

**TAX MAP NO.: Portion of 31-0-1**

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS  
FOR  
LIBERTY SQUARE**

THIS DECLARATION, made on the date hereinafter set forth by LIBERTY LAND COMPANY, L.L.C., a Virginia limited liability company, hereinafter referred to as "Declarant."

**W I T N E S S E T H**

WHEREAS, Declarant is the owner of that certain parcel of land containing 20.319 acres, more or less, located in the City of Harrisonburg and being the same property acquired by Declarant by deed dated January 11, 2005, and recorded in the Circuit Court Clerk's Office of Rockingham County, Virginia in Deed Book 2611, page 203.

WHEREAS, Rockingham Heritage Bank has a Deed of Trust, which is recorded in the aforesaid Clerk's Office in Deed Book 2611 page 211, on the property that is subject to this Declaration, Rockingham Heritage Bank and its Trustee, J. Jay Litten, join in the Declaration to evidence his consent; and

WHEREAS, Declarant will convey the said property containing 20.319 acres as more particularly described on the plat prepared by Barry E. Lotts, dated April 18, 2005, and entitled "Final Plat of Liberty Square, Section One" recorded immediately prior hereto, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that said 20.319 acres, more or less, of the aforesaid property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and liens shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. Declarant may choose to add additional property that shall be subject to this Declaration. Additionally, Declarant reserves the right to not add any additional property and to sell or transfer any remaining property owned by Declarant free from this Declaration. Declarant, until such time as the Common Area is conveyed by deed to the Association, reserves the right to convey or encumber any portion or portions of the Common Area to any person or entity for any reason without the consent of the Owners.

## ARTICLE I DEFINITIONS

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

Section 2. "Board of Directors" shall mean and refer to the governing body of the Association.

Section 3. "Common Area" shall mean and refer to all real property which is not a Lot and which is identified as "Common Area" on the plat prepared by Barry E. Lotts, Land Surveyor, entitled "Final Plat of Liberty Square, Section One", dated April 18, 2005, and recorded immediately hereto,

Section 4. "Declarant" shall mean and refer to Liberty Land Company, L.L.C., its successors and assigns. Unless otherwise set forth herein, the rights and

obligations of Declarant, as Declarant shall cease when the last Lot is sold.

Section 5. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, and the Bylaws of the Association, all as initially drawn by the Declarant and filed or recorded as the case may be, and all as may be duly amended from time to time.

Section 6. "Governing Documents" shall mean and refer to collectively and severally to the Founding Documents and the Book of Resolutions as such may be amended from time to time.

Section 7. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, with the exception of the Common Area.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association as follows:

- (1) **Class A.** Class A members shall be comprised of those persons or entities which own a fee simple interest (or an undivided fee simple interest) in, and are the record owners of title to, any lot in the Association's Development; provided, however, that Class A members shall not include (i) persons or entities holding such an interest solely as security for the performance of an obligation, or (ii) the Declarant, its successor or assignee.
- (2) **Class B.** The sole Class B member shall be the Declarant or its successor or assignee.

Section 9. "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 Property, including the Declarant and contract sellers, but excluding those having

such interest merely as security for the performance of an obligation.

Section 10. "Properties" shall mean and refer to that subdivision of land containing 20.319 acres, more or less, being more specifically described on plats prepared by Barry E. Lotts, Land Surveyor, dated April 18, 2005, and entitled "Final Plat of Liberty Square, Section One" that is recorded immediately prior hereto.

Section 11. "Single Family" shall mean and refer to a single housekeeping unit that includes not more than 2 adults who are not legally related, by blood, adoption or marriage.

Section 12. "Voting Power" shall mean and refer to the total vote authorized under Article V herein.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. The "Properties." The Properties are and shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

Section 2. Additions to the Properties. Additional properties may become subject to this Declaration in the following manner:

- a. *Additions by the Declarant.* The Declarant shall have the unilateral right to subject to the Declaration any additional property that it acquires, provided that not more than five (5) years have lapsed since the recordation of the last Supplementary Declaration among the land records of the City of Harrisonburg, Rockingham County, Virginia.

The Supplementary Declaration which subjects additional property to the Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration and extending the jurisdiction of the Association to cover the real estate so described in such Supplementary Declaration. The Supplementary Declaration may contain such complementary additions and modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches to which the annexed land or parts thereof may be subject, all of which may be significantly at variance with other portions of the Properties, but all of which shall be consistent in quality with the improvements constructed on the Properties.

The additions authorized under subsection "a" shall be made by complying with the requirements of the applicable City Zoning Ordinance; by securing the approval of the Federal Mortgage Agencies, if required; by recording on these land records one or more Supplementary Declarations of covenants and restrictions with respect to the additional property; and by filing with the Association the preliminary plat for such addition.

