

5-3-02
(23)

**DECLARATION OF RESTRICTIONS
OF
MORSE OVERLOOK**

**Instrument
#069605674**

THIS DECLARATION made this 8th day of February, 1998 by THE MARINA LIMITED PARTNERSHIP, an Indiana Partnership (hereinafter referred to as the "Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner of the lands contained in the area described in Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided (hereinafter referred to as the "Development"); and

WHEREAS, the Developer, The Marina Limited Partnership, is the owner of land contained in the area shown on Exhibit "A", Phase I, attached hereto, made a part hereof (which land will be subdivided and referred to as "Development"); and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and the future owners thereof; and

NOW, THEREFORE, The Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restriction, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development.

The Developer specifically reserves unto itself the right and privilege to include additional real estate to the Development, said additional real estate which is described in Exhibit "B".

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#69605674
HAMILTON COUNTY, INDIANA
HENRY L. LARK
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The additional real estate which could be added to Exhibit "A" is contiguous to the development and lies within the real estate described in Exhibit "B" in the original Declaration of Restrictions. The Developer reserves the right to exercise its option if said option is exercised, the additional real estate shall be deemed and labeled Additional Real Estate and will become part of the original development, for all purposes hereunder when declarant pieces of record in Hamilton County, Indiana, an instrument entitled Designation of Additional Real Estate, which would recite therein the real estate described.

The additional real estate that the developer may expand into is incorporated into this document and marked as Exhibit "B".

Upon the recording of such instrument or instruments, the real estate would be described therein shall for all purposes be deemed additional real estate and the owners of any lots within such additional real estate shall be deemed for all other purposes to have all rights, duties, privileges and obligations of owners of lots within the original real estate Declaration, as herein provided, without regard to whether the common properties have been conveyed by the declarant to the corporation or property owner's association, as hereinafter defined in accordance with the terms of the Declaration and without regard to the record ownership of the common properties. For purposes of this paragraph a plat depicting a portion of the development area shall be deemed Supplementary Declaration. Upon the recording of such instrument or instruments, the real estate which would be described therein shall for all purposes thereafter be deemed additional real estate and the owners of any lots within such additional real estate shall be deemed for all other purposes to have all rights, duties, privileges and obligations of owners of lots within the original real estate Declaration, as herein provided, without regard to whether the common properties have been conveyed by the declarant to the corporation or property owner's association, as hereinafter defined in accordance with the terms of the Declaration and without regard to the record ownership of the common properties. For purposes of this paragraph a plat depicting a portion of the development area shall be deemed to be a designation of additional real estate. The decision whether to add additional real estate to the original development shall be at the sole discretion of the developer and that no act on behalf of the developer in adding real estate to the original development is intended to nor shall it be construed as transferring of any ownership interest until such time as the real estate is platted and the lots are sold to individual owners.

The decision whether to add or subtract additional real estate to the original development shall be at the sole discretion of the developer and that no act on behalf of the developer in adding or subtracting real estate to the original development is intended to nor shall it be construed as transferring of any ownership interest until such time as the real estate is platted and the lots are sold to individual owners.

1. **DEFINITIONS.** The following are the definitions of the terms as they are used in this Declaration:

A. "Committee" shall mean the Morse Overlook Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Morse Overlook Property Owners Association, a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 10 of this Declaration.

C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of any obligation.

2. **CHARACTER OF THE DEVELOPMENT.**

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

Prior to issuance of an Improvement Location Permit, a delineation of the lot shall be submitted for approval to the Development Control Committee. Said delineation shall indicate all trees which have a diameter of more than twelve (12) inches caliper at a point five feet above the tree's natural base and which are located outside the building, driveway, and parking areas. These shall be designated by type and size and shall not be removed unless approved by the Development Control Committee upon proof of unusual hardship in the practical utilization of the lot and such removal shall not cause a materially adverse effect upon the aesthetic values of adjoining lands and rights-of-way.

