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DECLARATION OF COVENANTS AND RESTRICTIONS

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SAIL PLACE

This Declaration, made as of the 30th day of July, 1997 by The Marina Limited Partnership, an Indiana limited partnership ("Declarant")

WITNESSETH:

Filed for Record in
HAMILTON COUNTY, INDIANA
HARRY L CLARK
On 08-14-1997 At 02:43 pm.
DEC COV RES 66.00

WHEREAS, the following facts are true:

A. Declarant owns the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a residential community to be known as Sail Place.

B. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Tract and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract to the covenants, restrictions, assessments, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities in the Tract, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in the Tract.

D. Declarant has incorporated under the laws of the State of Indiana a nonprofit corporation known as Sail Place Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of its Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such

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Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Applicable Date" means the earlier of (i) the date when all Lots in the Tract have been improved by the construction thereon of Residences or (ii) December 31, 2009 .

"Architectural Control Assessment" means the assessment levied by the Corporation pursuant to Paragraph 1(c).

"Architectural Review Board" means that entity established pursuant to Paragraph 12 of this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, the Articles or the By-Laws.

"Board of Directors" means the governing body of the Corporation elected in accordance with the By-Laws.

"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Common Area Blocks" means (i) the Drainage System, (ii) the Detention Area, (iii) the Entry Ways, and (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through the Tract, and any areas of land shown on the Plat, described in any recorded instrument prepared by Declarant or its agents, or conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Common Area Initial Assessment" means the initial assessment for the Reserve for Replacements required by Paragraph 5(e).

"Corporation" means Sail Place Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means The Marina Limited Partnership its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from



Dedearant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Drainage Board" means the Hamilton County, Indiana Drainage Board, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities (excluding the Detention Area) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

" Sail Place" means the name by which the Tract shall be known.

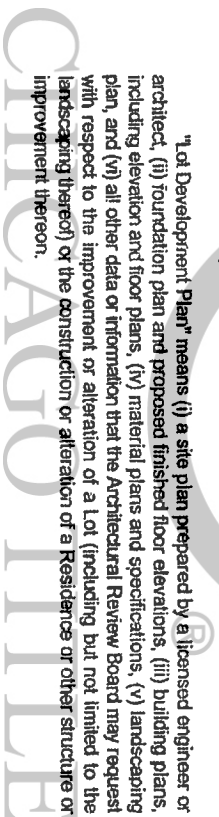
"Entry Ways" means the structures constructed as an entrance to Sail Place or a part thereof (including signage but exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as a designated Block on the Plat and any other traffic islands dividing a roadway or cul-de-sac providing access to Sail Place or a part thereof, and the grassy area surrounding such structures and/or real estate which is subject of Easement Agreement between The Indianapolis Sailing Club and The Marina Limited Partnership, its successors and assigns recorded as Instrument Number 013558 in the Office of the Recorder of Hamilton County, Indiana (hereinafter referred to as "Easement Agreement").

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Tract, as such may be amended from time to time.

"Landscape Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped and depicted as a Block.

"Lot" means a platted lot as shown on the Detailed Development Plan.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.



"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, easement, right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Detailed Development Plan" means the Tract recorded in the Office of the Recorder of Hamilton County, Indiana.

"Residence" means any structure intended exclusively for occupancy by (and subsequent to construction, actually occupied by) a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Tract" means the land described in Exhibit A on the Detailed Development Plan.

"Zoning Authority" with respect to any action means the Administrator of the Noblesville Board of Zoning or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Administrator.

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2. Declaration. Declarant hereby expressly declares that the Tract shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy, of any Lot, shall accept, such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. The Detention Area Blocks. Declarant shall convey title to the Detention Area Blocks to the Corporation. The Corporation shall be responsible for maintaining the Detention Area Blocks. The Maintenance Costs of the Detention Area Blocks shall be assessed as a General Assessment against all Lots subject to assessment. Declarant shall have no liability to any Person with respect to the Detention Area Blocks, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Detention Area Blocks or the proximity of a Lot thereto, including loss or damage from erosion.

4. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Tract and the occasional discharge thereof to the Detention Area as reasonably required from time to time. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1999 or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

5. Maintenance of Entry Ways, Blocks and Landscape Easement Blocks. The Corporation shall maintain the Entry Ways and Easement Agreement and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Sail Place or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and slightly condition appropriate to a first-class residential subdivision. Unless the Board of Directors determines that all or some of the Landscape Easements should be maintained by the Corporation and the Maintenance Costs thereof assessed as a General

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Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.

