1996

Then personally appeared Jerry G. Roberts, of Malcolm's Point, Incorporated, and acknowledged the forgoing instrument to be his free act and deed, before me this 1st day of June, 1995

My Commission Expires: 12/31/96

Herbert W. Frey  
 NOTARY PUBLIC



STATE OF New York  
COUNTY OF Nassau

)  
)SCT.  
)

NOTARY PUBLIC, State of New York  
No. 4727341  
Qualified in Nassau County  
Commission expires December 31, 1996

Then personally appeared Roberta F. Roberts, of Malcolm's Point, Incorporated, and acknowledged the forgoing instrument to be her free act and deed, before me this 1st day of June, 1995

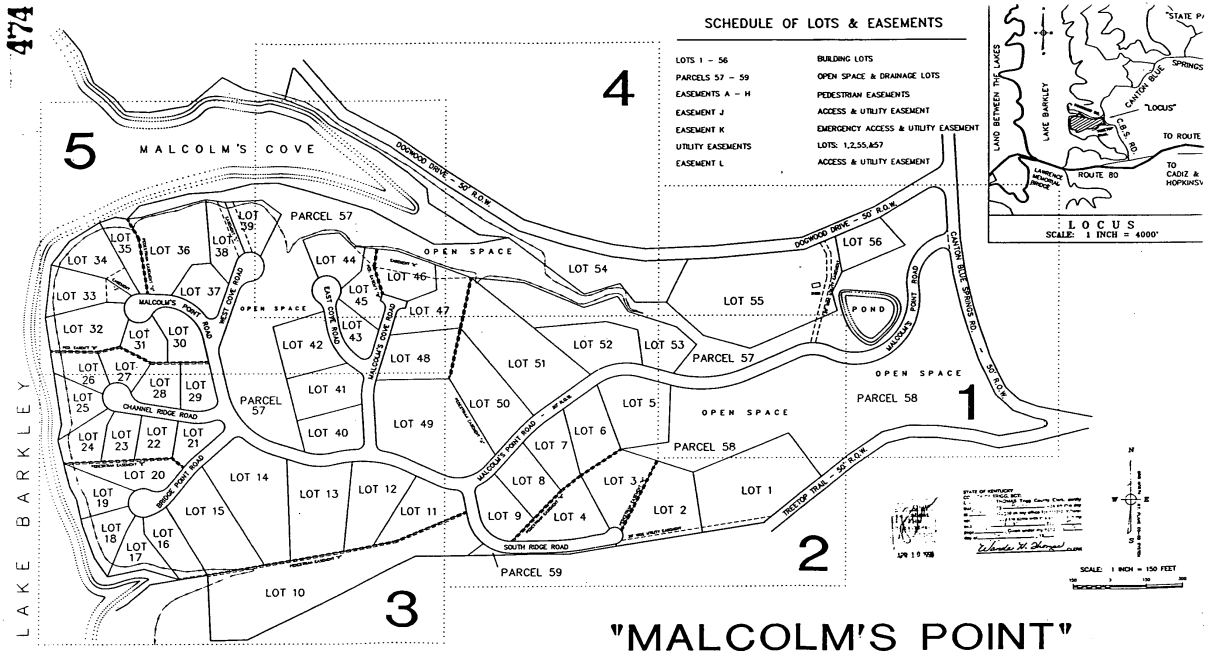
My Commission Expires: Dec 31, 1996

HERBERT W. FREY  
NOTARY PUBLIC, State of New York  
No. 4727341  
Qualified in Nassau County  
Commission expires December 31, 1996

Herbert W. Frey  
NOTARY PUBLIC

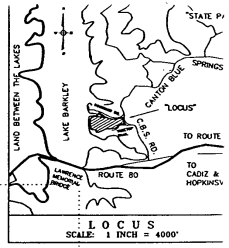
THIS INSTRUMENT WAS PREPARED BY:

Lester Bennett Guier  
LESTER BENNETT GUIER  
Attorney At Law  
610 South Main Street  
P.O. Box 1214  
Hopkinsville, Kentucky 42241-7214  
(502)885-8285



SCHEDULE OF LOTS & EASEMENTS

LOTS 1 - 56	BUILDING LOTS
PARCELS 57 - 59	OPEN SPACE & DRAINAGE LOTS
EASEMENTS A - H	PEDESTRIAN EASEMENTS
EASEMENT J	ACCESS & UTILITY EASEMENT
EASEMENT K	EMERGENCY ACCESS & UTILITY EASEMENT
UTILITY EASEMENTS	LOTS: 1,2,55,65,7
EASEMENT L	ACCESS & UTILITY EASEMENT



"MALCOLM'S POINT"

ROBERTS LAND, TRIGG COUNTY, KENTUCKY  
SUBDIVISION PLAN OF LAND OFF OF CANTON BLUE SPRINGS ROAD, CANTON, KY.  
AUGUST 15, 1994

