

Inst: 245215 Date:09/26/2006 Time:11:38 AM DRICHARDSON DC, Brent Thurmond,
WAKULLA County B: 676 P: 705 - 712

*This instrument prepared by:
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Smith, Thompson, Shaw & Manausa, PA
3520 Thomasville Road, 4th Floor
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**AMENDED DECLARATION OF
RESTRICTIVE COVENANTS OF MALLARD POND**

This FIRST AMENDEMNT is made this 25th day of September, 2006 by the Owners of the Property known as Mallard Pond Subdivision and more specifically identified in Exhibit A.

WITNESSEETH

WHEREAS, Declaration of Covenants, Conditions and Restrictions of Mallard Pond Homeowners Association, Inc. ("Covenants") were recorded at Official Records Book 579, page 585 in the Public Records of Wakulla County, Florida;

WHEREAS, pursuant to the Covenants, the owners wish to amend the Covenants;

WHEREAS, the parties named below represent all Owners of Mallard pond;

WHEREAS, the Owners wish to amend the Declaration by completely revoking the initial restrictive covenants and replacing them in their entirety with the amendment below;

NOW THEREFORE, pursuant to the Owners' authority, the Owners hereby amend the Covenants as follows:

AMENDMENT

TRIPLE H. CONSTRUCTION, INC., as the owners of that certain land in Wakulla County, Florida described in Exhibit "A" attached hereto and made a part thereof, hereafter referred do as "Mallard Pond", by this instrument do make, declare and impose upon the lands described in Exhibit "A" for the benefit of all present and future owners of the land, the following conditions, restrictions, and limitations which shall be covenants running with the land, binding upon the owner, its successors and assigns, and all persons claiming any right, title or interest in the land and all subsequent purchasers of the land, their heirs, personal representatives and assigns. All prior covenants recorded for Mallard Pond are revoked and replaced in their entirety by the provisions below.

**ARTICLE I
DEFINITIONS**

Section 1. "Declarant" shall mean and refer to TRIPLE H CONSTRUCTION, INC. or their assigns.

Section 2. "Plat of Mallard Pond Subdivision" shall mean and refer to the Plat of the Mallard Pond recorded in Plat Book 4, Pages 56-57 of the Public Records of Wakulla County, Florida and particularly those properties identified thereon as Mallard Pond Subdivision.

Section 3. "Association" shall mean and refer to MALLARD POND HOMEOWNERS ASSOCIATION, INC., a Florida Corporation not for profit, formed to administer these covenants, initially related to land in Exhibit "A".

Section 4. "Easement" shall mean the land described on the Plat for Mallard Pond or recorded documents for the purposes of roadway, storm water conveyance and utility use and shall include real property interests conveyed to Wakulla County and/or easements to a utility provider. Easements are further defined as:

1. Right of Ways are for roadways and swales for the purposes of egress and ingress and the transference of storm water and utilities. These are owned by Wakulla County and maintained by the Association until Wakulla County accepts said improvements for maintenance. Refer to the Plat of the Mallard Pond for exclusions and restrictions. This will change as outlined in Article IX, Section 7 – Private Roadways below.
2. Utility Easements owned by the lot owner as defined in Article 5 below or the Association and used by utility companies.
3. Storm water/Utility Easements are either within the lots as defined in Article 5 below or adjacent to the lots and owned by the Association.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership: Any person who owns property that is subject to these restrictions shall automatically be a member of the Association provided, however, that where any lot is owned by more than one (1) person, one (1) of the owners shall be designated to cast the vote on matters to come before the Association on behalf of all the owners of the lot.

In the event the owner of a lot is a corporation or partnership, a partner or corporate officer shall be designated to cast the vote on behalf of the partnership or corporation.

Section 2. Voting Rights: The Association shall have two (2) classes of voting members as follows:

“Class A” – Class A members shall be all owners in good financial standing with the Association with the exception of Declarant, and shall be entitled to one (1) vote for each unit of property owned.

“Class B” – The Class B member shall be the Declarant, who shall be entitled to exercise three (3) votes for each unit owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals (90)% of the total votes outstanding in the Class A and Class B membership.

“Class C” – Class C members shall be non-voting members and limited to primary builders.

Section 3. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and Facilities to the members of his immediate family, his tenants, or contract purchasers who reside on the property.

ARTICLE III ASSESSMENTS

Section 1. Liens and Personal Obligation of Assessments: Each “Class A” owner of a lot by acceptance of his deed for such a lot, whether or not it is expressed in his deed, agrees to pay the assessments as provided in this article.

