

APPROVAL OF FIRST AMENDMENT TO COVENANTS  
CARROLL CREEK/SECTION I, PHASES 1, 2, 3 AND 4/Lots 1 - 195

The undersigned being the record owners of lots in Section I, Phases 1, 2, 3 and 4 of Carroll Creek, hereby execute this First Amendment to said Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to as Part of the Dedication and Plat of Carroll Creek, Section I, Phases 1, 2, 3 and 4.

Section 4, Covenant for Maintenance shall be deleted in its entirety and replaced with the language on the attached Exhibit A. Further, Section 6.11 of Section I, Phase 1 of the Covenants of Carroll Creek and Section I, Phases 2, 3, and 4, Section 6.10 of the Covenants of Carroll Creek shall be deleted in their entirety and replaced with the language contained on Exhibit A.

<u>Name</u>	<u>Address</u>	<u>Lot Number</u>
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STATE OF INDIANA, COUNTY OF ALLEN, SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the persons named above who acknowledge the voluntary execution of the above and foregoing amendment for the purposes and uses therein set forth this \_\_\_ day of \_\_\_\_\_, 2005.

WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public  
Resident of Allen County, Indiana

My Commission Expires:  
\_\_\_\_\_

## EXHIBIT A

### **FIRST AMENDMENT TO DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS OF THE PLAT OF CARROLL CREEK, SECTION I, PHASE 1, 2, 3 AND 4 A SUBDIVISION IN EEL RIVER TOWNSHIP, ALLEN COUNTY, INDIANA**

The undersigned, being the record owners of lots in Section I, Phases 1, 2, 3 and 4 of Carroll Creek, a subdivision in Allen County, Indiana, said owners constituting not less than seventy-five percent (75%) of lots in Carroll Creek, Section I, Phases 1, 2, 3 and 4 hereby amend the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to as Part of the Dedication and Plat of Carroll Creek, Section I, Phases 1, 2, 3, and 4 as originally recorded in Plat Cabinet D, page 4, Plat Cabinet D, page 43, Plat Cabinet E, page 59, and Plat Cabinet D, page 94, respectively, as document numbers 98-0012818, 98-0062679, 99-0077298, and 20-1012331, respectively, as follows:

Section 4. Covenant for Maintenance Assessments shall be deleted in its entirety and replaced with the following:

#### Section 4. COVENANTS FOR MAINTENANCE ASSESSMENTS.

- 4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer, by acceptance of a deed for a Lot, 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; (2) special assessments; (3) tax recoupment assessments; and (4) pool assessments. Such assessments to be established and collected as provided in these Covenants and the Bylaws. The annual, special, tax, and pool assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.
- 4.2 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in all the subdivisions of Carroll Creek including but not limited to, the improvement and maintenance of the

Common Area, maintenance of street lighting, maintenance of the sprinkler system situated in the Common Area, storm water detention basins, outlet pipes and water level control structures, and removal of snow and ice from the streets.

4.3 Maximum Annual Assessments. Commencing January 1, 2006, the Maximum annual assessment shall be One-Hundred Sixty-Five Dollars (\$165.00) per Lot. Subsequent assessments may be made as follows:

4.3.1 Commencing January 1, 2006, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than ten percent (10%) above the annual assessment for the previous year, without a vote of the membership.

4.3.2 Commencing January 1, 2006, the maximum annual assessment may be increased by a percentage in excess of ten percent (10%) only by the vote or written assent of fifty-one percent (51%) of the members of the Association in attendance at a meeting called for that purpose.

4.4 Special Assessments. In addition to the annual assessments authorized in section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, (1) the cost of any new construction, or repair or replacement of an existing capital improvement, in the Common Area, including fixtures and related personal property (2) any budget shortfall; or (3) emergency need of the Association, provided that any such assessment shall have the vote or written assent of seventy-five percent (75%) of the members of the Association in attendance at a meeting called for that purpose.

4.5 Tax Recoupment Assessments. In addition to all other assessments provided for in this Article, the Association may levy in any assessment year, an assessment ("Tax Recoupment Assessment") applicable to that year only for the purpose of defraying, in whole or in part, any cost or expense incurred by the Association in the form of a tax, and/or penalty and/or interest on a tax imposed upon, assumed by or assessed against the Association or its properties, and arising out of or in any way related to the acceptance of title to, the ownership of and/or operation or maintenance of any plant or equipment (including utility lines, lift stations and other property) for the transmission, delivery or furnishing of water, or for the collection, transmission and disposal of liquid and solid waste, the sewage, and/or the ownership of any real estate or easements or

other rights with respect to real estate owned and/or possessed in connection with such plant or equipment.

