

**\* NOTICE \***  
**SPECIAL MEETING!!!**

LIBERTY CREEK NORTH ASSOCIATION, INC.

WHEN: August 24, 1995. 7:00PM.  
WHERE: Community Clubhouse, 5929 Vicksburg Dr.

PURPOSE:

To review and approve "Amended and Restated" documents of Liberty Creek North Association.

You are hereby notified of a special meeting called for Liberty Creek North Association, Inc. for the purpose of reviewing and accepting the amended and restated documents of the Association, having been amended to include the mandatory changes as required by The Indiana Non Profit Corporation Act of 1991, as well as amendments to enhance and protect the rights of the members. Please review the enclosed documents prior to the meeting and bring any questions you may have with you to the meeting.

If you are unable to attend, a proxy is included for you to fill out and return. Please fill it out as soon as possible and send it to the Secretary, Mr. Rob Strich, 5925 Terrytown Pkwy, Indpls., IN., 46254.

Thank You,

LIBERTY CREEK NORTH BOARD OF DIRECTORS.

AMENDED & RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LIBERTY CREEK NORTH ASSOCIATION, INC.

THIS AMENDMENT to and RESTATEMENT of the Declaration of Covenants, Conditions and Restrictions for Liberty Creek North is made this \_\_\_ day of \_\_\_\_\_, 199\_\_.

W I T N E S S E T H:

WHEREAS, the Liberty Creek North subdivision located in Indianapolis, Marion County, Indiana was established by a certain "Declaration of Covenants, Conditions and Restrictions" which was recorded on August 6, 1987, as Instrument No. 87-90652 in the Office of the Recorder of Marion County, Indiana ("Original Declaration") and the Plats described below ; and

WHEREAS, a Plat filed with the Office of the Recorder of Marion County, Indiana on July 29, 1987, as Instrument No. 87-86919 established Liberty Creek North-Section One consisting of seventy-nine (79) Lots, numbered one (1) through seventy-nine (79) ; and

WHEREAS, a Plat filed with the Office of the Recorder of Marion County, Indiana on June 30, 1988, as Instrument No. 88-64126 established Liberty Creek North-Section Two consisting of one hundred nine (109) Lots, numbered eighty (80) through one hundred eighty-eight (188) ; and

WHEREAS, a Plat filed with the Office of the Recorder of Marion County, Indiana on February 20, 1990, as Instrument No. 90-20673 established Liberty Creek North-Section Four consisting of eighty-five (85) Lots, numbered one hundred ninety-one (191) through two hundred seventy-five (275) ; and

WHEREAS, the original developer of Liberty Creek North declared in the Original Declaration that all the property subject thereto would be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Original Declaration which were and are for the purpose of protecting the value and desirability of, and which run with, the above described Lots and are binding on all parties having any right, title or interest in said property, their heirs, successors and assigns and shall inure to the benefit of each owner ; and

WHEREAS, pursuant to a certain "Joint Use and Maintenance Agreement" executed on June 1, 1993, and recorded with the Marion County Recorder's Office on June 1, 1993, as Instrument No. 1994-0173386, the Owners of Lots in Liberty Creek North are

entitled to use the recreational facilities described in said agreement and are obligated to share in the expenses of maintaining, repairing and replacing such facilities. The Joint Use and Maintenance Agreement is incorporated herein by reference ; and

WHEREAS, Article XI, Section 3 of the Original Declaration states that the same may be amended during the first twenty (20) years period by an instrument signed by not less than ninety percent (90%) of the Lot Owners ; and

WHEREAS, after notice was duly given, a special meeting of the members of Liberty Creek North Association, Inc.(consisting of the Owners of Lots) was held on \_\_\_\_\_, 1995, for the purpose of reviewing and discussing the amendment and restatement of the Original Declaration pursuant to the provisions below ; and

WHEREAS, the undersigned Owners, constituting at least ninety percent (90%) of the two hundred seventy-three (273) total Lots in Liberty Creek, Sections One, Two, and Four, desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Liberty Creek North in no way nullifies or changes the Original Declaration or the effective date of the Original Declaration.

NOW, THEREFORE, the undersigned Owners hereby amend and restate the Original Declaration such that all of the platted Lots and lands located within Liberty Creek North as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in Liberty Creek North. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development.

