

## DECLARATION OF RESTRICTIONS

### SOUTH HARBOUR DEVELOPMENT PROJECT

THIS DECLARATION made this 21 day of May, 1971, by the Shorewood Corporation, an Indiana corporation hereinafter referred to as the "Developer"), WITNESSES:

WHEREAS, the Developer is the owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as the "South Harbour Development Project" (hereinafter referred to as the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the offices of the Recorder of Hamilton County, Indiana; 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 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:

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 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 Restrictions, 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, prior to the recording of the plat by the Developer of a particular lot or tract within the Development as shown on Exhibit A, to exclude any real estate so shown from the Development, or to include additional real estate; provided, however, that the Developer may not plat and therefore include more than 700<sup>1</sup> residential lots within the Development.

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

- a) "Committee" shall mean the South Harbour 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 South Harbour Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in paragraph 9 of this Declaration.
- c) "Lot" shall mean any parcel of real estate, 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, the Association, or Indianapolis Water Company 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 an obligation.

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<sup>1</sup> Amended October 161, 1978: The number of residential lots, which may be platted, was amended to not more than 750 residential lots. Deed Record 307, page 709.

Amended March 5, 1986: The number of residential lots was amended and enlarged to allow the addition of approximately 12 lots (762). Deed Record 186, page 443.

GUIDELINES FOR FENCES, ACCESSORY OUTBUILDINGS AND MAIL BOXES  
SOUTH HARBOUR PROPERTY OWNERS ASSOCIATION

Approval for construction of fences and accessory outbuildings shall be obtained by written application to the South Harbour Development Control Committee,

Such written application shall be accompanied by two (2) complete sets of plans and specifications. Such plans shall include two (2) plot plans showing the location of all existing improvements on the lot and the location of the proposed fence or accessory outbuilding to be constructed or placed upon the lot, properly and clearly designated in ink. Such plans and specifications shall set forth the color and composition of all materials proposed to be used and any proposed landscaping. The application shall include the name, address, phone number and lot number of the Owner requesting authorization from the committee.

**FENCES**

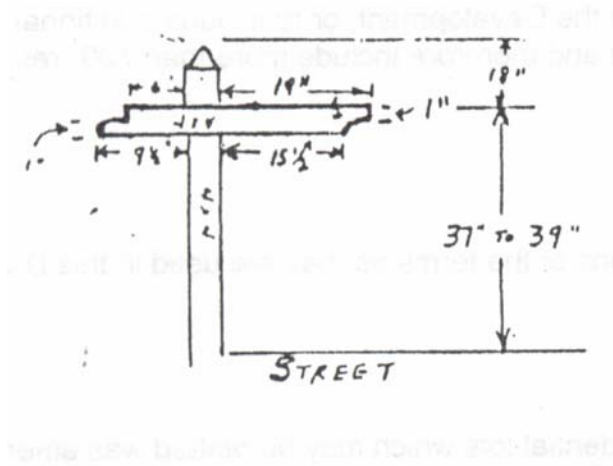
Fences shall be restricted to rear yards only. On corner lots, the area of the lot to the side of the dwelling, which abuts the road, bounded by a parallel line with that road, extending from the rear corner of the dwelling to the rear property line back to the rear corner of the lot to that side, which abuts the road, shall be considered side yard.

Fences are not to exceed five (5) feet in height except on property lines which abut property outside of the Development. Patio enclosures are not to exceed six (6) feet in height. The use of stockade fences shall be restricted to patio enclosures and property lines, which abut property outside of the Development.

**OUTBUILDINGS**

No accessory outbuildings will be permitted on lots that abut Morse Reservoir. In general, accessory outbuildings will be restricted to those lots, which abut to property outside of the Development, and those lots that are wooded, or have natural terrain to screen the accessory outbuildings from the view of surrounding Owners. The Committee may refuse to grant permission to construct, place or make the requested improvement, when: the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures and the use of metal is restricted.

**MAIL BOXES**



Color of Post and Mailbox: Flat black

Post and Arm: 4 X 4

Mailbox Size: width 8" X 1.21" X height 10 1/2"

The Committee may allow reasonable adjustments of the guidelines, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of the guidelines and no approval shall be granted which would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other Owners.

