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FILED

JOHN W. MONARX  
MARION COUNTY RECORDER

TENTH SUPPLEMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF LIBERTY CREEK NORTH AND STRATFORD GLEN

DEC 07 1994

Dec 1994 76726

TOWNSHIP  
ASSESSOR

This Tenth Supplement is made this 7th day of December, 1994, by Davis Development, L.P., an Indiana limited partnership and successor in interest to Davis Land Developers, Inc. (the "Developer").

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Liberty Creek North and Stratford Glen, on September 12, 1991 and recorded the same on September 26, 1991 as Instrument No. 91-99410 in the Office of the Recorder of Marion County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Marion County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this Tenth Supplement as follows:

1. Definitions. All terms used in this Tenth Supplement not otherwise defined in this Tenth Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Tenth Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and be subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements,

covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this Tenth Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this Tenth Supplement has been executed by Developer as of the date first above written.

By: Davis Development, L.P.,  
an Indiana limited partnership

By: Davis Development, Inc.,  
general partner

By:   
C. Richard Davis  
President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, President of Davis Development, Inc., who acknowledged the execution of the foregoing Tenth Supplement to Declaration of Covenants, Conditions and Restrictions of Liberty Creek North and Stratford Glen.

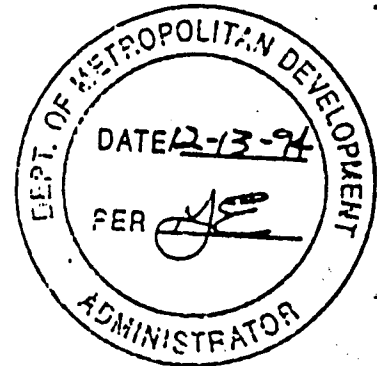
WITNESS my hand and Notarial Seal this 7th day of December, 1994.

Li-Ching Wu  
Notary Public

Li-Ching Wu  
Printed Name

My Commission Expires: 4-21-96

Residing in Hamilton County



This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317)595-2900.

FILED

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JOHN J. VAN NAK  
MARION COUNTY RECORDER

TENTH SUPPLEMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF LIBERTY CREEK NORTH AND STRATFORD GLEN

DEC 07 1994

Dec 7 1994 7:26

ASSIGNED FOR

ASSESSOR

This Tenth Supplement is made this 7th day of December, 1994, by Davis Development, L.P., an Indiana limited partnership and successor in interest to Davis Land Developers, Inc. (the "Developer").

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Liberty Creek North and Stratford Glen, on September 12, 1991 and recorded the same on September 26, 1991 as Instrument No. 91-99410 in the Office of the Recorder of Marion County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Marion County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this Tenth Supplement as follows:

1. Definitions. All terms used in this Tenth Supplement not otherwise defined in this Tenth Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Tenth Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and be subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements,

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covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration. as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this Tenth Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this Tenth Supplement has been executed by Developer as of the date first above written.

By: Davis Development, L.P.,  
an Indiana limited partnership

By: Davis Development, Inc.,  
general partner

By:   
C. Richard Davis  
President

STATE OF INDIANA     )  
                          ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, President of Davis Development, Inc., who acknowledged the execution of the foregoing Tenth Supplement to Declaration of Covenants, Conditions and Restrictions of Liberty Creek North and Stratford Glen.

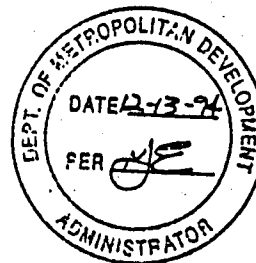
WITNESS my hand and Notarial Seal this 14th day of December, 1994.

Li-Ching Wu  
Notary Public

Li-Ching Wu  
Printed Name

My Commission Expires: 4-21-96

Residing in Hamilton County



This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317)595-2900.

Exhibit "A"

Land Description  
Liberty Creek North 10

Part of the West Half of Section 1, Township 16 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section; thence North 00 degrees 51 minutes 23 seconds West (assumed bearing) along the West line thereof 841.50 feet; thence North 89 degrees 19 minutes 36 seconds East, parallel with the South line of said Quarter Section, 946.23 feet to the Point of Beginning; thence continuing North 89 degrees 19 minutes 36 seconds East 300.33 feet parallel with the said South line to the Northwest corner of Liberty Creek North- Section 5B the plat of which is recorded as Instrument #92-91088 in the office of the Recorder of Marion County, Indiana (the next five courses are along the Westerly and Southerly lines of said Section 5B); (1) thence South 00 degrees 51 minutes 23 seconds East 330.17 feet; (2) thence North 89 degrees 19 minutes 36 seconds East 70.00 feet; (3) thence South 12 degrees 57 minutes 13 seconds West 293.25 feet; (4) thence South 00 degrees 51 minutes 23 seconds East along said Westerly line 226.33 feet; (5) thence North 89 degrees 19 minutes 36 seconds East 290.00 feet to the Southeast corner of lot #370 of said Liberty Creek North- Section 5B; thence South 27 degrees 54 minutes 44 seconds East 49.94 feet; thence South 65 degrees 15 minutes 23 seconds West 134.15 feet; thence South 56 degrees 14 minutes 20 seconds West 175.64 feet; thence South 89 degrees 19 minutes 36 seconds West 247.51 feet; thence North 54 degrees 35 minutes 23 seconds West 331.09 feet to the South line of the Northwest Quarter; thence South 89 degrees 19 minutes 36 seconds West along said South line 128.98 feet; thence North 00 degrees 27 minutes 53 seconds East 572.26 feet to the Northerly right of way line of Petersburg Parkway as described in Instrument #92-119700 in said Recorder's Office; thence North 73 degrees 55 minutes 46 seconds East along said Northerly right of way line 295.05 feet; thence North 00 degrees 40 minutes 24 seconds West 191.00 feet to the Point of Beginning, containing 12.518 acres, more or less.

Stratford Glen Section 7

Part of the Northwest Quarter of Section 1, Township 16 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the said Northwest Quarter Section; thence North 00 degrees 51 minutes 23 seconds West (assumed bearing) along the West line thereof 841.50 feet; thence North 89 degrees 19 minutes 36 seconds East, parallel with the South line of said Quarter Section, 667.12 feet to the Point of Beginning; thence continuing North 89 degrees 19 minutes 36 seconds East parallel with the said South line 279.11 feet; thence South 00 degrees 40 minutes 24 seconds East 191.00 feet to the Northerly right-of-way line of Petersburg Parkway as described in Instrument #92-119700 in the office of the Recorder of Marion County, Indiana, the next course is along said Northerly right-of-way line; thence South 73 degrees 55 minutes 46 seconds West 295.05 feet to a point which bears South 00 degrees 27 minutes 53 seconds West 269.40 feet from the beginning point; thence North 00 degrees 27 minutes 53 seconds East 269.40 feet to the Point of Beginning, containing 1.487 acres, more or less.

CROSS REFERENCE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

LIBERTY CREEK NORTH AND STRATFORD GLEN

PIKE TOWNSHIP  
ASSESSOR

THIS DECLARATION is made this 12<sup>th</sup> day of September, 1991 by  
David Land Developers, Inc., an Indiana corporation (the  
"Developer").