Section 2. Duties of Declarant: The Declarant shall pay for the initial entrance sign along with landscaping and construction of the entrance into Mallard Pond, including, but not limited to construction and installation of the entry gates for Mallard Pond.

Section 3. Annual assessments: Annual assessments shall be paid by each “Class A” lot owner to the Association. The assessment for the year 2006 shall be three hundred dollars (\$300.00) for each unit assessed to an owner. After 2006, the annual assessment may be increased by vote of the Board of Directors of the association, not to exceed twenty-five percent (25%) over the assessment of the previous year unless a greater increase is approved by greater than fifty (50%) of “Class A” members. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents on the property and for:

- (a) the enforcement of the provisions of this Declaration on behalf of the Association;

- (b) the improvements and maintenance of the Common Areas;
- (c) water and electrical usage for the Common Areas; (Note: When there has been sufficient money collected from annual assessments, money paid by the Declarant for deposits, fees, usage, etc. will be refunded to him upon presentation of proper documentation.)
- (d) liability insurance for officers and directors;
- (e) insurance for Association; and,
- (f) management fees for professional association management.

Section 4. Special Assessments-Other: In addition to the previous defined assessments, the Association may levy, in any assessment year, a special assessment to "Class A" owners for that year only. It is for the purpose of defraying, in whole or in part, the cost of enforcing this Declaration on behalf of the Association or the cost of construction, reconstruction, repair or replacement of the entrance way, any entrance sign, gates, roadways or improvement upon the Common Areas, including fixtures and personal property. Any such assessment must be approved by the majority vote of each class of membership of the Association in person or by proxy. Each "Class A" owner shall be assessed a percentage of the maintenance cost. The percentage of the cost allocated to each "Class A" Owner shall be determined by the number of units assessed to each "Class A" owner. If the health and welfare of the public is at risk or if damage is done to the entrances of any of the neighborhoods in Mallard Pond, the Board of Directors has the right to levy this special assessment without the vote of the members of both The Board of Directors and the Architectural Control Committee deems as necessary.

Section 5. Effects of Nonpayment of Assessments and Remedies of the Association: Any assessment not paid within sixty (60) days after February 28 shall be deemed in default and be subject to a late fee of twenty-five \$25.00 for each sixty (60) days of delinquency. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for assessments provided for herein by abandonment of his lot.

Section 6. Subordination of Assessment Lien Mortgages: The assessment lien provide for herein shall be subordinate to the lien of the first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceedings in lieu thereof shall extinguish the assessment lien that becomes due prior to such sale or transfer. No sale or transfer shall release such lot from liability for any assessments thereafter becoming due.

Section 7. Uniform rate of Assessment and Collection: Except as otherwise set forth herein, both annual and special assessments shall be fixed at a uniform rate for all lots and be based on the calendar year. Assessments may be collected on an installment basis at the discretion of the Board of Directors. The assessments will be prorated based on the date of the deed.

ARTICLE IV PRIMARY BUILDERS' RIGHTS

Primary Builders have the authority to maintain model home(s) with appropriate on-site parking and signage as well as any off-site signs and flags as they deem necessary to promote the sales of their home(s). These signs may also be placed within the common area within the entrance way of the Mallard Pond. This right will stay in effect until all home(s) have been sold to first-time buyers. This right survives the cessation of the "Class B" membership. Declarant shall designate Primary Builders from time to time.

ARTICLE V EASEMENTS AND STORM WATER SYSTEMS

Except for the Declarant, no owner shall permit or otherwise allow any portion of any lot to be utilized as an easement, roadway, driveway, street or other method of access, ingress, or egress to areas of property not included within the property. The purpose of this provision is to preserve and protect the integrity of the exterior boundaries of the property and to preclude and prohibit any break in those boundaries by easement, roadway, driveway, or street granted,

permitted or otherwise created by any owner other than the Declarant. The Declarant reserves the right to grant such easements or create such roadways upon property or lots owned by the Declarant as the Declarant, in the Declarant's sole discretion, determines necessary, appropriate or desirable.

Within easements described in the Public Records, no structure, plant or other object shall be placed or permitted to remain which may damage, interfere or change the direction or flow of drainage or interfere with the proper maintenance within the easement, or the safe passage of automobile traffic.

The Association will be responsible for maintenance of all storm water systems and easements not accepted by Wakulla County. The Declarant has the right to build additional storm water conveyance systems as he feels is necessary to remedy any drainage problems as they arise.

