

MALLARD POINTE

**AMENDED AND RESTATED
PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS,
AGREEMENTS, AND CHARGES**

These Amended and Restated Protective Restrictions, Covenants, Limitations, Easements, Agreements, and Charges ("Amended Restrictions"), made the 2nd day of March, 2015, by property owners (the "Owners") of Mallard Pointe, located in Harris Township, St. Joseph County, Indiana, and consisting of Sections I, II, and III, with lots numbers 1 through 102 as more particularly described on the recorded Primary Plat of Mallard Pointe and the recorded plats of Section I, Section II and Section III (which also includes Lot A, an existing home included in the plat for the convenience of the Developer (as defined below) with the cooperation of the owners of Lot A but which is not subject to these restrictions), recorded in the Office of the Recorder of St. Joseph County, Indiana as Instrument Nos. 9213301, 9236153, and 9320383 respectively ("Mallard Pointe").

WHEREAS, certain Protective Restrictions, Covenants, Limitations, Easements, Agreements, and Charges for Mallard Pointe were caused to be recorded by Woodfield Downs, Inc., an Indiana corporation and the developer of Mallard Pointe ("Developer"), on October 8, 1992 in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 9237400 (as amended by Instrument Nos. 9434390 and 9712312, recorded on September 8, 1994 and April 7, 1997, respectively, the "Original Restrictions"); and

WHEREAS, these Amended Restrictions are being made pursuant to the authorization contained in Article I, Section B of the Original Restrictions, inasmuch as these Amended Restrictions are being executed and recorded after eighty percent (80%) of all lots of all sections of Mallard Pointe have been sold to residential buyers and are being executed by the owners of more than eighty percent (80%) of the lots in Mallard Pointe.

NOW THEREFORE, the Owners declare that the Original Restrictions are hereby amended and restated in accordance with the terms and provisions of these Amended and Restated Protective Restrictions, Covenants, Limitations, Easements, Agreements, and Charges, and that the real property in Mallard Pointe, except Lot A, shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to the covenants and restrictions hereinafter set forth, which shall run with the land, expressly and exclusively for the use and benefit of said property and of each and every person or entity who now or in the future owns any portion or portions of said real property. The owner or owners, present or future, of any land or lot subject to these Amended Restrictions shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injuries resulting from any violation hereof, but there shall be no right of reversion or forfeiture of title resulting from such violation. The Amended and Restated Protective Restrictions, Covenants, Limitations, Easements, Agreements, and Charges imposed upon Mallard Pointe are as follows:

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I. DURATION, AMENDMENT, CONTROL, AND ENFORCEMENT.

A. DURATION. These Amended Restrictions shall be deemed to be attached to, and shall be considered a part of, the Plat of all Sections of Mallard Pointe, and shall become effective upon the recording in the Office of the Recorder of St. Joseph County, Indiana. These Amended Restrictions are to run with the land and be binding upon the undersigned and all legal representatives, successors in interest, grantees, heirs, and assigns of the undersigned until January 1, 2023, at which time said restrictions shall be automatically extended for a successive term of ten years, and similarly extended each ten year period thereafter, unless prior to the end of any given term it is agreed not to extend these restrictions or any part or parts thereof by vote of eighty percent (80%) of the then owners of all lots. The owner or owners of each said lot shall be entitled to one vote per lot.

B. AMENDMENT. These Amended Restrictions may be amended or rescinded, in part or in whole, by either 1) written instrument signed by the then owners of eighty percent (80%) of the lots of Mallard Pointe whose dues are current at the time of the vote and who are in good standing with Mallard Pointe with the owner(s) of each lot being entitled to one vote per lot, or by 2) signature of an officer of the Homeowners Association certifying that the owners of eighty percent (80%) of the lots of Mallard Pointe whose dues are current at the time of the vote and who are in good standing with Mallard Pointe voted in the affirmative for the proposed amendment or rescission with the owner(s) of each lot being entitled to one vote per lot.

C. CONTROL. Part V. paragraphs A and B are incorporated here by reference.

D. PARTIAL INVALIDITY. Invalidation of part or parts of these Amended Restrictions by judgment or court order shall in no wise affect the remainder or any of the other provisions herein which shall remain in full force and effect.