- Developmental Control Committee

**2. Character of the Development.**

- a) **In General.** Every numbered lot in the Development, unless the Developer otherwise designs it, 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 a single family dwelling house. All tracts of land located within the Development, which have not been designated by numbering as residential building lots in the recorded plats shall be commercial in nature and shall be used in a manner consistent with the zoning and use designated in a master plan by the Developer. The Developer reserves unto itself the right to change the character of the designated commercial use at any time in the future and, where necessary, to apply to the necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.
- 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 or any temporary structure 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.
- 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 Committee shall make the determination of whether the house shall have been substantially completed and such decision shall be binding on all parties.
- d) **Other Restrictions.** All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record between the Indianapolis Water Company and the Developer, recorded in Book 121, Instrument No. 4862 in the office of the recorder of Hamilton County, Indiana, 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, accessory buildings, or basements shall be designated on the recorded plats of the sections within the Development.
- b) **Residential Setback Requirements.**
  - i) **In General.** Unless otherwise provided in these restrictions or on the recorded plat, no dwelling house or above grade structure shall be constructed or placed on any residential lot in the Development except as provided herein. The living areas of any dwelling shall not be constructed lower than an elevation of 820 feet above mean sea level.
  - 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 25, 30, and 40 feet from the right of way of the road upon which the lot abuts, all as set forth upon the plats of the Development.
  - iv) **Cul de Sacs.** If the particular lot abuts on a cul de sac, the front building setback line shall be as shown on the plat of that lot.
  - v) **Side Yards.** The side yard set-back lines shall not be less than 10 feet from the side line of the lot on one side and the total of both side yards shall be not less than 20% of the entire width of the lot.
  - vi) **Rear Yards.** The rear setback line shall be at least 20 feet from the rear line, but if the lot

abuts on Morse Reservoir the Committee may determine that the location of the building line adjacent to the Reservoir shall be otherwise.

- c) **Fences, Mailboxes and Trees.** In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or mailbox 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 trees growing upon it in the front yard by the time the house is completed, and if this requires plantings by the Owner, the Committee must approve the size and location of such trees.
- d) **Exterior Construction.** The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tarpaper, roll brick siding or any other similar material. No house shall have metal prefabricated flues that extend above the roofline. All driveways must be paved with asphalt or concrete a minimum of 25 feet from their point of connection with the abutting street or road.
- e) **Heating Plants.** 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.
- f) **Diligence in Construction.** Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) 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.
- g) **Time in Which to Build Structures.** The time or times within which the Owners of the residential lots within the Development must construct and complete, ready for habitation, houses on their lots after their purchase of the lot will be designated on the recorded plats of the section within the Development. If a house is not completed upon a lot within the prescribed time, the Developer shall have the right to repurchase such lot for a price, in cash, equal to the Owner's cost basis in the lot, including the cost of improvements until the time that a house is completed upon such lot in the manner set out in this Declaration.
- h) **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.
- i) **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 manner 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 the 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) Where applicable, prevent debris or foreign material from entering Morse Reservoir, or, when any such debris has entered Morse Reservoir from the lot, remove the same immediately.
  - vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- j) **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, 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 therefore 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 nor 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 of Sanitary Waste

- a) **Nuisances.** 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 Morse Reservoir. No discharge from any floor drain shall be permitted to enter into Morse Reservoir. By purchase of a lot, each Owner agrees that any violation of this paragraph constitutes a nuisance, which may be abated in Indianapolis Water Company, the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' 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 Indianapolis Water Company, the Developer nor the Association, 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. Copies of all permits, plans and designs relating to the construction of a sanitary sewer service line shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from said Committee of a permit to build.

## 5. General Prohibitions

- 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.
- 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 campers, trailers, boats or similar vehicles shall be parked on any street in the Development. No truck shall be parked for overnight or longer storage on any lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other lots in the Development, the users of any street in the Development, or to persons upon Morse Reservoir.
- 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 garbage 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. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at anytime, except at the times when refuse collections are being made.
- g) **Model Homes.** No Owner of 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 hose, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot, except upon lands specifically designated by the Developer for camping purposes, and then only subject to such rules as may be adopted by the Developer or the Association for the use of camping areas.
- i) **Docks and Piers.** No pier, dock or other structure may be constructed into Morse Reservoir that does not conform to the specifications established by the Committee.
- j) **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. Beaches

shall be constructed of sand only, which shall not extend farther than 25 feet from the shoreline into Morse Reservoir. No spoil materials shall be placed or allowed to collect in Morse Reservoir, which result from beach construction.

- k) **Ditches and Swales.** It shall be the duty of every Owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his 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 Committee.
- l) **Utility Services.** No utility services shall be installed under finished streets except by jacking, drilling or boring.
- m) **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, without the approval of the Committee.