6. Construction of Residences.

(a) Land Use. Lots may be used only for the construction, maintenance and use thereon of a Residence and for other single-family residential purposes, and only one Residence not to exceed two (2) stories in height measured from finish grade to the underside of the eave line may be constructed, maintained and occupied thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Tract than the number of original Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Lot Development Plans. Prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 10. The Architectural Review Board may require as part of a Lot Development Plan a report of a subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed Residence. Each Owner shall comply with the terms and provisions of Paragraph 10 and the requirements of the Architectural Review Board established pursuant to the authority granted by this Declaration.

(c) Size of Residence. Except as otherwise provided herein, no Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a minimum ground floor area of 1,800 square feet if a one-story structure or a minimum ground area of 2,400 square feet if a two (2) story structure. Basements shall not be included in the computation of the minimum living area except for those portions of a walkout basement which are finished as living area and have been approved by the Architectural Review Board prior to construction.

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(d) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(e) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on the Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than zero (0) feet, however, there shall be a minimum of 10 foot of separation between any structures placed in the development or nearer than ten (10) feet to any rear Lot line. The side yard setback shall not be less than zero (0) feet, however, there shall be at least ten (10) feet of clear space separation between structures. A minimum finished floor elevation, shown on the development plan for the Tract, has been established for each Lot and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations.

(f) Driveways. All driveways shall be paved with either concrete or asphalt.

(g) Yard Lights. Each Owner or his builder may install and maintain a light in operable condition on his Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. Developer reserves the right, at his option, to cause to be installed in the private street blocks and/or utility easement, street lights which will illuminate the private roadway blocks within the development. The utility charges in connection with the street lights will become an assessment and paid for by the lot owners pursuant to Paragraph 11(f).

(h) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view.

(i) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot and maintenance thereof shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board and subsequent determinations by the Board with respect to maintenance of improvements, including but not limited to, exterior painting and maintenance of landscaping. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court

injunction or acts of God, construction of a Residence shall be completed within one (1) year after the date of commencement of the building process. The landscaping shall be irrigated with the irrigation system and plans approved by the Architectural Review Board.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Residence upon the Lot within the time period specified herein. For the purposes of this subparagraph, construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(j) Mailboxes. All mailboxes shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mail boxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(k) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the City of Indianapolis or a successor public agency or public utility) shall be installed or maintained on any Lot.

(l) Water Systems. Each Owner shall connect to the water line for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

(m) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Tract will be included in a legal drain established by the Drainage Board. In such event, each Lot in the Tract will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Detention Area included in such legal drain, which assessment will be a lien against the Lot. The elevation of a lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile or to a natural drainage area. Each Owner shall maintain the

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subsurface drains and ties located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

7. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of the Tract and the sale of Lots therein and such signs as may be located on the Common Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or its part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of the Detention Area. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. Each Owner shall keep his lot reasonably clear of weeds and brush and preclude unsightly growth at all times. If an Owner fails to comply with the above, the Lot may be cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

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(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No satellite receiver, down-link or antenna which is visible from a public way or from any other Lot shall be permitted on any Lot without the prior written consent of the Architectural Review Board. An 18" satellite dish may be approved by the Architectural Review Board.

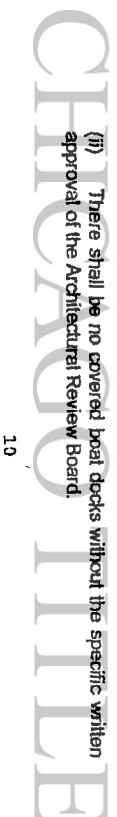
(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

8. 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 in such a manner that any portion thereof extends beyond a reasonable distance from the shore into Geist Reservoir and in no event shall any pier, dock or other structure be erected that does not conform to the specifications established by the Architectural Review Board 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 Architectural Review Board.



- (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 Architectural Review Board for approval before installation is commenced.
- (vi) There shall be no individual launch sites or ramps constructed on any residential lot.
- (vii) 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 Geist Reservoir unless the plans and specifications for the beach are submitted to and approved by the Architectural Review Board 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 Geist 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 and to obtain proper prior approval of the Architectural Review Board.

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

All operation of boats upon Geist Reservoir is pursuant to a license that shall be exercised in accordance with the limitations made by the joint Architectural Review Board 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 Architectural Review Board shall have the power to assess fines for the violation of any limitations on boat traffic on Geist 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.

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 charges shall bear interest at the rate of ten percent (10%) per annum until paid in full. If, in the

opinion of the Developer, such change 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 attorneys' 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. Sail Place Homeowners Association, Inc.

- (a) **Membership.** Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by the Declaration on other Owners, including those provisions with respect to the payment of Assessments.
- (b) **Powers.** The Corporation shall have such powers as are set forth in this Declaration and the Articles, together with all other powers that belong to it by law.
- (c) **Classes of Members.** The Corporation shall have a single class of members.
- (d) **Voting and Other Rights of Members.** The voting and other rights of Members shall be as specified in the Articles and By-Laws.
- (e) **Reserve for Replacements.** The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the cost of periodic maintenance, repairs, renewal or replacement of the Common Area.

(f) Limitations on Action by the Corporation. Unless at least two-thirds of the Mortgagees (based on one vote for each first mortgage owner) or two-thirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 10(e), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the Common Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Common Area, or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(g) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

10. Property Rights In Blocks and Private Drives

A. Landscape and Common Area Blocks, Sail Place

(i) LANDSCAPE BLOCKS. Certain alphabetical blocks are created and reserved 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, drainage pipes, accent lighting systems, street lights, subdivision, identification and other items.

(ii) OWNERSHIP, USE AND ENJOYMENT OF LANDSCAPE EASEMENT BLOCKS AND COMMON AREA BLOCKS. "Commons" and "Commons Area" and "Landscape Easements" shall mean those areas set aside for conveyance to the Association, as shown on the plat and the real estate which is the subject of the Easement

Agreement between The Indianapolis Sailing Club and The Marina Limited Partnership. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats (Detailed Development Plan) nor 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. All common areas are drainage easements and utility easements.

(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.

B. Exclusive Ownership Blocks

Exclusive blocks are created for the exclusive use, benefit and enjoyment of certain lot owners as designated herein, to provide among other things, access to Geist Reservoir. These exclusive blocks may provide among other things potential access to boat docks adjoining the block. If the Developer makes a boat dock available the exclusive blocks will be deeded in fee based upon the percentage ownership interest to the owners of the lots which have ownership rights therein based upon the percentage. The ownership of the undivided interest in these exclusive blocks shall not be separately conveyed nor transferred.

(i) Maintenance of Exclusive Blocks. The Developer may install walkways and, where applicable, stairways and other improvements, within exclusive blocks designated on this plat for the use, benefit and enjoyment of the lot owners referred to the preceding paragraph. It shall be the obligation of each of the lot owners entitled to the use and benefit of exclusive blocks and any improvement situated thereon to maintain said exclusive blocks and improvements in a safe, orderly and slightly condition at all times. In furtherance thereof, it shall be the obligation of each of the owners of the lots entitled to the use and benefit of exclusive blocks to contribute an equal share of the costs of the repairs and maintenance of the Block and any improvements located within said exclusive blocks, where a majority of the owners of lots entitled to the use and benefit of a particular walkway to repair, maintain, and/or make improvements to any walkway or other improvements located within exclusive blocks and one or more of the owners entitled to use said exclusive blocks, fail to pay their allocable share of such repair, maintenance, or improvements, then the owners paying such costs may file a lien for 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 assessment owed, together with interest from due date and reasonable attorney fees.

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

C. Private Drives, Blocks Designated as "CD", Blocks "H" and "I"

All of the drives in Sail Place are private drives. The cost and maintenance of the private drive block shall be borne by all lot owners equally. If the Corporation determines to repair such drives the procedure for assessment shall be a general assessment against all lot owners. The private drives may contain utilities, private or public to serve said lots, in which event the property owners shall maintain the utilities not otherwise maintained by the respective utility in the same manner as set out for drive maintenance. All private drives, C,D, shall be utility easements and drainage easements. The private drives may be accessed by emergency vehicles to perform emergency functions within the development. There shall be no vehicular parking on the private drives in Sail Place. The Corporation shall have vehicles that violate this parking restriction towed at the owner's expense.

D. Property Rights in Blocks in Sail Place

(a). **COMMON AREA BLOCKS:** BLOCKS A, B, C, D, F, G and J. Certain blocks in the development are created and reserved for the use and benefit of the Developer and Property Owners Association for the purposes of providing green space and allowing for recreational type activities. However, no launching of watercrafts including, but not limited to motor boats shall take place from this real estate in Sail Place. In addition, this space shall remain private and no act or omission on behalf of the Developer or the Property Owners Association shall be construed as a dedication of this space to the public. All common area blocks are drainage easements and utility easements.