E. ENFORCEMENT. If any persons shall violate or attempt to violate any of the restrictions herein, it shall be lawful for the Homeowners Association (as defined below), owners of one or more lots, and holders of leasehold interests in any lot or portion thereof in Mallard Pointe to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any of these restrictions to prevent such violations, or to recover damages for such violations, including attorneys fees, or both. The Homeowners Association may bring an action arising out of these Amended Restrictions in the St. Joseph Superior Court, Small Claims Division, but owners bringing suit against the Homeowners Association must bring their claim in the upper courts of the St. Joseph Circuit or Superior Courts. The owners hereby acknowledge that any violation of these Amended Restrictions would result in irreparable harm to the Homeowners Association and to other owners leaving them without adequate remedy at law justifying an immediate court-ordered injunction.

II. LAND USE; DWELLING SIZE.

A. LAND USE. With the exception of lot 26, which includes the lake ("Mallard Lake") and which has been conveyed to Homeowners Association for use which is compatible

with these Amended Restrictions and for the benefit of the families owning residences in Mallard Pointe, no lot shall be improved, used, or occupied for other than private, one-family residential purposes. All residences and other structures erected in Mallard Pointe must be approved by the Compliance Committee (as defined below). All detached buildings and structures, including in-ground swimming pools, pool houses, storage annexes, fences, dog exercise areas, and dog houses, must have architectural approval by the Compliance Committee unless such items fall within the permitted parameters outlined in these Amended Restrictions. Such detached buildings must be made of wood with wood or simulated wood exterior. The maximum size for detached buildings, including storage buildings and pool houses, shall be ten feet (10') by twelve feet (12'), unless written exception is given by the Compliance Committee. Only in-ground swimming pools shall be permitted. Above-ground swimming pools, including above-ground swimming pools that are partially or completely placed in-ground, are strictly prohibited. Above ground hot tubs or spas are permitted subject to design, location, and screening approval by the Compliance Committee. Satellite dishes larger than forty-eight inches (48") in diameter are prohibited. Satellite dishes forty-eight inches (48") or smaller in diameter are permitted, so long as such dishes are not visible from the front of the home. Antennas are not permitted. All swimming pools and other accessory structures shall conform to and comply with all relevant federal, state, and local laws, regulations, and ordinances, and all necessary permits for any swimming pools or other accessory structures must be properly obtained.

B. DWELLING SIZE. No dwelling shall be permitted on any lot with a living floor area of the main structure, exclusive of one-story open porches and garages, of less than the following number of square feet for the following types of dwellings:

<u>Type of Home</u>	<u>Minimum Square Footage</u>
Ranch Style	1,275 square feet
Two Story	1,500 square feet
Raised Ranch (bi-level) (including both levels whether the lower level is finished or not)	2,000 square feet
Three level	1,560 square feet

Garages. All dwellings must have a full-sized attached garage capable of storing two automobiles, but not to exceed the space for storing three automobiles.

C. CONSTRUCTION SCHEDULE AND OCCUPANCY. Building construction conforming to the restrictions herein shall be begun within one (1) year of the initial purchase of the lot. Building exteriors must be completed six (6) months after the start of construction. All buildings and accessory buildings shall be of substantial frame, brick, or stone construction and fully completed on exterior prior to any occupancy.

D. PROHIBITION AGAINST RESUBDIVISION. No lot shall be resubdivided into building lots or plots, but each shall remain devoted exclusively to the land use as assigned by the respective plat with land use terms and restrictions as defined herein. However, this

restriction shall not prevent one owner from acquiring title to two or more lots for construction of a single residence or prevent the dividing of one lot accomplished by a formal replat and the creation of two lots from three.

E. ARCHITECTURAL, LOCATION, AND CONSTRUCTION APPROVAL. There is hereby created the Mallard Pointe Compliance Committee (the "Compliance Committee"), which shall consist of three (3) persons appointed by the Homeowners Association who shall serve until they are removed by the Homeowners Association or have resigned. The Compliance Committee may designate any one of its members to act on its behalf. In the event of any vacancy on the Compliance Committee, the Homeowners Association shall appoint a replacement. In order to maintain harmonious structural design, no building shall be erected, placed upon, or altered on any lot until the building plans and specifications, and a plan showing the location of such structure have been approved in writing by the Compliance Committee. Such approval shall be required as to materials, harmony of external design with existing structures, location with respect to topography, and finish grade elevation. The decision of the Committee shall be entirely within its discretion. When seeking approval from the Compliance Committee as required in these Amended Restrictions, an applicant should provide the President of the Homeowners Association (who will in turn provide a copy to the Compliance Committee) a formal written request, including detailed plans and specifications, if applicable, via certified mail, return receipt requested, at least thirty (30) days prior to the anticipated commencement of work. In the event the Compliance Committee fails to approve such design and location in writing within thirty (30) days after said request has been submitted to President of the Homeowners Association, said request shall be deemed denied. The Compliance Committee, in its sole discretion, may approve a request, reject a request, or approve a request subject to conditions or restrictions. If the Compliance Committee approves the request, the work shall be completed no later than twelve (12) months from the time the applicant's written request was approved.

F. LOT DRIVEWAYS. All lot or parking driveways shall be constructed of hard surface concrete pavement materials for the full length and width thereof and shall be installed by the time of occupancy, unless delayed by weather, in which event construction of the driveway shall be completed as soon as practicable.

G. SIDEWALKS. All lots were furnished with a frontage 4 ft. wide sidewalk at a location designated by the Developer. The frontage sidewalks on each lot shall be maintained and repaired by, and at the sole cost and expense of, the Owner of each such lot.

H. LANDSCAPING. Grading and seeding for grass or sod must be completed by the time of occupancy, however, if the time of year does not permit, sodding and/or seeding must be completed as soon as practical and in no event later than June 15 following occupancy. Grading, sodding, and seeding shall be completed in such manner as not to hinder drainage or the natural flow of surface water. Any drainage swales or easements for drainage, including road ditches, shall be left open and not filled as to hinder the natural flow of surface water. Subsurface drains and/or drywells may be installed by individual Owners to assist lot drainage.

I. PRE-EXISTING STRUCTURES, ETC. Notwithstanding the fact that certain provisions of the Original Restrictions were not actively enforced and the fact that approval for certain projects was given by the Compliance Committee, from and after the effective date of these Amended Restrictions, all provisions of these Amended Restrictions will be actively enforced by the Homeowners Association and the Compliance Committee. Any non-conforming structures as of the effective date, as determined by the Compliance Committee, shall be permitted to remain until such structure falls into disrepair, at which time it shall be completely removed, or until such structure is voluntarily removed. All determinations of "disrepair" shall be made in the sole discretion of the Compliance Committee. Once the non-conforming structure is removed, it may not be re-constructed.

III. NUISANCES.

A. NUISANCES. No noxious or offensive trade or activity shall be conducted or carried on upon any lots, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No commercial business or professional office uses shall be conducted or carried on upon any residential lot.

B. HOME OCCUPATIONS. No home site shall be used for any purpose other than as a single family residence, except that a Home Occupation (as defined below) may be permitted. For purposes of this section, "Home Occupation" shall mean any legal use conducted entirely within the dwelling unit (confines of the house itself) and carried on only by a member or members of the immediate family residing in said residence, which use is clearly secondary to the use of the dwelling unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a dwelling unit; (b) no person employed other than a member of the immediate family who resides at the homesite; and (c) no mechanical or electrical machinery is used, except such as is permissible for domestic or household purposes. No clients or customers shall visit the property for any business purpose, including, but not limited to, making purchases, entering into agreements, or receiving services. Examples of businesses prohibited in all home sites include, but are not limited to, hairdressers, barber shops, beauty shops, gift shops, rental facilities, restaurants, or eating or drinking establishments. No residential building shall be structurally altered to indicate from the exterior that the building is being utilized for any purpose than that of a residential dwelling.

C. TEMPORARY STRUCTURES. No trailer, basement, garage, nor any structure of a temporary character shall be used at any time as a residence, either temporarily or permanently. Mobile homes, house trailers, boats, boat trailers, motor homes, camping trailers, recreation vehicles, larger commercial trucks and trailers, and similar items therefore shall not be parked or kept on any lot or street in Mallard Pointe for longer than seventy-two (72) hours. Such items may be parked within a garage provided the garage door is capable of being closed completely.

D. FENCES AND SIGNS. Unless they fall within the permitted parameters listed below, fences must be approved by the Compliance Committee, as detailed in Part II, paragraph E, as to quality and kind of materials, height, location, and views. Standard chain-link fences are

prohibited. Covered chain link and polyvinyl fences of conforming height are permitted. Normally, five (5) foot high fences will be the maximum (with four (4) foot high fences being preferred); however, privacy fences of six (6) feet may be allowed at the rear of homes around patios, hot tubs, and swimming pools. Notwithstanding anything to the contrary contained herein, swimming pool fences must comply with city and/or county requirements. Any six (6) foot high fencing shall be interior to the yard and at the patio, hot tub, or pool location. Six (6) foot high lot perimeter fencing is prohibited. To the fullest extent allowed by state law, no sign of any kind shall be displayed to public view on any residential lot or building except one sign of not more than five (5) square feet advertising the realty for sale or rent. The Homeowners Association may provide signage for lot 26, which includes Mallard Lake, as it deems suitable.

IV. LOT MAINTENANCE, SANITARY, PETS, PARKING, AND EASEMENTS.

A. STORAGE. No lot shall be used for outside storage, for longer than seventy-two (72) hours, of old lumber, boats, cars, materials, or debris which would tend to make the lot unsightly in appearance and character, as determined by the Compliance Committee. All fuel tanks shall be buried or concealed.

B. RUBBISH. All incinerators, garbage cans, and barrels shall be either located inside permanent structures or shall be of the "concealed type" and kept underground. No ashes or other rubbish shall be left in public view on any lot. No trash burning or leaf burning shall be allowed in Mallard Pointe.

C. ANIMALS, PETS, AND PET EXERCISING AREAS. No live poultry, sheep, hogs, horses, cattle, or any similar farm-type animals shall be quartered or housed on any realty in Mallard Pointe. However, domesticated dogs and cats or other ordinary household pets, may be housed within any residence or garage provided that no pet(s) be kept, bred, or maintained for any commercial purpose. When not in their own yard, dogs must be kept on a leash. No kennel, dog house, or similar structure shall be permitted. Pet exercise areas must be approved by the Compliance Committee.

D. EASEMENTS. There are strips of ground, variable in width and as shown on the plats of Mallard Pointe, which are marked "Easement," and which are reserved for various uses including, but not limited to, roads, sewers, mains, poles, ducts, lines and wires, overland drainage flows, et al., all of which are subject to control by the proper authorities and to the easement uses designated on the plat. No permanent structures shall be made in the grading of any lot areas used as drainage swales and initially provided, which would alter the flow of overland storm drainage runoff. Owners of lots in Mallard Pointe and all sections or phases thereof, take their titles subject to such easements and the rights of the public utilities and others present in the subdivision.

E. LOT AND BUILDING MAINTENANCE. The owners of every lot and residence shall maintain the lawn of their respective lots and their buildings so that they are attractive in appearance and character, as reasonably determined by the Compliance Committee.

F. PARKING. As neighbors, Owners should be considerate in the parking of vehicles. It is preferable that vehicles be parked in garages or on driveways. If vehicles are parked on the street, they should be parked in a manner that does not impede or impair the ability of a resident to enter or exit his or her driveway or block access to mailboxes by the U.S. Postal Service. In the winter, every effort should be made to keep the streets free of parking to allow for the plowing of snow. Parking a vehicle in any location which blocks or obstructs the entering or exiting of any driveway or blocks or impairs access to mailboxes by the U.S. Postal Service is prohibited. Parking a vehicle on the grass or lawn of any Lot or Common Area for longer than four (4) hours in any given twenty-four (24) hour day or for longer than eight (8) hours in any seven (7) day week is prohibited. Mallard Pointe reserves the right to have vehicles in violation of these parking provisions towed at the vehicle owner's expense. Mallard Pointe also reserves the right to report any violations of the St. Joseph County Code regarding General Regulations for Residential Districts to the appropriate authorities.

