#204062938

RECORDED
06/25/2004 09:42:41
RECORDER
PATRICIA J CRICK
ALLEN COUNTY,IN
Doc. No. 204062938
Receipt No. 28529
DCFD 3.00
PLAT 50.00
PLAT 9.00
Total 62.00

Plat Cab F Pg. 21

DEDICATION; PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED OF THE LAKES OF CARROLL CREEK, SECTION 6 A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

Carroll Creek Development Company, Inc., an Indiana corporation, by J. Andrew Norton, its President, declares that it is the Owner of the real estate shown and legally described in this plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference in this document. The platted Subdivision shall be known and designated The Lakes of Carroll Creek, Section 6, a Subdivision in Perry Township, Allen County, Indiana.

The lots are numbered from 225 through 265 inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are hereby expressly dedicated to public use for their usual and intended purpose.

PREFACE

The Lakes of Carroll Creek, Section 6, is part of a tract of real estate, which is currently planned to be subdivided into a maximum of 337 residential lots. In addition to the recordation of the Plat and this document, there will be recorded Articles of Incorporation of The Lakes of Carroll Creek Community Association, Inc., it being Developer's intention that said association be bound by its Articles of Incorporation and By-Laws.

Section 1. <u>DEFINITIONS.</u> The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 **"Articles".** The Articles of Incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

1.2 **"Association".** The Lakes of Carroll Creek Homeowner's Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

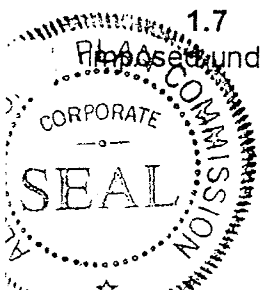
1.3 **"Board of Directors".** The duly elected board of directors of the Association.

1.4 **"By-Laws".** The By-Laws adopted by The Lakes of Carroll Creek Community Association, Inc., and all amendments to those By-Laws.

1.5 **"Committee".** The Architectural Control Committee established under Section II of the Covenants.

1.6 **"Common Area".** All real property owned by the Association for the common use and enjoyment of Owners.

1.7 **"Covenants".** This document and the restrictions, limitations, and covenants imposed under it.



AUDITOR'S OFFICE
Duly entered for taxation. Subject to final acceptance for transfer.
AUG 24 2004
Richard A. Glasser

04 5208
ALLEN COUNTY AUDITOR'S NUMBER

1.8 "Developer". Carroll Creek Development Company, Inc., its successor, an Indiana Corporation, and its assigns and successors in interest in the Real Estate.

1.9 "Lot", and in plural form, "Lots". Any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance; provided, however, that no tract of land consisting of part of Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 50 feet in width at the established front building line as shown on the Plat. If home is built on two lots and structure sits on both lots, these two lots shall be considered one lot for assessment purposes. A special assessment will be charged to a Unit sitting on two Lots based on the landscape maintenance bid.

1.10 "Unit". Home unit.

1.11 "Owner", and in the plural form, "Owners". The record owner(s) (whether one or more persons or entities) of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.12 "Plan Commission". The Allen County Plan Commission, or its successor agency.

1.13 "Plat". The recorded secondary plat of Carroll Creek.

1.14 "Subdivision". The platted Subdivision of The Lakes of Carroll Creek.

Section 2. PROPERTY RIGHTS.

2.1 "Owners" Easements of Enjoyment". Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and pass with the title to every Lot, subject to the following rights, which are granted to the Association:

2.1.1 To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against an Owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the By-Laws, or any published rule of the Association.

2.1.2 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 Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family and tenants or contract purchasers who reside on the Owner's Lot.

Section 3. <u>MEMBERSHIP AND VOTING RIGHTS</u>

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

3.2 The Association shall have the following two classes of voting membership.

3.2.1 **<u>Class A</u>**. Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such lot shall be exercised as its Owners among themselves determine, but in no event shall more than one vote be cast with respect to a Lot.

3.2.2 **<u>Class B</u>**. Class B membership consists of Developer and its successor. The Class B member shall be entitled to 110 votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.2.2.1 When fee simple title to all lots has been conveyed by Developer; or

3.2.2.2 on December 31, 2004

Section 4. <u>COVENANT FOR MAINTENANCE ASSESSMENTS</u>.

4.1 **<u>Creation of the Lien and Personal Obligation of Assessments</u>.** 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 or charges; and (2) special assessments for capital improvements. Such assessments to be established and collected as provided in these Covenants and the By-Laws. The annual and special 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. The lien is effective from and after recording a Claim of Lien in the Public Records, stating the description of the Lot, name of the Owner, amount due and the due dates. 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 **<u>Maximum Annual Assessments</u>.** Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be <u>$120.00</u> per Lot for all maintenance, replacements and repairs to be performed by the Association ("common area maintenance") together with an assessment for Grounds Keeping Services in an amount to be determined depending upon services selected by Owner. This Section is subject to change from time to time as determined by the Developer or the Association, after the same has been established.

4.2.1 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than 8% above the annual assessment for the previous year, without a vote of the membership.

4.2.2 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

4.3 Special Assessments for Capital Improvements. In addition to the annual assessments authorized in section 4.2, 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, 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, provided that any such assessment shall require the vote or written assent of 75% of each class of members of the Association; and provided, further, that no such special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain its Common Area, or pay its pro rata share of the cost of maintaining the common impoundment basins ("Lakes").

4.4 Notice and Quorum for any Action Authorized Under Subsections 4.2.2 and 4.3. Any action authorized under sections 4.2.2 and 4.3 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 less than the requisite percentage 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.

4.5 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Section 8.2 and may be collected on a monthly, quarterly or yearly basis. The annual assessment as set forth in Section 4.2 shall include an assessment for common area maintenance and for Grounds Keeping Services, the costs of which shall be assessed as set forth herein. The portion of the annual budget allocated for landscaping shall be assessed in accordance with the actual cost as determined by the annual contract with the landscape contractor, which contract when bid out by the Board shall be awarded in two parts as follows: (1) Grounds Keeping Services for the Units and; (2) landscape maintenance, repair and replacement for the Common Areas. The charges for each shall be shared equally by all Units except as provided in Section 8.2.

4.6 Date of Commencement of Annual Assessment. The annual assessment allowed under section 4.2 shall be in force and effect on the first day of the month following the first conveyance of a Lot by Developer or its successor. The first annual assessment shall be based upon a partial year unless such conveyance is made in the first month of such year. The portion of the annual assessment for common area maintenance shall commence as to individual Lots on the first day of the month following the conveyance of such Lot to Owner, pro-rated according to the number of months remaining in the calendar year at the time of conveyance (except for the initial year, when the pro-ration shall be based upon the partial year). That portion of the annual assessment for Grounds Keeping Services shall commence as to individual Lots on

the first day of the month following the issuance of an Occupancy Permit for such Lot, pro-rated according to the number of months remaining in the calendar year at the time of issuance (except for the initial year, when pro-ration shall be based upon the partial year). The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of the date when the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. 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.

4.7 Club Operating Fund. The Developer plans to construct a swimming pool and bath house within Carroll Creek, which facilities will be owned and operated by the Association, and which will be available for use by members of the Association. At such time as construction on said facilities is substantially completed, a Club Operating Fund will be commenced and all lots within Carroll Creek shall be charged an assessment (in addition to any annual assessment and special assessment) with respect to the operation and maintenance of said facilities ("Club Assessment"). This Club Assessment will be assessed against each Lot, not owned by the Developer, irrespective of whether a dwelling unit is located thereon. Such Club Assessment 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 my be collected in accordance with the provisions of Section 4 of this Article. Club Assessments shall be payable on the same day as the annual assessment of each year thereafter. All Club Assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such Club Assessments.

The amount of the Annual Club Assessment shall be established as follows:

(a) Commencing with the year following substantial completion of the swimming pool and bath house, the Board of Directors of the Association shall establish a budget for each calendar year and shall determine therefrom the Annual Club Assessment for each lot required to meet such budget. Such budget and Club Assessment for each calendar year shall be established, by the Board of Directors, at a meeting to be held not later than December 31st of each proceeding calendar year. The Board of Directors shall mail to all Association members a copy of the proposed budget and notice of the ensuing year's proposed Club Assessment at least thirty (30) days prior to such meeting.

(b) Such said Club Operating Fund shall be used exclusively for the purpose of operating and maintaining said swimming pool and bath house facility as well as all recreational facilities therein or used in connection therewith, including but not limited to, debt service, repair, maintenance, cost of living, equipment, supervision, taxes, insurance and other items necessary or desirable in the opinion of the Board of Directors of the Association.

Section 5. ESTABLISHMENT OF ASSESSMENTS.

5.1 The Board of Directors of the Association shall approve and establish all sums which shall be payable by the members of the Association in accordance with the following procedures:

5.1.1 The Annual assessments against the Owners of all of the Units shall be established after the adoption of an operating budget, and written notice of the amount and date

of commencement thereof shall be given to each Owner not less than 30 days in advance of the date thereof. Annual assessments shall be payable at such time or times as the Board of Directors shall direct which shall be monthly until otherwise directed. Annual assessments shall include an amount for "Reserves for Replacement" so as to enable the Association to establish and maintain an adequate reserve fund for periodic maintenance, repair and replacements of improvements to the Common Areas.

5.1.2 Special assessments against the Owners and all other fees, dues and charges, including assessments for the creation of reasonable reserves, may be established by the Board of Directors at any regular or special meeting thereof, and shall be payable at such time or times as the Board of Directors shall direct.

5.1.3 The Board of Directors may, from time to time, establish a resolution, rule or regulation, or may delegate to an officer or agent, the power and authority to establish specific fees, dues or charges to be paid by Owners of Units for any special or personal use of facilities, or to reimburse the Association for the expenses incurred in connection with the enforcement of any of the terms of this Declaration. Such sums shall be payable by the affected member at such time or times as shall be established by the resolution, rule or regulation of the officer or agent.

5.1.4 The Association shall prepare a roster of the Units and assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any Owner. The Association shall, upon demand, furnish an Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the assessment has been paid and/or the amount which is due as of any date. As to parties without knowledge of error, who rely thereon, such certificates shall be conclusive evidence of payment or partial payment of any assessment therein stated having been paid or partially paid.

Section 6. EFFECT OF NONPAYMENT OF ASSESSMENTS.

6.1 If any assessment is not paid within 30 days after the due date, a late fee of $25.00 beginning from the due date, shall be levied by the Board of Directors, for each month the assessment is unpaid.

For example: Owner A is delinquent in payment of his monthly assessment for two (2) months. The computation of late fees is as follows:

1st month's late fees:	$25.00 for Assessment #1.
2nd month's late fees:	$25.00 for Assessment #2 and another $25.00 for Assessment #1.

Total amount of late charges due after two months: $75.00.
($25.00 for month #1 and $50.00 for month #2).

The Association, on approval by the Board of Directors, may, at any time after a delinquency has continued for two (2) months, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. Any officer of the Association is authorized to execute any documents required to effect such action. Any such action shall include subsequent unpaid assessments and/or late charges. There shall be added to the

assessment all costs and expenses, including attorney's fees required to collect 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 the Unit.

Section 7. SUBORDINATION OF THE LIEN TO MORTGAGES.

7.1 As hereinabove provided in Section 4.1, the lien of the Association for assessments and other charges of the Association becomes effective from and after recording of a Claim of Lien in the Public Records and shall automatically secure all unpaid assessments, late fees and other charges, including attorney's fees which may become due from and after the recording of the Claim of Lien. The Claim of Lien shall be executed by an officer of the Association and shall comply with the requirements necessary for the recording thereof in Allen County, Indiana. This lien of the Association shall be subordinate to a first mortgage on any Unit, which mortgage is recorded in the Public Records prior to any said Claim of Lien against the same Unit being recorded in the Public Records. A lien for assessments shall not be affected by any sale or transfer of a Unit; provided, however, that in the event of a sale or transfer pursuant to a foreclosure of a first mortgage, a foreclosure of a mortgage held by an Institutional Mortgage, or deed in lieu of foreclosure by a first mortgage or a mortgage held by an Institutional Mortgagee, the acquire of title, his successors and assigns, shall not be liable for assessments pertaining to the Unit or chargeable to the former owner of the Unit which became due prior to such sale or transfer. However, any such unpaid assessments for which such acquire of title is not liable, may be reallocated and assessed to all Units (including such acquire of title) as an Association expense. Any such sale or transfer pursuant to a foreclosure or deed in lieu of foreclosure shall not relieve the Purchaser or Transferee of a Unit from liability for, or the Unit from, the lien of any assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent assessments from the payment thereof, or the enforcement of collection by means other than foreclosure.

Section 8. MAINTENANCE OBLIGATION OF ASSOCIATION.

8.1 **Common Area.** The Association shall at all times maintain, repair and replace at its expense all Common Areas, including all improvements placed thereon, in good condition and repair.