Lot setbacks, described in Article VII Section 3 below, shall serve as prescriptive drainage cross-easements allowing uphill and adjacent properties storm water access to master storm water facilities as depicted on the final plat. Each owner shall use reasonable efforts to direct storm and surface water from such owner's lot to the storm water management facility without increasing storm water impact to adjacent lots. Plants and structures are not allowed to be placed in swales altering the flow of the water.

In order to meet local and state storm water requirements, this subdivision has been designed and approved with the use of roadside swales for collection, retention, treatment and percolation of storm water that discharges from lots and the roadway system. These swales (commonly known as ditches) and primarily located along the roadway will retain storm water for the purpose of treatment and volume control for up to 72 hours following a rainfall event.

The retention of this storm water in the swales enhances the environment and is an essential component of the treatment of the storm water from this site.

ARTICLE VI ARCHITECTURAL CONTROL

Nothing shall be constructed on the lot including houses, outbuildings, fencing, or any other structures or improvements nor shall any exterior addition to or change to or alteration therein be made, until the plans and specifications have been approved in writing by the Architectural Control Committee (ACC). The ACC shall be composed of three (3) or more representatives named in the Articles of Incorporation of Mallard Pond Homeowners Association, Inc., or subsequently appointed by the Board of Directors of the Association. In the event the ACC fails to act in writing within thirty (30) days of receipt of the plans and specifications, then the party seeking approval shall send a certified letter to the attention of the President of the Association requesting action from the ACC. Should the party seeking approval fail to receive a reply within thirty (30) days from the date of the certified letter, approval will not be required and this Article will be deemed fully complied with. The ACC representatives (primary) named in the Articles of Incorporation cannot be voted out by the board of directors until all lots have been built on or until the ACC members consent to be replaced. There is nothing here to prevent the ACC from appointing a sub-committee of three (3) members in good standing from the Association to monitor and govern these covenants on all houses that have been issued a Certificate of Occupancy. There must be a majority vote of sub-committee members to initiate any action against any member of the Association. An appeal may be field with the ACC primary representatives. A majority vote is required to overturn the decision of the sub-committee. The primary representatives have the right to replace individual members of the sub-committee or dissolve the sub-committee in its entirety with a majority vote.

ARTICLE VII USE RESTRICTIONS

Mallard Pond shall be occupied and used only as follows:

Section 1. Each lot shall be used as a residence for a single family and no other purpose.

Section 2. No lot shall be divided.

Section 3. Minimum setbacks for buildings are as follow: twenty-five (25) feet front, fifteen (15) feet rear, eight (8) feet side interior and fifteen (15) feet side corner. For the purposes of this Article, eaves and steps shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building to encroach upon another lot. Storm-water and utility easements can be within the setbacks.

Section 4. No houses, outbuildings, fences including additions to existing structures, shall be erected within the Association until the construction plans, site plans and specifications showing the location and architectural design of the structure have been approved by the ACC. Approval shall be based on compliance with these restrictions, quality of materials and location on the property. Approval shall not be unreasonably withheld. Basic architecture will be consistent, as more fully described in Section 10 below.

Section 5. No mobile homes shall be allowed on the property.

Section 6. Outbuildings shall be limited to storage sheds, boat houses, greenhouses, and structures customarily associated with single family residential homes. All outbuildings shall be approved as provided for in Section 4 and 10.

Section 7. Noxious or offensive activity shall not be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Association. This provision also applies to the common areas. Animals shall not be kept on the property in such a manner as to cause a nuisance or annoyance because of smell or noise or to cause a health hazard (this includes the removal of pet excrement). No crops or animals shall be raised, bred or kept on the property for any commercial purposes. Animals shall be limited to domestic dogs, cats and other household pets. No fighting dogs or dogs that create a hazard shall be allowed on the property. All pets shall at all times be confined within the owner's home or fenced lot or when outside of said lot be securely kept on a lease. The Board of Directors has the complete authority to control Section 7 in its entirety.

Section 8. No dwelling shall be constructed on any lot within the property that contains less than one thousand three hundred (1,300) square feet of space, heated and cooled. Once construction starts, work shall be pursued diligently until completed.