V. MALLARD POINTE HOMEOWNERS ASSOCIATION, INC.

A. ASSOCIATION. The Mallard Pointe Homeowners Association, Inc., an Indiana not-for-profit corporation (the "Homeowners Association"), has been created according to law for the benefit of the Owners. Only persons who are record owners of lots of Mallard Pointe shall be members of the Homeowners Association, except that the Owners of Lot A, and their successors, shall not be eligible for membership, nor shall they, or their successors, be bound by these Amended Restrictions. Voting membership in said association shall be apportioned according to one vote per lot.

B. PURPOSE. The purpose of the Homeowners Association is as set forth in the Articles of Incorporation, and also as set forth in these Amended Restrictions, including, but not limited to, the right to assess lot owners for:

1. The cost of maintenance of street lights and cost of electricity for the streetlights of the subdivision;
2. The maintenance of the two (2) entrance areas on Brick Road, including maintaining the sprinkling system, grass, trees, flowers, the signs, and such other items as may be deemed appropriate;
3. The maintenance of the mounded areas east and west of the main entrance on Brick Road and the mounded areas to the rear of Lots 1, 2, 3, and 4;
4. The maintenance of Lot 26, including shore line and the lake retention area and the payment of taxes and insurance on Lot 26, which Lot is owned by the Homeowners Association and which Lot includes the "building area" on Eagle Chase Drive (100' x 150') and the entire lake retention area;
5. The payment of the cost of installing and maintaining a four (4) inch well, pump, and water outlet to be used for watering the grass, trees, and such other nursery stock that has been planted, or that the Homeowners

Association may plant, on Lot 26, and a sprinkling system in the future, if so decided upon by the Homeowners Association.

6. The purchase by the Homeowners Association of sod, grass, fertilizers, trees, nursery stock, and maintenance items and maintenance contracts for maintenance on all portions of common areas, including signs and including all portions of Lot 26. This may include the purchase of sprinkling systems, playground equipment, picnic equipment etc. as the Homeowners Association may deem advisable and beneficial for the membership in its use and enjoyment of the common areas under its control.

7. The purchase of property, liability, and other appropriate insurance, including insurance on Lot 26, the entrance signs, and landscaping owned or controlled by the Homeowners Association.

8. Any other purpose reasonably necessary for the Homeowners Association's conduct of its affairs.

C. LOT 26. Members of the Homeowners Association and their families shall have and enjoy the right of access to the lake-retention area and use thereof, subject to rules and By-Laws regulating the use of Lot 26 as established either by the Homeowners Association.

D. EASEMENTS OF ENJOYMENT. Each resident of Mallard Pointe and each member of the Homeowners Association shall have a right and easement of enjoyment in all the sidewalks of Mallard Pointe, the entrance areas at Brick Road and at Eagle Chase Drive, which is part of Lot 26, and the lake and shore retention area of Lot 26, as aforesaid with rules and regulations, which rights shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions.

The right of Mallard Pointe Homeowners Association, Inc. to suspend the voting rights for any period during which any dues or assessment against membership remains unpaid and to suspend, during that period, the use of Lot 26 to such delinquent owners.

E. GREEN BELT AREAS. The term "Green Belt Areas" shall mean all real property ultimately to be owned or controlled by Mallard Pointe Homeowners Association, Inc. for the common use and enjoyment of all members of said association, including: the entrance areas at and along Brick Road and mounds to the west and east of the main entrance including the mounds located on the back end of Lots 1, 2, 3, and 4; the islands separating the ingress and exit areas of the entrance; and Lot 26, including the lake retention and drainage area and shore areas and that portion thereof which has 100 feet of frontage on Eagle Chase Drive, all of which shall be maintained at the cost of the Homeowners Association as provided herein.

