

AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter sometimes referred to as "this Agreement") is made this 11 day of August, 1990, by RIVA TRACE CORPORATION, a Maryland corporation, and RIVA TRACE COUNCIL, INC. a Maryland Corporation, hereinafter referred to as the "Association", both of the foregoing hereinafter collectively referred to as "Owners", and RICHARD and MARYANITA FULTON, SR., RICHARD B. FULTON, JR., 85 Wallace Manor Road, Edgewater, MD 21037; DUDLEY and DORIS PURDY, SR., 103 Wallace Manor Road, Edgewater, MD 21037; DUDLEY W. PURDY, JR., 101 Wallace Manor Road, Edgewater, MD 21037; JAMES WOODARD, ROBERT V. WOODARD, 113 Wallace Manor Road, Edgewater, MD 21037; NORMAN and VIRGINIA C. CRABBE, 77 Wallace Manor Road, Edgewater, MD 21037; PHILIP S. and RENEE M. OLSON, 135 Wallace Manor Road, Edgewater, MD 21037; HAROLD R. BROWN, 2750 Solomons Island Road, Edgewater, MD 21037; J. KENT McNEW, 23 Wallace Manor Road, Edgewater, MD 21037; MR. and MRS. BRUCE OGDEN, 145 Wallace Manor Road, Edgewater, MD 21037; STEPHEN E. NEVAS, 126 Island View Road, Annapolis, MD 21401; CARROLL THURLOW, 2748 Solomons Island Road, Edgewater, MD 21037; WILLIAM F. SIMMS, JR., 2746 Solomons Island Road, Edgewater, MD 21037; RALPH and CARLOTTA CROSBY, 139 Wallace Manor Road, Edgewater, MD 21037; and ROBERT L. SAULS, II, 107 Wallace Manor Rd., Edgewater, MD 21037, (hereinafter referred to as "Adjacent Property Owners").

RECORDED
 242.00
 2.00
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 REGISTERED CASE NO. 814

EXPLANATORY STATEMENT:

Riva Trace Corporation is the record title owner of all of that real property lying and situate in the Second Assessment District of Anne Arundel County, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. The parcel is referred to hereinafter as the "Tract". The Tract shall be conveyed to the Association.

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 M. ROSE
 ANNE ARUNDEL COUNTY

The Association is a non-profit Maryland corporation which has as its purpose, in relevant part, to do any and all lawful things and acts which the Association from time to time may deem appropriate in order to benefit, aid, promote and provide for the peace, health, safety, convenience, comfort and the general welfare of the owners of property in the Riva Trace community.

In conjunction with Anne Arundel County's comprehensive rezoning process, the Tract was reclassified to the R5 Residential District, ~~as a R5 Residential District~~.

The Owners have requested that a Special Exception and Variances be approved to allow a community marina on the Tract. The Administrative Hearing Officer approved the Special Exception and Variances in Case Nos. S-236-89, V-451-89 and V-452-89, a copy of the Opinion attached hereto as Exhibit "B" and incorporated herein by reference.

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The Adjacent Property Owners filed appeals of the aforementioned Opinion, designated as Case Nos. BA18-90S, BA19-90V and BA20-90V, before the County Board of Appeals of Anne Arundel County.

The Owners and Adjacent Property Owners have reached an agreement by which all parties hereto shall accomplish their desired objectives. In exchange for the support of the Adjacent Property Owners, the Owners will place certain perpetual conditions and restrictions upon the future development and use of the Tract which may not be altered or amended without the consent of the Adjacent Property Owners. The purpose of this Agreement and Declaration of Covenants, Conditions and Restrictions is to embody the agreement of the Owners and the Adjacent Property Owners and to subject the Tract to perpetual covenants running with the land in furtherance of such agreement.

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged, the Owners and the Adjacent Property Owners covenant and agree as follows, and the Owners declare that the Tract henceforth shall be held, conveyed, encumbered, sold, leased, rented, used, occupied and improved subject to such covenants, conditions, restrictions, uses, limitations, obligations, and equitable servitudes as are hereinafter set forth, all of which covenants, conditions, restrictions, uses, limitations, obligations, and equitable servitudes shall be deemed to run with and bind the land and be part of a general scheme of development, and shall inure to the benefit of and be enforceable by the Adjacent Property Owners.

1. **Implementation of Special Exception and Variances for Community Marina.** The Adjacent Property Owners shall withdraw their appeals pending before the County Board of Appeals. If the County Board of Appeals still requires a hearing due to the intervention of other aggrieved parties, the Adjacent Property Owners and/or their legal counsel shall testify in favor of all pending appeals, in a manner consistent with the terms and conditions set forth in this Agreement and Declaration of Covenants, Conditions and Restrictions.

2. **Obligations of Owners.** Predicated upon the final and unappealable grant of the Special Exception and Variances as above set forth, either by virtue of reimplemention of the Opinion of the Administrative Hearing Officer, or by the Opinion of the County Board of Appeals, the Owners shall undertake or cause to be undertaken the following:

A. Comply with paragraphs 1 through 20 set forth in the Opinion of the Administrative Hearing Officer appended hereto as Exhibit "B", except that condition #3 (on page 10 of the Opinion) shall be modified to permit the maximum length of boats to be up

to twenty-six (26) feet, provided appropriate zoning approval for such modification is obtained.

B. No boats shall be put into or taken out of the water from the Tract, nor shall any other activity take place on the Tract, earlier than 7:00 a.m., nor later than one-half hour after sunset. Sunset shall be the time published in the Annapolis newspaper, The Capital, unless said newspaper shall cease publishing such time, in which case sunset shall be the time established by the Naval Observatory in Washington D.C. and published by the National Weather Service.

C. Any lighting installed on the Tract shall be down-lighting, with no glare off-site.

D. No person shall be allowed to dock or moor watercraft overnight in the adjacent creek by utilizing the Tract.

E. The Tract shall be enclosed by a security fence and gate which shall be locked to vehicular traffic except for permitted users and uses.

F. No sound systems, amplification systems or other excessive noise shall be permitted by users or uses of the Tract.

G. On or before May 1st of each year, the Association shall provide to the person designated by the Adjacent Property Owners a list of all names of the up to 46 authorized boat/trailer users of the Tract, together with a description of their respective boats, including registration number, length, color and name, if any, such list to be amended from time to time to reflect changes authorized by the Association.

H. The Association and the Adjacent Property Owners shall each appoint a committee of up to three members for purposes of conferring regarding mutual concerns.

I. The Association and the Adjacent Property Owners jointly shall petition all appropriate regulatory agencies to create a "no wake" area for the entire length of the adjacent creek.

J. The Association shall not allow use of other property owned or controlled by the Association for launching or retrieval of boats.

K. Anything in this Agreement to the contrary notwithstanding, Riva Trace Corporation shall have no further obligation or liability pursuant to this Agreement at such time as it conveys a good and marketable title of the Tract to the Riva Trace Homeowners Association.

L. Anything in this Agreement to the contrary

notwithstanding, Riva Trace Homeowners Association shall have the one time right to petition for an additional special exception to increase by fourteen (14) the number of trailered boats kept on and launched from the Tract, subject to the other terms and conditions of this Agreement. Such petition shall not be made until the expiration of three (3) years from the date of finality of Special Exception Case S-236-89, and any of the Adjacent Property Owners specifically reserve the right to protest and appear in opposition to such special exception.

M. Anything in this agreement to the contrary notwithstanding, no boat that is designed for and/or utilizes an engine exhaust above the waterline shall be stored on the Tract, nor shall such a boat be put into or taken out of the water from the Tract, or otherwise use the Tract.

3. Enforcement of Agreement.

A. This Agreement and the covenants, conditions and restrictions contained herein, shall inure to the benefit of, and may be enforced by the Association.

