

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS

LIBERTY CREEK ASSOCIATION, INC.

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CONDITIONS AND RESTRICTIONS

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.

ARTICE 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 hereinafter be brought within the jurisdiction of the Association.

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 in 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, and recorded on September 7, 1983, as Instrument 83-64359 in the Office of the Recorder of Marion County, Indiana.

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 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.

(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.

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.

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.

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 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 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.

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 improvement 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 identified in Exhibit B, has been conveyed free and clear of all encumbrances by 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. 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.

Section 6. Rate of Assessment. The annual and special assessment must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

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.

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 such assessments as to payments which become 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, 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 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.

ARTICLE VI

ARCHITECTURAL CONTROL

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 comprised 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.

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.

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 negligence or willful acts of 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).

ARTICLE VIII

EXTERIOR MAINTENANCE

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

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 or bred or maintained for any commercial purposes.

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 whatsoever 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 end 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.

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 of 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 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 each encroachment 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.

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 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 herein. Should any utility furnishing a service covered by the general easement herein provided a 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.

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. 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 Declaration. 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.

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 _____ day of _____ 2006.

By _____

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

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

IN WITNESS WHEREOF, I have set my hand and Notarial Seal this _____ day of _____, 2006.

Notary Public

My Commission Expires:

Printed

My County of Residence:
