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DECLARATION OF HORIZONTAL

PROPERTY OWNERSHIP

FOR

WATERSCAPE

HORIZONTAL PROPERTY REGIME

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DECLARATION OF HORIZONTAL  
PROPERTY REGIME

Waterscape  
Horizontal Property Regime

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DECLARATION OF HORIZONTAL  
PROPERTY OWNERSHIP

Waterscape  
Horizontal Property Regime

This Declaration ("Declaration") is made this 15th day of April, 1994, by WATERSCAPE DEVELOPMENT CORPORATION, an Indiana corporation (the "Declarant").

Be It Declared That:

A. WHEREAS, Declarant is the sole owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated by reference herein (the "Real Estate"); and

B. WHEREAS, Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit "B" attached hereto and incorporated by reference herein (the "Tract"); and

C. WHEREAS, Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime upon the Tract, subject to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration:

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

"Act" means the Horizontal Property Law of the State of Indiana, I.C. 32-1-6-1 et.seq. as amended by Acts of 1977. The Act is incorporated herein by reference.

"Annual Boat Dock Fees" means the annual boat dock fees payable by Boat Dock Owners and Boat Dock Licensees under the Declaration, the applicable Boat Dock Agreements and the By-Laws.

"Applicable Date" means the earliest of (i) five (5) years from the date that the first Condominium Unit has been conveyed to a purchaser; or (ii) four (4) months after seventy-five percent (75%) of the Condominium Units that may be developed on the Real Estate have been conveyed to purchasers, or (iii) the date Declarant files of record in the office of the Recorder of Hamilton County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Paragraph 20 of this Declaration to expand or further expand Waterscape.

"Articles" means the Articles of Incorporation of the Association.

"Association" means Waterscape Homeowners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-owners of Waterscape, more particularly described in Paragraph 16 hereof.

"Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Co-Owners in accordance with the By-Laws.

"Boat Dock" means the boat dock as defined in Paragraph 10 of this Declaration.

"Boat Dock Addendum" means a Boat Dock Addendum to Purchase Agreement in the form attached hereto as Exhibit "E".

"Boat Dock Agreements" means and collectively refers to the Underlying License, the Boat Dock Addendums, the Boat Dock Owner Waiver and Assignment Agreements, the Boat Dock License Agreements, the Transfer Agreements, the Boat Dock Lease Agreements, the Articles, the By-Laws, and this Declaration.

"Boat Dock Facilities Plans" means the general plan of the Boat Dock Facilities for the development of the Real Estate being subjected to the Regime attached hereto as Exhibit "F" and the composite of each specific Boat Dock Plan for each Boat Dock attached as Exhibit "BDA-2" to a Boat Dock Addendum.

"Boat Dock Fee Share" means a percentage amount equal to one divided by the total number of boat docks appurtenant to the Real Estate which then exists.

"Boat Dock Lease Agreement" means an agreement by and between the Declarant or the Association and a Person under which such Person leases the use of a boat dock for a term not more than twelve (12) months upon substantially the same terms and conditions and subject to substantially the same limitations as the Boat Dock Owners and Boat Dock Licensees.

"Boat Dock License Agreement" means a Boat Dock License Agreement in the form attached as Exhibit "BDA-A" to a Boat Dock Addendum.

"Boat Dock Lessee" means a Person who leases a boat dock under a Boat Dock Lease Agreement.

"Boat Dock Licensee" or "Licensee" means an owner of a portion of the Real Estate, but not an Owner of a Condominium Unit, who purchases and attains the use of a boat dock under a Boat Dock Addendum and a Boat Dock License Agreement.

"Boat Dock Owner Waiver and Assignment Agreement" means an agreement between the Declarant (or the Association) and an Owner under which an Owner disclaims and waives any and all of his rights, privileges, title, and interest in his Boat Dock and quitclaims, grants, conveys, and assigns such interest in his Boat Dock to the Declarant or the Association.

"Boat Dock Owner" means an Owner who purchases and attains the use of a Boat Dock under a Boat Dock Addendum and a Boat Dock License Agreement.

"Boat Dock Plans" means the plans for a certain floating dock attached as Exhibit "BDA-2" to the Boat Dock Addendum.

"Boat Docking Facilities" means the boat docking facilities as defined in Paragraph 10 of this Declaration.



"Boat Docking Facilities Expenses" means expenses of administration of the Boat Docking Facilities by the Association and expenses for the operation, upkeep, maintenance, dredging, repair, replacement of the Boat Docking Facilities (to the extent provided in the Declaration, any Supplemental Declaration, the Boat Dock Addendums, the Boat Dock License Agreements, the Articles, the By-Laws, and any other applicable Boat Dock Agreement), and all sums lawfully assessed against the Boat Dock Owner and Boat Dock Licensees by the Association or as declared by the Act, this Declaration, any Supplemental Declaration, the Boat Dock Addendum, the Boat Dock License Agreements, the Articles, the By-Laws, or any other applicable Boat Dock Agreement, including, but not limited to, insurance costs, adequate reserves, and administrative costs.

"Building" means any structure on the Tract in which one or more Condominium Units are located, including any additional structure on the Real Estate containing one or more Condominium Units which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. The Initial Building is more particularly described and identified on the Plans and in Paragraph 3 of this Declaration and any additional Buildings will be identified in Supplemental Declaration or Plans that will be filed therewith.

"By-Laws" means the By-Laws of the Association providing for the administration and management of the Property and restrictions on its use as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.

"Common Areas" means the common areas and facilities as defined in Paragraph 6 of this Declaration.

"Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair, and replacement of the Common Areas and Limited Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration, or the By-Laws, but shall not include the Boat Docking Facilities Expenses.

"Condemnation Award" means all compensation, damages, or other proceeds payable to the Insurance Trustee from the taking or condemnation of all or any part of the Property as defined and in accordance with Paragraph 15 herein.

"Condominium Unit" or "Unit" means each one of the living units constituting Waterscape, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration, and each additional living unit which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. "Condominium

Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

"Co-Owner" or "Co-Owners" means the Owners of all the Condominium Units.

"Constitutional Majority" means not less than sixty-seven percent (67%) in the aggregate of the Percentage Vote eligible to be cast by the Co-Owners.

"Declarant" shall mean and refer to Waterscape Development Corporation, an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

"Declaration" means this Declaration made this 15th day of April, 1994, by Waterscape Development Corporation.

"Event of Suspension" means the occurrence of one of the events set forth and defined in Paragraph 11(d) of this Declaration which suspends the rights and privileges of a Boat Dock Owner to use and operate his Boat Dock and the Boat Docking Facilities.

"Expansion Parcel" means that portion of the Real Estate added to the Tract pursuant to and in accordance with Paragraph 20 hereof.

"General Plan" means the general plan of development of the Real Estate being subjected to the Regime and areas into which expansion may be made pursuant to and in accordance with this Declaration and any Supplemental Declarations and as specifically provided in Paragraph 20 hereof, all as set forth in Exhibit "G" attached hereto and incorporated by reference herein.

"Initial Board" means the initial Board of Directors set forth and defined in the By-Laws.

"Initial Building" means Building 2 as depicted in the Plans.

"Insurance Trustee" means such bank with trust powers authorized to do business in Hamilton County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards.

"Limited Areas" means the limited common areas and facilities as defined in Paragraph 7 of this Declaration.

"Majority of Mortgagees" means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least seventy-five percent (75%) of the Percentage Vote allocated to Mortgaged Units.

"Majority of Owners" or "Majority of the Percentage Vote" means the Owners entitled to cast more than fifty percent (50%) of the Percentage Votes in accordance with the applicable percentages set forth in this Declaration.

"Mortgaged Unit" means a Condominium Unit that is subject to the lien of a mortgage held, insured, or guaranteed by a Mortgagee.

"Mortgagee" means the holder, insurer, or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the By-Laws.

"Nonowner-Occupied Unit" means a Condominium Unit that is not occupied by an Owner for residential purposes.

"Owner" means a person, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof, who or which owns the fee simple title to a Condominium Unit.

"Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as specifically expressed in Paragraphs 3 and 8 of this Declaration.

"Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof; the Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

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

"Plans" means (i) the floor and building plans and elevations of the Initial Building and Condominium Units located on the Tract prepared and certified by James E. Dankert, a licensed professional engineer, under date of April 14, 1994, and (ii) the General Plan of Waterscape, all of which are incorporated herein by reference, as may be supplemented and amended to reflect the addition of Buildings and Condominium Units as contemplated by Paragraph 20 in this Declaration.

"Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, Boat Docking Facilities, all other improvements and property of every kind and nature whatsoever, real, personal or mixed, located upon the Tract and used in connection with the operation, use and enjoyment of Waterscape, excluding the personal property of the Owners.

"Real Estate" means the real estate described in Paragraph A of the recitals above and more particularly described in Exhibit "A" attached hereto and incorporated by reference herein.

"Regime" means Waterscape Horizontal Property Regime created by this Declaration pursuant to the Act.

"Restoration" means (re)construction or (re)building of the Buildings, the Condominium Units, the Common Areas, the Limited Areas, and Boat Dock Facilities to not less than the same condition as they existed immediately prior to any loss, damage, or destruction with the same type of architecture and structure, using where appropriate new materials of like kind and quality.

"Statute" means the Indiana Nonprofit Corporation Act of 1991, as amended.

"Supplemental Declaration" means any supplement or amendment to this Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act or this Declaration.

"Security Interest" means the security interest in the Owner's interest in a Boat Dock granted and conveyed to a Mortgagee pursuant to Paragraph 11(b) in this Declaration.

"Tract" means the real estate described in Paragraph B of the recitals above and such other portions of the Real Estate which have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or a Supplemental Declaration as herein provided.

"Transfer Agreement" means an agreement to transfer and convey a Boat Dock between a Boat Dock Owner and a New Owner in accordance with the applicable Boat Dock Agreement.

"Underlying License" means a certain License Agreement by and between the Indianapolis Water Company and the Shorewood Corporation dated October 19, 1978, and recorded October 22, 1978, as Instrument No. 70-46985, in the Office of the Recorder of Hamilton County, Indiana, and any governing rules, regulations, or interpretations made with respect thereto.

"Waterscape" means the name by which the Property and Regime shall be known.

2. Declaration. Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Buildings. There is one (1) Building containing eight (8) Condominium Units on the Tract as of the date hereof as shown on the Plans. Such Initial Building is identified and referred to in the Plans as Building 2. A description of the Initial Building and the Condominium Units contained therein is set forth in Exhibit "C", attached hereto and incorporated by reference herein.

4. Legal Description. Each Condominium Unit is identified on the Plans by a Unit letter, Building number, and Phase number. The legal description for each Condominium Unit shall consist of the Unit letter, Building number, and Phase



number as shown on the Plans and shall be stated as "Unit \_\_\_\_\_ in Building \_\_\_\_ in Phase \_\_\_\_ of Waterscape Horizontal Property Regime".

5. Description of Condominium Units.

(a) Appurtenances. Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use, and benefit of the Condominium Unit wherein the same are located or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety, or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operation of any of the Buildings or which are normally designed for common use; provided however, that all fixtures, equipment, and appliances designed or intended for the exclusive enjoyment, use, and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. The space within the basement or crawl space, if any, under Condominium Unit is considered a part of and for the exclusive use of such Condominium Unit. The space

within the attic, if any, above Condominium Unit is considered a part of and for the exclusive use of such Condominium Unit. The space within the garage connected to each of the Condominium Units is considered a part of and for the exclusive use of the Condominium Unit to which it is connected. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls (except load-bearing walls) and all of the floors and ceilings within the boundaries of a Condominium Unit are considered part of the Condominium Unit.

(b) Boundaries. The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction. The vertical boundaries shall run from the upper surfaces of the interim, unfinished surfaces of the lowest floors to the interim unfinished surfaces of the highest ceilings, and the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior load bearing walls (including windows and doors). In the event any horizontal, vertical, or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor, or roof surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall

be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use, and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor, or roof surfaces of the Condominium Unit.

6. Common Area and Facilities. "Common Areas" means (1) the land portion of the Tract, except as otherwise provided herein, (2) the foundations, roofs and exterior wall surfaces of the Buildings, (3) the yards, gardens, ponds, waterscapes, open spaces, landscaping, woodland areas, sidewalks, walkways, driveways, and parking areas, except to the extent the same are otherwise classified and defined herein as Boat Docking Facilities or Limited Areas, (4) central electricity, gas, water, air conditioning, and sanitary sewer mains serving the Buildings, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other common areas unless separately metered to a particular Condominium Unit or Boat Dock, (6) pipes, ducts, electrical wiring and conduits, and public utilities lines or mains which serve more than one Condominium Unit, (7) master television cable lines, master television antenna, or other telecommunication systems with wiring and outlets which serve

more than one Condominium Unit, (8) all streets that are not dedicated, (9) subfloors, ceilings, and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units, walls and floors between the garages and the Condominium Units except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (10) all recreational facilities, if any, located on the Tract, except to the extent the same are otherwise classified and defined herein as Boat Docking Facilities or Limited Areas and (11) all structures, structural components, facilities, and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Boat Docking Facilities, Limited areas, or as part of the Condominium Unit.

7. Limited Areas and Facilities. Limited Areas and those Condominium Units to which use thereof is limited are as follows:

(a) The halls, corridors, lobbies, stairs, stairways, entrances, and exits of each Building, if any, (except those located within the interior of Condominium Units) shall be limited to the use of the Condominium Units of such Building;

(b) Balconies, patios and porches, storage areas, if any, together with any area around such patios, decks, or porches specifically shown and designated on the Plans, and

any fences and gates therein enclosing or surrounding the same, and the driveways and sidewalks serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they are directly accessible, attached, or appertain;

(c) Air conditioning compressors or other heating and air conditioning systems, if any, attached to or located in a Building are limited to the use of the Condominium to which they are connected;

(d) The exterior sides and surfaces of doors, windows, and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain;

(e) Structural separations between Condominium Units or the space that would be occupied by such structural separations may become Limited Areas for the exclusive use of the Owners, or Owners of the Condominium Units on either side thereof, as provided in Paragraph 27; and

(f) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

8. Ownership of Common Areas and Percentage Interest.

Each Owner shall have an undivided interest in the Common Areas

and Limited Areas equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in Exhibit "D" attached hereto and incorporated by reference herein. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that from time to time have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of Waterscape. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered, except in compliance with all requirements of the Act. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an Owner's interest in the Common Areas or Limited Areas will be void unless the Condominium Unit to which that interest is allocated is also transferred.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Waterscape and the Association upon which the Co-Owners are entitled to vote.

9. Encroachments and Easements for Common Areas. If, by reason of the location, construction, Restoration, settling, or shifting of a Building, any Common Area, or Limited Area now

encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use, and enjoyment of such Common Area or Limited Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

Each Owner shall have the right to ingress or egress over, upon, and across the Common Areas necessary for access to his Condominium Unit and any Limited Area designated for use in connection therewith, and shall have the right to the horizontal and lateral support of his Condominium Unit. Such ingress and egress rights shall be appurtenant to and pass with the title to each Condominium Unit.

10. Boat Docks and Boat Docking Facilities. "Boat Dock" means each one of the floating boat docks constituting the Boat Docking Facilities installed and made available to each Boat Dock Owner by the Declarant pursuant to a certain Boat Dock Addendum To Purchase Agreement attached hereto as Exhibit "E" (the "Boat Dock Addendum"). "Boat Docking Facilities" means the floating Boat Docks, including walkways and floatation and docking systems appurtenant thereto along the shoreline of the Real Estate on Morse Reservoir in the general location shown on Exhibit "F" attached hereto. The legal description for each

Boat Dock shall consist of the Boat Dock number as shown on the Boat Docking Facilities Plans, and shall be stated as "Waterscape Dock No. \_\_\_\_." Except as provided in Paragraph 22, the number of Boat Docks shall not exceed the number of Condominium Units in Waterscape and shall be determined by the Declarant based on the demand for such Boat Docks within Waterscape. The Declarant shall not be obligated to install or maintain more Boat Docks than are required to meet Owners' demands. Except as provided in Paragraph 22, the Boat Docking Facilities shall be installed and made available by the Declarant exclusively for the benefit of and to Owners. An Owner may only attain the use of one Boat Dock.

11. Rights and Privileges of Boat Dock Owners.

(a) Declarant's Transfer of Rights and Privileges.

The Declarant, as a successor in title to the Real Estate, shall quitclaim and assign to any Owner of a Condominium Unit any and all of the Declarant's rights, privileges, and interest in, to, and under that certain Underlying License to use and operate on Morse Reservoir one (1) Boat Dock designated and described in any Owner's Boat Dock Addendum to any purchase agreement between the Declarant and an Owner for the sale and purchase of any Condominium Unit. Any and all rights, privileges, and interest of any Boat Dock Owner shall be subject to, limited by, and construed in accordance with the Underlying License, any governing rules, regulations, or interpretations made with respect



thereto, and any terms and conditions set forth in the deeds by which Declarant or its predecessors or successors have taken or will take title to the Real Estate. The Board of Directors of the Association shall have the right to impose such reasonable rules and regulations regarding the use of the Boat Docking Facilities, including each Boat Dock Owner's Boat Dock, as the Board of Directors deems appropriate. The Boat Dock Owners' rights or privileges shall consist only of a limited license to use and operate the Boat Docks and to use the Boat Docking Facilities for access to the Boat Docks subject to the conditions and limitations contained herein. Such rights and privileges of a Boat Dock Owner shall be exclusive in and to each Boat Dock Owner as Owner of his Condominium Unit and shall not be assigned or otherwise transferred or conveyed by a Boat Dock Owner, except as otherwise permitted herein.

(b) Mortgagee's Security Interest. Upon granting and conveying a mortgage in a Condominium Unit to a Mortgagee, the Owner of such Condominium Unit shall be deemed to have simultaneously granted and conveyed, and the Mortgagee shall be deemed to have received and obtained, a mortgage and security interest in such Owner's interest in the Boat Dock designated and described in his Boat Dock Addendum appurtenant to such Owner's Condominium Unit ("Security Interest"). Such Security Interest in the Boat Dock Owner's Boat Dock shall secure the indebtedness or other

obligations of the Owner otherwise secured by a mortgage on the Owner's Condominium Unit.

(c) Boat Dock Waiver and Assignment Agreement.

Subject to the written consent and release of a Mortgagee with a Security Interest in the Owner's Boat Dock, the rights and privileges to use and operate the Boat Dock and the Boat Docking Facilities shall be terminated and revert to the Declarant (or the Association) upon the execution of the Boat Dock Waiver and Assignment Agreement by such Owner. Upon the execution of such agreement, the Declarant (or the Association) shall be free to assign and sell the rights and privileges of the Boat Dock Owner to use and operate the Boat Dock on terms and conditions substantially similar to such terms and conditions in the Boat Dock Addendum and the Boat Dock Owner shall not have or retain any rights, privileges, title, or interest in the Boat Dock or its value or the Boat Docking Facilities.

(d) Suspension of Licensee's Rights; Remedies. All privileges and rights of a Boat Dock Owner to use and operate a Boat Dock and the Boat Docking Facilities shall be suspended and such Boat Dock Owner shall be prohibited from using and operating his Boat Dock and the Boat Docking Facilities upon the occurrence of any of the following events ("Event of Suspension"):

- (i) Boat Dock Owner fails or refuses to pay any Annual Boat Dock Fee, Special Boat Docking Facility

Assessment, or installment thereof when and as the same shall be due and payable and does not cure such failure or refusal within ten (10) days after written notice thereof from the Association until such payments are made by the Boat Dock Owner;

(ii) Boat Dock Owner fails or refuses to observe or comply with the applicable provisions of the Underlying License, the applicable provisions of the deeds by which the Declarant or its predecessors or successors have taken or will take title to the Real Estate, any rule or regulation properly established by the Board of Directors, or any other covenant or restriction contained in the Boat Dock License Agreement or this Declaration, and Boat Dock Owner either fails to cure such failure or refusal within twenty (20) days after written notice thereof from the Association, or persists in or repeats such failure or refusal more than twenty (20) days after receiving such written notice until such failure or refusal is cured by the Boat Dock Owner;

(iii) Boat Dock Owner assigns, conveys, leases, or otherwise transfers its rights and privileges hereunder, whether voluntarily or involuntarily, to any person or entity which is not an Owner of a Unit within Waterscape or the Association until such rights and privileges revert back to the Boat Dock

Owner and the assignment, conveyance, lease, or other transfer is terminated and rescinded;

- (iv) Boat Dock Owner conveys or otherwise transfers, whether voluntarily or involuntarily, legal or equitable title to the Condominium Unit (other than by a mortgage prior to foreclosure thereof) and attempts to reserve his rights or privileges to use and operate the Boat Dock and the Boat Docking Facilities until the rights and privileges are transferred and assigned to the new Owner of the Condominium Unit.

Upon any Event of Suspension, Boat Dock Owner shall promptly remove his boat and any other personal property of Boat Dock Owner from the Boat Dock, and all of the rights and privileges (legal or equitable) of a Boat Dock Owner shall be suspended in or to use, operate, or own the Boat Dock, its value, or the Boat Docking Facilities, except as otherwise provided herein. Notwithstanding an Event of Suspension, Boat Dock Owner shall be liable for all damages, costs, and reasonable attorney's fees incurred by the Association with respect to Boat Dock Owner's failure or refusal to comply with this Declaration or with respect to the Association's efforts to enforce the terms of the Boat Dock License Agreement. Except as provided herein, no Event of Suspension shall relieve Boat Dock Owner from liability for any such damages, costs, or fees payable by

Boat Dock Owner hereunder, including, but not limited to, any Annual Boat Dock Fee or Special Boat Docking Facilities Assessment becoming due and payable in any calendar year. All sums payable by Boat Dock Owner hereunder shall bear interest at the rate of eighteen percent (18%) per annum from the due date thereof or from the date incurred by the Association.

(e) Owner's Transfer of Boat Dock Rights and Privileges. A Boat Dock Owner shall notify the Association in writing of any transfer of his rights or privileges to use and operate a Boat Dock or the Boat Docking Facilities on or before the date of such transfer. Unless Boat Dock Owner has so notified the Association of a prior transfer, the rights or privileges to use the Boat Dock and the Boat Docking Facilities shall be deemed to pass to any person acquiring legal or equitable title (other than a mortgage lien prior to foreclosure) to Boat Dock Owner's Condominium Unit as of the date such title is acquired, whether or not the instrument conveying such title or any other instrument expressly grants, assigns, or otherwise transfers such rights or privileges. Upon any such transfer of title, Boat Dock Owner shall continue to be primarily liable hereunder unless and until Boat Dock Owner delivers to the Association an agreement, executed by the transferee in favor of and acceptable to the Association, under which the new Owner expressly assumes the duties and obligations

under this Declaration and the Boat Dock License Agreement ("Transfer Agreement"). If a Boat Dock Owner delivers to the Association such Transfer Agreement, such Boat Dock Owner shall have no liability for any assessment with respect to the Boat Dock and the Boat Docking Facilities imposed in any year after the year in which Boat Dock Owner delivers such Transfer Agreement, nor any liability for any damages, costs, or attorneys' fees incurred with respect to events occurring after the date such Transfer Agreement is delivered.

12. Retained Interests of Declarant and Association.

Except as otherwise transferred or conveyed to each Boat Dock Owner, pursuant to Paragraph 11(a), the Declarant reserves and retains all of its rights, privileges, title, and interest as a successor in title to the Real Estate in the Boat Docks and Boat Docking Facilities. Such retained rights include, but are not limited to (i) the rights of the Declarant to assign its rights under the Underlying License Agreement, Boat Dock Addendums, Boat Dock License Agreements, Transfer Agreements, Boat Dock Owner Waiver and Assignment Agreements, Boat Dock Lease Agreements, the Articles, the By-Laws, and this Declaration (collectively referred to herein as the "Boat Dock Agreements") to the Association or any successor corporation, and (ii) the rights of the Declarant reserved pursuant to Paragraph 22(a) herein. Title to the Boat Docking Facilities and Boat Docks themselves shall be deemed to pass to

Declarant's successor in interest under the Boat Dock Agreements upon Declarant's written assignment of such interests. In the event any portion of the Boat Docking Facilities and Boat Docks is determined to be "facilities or common elements" of Waterscape under the Selling Guidelines of the Federal National Mortgage Association, the Declarant shall immediately comply with such guidelines and transfer and assign such portions of the Boat Docking Facilities and Boat Docks as required thereunder. Except as otherwise provided herein, the Declarant is not required to perform or complete any other transfers or assignments. Upon assignment of the applicable Boat Dock Agreements by the Declarant to the Association, the Association will be responsible for all actions and duties of the Declarant to the Boat Dock Owners, Boat Dock Licensees, and Boat Dock Lessees under such Boat Dock Agreements.

13. Easement For Boat Docking Facilities and Boat Docks. Each Boat Dock Owner, Boat Dock Licensee, and Boat Dock Lessee shall have the right to ingress and egress upon and across the Real Estate and Boat Docking Facilities necessary for access to his Boat Dock; provided, however, such ingress and egress rights shall be subject to and limited by the terms and conditions in the applicable Boat Dock Agreement.

14. Casualty and Restoration. In the event of damage or destruction of the Property by fire or other cause, the following provisions shall be applicable:

(a) Partial Destruction of Buildings. In the event that less than all of the Buildings are completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Property to be promptly repaired and restored in accordance with this Declaration and the original Plans and specifications. The proceeds of the insurance carried by the Association shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost of Restoration of the Building or Buildings shall be shared and paid by all of the Owners of the Condominium Units so damaged or destroyed in proportion to the ratio that the percentages of each Condominium Unit bears to the total Percentage Interest of all Condominium Units so damaged or destroyed. If any Owner or Owners refuses or fails to make the required payments, the other Owners shall (or the Association if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

(b) In the Event of Complete Destruction of the Buildings. In the event of complete loss or destruction of



all the Buildings (i) this Regime shall terminate, (ii) the proceeds of the insurance carried by the Association shall be divided among the Co-Owners proportionately according to the fair market value of all the Condominium Units immediately before the damage as compared with all other Condominium Units, and (iii) the Property shall be deemed owned in common by the Co-Owners and the provisions of Section 19, Section 21, and Section 28 of the Act shall apply. In the event it is determined under Paragraph 14(c) below that there is not a complete destruction of all Buildings, the Buildings shall be repaired and restored and the proceeds of the insurance shall be applied in accordance with Paragraph 14(a) above.

(c) Determination of Complete Destruction of the Buildings. It shall be conclusively presumed that complete destruction of all Buildings did not occur unless it is determined by a Constitutional Majority at a special meeting of the Association held within one hundred twenty (120) days following the date of damage or destruction that all Buildings have been completely destroyed, together with written consents of a seventy-five percent (75%) Majority of Mortgagees.

(d) Building Restoration Encroachments. Encroachments upon or in favor of Condominium Units which may be created as a result of Restoration shall not constitute a claim or basis of a proceeding or action by the Owner upon whose

property such encroachment exists, provided that such Restoration was either substantially in accordance with the Plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(e) Destruction of Boat Docking Facilities. In the event that any or all of the Boat Docks are partially or completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Boat Docking Facilities to be promptly repaired and restored in accordance with this Declaration, the original Boat Dock Facilities Plans and specifications, and any applicable Boat Dock Agreements; provided, however, in the event of complete loss or destruction of all of the Buildings, the Association shall not be obligated to restore the Boat Dock Facilities and Paragraph 14(b) shall apply. The proceeds of the insurance carried by the Association shall be applied to the cost of Restoration of the Boat Docking Facilities. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, each Boat Dock Owner shall pay his proportionate share of the cost of Restoration (in excess of the insurance proceeds) as a part of his Annual Boat Dock Fees assessment, such proportionate share being equal to one divided by the total number of Boat Docks appurtenant to

the Boat Docking Facilities which existed as of the date of the damage or destruction. If any Boat Dock Owner refuses or fails to make the required payments, the other Boat Dock Owners shall (or the Association, if such other Boat Dock Owners fail to do so) complete the Restoration and pay the cost thereof, and the cost attributable to the Boat Dock Owner who refuses or fails to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Boat Dock Owner's Condominium Unit and Boat Dock, and may be foreclosed in the same manner as provided for the lien for Common Expenses and Boat Docking Facilities Expenses.

(f) Maximize Insurance Recovery Provision. If any insurance proceeds which could otherwise be recoverable by the Association or any Owners would not be recoverable because of any provision(s) of this Declaration or the By-Laws, such provision(s) shall be inoperative to the extent necessary to maximize the recovery of insurance proceeds.

15. Condemnation of Property. If at any time or times during the continuance of this Regime, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) Representation. The Association, or the Insurance Trustee if so appointed by the Association, shall represent the Co-Owners in the condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Co-Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph.

(b) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Insurance Trustee as trustee for all Owners and their Mortgagees according to their respective interests therein.

(c) Total Taking. In the event that the entire Property is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, this Regime shall terminate. The Condemnation Award shall be apportioned among the Co-Owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Insurance Trustee and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Insurance Trustee shall use and disburse the total amount of such

accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) Partial Taking. In the event that less than the entire Property is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, this Regime shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) the total amount allocated to the taking of or injury to the Common Areas and the Limited Areas shall be apportioned among the Owners in proportion to their respective Percentage Interest;

(ii) the total amount allocated to the severance damages shall be apportioned to the Owners of those Condominium Units that were not taken or condemned;

(iii) the respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner of the particular Condominium Unit involved; and

(iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Insurance Trustee determines to be equitable in the circumstances.

If any allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then, in allocating the Condemnation Award, the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority, and any assessments made pursuant to this Declaration or the By-Laws.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by a seventy-five percent (75%) Majority of Mortgagees.

(f) Restoration and Repair. Anything to the contrary in this Paragraph 15 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, and any Condominium Unit, Common Area, or Limited Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by a seventy-five percent (75%) Majority of Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and the Limited Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Area, and the amount, if any, allocable to the taking of or

injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Paragraph 14(a) shall apply.

(g) Alternative Valuation in Event of Total Taking.

In the event the amount of the Condemnation Award is determined in negotiation, judicial decree, or otherwise, according to the value of individual Condominium Units as separately determined, the Condemnation Award shall be apportioned with respect to such Condominium Units according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

16. Association of Owners. Subject to the rights of Declarant reserved in Paragraph 20 hereof, the maintenance, repair, upkeep, replacement, administration, management, and operation of the Property shall be by the Association. Each Owner shall automatically, upon becoming an Owner of a Condominium Unit, be and become a member of the Association and



shall remain a member until such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the By-Laws. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purposes of the Statute and qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner for any other purpose (unless he is actually an Owner and thereby a member of the Association).

An individual designated by an Owner that is not a natural Person shall be deemed a member of the Association for the purpose of qualifying for membership on the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement, and upkeep of the Property (exclusive of the

Condominium Units, except to the extent herein or in the By-Laws otherwise provide).

17. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units, the Common Areas, Limited Areas, and Boat Docking Facilities are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including, but not limited to, any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the date described in Paragraph 20 hereof as the date upon which Declarant's right to expand the Property and Waterscape terminates, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than Boat Docks licensed to Boat Dock Owners and individual Condominium Units owned by Persons other

than Declarant) and any portions of the Real Estate not then part of the Property, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Condominium Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

18. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

(e) Restrictions on Amendments.

(i) The consent of a Constitutional Majority and the approval of a seventy-five percent (75%) Majority of Mortgagees shall be required to terminate the Regime.

(ii) The consent of a Constitutional Majority and the approval of a seventy-five percent (75%) Majority of Mortgagees shall be required to amend materially any provisions of the Declaration, By-Laws, or equivalent organizational documents of the Regime or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (A) voting;
- (B) assessments, assessment liens, or subordination of such liens;
- (C) reserves for maintenance, repair, and replacement of the Common Areas or Boat Docking Facilities;

- (D) insurance or fidelity bonds;
- (E) rights of use of the Common Areas or Boat Docking Facilities;
- (F) responsibility for maintenance and repair of the several portions of the Property;
- (G) expansion or contraction of the Regime or the addition, annexation, or withdrawal of property to or from the Regime except as provided for in Paragraph 20;
- (H) boundaries for any Condominium Unit;
- (I) the interest in the Common Areas, Limited Areas, or Boat Dock Facilities;
- (J) convertibility of Condominium Units into Common Areas, or Common Areas into Condominium Units;
- (K) leasing of Condominium Units;
- (L) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium Unit; or
- (M) restoration or repair of the Property after damage or partial

condemnation in a manner other than as specified herein or in the By-Laws.