## 6. South Harbour Development Control Committee

### a) Powers of Committee

- 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 two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvement existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly 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 plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1" = 10', or to such other scale of the Committee may require. There shall also be submitted, where applicable, the permits or reports required under paragraph 3 of these Restrictions. All such plot plans shall be prepared by either a registered land surveyor, engineer or architect.
- 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 materials submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;
  - b) The design 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 thereof, 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 30 days after all required information shall have been submitted to it. One copy of submitted materials 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, nor the Association, 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.
- d) **Piers, Boat Docks, and Boathouses.** When the Committee shall permit the construction or placing of a structure wholly or partly within Morse Reservoir, such permits shall constitute a license, and only a license, from the Indianapolis Water Company and the Developer or its successors in title to Morse Reservoir, and said structures must have the prior approval of the Committee.
- e) **Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

**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. Ownership, Use, and Enjoyment of Commons and Recreational Facilities**

Morse Reservoir and each commons and recreational facility 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 or recreational facilities or Morse Reservoir. A license upon such terms and conditions as Indianapolis Water Company, the Developer, and the successors, assigns or licenses of either of them shall from time to time grant, for the use and enjoyment of the commons, Morse Reservoir and the recreational facilities, is granted to the persons who are from time to time members of the Association. Ownership of Morse Reservoir shall remain in Indianapolis Water Company, but ownership of the commons and recreational facilities 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 of those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons and recreational facilities to the Association.

**9. The South Harbour Property Owners' Association. Inc.**

- a) **In General.**
  - i) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "South Harbour Property Owners' Association, Inc." which is referred to as the "Association." Every Owner of a residential lot in the Development shall be a member of the Association. If a person would realize upon his security and become the Owner of a residential lot within the Development, he shall then be subject to all the requirements and limitations imposed in these Restrictions on other Owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.
  - ii) In addition to the foregoing, the Board of Directors of the Association may establish associate memberships in the Association for persons who may from time to time be owners of lots in other developments of the Developer at Morse Reservoir and who are not otherwise entitled to the benefits of membership by virtue of being Owners of residential

lots within the Development. Associate members shall have none of the rights of members to vote at meetings of the Association. The Board of Directors of the Association may establish fees or charges for such associate memberships and rules and regulations concerning such associate memberships, which may be different from those applicable to members generally.

**b) Purposes of the Association**

- i) The general purpose of the Association is to provide a means whereby those areas within the Development designated as commons and recreational areas on the plats thereof, and such other recreational facilities within the Development as may be conveyed to the Association or established by it, may be operated, maintained, repaired and replaced.
- ii) An additional purpose of the Association is to provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of such commons and recreational facilities or other amenities and such other recreational facilities within the Development as may be conveyed to the Association.

**c) Power of Association to Levy and Collect Charges and Impose Liens**

- i) The Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy a uniform annual charge or assessment against the lots within the Development. Such charge shall be at least \$84.00 per year for each residential lot in the Development. However, if the Board of Directors of the Association, acting in accordance with the By-Laws of the Association, shall so determine after consideration of the financial requirements of the Association, the annual charge may be greater than \$84.00. No charge shall ever be levied by the Association against the Developer or any corporation that may be created to acquire title to and operate utilities serving the Development.
- ii) Every such charge shall be paid by the members of the Association before the first day of March of the year for which the charge is made. The Board of Directors of the Association shall fix the amount of the annual charge by the first day for February of each year, and written notice of the charge so fixed shall be sent to each member.
- iii) If 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 6%<sup>2</sup> 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

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<sup>2</sup> Amended March 5, 1986: The annual charge shall bear interest at the current lawful rate. Deed Record 186, page 443.

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 covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph 9-C of the Restrictions.

- iv) The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive 'evidence of payment of any assessment therein stated to have been paid.
- d) **Purpose of the Assessments.** The charges or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and, in particular, for the improvement and maintenance of the properties owned or operated by the Association.
- e) **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 right to use the facilities of the Association of any member or associate member
  - i) for any period during which any of the Association's charges or any fines assessed under paragraph 10 of these Restrictions owed by the member or associate 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;
  - iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

## 10. Use of the Reservoir

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. That 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. Every such fine shall be paid promptly upon its being assessed, and, if it is not, the Association shall add the amount of the fine to the annual charge made by the Association pursuant to subparagraph 9-C of the Restrictions, and the amount of such fine shall be collectible by the same means as are prescribed in said subparagraph for the collection of delinquent annual charges of the Association.

## 11. Remedies

- a) **In General.** The Association or any party to whose benefit these Restrictions insure, including the Developer or Indianapolis Water Company (with respect to activities that affect Morse Reservoir), may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer, Indianapolis Water Company, 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, recurrence or continuation of such violation or violations of these Restrictions.

**12. 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 that rights and powers of the developer 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, 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.

**13. Titles**

The underlined 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.

**14. 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, 2069, 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, or Indianapolis Water Company with regard to its Morse Reservoir.

**15. 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.