B. In the event of any alleged violation hereunder, any of the Adjacent Property Owners shall give notice to the violating party. If such alleged violation shall not be cured within a reasonable time, the Adjacent Property Owners owning at least four (4) of the individual adjacent properties may institute appropriate litigation to correct and/or enjoin the alleged violation. In the event of litigation, if the violation was determined not to exist, reasonable counsel fees and expenses shall be awarded to the Association. If a violation was determined to exist, reasonable counsel fees and expenses shall be awarded to the Adjacent Property Owners who are parties to the litigation.

4. General Interpretative Provisions.

A. **Term.** The term of this Agreement shall run for fifty (50) years from the date of execution as first executed above.

B. **Governing Law.** This Agreement is being executed and delivered and is intended to be performed in the State of Maryland and shall be construed and enforced in accordance with the laws of such state.

C. **Construction.** In construing this Agreement, feminine, neuter or plural nouns and pronouns shall be substituted for those masculine or singular in form, and vice versa, in any place in which the context so requires. This Agreement has been prepared by all parties hereto, and the language used in this Agreement shall not be construed in favor of or against any particular party or parties. The provisions stated and contained in the EXPLANATORY STATEMENT above are intended to be a material

part of this Agreement and are not merely prefatory in nature.

D. Captions. The captions at the beginning of any section or subsection of this Agreement are inserted only as a matter of convenience for reference, and are in no way intended to be a substantive part thereof, or to define, limit, affect, or supplement any provisions of this Agreement.

E. Entire Agreement and Modification. This Agreement contains the entire understanding of the parties, and there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein. A modification or amendment of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

F. Scope of Agreement. All of the promises, stipulations, covenants, and agreements herein contained shall apply to, bind, and be obligatory upon the parties hereto and the heirs, legatees, devisees, executors, administrators, personal representatives, successors, and assigns of each whether so expressed or not.

G. Time of the Essence. Time is of the essence of this Agreement.

H. Nonwaiver of Breach. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of such breach by any other party, as an amendment of this Agreement, or as a waiver of any subsequent breach of the same or any other provision of this Agreement by the waiving party or by any other party hereto.

I. Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable, or in conflict with any county, state, or federal law or regulation or any zoning or subdivision condition, for any reason, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable or with which there is a conflict, shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. If a conflict exists or develops between any term, covenant or condition of the Agreement or the application thereof, and any county, state or federal law or regulation or any zoning or subdivision condition, the more restrictive shall control.

J. Grantee's Covenant. Each Grantee accepting a deed, lease or other instrument conveying any interest in the Tract or portion thereof, whether the same incorporates or refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by this Agreement and Declaration and by the obligations imposed upon the Owners by this

Agreement and Declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject thereto.

K. **Effective Date and Recordation.** This Agreement and Declaration shall be null and void in the event that the aforesaid Special Exception and Variances in form and substance reasonably the same as authorized by Exhibit B (or as otherwise agreed to by the Owners) do not become final and unappealable. This Agreement shall remain in effect so long as the Owners are pursuing the Special Exception and Variances. Upon such Special Exception and Variances becoming final and unappealable, Harry C. Blumenthal, Esq., who shall serve as an escrow agent for the purpose of holding this fully executed Agreement and Declaration of Covenants, Conditions and Restrictions, shall record this Agreement among the Land Records of Anne Arundel County, Maryland.

L. **Notices.** Any and all notices provided for by this Agreement shall be made in writing and delivered either (i) by actual delivery of the notice into the hands of the party entitled thereto, or (ii) by the mailing of the notice in the U.S. mails to the address of the party entitled thereto as previously specified by such party or, if no such address has been so specified, to the last known address of that party, by certified mail, return receipt requested. Absent proof to the contrary, any such notice shall be deemed to have been received in situation (i) above on the date of its actual receipt by the party entitled thereto and in situation (ii) above on such date as shall be two business days after the date of its mailing. Unless otherwise specified by the parties, notice to each party shall be sent to the following addresses:

If to Adjacent Property Owners: Stephen E. Nevas
126 Island View Dr., P.O. Box 6477
Annapolis, Maryland 21401

with a copy to: Harry C. Blumenthal, Esq.
Blumenthal & Wayson, P.A.
P.O. Box 968
Annapolis, Maryland 21404

If to Association: Riva Trace Council, Inc.
c/o Wallace Campbell & Co., Inc.
8775 Cloudleap Court, Suite 226
Long Reach Village Center
Columbia, Maryland 21045

If to Riva Trace Corporation: Riva Trace Corporation
2661 Riva Rd., Suite 1050
Annapolis, Maryland 21401

Dudley W. Purdy, Jr. (SEAL)
Dudley W. Purdy, Jr.