8.2 **Grounds Keeping Services.** Grounds Keeping Services as hereinafter defined, shall be provided by the Association for all Units. For purposes hereof, Grounds Keeping Services shall consist of the maintenance of all landscaping, vegetation, grass, plants, trees and the like located upon each Unit; provided, however, that if any of the foregoing landscaping requires replacement, it shall be the responsibility of, and at the expense of, the Owner of the applicable Unit to make such replacement. If a Unit actually sits on two Lots, the Owner shall be charged one annual assessment and an additional assessment for additional landscaping maintenance required to maintain both Lots. In the event that there is a fenced-in area upon a Unit, adequate access to this area shall be provided to enable the Association to perform this maintenance, but if none is so provided or if the access is locked or otherwise made inaccessible, then the Association shall not be responsible for providing any maintenance within this area, and the Owner thereof shall have such responsibility and shall not be entitled to claim any abatement of any portion of the Annual assessment by the Association due to such situation. If the

installation of fencing or additional landscaping by an Owner increases the cost to the Association of performing this landscaping maintenance, then the Board of Directors may cause such Owner to pay such increases as a Special Assessment. Maintenance, repair or replacement of any portion or part of a Unit's sprinkler system, shall be the responsibility of that Unit's Owner. If a Unit Owner fails or refuses to make required repairs or replacements of his sprinkler system after reasonable notice from the Association to do so, the Association may enter upon said Unit and perform such required work to the sprinkler system; and the cost thereof, plus reasonable overhead costs of the Association, shall be a Special Assessment upon such Unit.

8.3 Right of Entry by Association. Whenever it is necessary to enter a Unit for the purpose of inspection, including inspection to ascertain an Owner's compliance with the provisions of this Declaration, or for performance of any maintenance, alteration or repair to any portion of the dwelling or improvements upon the Unit, the Owner thereof shall permit an authorized agent of the Association to enter such dwellings, or go upon the Unit, provided that such entry shall be made only at reasonable times. In the case of emergency such as, but not limited to, fire or tornado, entry may be made at any time. Each Owner does hereby appoint the Association as its agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused or occurring on account of any entry.

8.4 Others. As deemed appropriate by the Board of Directors, the Association shall maintain the Lakes vegetation, landscaping and sprinkler system upon areas which are not within the Properties but abut same or are owned by a utility or governmental authority, so as to enhance the appearance of the properties.

Section 9. MAINTENANCE OBLIGATION OF UNIT OWNERS.

9.1 Owner's Responsibility.

9.1.1 Each Unit Owner is responsible for the repair, maintenance and/or replacement at his expense of all portions of the dwelling, landscaping and other improvements constructed on his Lot excluding, however, Grounds Keeping services as set forth in Section 8.2 hereof. Accordingly, each Owner shall maintain at his expense the exterior and interior of the dwelling, including but not limited to, all doors, windows, glass, screens, electric panels, electric wiring, electric outlets and fixtures, drains, plumbing fixtures and connections and all air conditioning equipment. Further, each owner shall maintain at his expense all structural, electrical, mechanical and plumbing elements thereof. Owners are strictly prohibited from performing any maintenance duties of the Association without prior consent of the Board of Directors and the Architectural Control Committee.

9.1.2 There has been provided, at the time of construction of a dwelling on each Lot, a post light, which post lights shall provide street lighting for The Lakes of Carroll Creek. Each post light has been connected to a Unit and each Unit Owner shall be responsible for the maintenance and replacement of said post light. Said post lights shall be operated in accordance with the directions of the Board of Directors of the Association.

9.2 Owner Liability. Should any Owner do any of the following:

9.2.1 Fail to perform the responsibilities as set forth in Section 9.1 above; or,

9.2.2 Cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or

9.2.3 Undertake unauthorized improvements or modifications to his dwelling or to any other portion of his Unit or to the Common Area, as set forth herein.

9.2.4 The Association, after approval of two-thirds (2/3rds) vote of the Board of Directors and ten days prior written notice, shall have the right, through its agents and employees, to enter upon said Unit and cause the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof, plus reasonable overhead costs to the Association, shall be added to and become a part of the assessment to which the Unit is subject.

Section 10. ARCHITECTURAL CONTROL.

10.1 Approval Necessary. No building, outbuilding, garage, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed or maintained on the Properties, nor shall any dwelling or other improvements on each Unit, as originally constructed and provided by Declarant, be altered, changed, repaired or modified unless prior to the commencement of any work thereof, two complete plans and specifications therefore, including but not limited to exterior colors, materials, and decorations, and also including, as applicable, front, side and rear elevations, and floor plans, and two plot plans indicating and fixing the exact location of such improvements, structures or such altered structure on the Unit with reference to the street and side lines thereof, shall have been first submitted in writing for approval and approved in writing by the Architectural Committee. The foregoing prior approval is intended to specifically apply to the painting of a dwelling or any other maintenance or repair which changes the exterior appearance of a dwelling or other improvements on a Unit.

10.2 Members. The Architectural Committee shall consist of three (3) members, appointed by the Board of Directors. The members of the Architectural Committee shall serve at the pleasure of the Board of Directors. However, the initial Architectural Committee shall consist of the following three members: Todd M. Ramsey, J. Andrew Norton and Judith Burdek. After primary residences are constructed on all Lots, the Board of Directors shall succeed to the initial Committee's responsibilities under this Section 10 to review subsequent construction, modifications and additions of structures.

10.3 Endorsement of Plans. Approval of plans, specifications and location of improvements by the Architectural Committee shall be endorsed on both sets of said plans and specifications, and one set shall forthwith be returned by the Architectural Committee to the person submitting the same. The approval of the Architectural Committee of plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver of the right of the committee to disapprove of any features or elements embodied in such plans or specifications, if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Units.

10.4 Construction to be in Conformance with Plans. After such plans and specifications and other data submitted have been approved by the Architectural Committee, no building, outbuilding, garage, fence, wall, retaining wall, or other improvements or structures of any kind shall be erected, constructed, placed, altered or maintained upon the Properties unless the same shall be erected, constructed or altered in conformity with the plans and specifications and plot plans theretofore approved by the Architectural Committee.

10.5 Right of Entry. Any agent or member of the Architectural Committee may at any reasonable time enter and inspect any building or property subject to the jurisdiction of the Architectural Committee under construction or on or in which the agent or members have reason to believe that a violation of the covenants, restrictions, reservations, servitude or easements is occurring or has occurred.

10.6 Fences. Notwithstanding any other provisions to the contrary in this Section 10, the Architectural Committee may not approve construction or modification of any fence or any plantings on any Lot, which, in the Architectural Committee's sole opinion, would create a sight obstruction of any lake in the Subdivision. No fence, or other improvement, shall be erected upon a Lot which is deemed by the Architectural Committee to interfere with the common sprinkler system upon the Properties, or which interferes with the landscape maintenance performed by the Association, thereby increasing the amount of trimming or edging required to be done, or increase in any other manner the cost of maintenance of the landscaping by the Association, unless otherwise specifically agreed to in writing by the Association. Compliance with the Allen County Zoning Ordinance for location and height of all fences is required.

Section 11. INSURANCE.

11.1 Units. The Association has no responsibility to purchase or maintain any fire or hazard insurance with respect to the dwellings or other improvements upon Units; the Owners thereof shall be solely responsible therefore.

11.2 Flood Insurance. If the properties become located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay the premiums upon a policy of flood insurance on Common Areas and any buildings or other common property covered by the required form of policy (herein "Insurable Property"), in an amount deemed appropriate, but not less than the following:

> The lesser of (I) the maximum coverage available under NFIP all buildings and other Insurable Property within any portion of the Common Areas located within a designated flood hazard area; or (ii) one hundred (100%) percent of current "replacement cost" of all such buildings and other Insurable Property.

11.3 Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all the Common Areas. The coverage shall be at least for $1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation,

maintenance or use of the Common Areas, and legal liability arising out of lawsuit related top employment contracts of the Association. Such policies must provide that they may not be canceled or substantially modified by any party, without at least 10 days' prior written notice to the Association.

11.4 Fidelity Bonds. The Association shall maintain a blanket fidelity bond for all officers, directors, trustees and employees of the Association, and all other persons handling or responsible for funds of, or funds administered by the association. In the event the association delegates some or all of the responsibility for the handling or responsible for funds of, or administered on behalf of, the Association. The amount of the fidelity bond shall be based upon best business judgement and shall not be less than the estimated maximum of funds, including reserve funds, in custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than an amount equal to three months aggregate assessments on all Units, plus reserve funds. The fidelity bonds required herein must meet the following requirements:

11.4.1 Fidelity bonds shall name the Association as an obligee.

11.4.2 The bonds shall contain waivers by the insurers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee", or similar terms of expressions.

11.4.3 The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent, or its officers, employees and agents), shall be paid by the Association as a common expense.

11.4.4 The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Association.

11.5 Purchase of Insurance. All insurance purchased pursuant to this Section 11 shall be purchased by the Association for the benefit of the Association, the Owners and their respective mortgagees, as their interest may appear, and shall provide for the issuance of certificates of insurance and mortgagee endorsements to Owners and any or all of the holders of institutional first mortgages. The policies shall provide that the insurer waives its rights of subrogation as to any claims against Owners and the Association, their respective servants, agents and guests. Each Owner and the Association hereby agree to waive any claim against each other and against other Owners for any loss or damage for which insurance hereunder is carried where the insurer has waived its rights of subrogation as aforesaid.

11.6 Cost and Payment of Premiums. The Association shall pay the cost of obtaining all insurance hereunder, excluding only the insurance as may be purchased by individual Owners and any other fees or expenses occurred which may be necessary or incidental to carry out the provisions hereof.

11.7 Owners' Responsibility. Each owner may obtain insurance, at his own expense, affording coverage upon his own personal property and for his own liability and living expenses as he deems advisable. All such insurance shall contain the same waiver of subrogation that is referred to herein and shall waive any right of contribution.

11.8 Association as Agent. The Association is irrevocably appointed agent for each Owner, for each Owner of a mortgage upon a Unit and for each Owner of any other interest in a Unit or the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

11.9 Estimates. In all instances hereunder, immediately after a casualty causing damage to the property for which the Association has the responsibility of maintenance and repair, the Association shall obtain a reliable, detailed estimate of the cost to place the damaged property in a condition as good as that before the casualty. Such cost may include professional fees and premiums for such bonds as the Board may desire or those required by Institutional Mortgagees involved.

Section 12 PROHIBITED USES.

12.1 Garbage and Trash. All garbage cans, trash containers, bicycles and other personal property shall be kept, stored and placed in an area not visible from outside the dwelling. Each Owner shall be responsible for properly depositing his garbage and trash in garbage cans and trash containers sufficient for pick-up by the appropriate authorities. Garbage cans and trash containers shall be placed at the curbside no sooner than the evening before and removed no later than the evening of the scheduled pick-up.

12.2 Structures. No temporary or permanent utility or storage shed, building, tent, structure or improvement shall be constructed, erected or maintained without the prior approval of the Architectural Committee. Structures shall include, but not be limited to, play sets and/or jungle gyms, in-ground and above-ground pools, spas, hot tubs, and associated structures.

12.3 Pets and Animals. Pets and animals shall be permitted, only as provided for in this Section.

12.3.1 Animals and pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, lizards, gerbils, turtles, guinea pigs and rabbits, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing restriction shall apply to animals/pets that visit the community. No other animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot.

12.3.2 All dogs and cats must be inoculated against rabies by a duly qualified and licensed veterinarian and shall also be inoculated in like manner in such cases of emergency whenever ordered by the Board of Health of the State of Indiana.

12.3.3 When outside the Unit, all dogs and cats must be accompanied by an attendant who shall have such dog/cat firmly held by collar and leash, which leash shall not exceed 8 feet in length. No cats or dogs shall be permitted to run at large outside of the Unit; this shall not prohibit a cat or dog from being maintained without a leash or other restraint within any enclosed privacy area of the Unit in which the dog or cat resides and/or is maintained.

12.3.4 The owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the animal/pet.

12.3.5 The owner/custodian of the animal or pet shall remove his or her animal or pet from the Community when such animal or pet emits excessive noise such that the same may be heard outside of the Unit.

12.3.6 The animal/pet owner and the Unit owner of the Unit involved shall be strictly liable for damages caused to the Common Area by the animal/pet.

12.3.7 Any animal/pet owner's right to have an animal/pet reside in or visit the Community shall have such right revoked if the animal/pet shall create a nuisance or shall become a nuisance as may be determined by the Board of directors of the Association.

12.4 Stables. No stable, livery stable, barn, or kennel shall be erected, constructed, permitted or maintained on any Unit.

12.5 Vehicles and Parking. Public parking is allowed on all public dedicated and maintained streets. The following restrictions apply to all other Properties, which lie within areas not owned by or dedicated by a governmental entity:

12.5.1 Prohibited Vehicles or Items. This Section 12.5.1 contains prohibited vehicles or items, which are prohibited and shall not be entitled to park anywhere within the Community. The prohibited vehicles and items are as follows: trucks, including pickup trucks; vans; recreation vehicles; mobile homes; motor homes; campers; buses; all terrain vehicles; off-road vehicles; go carts; three-wheel motorized vehicles; commercial vehicles; limousines; mopeds; dirt bikes; and other such motor vehicles; and boats and trailers, unless such vehicles are parked/stored in the garage of the Unit with the garage door closed, with the exception of being permitted to be parked ungaraged on a Lot for periods not to exceed 48 hours, or for a period of which is in the aggregate in excess of 8 days per calendar year. Notwithstanding the foregoing or anything in this Section 12.5.1 to the contrary, the foregoing shall not apply to and shall expressly exclude utility vehicles. As used herein the term "utility vehicle" is intended to include certain vehicles which are used as and have the same characteristics as a passenger vehicle, such as but not limited to, Chevrolet Blazers, ford Broncos and Explorers, and Chrysler Jeep Cherokees, and whether or not such vehicle is classified as a "utility vehicle" by the most current edition of the Guide, as hereinafter defined, or its manufacturer. The Board of Directors shall have the sole authority to determine whether any vehicle falls within the definition of "utility vehicle" as used herein. Should the Guide adopt a definition or classification of a "utility vehicle" consistent with the intended meaning of same as used herein, then the Board shall defer to such definition or classification established by the Guide.

12.5.2 Exception to 12.5.1 Above. The following vehicles shall not be subject to the parking restrictions contained in Section 12.5.1 above, and shall be entitled to park within the designated areas for parking in the Community, subject to the restrictions and provisions contained in Sections 12.5.2(a) through 12.5.2(e) below.

(a) A moving van, but only for the purpose of loading and unloading and at no time shall same park during the hours of 9:00 p.m. to 6:00 a.m.

(b) Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Properties, and only for the time period during which the maintenance, care or protection is being provided.

(c) Service and Delivery Vehicles, regardless of classification, during regular business hours and only for that period of time to render the service or delivery in question.

(d) Vehicles for the handicapped bearing identification as such by an applicable governmental authority.

(e) Certain vans described as follows: Subject to that provided above, a two-axle van as defined below which does not exceed the manufacturers' standard length, height and width of the particular van in a customized converted condition; used for family or personal transportation and which is not a commercial vehicle as defined below; which contains at least two (2) rows of seating and windows on each side of the vehicle adjacent to at least each of the first two (2) rows of seating; and which is or would be registered in the State of Indiana as a passenger station wagon or equivalent shall be permitted to park on the Properties. The Association is permitted to make a presumption that the foregoing criteria are met without the receipt of specific information or vehicle registration, unless upon visual inspection, it is obvious that any of the criteria are not met. The owner or custodian of the vehicle shall submit to the Association reasonable information and documentation (including title and/or registration) concerning the vehicle upon request.

12.5.3 Classifications and Definitions.

(a) The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck or van, or whether it is a passenger automobile. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be selected by the Board of Directors to be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans under Section 12.5.2(e) above, a State registration or title classification shall have no bearing on determination of the classifications under this Section 12.5.3(a).

(b) A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, such as: the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo.

(c) A "truck" shall mean any motor vehicle which is classified as a truck in accordance with Section 12.5.3(a) above.

(d) A "van" shall mean any motor vehicle which is classified as a van in accordance with Section 12.5.3(a) above and which is recognized by the manufacturer to be a type of a van, and which has two (2) axles. Notwithstanding the foregoing to the contrary, a pick-up truck shall not be considered to be a van by the addition of a camper top or similar topping.

12.5.4 All motor vehicles must be maintained as to not create an eyesore in the community.

12.5.5 Parking restrictions may be created and enforced by the Board of Directors by rule and Regulations.

12.5.6 Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas and/or streets. Racing engines and loud exhausts shall be prohibited. No vehicle shall be parked with motor running.

12.5.7 The Following Restrictions Also Apply.

(a) No repair (including changing of oil) of a vehicle shall be made within the community except for minor repairs necessary to permit removal of a vehicle, unless they are made in the garage of a Unit with the garage door closed. However, washing or waxing of a vehicle is permitted outside the garage.

(b) All personal vehicles which can be appropriately parked within a standard-size parking stall may be parked on the Properties. No vehicles of any nature shall be parked on any portion of the Properties or a Unit except on the surfaced parking area thereof. No parking will be permitted on sidewalks at any time or on the streets between 2:00 a.m. and 6:00 a.m.

12.5.8 Remedies of Towing. If upon the Association's provision of that notice required by Indiana Statutes, as amended from time to time, an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Community, the Association shall have the option and right to have the vehicle towed away at the vehicle owner's expense. By this provision, each Owner and vehicle owner consents to such tow. In the event that the vehicle owner fails to pay the towing costs upon demand, the Association shall have the right to levy a charge for the costs against the Unit and Owner in question, that is, against the Owner for himself/herself as the owner of the vehicle or for his/her family, lessees, guests, employees, visitors, etc. as owner(s) of the vehicle (as such, the Unit Owner is liable for the vehicle violations of his/her family, lessees, guests, visitors, etc.), and the charge shall be collected as provided in this Section.

12.5.9 Alternative/Concurrent Remedies. Whether on not the Association exercises its right to have the vehicle towed, the Association shall have the right to seek compliance with this Section 12.5 by injunctive and other relief through the Courts; and/or any other remedy conferred upon the Association by law or the Governing Documents. The Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this Section 12.5.