4.6 Pool Operating Fund Assessment. The Developer has constructed a bathhouse and swimming pool within Carroll Creek which facilities are owned and operated by the Association, and which are available exclusively for use by members of the Association. A Pool Operating Fund has been established and an assessment shall be charged with respect to the operation and maintenance of said facility ("Pool Assessment").

4.6.1 Commencing January 1, 2006, members of the Association (except Developer), shall be charged a Pool Assessment (in addition to the annual assessments, special assessments, and tax assessments provided in Section 4 herein), with respect to the operation and maintenance of said facilities. This Pool Assessment will be assessed against each lot owner. Such Pool Assessments shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of the Owner of such Lot, and may be collected in accordance with the provisions of this section.

4.6.2 The due date shall be established by the Board of Directors of the Association. All Pool Assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such Pool Assessments. All members shall be subject to all rules and regulations governing Membership and use as may be established by the Association from time to time.

4.6.3 The amount of annual Pool Assessment shall be established as follows;

4.6.3.1 Commencing January 1, 2006, the Board of Directors of the Association shall establish a budget for the fiscal year and shall determine therefrom the annual Pool Assessment for each lot required to meet said budget. Such budget and Pool Assessment for each fiscal year shall be established by the Board of Directors. The Board of Directors shall mail to all Association members a copy of a proposed budget and notice of the proposed Pool Assessment.

4.6.3.2 Said Pool Operating Fund shall be used exclusively for the purpose of operating and maintaining said bathhouse and swimming pool as well as all recreational facilities therein or used

in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Board of Directors of the Association.

- 4.7 Notice and Quorum for any Action Authorized Under Subsections 4.3 and 4.4. Any action authorized under Sections 4.3.2 and 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is favored by the majority of the votes cast at such meeting, but such vote is less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the association within 30 days of the date of such meeting.
- 4.8 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or yearly basis as the Board of Directors determines from time to time.
- 4.9 Date of Commencement of Assessment/Due Dates. The assessments provided for herein shall commence as to all Lots (excepting Lots owned by Developer) on January 1, 2006. The Board of Directors shall fix the amount of the assessment against each Lot for each Assessment Period. Written notice of the assessment shall be given to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.
- 4.10 Effect of Nonpayment of Assessments/Remedies of the Association.

4.10.1 Any assessment not paid within 30 days after its due date shall bear interest from the due date at the highest legal rate of interest allowed in Indiana.

4.10.2 The Association may bring an action at law against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in Indiana. The Association shall also be

entitled to recover the attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 4.

4.10.3 Subordination of Assessment Lien to First Mortgages Liens. The lien of the assessments made under the covenants shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer.

Section I, Phase 1, 6.11 shall be deleted and replaced with the following:

6.11 Free Standing Poles. No clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs or devices regardless of purpose, with the exception of a flag pole displaying the United States Flag and a permanent basketball pole, shall be constructed, erected, or located or used on a Lot, provided however, that the installation and location thereof must be approved by the Committee under Section 5.

Section I, Phase 2, Phase 3, and Phase 4, 6.10 Free Standing Poles should be deleted in its entirety and replaced with the following:

6.10 Free Standing Poles. No clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs or devices regardless of purpose, with the exception of a flag pole displaying the United States Flag and a permanent basketball pole, shall be constructed, erected, or located or used on a Lot, provided however, that the installation and location thereof must be approved by the Committee under Section 5.

All other terms and provisions of said Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals of the plat of Carroll Creek Section I, Phases 1, 2, 3 and 4, shall remain in full force and effect and shall not be altered or modified except as specifically set forth in this Amendment.

IN WITNESS WHEREOF, the undersigned Lot owners and Developer do hereby execute this Amendment to said Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to as part of the dedication and plat of Carroll Creek, Section I, Phases 1, 2, 3, and 4.

CARROLL CREEK DEVELOPMENT  
COMPANY, INC.

By: \_\_\_\_\_  
J. Andrew Norton, President

STATE OF INDIANA, COUNTY OF ALLEN, SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared J. Andrew Norton, known by me to be the duly authorized and acting President of Carroll Creek Development Company, Inc. and acknowledged the voluntary execution of the above and foregoing instrument on behalf of said company for the purposes and uses therein set forth, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

WITNESS my hand and notarial seal.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
, Notary Public  
Resident of Allen County, Indiana

**CARROLL CREEK, SECTION I  
PHASE 1**

Plat Cabinet D, Page 11

Part of the East half of the Southeast Quarter of Section 25, Township 32 North, Range 11 East of the Second Principal Meridian in Allen County, Indiana, more particularly described as follows:

Beginning at a Harrison monument found at the Southeast corner of said Southeast Quarter; thence South 90 Degrees 00 Minutes 00 Seconds West (assumed bearing and basis of bearings for this description), a distance of 1358.60 feet along the South line of said Southeast Quarter to the West line of the East half of said Southeast Quarter; thence North 00 Degrees 19 Minutes 29 Seconds East, a distance of 806.64 feet, along said West line; thence North 89 Degrees 27 Minutes 54 Seconds East, a distance of 165.32 feet; thence North 86 Degrees 17 Minutes 37 Seconds East, a distance of 50.86 feet; thence North 89 Degrees 47 Minutes 20 Seconds East, a distance of 187.27 feet; thence South 00 Degrees 27 Minutes 53 Seconds West, a distance of 256.82 feet; thence South 73 Degrees 54 Minutes 51 Seconds East, a distance of 157.79 feet; thence South 86 Degrees 13 Minutes 49 Seconds East, a distance of 102.98 feet; thence North 76 Degrees 46 Minutes 50 Seconds East, a distance of 258.58 feet; thence North 89 Degrees 47 Minutes 23 Seconds East, a distance of 131.41 feet; thence North 85 Degrees 53 Minutes 44 Seconds East, a distance of 135.67 feet; thence North 47 Degrees 35 Minutes 50 Seconds East, a distance of 74.55 feet; thence North 19 Degrees 13 Minutes 21 Seconds East, a distance of 57.66 feet; thence South 89 Degrees 49 Minutes 53 Seconds East, a distance of 107.91 feet to the East line of said Southeast Quarter, being also the centerline of Bethel Road; thence South 00 Degrees 10 Minutes 07 Seconds West, a distance of 678.58 feet along said East line and said centerline of Bethel Road to the Point of Beginning, containing 863,772.730 square feet or 19.829 acres, more or less.



**CARROLL CREEK, SECTION I  
PHASE 2**

Plat Cabinet D, Page 43

Part of the East half of the Southeast Quarter of Section 25, Township 32 North Range 11 East of the Second Principal Meridian in Allen County, Indiana, more particularly described as follows:

Commencing at a Harrison monument found at the Southeast corner of said Southeast Quarter, thence North 00 degrees 10 minutes 07 seconds East (Deed bearing of an 82.488 acre tract described in Doc. No. 970058213, as recorded in the Office of the Recorder of Allen County, Indiana, and basis of bearings for this description), a distance of 678.58 feet along the East line of said Southeast Quarter, being also the centerline of Bethel Road, to the true Point of Beginning of the herein described tract, thence North 89 degrees 49 minutes 53 seconds West, a distance of 107.91 feet; thence South 19 degrees 13 minutes 21 seconds West, a distance of 57.66 feet; thence South 47 degrees 35 minutes 50 seconds West, a distance of 74.55 feet; thence South 85 degrees 53 minutes 44 seconds West, a distance of 135.67 feet; thence South 89 degrees 47 minutes 23 seconds West a distance of 131.41 feet; thence South 76 degrees 46 minutes 50 seconds West, a distance of 258.58 feet; thence North 86 degrees 13 minutes 49 seconds West, a distance of 102.98 feet; thence North 73 degrees 54 minutes 51 seconds West, a distance of 157.79 feet; thence North 00 degrees 27 minutes 53 seconds East, a distance of 256.82 feet; thence South 89 degrees 47 minutes 20 seconds West, a distance of 187.27 feet; thence South 86 degrees 17 minutes 37 seconds West, a distance of 50.86 feet; thence South 89 degrees 27 minutes 54 seconds West, a distance of 165.32 feet to the West line of said 82.488 acre tract; thence North 00 degrees 19 minutes 29 seconds East, a distance of 1,131.17 feet along the West line of said 82.488 acre tract; thence South 89 degrees 28 minutes 03 seconds East, a distance of 32.89 feet; thence South 00 degrees 31 minutes 57 seconds West, a distance of 29.88 feet; thence North 89 degrees 27 minutes 54 seconds East, a distance of 185.05 feet; thence South 00 degrees 31 minutes 57 seconds West, a distance of 187.39 feet; thence along a curve concave to the East, through a central angle of 19 degrees 57 minutes 26 seconds, an arc distance of 95.79 feet (chord bearing South 09 degrees 26 minutes 46 seconds East, a distance of 95.30 feet); thence South 19 degrees 25 minutes 29 seconds East, a distance of 124.55 feet; thence along a curve concave to the West, through a central angle of 04 degrees 50 minutes 58 seconds, an arc distance of 61.36 feet (chord bearing South 16 degrees 59 minutes 59 seconds East, a distance of 61.34 feet); thence North 89 degrees 47 minutes 20 seconds East, a distance of 112.35 feet; thence South 00 degrees 12 minutes 54 seconds West, a distance of 320.03 feet; thence North 89 degrees 47 minutes 20 seconds East, a distance of 66.47 feet; thence North 79 degrees 19 minutes 27 seconds East, a distance of 385.37 feet; thence North 89 degrees 47 minutes 20 seconds East, a distance of 503.95 feet to the East line of said Southeast Quarter and centerline of Bethel Road; thence South 00 degrees 10 minutes 07 seconds West, a distance of 527.11 feet along said centerline to the Point of Beginning, containing 22.079 acres (961,771.441 square feet), more or less.

**CARROLL CREEK, SECTION I  
PHASE 3**

Plat Cabinet E, Page 59

Part of the East Half of the Southeast Quarter of Section 25, Township 32 North, Range 11 East of the Second Principal Meridian in Allen County, Indiana, more particularly described as follows:

Commencing at a Harrison monument found at the Southeast corner of said Southeast Quarter; thence North 00 degrees 10 minutes 07 seconds East (Deed bearing of an 82.488 acre tract described in Doc. No. 970058213, as recorded in the Office of the Recorder of Allen County, Indiana, and basis of bearings for this description), a distance of 1205.69 feet along the East line of said Southeast Quarter, also being the centerline of Bethel Road, to the true Point of Beginning of the herein described tract; thence South 89 degrees 47 minutes 20 seconds West, a distance of 503.95 feet; thence South 79 degrees 19 minutes 27 seconds West, a distance of 385.37 feet; thence South 89 degrees 47 minutes 20 seconds West, a distance of 66.47 feet; thence North 00 degrees 12 minutes 54 seconds East, a distance of 320.03 feet; thence South 89 degrees 47 minutes 20 seconds West, a distance of 112.35 feet to the point of curvature of a non-tangent curve, concave to the West; thence along said curve an arc distance of 61.36 feet, having a radius of 725.00 feet, a central angle of 04 degrees 50 minutes 58 seconds, a chord bearing of North 16 degrees 59 minutes 59 seconds West and a chord distance of 61.34 feet; thence North 19 degrees 25 minutes 29 seconds West, a distance of 124.55 feet to the point of curvature of a tangent curve, concave to the East; thence along said curve an arc distance of 95.79 feet, having a radius of 275.00 feet, a central angle of 19 degrees 57 minutes 26 seconds, a chord bearing of North 09 degrees 26 minutes 46 seconds West and a chord distance of 95.30 feet; thence North 00 degrees 31 minutes 57 seconds East, a distance of 196.63 feet; thence North 89 degrees 47 minutes 20 seconds East, a distance of 125.02 feet; thence North 00 degrees 31 minutes 57 seconds East, a distance of 381.89 feet; thence North 89 degrees 48 minutes 57 seconds East, a distance of 137.17 feet; thence South 00 degrees 16 minutes 59 seconds West, a distance of 95.00 feet; thence South 02 degrees 52 minutes 35 seconds West, a distance of 117.11 feet; thence South 14 degrees 59 minutes 34 seconds East, a distance of 59.32 feet; thence South 42 degrees 26 minutes 05 seconds East, a distance of 90.00 feet; thence South 69 degrees 52 minutes 37 seconds East, a distance of 76.82 feet; thence North 82 degrees 40 minutes 52 seconds East, a distance of 90.00 feet; thence North 54 degrees 46 minutes 13 seconds East, a distance of 79.62 feet thence North 26 degrees 51 minutes 34 seconds East, a distance of 75.00 feet; thence North 05 degrees 58 minutes 27 seconds East, a distance of 60.13 feet; thence North 14 degrees 22 minutes 35 seconds West, a distance of 107.36 feet; thence North 00 degrees 16 minutes 59 seconds East, a distance of 75.00 feet; thence North 89 degrees 48 minutes 57 seconds East, a distance of 188.24 feet; thence South 00 degrees 32 minutes 23 seconds West, a distance of 396.31 feet; thence South 89 degrees 27 minutes 37 seconds East, a distance of 175.00 feet; thence South 00 degrees 32 minutes 23 seconds West, a distance of 26.87 feet; thence South 89 degrees 27 minutes 37 seconds East a distance of 200.41 feet to the aforesaid East line and centerline of Bethel Road; thence South 00 degrees 10 minutes 07 seconds West, a distance of 670.55 feet along said East line to the Point of Beginning, containing 20.687 acres (901,121.852 square feet), more or less.