Recitals

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer intends to subdivide the Initial Real Estate into residential lots. Such residential lots will be grouped into the following two separate subcommunities: Liberty Creek North and Stratford Glen. Each of the such subcommunities is part of the Initial Real Estate and shall be subjected to the provisions of this Declaration of Covenants, Conditions and Restrictions as more specifically provided in Recital 3 below. The real estate described in Exhibit A hereto and the additional real estate which, as described in Recital 5 below, Developer expects from time to time to subject to the provisions of this Declaration were originally part of an overall parcel of land referred to in the Declaration of Covenants, Conditions and Restrictions made by American Community Development Corporation and recorded in the office of the Recorder of Marion County, Indiana, on July 25, 1988 as Instrument No. 88-73610 (the "Prior Declaration"). As expressly provided in Article II of the Prior Declaration, the real estate intended to be subjected to the provisions of the Prior Declaration is known as "Liberty Creek North, Section 1" and consists of seventy-nine (79) lots, and the real estate that is or will become subject to this Declaration which, as of the date hereof, has not yet been developed is not affected by the Prior Declaration.
3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create a separate organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Initial Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Initial Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana and of collecting and disbursing assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tracts adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such additions, as and when the same become subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate").

NOW, THEREFORE, Developer hereby declares that the Initial Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, each of which shall run with the land and be binding upon, and inure to

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the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Initial Real Estate or any part thereof.

## ARTICLE I

### DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Association" means the Liberty Creek North and Stratford Glen Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committees" means the architectural review committees established pursuant to Article VI, paragraph 6.1, of this Declaration. As provided in such Article VI, paragraph 6.1, there shall be established a separate architectural review committee for each of Liberty Creek North and Stratford Glen.

1.3 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common areas may be located within a public right-of-way.

1.4 "Common Expenses" means (i) expenses of and in connection with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping not located on a Lot (unless located on a Drainage, Utility or Sewer Easement or unless located on a Landscape Easement or Landscape Preservation Easement located on a Lot to the extent the Association deems it necessary to maintain such easement), (ii) expenses of and in connection with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance with respect to the Common Areas and (v) all expenses incurred in the administration of the Association.

1.5 "Developer" means Davis Land Developers, Inc., an Indiana corporation, and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Residence Unit or Lot within or upon the Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.7 "Landscape Easements" means any areas of ground so designated on a Plat of any part of the Real Estate.

1.8 "Landscape Preservation Easements" means any areas of ground so designated on a Plat of any part of the Real Estate.

1.9 "Lake Easements" means any areas of ground so designated on a Plat of any part of the Real Estate.

1.10 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Real Estate.

1.11 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot or Residence Unit.

1.12 "Nonaffiliated Owner" means any Owner other than Developer or any entity related to Developer.

1.13 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot, Residence Unit or any Real Estate in the Real Estate.

1.14 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.15 "Residence Unit" means any single family home in the subdivision designed for residential occupancy.

1.16 "Sidewalk Easements" means any areas of ground so designated on a Plat of any part of the Real Estate.

1.17 "Utility, Drainage or Sewer Easements" means any areas of ground so designated on a Plat of any part of the Real Estate.

## ARTICLE II

### APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any builder or any subsequent Owner of the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants for himself, his heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

## ARTICLE III

### PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Residence Unit, subject to the following provisions:

(1) the right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated upon the Common Areas;

- (ii) the right of the Association to fine any Owner or make a special assessment against any Residence Unit or Lot in the event a person permitted to use the Common Areas by the Owner of the Residence Unit violates any rules or regulations of the Association as long as such rules and regulations are applied on a reasonable and nondiscriminatory basis;
- (iii) the right of the Association to make reasonable regular assessments for use of the Common Areas;
- (iv) the right of the Association to dedicate or transfer all or any part of the Common Areas or to grant easements to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;
- (v) the right of the Association to enforce collection of any fines or regular or special assessments through the imposition of a lien pursuant to paragraph 7.7;
- (vi) the rights of Developer as provided in this Declaration and in any Plat of any part of the Real Estate;
- (vii) the terms and provisions of this Declaration;
- (viii) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate; and
- (ix) the right of the Association to limit the use of Common Areas in a reasonable nondiscriminatory manner for the common good.

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas. Such permissive use shall be subject to the By-Laws of the Association and any reasonable nondiscriminatory rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Upon sixty (60) days notice to the Association, Developer may convey all of its right, title and interest in and to any of the Common Areas to the Association by quitclaim deed, and such Common Areas so conveyed shall then be the property of the Association.

#### ARTICLE IV

##### USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating or fishing in or on any lake, pond, creek or stream on the Real Estate. The Association shall promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

4.2 Initial Sale of Units. All initial sales of Residence Units by the Developer or any builder or any affiliate of Developer or any builder shall be to owner-occupants; provided, however, this provision shall not apply to a mortgagee or its successor who acquires the development or a portion thereof through foreclosure or sale in lieu thereof. If any owner-occupant desires to lease his unit, such rental shall be pursuant to a written lease with a minimum term of one year and such lease shall expressly provide that the leasee shall be subject to all rules and regulations of the Association.

4.3 Use of Common Areas. The Common Areas shall not be used for commercial purposes.

4.4 Lot Access. All Lots shall be accessed from the interior streets of the subdivision. No direct access is permitted to any Lot from West 62nd Street

4.5 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contain additional restrictions on the use of the Lots in the subdivision, including without limitation prohibitions against commercial use, detached accessory buildings and nuisances; restrictions relating to the use of Landscape Easements, Landscape Preservation Easements, Lake Easements, Sidewalk Easements and Utility, Drainage and Sewer Easements; and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

#### ARTICLE V

#### ASSOCIATION

5.1 Membership. Each Owner, automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member of the Association so long as he or she owns the Lot.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which event Developer shall then be a Class A member). Each Class A member shall be entitled to one (1) vote.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote under paragraph 5.2 (in the case of Class A membership). No Lot's vote shall be split.

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

5.6 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall

provide for termination by either party with or without cause, without any termination penalty, on written notice of ninety (90) days or less.

5.7 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon in good repair as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Lake Easements or Landscape Easements or Landscape Preservation Easements or Sidewalk Easements as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of any private street signs.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of the Owner, including any builder, of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded.

(v) Maintenance of lake water levels so as not to create stagnant or polluted waters affecting the health and welfare of the community through recirculation of accumulated water or chemical treatment.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration and such other insurance as the Board of Directors deems necessary or advisable.

(vii) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(viii) Assessment and collection from the Owners of the Common Expenses.

(ix) Contracting for such services as management, snow removal, Common Area maintenance, security control, trash removal or other services as the Association deems necessary or advisable.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and the zoning covenants and commitments.

5.8 Powers of the Association. The Association may adopt, amend, or rescind, reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges against any Residence Unit or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person or firm employed or retained by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this paragraph 5.11.

5.12 Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of theft, fraud or dishonesty in such sums and with such sureties as may be approved by the Board of Directors, and any such bond may specifically include protection for any insurance proceeds received for any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEES

6.1 Creation. There shall be, and hereby are, created and established an Architectural Review Committee for each of Liberty Creek North and Stratford Glen (the two subcommunities comprising the subdivision) to perform the functions provided for herein. At all times during the Development Period, each Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, each Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The three persons appointed by the Board of Directors to each Architectural Review Committee shall consist of Owners of Lots within the specific subcommunity to which such Architectural Review Committee relates. The Board of Directors may at any time after the end of the Development Period remove any member of any Architectural Review Committee at any time upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of Architectural Review Committees. Each Architectural Review Committee shall review and approve the design, appearance and location of all residences, buildings, structures or any other improvements placed by any person, including any builder, on any Lot within the subcommunity to which such Architectural Review Committee relates, and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot within such subcommunity, in such a manner as to preserve and enhance the value and desirability of the Real Estate and to preserve the harmonious relationship among structures and the natural vegetation and topography.

(1) In General. No residence, building, structure antenna, walkway, fence, deck, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any Residence Unit or accessory building located on any Lot without the prior written approval of the Architectural Review Committee governing the subcommunity in which such Lot is located. Such approval shall be obtained only after written application has been made to such Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise specified by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the relevant Architectural Review Committee acknowledging the approval thereof. It is contemplated that the Architectural Review Committees will review and grant general approval of the floorplans and exterior styles of the homes expected to be offered and sold in each subcommunity by the builders and that such review and approval will occur prior to

the builders selling any homes in the community. Unless otherwise directed in writing by the relevant Architectural Review Committee, once a builder has received written approval of a particular floorplan and exterior style, it shall not be necessary to reapply to such Architectural Review Committee in order for such builder to build the same floorplan and exterior style on other Lots in the subcommunity.

(ii) Power of Disapproval. Each Architectural Review Committee may refuse to approve any application made to it as required under paragraph 6.2 (i) above (a "Requested Change") when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the Requested Change to be in violation of any restrictions in this Declaration or in a Plat of any part of the Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent buildings or structures; or

(c) The Requested Change, or any part thereof, in the opinion of such Architectural Review Committee, would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) Rules and Regulations. Each Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of such Architectural Review Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or a Plat of any part of the Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

6.3 Duties of Architectural Review Committees. If an Architectural Review Committee does not approve a Requested Change within thirty (30) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committees. Neither any Architectural Review Committee, the Association nor any agent of any of the foregoing, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. Each Architectural Review Committee or its representative may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with the approved Requested Change, or not approved, to be stopped and removed.

## ARTICLE VII

### ASSESSMENTS

7.1 Purpose of Assessments. The purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the



Owners, and the same shall be levied for the following purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn liage and landscaping within and upon the Common Areas, Landsc... Assessments, Landscape Preservation Easements, Drainage, Utility or Sewer Easements or Lake Easements and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots and Residence Units within the subdivision.

**7.2 Regular Assessments.** The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the Maximum Regular Assessment as follows:

(i) Until December 31, 1992, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Four Hundred Twenty Dollars (\$420.00).

(ii) From and after January 1, 1993, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than fifteen percent (15%) above the Regular Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (iii).

(iii) From and after January 1, 1993, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

**7.3 Special Assessments.** In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of two-thirds (2/3) of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called for such purpose.

**7.4 No Assessment against Developer During the Development Period.** Neither the Developer nor any related entity shall be assessed any portion of any Regular or Special Assessment during the Development Period.

**7.5 Date of Commencement of Regular or Special Assessments; Due Dates.** The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner, provided that in the case of the

conveyance by Developer of a Lot to any builder, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to the builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment (as described in paragraph 7.7 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Residence Unit or Lot, costs and expenses of such action incurred (including but not limited to attorneys reasonable fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this paragraph 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. Each Owner (other than the Developer during the Development Period) of a Residence Unit or Lot by acceptance for itself and related entities of a deed therefor, whether or not it shall be so

expressed in such deed, is deemed to covenant and agree to pay to the Association for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. All such assessments, together with interest, costs of collection and attorneys reasonable fees, shall be a continuing lien upon the Residence Unit or Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Residence Unit or Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Residence Unit at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Residence Unit) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Residence Unit, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Residence Unit or Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sewer Easement Deemed a Special Assessment. As provided in the Plat covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sewer Easement, including any builder, shall be required to keep the portion of said Drainage, Utility or Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the Department of Public Works and prior written approval of the Developer. Also, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's written request, be removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of Developer's written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer may, on behalf of the Association, enter upon the lot and cause such obstruction, structure or improvement to be removed so that the Drainage Utility and Sewer Easement is returned to its original designed condition. In such event, Developer, on behalf of the Association, shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a Special Assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any other Regular Assessment or Special Assessment may be collected.

#### ARTICLE VIII

##### INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage". The Association shall also insure any other property, whether real or personal, owned by the Association, against loss

or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if possible, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate but not limited to officers' and directors' liability insurance.

8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expenses.

## ARTICLE IX

### MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Drainage, Utility or Sewer Easements located on the Lot, free of weeds, trash or construction debris and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by a majority vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a Special Assessment against such Lot and the owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association is required to maintain hereunder, the

Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds or against such Owners who benefit by the Special Assessments if less than all benefit. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of the subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a Special Assessment against such Owner, whether or not a builder, and its Residence Unit and Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

#### ARTICLE X

##### MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of a Residence Unit or Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot or Residence Unit may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become charges against the Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee on any Lot or Residence Unit may make the payment on behalf of the Association.

ARTICLE XI

AMENDMENTS

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

(ii) 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 votes of all

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by paragraph 11.1 (iv) at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-seven percent (67%) in the aggregate of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence unit within and upon the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to such proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Real Estate, to make any amendments to this declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation, to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

## ARTICLE XII

### MISCELLANEOUS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, or zoning covenants shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing to enforce any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to it upon the occurrence, recurrence or continuance of such violation or violations.

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2005, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

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

12.6 Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

12.7 Annexation. Additional land adjacent to the Initial Real Estate may be annexed by Developer to the Initial Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration by Developer; and such action shall require no approvals or action of the Owners.

12.8 Government Financing Entities' Approval. If there is Class B membership in the Association and if there is financing provided for any of the Huntington Real Estate by the Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, and any of these entities requires that their consent be obtained prior to amending this Declaration or dedicating the Common Areas subject to this Declaration, then while there is Class B Membership the Developer and the Association must obtain the consent of such entity. If none of the Huntington Real Estate is financed by any of such entities, then the Developer, while there is Class B Membership, or the Association may amend this Declaration or dedicate any Common Areas without obtaining the consent of the above referenced entities.

XIII

#### DEVELOPER'S RIGHTS

13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all of the Real Estate (subject to the limitations hereinafter provided in this paragraph 13.1) for the use of Developer and its representatives, agents, designees, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this paragraph 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.




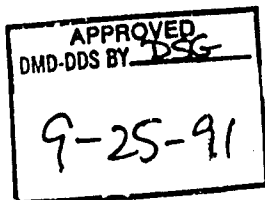
13.2 Signs. Developer shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat limitations with respect to signs during the Development Period. The Developer shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

13.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices and sales offices.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

By: Davis Land Developers, Inc.

By:   
C. Richard Davis  
President



STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, a Notary Public, in and for the State of Indiana, personally appeared C. Richard Davis, President of Davis Land Developers, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Liberty Creek North and Stratford Glen.

WITNESS my hand and Notarial Seal this 12th day of September, 1991.

Deanna Marie Fox  
Notary Public

Deanna Marie Fox  
Printed

My Commission Expires: 8-26-95

County of Residence: Marion

This instrument was prepared by C. Richard Davis, President of Davis Land Developers, Inc., 8250 Haverstick Road, Suite 290, Indianapolis, Indiana 46240, (317) 259-6217.

EXHIBIT " A "

(STRATFORD GLEN SECTION ONE)

Part of the Northwest Quarter of Section 1, Township 18 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the Southeast Quarter of Section 35, Township 17 North, Range 2 East; thence along the South line thereof and the North line of the Northwest Quarter of said Section 1, South 89 degrees 09 minutes 41 seconds West (assumed bearing) 1095.48 feet to the Point of Beginning; thence South 00 degrees 40 minutes 35 seconds East 787.00 feet; thence South 89 degrees 32 minutes 49 seconds West 164.00 feet; thence North 58 degrees 03 minutes 11 seconds West 132.00 feet; thence North 19 degrees 38 minutes 11 seconds West 159.00 feet; thence North 38 degrees 35 minutes 34 seconds West 143.95 feet to a point on a curve having a radius of 330.00 feet, the radius point of which bears South 88 degrees 01 minutes 50 seconds East; thence Northerly along said curve, 21.08 feet to a point which bears North 82 degrees 22 minutes 11 seconds West from said radius point; thence North 07 degrees 37 minutes 49 seconds East 2.83 feet; thence North 85 degrees 22 minutes 53 seconds West 94.99 feet; thence South 03 degrees 59 minutes 52 seconds West 144.15 feet; thence South 48 degrees 47 minutes 45 seconds West 112.00 feet to the approximate center line of Glen Creek (the following two courses are along the approximate center line of said Glen Creek); (1) thence North 41 degrees 38 minutes 34 seconds West 44.11 feet; (2) thence South 87 degrees 58 minutes 45 seconds West 168.77 feet; thence North 00 degrees 40 minutes 35 seconds West 891.76 feet to a point on the North line of the Northwest Quarter of said Section 1, which point bears South 89 degrees 09 minutes 41 seconds West 856.74 feet from the point of beginning; thence along said North line, North 89 degrees 09 minutes 41 seconds East 856.74 feet to the Point of Beginning, containing 12.976 acres, more or less.