## ARTICLE I

### DEFINITIONS

Section 1.1. "Association" shall mean and refer to Liberty Creek North Association, Inc., its successors and assigns.

Section 1.2. "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 1.3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as have been brought within the jurisdiction of the Association and this Declaration.

Section 1.4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.

Section 1.5. "Lot" shall mean and refer to each plot of land shown upon any recorded subdivision map or plat of or within the Properties, including any improvements thereon.

Section 1.6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.7. "Recreational Facilities" shall mean the amenities such as a swimming pool, tennis court, clubhouse, cabana, basketball court, picnic area, volleyball court, baseball field and playground which are more fully described in the "Joint Use and Maintenance Agreement" recorded in the Marion County Recorder's Office on June 1, 1993, as Instrument No. 1994-0173386. The Joint Use and Maintenance Agreement is incorporated herein by reference. Pursuant to the Joint Use and Maintenance Agreement, the Owners have the common use and enjoyment of such Recreational Facilities together with the owners and residents of the Liberty Creek subdivision and the Stratford Glen subdivision.

## ARTICLE II

### PROPERTY RIGHTS

Section 2.1. 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 approved by two-thirds (2/3) of the Owners.

(b) 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 and Recreational Facilities.

Section 2.2. 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 Recreational Facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Lot.

All Owners shall be members, 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.

### ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner 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, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with late charges, 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 4.2. 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 and Recreational Facilities.

**Section 4.3. Annual Budget.** Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing fiscal year, estimating the total amount of the common expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting together with the notice of said meeting. In preparing the annual budget, the annual assessment applicable to each Lot may be increased by the Board of Directors each year by not more than twenty percent (20%) above the annual assessment for the previous year without a vote of the Association's membership. The annual assessment may be increased above twenty percent (20%) by a vote of a majority of the Owners who are voting in person or by proxy at the annual meeting at which a quorum is represented. The annual budget shall be the basis for the annual assessments for the next year.

**Section 4.4. Special Assessments.** From time to time, common expenses of an unusual or extraordinary nature or otherwise not anticipated may arise. At such time and with the approval of at least two-thirds (2/3) of those Owners who are present, in person or by proxy, at a special meeting duly called for such purpose at which a quorum is represented, the Board of Directors shall have the full right, power and authority to make and levy special assessments which, upon resolution of the Board of Directors, shall become a lien on each Lot and the personal obligation of the Owner of each Lot, prorated in equal shares.

**Section 4.5. Rate of Assessment.** Except as otherwise stated in this Declaration, both annual and special assessments must be fixed at a uniform rate for all Lots, and may be collected on a monthly basis, or as deemed necessary by the Board of Directors.

**Section 4.6. Due Dates:** 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. Unless otherwise specified by the Board, the Due Date for annual assessments shall be March 1st of each year. 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 4.7. Failure of Owner to Pay Assessments.** No Owner may exempt himself or herself from paying annual or special assessments, or from contributing toward the common expenses or toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area or Recreational Facilities, or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all annual and special assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any

annual or special assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any annual or special assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount not to exceed twenty-five percent (25%) of the assessment ; and
- (2) authorize any person or agency to initiate collection, the expense of such collection to be considered an addition to the assessment ; and
- (3) suspend such Owner's right to use the Recreational Facilities and any other part of the Common Areas as provided for in the Indiana Nonprofit Corporation Act of 1991, as amended ; and
- (4) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and home thereon and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid annual or special assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid annual or special assessments without foreclosing or waiving the lien securing the same. In any action to recover a annual or special assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot.

Section 4.8. 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 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.

ARTICLE V  
ARCHITECTURAL REVIEW COMMITTEE

**Section 5.1. Creation.** There shall be, and hereby is, created and established an Architectural Review Committee for Liberty Creek North to perform the functions provided for herein. The Architectural Review Committee shall be a standing committee of the Association consisting of at least three (3) members appointed, from time to time, by the Board of Directors and who shall be subject to removal by the Board at any time with or without cause. The three (3) persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots. At least one (1) member of the Committee must concurrently serve on the Board of Directors.

**Section 5.2. Purposes and Powers of Architectural Review Committees.** The Architectural Review Committee shall review and approve the design, appearance and location of all residences, buildings, structures, fences or any other improvements placed by any person, including any builder, on any Lot within the community, in such a manner as to preserve and enhance the value and desirability of the Properties and to preserve the harmonious relationship among structures and the natural vegetation and topography.