Nothing contained herein shall bind the Declarant to add to the Properties any or all of the lands it may acquire, nor to improve any portion of such lands unless and until a Supplementary Declaration is filed by the Declarant for such property which subjects it to this Declaration. The Declarant hereby reserves the right to develop additional land not yet submitted to this Declaration, as desired by the Declarant in response to changes in technological, economic, environmental, or social conditions related to the development or marketing of the land or to changes in requirements of government agencies and financial institutions.

### ARTICLE III THE ASSOCIATION

#### Section 1. Organization.

- a. *The Association.* The Association is a nonprofit, nonstock corporation organized and existing under the laws of Virginia and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents as such may be amended from time to time.

#### Section 2. Association Board of Directors.

- a. *Composition.* The number of Directors and method of selection of Directors shall be provided in the Bylaws; provided, however, that the Declarant, until such time as the last Lot is sold, shall be entitled to appoint all of the Directors.
- b. *Extent of Power.*
  - 1. The Board of Directors shall have all powers to conduct the affairs of the Association which are enabled by law or the Founding Documents and which are not specifically reserved to Owners or the Declarant by said Documents.
  - 2. The Board of Directors shall exercise its powers in accordance with the Governing Documents.
- c. *Powers and Duties.* By way of example and without limiting the generality thereof, the Board shall have the power and

obligation to perform the following duties:

1. *Real and Personal Property.* To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association; and
2. *Rule Making.* To establish rules and regulations for the use of the Properties and to review, modify and approve architectural guidelines adopted by the Architectural Review Board; and
3. *Assessments.* To fix, levy, and collect assessments as provided herein; and
4. *Easements.* To grant and convey easements over and across the Common Area; and
5. *Employment of Agents.* To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association; and
6. *Enforcement of Governing Documents.* To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be filed or enforced, suspending membership rights, or enforcing or effectuating any of the provisions of the Governing Documents; and

7. *Common Area Fees.* To maintain and regulate the use of the Common Areas, and to set reasonable fees for the use of the Common Areas by Owners and fees for the use of the Common Area by non-owners.

#### **ARTICLE IV MEMBERSHIP**

Every Owner, including the Declarant, shall be a Member of the Association. Where there is more than one Owner of a Lot, each Owner shall be a Member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot, except to person(s) occupying a Lot as herein provided. Ownership of a lot shall be the sole qualification for membership. The benefits of membership may be assigned to any person who occupies the Owner's Lot, by written notice of such assignment, with a copy to the Board of Directors.

#### **ARTICLE V VOTING RIGHTS**

Each Owner, excluding the Declarant, shall be a Class A Member and shall be entitled to one vote for each Lot as to which he qualifies as an Owner. However, in no event shall more than one vote be cast with respect to any Lot, except the Declarant as a Class B Member. The Class B member shall be entitled to three (3) votes for each Lot it owns.

Where there is more than one person or entity constituting the Owner of a lot, the vote for such Lot shall be exercised as they among themselves determine.



## ARTICLE VI COMMON AREA

**Section 1. Obligations of the Association.** The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management, maintenance, repair and control, for the benefit of the Members, of the following: the Common Areas and all improvements thereon, the Jogging Trail, the Private Drainage Easement (including but not limited to the stormwater detention ponds, pipes, drop inlets and all other drainage facilities) and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

**Section 2. Members' Easement of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to, and shall pass with, the title to every Lot, subject to the following provisions:

- (1) The right of the Association to charge reasonable fees for the use of any facility situated upon the Common Area.
- (2) The right of the Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said Properties.
- (3) The right of the Association to suspend the voting rights and right to use of the facilities by an Owner for any period during which any assessment against his Lot remains unpaid.
- (4) Until such time as the Common Area is conveyed by the Declarant to the Association, nothing in this Declaration shall be construed to deny Developer the right to convey or encumber all or a portion of any Common Area to any person or entity for any reason without the consent of the owners and Developer hereby reserves such right.

- (5) After the Common Area is conveyed by the Declarant to the Association, the Association shall have the right to dedicate or transfer all or any part of the Common Area or any easement therein to any public agency, authority or utility for each purpose and subject to such conditions as may be agreed to in the instrument of dedication or transfer. No such dedication or transfer shall be effective unless an instrument signed by two-thirds of the Board of Directors has been recorded, agreeing to such dedication or transfer.

**Section 3. Delegation of Use.** Any Member may delegate, in accordance with the Articles and By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants and contract purchasers who reside on the Properties.

**Section 4. Title to the Common Area.** The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association with good and marketable title and free and clear of liens no later than when the last Lot is sold.

## ARTICLE VII EASEMENTS

**Section 1. Encroachments and Support.** If any improvement constituting part of any Lot or part of the Common Area now or hereafter encroaches on any (other) Lot or on the Common Area by reason of:

- (1) the original construction thereof;
- (2) deviation within normal construction tolerances in the maintenance or repair of any improvement;

- (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. To the extent that any land or improvement constituting part of any Lot or part of the Common Area now or hereafter supports or contributes to the support of any land or improvement constituting part of any (other) Lot or on the Common Area, the former is hereby burdened with an easement for the support of the latter.

**Section 2. Easement Reserved to Liberty Land Company, L.L.C.**

Liberty Land Company, L.L.C., a Virginia limited liability company, hereby reserves for itself, an **exclusive** easement over, under, across and upon the Properties, together with the right to further convey any easements as Liberty Land Company, L.L.C., in its sole discretion, deems appropriate, for the purpose of:

- (1) Completing the construction of all improvements on the Properties;
- (2) Placing and maintaining signs on the Common Area;
- (3) Installing, maintaining, repairing and delivering telecommunications, telephone, data, Internet, multi-channel video, and television programming transmission and reception services, appertaining infrastructure, systems and utilities. Ownership and control of said infrastructure, systems, utilities fiber-optic facilities, outside plant, Network Interface Device (NID) electronics, etc. placed in and upon the Properties shall remain with Liberty Land Company, L.L.C. Liberty Land Company, L.L.C. shall have the right to enter into arrangements and long-term contracts with service providers, selected solely at the discretion of Liberty Land Company, L.L.C., for the retail distribution and delivery of said services to Owners. For a period of twelve (12) years following the recordation of this

Declaration, access to the Properties for the purposes of retail delivery of any one, several or all of the aforesaid services via landline distribution means shall be limited to those service providers designated by Liberty Land Company, L.L.C., except and unless as may be otherwise allowed by applicable governmental laws, rules or regulations, as the same may be amended from time to time; and

- (4) Any other lawful purpose.

This easement shall be perpetual and **exclusive** to Liberty Land Company, L.L.C.

**Section 3. Utilities.** The Properties as a whole are hereby made subject to an easement for the provision of utilities to any portion or portions of the Properties. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the recorded permission of the Declarant, where contemplated on any site plan approved by the Declarant, its successors and assigns. The right is hereby reserved to the Declarant, its successors and assigns, to grant to any utility companies easements over and through any portion or portions of the Properties, including (without limitation) any Lots of which the Declarant is not the Owner at the time such easements are granted. The right is further reserved to the Declarant to grant any easements required by any government or governmental agency over any portion or portions of the Properties, including (without limitation) any Lots of which the Declarant is not the Owner at the time such easements are granted. Further, the Properties are subject to a ten (10) feet wide Utility Easement inside all exterior property lines and centered on all interior lot lines except where lot lines pass through buildings as shown on the plat entitled "Final Plat of Liberty Square, Section One", prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto. No utilities shall be installed in this Utility Easement without the express written consent of Liberty Land Company, L.L.C.

**Section 4. Water Service Easement.** All individual water service lines and water meters that are installed for Harrisonburg, Virginia water service from the City water mains as designated on the original subdivision plat shall be governed by Section 7-2-21 of the Harrisonburg City Code.

**Section 5. Mutual Access Easement and Pedestrian Easement..** The Properties are subject to a ten (10) feet wide Mutual Access Easement centered on the rear property lines of each Lot as shown on the plat entitled "Final Plat of Liberty Square, Section One", prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto. Further, a Pedestrian Easement is hereby reserved unto Declarant, its successors and assigns, the Association, its successors and assigns and the Owners of the Units within the same building, a five feet (5') wide easement for pedestrian access from the Private Access Easement, along the sides of any Lot, thence along the Mutual Access Easement running along the rear property lines of each Lot; thence along the side of any Lot to the point where it adjoins the Private Access Easement.

**Section 6. Private Drainage Easement.** Declarant hereby reserves for itself, its successors and assigns, the Association, and all Owners a Private Drainage Easement as shown on the plat entitled "Final Plat of Liberty Square, Section One", prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto. Said easement shall be for the purpose of constructing, operating, maintaining, adding to or replacing, present or future storm drainage facilities, necessary structures and appurtenances necessary for the disbursement of storm water and for its transmission through and across the Properties.

**Section 7. Private Access and Utility Easement.** Declarant hereby reserves for itself, its successors and assigns, the Association, and all Owners a variable width Private Access and Utility Easement as shown on the plat entitled "Final Plat of Liberty Square, Section One", prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto. Said easement shall be for

the purpose of ingress and egress, parking, constructing, operating, maintaining, adding to or replacing, present or future roadways, utilities and all appurtenances thereto, over, under, through and across the Properties. Each Lot shall be assigned two parking spaces by the Declarant, its successors and assigns and / or the Association, its successors and assigns. Said Private Utility Easement is reserved exclusively to Liberty Land Company, L.L.C., a Virginia limited liability company, as is more particularly described in Article VII, Section 2 herein. Therefore, no utilities shall be installed in this Utility Easement without the express written consent of Liberty Land Company, L.L.C.

**Section 8. Parking/Garage Easement.** Declarant hereby grants and conveys to each Owner an easement over all lots and Common Areas for the sole purpose of ingress and egress and the parking of vehicles as set forth herein. Certain Lots shall contain two parking spaces designated as "Parking/Garage Easement" on the aforesaid Plat. The "Parking/Garage Easement" shall be used for the parking of two automobiles. In the event a garage structure is situated upon a "Parking/Garage Easement," the garage must provide two parking spaces as aforesaid. The garage shall not be used for storage or other purposes such that two automobiles may not be parked therein. In the event a garage has not been constructed, then the "Parking/Garage Easement" must be used for two parking spaces. Owners, the Association, and/ or the Declarant may enforce the parking rules as set forth herein. Any Owner, the Association and / or the Declarant may have any car, which is parked in violation of these parking rules, towed at the expense of the car owner. Further, the Declarant and / or the Association may promulgate additional enforcement mechanisms, such as fines, additional assessments, etc. in furtherance of the enforcement of these parking rules.

**Section 9. Easement for Construction and/ or Maintenance of Exterior of Garage.** Declarant hereby reserves for itself, its successors and assigns, the Association and all Owners a ten feet (10') wide easement centered on all boundary lines where an existing or proposed garage adjoins a Lot without a garage. The purpose of this easement is to allow the adjoining Owner, Declarant,

and/or the Association the right to enter upon the Lot, without a garage, to construct and/or maintain an adjoining garage. This easement shall run with and be appurtenant to the following Lots: 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, and 132 and any other Lots as indicated on the plat entitled "Final Plat of Liberty Square, Section One", prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto.

**Section 10. School Bus Easement.** Declarant hereby grants and conveys to the Transportation Department, its successors and assigns, and the Harrisonburg City School system, its successors and assigns, an easement over all private streets in Liberty Square for the sole purpose of transporting school children to and from their homes and school. Neither the Transportation Department nor the Harrisonburg City School system shall be responsible for any private street repair, maintenance, or replacement within Liberty Square.

**Section 11. Temporary Construction Easement.** Declarant hereby grants and conveys, to the City or private developer who constructs the extension of Oriole Lane, a ten (10) feet wide easement located along the eastern boundary line of the Properties shown on the plat entitled "Final Plat of Liberty Square, Section One", prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto. Said easement shall terminate upon the completion of the Oriole Lane road extension.

**Section 12. Jogging Trail Easement.** There is hereby reserved unto the Declarant, its successors and assigns, the Association, its successors and assigns, and the Owners a Jogging Trail Easement over all Common Areas as built and over all Lots as shown on the plat entitled "Final Plat of Liberty Square, Section One," prepared by Barry E. Lotts, dated April 18, 2005, and recorded immediately prior hereto. This Easement shall be for pedestrian use only, provided however, that the Declarant, its successors and assigns, or the Association, its successors and assigns may drive vehicles or equipment onto this Easement for the purpose of installation, repair, replacement and maintenance thereof.

**ARTICLE VIII  
COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligations of Assessments.** The Declarant, for each improved lot owned within the Properties, hereby covenants, and each Owner, of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, 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 fixed, established, and collected from time to time as hereinafter provided. Such annual and special assessments, together with any interest thereon and costs of collection thereof, including reasonable attorney's fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Properties against which each such assessment is made in the manner as hereinafter provided and subject to prior liens upon the Properties as hereinafter provided. Each such assessment, together with such interest costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Properties at the time when the assessment fell due.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Properties and in particular for the administrative costs of the Association and the improvement, maintenance, and repair of the Common Area and the maintenance of Lots, to include grass cutting and pruning of shrubs and trees. The Association shall not be obligated to, but may at its discretion, maintain on any Lot any plants, shrubs, trees, gardens or other landscaping features or elements which may be added by any Owner. Fenced-in or screened-in areas on Lots shall be the responsibility of the Owner to maintain. The Association shall not be responsible for mowing areas of an Owner's lot that are inaccessible to a riding mower. The Owner shall be



responsible for the mowing and maintenance of any areas on his/her Lot that are deemed by the Board of Directors of the Association to be inaccessible to a riding lawn mower. The Owner shall perform said maintenance of inaccessible portion(s) of a Lot at least four times annually. If any Owner wishes to be excluded from having the Association provide the aforesaid yard maintenance such Owner shall make written request to the Association and must agree to maintain the Lot in a manner satisfactory to the Board of Directors in order for such request to be approved. The Board of Directors shall, in its sole discretion, have the right to approve, deny or rescind approval of any such request. In no event shall approval of any such request result in any reduction in the Assessment due for such Lot.

The Association, its successors, and assigns, shall use such assessments and levies for the general purposes stated above, and in addition thereto shall be required to maintain and operate the following:

- (1) The Association, its successors and assigns, shall provide maintenance and repairs on the Common Area, including but not limited to improvements such as the walkways, the storm water system, detention pond, spillway, putting green, jogging trail, playground area and equipment and the covered picnic shelter area. If need for such repair is caused by the willful or negligent act or omission of an Owner, his family, guests, or tenants, the costs of such repairs shall be added to and become a part of the assessment to which such Owner's Lot is subject.
- (2) The Association shall maintain all open and Common Areas, as well as all lights, travel ways and parking areas. The Association may, at its sole discretion, contract for services for the collection of garbage, snow removal, and grass cutting for the Common Area, grass cutting for the front, side and rear yards of all Lots and the pruning of shrubbery and trees on Lots and Common Area.

- (3) The Association shall operate, maintain, add to and replace, present or future storm drainage facilities, necessary structures and appurtenances necessary for the disbursement of storm water and for its transmission through and across the Properties. Further, the Association shall maintain the Existing 20' wide Drainage Easement as shown on the plat entitled "Final Plat of Liberty Square, Section One," prepared by Barry E. Lotts, Land Surveyor, which is recorded immediately prior hereto.
- (4) The Association shall operate such recreational facilities, as it deems proper for the use of the Members.
- (5) The Association shall further be in charge of the general policing and control of the entire subdivision.

**Section 3. Annual Assessments.** At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall estimate the net charges to be paid during the following year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's operation). Said "Common Expense Fund" shall be assessed to the Owner as provided herein. Declarant will be liable for the amount of any assessments against completed Units, owned by the Declarant, which have been awarded a Certificate of Occupancy by the City of Harrisonburg.; However, there shall be no assessment on unimproved Lots owned by Declarant. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessments, the Board of Directors may at any time levy a further assessment, which shall be assessed to the Owners in like proportion unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Board of Directors annually or in such other reasonable manner as the Board of Directors shall designate.

- (1) The Common Expense Fund may also include such amounts as the

Board of Directors may deem proper for general working capital, for a general operating reserve, for a reserve fund for replacements and major maintenance and to make up for any deficit in the common expenses for any prior year.

- (2) The omission by the Board of Directors before the expiration of any year to fix the assessments hereunder, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions hereof or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.
- (3) The Board of Directors or its designee shall keep detailed, accurate records in chronological order, for the receipts and expenditures affecting the Common Area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by an Owner upon written request at reasonably convenient hours.

**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, or reconstruction, or unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment must be approved by two-thirds of the voting power. Voting for special assessments shall be in person or by proxy at a meeting duly called for this purpose, pursuant to the normal notice required for meeting as provided under the By-laws of the Association or under Virginia state law.

**Section 5. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all improved Lots, and may be collected on an annual, semi-annual, quarterly, or monthly basis as determined by the Board of Directors. There shall be no assessment for unimproved Lots owned by the Declarant.

**Section 6. Effect of Nonpayment of Assessments.** Any assessments, which are not paid when due, shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency, up to the maximum interest rate provided by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot(s) involved, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. An action at law to recover a money judgment for delinquent assessments shall be maintainable without foreclosing or waiving the lien securing same. 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 7. Lien for Payment of Assessments and Subordination of Lien to First Mortgage.** There shall be a continuing lien upon each of the individual lots herein, in order to secure the payment of any of the assessments provided under this Declaration. Such lien shall include interest costs and reasonable attorney's fees incident to collection of the assessment. Such lien shall be subject and subordinate to any first mortgage or deed of trust. However, at such time as the Association places on record a notice of delinquency as to any particular Lot on a form prescribed by the Board of Directors, then, from the time of recordation of said notice the lien for such delinquent assessments in the amount stated in such notice shall become a lien prior to any mortgages or deeds of trust placed of record subsequent to the date of said notice, in the same manner as the lien of a docketed judgment in the Commonwealth of Virginia.

A certificate executed and acknowledged by a majority of the Board of

Directors stating the indebtedness secured by the lien upon any Lot created hereunder, shall be conclusive upon the Board of Directors, as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or any encumbrances or prospective encumbrances of a Lot upon request at a reasonable fee. Unless the request for a certificate of indebtedness shall have been complied with within fifteen (15) days, all unpaid assessments that became due prior to the date of making such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a Lot may pay any unpaid assessments payable with respect to such Lot and upon such payment such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been recorded, or other satisfaction thereof, the Board of Directors shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof.

The lien of the assessments provided for herein, whether or not notice has been placed of record as above provided, may be foreclosed by a Bill in Equity in the same manner as provided for the foreclosure of mortgages, vendor's liens, and liens of similar nature.

## ARTICLE IX PARTY WALLS

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding the party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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ATTORNEYS AT LAW  
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22803

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the rights of any such Owner regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his/her 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 of 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 any provisions of this Declaration, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator.

## ARTICLE X ARCHITECTURAL CONTROL

The Architectural Review Board.

**Section 1. Composition.** Until the Declarant rights cease, the Architectural

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92 NORTH LIBERTY STREET  
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HARRISONBURG, VIRGINIA  
22803



Review Board shall be composed of the Declarant and its designees.

When the Declarant's rights as Declarant cease, the Architectural Review Board shall consist of three or more persons who shall be appointed by the Board of the Association.

**Section 2. Powers and Duties.** The Architectural Review Board shall regulate the external design, appearance, and location of improvements located on the Properties in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. In furtherance thereof, the Architectural Review Board shall:

(1) Review and approve, modify, or disapprove written applications of Owners and of the Association for improvements or additions to Lots, Units, or Common Areas. Notice of any disapproval of applications shall be by Registered Notice. Approvals shall be sent by regular mail.

(2) Monitor Lots for compliance with architectural standards and approved plans for alteration in accordance with the Bylaws and all Resolutions of the Board of the Association.

(3) Adopt Architectural Guidelines subject to the confirmation of the Board of the Association. The Declarant may adopt Architectural Guidelines during the period of Declarant control. These Guidelines may be more restrictive than these Covenants, or any amended Covenants. However, the aforesaid Guidelines shall not be less restrictive than these Covenants nor shall the Guidelines allow any act or omission that is prohibited by these Covenants. Architectural Guidelines may be amended only by a vote of seventy-five percent (75%) of the members of the Architectural Review Board and a vote of seventy-five percent (75%) of the Board of the Association; and

(4) Adopt procedures for the exercise of its duties.

**Section 3. Failure to Act.** In the event the Architectural Review Board fails to approve, modify, or disapprove, in writing, a correctly filed application within forty-five (45) days, the Owner may give further written notice to the Board of Directors and the Architectural Review Board that its application has been ignored. In the event the Architectural Review Board fails to approve, modify, or disapprove, in writing, this application within thirty-five (35) days after its receipt of further written notice from the Owner as aforesaid, then approval will be deemed granted. Notification of total or partial disapproval shall include the reasons for such disapproval. Failure of the Architectural Review Board or the Board of the Association to enforce the architectural standards or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of the Association of the enforcement of this Declaration at any later date.

## ARTICLE XI EXTERIOR MAINTENANCE

The Owners shall be responsible for the maintenance of their homes and Lots, except to the extent maintenance services are provided by the Association. However, in the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, after approval by two-thirds (2/3) decision of the Board of Directors, the Association shall have the right, through its agents and employees to enter upon said parcel and repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the annual assessment to which such Lot is subject, and the expense of such exterior maintenance shall become a lien upon the subject Properties. It is a condition of these covenants that the Association, its successors and assigns, is and shall be, deemed a general contractor for the purpose of qualifying to file a mechanic's lien.

Further, every Owner so in default, by the acceptance of his deed, and those claiming lien, and every lot Owner so in default, by the acceptance of his deed, and those claiming under him, hereby agrees to pay such expense, and grants permission to the Association, its successors and assign to enter upon such Lot and make such exterior maintenance without being guilty of trespass, and said Association, its agents and employees, shall not be liable in damages to any lot owner except for willful and tortious acts committed beyond the scope hereof. Any assessments under this paragraph and the preceding paragraph hereof, shall constitute liens and shall be subject to the provisions of Section 55-516 of the Code of Virginia, as amended.

## ARTICLE XII USE RESTRICTION

**Section 1. Limitation on Use of Lots and Common Area.** The Lots and Common Area shall be occupied and used as follows:

- (1) All Lots shall be used for Single Family residential purposes only. Not more than 2 adults, who are not legally related by blood, adoption or marriage, may occupy a Unit. The Declarant, the Association, or the City of Harrisonburg may enforce this limitation.
- (2) No Owner shall occupy or use his Lot, or permit the same or any part thereof to be occupied or used, for any purpose other than as a residence for the Owner and the Owner's family or the Owner's lessees or guests.
- (3) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Association.
- (4) Nothing shall be done or kept in any Lot or in the Common Area that

will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of the law. No waste will be committed in the Common Area.

- (5) No sign of any kind shall be displayed to the public view on or from any Lot or the Common Area, without the prior written consent of the Association. Provided, however, that the Owner may, without first obtaining the written consent of the Association, place one sign on the Lot for the purpose of advertising that the Lot/Unit is available for sale or lease, subject to and in conformance with any applicable rules, regulations, or covenants, if any, promulgated by the Board of Directors and/or the Architectural Review Board.
- (6) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Lot or in the Common Area; except that dogs, cats, or other commonly accepted household pets may be kept on a Lot, for non-commercial purposes, subject to rules and regulations adopted by the Board of Directors. No animal shall be tied or caged outside of a Unit. All animals that are kept on any Lot, in accordance with this paragraph, shall be maintained in such a manner so as to insure that the animal does not make noise that is bothersome to other Owners, their guests, tenants, or invitees. Dogs outside must be restrained on a leash or kept behind an invisible electronic fence. Further, anyone who has an animal on any Lot or Common Area shall be responsible for the immediate removal of any waste deposited on such area by the animal.
- (7) No noxious or offensive activity shall be carried out on any Lot or in the Common Area, nor shall anything be done therein which may be

or become an annoyance or nuisance to the other Owners. No use shall be permitted or maintained on any Lot or Common Area which produces or contributes to noise, that because of excessive or unusual volume, duration, intermittence, time of day, beat, frequency, or pitch is objectionable to Owners of other Lots located on the Properties. The Association Board of Directors shall pass appropriate resolutions for the enforcement of this use restriction, which may include, but is not limited to an additional assessment to be levied against the Owner responsible for the violation. Such assessments, together with any interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Properties against which each such assessment is made, subject to prior liens upon the property. Each such assessment, together with such interest costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Properties at the time when the assessment fell due.

- (8) Nothing shall be altered or constructed in, or removed from, the Common Area, except upon the written consent of the Association.
- (9) There shall be no violation of rules for the use of the Common Area and Lots adopted by the Board of Directors and furnished in writing to the Owners, and the Board of Directors is authorized to adopt such rules.
- (10) Nothing in this Declaration shall be construed to deny the right hereby reserved to the Declarant for a period of five years following the recordation of this Declaration to maintain sales offices anywhere on the Common Area or on any Lot of which the Declarant is the Owner.
- (11) Declarant shall initially allocate to Owner two parking spaces for

each unit. The Association shall be responsible for allocating two parking lots to the Owner of each Unit after the period of Declarant Control ceases. No unit shall occupy more than two parking spaces except for "temporary guests." Temporary guests shall mean seven or less nights per month.

- (12) Certain Lots shall include two parking spaces designated as "Parking/Garage Easement" on the aforesaid Plat. The "Parking /Garage Easement" shall be used for the parking of two automobiles. In the event that a garage structure is situated upon a "Parking /Garage Easement", the garage must provide two parking spaces as aforesaid. The garage shall not be used exclusively for storage such that two automobiles may not be parked therein. In the event a garage has not been constructed, then the "Parking /Garage Easement" must be used for two parking spaces and no other structure shall be placed thereon.
- (13) No motorized vehicles of any kind shall be permitted upon any areas within said subdivision except for the streets and parking areas constructed by Declarant. No right of vehicular access shall exist across any Lot in said subdivision except for those areas upon which streets or parking areas have been constructed by Declarant.
- (14) There shall be no fencing or hedges in the front of any of the townhouse units, and all fencing to the rear of the townhouse units shall be attached to the individual unit. Except as otherwise approved by the Architectural Review Board, all fences shall be white picket fences constructed of durable materials as approved by the Architectural Review Board. Said fences shall not be higher than four feet. Support posts may be up to four feet and ten inches in height. Privacy screening shall not exceed six feet in height and ten feet in length, and must abut the building. Privacy screening support posts

may be up to six feet and ten inches in height. No fence shall be constructed until the Architectural Review Board has approved the same.

- (15) Each Owner shall keep all Lots owned by him and all improvements therein or thereon in good order and repair and free of debris, including, but not limited to, the seeding and watering of all lawns, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after notice to the Owner as provided in the Bylaws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the building erected thereon. All costs related to such correction, repair or restoration shall become a special assessment upon such Lot.
- (16) No strollers, baby carriages, bicycles, skateboards or other articles of personal property shall be deposited, allowed or permitted to remain outside of any townhome except within the area immediately adjacent to the rear of the town home. The Association shall specifically have authority to impound all such articles and to make a charge for the safekeeping and return thereof.
- (17) No building, structure, addition or exterior alteration (including basketball backboards, rims and nets) or improvements of any character shall be constructed upon any Lot or dwelling located thereon, except for exterior painting performed in the course of proper maintenance where no significant change in color or appearance is made, unless the plan of construction, including quality

of workmanship, design, colors and materials, shall have been approved in writing by the Association as being in harmony with the whole subdivision, especially the adjoining townhouse unit(s).

- (18) No boats, mobile homes, motor homes, campers, buses, trailers of any type, tractors, trucks or any other motor vehicle, other than automobiles, motorcycles, pickup trucks or vans shall be permitted on any Lot, except during the course of construction. No motor vehicle or material portion thereof that does not have a current license or current Virginia inspection sticker shall be permitted on any Lot.
- (19) Outdoor grilling shall be permitted only in the rear yards or on rear patios or rear decks.
- (20) No satellite dish or satellite receiving apparatus shall be installed or located on the exterior of any Unit or Lot.

**Section 2. Entry for Repairs.** The Association or Declarant or their agents may enter any Lot, Unit, or residence thereon when necessary in connection with any maintenance, landscaping or construction for which the Association or Declarant is responsible. Such entry shall be made at reasonable hours and with, as little inconvenience to the Owner as practicable.

### ARTICLE XIII INSURANCE

The Association shall maintain hazard insurance policies for 100% of the replacement cost of any improvements on the Common Areas and a comprehensive policy of public liability insurance covering the Common Areas as required by the Federal Mortgage Agencies. In the event the Association shall fail to maintain insurance for the Common Areas or shall allow insurance coverage to lapse, one or more of the First Mortgagees shall have the right upon reasonable notice to the



Association to obtain such insurance and to advance premiums on behalf of the Association. The Association shall reimburse such First Mortgagees for premiums advanced.

#### ARTICLE XIV 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 now or hereafter imposed by the provisions of this Declaration or the By-laws or rules and regulations of the Association. Failure by the Association or by an Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. **Severability.** Invalidity 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. **Duration.** The covenants, conditions, reservations and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Association, the Declarant, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, devisees, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods.

Section 4. **Amendment.** For a period of five (5) years after the recording of this Declaration, the Declarant may unilaterally make any amendment to this Declaration that is required by the Federal Mortgage Agencies or the City of Harrisonburg or Rockingham County, Virginia. Said Amendment by Declarant shall be executed and recorded following registered notice to all Owners. After such five (5) year period, or to make any amendment which is not one required by such agencies, any amendment shall be accompanied by a document signed by not less than two-thirds (2/3) of the Voting Power. Any amendment must be recorded

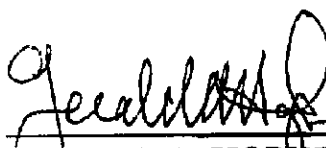
**Section 5. Interpretation.** All the terms and words used in the Declaration, regardless of the number and gender in which they were used, shall be deemed and construed to include any other number (singular or plural), and any other gender (masculine, feminine or neuter), as the context or sense of this Declaration or any paragraph or clause hereof may require, the same as if such words had been fully and properly written in the number and gender.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be signed this \_\_\_\_\_ day of July, 2005.

LIBERTY LAND COMPANY, L.L.C., a  
Virginia limited liability company

By:  (Seal)  
JARED S. SCRIPTURE, Manager

ROCKINGHAM HERITAGE BANK, Note  
holder

By:  (Seal)  
GERALD A. HOPKINS,  
Senior Vice President

 Trustee (Seal)  
JAY LITTEN, Trustee

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COMMONWEALTH OF VIRGINIA,  
CITY OF HARRISONBURG to-wit:

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 5 day of July, 2005, by JARED S. SCRIPTURE, Manager of Liberty Land Company, L.L.C., a Virginia limited liability company, on behalf of the company.

My commission expires: March 31, 2007

Debb Thayer  
NOTARY PUBLIC

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Rockingham, to-wit:

The foregoing instrument was acknowledged before me this 5 day of July, 2005, by Gerald A. Hopkins, Senior Vice President of Rockingham Heritage Bank.

Cheryl R. Montgomery  
NOTARY PUBLIC

My commission expires: May 31, 2006

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Harrisonburg, to-wit:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of  
July, 2005, by J. Jay Litten, Trustee.

Melissa R. Pope  
NOTARY PUBLIC

My commission expires: 5-31-08.

05 JUL 11 PM 2:39

ROCKINGHAM COUNTY  
CIRCUIT COURT  
L. WAYNE HARPER, CLERK

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County  
The foregoing instrument was this day presented in the office aforesaid, and is  
together with the certificate of acknowledgement annexed, admitted to record this  
11 day of July, 2005 at 2:39P M. I certify that  
taxes were paid when applicable:

Sec. 58-54 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_  
Sec. 58-54.1 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_ Transfer \_\_\_\_\_  
Recording 55<sup>00</sup> Copies 17<sup>00</sup> TESTE

L. WAYNE HARPER  
CLERK 72<sup>00</sup>

Deed Book No 2498 Page 787

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