(b). **EXCLUSIVE USE BLOCKS.** Certain blocks are created for the exclusive use, benefit and enjoyment of certain lot owners as designated herein, to provide among other things, access to Geist Reservoir.

(i). **BLOCK E.** Block E is created for the exclusive use and benefit of twenty (20) lot owners. Block E shall be deemed an undivided 1/20th interest to the owners of the aforescribed lots as selected by the developer at the time of transfer of the lots. The ownership of the undivided interest in the blocks shall not be separately conveyed nor transferable or assigned.

(c). **OWNERSHIP AND MAINTENANCE OF BOAT DOCKS.** The Developer shall install a boat dock system containing spaces for 20 boats in Geist Reservoir adjacent to Block E. The Developer shall convey ownership of the boat docks to a lot by bill of sale at such time that the lot owner pays the Developer in full for subject lot. Said bill of sale shall be for an undivided interest in the boat dock system to be installed by the Developer subject to the lot owner using the dock corresponding to his lot number. Maintenance of

the boat docks which have been installed by the Developer shall be the responsibility of the respective lot owners thereof. Such boat docks shall not be used by a party other than the residents of the aforementioned lots. Each owner of a boat dock shall maintain the boat dock designated for his use in a safe, orderly and signly condition at all times in compliance with all restrictions of record and applicable rules and regulations established from time-to-time by the Sail Place Architectural Review Board or its assignees. Specifically, no improvements or alterations shall be made to any boat dock without the prior written approval of aforementioned Architectural Review Board or its assignees. The owners of the boat docks shall contribute an equal share for the cost of maintenance or repair of any common cables, platforms, walkways, or catwalks which are used by all boat dock owners and are part of the boat dock system installed by the Developer. Cost of maintenance and repairs for the above referenced common facilities shall be collected and enforced in the same manner as the maintenance and repair costs as provided for and as set forth in Paragraph 10B(i) above.

11. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) Common Area Initial Assessment, (3) Architectural Control Assessments (to the extent levied) and (4) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b). General Assessment.

(1) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Common Area and/or private street blocks.

(2) Basis for Assessment.

(i) Lots Generally. Each lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

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(ii) Lots Owned by Declarant: No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(iii) Change in Basis: The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such Members duly called for this purpose.

(3) Method of Assessment: By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(i) Landscape Assessment: The Corporation will be responsible for maintenance of the landscape area, included but not limited to, upkeep and irrigation charges. This cost will be the responsibility of the Corporation and will be assessed as part of the general assessment.

(ii) Easement Assessment: There exists between The Marina Limited Partnership and The Indianapolis Sailing Club a certain Easement Agreement recorded as Instrument Number ~~0783588~~ in the Office of the Recorder of Hamilton County, Indiana. This Easement Agreement provides, among other things, access to the real estate and assigns responsibilities with respect to maintenance of the ingress/egress real estate as well as utility charges in connection with signage. The charges and assessments generated by this Easement will be the responsibility of the Corporation and will be assessed as part of the general assessment.

(c) Architectural Control Assessment: If any Owner fails to comply with the requirements of the first two sentences of Paragraph 6(f) and/or the provisions of Paragraph 12(c) of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Ten Thousand Dollars (\$10,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (g) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration.

(f). Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Area, including fixtures relating thereto, provided that any such Assessment shall have the assent of the Declarant and of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of the Members duly called for this purpose.

(g). Date of Commencement of General Assessments. The monthly or quarterly 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.

(h). Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

(i). Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as

to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(h). Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(i). Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met.

12. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as provided in the By-Laws shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography, including but not limited to, landscaping, maintenance of irrigation system and maintenance and general upkeep of improvements, included but not limited to, painting and general appearance of improvement.

(c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no Residence, buildings, fence, wall, swimming pool, tennis court, patio, satellite dish or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Sail Place, and no Owner shall undertake any construction activity within Sail Place unless all legal requirements have been satisfied.

Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a future height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as well as improvement maintenance standards, included but not limited to, painting and general upkeep of improvement as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted. If the Architectural Review Board notifies lot owner that his improvement is in poor condition and needs to be maintained, such written notice shall be served upon lot owner and if lot owner fails to respond within a reasonable period of time, the Architectural Review Board may have the work undertaken and collect the costs and charges, including but not limited to, expenses of reasonable attorney fees assessed against the lot owner pursuant to the procedures which regulate general assessments.

(g) Design Consultants. The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the first two sentences of Paragraph 5(f) and/or the provisions of subparagraph (c) of this Paragraph 10, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements or landscaping constructed and/or installed prior to the submission or approval of a Lot Development Plan (or constructed and/or installed in violation of a previously approved improvement or landscaping) to the extent any such previously constructed and/or installed improvement or landscaping is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of Paragraph 6 of this Declaration. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated of this Declaration and such violation remains uncured.

(i) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant 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 Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, 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.

(k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

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13. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Sall Place and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Tract for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easement Blocks and Easement Agreement are created for the use by Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways. ^(R)

(v) Landscape Easement Block is created for the use by Declarant, the Architectural Review Board and the Corporation, at their election, for the planting and maintenance of trees, shrubs and other plantings.

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(vi) Non-Access Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) **General Easement.** There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Tract except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Tract to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) **Public Health and Safety Easements.** An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Common Area Private Drive in the performance of their duties.

(d) **Drainage Board Easement.** An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) **Crossing Underground Easements.** Easements utilized for underground service may be crossed by driveways and walkways provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings,

pavios, or other pavings, other than crossings, driveways and walkways, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Tract, Declarant reserves a blanket easement and right on, over and under the ground within the Tract to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

14. Use of Lots During Construction.

(a) By Declarant. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Tract, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in the Tract may, with the prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, Lots adjacent to or in proximity to such model home may be used for parking by visitors to such model home.

15. Enforcement.

The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for

failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

16. Limitations on Rights of the Corporation.

Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

17. Approvals by Declarant.

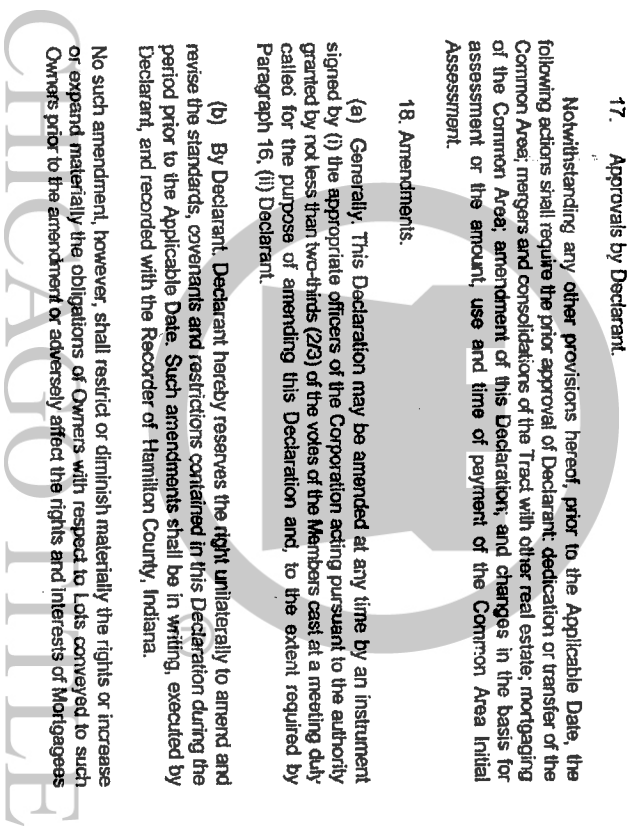
Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: dedication or transfer of the Common Area; mergers and consolidations of the Tract with other real estate; mortgaging of the Common Area; amendment of this Declaration, and changes in the basis for assessment or the amount, use and time of payment of the Common Area Initial Assessment.

18. Amendments.

(a) Generally, This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 16, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to the Applicable Date. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana.

No such amendment, however, shall restrict or diminish materially the rights or increase or expand materially the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees



holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 12(f), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) **Effective Date.** Any amendment shall become effective upon its recording in the Office of the Recorder of Hamilton County, Indiana.

19. **Interpretation.**

The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Whenever 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.

20. **Duration.**

The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2021, 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 Lots in the Tract.