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## LIBERTY CREEK NORTH SECTION 6

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Commencing at the Southwest corner of the Northwest Quarter of said Section 1; thence North 89 degrees 19 minutes 38 seconds East (assumed bearing) 2786.80 feet along the South line of the North Half of said Section 1 to the Southwest corner of Liberty Creek North, Section One, the plat of which is recorded as Instrument Number 870086919 in the Office of the Recorder of Marlon County, Indiana; thence North 00 degrees 51 minutes 40 seconds West 838.30 feet (838.27 feet by plat) along the West line of said Liberty Creek North, Section One to the Northwest corner of Lot 46 thereof and the Point of Beginning; thence South 78 degrees 18 minutes 02 seconds East 153.83 feet along the North line of said Lot 46 to the Northeast corner thereof, which corner is also the Southwest corner of Liberty Creek North, Section Two, the plat of which is recorded as Instrument Number 880084128 in the said Office of the Recorder (the next twelve courses are along the Westerly lines of said Liberty Creek North, Section Two, which lines are also the Westerly lines of Terrytown Parkway); (1) thence North 07 degrees 40 minutes 15 seconds West 49.97 feet (48.40 feet by plat) to a curve to the right having a radius of 175.00 feet, the radius point of which bears North 82 degrees 19 minutes 45 seconds East; (2) thence Northeastly along said curve 126.09 feet (126.16 feet by plat) to a point which bears North 56 degrees 23 minutes 14 seconds West from said radius point; (3) thence North 33 degrees 36 minutes 46 seconds East 96.81 feet (97.31 feet by plat) to a curve to the right having a radius of 180.00 feet, the radius point of which bears South 56 degrees 23 minutes 14 seconds East; (4) thence Northeastly along said curve 82.29 feet (82.10 feet by plat) to a point which bears North 30 degrees 11 minutes 38 seconds West from said radius point; (5) thence North 62 degrees 34 minutes 16 seconds East 103.65 feet (103.60 feet by plat) to a curve to the left having a radius of 125.00 feet, the radius point of which bears North 30 degrees 11 minutes 38 seconds West; (6) thence Northeastly along said curve 72.85 feet (72.86 feet by plat) to a point which bears South 63 degrees 35 minutes 03 seconds East from said radius point; (7) thence North 26 degrees 24 minutes 55 seconds East 231.15 feet (231.08 feet by plat) to a curve to the right having a radius of 275.00 feet, the radius point of which bears South 63 degrees 35 minutes 03 seconds East; (8) thence Northeastly along said curve 108.11 feet (108.06 feet by plat) to a point which bears North 41 degrees 03 minutes 34 seconds West from said radius point; (9) thence North 48 degrees 56 minutes 26 seconds East 225.45 feet (225.43 feet by plat) to a curve to the left having a radius of 150.00 feet, the radius point of which bears North 41 degrees 03 minutes 34 seconds West; (10) thence Northerly along said curve 171.41 feet (171.39 feet by plat) to a point which bears North 73 degrees 28 minutes 03 seconds East from said radius point; (11) thence North 16 degrees 31 minutes 57 seconds West 170.17 feet; (12) thence North 19 degrees 30 minutes 49 seconds West 151.46 feet to the Southeast corner of a parcel of land conveyed to American Community Development Corporation, the deed of which is recorded as Instrument Number 890023769 in the said Recorder's Office; thence North 79 degrees 36 minutes 05 seconds West 153.80 feet along the South line of said parcel of land; thence South 16 degrees 31 minutes 57 seconds East 416.28 feet; thence South 48 degrees 56 minutes 26 seconds West 238.56 feet; thence South 30 degrees 56 minutes 47 seconds West 180.00 feet; thence South 26 degrees 24 minutes 55 seconds West 150.00 feet; thence South 44 degrees 56 minutes 00 seconds West 325.84 feet; thence South 25 degrees 15 minutes 02 seconds West 117.18 feet; thence South 84 degrees 43 minutes 28 seconds West 100.45 feet; thence South 00 degrees 51 minutes 40 seconds East 115.00 feet; thence North 89 degrees 08 minutes 20 seconds East 40.00 feet to the Point of Beginning, containing 4.556 acres, more or less.

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CROSS REFERENCE 86-225240 830091877 335 850098791 CROSS REFERENCE 810001918

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by LIBERTY CREEK ASSOCIATES, INC., hereinafter referred to as "Declarant"

86-12-9337 III WITNESSES:

WHEREAS, Declarant is the owner of certain property in Indianapolis County of Marion, State of Indiana; which is more particularly described in Exhibit "A" attached hereto and made part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described, above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

84-91813 (VI) 86-23323 (VIII) 83-90188 (I)

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Liberty Creek Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties. Including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

PIKE TOWNSHIP ASSESSOR

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Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association is described on Exhibit "B" which is attached hereto and made a part hereof.

Section 5. "Lot" shall mean and refer to each plot of land shown upon any recorded subdivision map or plat of or within the Properties, with the exception of the Common Area, upon which one dwelling unit may be constructed.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Unit" shall mean a lot and the dwelling unit constructed upon the lot together with any other improvements on the lot.

Section 8. "Prior Declaration" shall mean and refer to that certain Declaration of Covenants and Restrictions of Liberty Creek Development Project dated July 19, 1983, 1983, and recorded on September 7, 1983, 1983, as Instrument 83-64359 in the Office of the Recorder of Marion County, Indiana.

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ARTICLE II

PLAN OF DEVELOPMENT OF LIBERTY CREEK

Liberty Creek is planned to be developed in seven (7) or more Sections. Section 1 includes the Real Estate subject to this Declaration, and is intended to be developed into fifty-one (51) Lots. Section 2 is intended to be developed into sixty-seven (67) Lots; Section 3 into thirty-five (35) Lots; Section 4 into forty-five (45) Lots; Section 5 into forty-five (45) Lots; Section 6 into forty-five (45) Lots; and, Section 7 into thirty (30) Lots. Common Areas may be conveyed to the Association at the time subsequent sections are developed. A legal description of Sections 2, 3, 4, 5, 6, and 7, are set

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forth in Exhibit "C" attached hereto and made a part hereof, and the developer reserves the right to annex such Sections to the Subdivision and each Lot owner in Section 1 and in each of the subsequent sections annexed hereto shall have the right to become members of the Association, to share the use of all Common Areas, and such Lot owners shall be assessed for common expenses in the same manner as all other Lot owners in the subdivision. Assessments may not be assessed against any lot in a Section until the common area for that Section has been conveyed to the Association.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners Easements and Rights of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members, has been recorded.

(b) The right of the individual Lot owners to the exclusive use of the parking spaces in the Common Area. ~~83-01077~~

(c) The right of the Association to charge reasonable and non-discriminatory fees and to establish rules and regulations for the use of the Common Areas. ~~850050791~~

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Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws of the Association his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

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ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves may agree, but in no event shall such vote be split into fractional votes nor shall more than one vote be cast with respect to any Lot. Each vote cast for a Lot shall presumptively be valid, but if such vote is questioned by any member holding any interest in such Lot, if all such members are not in agreement the vote of such Lot which is questioned shall not be counted.

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Class B. The Class B members shall be the Declarant and the Class B member shall be entitled to three (3) votes for each Lot owned. Each such owner may designate one or more persons to cast its votes. The Class B membership shall cease and be converted to Class A membership on the happening

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of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or,
- (b) on December 31, 1992.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner (with the exception of the Declarant) of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improve-

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ment and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1, of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be \$120.00 per lot. Assessments shall not be commenced for any lot in any Section until the Common Area for that Section, as identified in Exhibit B, has been conveyed free and clear of all encumbrances to the Association.

- (a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be adjusted in conformance with the Consumer Price Index ("CPI") published by the U.S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items, unadjusted for seasonal variation. The maximum assessment for any year shall be the amount determined by (a) taking the dollar amount specified above in the first sentence of this Section, (b) multiplying that amount by the published CPI number for the third month prior to the beginning of the subject year and (c) dividing that resultant by the published CPI number for the third month prior to the month in which this declaration was signed by the Declarant.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment amount specified above in the first sentence of this Section and used in the above CPI adjustment formula may be changed by a vote of the members, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting; setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (d) In addition to the Assessments by the Association, the Association may collect from the owners the assessments levied by Liberty Creek Club, Inc.

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pursuant to the Prior Declaration, and it shall remit all such assessments so collected to Liberty Creek Club, Inc. Assessments levied by Liberty Creek Club, Inc., are governed by the terms of the Prior Declaration and not by the provisions of this Declaration.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including the exteriors of the buildings or roofs, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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Section 6. Rate of Assessment.

Both annual and special assessment must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

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Section 7. Date of Commencement of Annual Assessments; Due Dates:

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of The

Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of

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such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to and accepted by a local public authority, the Common Area, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Indiana shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of a majority of the votes of each class of the Members of the Association. In no event shall such management agreement be cancelled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association by its Board of Directors to effect a management agreement. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of this type of project. The Association may require a fidelity bond from the management agent in such amount as it deems appropriate.

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ARTICLE VI  
ARCHITECTURAL CONTROL

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No building, fence, wall, sign or any structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. If the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been duly complied with.

ARTICLE VII  
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Units upon the Properties which connects two dwelling units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall.

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Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party).

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ARTICLE VIII

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EXTERIOR MAINTENANCE

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Section 1. Each lot owner shall be responsible for the exterior maintenance of all improvements on his lot. However, if a Unit owner shall

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fail to maintain the exterior of his Unit, or to keep it looking good, or to keep his Lot and lawn well kept and in a good, clean and sanitary condition, the Association may require, by Court action or otherwise, that the Lot Owner perform such maintenance or other work and/or the Association may perform such maintenance and/or other work at the Lot owner's expense, and the cost thereof shall be due and payable immediately as an addition to the Lot owner's regular assessment, and shall be secured by the Association's lien on such Lot.

Section 2. Lawn Maintenance and Other Work. The Association may agree with individual Lot owners to perform lawn and other maintenance work for such owners, provided the following conditions are met:

- (a) The Lot owner is charged a reasonable fee for such maintenance work that is designed to reimburse the Association for the cost thereof;
- (b) The Association is willing to perform similar work for any other Lot owners in Liberty Creek; and
- (c) There shall be no discrimination among the Lot owners in the performance of any such work.

ARTICLE IX

USE RESTRICTIONS

Section 1. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

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Section 2. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes.

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Section 3. No advertising signs (except one of not more than five square feet "for rent" or "for sale" sign per parcel), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the sale and maintenance of the Lots and improvements by the Declarant, its agents and assigns during the sale period and of the Association, its successors, and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 4. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash may be stored in enclosed containers provided by the Association for that purpose. All clotheslines shall be confined to patio areas.

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Section 5. Outside Use of Lots. Except in an individual patio area appurtenant to a dwelling unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representatives. In no instance shall unenclosed carports be allowed. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of

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the Property outside the exterior building lines, patio and individual parking areas, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Lots in the Liberty Creek subdivision and is necessary for the protection of said Owners.

Section 6. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Lot Owner or Lot Owners in favor of the other Lot Owners.

ARTICLE X

EASEMENTS

Section 1. Each Lot and the Property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or as constructed. A valid easement for such encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a dwelling structure containing more than one Unit is partially or totally destroyed, and then rebuilt, the Lot owners agree that minor encroachments of parts of the adjacent dwelling unit or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. ~~86 51377~~

Section 2. The Association shall have the right to grant easements upon, across, over and under all of the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to cablevision, water, sewers, gas, telephones and electricity. The Association may permit any electrical and/or telephone company to erect and maintain the lines and other necessary equipment on the Common Areas. An easement is further granted to all police, fire protection, ambulance and all

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similar persons to enter upon the streets and Common Areas in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter into or to cross over the Common Area and any dwelling Unit to perform the duties of maintenance and repair of any dwelling unit or the Common Area provided for herein. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association's Board of Directors shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this Article IX shall in no way affect any other recorded easement on said premises. An easement is granted to the Board of Public Works, all law enforcement agencies and the fire department to enter upon the Property in the performance of their duties.

ARTICLE XI  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges on or hereafter imposed by the provisions of this Declaration. Failure by the Association by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. ~~88 91377~~

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no wise affect any other provisions which shall remain in full force and effect. 870001109

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Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation of Additional Property. Declarant reserves the right to annex the area described in Exhibit "D" attached hereto and to include such areas as part of the Property subject to this Declaration, provided that any areas so annexed shall be developed for single family detached homes and provided further that not more than an aggregate of 835 dwelling units shall be developed on all such land so annexed. No vote of the members shall be required for any such annexation. After December 31, 1992, additional residential property and Common Area may be annexed to the Properties only with the consent of two-thirds (2/3) of each Class of members.

Section 5. Reserved Rights of Declarant. The Declarant reserves the right to use any lots and Units owned by it as a sales office for the sale of Units and to do and perform therein any work reasonably related to the sale or leasing of Units in the Properties. Declarant may also use any lot to provide access to any adjoining property.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration (FHA) or the Veterans Administration (VA): dedication of Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions.

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~~81-25698~~ ~~850098791~~  
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~~5600-1719~~      ~~8700-1318~~

Section 7. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, the undersigned have set their hands this 13th day of December 1983.

By David C. McKinney  
DAVID C. MCKINNEY

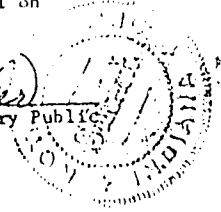
STATE OF INDIANA    )  
                                  )    SS:  
COUNTY OF MARION    )

Before me a Notary Public in the State of Indiana and a resident of Marion County, personally appeared Liberty Creek Association, Inc. by David C. McKinney, its President, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal on this 13th day of December, 1983.