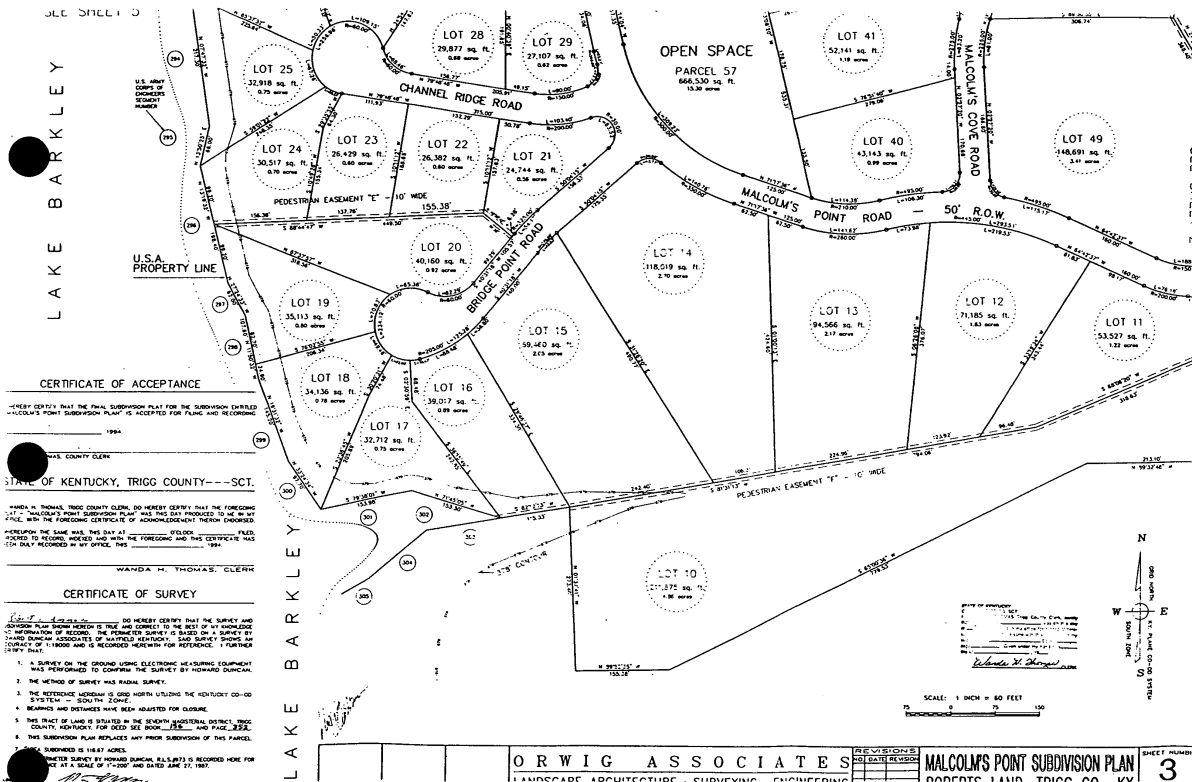
OWNER: MALCOLM'S POINT INC., 4485 CADIZ ROAD, HOPKINSVILLE, KENTUCKY, 42240

SHEET INDEX

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1	1	2	3	4	5	6
2	1	2	3	4	5	6
3	1	2	3	4	5	6
4	1	2	3	4	5	6
5	1	2	3	4	5	6
6	1	2	3	4	5	6







**CERTIFICATE OF ACCEPTANCE**

WHEREAS, the final subdivision plan for the subdivision entitled "MALCOLM'S POINT SUBDIVISION" is accepted for filing and recording in the office of the County Clerk, TRIGG COUNTY, KENTUCKY, this 17th day of June, 1987.

**CERTIFICATE OF SURVEY**

I, WANDA H. THOMAS, CLERK, DO HEREBY CERTIFY THAT THE FOREGOING "MALCOLM'S POINT SUBDIVISION" PLAN WAS THIS DAY PRODUCED TO ME BY THE SURVEYOR, MALCOLM'S POINT SUBDIVISION, AND THAT THE SURVEYOR HAS COMPLIED WITH THE REQUIREMENTS OF THE KENTUCKY SUBDIVISION ACT, CHAPTER 120, KRS, AND THAT THE FOREGOING PLAN IS A TRUE AND CORRECT COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE, THIS 17th day of June, 1987.

WANDA H. THOMAS, CLERK

**CERTIFICATE OF SURVEY**

I, MALCOLM'S POINT SUBDIVISION, DO HEREBY CERTIFY THAT THE SURVEY AND SUBDIVISION PLAN SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND INFORMATION OF RECORD. THE FOREGOING SURVEY IS BASED ON A SURVEY BY MALCOLM'S POINT SUBDIVISION, ASSOCIATES OF HARTFORD, KENTUCKY, AND SURVEYOR THOMAS H. THOMAS, CLERK, TRIGG COUNTY, KENTUCKY, AND IS RECORDED HEREIN FOR RECORD. I FURTHER CERTIFY THAT:

1. A SURVEY ON THE GROUND USING ELECTRONIC MEASURING EQUIPMENT WAS PERFORMED TO CONFIRM THE SURVEY BY MALCOLM'S POINT SUBDIVISION.
2. THE METHOD OF SURVEY WAS BY THE SURVEYOR.
3. THE REFERENCE MERIDIAN IS GRID NORTH UTILIZING THE KENTUCKY CO-80 87-75-15" - SOUTH ZONE.
4. BEARINGS AND DISTANCES HAVE BEEN ADJUSTED FOR CURVATURE.
5. THIS TRACT OF LAND IS SITUATED IN THE SEVENTH JUDICIAL DISTRICT, TRIGG COUNTY, KENTUCKY, FOR DEEDS, RECORDS, AND TAXES.
6. THIS SUBDIVISION PLAN REPLACES ANY PRIOR SUBDIVISION OF THIS PARCEL.

SUBMITTED IN 1987 JUNE  
RECORDED BY HONORABLE CLERK, TRIGG COUNTY, KENTUCKY, FOR DEEDS, RECORDS, AND TAXES, AT A BOARD OF 17-0007 AND DATED JUNE 17, 1987.