F. COVENANT FOR DUES. The owners of each lot in Mallard Pointe shall be subject to an annual dues charge of One Hundred Fifty Dollars (\$150.00) per lot, to be paid to the Homeowners Association, due on the 1st day of April and payable within thirty (30) days after such billing date each year until by proper procedures said sum shall be increased, reduced, or abolished. Said fund is to be used for such purposes as the Homeowners Association may

approve and as provided for herein. Where closings take place in mid-year, the dues charged shall be pro-rated for that current year to the day of closing and shall be due at closing. Such dues and other amounts due under these Amended Restrictions, including interest, costs of collection, and attorneys' fees incurred in enforcing these Amended Restrictions, including those fees incurred in collecting dues and assessments, if any, shall become a lien on each realty interest as to which said dues remain unpaid for a period of more than thirty (30) days inferior only to bona fide mortgages thereon, and enforceable in the same manner as provided for in the Mechanic's Lien statute or the Homeowners Association Lien statute. After said 30 day period, interest at 12% shall be due on the unpaid amount from the due date. Additionally, and not in lieu thereof, members not current in the payment of dues shall be precluded from their vote and may be precluded from the use and enjoyment of Green Belt Areas located therein until such time as their dues charges are made current, subject also to such further provisions as may be contained in the By-Laws of the Homeowners Association. The Board of Directors of the Homeowners Association may change the annual dues, provided that such may not be increase any year more than fifteen per cent (15%) above the previous year without majority affirmative vote of a quorum of the Homeowners Association membership first had and obtained, or by a 100% affirmative vote of the Board of Directors of the Homeowners Association.

G. MEMBERSHIP REQUIRED. By the act of acceptance of a Warranty Deed, or other property interest, the recipient thereof thereby becomes an accepted member in the Homeowners Association, an association composed of all persons similarly situated in Mallard Pointe, and agrees to maintain membership therein and abide by all rules and regulations of said association, including but not limited to payment of dues prescribed by said association.

H. SUBORDINATION OF DUES TO LIEN OF MORTGAGES. The lien of dues provided for herein shall be subordinate to the lien of any bona fide first mortgages. Sales or transfer of any property interest shall not affect the dues lien, which is enforceable in the same manner as provided in the statute for enforcement of a Mechanic's Lien. However, the sale or transfer of any property interest pursuant to mortgage foreclosure or any proceedings in lieu thereof shall extinguish the lien of such dues as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve such property interest from liability for any assessments of dues thereafter becoming due or from the lien of dues which are due or owing prior thereto.

VI. INTERPRETATION.

Section headings in these Amended Restrictions are included for convenience of reference only and shall not constitute a part of these Amended Restrictions for any other purpose.

IN WITNESS WHEREOF, the following Owners, do hereby execute the above Amended and Restated Protective Restrictions, Covenants, Limitations, Easements, Agreements, and Charges for Mallard Pointe, a subdivision located in Harris Township, St. Joseph County, Indiana, effective the 2nd day of March, 2015.

This instrument prepared by Daniel G. Herbster, Attorney at Law,
THORNE GRODNIK, LLP
420 Lincolnway West, Mishawaka, Indiana 46545

MALLARD POINTE HOMEOWNERS ASSOCIATION

By: *Edward Hayes*
Edward Hayes, President

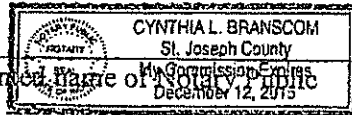
STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, a Notary Public in and for said County and State, personally appeared Edward Hayes, known to me to be the President of Mallard Pointe Homeowners Association, and acknowledged the execution of the foregoing Amended and Restated Protective Restrictions, Covenants, Limitations, Easements, Agreements and Charges.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of March, 2015.

Cynthia L. Branscom
Notary Public

My Commission Expires:
12/12/2015



Typed or printed name of Notary Public

A resident of _____ County,
State of _____

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Daniel G. Herbster.

THIS INSTRUMENT WAS PREPARED BY: Daniel G. Herbster, THORNE · GRODNIK, LLP, P.O. Box 1210, Mishawaka, Indiana 46546-1210.