Removal or destruction of such trees by a lot owner or his successors in title, other than by acts of God or circumstances beyond the lot owner's control, within ninety (90) days notice in writing, shall be replaced by a tree of a type and size established by the Development Control Committee, and upon failure to do so, the Development Control Committee shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the property collectable in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For the purposes of executing this covenant, an easement for ingress and egress shall be reserved on each lot for the performance thereof.

Also, adequate physical barriers, such as straw bales or snow fence, shall be provided by the builder to protect trees to be preserved from damage by construction equipment or otherwise in the erection of building improvements. Pruning of trees outside the building line shall be permitted subject to the review and approval of the Development Control Committee and shall be undertaken only by qualified persons having adequate equipment to properly protect and preserve such trees.

In addition to individual site plan restrictions and tree preservation requirements administered by the Development Control Committee, platted building lines, minimum distances between buildings and minimum front and rear building lines shall be established on each plat. Since most of the perimeter is heavily wooded, additional ornamental plantings or other landscape devices should be minimal with primary emphasis being placed upon preservation of natural amenities and enforced by the Development Control Committee as hereinbefore stated.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. No metal or temporary outbuildings shall be permitted on any lot in the development.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. The foregoing is subject to the rules, regulations and ordinances of the City of Noblesville and of its building commissioners or directors of planning.

D. Other Restrictions. All tracts of land in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development. Basements shall not be included in the computation of the minimum living area.

B. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.

(iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.

(iv) Side Yards. The side yard set-back lines shall not be less than nine (9) feet from either side line of the lot and the total of both side yards shall be not less than twenty percent (20%) of the lot width at the building line.

(v) Rear Yards. The rear set-back line shall be at least twenty (20) feet from the rear line. In the case of lots which abut Morse Reservoir, a twenty (20) foot easement in favor of the Indianapolis Water Company must be observed in addition to any special considerations required by governmental authority with regard to wetlands, or the 100 year flood line, whichever is greater.

(vi) Rear Yards Abutting Pipeline Easements. The rear set-back line shall be at least twenty (20) feet from the rear line except for those lots which include a portion of or abuts, joins or are located adjacent to the Marathon Pipeline Company Easement in which case the rear set-back line shall either be the outer boundary line of the easement or a distance of twenty (20) feet from the rear line of the lot, whichever is greater.

(vii) Lots Which Fall Within the Marathon Pipeline Company Easement. For those lots which fall within the Marathon Pipeline Company easement, the front yard, side yard, and/or rear yard set-back requirements shall be the greater of either the distances and requirements contained in subparagraphs (iii), (iv), and or (v) of Paragraph 3, Item 3 of this Declaration of Restrictions or the width of the Marathon Pipeline Company easement, as measured at right angles.

(viii) Structures, Fences, Excavation, Pools, Etc., Prohibited In Pipeline Easement. Written permission from the Marathon Pipeline Company is required prior to any excavation or improvement above or below ground within the pipeline easement. No lot owner shall permit any excavation or earthmoving of any kind within the easement without first obtaining permits and consents as required from the Marathon Pipeline Company.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed and/or be in compliance with the Noblesville Street Tree Ordinance, as amended.

D. Individual Yard Lights Required on Each Lot. At the time that the owner of the lot in the Development completes the construction of a home on his lot, he shall install or cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

E. Mailboxes. Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee.

F. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material acceptable to and approved by the Development Control Committee. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road.

G. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Development must have at least a two-car garage, attached or detached of the same architectural design and material as that of the house constructed on the lot.

H. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

I. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

J. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a matter as to prevent the lot or improvements from becoming unsightly, and, specifically, such owner shall:

- (i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

1. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association or any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. PROVISIONS RESPECTING DISPOSAL OR SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter any storm drain or Morse Reservoir. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Indianapolis Water Company, the Developer or the Association in any manner provided at law of in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Neither the Developer, nor the Association, nor the Indianapolis Water Company, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Hamilton County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS AND REQUIREMENTS.

A. In General. No noxious or offensive activities shall be carried on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for real estate sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks (one ton or larger), campers, trailers, commercial vehicles, boats, or similar vehicles shall be parked on any street or lot in the Development.

E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or lot within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. no owner or any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, storage building, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

I. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the City of Noblesville, Hamilton County, Indiana, and of the appropriate zoning bodies.

J. Docks and Piers. All docks and piers constructed adjacent to any lot in the Development shall be for the personal use of the lot owner. No pier, dock or other structure may be constructed, as determined by the Committee or rules of the Indianapolis Water Company, in such a manner that any portion thereof extends beyond a reasonable distance from the shore into Morse Reservoir and in no event shall any pier, dock or other structure be erected that does not conform to the specifications established by the Committee, which are as follows:

- (i) All docks must be floating and secured to avoid release by flood waters.
- (ii) There shall be no covered boat docks without the specific written approval of the Development Control Committee.

(iii) All docks shall be white, gray or natural in color.

(iv) Anchoring devices must be hidden.

(v) Plans for the placement of all boat docks must be submitted to the Development Control Committee for approval before installation is commenced.

(vi) There shall be no individual launch sites or ramps constructed on any residential lot.

(vii) Any boathouse constructed upon a lot may not protrude into the Reservoir, but must be constructed and excavated back into the lot. In addition to approval by the Development Control Committee such construction may require approval by the Indianapolis Water Company and/or the U.S. Army Corps of Engineers or other governmental body.

(viii) In all instances of the above recited installations such construction shall conform to the requirements of such governmental bodies as may be applicable.

K. Beaches. No beach may be constructed on Morse Reservoir unless the plans and specifications for the beach are submitted to and approved by the Committee and the Indianapolis Water Company if required. Beaches shall be constructed of sand only. No spoil materials shall be placed or allowed to collect in Morse Reservoir which result from beach construction. Placement of materials to construct a beach may require a federal permit. If such a permit is required, it is the purchaser's responsibility to obtain such permit.

L. Seawalls and Shoreline Protection. It shall be the responsibility of Purchasers of waterfront lots in the Development who desire to construct seawalls or other types of shoreline protection on their lots to obtain any and all permits, consents, licenses, and approvals which may be required by any federal and/or state governmental agency, department, commission, or body.

M. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the appropriate governmental body, where the streets are public and by the property owners where there are private drives, if any.

N. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development.

O. Prohibition of Antennas. No exposed radio, cable or television antennas and/or large satellite dishes shall be permitted within the Development. However, small diameter, 18 inches and less, roof-mounted satellite dishes and devices shall be allowed after they are approved by the Development Control Committee.

P. Pumping. The pumping of water from Morse Reservoir is prohibited by a recorded agreement with the Indianapolis Water Company.

6. MORSE OVERLOOK DEVELOPMENT CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each property and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

(ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

(b) The design, building materials or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within a reasonable time after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does or make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.

8. USE OF THE RESERVOIR.

A. All operation of boats upon Morse Reservoir is pursuant to a license that shall be exercised in accordance with the limitations made by the joint committee of the Developer and the Indianapolis Water Company made according to the procedures set out in the License Agreement recorded in Book 121, Instrument No. 4863, in the Office of the Recorder of Hamilton County, Indiana. If legally permissible, this Committee shall have the power to assess fines for the violation of any limitations on boat traffic on Morse Reservoir in accordance with the schedule of fines promulgated by it, and which shall become a charge upon the lot owned by the person against whom the fine is assessed.

B. Any fine so assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full, and shall also be a personal obligation of the owner or owners of that lot. Such charge shall bear interest at the rate of ten percent (10%) per annum until paid in full. If, in the opinion of the Developer, such charge has remained due and payable for an unreasonably long period of time, the Developer may institute such procedures, either at law, or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorney's fees incurred by the Developer in collecting the same. Every owner of a lot in the development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have consented to pay the Developer all fines that shall be made pursuant to this Paragraph 8 of the Restrictions.

9. PROPERTY RIGHTS IN BLOCKS, PRIVATE DRIVES, AND SIGN EASEMENTS

A. Landscape and Common Area Blocks and Sign Easements, Morse Overlook

(i) **LANDSCAPE BLOCKS AND SIGN EASEMENTS.** Certain alphabetical blocks and sign easements are created for the reserve for the benefit of the Developer and the Property Owners Association for the installation, construction, maintenance, repair, reconstruction and replacement of earthen mounds, plantings and other landscaping, walls, fences, entry ways, columns, landscape irrigation systems, accent lighting systems, street lights, subdivision identification, emergency access to the subdivision from adjoining real estate, and other items.

(ii) **OWNERSHIP, USE AND ENJOYMENT OF LANDSCAPE EASEMENT BLOCKS AND COMMON AREA BLOCKS AND SIGN EASEMENTS.** "Commons", "Commons Area", "Landscape Easements" and "Sign Easements" shall mean those areas set aside for conveyance to and/or maintenance by the Association, as shown on the plat. Any commons area depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons area.

Sign Easements in Morse Overlook are reserved on Lot #3 and Lot #43 in Section One, as per plat filed. Common Area Block "A" shall serve as an emergency access easement. The easement shall be reserved only for fire and police emergency vehicular traffic pursuant to the subdivision requirements imposed by the City of Noblesville. The reservation and granting of this easement nor any other act by the developer is intended to be nor shall be construed as a dedication to the public of the right to use the real estate depicted in Block "A" and/or the real estate which is the subject of the vehicular easement.

(iii) A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the commons, is granted to the persons who are from time to time members of the Association. Ownership of any commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons to the Association.

In Morse Overlook, Section One and Section Two, the landscape and common area blocks are designated on the plat. Block "A" shall be subject to an easement for ingress and egress through and over the real estate. The easement shall be reserved only for fire and police emergency vehicular traffic pursuant to the subdivision requirements imposed by the City of Noblesville. The reservation and granting of this easement nor any other act by the developer is intended to be nor shall be construed as a dedication to the public of the right to use the real estate depicted in Block "A" and/or the real estate which is the subject of the vehicular easement.

B. Private Drives

Where private drives are shown on this plat and designated "C.D.", those lot owners abutting, or upon whose lot said drives shall be placed, shall own, in fee simple, or own equal and undivided interest in the drives as tenants in common depending upon a location of the drive. It shall be the obligation of the owner, in fee simple, to be responsible for the cost of maintenance of such drives. Where a majority of lot owners served by a private drive elect to repair such drive and one or more lot owners fail to pay their allocable share of such repair, then the owners paying such cost may file a lien for the reasonable value of labor performed and materials furnished as prescribed by the lien laws of the State of Indiana against any such lot and the owner thereof and recover the full assessments owed together with interest from due date and reasonable attorney's fees. The private drive may contain utilities (private of public) to serve said lots in which event the several property owners shall maintain the utilities not otherwise maintained by the respective utility in the same manner as set out for drives. All private drives (C.D.) shall be utility easements (U.E.).

The ownership rights in the above-described landscape common area of blocks, exclusive blocks, and private drives will be designated and depicted on the recorded plats of development.

10. MORSE OVERLOOK PROPERTY OWNERS ASSOCIATION

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as Morse Overlook Property Owners Association, which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restractions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of a semi-annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership.

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be

members. The vote for such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) On the date the Developer sells the last lot and no longer owns any lots or land in the Development; or
- (ii) On January 1, 2009.

C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain and repair the Common Areas and Landscape Easements shown on the plat(s) including improvements thereof.

(ii) The Association shall maintain the landscaping located in Landscape Easement and the landscaping and any entrance treatments located in the right-of-way at the entrance and shall keep such areas in a neat, clean and presentable condition at all times.

(iii) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance as it deems necessary or advisable.

(iv) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

(v) The Association shall provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of Common Areas.

(v) The Association may be required to cause for, maintain and repair and rebuild common drives, private drives or walkways within the project that are not subject to maintenance by governmental authority. (A private drive is a drive which serves more than one dwelling unit.)

11. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) semi-annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The semi-annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the semi-annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required

quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Date of Commencement of Semi-Annual Assessments: Due Dates. The semi-annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association, as of the date of its issuance.

F. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have consented to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first

mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association, and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

12. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuance of such violation or violations of these Restrictions.

13. EFFECT OF BECOMING AN OWNER.

The owners of any lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Developer, Committee and the Association and to and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

14. TITLES.

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

15. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2081, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the Development.

16. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of an from every other one of the Restrictions, and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 8th day of February, 1986.

CHICAGO TITLE
THE MARINA LIMITED PARTNERSHIP

BY: Allen E. Rosenberg
ALLEN E. ROSENBERG, President
of THE MARINA II CORPORATION,
General Partner of THE MARINA
LIMITED PARTNERSHIP

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared ALLEN E. ROSENBERG, President of The Merina II Corp., who, for and on behalf of said Partnership, acknowledged the execution of the foregoing Declaration of Restrictions of Morse Overlook.

Subscribed and sworn to before me this 8th day of February, 1996.

My Commission Expires:



Kelly A. Doros
Kelly A. Doros, NOTARY PUBLIC
A Resident of Hamilton County



CHICAGO TITLE

This instrument prepared by:
Gordon D. Byers
136 South 9th Street
Suite 318
Noblesville, IN 46060
(317) 773-8221

**LAND DESCRIPTION
MORSE OVERLOOK - SECTION ONE**

Part of the Southeast Quarter of the Southeast Quarter of Section 11, part of the Northeast Quarter of the Northeast Quarter of Section 14, and part of the West Half of the Northwest Quarter of Section 13, all in Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 13; thence South 88 degrees 08 minutes 31 seconds West (azimuth bearings assumed as South 00 degrees 49 minutes 07 seconds West along the West line of the Northwest Quarter of said Section 13) 6.49 feet to the centerline of Shingora Pile; thence South 01 degrees 04 minutes 11 seconds West along the said centerline 167.57 feet to a curve having a radius of 933.04 feet, the radius point of which bears North 88 degrees 55 minutes 49 seconds East; thence Southwesterly along said curve and centerline 121.79 feet to a point on the West line of the Northwest Quarter of said Section 13, said point bears South 83 degrees 45 minutes 47 seconds West from said radius point; thence South 00 degrees 49 minutes 07 seconds West along the said West line 375.74 feet to a point which lies 59 feet Westwardly of the center line of Morse Reservoir East Handbook of Levee, as now located; thence South 21 degrees 52 minutes 41 seconds East 50 feet Westwardly of and parallel with the center line of said Levee 468.82 feet; thence South 68 degrees 07 minutes 19 seconds West 236 feet, more or less, to the shoreline of Morse Reservoir, as said shoreline would have been established on December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence Northwesterly and Northwesterly along said meandering shoreline 2,567 feet, more or less, to the Southerly line of Beachplace - Section Two, as per plat thereof, recorded as Instrument #8315404 in Plat Book 12, page 69 in the Office of the Recorder of Hamilton County, Indiana (the next five courses are along the Southerly boundary of said Beachplace - Section Two): 1) thence South 57 degrees 28 minutes 20 seconds East 153 feet, more or less; 2) thence North 32 degrees 31 minutes 40 seconds East 260.00 feet; 3) thence South 89 degrees 58 minutes 20 seconds East 90.00 feet; 4) thence North 32 degrees 31 minutes 40 seconds East 21.00 feet; 5) thence South 89 degrees 58 minutes 20 seconds East 160.00 feet to the East line of the Southeast Quarter of said Section 11; thence South 01 degrees 03 minutes 07 seconds West along the east East line 389.46 feet to the point of beginning, containing 23.4 acres, more or less.

Subject to all legal easements and rights of way.