(iii) The consent of a Constitutional Majority and the approval of a seventy-five percent (75%) Majority of Mortgagees shall be required to amend any provisions included in the Declaration, By-Laws, or the equivalent organizational documents of the Regime that are for the express benefit of such Mortgagees or any insurer or guarantor.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association, provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right, acting alone and without the consent or approval of the Co-Owners, the Association, the Board of Directors, any mortgagees, or any other person, to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time

to time, or (ii) such amendment or supplement is made to implement expansion of the Property and Waterscape pursuant to Declarant's reserved rights to expand the same as set forth in Paragraph 20 hereof, or (iii) such amendment is necessary to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages, (iv) such Amendment to the Plans are set forth in Paragraph 33, or (v) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 18 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant

to vote in favor of, make, execute, and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 18 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

19. Acceptance and Ratification. All present and future Owners, mortgagees, tenants, and occupants of the Condominium Units shall be subject to and shall comply with the provisions, the Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws, and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by such Owner, tenant, or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, limited liability companies, or other legal entities who may occupy, use, enjoy, or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the Statute, the



By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

20. Expandable Condominium and Declarant's Reserved Rights. Waterscape is and shall be an "expandable condominium," as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and Waterscape in accordance with the provisions of the Act and the following provisions:

(a) The real estate described and defined herein as the Tract (as described in Exhibit "B") is the real estate being subjected to the Regime by this Declaration and constitutes the first phase of the General Plan of development of the Real Estate attached hereto and incorporated by reference herein as Exhibit "G". The balance of the Real Estate is the area into which expansion of Waterscape may be made by Declarant. The maximum number of Condominium Units which may be developed on the Real Estate, including the eight (8) Condominium Units on the Tract as defined in this original Declaration, shall be one hundred one (101). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate and applicable zoning ordinances, Waterscape may be expanded by Declarant to include additional portions of the Real Estate (as described in Exhibit "A") in one (1) or more additional phases by the execution and recording of one (1) or more Supplemental Declarations; provided,

however, that no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Waterscape to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as such first expansion is made on or before five (5) years from date of recording hereof, and a time limit of not exceeding seven (7) years in which all phases may be added to the Regime from date of recording hereof. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Waterscape beyond the Tract (as described in Exhibit "B") or any other portions of the Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental Declarations as provided above.

(b) The Percentage Interest which will appertain to each Condominium Unit in Waterscape, as Waterscape may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration), shall be equal and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that from time to time have

been subjected and submitted to this Declaration and then constitute a part of Waterscape.

(c) Simultaneously with the recording of Supplemental Declarations expanding Waterscape, Declarant shall record new Plans as required by the Act. Such Supplemental Declarations shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the Supplemental Declaration incorporating those changes has been recorded.

(d) When the Supplemental Declaration incorporating the addition of Condominium Units or expansion of Common Areas and Limited Areas, or both, is recorded, all liens, including, but not limited to, mortgage liens, shall be released as to the Percentage Interests in the Common Areas and Limited Areas described in the Declaration and shall attach to the reallocated Percentage Interests in the Common Areas and Limited Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interest appertaining to additional Condominium Units being added by the Supplemental Declaration are subject to mortgage liens upon the recordation of such Supplemental Declaration.

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each Supplemental Declaration recorded pursuant to this Paragraph 20. Each deed, mortgage, or other instrument with respect to a Condominium Unit, and the acceptance thereof, shall be deemed a consent to and an acknowledgment and grant of (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in such recorded Supplemental Declaration.

(f) Each Owner of a Condominium Unit, by acceptance of a deed thereto, further acknowledges, consents, and agrees, as to each such recorded Supplemental Declaration as follows:

(i) The portion of the Real Estate described in each Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each

Supplemental Declaration and, upon the recording thereof, such Percentage Interests shall thereby be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each recorded Supplemental Declaration.

(iii) Each deed, mortgage, or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall, upon the recording of each Supplemental Declaration, be divested pro tanto to the reduced percentage set forth in such Supplemental Declaration and vested among the other Owners, any mortgagees, and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded Supplemental Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each deed, mortgage, or other instrument of a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas included in the

Real Estate to which Waterscape is expanded by a recorded Supplemental Declaration, and each deed, mortgage, or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and Limited Areas and the ownership of any such Condominium Unit and lien of any such mortgage shall automatically include and attach to such additional Common Areas as such Supplemental Declarations are recorded.

(vi) Each Owner shall have a perpetual easement, appurtenant to his Condominium Unit for the use of any such additional Common Areas described in any recorded Supplemental Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners (also known as Limited Areas) of specific Condominium Units as may be provided in any such Supplemental Declaration.

(vii) The recording of any Supplemental Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including any mortgagees, that this Declaration and each

Supplemental Declaration are and shall be deemed to be in accordance with the Act, and for purposes of this Declaration and the Act, any changes in the respective Percentage Interest in the Common Areas and Limited Areas as set forth in each Supplemental Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Paragraph 20 to comply with the Act as it may be amended from time to time.

(x) Assessments, method of payment, and enforcement thereof on Condominium Units built as an expandable Condominium Unit pursuant to any Supplemental Declaration shall be governed by the same provisions pertaining to assessments as set forth in the By-Laws.

(xi) Voting rights of an Owner in an expandable Condominium Unit created by Supplemental Declaration shall vest upon becoming a member of the Association as prescribed by the By-Laws.

(g) In the event Declarant elects to expand the Property and Waterscape, all improvements constructed on that portion of the Real Estate added to the Tract (the "Expansion Parcel") shall be consistent with the improvements then located on the Tract in terms of the quality of construction, and all such improvements shall be

substantially completed before the Expansion Parcel is added to the Tract. No lien arising in connection with Declarant's ownership of and construction of improvements on the Expansion Parcel shall adversely affect the rights of existing Owners or the priority of first mortgages on Condominium Units in the existing Property. All taxes and other assessments relating to the Expansion Parcel covering any period prior to the additions of the Expansion Parcel shall be paid by or otherwise satisfactorily provided for by Declarant.

21. Granting of Permits, Licenses, and Easements. The Association is granted the authority to grant permits, licenses, and easements over the Common Areas for utilities, roads, and other purposes necessary for the proper operation of the Property, upon such terms and conditions and for such consideration as it deems appropriate.

22. Reservation of Rights to the Use of the Common Areas.

(a) Common Areas. If, at any time and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration, and such portion or portions of the Real Estate not so subjected to the Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof,



to include the yards, gardens, ponds, waterscapes, open spaces, landscaping, waterscaped ponds, sidewalks, walkways, driveways and parking areas, and utilities for the use of the Persons occupying such dwelling units upon the same terms and conditions as the use of such Common Areas by the Owners of the Condominium Units, their families, tenants, and guests. The owners of such portions of the Real Estate shall pay their proportionate share for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage, such proportionate share being equal to the number of such dwelling units so entitled to utilize such facilities divided by the total number of such dwelling units and Condominium Units on the Real Estate. The owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time and the same manner as the Owners of the Condominium Units pay their assessments to the Association.

(b) Boat Docks. Declarant shall have and hereby reserves the right to license and make available boat docks to owners of dwelling units developed on the Real Estate not subject to the Declaration or to the Act. The owners of such dwelling units that have licensed boat docks from the Declarant ("Boat Dock Licensees") shall have the benefit of the Boat Docking Facilities upon substantially the same terms and conditions and subject to substantially

the same limitations as the Boat Docking Facilities made available to the Boat Dock Owners under the Boat Dock Addendums. The Boat Dock Licensees with licensed boat docks shall pay their proportionate share for the use of the Boat Docking Facilities based on the cost of operation, maintenance, dredging, repair, replacement, including, but not limited to, insurance costs, adequate reserves for replacements, and administration costs, of such facilities for the year of such usage, such proportionate share being equal to the number of such dwelling units on the Real Estate with licensed boat docks divided by the total number of such dwelling units with licensed boat docks and Boat Dock Owners. The Boat Dock Licensees shall make payment for the usage provided herein to the Association at the same time and the same manner as the Boat Dock Owners pay their Annual Boat Dock Fees and Special Boat Docking Facilities Assessments to the Association in accordance with this Declaration and the By-Laws.

(c) Easement. Declarant shall have and hereby reserves an easement over, across, upon, along, in, through, and under the Common Areas, including to the extent necessary the Limited Areas and Boat Docking Facilities, for the purposes of installing, maintaining, repairing, replacing, relocating, and otherwise servicing utility or telecommunication equipment, facilities, and installations to serve the Property and any portions of the

Real Estate which are not part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate which are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate which are not part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate which are not part of the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights, or privileges to other Persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights, or privileges, may so use the Common Areas and to the extent necessary the Limited Areas and Boat Docking Facilities to supply utility and telecommunication services to the Property and any portions of the Real Estate that are not part of the Property and to permit public and quasi-public vehicles, including, but not limited to, police, fire, and other emergency vehicles, trash and garbage collection, post office vehicles, and privately-owned delivery vehicles, and their personnel to enter upon and use the drives and streets, the Common Areas, and to the extent necessary the

Limited Areas and Boat Docking Facilities of Waterscape in the performance of their duties.

23. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles, including, but not limited to, police, fire, and other emergency vehicles, trash and garbage collection, post office vehicles, and privately-owned delivery vehicles, shall have the right to enter upon the streets, Common Areas, Limited Areas, and Boat Docking Facilities of Waterscape in the performance of their duties. An easement is also granted to all utilities and their agents for installation, replacement, repairing, and ingress, egress, installation, replacement, repairing, and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephones, cable television, and electricity on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, telephone lines, cable television lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement the cable television, electric, and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain cable television, electric, and telephone wires, cables, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Buildings.

24. Initial Management. As set forth in the By-Laws, the Initial Board consists and will consist of Persons selected by Declarant until the Applicable Date. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than the Applicable Date under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management, and maintenance of the Common Areas and Boat Docking Facilities and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

The Initial Board may extend the management agreement beyond the Applicable Date providing the contract includes a

right of termination without cause that the Association can exercise at any time after the Applicable Date. Such right of termination shall not require the payment of any penalty or an advance notice of more than ninety (90) days. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

25. Assessments and Limitation on Declarant's Liability for Assessments. Co-Owners are obligated to contribute pro rata in the same percentages as their established Percentage Interest in Common Areas and Limited Areas set forth in Paragraph 8 of this Declaration are to the respective, usual, and ordinary maintenance and replacement reserve funds to assure continuous and adequate maintenance of Waterscape as prescribed by the Act, the assessment procedures and the method of collection and enforcement set forth under the By-Laws and the rules and regulations adopted pursuant thereto as each may be amended from time to time. Boat Dock Owners are also obligated to contribute pro rata their Boat Dock Fee Share to the respective usual and ordinary maintenance and replacement reserve funds to assure continuous and adequate maintenance of the Boat Docking Facilities and the Boat Docks as set forth in the Boat Dock Addendum, the assessment procedures and the method of collection and replacement set forth under the By-Laws and the rules and regulations adopted pursuant thereto as each may be amended from time to time. Assessments on all

Condominium Units shall commence no later than sixty (60) days after the closing of the sale of the first Condominium Unit occurs in the Buildings committed by this Declaration to the Regime; such provision shall also apply to assessments for Condominium Units in Buildings committed by Supplemental Declarations. Prior to the Applicable Date, Declarant shall bear all expenses incurred with respect to the Tract arising out of construction or other activities on any portion of the Real Estate not included in the Tract, including, but not limited to, road damage and clean-up of debris caused by construction traffic, connection to any utility lines or mains located on the Tract, and damage to or deterioration of grass, trees, fences, or other portions of the Property due to construction off site or the state of areas under development. Declarant shall have the same rights and duties on all Condominium Units owned by it as any other Owner.

26. Sale, Lease, or Other Transfer of Condominium Unit by Owners.

(a) Lease. It is in the best interests of all the Owners that those persons residing in Waterscape have similar proprietary interests in their Condominium Units. For the purpose of maintaining the congenial and permanent residential character of Waterscape, no Condominium Unit shall be a Nonowner-Occupied Unit without the prior approval of the Board. All leases shall be (i) in writing, and (ii) shall be entered into for a term of not less than

seven (7) days, unless otherwise approved by the Board. No lease may be for less than one (1) entire Condominium Unit. In determining whether to allow an Owner to lease his Unit, the Board may consider:

- (i) the total number of (leased) Nonowner-Occupied Units;
- (ii) the total number of Nonowner-Occupied Units on which there are federally-insured mortgages;
- (iii) the number of federally-insured mortgages unit foreclosures within the most recent twelve (12) month period in Waterscape;
- (iv) the number of conventional mortgage unit foreclosures within the most recent twelve (12) month period in Waterscape;
- (v) the increase or decrease in fair market value of the Condominium Units within the most recent twelve (12) month period; and
- (vi) other factors affecting the fair market value and marketability relative to similar real estate in the area.

Any lease shall be made explicitly subject to the terms of this Declaration and the By-Laws and must be approved by the Board.

(b) Lease Limitations. Based on the sole judgment of the Board, if the fair market value of the Condominium Units is determined to be decreasing or if the appreciation



of the Condominium Units are determined to be reduced or hindered relative to that of similar real estate in the area due to the number of (leased) Nonowner-Occupied Units or due to the length of short-term or long-term leases, the Board may:

- (i) limit the period of any Nonowner-Occupied Unit to twelve (12) consecutive months;
- (ii) disapprove any lease; or
- (iii) take other appropriate action to preserve and enhance the value of the Condominium Units and the Property.

(c) Fannie Mae Compliance. Notwithstanding any other provision herein, the Board shall comply with the Selling Guidelines of the Federal National Mortgage Association, with respect to leasing restrictions.

(d) Sale. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his Condominium Unit free of any such restriction.

27. Right to Combine Units. Two (2) or more adjoining Condominium Units may be utilized by the Owner or Owners thereof as if they were one Condominium Unit, or three (3) Condominium Units may be constructed or structurally altered into two (2) Condominium Units and any walls, floors, or other structural separations between any such Condominium Units, or any space that would be occupied by such structural separations

but for the utilization of the Condominium Units as one Condominium Unit, may, for as long as the Condominium Units are utilized as one, be utilized by the Owner or Owners of the adjoining Condominium Units as Limited Areas, except to the extent that any structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of the building of which they are a part. At any time, upon request of the Owner of one of such adjoining Condominium Units, any opening between the Condominium Units that, but for joint utilization of the two Condominium Units, would have been occupied by a structural separation, shall be closed, at the equal expense of the Owners of each of the Condominium Units, and the structural separations between the Condominium Units shall thereupon become Common Areas. To the extent that a Condominium Unit is enlarged as immediately above set forth, the percentage of assessment shall correspondingly be increased in the same manner as the percentage interest in Common Areas and the Percentage Vote allocable to the Owner thereof in all matters with respect to Waterscape and the Association as the same are defined in this Declaration and the By-Laws.

28. Right of Action and Enforcement. Subject to the provisions of Paragraph 34, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with these provisions of the Declaration, By-Laws, or any rules, regulations, or decision of the

Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right of action against the Association. The provisions of this Declaration, the By-laws, the Articles, the Act, the Statute, or the rules and regulations adopted pursuant thereto as each may be amended from time to time may be enforced by the Association or by any aggrieved Owner through court proceedings for injunctive relief, for damages or for both.

29. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws, or the Act, or to comply with any provision of the Declaration, the By-Laws, the Articles, the Act, the Statute, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees and expenses incurred in connection with such default or failure.

30. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses or Boat Docking Facilities Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of the Condominium Unit or Boat Dock.

31. Severability Clause. The invalidity of any covenant, restriction, condition, limitation, or other provisions of this Declaration or the By-Laws filed herewith shall not impair or

affect in any manner the validity, enforceability, or effect of the rest of this Declaration or the attached By-Laws.

32. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

33. Floor Plans. Simultaneously (or before) the recording of this Declaration or subsequent Supplemental Declarations, the Plans setting forth with relation to lot lines, the layout, location, identification numbers, and dimensions of the Condominium Units, Buildings, and the Property shall be filed in the office of the Recorder of Hamilton County, Indiana, in Horizontal Property Plan. The Plans shall bear the verified statement of a registered architect or licensed professional engineer certifying that the Plans are an accurate copy of portions of the Plans of the Buildings as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for construction of the Buildings ("Verified Statement"). If the Plans do not include a Verified Statement, the Declarant shall record, prior to the first conveyance of any Condominium Unit in such Buildings, an Amendment to this Declaration to which such Verified Statement that Plans theretofore filed or being filed simultaneously with such Amendment fully and accurately

depict the layout, unit number, and dimensions of the Condominium Units as built.

34. Exculpation. This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings, and agreements herein made on the part of Declarant ("Representations"), while in form purporting to be the Representations of Declarant, are nevertheless each and every one of them made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally, but are made and intended for the purpose of binding only the Tract; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or its directors and officers, on account of this instrument or on account of, in connection with, or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit as a condition to the acquisition thereof.

35. Mortgagees' Rights.

(a) Priority to Right of First Refusal. Any right of first refusal now or hereafter contained in this Declaration or the By-laws shall not impair the rights of any Mortgagee to:

(i) Foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, or

(ii) Accept a deed or assignment in lieu of foreclosure in the event of default by the owner, or

(iii) Sell or lease a Unit acquired by such mortgagee.

(b) Other Priority Rights. Notwithstanding any other provisions in this Declaration to the contrary, unless a Constitutional Majority and a seventy-five percent (75%) Majority of Mortgagees have given their prior written approval, the Association shall not:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Tract, Common Areas, Limited Areas, Boat Docking Facilities, or improvements located thereon which are owned or controlled directly or indirectly by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Tract by the Association shall not be deemed a transfer within the meaning of this clause.

(ii) By act or omission, change, waive, or abandon any scheme or regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Units, the exterior maintenance of the Units, the maintenance of party

walls or common fences, driveways, or the upkeep of lawns and plantings on the Tract.

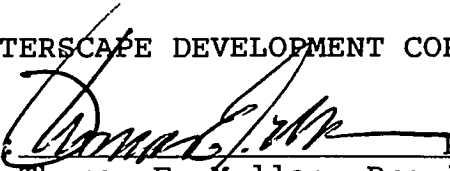
(iii) Failure to maintain fire and extended coverage insurance on insurable common property on current replacement costs basis in any amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

This Paragraph 35(b) shall apply to or affect the rights and options of the Declarant set forth in Paragraphs 20 and 24 hereof.

(c) Rights of Mortgage Purchaser. In the event Federal Home Loan Mortgage Corp., or other purchaser of a mortgage of any Unit in the Properties should request or require it, Declarant or Board of Directors may fully satisfy such requirements, and the right to act for and on behalf of such Owners with regard to same is hereby conferred.

36. Model Units, Sales, and Management Offices. The Declarant may maintain sales offices, management offices, and model Condominium Unit in Waterscape in the number, size, location, and relocation as determined by the Board. However, in no event shall the number of model units allowed by the Board be less than one of each type of Condominium Units in Waterscape. The minimum square footage of sales and management office space allowed by the Board shall be not less than two thousand four hundred (2,400) square feet.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

WATERSCAPE DEVELOPMENT CORPORATION  
By:  President  
Thomas E. Mullen, President

ATTEST:

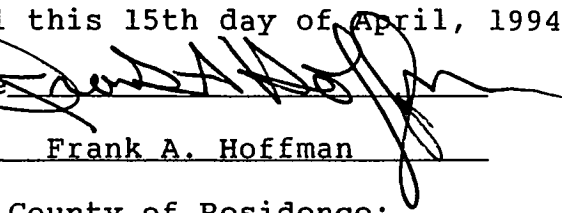
 Secretary  
Curtis Halvorson, Secretary



STATE OF INDIANA            )  
                                  ) SS:  
COUNTY OF HAMILTON        )

Before me, the undersigned Notary Public in and for said County and State, personally appeared Thomas E. Mullen, the President of Waterscape Development Corporation and acknowledged his execution of the foregoing Declaration of Horizontal Property Ownership.

WITNESS my hand and Notarial Seal this 15th day of April, 1994.

Signature 

Printed Frank A. Hoffman

My Commission Expires:

March 18, 1998

My County of Residence:

Hamilton

STATE OF INDIANA            )  
                                  ) SS:  
COUNTY OF HAMILTON        )

Before me, the undersigned Notary Public in and for said County and State, personally appeared Curtis Halvorson, the Secretary of Waterscape Development Corporation and acknowledged her execution of the foregoing Declaration of Horizontal Property Ownership.

WITNESS my hand and Notarial Seal this 15th day of April, 1994.

Signature 

Printed Frank A. Hoffman

My Commission Expires:

March 18, 1998

My County of Residence:

Hamilton

FAH:1604:sk

This document prepared by Frank A. Hoffman, Attorney at Law, Krieg DeVault Alexander & Capehart, One Indiana Square, Suite 2800, Indianapolis, Indiana 46204.