My Commission Expires: May 4, 1985  
1985  
My County of Residence: Marion

Judith A. Alexander  
Notary Public  
Judith A. Alexander



~~83-91377~~

THIS INSTRUMENT PREPARED BY  
DAVID C. MCKINNEY

~~81-90028~~      ~~8500-05791~~  
87000-1109  
~~87000-1109~~

~~810061318~~  
~~810061318~~  
EXHIBIT "A"

Part of the South Half of Section 1, Township 16 North, Range 7 East, Marion County, Indiana, and being more particularly described as follows: Beginning at the point of intersection of the North line of said half section with the centerline of Moller Road, as it now exists, said point being 659.26 feet North 07 degrees 51 minutes 21 seconds West of the Northwest corner of said half section; thence continuing North 59 degrees 11 minutes 21 seconds West, on and along said north line, 4477.16 feet measured (North 72 degrees 41 minutes West, 4474.50 feet dead) to the Northwest corner of the Northwesterly extension of that portion of the centerline of Lafayette Road (formerly U.S. 57), as it now exists, that intersects the South line of the Southwest Quarter of said Section 1; thence South 17 degrees 17 minutes 20 seconds East, on and along said centerline extension and said centerline, 3326.53 feet measured (South 36 degrees 19 minutes East, 3327.75 feet dead) to said south line; thence North 59 degrees 11 minutes 21 seconds East, on and along said south line of said southwest quarter section, 508.11 feet to the Southeast corner thereof, which is the Southwest corner of the West Half of the Southeast Quarter of said Section 1; thence North 90 degrees 00 minutes 00 seconds East, on and along the South line of said half-quarter section, 1331.51 feet to the Southeast corner thereof; thence North 0 degrees 03 minutes 50 seconds West, on and along the East line of said half-quarter section, 1214.15 feet measured (North 0 degrees 17 minutes West, 1218.55 feet dead); thence South 59 degrees 51 minutes 21 seconds East, parallel with the North line of the South Half of said Section 1, 674.70 feet measured (South 72 degrees 31 minutes East, 676.50 feet dead) to the centerline of Moller Road; thence North 0 degrees 15 minutes 21 seconds West, on and along said centerline, 752.40 feet measured (North 0 degrees 01 minute West, 752.0 feet dead) to the point of beginning and containing 12.94 acres, more or less. Subject to right of way for Lafayette Road, South Street and Moller Road off the entire Westerly, South and East sides, respectively, and all other applicable easements and rights of way of record.

Note: See the Surveyor's Notes for further clarification of this description.

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I, the undersigned, a Registered Land Surveyor in the State of Indiana, hereby certify that the within plat is true and correct and represents accurate data of the above described real estate.

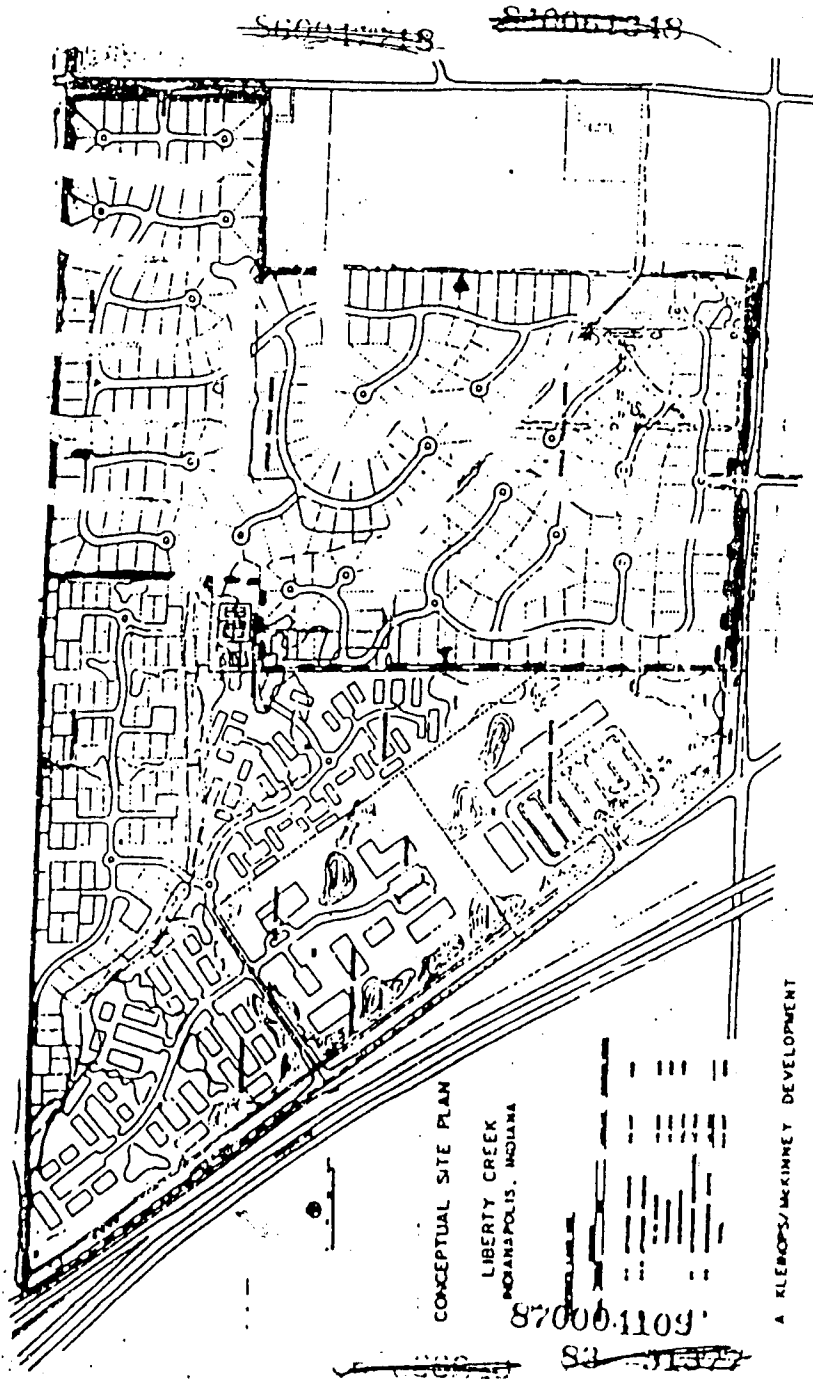
Witness my hand and seal, this 14th day of March, 1942

*Hubert W. Allen*

87000-1109

Hubert W. Allen, Registered Land Surveyor, Indiana #52731

ORIGINAL ILLEGIBLE



CONCEPTUAL SITE PLAN

LIBERTY CREEK  
INDIANAPOLIS, INDIANA

87000-1109

A KLEBOS/MCKINNEY DEVELOPMENT

5600-17718

EXHIBIT 'B'

COMMON AREA

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854000000

854000000

EXHIBIT C

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Part of the South Half of Section 1, Township 16 North, Range 2 East, Marion County, Indiana, and being more particularly described as follows:

Beginning at the point of intersection of the North line of said half section with the centerline of Moller Road, as it now exists, said point being 559.26 - feet North 89 degrees 51 minutes 21 seconds West of the Northeast corner of said half section; thence continuing North 89 degrees 51 minutes 21 seconds West, on and along said north line, 4477.18 feet measured (North 89 degrees 43 minutes West, 4474.50 feet deed) to a point on the Northwesterly extension of that portion of the centerline of Lafayette Road (formerly U.S. 52), as it now exists, that intersects the South line of the Southwest Quarter of said Section 1; thence South 36 degrees 17 minutes 20 seconds East, on and along said centerline extension and said centerline, 3326.83 feet measured (South 36 degrees 19 minutes East, 3329.75 feet deed) to said south line; thence North 89 degrees 57 minutes 04 seconds East, on and along said south line of said southwest quarter section, 508.14 feet to the Southeast corner thereof, also being the Southwest corner of the West Half of the Southeast Quarter of said Section 1; thence North 90 degrees 00 minutes 00 seconds East, on and along the South line of said half-quarter section, 1131.51 feet to the Southeast corner thereof; thence North 0 degrees 03 minutes 50 seconds West, on and along the East line of said half-quarter section, 1919.18 feet measured (North 0 degrees 17 minutes West, 1918.55 feet deed); thence South 89 degrees 51 minutes 21 seconds East, parallel with the North line of the South Half of said Section 1, 674.70 feet measured (South 89 degrees 31 minutes East, 676.50 feet deed) to the centerline of Moller Road; thence North 0 degrees 18 minutes 31 seconds West, on and along said centerline, 752.40 feet measured (North 0 degrees 01 minute West, 748.0 feet deed) to the point of beginning

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CROSS REFERENCE

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

RECORDED  
LIBERTY CREEK CLUB, INC.  
JAN 12 81001157  
LIBERTY CREEK CLUB, INC.  
LIBERTY CREEK CLUB, INC.  
LIBERTY CREEK CLUB, INC.