(a) **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 single family dwelling or accessory building located on any Lot without the prior written approval of the Architectural Review Committee or the Board of Directors. 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 Lots 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.

(b) Every single-family dwelling, outbuilding, or other structure permitted to be constructed or remain on any Lot, or any additions or alterations thereof, shall be completed on the exterior within ninety (90) days from the start of construction (unless otherwise approved by



the Committee), including at least one coat of paint, stain, or varnish on any exterior wood surface. During the period of construction of any structure or other improvement on any Lot, the Lot shall be kept and maintained in a sightly and orderly manner and no trash or other rubbish shall be permitted to accumulate unreasonably on any such Lot.

**Section 5.3. Power of Disapproval.** The Architectural Review Committee or the Board of Directors may refuse to approve any application made to it as required under Section 6.2(a) above when:

(i) 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 Properties ; or

(ii) 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

(iii) The requested change, or any part thereof, in the opinion of such Architectural Review Committee or Board of Directors, would not preserve or enhance the value and desirability of the Properties or would otherwise be contrary to the interests, welfare or rights of the Association or any other Owner.

**Section 5.4. Rules and Regulations.** The Chairperson of the Architectural Review Committee shall be a member of the Board of Directors. The Architectural Review Committee and the Board of Directors, from time to time, may jointly promulgate, amend or modify additional rules and regulations as they 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).

**Section 5.5. Duties of Architectural Review Committee.** If the Architectural Review Committee or Board of Directors 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.

**Section 5.6. Liability of the Architectural Review Committees.** Neither the Committee, the Association's Board of Directors or Officers, nor any member thereof, nor any agent thereof 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. Further, the Committee and/or Board do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used as reflected on any plans, specifications or other material submitted to the Committee or Board.

Section 5.7. Inspection. The 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 VI EXTERIOR MAINTENANCE

Section 6.1. Owner Responsibility. Each Lot Owner shall be responsible for the exterior maintenance of all improvements on his Lot. However, if an Owner shall fail to maintain the exterior of his home, 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 a special assessment applicable solely to that Lot Owner, and shall be secured by the Association's lien on such Lot.

Section 6.2. Animals. 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 commercial purposes and do not create an annoyance or nuisance to other residents.

Section 6.3. Residential Home Size and Other Requirements. No residence constructed on a Lot shall have less than one thousand (1000) square feet of total floor area, exclusive of garages. The minimum main (first floor) living area of any building higher than one story shall be six hundred sixty (660) square feet. Each residence shall include an attached two-car (or larger) garage. The maximum height of any residential dwelling constructed on a Lot shall be thirty-five (35) feet. The maximum height of any residential accessory building shall be ten (10) feet.

Section 6.4. Residential Use. All Lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on any Lot, and no business may be conducted on any part thereof. No building shall be erected, placed or permitted to remain on any Lot other than one detached single-family residence not to exceed two (2) stories in height and permanently attached residential accessory buildings. Any garage, tool shed, storage building or any other attached building erected or used as an accessory building to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

Section 6.5. Outside Use of Lots. Except in an individual Patio Area appurtenant to a dwelling unit, no planting or gardening shall be done nor shall any fences, hedges, wall or other improvements be erected or maintained upon any Lot except such as approved by the Association's Board of Directors or its designated representatives. For purposes of this Declaration, a Lot's

Patio Area is defined as that area of a Lot which begins at the back corners of the residence and extends to the furthest rear corners of the Lot. In no instance shall unenclosed carports be allowed. 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 North subdivision and is necessary for the protection of said Owners.

Section 6.6. Accessory and Temporary Buildings. No trailers, shacks, outhouses or detached or unenclosed storage sheds, tool sheds or accessory buildings of any kind shall be erected or situated on any Lot in the subdivision, except as approved in writing by the Board of Directors or their designated representatives.