December 22, 1993  
PIC Job #87450-20100

**EXHIBIT "A"**

**WATERSCAPE HORIZONTAL PROPERTY REGIME  
LAND DESCRIPTION**

Part of the Southwest Quarter and part of the Southeast Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the said Southwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the North line of the said Southwest Quarter Section 1325.88 feet; thence North 00 degrees 11 minutes 38 seconds East 13.71 feet to a point on the center line of Carrigan Road, as located, said point being the beginning of a curve having a radius of 636.62 feet, the radius point of which bears South 00 degrees 08 minutes 08 seconds West (the next three courses are along the center line of the said Carrigan Road); thence Southeasterly along the said curve 827.78 feet to a point which bears North 74 degrees 38 minutes 08 seconds East from the said radius point; thence South 15 degrees 21 minutes 52 seconds East 224.33 feet to a curve having a radius of 954.93 feet, the radius point of which bears North 74 degrees 38 minutes 08 seconds East; thence Southeasterly along the said curve 827.26 feet to a point which bears South 25 degrees 00 minutes 00 seconds West from the said radius point, which is the point of beginning; thence South 25 degrees 00 minutes 00 seconds West 196.37 feet; thence South 00 degrees 00 minutes 00 seconds 554.12 feet; thence South 20 degrees 00 minutes 00 seconds East 407.61 feet; thence South 58 degrees 00 minutes 00 seconds West 265 feet, more or less, to the shore line of Morse Reservoir, as said shore line would have been established December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence to the left Easterly along the meandering shore line to a point which lies South 02 degrees 00 minutes 52 seconds East from a point on the center line of the said Carrigan Road, which point on the said center line lies 50 feet West of the West end of the Carrigan Road Bridge; thence from said shore line North 02 degrees 00 minutes 52 seconds West 49 feet, more or less, to said point on the said center line of Carrigan Road (the next two courses are along the said center line of Carrigan Road); thence South 87 degrees 59 minutes 08 seconds West 283.00 feet to aforesaid curve having a radius of 954.93 feet, the radius point of which bears North 02 degrees 00 minutes 52 seconds West; thence Easterly along the said curve 450.24 feet to the point of beginning, containing 13.5 acres, more or less.

EXCEPT therefrom the following described real estate:

Part of the Southwest Quarter and part of the Southeast Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:  
Commencing at the Northwest corner of the said Southwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the North line of the said Southwest Quarter Section 1325.88 feet; thence North 00 degrees 11 minutes 38 seconds East 13.71 feet to a point on the center line of Carrigan Road, as located, said point being the beginning of a curve having a radius of 636.62 feet, the radius point of which bears South 00 degrees 08 minutes 00 seconds West (the next three courses are along the center line of the said Carrigan Road); thence Southeasterly along the said curve 827.78 feet to a point which bears

North 74 degrees 38 minutes 08 seconds East from the said radius point; thence South 15 degrees 21 minutes 52 seconds East 224.33 feet to a curve having a radius of 954.93 feet, the radius point of which bears North 74 degrees 38 minutes 08 seconds East; thence Southeasterly along the said curve 827.26 feet to a point which bears South 25 degrees 00 minutes 00 seconds West from the said radius point; thence South 25 degrees 00 minutes 00 seconds West 196.37 feet along the center line of Clarendon Drive per dedication of right of way recorded July 28, 1981 as Instrument #25557 in Book 166 on pages 158 and 159 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds 554.12 feet; thence South 20 degrees 00 minutes 00 seconds East 121.06 feet to the point of beginning; thence continue South 20 degrees 00 minutes 00 seconds East 286.55 feet; thence South 58 degrees 00 minutes 00 seconds West 265 feet, more or less, to the shore line of Morse Reservoir, as said shore line would have been established December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence to the left Easterly along the meandering shore line to a point which bears South 72 degrees 30 minutes 00 seconds East from a point which bears South 17 degrees 30 minutes 00 seconds West 222.50 feet from a point which bears South 72 degrees 30 minutes 00 seconds East 258.46 feet from the point of beginning; thence from said shore line bear North 72 degrees 30 minutes 00 seconds West 110 feet, more or less, to said point which bears South 17 degrees 30 minutes 00 seconds West 222.50 feet from a point which bears South 72 degrees 30 minutes 00 seconds East 258.46 feet from the point of beginning; thence North 17 degrees 30 minutes 00 seconds East 222.50 feet to said point which bears South 72 degrees 30 minutes 00 seconds East 258.46 feet from the point of beginning; thence North 72 degrees 30 minutes 00 seconds West 258.46 feet to the point of beginning, containing 2.4 acres, more or less.



WATERSCAPE HORIZONTAL PROPERTY REGIME  
Phase One A - Land Description  
(Building 2)

Part of the Southwest Quarter of the Southeast Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Building 2 of Waterscape Horizontal Property Regime, the Conditional Final Plat of which was recorded on March 11, 1994 in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9411602 in Plat Cabinet 1, Slide 400.

The subject real estate contains 0.7 acre, more or less, and is improved with a two-story building containing eight (8) condominium units with garages. The size of the subject real estate, location of the building, and dimensions of the exterior walls of the building are shown in figures denoting feet and decimal parts thereof as set forth on the Plans.



**Declaration**  
**Exhibit "C"**

**DESCRIPTION OF BUILDING AND CONDOMINIUM UNITS**

The Building on the Tract as of the date of this Declaration is identified and referred to in the Plans as Building 2. The Building is a two-story structure of vinyl and brick exterior siding with combination wood and concrete flooring and framing.

Building 2 contains a total of eight (8) Condominium Units as set forth in the Plans.





**Declaration**  
**Exhibit "D"**

**DESCRIPTION OF PERCENTAGE INTERESTS OF CONDOMINIUM UNITS**

The Percentage Interest appertaining to each of the respective Condominium Units is 12.501% as of the date of this Declaration. Such Percentage Interests are subject to adjustment and alteration upon expansion of Waterscape as provided in this Declaration.



DECLARATION  
EXHIBIT "E"

WATERSCAPE  
BOAT DOCK ADDENDUM TO PURCHASE AGREEMENT

This Boat Dock Addendum to Purchase Agreement ("Boat Dock Addendum") made this \_\_\_\_ day of \_\_\_\_\_, 199\_\_ by and among Waterscape Development Corporation, an Indiana corporation ("Seller"), and \_\_\_\_\_ ("Buyer"), as a supplement to a certain Purchase Agreement executed by Seller and Buyer on \_\_\_\_\_, 199\_\_ ("Purchase Agreement").

W I T N E S S E T H:

WHEREAS, Buyer, under the Purchase Agreement, agrees to purchase from Seller a certain condominium unit more particularly described in the Purchase Agreement as Unit \_\_\_\_ in Building \_\_\_\_ in Phase \_\_\_\_ ("Condominium Unit") of Waterscape Horizontal Property Regime, and Seller agrees to sell to Buyer the Condominium Unit under the terms and conditions set forth in the Purchase Agreement; and

WHEREAS, under the Declaration of Horizontal Property Ownership for Waterscape ("Declaration"), Seller, as a successor in title to certain real estate, has agreed and covenanted to quitclaim and assign to any owner of a condominium unit in Waterscape certain rights and privileges to use and operate one (1) boat dock on Morse Reservoir designated and described in a certain boat dock addendum to any purchase agreement between the Seller and an owner for the sale and purchase of any condominium unit.

NOW, THEREFORE, as contemplated by the Purchase Agreement and required in the Declaration, and in consideration thereof, the sufficiency of which is acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Declaration.

2. Conditions on Obligations of Parties. This Boat Dock Addendum is executed as a supplement to the Purchase Agreement to which this Boat Dock Addendum shall be attached and become a part thereof. The respective obligations and rights of each party hereunder are contingent upon the continuing due and proper performance of the respective obligations of the other party under, and subject to the various conditions in, the Purchase Agreement. Any termination or breach of the Purchase Agreement shall be deemed to be a termination or breach of this Boat Dock Addendum.

3. Boat Dock Rights and Privileges. The rights and privileges to use and operate a certain floating dock on Morse Reservoir (in the general location shown on Exhibit "BDA-1" attached to the Boat Dock License Agreement which is attached hereto and incorporated by reference herein as Exhibit "BDA-A" ("Boat Dock License Agreement")) to be known as Waterscape Dock No. \_\_\_\_\_, ("Boat Dock")) shall be granted to Buyer as an Owner of the Condominium Unit simultaneously with the conveyance of the Condominium Unit in accordance with the Declaration and pursuant to this Boat Dock Addendum. At the closing under the

Purchase Agreement, Buyer shall properly execute and accept as Owner of the Condominium Unit, and Seller shall properly execute and deliver as successor in title to the Real Estate, the Boat Dock License Agreement.

4. Purchase Price. The amount paid by Buyer for the rights and privileges to use and operate the Boat Dock under this Boat Dock Addendum shall be included in the purchase price of the Condominium Unit set forth in the Purchase Agreement.

5. Completion Date. The Boat Dock shall be completed by Seller and shall be made available for use by Buyer by the closing date under the Purchase Agreement or as soon as practical thereafter as weather and other conditions permit.

6. Termination. In the event that, prior to the closing date, the Indianapolis Water Company or Shorewood Corporation takes, or indicates that it is considering taking, any action which results or could result in the termination or impairment of any rights under or arising from the Underlying License, or in the event that any person institutes or threatens to institute any action or proceeding challenging the nature or validity of the rights under or arising out of the Underlying License, Seller and Buyer shall each have the right to terminate this Boat Dock Addendum upon notice to the other.

7. Default. Failure by Buyer to perform any of his obligations under this Boat Dock Addendum shall be deemed a default under the Purchase Agreement, and Seller shall be entitled to all remedies for a default thereunder. Failure by Seller to perform its obligations under this Boat Dock Addendum

shall not have any effect whatsoever on the rights and obligations of the parties under the Purchase Agreement, but Buyer shall have the right separately to enforce this Boat Dock Addendum against Seller, and Buyer's remedies shall be identical to those set forth in the Purchase Agreement.

8. Title Evidence. Seller will not provide and Buyer shall not be entitled to any evidence or assurance of whatever rights are being conveyed hereunder. Buyer acknowledges that copies of the Declaration, Boat Dock License Agreement and Underlying License have been made available to Purchaser prior to the signing of this Boat Dock Addendum. Buyer waives and shall be deemed to have waived any and all rights to object to the contents or provisions thereof.

9. Condition of Boat Dock. Seller agrees that, as of the date of which the Boat Dock is first placed in service, the Boat Dock will be free of any condition which significantly impairs the normal or intended use thereof, or which causes a significant impairment of the normal or intended use thereof during the one-year period following the date of the Boat Dock License Agreement. Seller shall either repair or replace, at its option, the Boat Dock or defective portion thereof, if the condition is brought to Seller's attention within said one-year period. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, SELLER SHALL HAVE NO (IMPLIED, CONTINGENT OR OTHER) LIABILITY OR OBLIGATION WITH RESPECT TO THE CONDITION OF THE BOAT DOCK OR ITS USE BY BUYER, AND SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL (SECONDARY) DAMAGE TO

ANY PERSON OR PROPERTY RESULTING FROM ANY CONDITION OF THE BOAT DOCK. Buyer agrees to indemnify and hold Seller harmless from and against any and all such liability.

IN WITNESS WHEREOF, the parties hereto have executed this Boat Dock Addendum as of the date first above written.

BUYER:

SELLER:  
WATERSCAPE DEVELOPMENT CORPORATION

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Thomas E. Mullen, President

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

FAH:1607:sms



**BOAT DOCK ADDENDUM**  
**EXHIBIT "BDA-A"**

**WATERSCAPE**  
**BOAT DOCK LICENSE AGREEMENT**

THIS BOAT DOCK LICENSE AGREEMENT ("License Agreement"),  
made this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by and  
between WATERSCAPE DEVELOPMENT CORPORATION, an Indiana  
corporation, ("Licensor") and \_\_\_\_\_  
\_\_\_\_\_, ("Licensee"),

**WITNESSETH THAT:**

WHEREAS, Licensor is the declarant of Waterscape Horizontal  
Property Regime ("Waterscape") under the declarations governing  
Waterscape recorded as Instrument No. \_\_\_\_\_ in the  
office of the Recorder of Hamilton County, Indiana (the  
"Declaration"); and

WHEREAS, as capitalized terms not otherwise defined herein  
shall have the meaning set forth in the Declaration; and

WHEREAS, Licensee, under a certain Purchase Agreement  
executed by Licensee and Licensor on \_\_\_\_\_, 199\_\_\_\_  
("Purchase Agreement"), agreed to purchase from Licensee a  
certain condominium unit more particularly described in the  
Purchase Agreement as Unit \_\_\_\_\_ in Building \_\_\_\_\_ in  
Phase \_\_\_\_\_ ("Condominium Unit") of Waterscape, and Licensor  
agreed to sell to Licensee the Condominium Unit under the terms  
and conditions set forth in the Purchase Agreement; and

WHEREAS, the Licensee and Licensor have closed on the sale  
and purchase of the Condominium Unit under the Purchase  
Agreement, and the Licensee, as an Owner in Waterscape as of  
the date hereof, owns the Condominium Unit; and

WHEREAS, Licensor, as a successor in title from the Shorewood Corporation to the Real Estate, may have certain license privileges or easement rights for the construction and maintenance of certain boat docks along the shoreline of Morse Reservoir, pursuant to a certain License Agreement between the Indianapolis Water Company and Shorewood Corporation, dated October 19, 1970, and recorded October 22, 1970, as Instrument No. 70-46985 in the office of the Recorder of Hamilton County, Indiana (hereinafter called the "Underlying License"); and,

WHEREAS, the Licensor intends to make available certain Boat Docks and related Boat Docking Facilities along the shoreline of Waterscape, including a certain dock to be known as Waterscape Dock No. \_\_\_\_\_ in the location shown on the attached Exhibit "BDA-1" (the "Boat Dock") in accordance with the Declaration; and

WHEREAS, Licensee has agreed to purchase, and Licensor has agreed to sell under the terms and conditions set forth in a certain Boat Dock Addendum dated \_\_\_\_\_, 199\_\_\_\_, the right or privilege to use the Boat Dock and Boat Docking Facilities, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto now agree as follows:

1. Grant of License. Licensor hereby quitclaims and assigns to Licensee such privileges or rights as it may have, pursuant to the Underlying License as successor in title from

the Shorewood Corporation to the Real Estate, to use and operate the Boat Dock on Morse Reservoir and to use the adjacent walkways on and about the Boat Docking Facilities for access to the Boat Dock, subject, however, to the conditions set forth in the Declaration. Licensee acknowledges and agrees that Licensor does not represent or warrant the existence or continuation of any such privileges or rights. The rights or privileges of a Licensee shall be exclusive in and to the Licensee as Owner of its Condominium and shall not be assigned or otherwise transferred or conveyed by the Licensee, except as otherwise permitted in the Declaration.

2. Prior Restrictions and Limitations. Licensee hereby agrees and acknowledges that its interests, if any, under this License Agreement are subject to the Declaration, By-Laws, the terms and provisions of the Underlying License, such terms and provisions being incorporated herein by this reference, any governing rules, regulations or interpretations made with respect thereto, and to the terms and conditions set forth in the deeds by which Licensor or its predecessors or successors have taken or will take title to the Real Estate. Licensee acknowledges and agrees that the privileges and/or rights hereunder are terminable at any time by the Indianapolis Water Company for any of the causes specified in the Underlying License and possibly without cause thereunder or under applicable law. Licensee further agrees and acknowledges that it is personally bound to observe the terms and provisions of the documents identified in this paragraph insofar as they are

applicable to the Boat Dock and Licensee's use and enjoyment thereof and that the Board of Directors of the Association under the Declaration and By-Laws has the right to impose such reasonable rules and regulations regarding the use of the Boat Docking Facilities, including the Licensee's Boat Dock, as the Association deems appropriate.

3. Mortgagee Security. The Licensee agrees and acknowledges that upon granting and conveying a mortgage in its Condominium Unit to a Mortgagee, such Mortgagee shall receive and obtain a mortgage and security interest in the Licensee's interest in the Boat Dock ("Security Interest"). The Licensee shall cause such Security Interest to secure the indebtedness or other obligations of the Licensee otherwise secured by a mortgage on the Licensee's Condominium Unit.

4. Retained Interests of Licensor and Association. Except as otherwise transferred or conveyed to the Licensor hereunder, the Licensor, as a successor in title of the Real Estate, reserves and retains all of its rights, privileges, title and interest in the Boat Dock and Boat Docking Facilities. Such retained rights shall include, but not be limited to, (i) the rights of the Licensor to assign its rights under the various Boat Dock Agreements to the Association or any successor corporation and (ii) the rights of the Licensee retained under the Declaration. The parties hereby acknowledge and agree that, at any time after the execution hereof, Licensor has the right to assign its rights under this License Agreement to the Association, or any successor corporation,

which is responsible for overseeing the maintenance and operation of Waterscape. Upon such assignment, the Association will be responsible for all actions and duties of Licensor hereunder, and Licensor shall have no further liability or responsibilities under this License Agreement. From and after the date of such assignment, the Licensee shall be bound to the Association to observe and perform its covenants and obligations under this License Agreement and the Declaration. The Board of Directors of the Association shall have the right to impose such reasonable rules and regulations regarding the use of the Boat Docking Facilities, including the Licensee's Boat Dock, as the Board of Directors deems appropriate, and Licensee shall fully and faithfully observe and comply with all such rules and regulations. Licensee shall not make any physical alteration of the Boat Dock or the related Boat Docking Facilities.

5. Annual Boat Dock Fees and Special Assessments. In addition to all Regular and Special Assessments payable under the Declarations and By-Laws governing Waterscape, the Licensee shall pay, in accordance with the Declaration and By-Laws, an Annual Boat Dock Fee and the Special Boat Docking Facilities Assessment (if any) based upon the Annual Boat Docking Facilities Budget and the Boat Docking Facilities Expenses. Licensee shall pay a proportionate share of the Annual Boat Docking Facilities Budget of the Boat Docking Facilities Expenses, such share being equal to one divided by the total number of boat docks appurtenant to the Real Estate which then

exist ("Boat Dock Fee Share"), and such portion shall be the "Annual Boat Dock Fee" for purposes of this License Agreement. In the event that an Annual Boat Docking Facilities Budget and Annual Boat Dock Fees are not approved and established in any year, the Annual Boat Docking Facilities Budget and Annual Boat Dock Fees in effect in the immediately preceding year shall continue in such year, subject to an increase of up to fifteen percent (15%) at the discretion of the Board of Directors. Such Annual Boat Dock Fees shall be due and payable in full on or before April 1st of each calendar year or on a date established by the Board of Directors; provided, however, that the Board of Directors may, in its discretion, provide for payment of the Annual Boat Dock Fees in installments throughout the calendar year, with such frequency and in such amounts as it deems appropriate; and provided further, that upon any failure to pay any such installment when due the full amount of such Annual Boat Dock Fee may be declared immediately due and payable. The Board of Directors may further provide for the payment of interest, not to exceed twelve percent (12%) per annum from and after each April 1st, for the privilege of paying the Annual Boat Dock Fees in installments after April 1st. No Licensee may exempt itself from paying any Annual Boat Dock Fees or Special Boat Docking Facilities Assessment or from contributing toward the expenses of administration and of maintenance and repair of the Boat Dock and the Boat Docking Facilities including, but not limited to, the Boat Docking Facilities Expenses, by waiver of the use or enjoyment or by

the abandonment of the Boat Dock. Each Licensee shall be personally liable for payment of its Boat Dock Fee Share in accordance with the Declaration and By-Laws. If any Licensee shall fail, refuse or neglect to make any payment of any Assessment, when due, a lien for such Assessment on the Licensee's Condominium Unit and Boat Dock may be filed and foreclosed by the Board of Directors in accordance with the Declaration and By-Laws.

6. Suspension of Licensee's Rights; Remedies. In accordance with the Declaration, all privileges and rights hereby granted to Licensee shall be suspended and the Licensee shall be prohibited from using and operating the Boat Dock and the Boat Docking Facilities, upon the occurrence of any of the following events ("Event of Suspension"):

(a) Licensee fails or refuses to pay any Annual Boat Dock Fee, Special Boat Docking Facility Assessment or installment thereof when and as the same shall be due and payable and does not cure such failure or refusal within ten (10) days after written notice thereof from the Association until such payments are made by the Licensee;

(b) Licensee fails or refuses to observe or comply with the applicable provisions of the Underlying License, the applicable provisions of the deeds referred to above, any rule or regulation properly established by the Board of Directors, or any other covenant or restriction contained in this License Agreement or the Declaration, and Licensee either fails to cure such failure or refusal within twenty

(20) days after written notice thereof from the Association, or persists in or repeats such failure or refusal more than twenty (20) days after receiving such written notice until such failure or refusal is cured by the Licensee;

(c) Licensee assigns, conveys, leases, or otherwise transfers its rights and privileges hereunder, whether voluntarily or involuntarily, to any person or entity which is not an Owner of a Unit within Waterscape, or the Association pursuant to the Declaration until such rights and privileges revert back to the Licensee and the assignment, conveyance, lease, or other transfer is terminated and rescinded;

(d) Licensee conveys or otherwise transfers, whether voluntarily or involuntarily, legal or equitable title to the Condominium Unit (other than by a mortgage prior to foreclosure thereof) and attempts to reserve to itself the rights or privileges hereby granted until the rights and privileges are transferred and assigned to the new Owner of the Condominium Unit.

Upon any Event of Suspension, Licensee shall promptly remove its boat and any other personal property of Licensee from the Boat Dock, and all of the rights and privileges (legal or equitable) of Licensee shall be suspended, in or to use, operate or own the Boat Dock or its value and the Boat Docking Facilities, except as otherwise provided herein. Notwithstanding an Event of Suspension, Licensee shall be



liable for all damages, costs, and reasonable attorney's fees incurred by the Association with respect to Licensee's failure or refusal to comply with this License Agreement or with respect to the Association's efforts to enforce the terms hereof. Except as provided herein, no Event of Suspension shall relieve Licensee from liability for any such damages, costs, or fees payable by Licensee hereunder, including but not limited to any Annual Boat Dock Fee or Special Boat Docking Facilities Assessment becoming due and payable in any calendar year. All sums payable by Licensee hereunder shall bear interest at the rate of eighteen percent (18%) per annum from the due date thereof or from the date incurred by the Association.

7. Transfers. Licensee shall notify the Association in writing of any transfer of its rights or privileges hereunder on or before the date of such transfer. Unless Licensee has so notified the Association of a prior transfer, the rights or privileges hereunder shall be deemed to pass to any person acquiring legal or equitable title (other than a mortgage lien prior to foreclosure) to Licensee's Condominium Unit as of the date such title is acquired, whether or not the instrument conveying such title or any other instrument expressly grants, assigns, or otherwise transfers such rights or privileges. Upon any such transfer of title, Licensee shall continue to be primarily liable hereunder unless and until Licensee delivers to the Association an agreement, executed by the transferee in favor of and acceptable to the Association under which the new

Owner expressly assumes the duties and obligations under this License Agreement ("Transfer Agreement"). If Licensee delivers such Transfer Agreement, Licensee shall have no liability for any annual fees imposed in any year after the year in which Licensee delivers such Transfer Agreement, nor any liability for any damages, costs, or attorneys' fees incurred with respect to events occurring after the date such Transfer Agreement is delivered. Licensee may hold a license to only one Boat Dock. Licensee must also own a Condominium Unit in Waterscape.

8. Taxes and Assessments. In the event that the Boat Dock is or becomes subject to any real estate or personal property taxes or assessments for municipal or other public improvements, or the value of the Boat Dock is considered in determining the value of the Condominium Unit, Licensee shall pay all such taxes and assessments attributable to the Boat Dock.

9. Notices. All notices required or permitted to be given under this License Agreement shall be sufficient if personally delivered or if sent by U.S. Registered Mail or U.S. Certified Mail, Return Receipt Requested, to the following persons:

If to Licensor or  
the Association

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If to Licensee:

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Such notices shall be deemed effective upon personal delivery thereof, or if mailed, upon the earlier of the actual receipt thereof or three (3) days after such notice is deposited in any regularly maintained U.S. Postal Box or Station.

10. Binding Effect. This License Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties. This License Agreement shall be modified only by written modification signed by the parties hereto.

11. Severability. In the event that any term(s) or provisions(s) of this License Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, or nullified by any action of any competent governmental authority, the parties hereto intend that the remaining provisions shall be unaffected thereby and shall continue in full force and effect.

12. Term. This License Agreement shall continue in effect so long as the Underlying License remains in effect, unless sooner terminated as provided herein.

13. Recording. Neither this License Agreement nor any memorandum thereof shall be recorded without the consent of the Shorewood Corporation, the Indianapolis Water Company, and the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing License Agreement as of the date first above written.

LICENSEE:

LICENSOR:  
WATERSCAPE DEVELOPMENT CORPORATION

\_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
Thomas E. Mullen, President

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

FAH:1610:11r

BOAT DOCK ADDENDUM

EXHIBIT "BDA-1"

Location of Boat Dock

BOAT DOCK ADDENDUM

EXHIBIT "BDA-2"

Boat Dock Plans

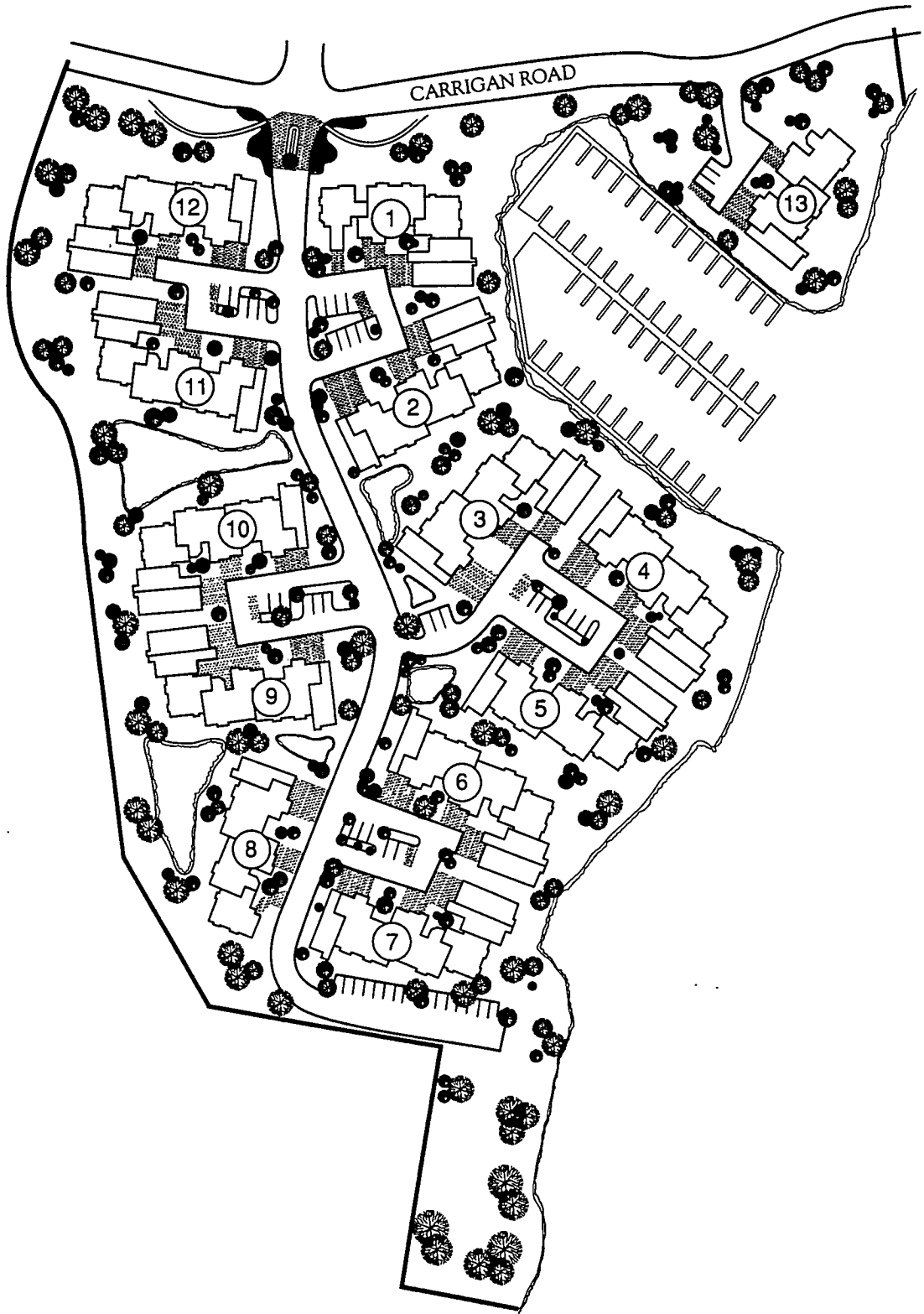


**Declaration**  
**Exhibit "F"**

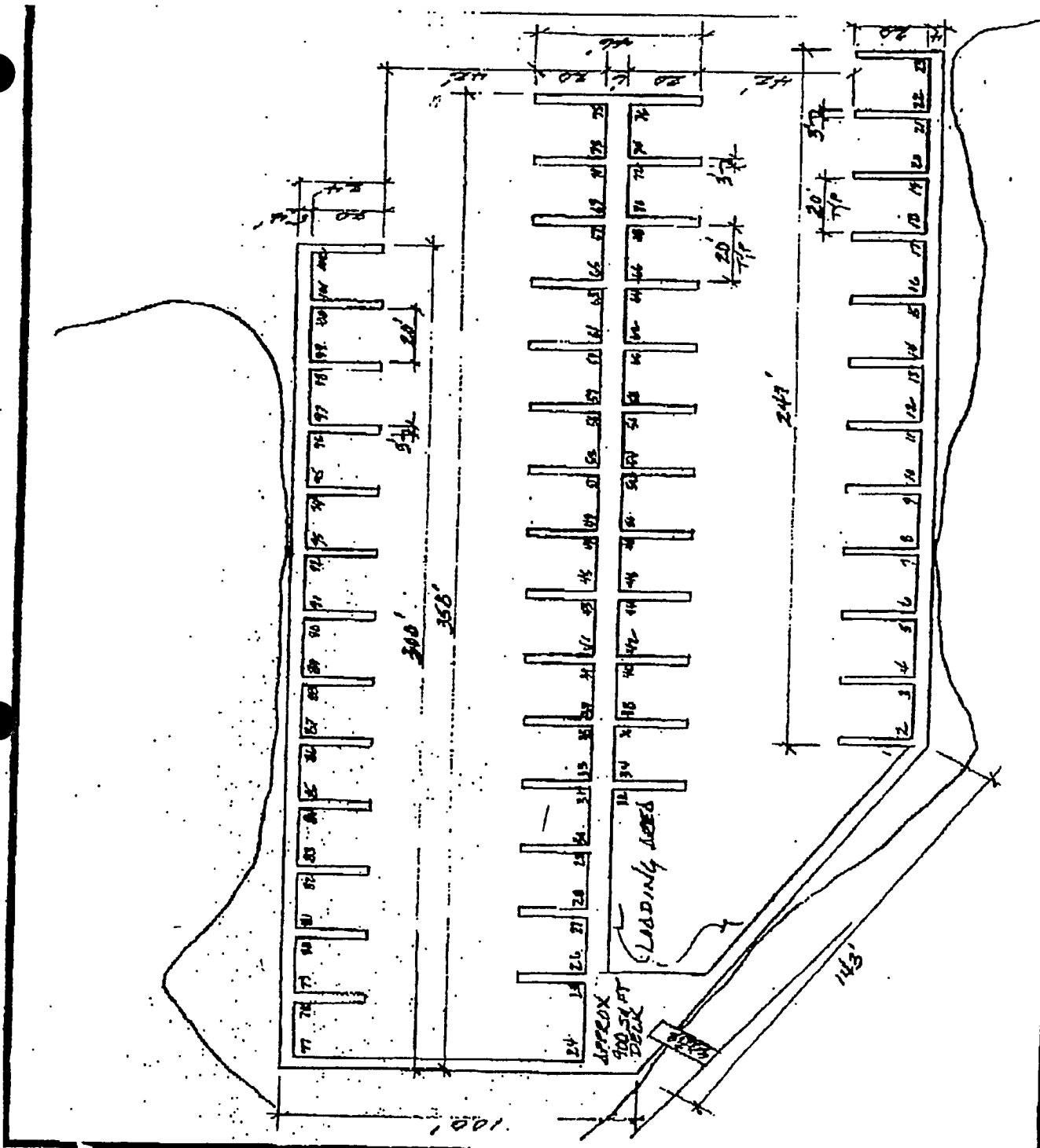
**BOAT DOCKING FACILITIES PLANS**

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Boat Dock Facilities Location Map	F-1
Boat Docking Facilities Plans	F-2





BOAT DOCKING FACILITIES PLAN



FLotation DOCKING SYSTEM

SCALE: 1"=40'

DATE: Aug 24/92

WATERSCAPE DEV.

7



ADDENDUM TO  
DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP  
FOR  
WATERSCAPE  
HORIZONTAL PROPERTY REGIME

Pursuant to Indiana Code 32-1-6-12 the reference to the instrument number, plat cabinet and date of record of the floor plans of the building affected by this Declaration is as follows:

Instrument number 9418204, in plat cabinet number 1, slide 405 in the Office of the Recorder of Hamilton County, Indiana.

FAH:1604:11r