Section 9. There will be no trash or any unsightly refuse allowed to be dumped on the lot permanently or temporarily. Trash, garbage or other waste shall not be allowed to accumulate over time on any lot or other part of the Properties and shall not be kept except in trash containers located and installed in the manner approved by the ACC. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition and shall not be visible from the street or from any private or common driveway except for those times designated for collection by the appropriate waste management company. Each Owner shall maintain the landscaping, including trees, shrubs, and grass within the boundaries of his lot, and the exterior of the house in a neat and attractive condition. If the Owner fails to maintain his property in such a prescribed fashion, then upon a vote of a majority of the Board of Directors, and after not less than ten (10) days' notice to the Owner, the Association shall have the right to enter upon such Lot and provide such maintenance as it deems necessary or appropriate, and the cost thereof shall be payable to the Association by such Owner within ten (10) days after delivery to the Owner of a demand for payment. Amounts due hereunder may be enforced and collected under the provisions of Bylaws of Mallard Pond Homeowners Association. For the purpose solely of performing the maintenance authorized by this paragraph, the Association agents and employees shall have the right, after reasonable notice to the Owner, to enter upon any such lot between the hours of 7:00 a.m. and 6:00 p.m.

Section 10. No motorized recreational vehicles, (4 wheelers, go carts etc.) shall be operated on any portion of the property; however, the Board of Directors may approve certain motorized vehicles designed so as not to disturb the members of the association (golf carts as an example).

Section 11. Building guidelines are as follows:

- A. The roof pitch can not be less than 6/12 and the roof must be shingled with colors approved by the ACC.
- B. All shingles should be twenty-five (25) year architectural shingles. Other roofing materials must be approved by the ACC.
- C. House siding shall be James Hardie (or comparable) lapped siding, brick, stone, or stucco. Colors must be approved by the ACC.
- D. Mailboxes shall be attractive and consistent in appearance and color. The ACC will establish this policy.
- E. Front yards must be sodded with grass and landscaped with plants and mulch. Whenever possible a natural buffer shall exist between adjacent houses.
- F. Screen porches shall match the existing structure of the house with materials and color.
- G. Driveways shall be located when the lot is first cleared so as to minimize damage to the existing paved road. Excessive road and ditch damage must be either fixed or cost reimbursed to the Declarant within thirty (30) days from receiving the Certificate of Occupancy. The ACC shall be final arbitrator in any dispute that may arise. The driveway shall not be located closer than three (3) feet from an interior lot line with the exception of a backup or turn-around pad which may be located as near as one (1) foot to an interior lot line. The primary ACC has the authority to alter these set backs.
- H. Proper culverts must be installed with concrete mitered- end sections (minimum length allowed by the County is 30 ft.) In certain cases, the builder may be exempt from putting in a driveway culvert. Wakulla County has the final authority.
- I. Walkways and patios must be concrete with a broom finish. Any specialty finish must be approved by the ACC.
- J. Outbuildings must be consistent with the exterior of the house in color and materials and located in the rear yard. The side-walls cannot exceed eight (8) feet in height. No metal outbuildings will be allowed. Wood may be substituted for Hardie Board. All outbuildings must get ACC approval.
- K. All fencing shall be six (6) foot "shadow box" style. It must start at the rear corners of the house unless otherwise approved by the ACC. Fences cannot be stained or painted. Natural wood preservative is allowed.
- L. Play ground equipment, boats, trailers, motor homes, campers, sheds, greenhouses, pet houses, and other like materials must be either in an enclosed garage behind a screen fence. If behind the fence, it can extend above the line of sight at ground level as long as it doesn't create a visual disturbance to the adjacent side and rear lot owners. The side and rear lot owners may seek remedy by a decision from a majority of the ACC primary committee representatives. Pursuit of hobbies or other activities including, but not limited to, work on vehicles or other mechanical devices and woodworking, which tend to result in disorderly unsightly or unkempt conditions, shall not be pursued or undertaken except within an enclosed garage.
- M. Each house shall have a functional garage attached thereto which shall be designated to accommodate the parking of at least one (1) automobile.
- N. Pet pens and pet houses must be kept behind a fence or in the rear yard. Crop and/or vegetable gardens shall be in the rear yard only.
- O. One sign only of not more than 5 square feet to advertise the property for sale or lease may be placed on the lot; all other signs and locations must be approved by the ACC unless promoting one-day events and then the owner must remove them by the end of the following day. Refer to Article IV for exceptions.
- P. No tank or storage of fuel, water or other substance shall be placed or permitted to remain on the lot unless approved by the ACC. Propane tanks must be placed underground.
- Q. Garages may be enclosed only on model homes and only so long as used as a model home, and not thereafter.
- R. The Architectural Control Committee shall make the final determination in any dispute that may arise involving these issues.

B: 676 P: 711

- S. Pools are allowed in the backyard only if a shadow box fence is constructed first so that the pool is not visible from the street or neighbors at ground level.
- T. Satellite antennas must be roof or eave mounted and not be visible from the street. Exceptions to this and all other outside antennas must be approved by the ACC.

ARTICLE VII EFFECT

Each and every conveyance of any lot in the Association is expressly made subject to the provisions hereof whether or not the terms of such conveyance incorporates or refers to these provisions.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement and Attorneys' Fees. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, including injunctive relief, all restrictions, conditions, covenants, reservations, liens, charges and obligations now or hereafter imposed by the provisions of this Declaration. In connection with such litigation, the prevailing party shall be entitled to recover all costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. Without limiting the generality of the foregoing, the prevailing party in any litigation to require the Association to perform any other action or obligation imposed on the Declarant pursuant to this Declaration, shall be entitled to recover all costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. The failure of the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Annexation. Additional residential property and common areas may be annexed to the Properties by the Declarant. Any such annexation shall subject said land to these covenants, conditions and restrictions, and Owners of each lot in such annexed area shall have the same rights, benefits, obligations and duties as the Owners of the lots described in this Declaration.

Section 4. Development by Declarant. No provisions contained herein shall prevent Declarant, or a Builder or its contractors or subcontractors from performing such work and activities as it deems necessary or advisable in connection with the development of the Properties and its construction activities, nor shall such provisions in any way prevent the Declarant from maintaining such sign or signs on the Properties as Declarant deems necessary or desirable for the sale or other disposition thereof, nor shall such provisions in any way prevent the use of a Lot and dwelling thereon as a model home and/or sales office including the use of the garage as a sales office.

Section 5. Duration/Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded in the Public Records of WAKULLA COUNTY, Florida, at the end of which period it shall be extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of expiration of said initial period, or any extension period, shall sign an instrument in which said covenants and restrictions are removed or modified in whole or in part, which instrument shall be filed for record in the appropriate WAKULLA COUNTY Public Records and in the manner then proved by law. No amendment shall affect the priority of the lien of any first mortgage on any lot over the lien of the assessments provided for herein unless the holder of the mortgage joins in the execution of the amendment. Declarant reserves and shall have the sole right to add to, alter, amend, revoke, release and waive this Declaration for any purpose or purposes, at any time and in whole or in part until the association is turned over to the property owners as provided by Florida Statute. Except as provided herein, no amendments to Article VII, Section 10, may occur until after five (5) years and upon a seventy-five (75%)

B: 676 P: 712

favorable vote of those eligible to vote; all other amendments shall require unanimous consent of all those eligible to vote at all times.

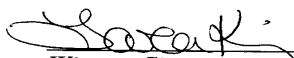
Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require prior written approval of the Federal Housing Administration or the Department of Veterans Affairs: annexation of additional properties to be subject to this Declaration, dedication of any Common Areas, and amendment of this Declaration.

Section 7. Private Roadways. The plat as originally recorded indicated the roadways of Mallard Pond would be public. Such was not the intent and all owners agree to cooperate in the future in getting an abandonment of the roadways from the County. The owners and Declarant understand and consent that Mallard Pond roadways will be privately owned by the association and that Mallard Pond will be a gated community.

WHEREAS It is the intent of the parties that this addendum shall control completely over any and all prior Covenants terms or conditions.

IN WITNESS WHEREOF, this instrument is executed this 25th day of September, 2006.

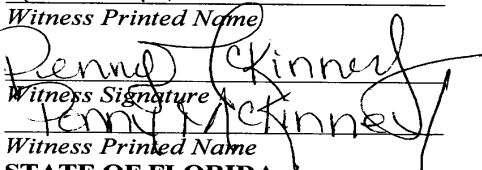
WITNESSES:



Witness Signature

Tara Kieser

Witness Printed Name



Witness Signature

Penny McKinney

Witness Printed Name

STATE OF FLORIDA

COUNTY OF Wakulla

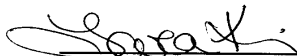
TRIPLE H CONSTRUCTION, INC.

BY: 

Michael V. Harbin
President

Executed by Michael V. Harbin as President for Triple H Construction, Inc., known to be the person described in and who executed the foregoing instrument, who acknowledged before me that he executed the same, that I relied upon the following form of identification of the above-named person: **Personally Known** and that an oath was/ was not taken.

WITNESS my hand and official seal in the County and State last aforesaid this 25th day of September, 2006.



NOTARY PUBLIC