Section 6.7. Temporary Residence. No trailer, camper, motor home, truck, shack, tent, boat, recreational vehicle, basement, garage or outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

Section 6.8. Nuisances. No domestic animals raised for commercial purposes and no farm animals or fowl shall be kept or permitted on any Lot. When any pet is outside the residence, it shall be leashed and accompanied by the pet owner and the pet must never be out of the sight of said owner, unless contained within a fenced area in the Patio Area of the residence. No pet shall be housed or chained in the front of a residence. The housing of more than three (3) dogs and/or cats in any residence is prohibited. No noxious, unlawful or otherwise offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 6.9. Vehicle Parking. No camper, motor home, truck, trailer, commercial vehicle of any kind, boat, snowmobile or other recreational vehicle of any kind may be stored on any Lot in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair on a Lot unless such repairs are done in the garage. Disabled vehicles shall not be allowed to remain in open public view.

Section 6.10. Outside Appearance of Lots. 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. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse. All clothelines shall be confined to Patio Areas.

Section 6.11. Storage Tanks. No gas, oil or other storage tanks shall be installed on any Lot.

Section 6.12. Water Supply and Sewage Systems. No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field

or similar method of sewage disposal shall be located or constructed on any Lot.

Section 6.13. Ditches and Swales. All Owners, including builders, shall keep unobstructed and in good maintenance and repair all open storm water drainage ditches and swales which may be located on their respective Lots.

Section 6.14. Driveways. Each driveway in the subdivision shall be of concrete material, and remain as the natural color without alteration.

Section 6.15. Antenna and Satellite Dishes. Exterior antennas shall conform with City and County Regulations, shall be restricted to the Patio Area of the residence, "Satellite Dishes" shall be restricted to the Patio Area of the residence, shall be of the ground mounted type, and shall not be higher than eight (8') feet. All antenna and satellite dishes shall be first approved by the Architectural Review Committee or Board of Directors.

Section 6.16. Awnings. No metal, fiberglass, canvas or similar type material awnings or patio covers shall be permitted in the subdivision.

Section 6.17. Solar Panels. No solar heat panels shall be permitted on roofs of any structures in the subdivision. All such panels shall be enclosed within fenced areas of the Patio Area and shall be concealed from the view of neighboring Lots, common areas and the streets.

Section 6.18. Outside Lighting. Except as otherwise approved by the Architectural Review Committee, all outside lighting contained in or with respect to the subdivision shall be of an ornamental nature compatible with the architecture of the project and shall provide for projection of light so as not to create a glare, distraction or nuisance to other property owners in the vicinity of or adjacent to the project.

Section 6.19. Site Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

## ARTICLE VII EASEMENTS

Section 7.1. 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.

Section 7.2. 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 cable television, water, sewers, gas, telephones and electricity. The Association may permit any electrical and/or telephone company to erect and maintain the lines and any 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 Lot to perform the duties of maintenance and repair of any Lot 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, 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 VIII shall in no way affect any other recorded easement on said premises. An easement is granted to the Department of Capital Asset Management, all law enforcement agencies and the fire department to enter upon the Properties in the performance of their duties.

#### ARTICLE VIII GENERAL PROVISIONS

Section 8.1. 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. Violation or threatened violation of the covenants and restrictions contained in this Declaration or in any rules or regulations adopted by the Board shall be grounds for any action by the Association, or any person or entity having any right, title or interest in the Properties, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys reasonable fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that the Association shall not be liable for damages of any kind to any person for failing to enforce such covenants or restrictions. Failure of the Association or an Owner to enforce any covenant or restriction herein or rule or regulation shall not be deemed a waiver of the right to do so thereafter.

Section 8.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way effect any other provisions which shall remain in full force and effect.

Section 8.3. Amendment. These covenants and restrictions may be amended at any time by the then Owners of at least two-thirds (2/3) of the Owners at a special meeting called for such purpose. No amendment which adversely affects the rights of a public utility shall be effective with respect to such public utility without its written consent thereto. No amendment which is contrary to a zoning commitment shall be effective without the written approval of the affected adjacent homeowners associations designated by the Department of Metropolitan Development.

Section 8.4. Term. The foregoing covenants and restrictions, as the same may be amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate and on all persons or entities claiming under them, until December 31, 2005, and thereafter they shall continue automatically in effect for successive ten (10) year periods unless terminated by a vote of two-thirds (2/3) of the then Owners of the Lots in the subdivision; provided, however, that no termination of said these covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easements shall have consented thereto in writing.

Section 8.5. 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.

Section 8.6. 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 Owners have set their hands this \_\_\_\_ day of \_\_\_\_\_, 1995.

By: \_\_\_\_\_