James Woodard (SEAL)
James Woodard

Robert V. Woodard (SEAL)
Robert V. Woodard

Norma Crabbe (SEAL)
Norma Crabbe

Virginia E. Crabbe (SEAL)
Virginia E. Crabbe

Philip S. Olson (SEAL)
Philip S. Olson

Rebec M. Olson (SEAL)
Rebec M. Olson

Harold R. Brown (SEAL)
Harold R. Brown

J. Kent McNew (SEAL)
J. Kent McNew

Bruce Ogden (SEAL)
Bruce Ogden

Mrs. Bruce Ogden (SEAL)
Mrs. Bruce Ogden

Stephen E. Nevas (SEAL)
Stephen E. Nevas

Carroll Thurlow (SEAL)
Carroll Thurlow

William E. Simas, Jr. (SEAL)
William E. Simas, Jr.

Ralph Crosby (SEAL)
Ralph Crosby

Carlotta Crosby (SEAL)
Carlotta Crosby

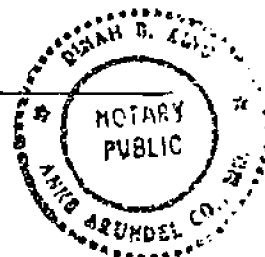
Robert L. Sauls, II (SEAL)
Robert L. Sauls, II

STATE OF MARYLAND, ANNE ARUNDEL COUNTY;

I HEREBY CERTIFY that on this 3rd day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared BOB B. KING PRESIDENT who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained, and that such act constitutes the lawful act of Riva Trace Corporation.

AS WITNESS my hand and notarial seal.

Bob B. King
Notary Public



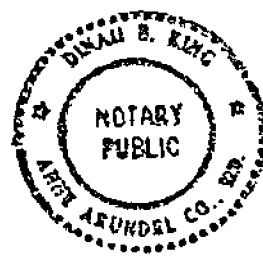
My commission expires: July 1, ¹⁹⁹³1990.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 2nd day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared LEONARD GROSS PRESIDENT who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained, and that such act constitutes the lawful act of Riva Trace Homeowners Association. COUNCIL, INC.

AS WITNESS my hand and notarial seal.

Bob B. King
Notary Public



My commission expires: July 1, ¹⁹⁹³1990.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 7th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared Richard and MaryAnita Fulton, Sr. who are known to me (or satisfactory proven) to be the persons whose names are subscribed to the within instrument and who made oath in due form of law that they executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: July 1995

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 7th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared Richard B. Fulton, Jr., who is known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: July 1995



STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 22nd day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared Dudley and Doris Purdy, Sr., who are known to me (or satisfactory proven) to be the persons whose names are subscribed to the within instrument and who made oath in due form of law that they executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: July 1, 1993

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 22nd day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared Dudley W. Purdy, Jr., who is known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: July 1, 1993

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 7th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared James Woodard, who is known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: July 1, 1993

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 7th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared Robert V. Woodard, who is known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: July 1, 1993

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 1st day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared [Signature], who is known to me (or satisfactory proven) to have Power of Attorney for Harold R. Brown, whose name is subscribed to the within instrument, and who made oath in due form of law that he executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public



My commission expires: July 1995

STATE OF MARYLAND, ANNE ARUNDEL COUNTY:

I HEREBY CERTIFY that on this 10th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared J. Kent McNew, who is known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument and who made oath in due form of law that he executed the within instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My commission expires: 7-31-94