LIBERTY CREEK CLUB, INC.

86-123937 (III)

RECORDED  
LIBERTY CREEK CLUB, INC.  
JAN 12 3 46 PM '87

RECEIVED

JAN 12 1987  
PIKE TOWNSHIP  
ASSESSOR

ORIGINAL ILLEGIBLE

CROSS REFERENCE

~~840061349~~

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

~~866000741~~

~~840089027~~

CROSS REFERENCE

THIS DECLARATION, made on the date hereinafter set forth: by LIBERTY

CREEK ASSOCIATES, INC., hereinafter referred to as "Declarant".

WITNESSES:

WHEREAS, Declarant is the owner of certain property in Indianapolis  
County of Marion, State of Indiana; which is more particularly described in  
Exhibit "A" attached hereto and made part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties  
described above shall be held, sold and conveyed subject to the following  
easements, restrictions, covenants, and conditions, which are for the purpose  
of protecting the value and desirability of, and which shall run with, the  
real property and be binding on all parties having any right, title or  
interest in the described properties or any part thereof, their heirs,  
successors and assigns, and shall inure to the benefit of each owner thereof.

~~81-24813 (SH)~~  
~~86-129937 (II)~~

~~8-2-3-3 (VII)~~  
ARTICLE I  
DEFINITIONS

~~8-2-3-3 (IV)~~  
~~86-46752 (IE)~~

Section 1. "Club" shall mean and refer to Liberty Creek  
Club, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner,  
whether one or more persons or entities, of a fee simple title to any lot  
which is a part of the Properties, including contract sellers, and including  
those having such interest in fee as security for the performance of  
obligation.

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Section 3. "Properties" shall mean and refer to that certain real  
estate hereinafter described, and such additions thereto as may hereafter

be brought within the jurisdiction of the Club.  
JUN 01 1986  
PIKE TOWNSHIP  
ASSESSOR

RECEIVED FOR RECORD  
BRIAN O'LAUGHLIN  
RECORDER-MARION CO.  
JUN 11 9 00 AM '86

MAY 02 1986  
PIKE TOWNSHIP  
ASSESSOR

DEC 18 5 14 PM '81

AUG 7 2 08 PM '81

AUG 7 2 08 PM '81

RECEIVED FOR RECORD  
JUN 12 12 59 PM '86

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CROSS REFERENCE  
MAY 28 10 09 23

AUG 10 9 43 8

DEC 18 1983 12 40  
RECEIVED

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EXHIBIT "A"

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East of the South Half of Section 1, Township 16 North, Range 2 East, Marion County, Indiana, and being more particularly described as follows: Beginning at the point of intersection of the North line of said half section with the centerline of Moller Road, as it now exists, said point being 459.76 feet North 89 degrees 51 minutes 21 seconds West of the Northwest corner of said half section; thence continuing North 59 degrees 21 minutes 21 seconds West, on and along said north line, 4477.16 feet measured (North 72 degrees 41 minutes West, 4474.50 feet dead) to the Northwest extension of that portion of the centerline of Lafayette Road (formerly U.S. 52), as it now exists, that intersects the front line of the Southwest Quarter of said Section 1; thence South 17 degrees 17 minutes 20 seconds East, on and along said centerline extension and said centerline, 3326.53 feet measured (South 36 degrees 19 minutes East, 3323.75 feet dead) to said south line; thence North 59 degrees 21 minutes 21 seconds East, on and along said south line of said southwest quarter section, 526.14 feet to the Southeast corner thereof, which is the Southwest corner of the West Half of the Southeast Quarter of said Section 1; thence North 90 degrees 00 minutes 00 seconds East, on and along the South line of said half-quarter section, 1331.51 feet to the Southeast corner thereof; thence North 0 degrees 01 minutes 50 seconds West, on and along the East line of said half-quarter section, 1718.55 feet measured (North 0 degrees 17 minutes West, 1718.55 feet dead); thence South 89 degrees 51 minutes 21 seconds East, parallel with the North line of the South Half of said Section 1, 674.70 feet measured (South 2 degrees 31 minutes East, 676.50 feet dead) to the centerline of Moller Road; thence North 0 degrees 12 minutes 31 seconds West, on and along said centerline, 752.40 feet measured (North 0 degrees 01 minute West, 752.40 feet dead) to the point of beginning and containing 12.44 acres, more or less. Subject to right of way for Lafayette Road, East Street and Moller Road off the entire westerly, South and East sides, respectively, and all other applicable easements and rights of way of record.

Notes: See the Surveyor's Notes for further clarification of this description.

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I, the undersigned, a Registered Land Surveyor in the State of Indiana, hereby certify that the within plat is true and correct and represents a true and correct copy of the above described real estate.