**CARROLL CREEK, SECTION I  
PHASE 4**

Plat Cabinet D, Page 94

Part of the East half of the Southeast Quarter of Section 25, Township 32 North, Range 11 East of the Second Principal Meridian in Allen County, Indiana, more particularly described as follows:

Beginning at a 5/8 inch steel rebar marking the Northeast corner of said Southeast Quarter; thence South 00 degrees 10 minutes 07 seconds West (Deed bearing of an 82.488 acre tract described in Doc. No. 970058213, as recorded in the Office of the Recorder of Allen County, Indiana, and basis of bearings for this description), a distance of 778.46 feet along the East line of said Southeast Quarter, also being the centerline of Bethel Road, to the Northeast corner of Carroll Creek, Section 1, Phase 3 recorded in Plat Cabinet "E", Page 59 in the Office of the Recorder of Allen County, Indiana; thence North 89 degrees 27 minutes 37 seconds West, a distance of 200.41 feet; thence North 00 degrees 32 minutes 23 seconds East, a distance of 26.87 feet; thence North 89 degrees 27 minutes 37 seconds West, a distance of 175.00 feet; thence North 00 degrees 32 minutes 23 seconds East, a distance of 396.31 feet; thence South 89 degrees 48 minutes 57 seconds West, a distance of 188.24 feet; thence South 00 degrees 16 minutes 59 seconds West, a distance of 75.00 feet; thence South 14 degrees 22 minutes 35 seconds East, a distance 107.36 feet; thence South 05 degrees 58 minutes 27 seconds West, a distance of 60.13 feet; thence South 26 degrees 51 minutes 34 seconds West, a distance of 75.00 feet; thence South 54 degrees 46 minutes 13 seconds West, a distance of 79.62 feet; thence South 82 degrees 40 minutes 52 seconds West, a distance of 90.00 feet; thence North 69 degrees 52 minutes 37 seconds West, a distance of 76.82 feet; thence North 42 degrees 26 minutes 05 seconds West, a distance of 90.00 feet; thence North 14 degrees 59 minutes 34 seconds West, a distance of 59.32 feet; thence North 02 degrees 52 minutes 35 seconds East, a distance of 117.11 feet; thence North 00 degrees 16 minutes 59 seconds East, a distance of 95.00 feet; thence South 89 degrees 48 minutes 57 seconds West, a distance of 137.17 feet; thence South 00 degrees 31 minutes 57 seconds West, a distance of 381.89 feet; thence South 89 degrees 47 minutes 20 seconds West, a distance of 125.02 feet; thence South 00 degrees 31 minutes 57 seconds West, a distance of 9.24 feet; thence South 89 degrees 27 minutes 54 seconds West, a distance of 185.05 feet; thence North 00 degrees 31 minutes 57 seconds East, a distance of 29.88 feet; thence North 89 degrees 28 minutes 03 seconds West, a distance of 32.89 feet to the West line of the East half of said Southeast Quarter; thence North 00 degrees 19 minutes 29 seconds East, a distance of 711.18 feet to the North line of said Southeast Quarter; thence North 89 degrees 45 minutes 23 seconds East, a distance of 1351.42 feet along said North line to the Point of Beginning, containing 19.893 acres [866,527.478 square feet], more or less.