21. **Severability.**

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

22. **Non-Liability of Declarant.**

Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability

arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

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

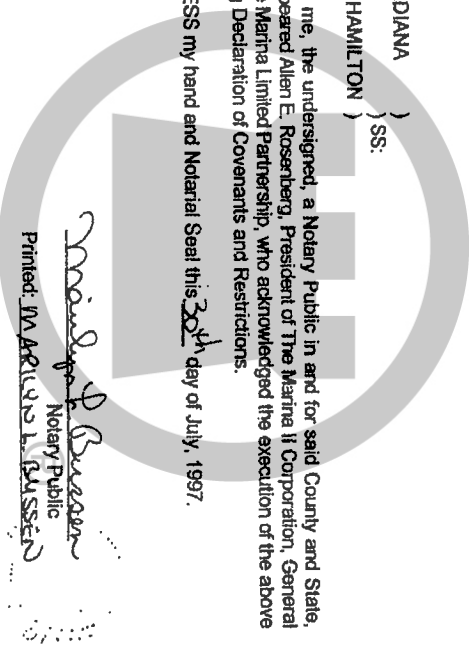
THE MARINA LIMITED PARTNERSHIP

By: Allen E. Rosenbergh
Allen E. Rosenbergh, President
The Marina II Corporation, General
Partner of The Marina Limited Partnership

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Allen E. Rosenbergh, President of The Marina II Corporation, General Partner of The Marina Limited Partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 30th day of July, 1997.


Madison L. Bussien
Notary Public
Printed: MADISON L. BUSSIEN

My Commission Expires: 10.27.2008
My County of Residence: Pasadena

This instrument was prepared by Gordon D. Byers, Attorney at Law, 136 S. 9th Street,
Suite 318, Noblesville, Indiana 46060

LAND DESCRIPTION
Said Place

Commencing at a point on the centerline of Fall Creek Road (as established November, 1999) which has South 00 degrees 15 minutes 19 seconds West (along the West line of the Northeast Quarter of said Section 10 projected Southwary 0.49 feet from the Northeast corner of said Southwest Quarter Section; thence along the centerline of Fall Creek Road South 89 degrees 10 minutes 29 seconds West 20.00 feet to the Point of Beginning; thence continuing along said centerline South 89 degrees 10 minutes 28 seconds West 811.98 feet to the Northeast corner of the plat of Masthead - Section Eleven, the plat of which is recorded in Plat Book 13, pages 34 thru 38 in the office of the Recorder of Hamilton County, Indiana; (the next two courses lie along the east line of said plat); thence South 00 degrees 49 minutes 32 seconds East 60.00 feet; thence South 22 degrees 35 minutes 00 seconds East 549 feet, more or less to a point on the shoreline of Gable Reservoir as established when said reservoir is full (with the water level thereof at an elevation of 785.0 feet above mean sea level); thence Easterly along said shoreline to a point on said shoreline which bears South 78 degrees 55 minutes 19 seconds West of a point, hereinafter referred to as Point "A", which has South 00 degrees 15 minutes 19 seconds West 569.00 feet of the point of beginning; thence North 78 degrees 55 minutes 19 seconds East 259 feet, more or less to said Point "A"; thence North 00 degrees 15 minutes 19 seconds East 569.00 feet to the place of beginning, containing 9 Acres, more or less.

Together with:

Commencing at the Northwest corner of the said Southeast Quarter, thence South 00 degrees 15 minutes 19 seconds West (assumed bearing) (along the West line of the Northeast Quarter of said Section 10 projected Southwary) 0.49 feet to a point on the center line of Fall Creek Road (as established November, 1999); thence along the center line of said Fall Creek Road, North 09 degrees 10 minutes 28 seconds East 20.00 feet to the Point of Beginning; thence continuing along said center line North 89 degrees 10 minutes 29 seconds East 106.44 feet to a curve having a radius of 1145.92 feet, the radius point of which bears South 00 degrees 49 minutes 32 seconds East; thence along said curve and said center line 457.47 feet to the northerly corner of the plat of Bridgewater Section Two (recorded as last No. 92-31571 - P.C. 1, Slide 256 in the office of the Recorder of Hamilton County, Indiana); thence South 22 degrees 02 minutes 52 seconds West (along said plat) thence South 47 degrees 12 minutes 19.52 feet; thence South 54 degrees 12 minutes 56 seconds West 274.44 feet to the East line of a tract conveyed as instrument No. 83-5613 in the office of the Recorder of said Hamilton County (the West line of said tract No. 86-198347); thence along said West and East lines North 00 degrees 15 minutes 19 seconds East 469.00 feet to the point of beginning, containing 3.55 Acres, more or less.

EXHIBIT "A"