EXHIBIT A

LAND DESCRIPTION
MORSE OVERLOOK - SECTION TWO

Part of the Northeast Quarter of the Northeast Quarter of Section 14, and part of the West half of the Northwest Quarter of Section 15, all in Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 13; thence South 00 degrees 49 minutes 07 seconds West (assumed bearing) along the West line of the Northwest Quarter of said section 666.11 feet to a point which lies 50 feet West of the center line of Morse Reservoir; East Embankment Levee, as now located (the next two courses are 50 feet West of and parallel with the center line of said levee); 1) thence South 21 degrees 52 minutes 41 seconds East 468.82 feet to the Point of Beginning; 2) thence containing South 21 degrees 52 minutes 41 seconds East 399.73 feet to a curve having a radius of 448.22 feet, the radius point of which bears South 68 degrees 07 minutes 19 seconds West; thence South 79 degrees 35 minutes 41 seconds East 00 minutes 30 seconds West 275 feet, more or less, to the shoreline of Morse Reservoir, as said shoreline would have been established on December 30, 1960, plus accretion and minus erosion (with the water level thereof as set at a elevation of 810.0 feet above mean sea level); thence Northwesterly and Northerly along said meandering shoreline 808 feet, more or less, to a point which bears South 68 degrees 07 minutes 19 seconds West 236 feet, more or less, from said Point of Beginning; thence North 68 degrees 07 minutes 19 seconds East 236 feet, more or less, to the Point of Beginning, containing 4.6 acres, more or less.

Subject to all legal easements and rights of way.

EXHIBIT B

Cross Reference:

Declaration of Restrictions, Instrument No. 9609605674
Plat of Morse Overlook, Plat Cabinet 1, Slide 660, Instrument No. 9609605675 and
corrected by Correction Certificate, Instrument No. 9609605625

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2

FIRST AMENDMENT
TO
DECLARATION OF RESTRICTIONS
OF
MORSE OVERLOOK
9609626052 Record
Filed For INDIANA
HAMILTON COUNTY,
MARY L. CLARK DE 02:26 PM
JUN 24 2014 14:00
IN 06-24-14 00
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Vol.

The First Amendment to the Declaration of Restrictions of Morse Overlook ("First Amendment"), made this 20th day of June, 1996, by The Marina Limited Partnership, an Indiana Limited Partnership (hereinafter called the "Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant, on the 9th day of February, 1996, recorded in the Office of the Recorder of Hamilton County, Indiana, the Declaration of Restrictions of Morse Overlook as Instrument No. 9605674 ("Declaration"); and

B. Declarant is desirous of amending the Declaration as hereinafter set forth:
NOW, THEREFORE, Declarant declares that the Declaration is hereby amended as follows:

SECTION 3

**RESTRICTIONS CONCERNING SIZE, PLACEMENT
AND MAINTENANCE OF DWELLING HOUSE AND OTHER STRUCTURES**

Section K is added to the Declaration to read as follows:

"I. LANDSCAPING OF LAKEFRONT LOTS

Q Lot owners shall not place on any lakefront lot in the area between the rear of the dwelling structure and the shoreline of Morse Reservoir the following items:
A (a) physical structures; (b) improvements; (c) landscaping materials exceeding twenty-four (24) inches in height if their placement would obstruct the view of an adjacent waterfront owner's view of Morse Reservoir.
E

This requirement to prevent the obstruction of views of waterfront lots does not negate the requirement of prior approval for the placement of all landscaping, planting material and the location placement of structures and improvements from the Morse Overlook Development Control Committee.

This provision does not negate the compliance with the rules and regulations of the Indianapolis Water Company."

IN TESTIMONY WHEREOF, Declarant has executed this First Amendment as of the date first above set forth.

THE MARINA LIMITED PARTNERSHIP

BY: *Allen E. Rosenberg*
Allen E. Rosenberg, President of
The Marina II Corp., General Partner
of The Marina Limited Partnership

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Allen E. Rosenberg, who acknowledged the execution of the foregoing First Amendment to Declaration of Restrictions.

WITNESS my hand and Notarial Seal this 20 day of June, 1996.



Kelly A. DeFoe
Notary Public
Kelly A. DeFoe
Printed

County of Residence: Hamilton

BEST POSSIBLE IMAGE
CHICAGO TITLE

This instrument prepared by Gordon Byers