Testimony March 1, 1952

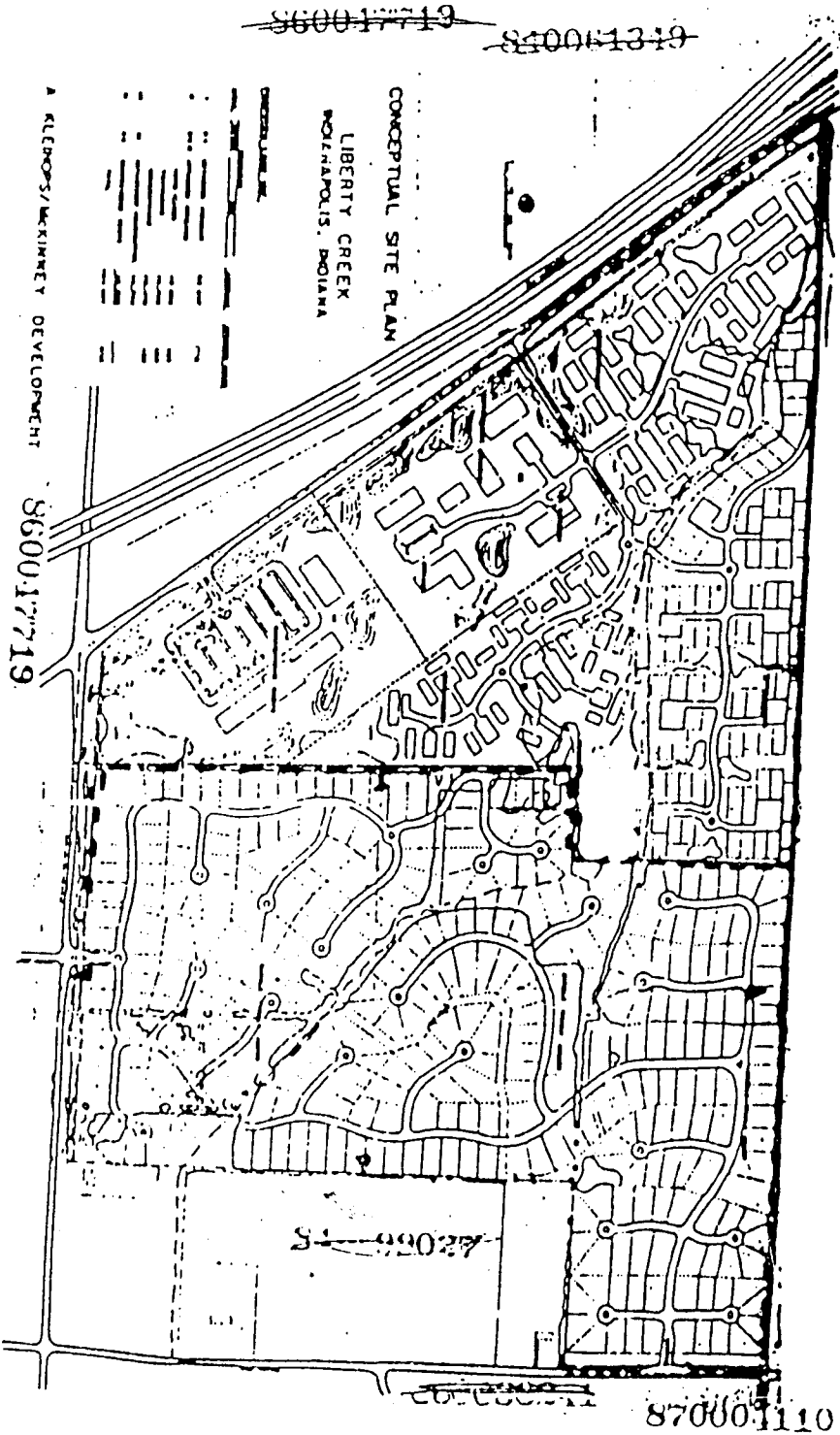
*Handwritten signature*

\_\_\_\_\_  
Registered Land Surveyor, Indiana #55231

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EXHIBIT 'B'



AREA OF RESPONSIBILITY

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Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Club for the common use and enjoyment of the owners. The Common Area to be owned by the Club is described on Exhibit "B" which is attached hereto and made hereof.

Section 5. "Lot" shall mean and refer to each plot of land shown upon any recorded map or plat of or within the Properties, with the exception of the Common Area, including any and all commercial and residential units, owned or rented.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Club.

Section 7. "Unit" shall mean a lot and the unit constructed upon the lot together with any other improvements on the lot.

Section 8. "Prior Declaration" shall mean and refer to that certain Declaration of Covenants and Restrictions of Liberty Creek Development Project dated July 19, 1983, 1983, and recorded on September 7, 1983, 1983, as Instrument 33- 64359 in the Office of the Recorder of Marion County, Indiana.

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#### ARTICLE II

##### PLAN OF DEVELOPMENT OF LIBERTY CREEK

Liberty Creek is planned to be developed incrementally, and will consist of both residential and commercial development. The maximum number of residential units is 835, 318 of which will be single-family homes. The commercial area is planned to consist of 130 retirement housing units, one (1) day care center, 65,000 square feet of office space and 90,000 square feet of shopping space. All tenants and residents of all the commercial and residential areas are to be members of the Club. The Declarant is not obligated to improve the common area controlled by the Club (which is not in the single family area) until 543 residential units are built within Liberty Creek.

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ARTICLE III

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PROPERTY RIGHTS

Section 1. Owners Easements and Rights of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Club to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members, has been recorded.

(b) The right of the individual Lot owners to the use of the parking spaces in the Common Area.

(c) The right of the Club to charge reasonable and non-discriminatory fees and to establish rules and regulations for the use of the Common Area.

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Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Club, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Club. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Club shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves may agree, but in no event shall such vote be split into fractional votes nor shall more than one vote be cast with respect to any Lot. Each vote cast for a Lot shall presumptively be valid, but if such vote is questioned by any member holding any interest in such Lot, if all such members are not in agreement the vote of such Lot which is questioned shall not be counted.

Class B. The Class B members shall be the Declarant and the Class B member shall be entitled to three (3) votes for each Lot owned. Each such owner may designate one or more persons to cast its votes. The Class B membership shall cease and be converted to Class A membership on the happening

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of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or,
- (b) on December 31, 1992.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned in the properties hereby covenants, and each owner (with the exception of the Declarant) of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Club

(1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. ~~81 99927~~

Section 2. Purpose of Assessments. The assessments levied by the Club shall be used exclusively to promote the recreation

of the residents in the Properties and for the Improve-

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ment and maintenance of the Common Area. No assessment shall be levied until the facilities in the common area are completed.

Section 3. Maximum Annual Assessment. Until January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$ 65.00 per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be adjusted in conformance with the Consumer Price Index ("CPI") published by the U.S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items, unadjusted for seasonal variation. The maximum assessment for any year shall be the amount determined by (a) taking the dollar amount specified above in the first sentence of this Section, (b) multiplying that amount by the published CPI number for the third month prior to the beginning of the subject year and (c) dividing that resultant by the published CPI number for the third month prior to the month in which this declaration was signed by the Declarant.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment amount specified above in the first sentence of this Section and used in the above CPI adjustment formula may be changed by a vote of the members, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Club may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including the exteriors of the buildings or roofs, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

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Section 7. Date of Commencement of Annual Assessments; Due Dates:

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Club shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Club setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Club as to the status of assessments on a Lot is binding upon the Club as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of The

Club Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Club may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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Section 9. Subordination of the Lien to Mortgages.

The assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of

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such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to and accepted by a local public authority, the Common Area, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Indiana shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Club. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Club shall provide that said management agreement may be cancelled by an affirmative vote of a majority of the votes of each class of the Members of the Club. In no event shall such management agreement be cancelled prior to the effecting by the Club or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Club by its Board of Directors to effect a management agreement. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of this type of project. The Club may require a fidelity bond from the management agent in such amount as it deems appropriate.

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ARTICLE VI

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ARCHITECTURAL CONTROL

The Board of Directors of this Club shall appoint an Architectural Committee composed of three (3) or more representatives. The Board, or this designated committee, must approve, prior to change, any alteration, addition, or deletion to any structure or amenity included within the common area governed by the Club.

ARTICLE VII

EASEMENTS

The Club shall have the right to grant easements upon, across, over and under all of the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to cablevision, water, sewers, gas, telephones and electricity. The Association may permit any electrical and/or telephone company to erect and maintain the lines and other necessary equipment on the Common Areas. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Areas in the performance of their duties. Further, an easement is hereby granted to the Club its officers, agents, employees, and to any management company selected by the Association to enter into or to cross over the Common Area to perform the duties of maintenance and repair of the Common Area provided for herein. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association's Board of Directors shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided

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for in this Article shall in no way affect any other recorded easement on said premises. An easement is granted to the Board of Public Works, all law enforcement agencies and the fire department to enter upon the Property in the performance of their duties.

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ARTICLE VIII

GENERAL PROVISIONS

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Section 1. Enforcement. The Club or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges on or hereafter imposed by the provisions of this Declaration. Failure by the Club by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration (FHA) or the Veterans Administration (VA): dedication of Common Area and amendment of this declaration of Covenants, Conditions and Restrictions.

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Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

~~810051349~~

IN WITNESS WHEREOF, the undersigned have set their hands this 7th day of August, 1984.

LIBERTY CREEK ASSOCIATES, INC.

By David C McKinney  
DAVID C. MCKINNEY  
PRESIDENT

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me a Notary Public in the State of Indiana and a resident of \_\_\_\_\_ County, personally appeared DAVID C MCKINNEY by LIBERTY CREEK ASSOCIATES INC, its PRESIDENT who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal on this 7 day of August, 1984.

My Commission Expires:

My County of Residence:

\_\_\_\_\_  
Notary Public

~~810051349~~

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DOCUMENT PREPARED BY  
DAVID C. MCKINNEY

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