12.6 Signs. No sign of any kind shall be displayed to the public view on a Lot or Unit without the prior consent of the Board of Directors, except signs used by a builder to advertise a Lot during the construction and sales periods.

12.7 No Business Activity. No business of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties, and without limiting the generality of the foregoing, no store, market, shop, mercantile establishment, trading or

amusement establishing, quarry, pit, undertaking establishment, crematory, cemetery, radio tower, auto camp, trailer camp or haven, hospital, public baths, school, kindergarten, nursery school, sanitarium asylum or institution shall be erected, maintained, operated, carried on, permitted or conducted on the Properties. Also prohibited are garage sales, yard sales and the like. Notwithstanding the foregoing, the following shall apply:

12.7.1 Home Occupations. No Lot shall be used for any purposes other than as a single-family residence, except that a home occupation, defined as follows, may be permitted. Any use conducted entirely within the dwelling unit and participated in solely by a member of the immediate family residing in said dwelling unit, which use is clearly incidental and secondary to the use of the dwelling unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the dwelling unit is being utilized in whole or in part for any purpose other than that of a dwelling unit; (b) no commodity is sold upon that Lot; (c) no person is employed in such home operation other than a member of the immediate family residing in the dwelling unit; and (d) no mechanical or electrical equipment is used other than is customarily used in an office-at-home or by home hobbyist, and which is generally unsuitable for commercial applications.

12.7.2 The practice of leasing Units shall not be considered as a business activity under this Section 12.7.

12.7.3 The business of operating the Association shall not be considered as business activity under this Section 12.7.

12.8 Maintenance. All Units shall be kept in a clean and sanitary manner and no rubbish, refuse or garbage allowed to accumulate, or any fire hazard allowed to exist. All Units shall be maintained in first class condition with well kept lawn and well maintained landscaping.

12.9 Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on a Lot, which may be or become an annoyance or nuisance to residents in the Subdivision. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on a Lot which are audible, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

12.10 Unlawful Uses. No improper, offensive or unlawful use shall be made of any Unit and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be strictly observed.

12.11 Antennas. No radio or television antenna with more than 24 square feet of grid area, or that attains a height in excess of 6 feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot. No satellite receiving disk, or dish in excess of 20 inches in diameter shall be permitted on a Lot, provided, however, that the installation and location thereof must be approved by the Committee under Section 10.

12.12 <u>Clothes Line</u>. No clothes, linens, or the like, shall be hung in any manner outside of a dwelling. No clothes lines or poles shall be permitted.

12.13 <u>Wells</u>. No individual water supply system shall be permitted on any Lot, except the installation required for a geothermal heating and cooling system.

12.14 <u>Sidewalks</u>. Operation of motorized vehicles is not permitted on the sidewalks or pass thru easements on the Properties. This excludes wheelchairs or other devices employed by the handicapped.

12.15 <u>Garage Doors</u>. Garage doors must be kept closed between the hours of 11:00 p.m. through 5:00 a.m. except when otherwise necessary for ingress and egress.

12.16 <u>Watercraft</u>. No watercraft of any description is permitted on any pond.

12.17 <u>Occupancy of Units and Subdivision</u>:

12.17.1 <u>Occupancy of Units</u>. Each Unit shall be occupied by Owners and tenants and their family members as a residence, as a single family dwelling, and for no other purpose.

12.17.2 <u>Subdivision</u>. No Unit may be subdivided into more than one Unit. Only entire Units may be sold, leased or otherwise transferred.

12.18 <u>Use</u>. No person shall use the Units or any parts thereof, in any manner contrary tc this Declaration.

Section 13. <u>GENERAL PROVISIONS</u>.

13.1 <u>Use</u>. Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Each residence shall include an attached garage to accommodate not less than two cars. Such garage shall be built as part of the residence, shall have a floor area of not less than ~~440 square fe~~et, and shall have one or more doors with an aggregate width of not less than 16 feet. Two car garage Per Todd 9/13/04

13.2 <u>Dwelling Size</u>. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeways or garages, of less than 1,100 square feet for a one-story residence, or less than 1,450 square feet of total living area, (excluding one-story open porches, breezeways and garages), for a residence that has more than one-story.

13.3 <u>Building Lines</u>. No Structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than a distance of 5 feet to an interior Lot line. No dwelling shall be located on an interior Lot nearer than 25 feet to the rear Lot line.

13.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than 50 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 6,250 square feet.

13.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear ten (10) feet of each Lot. No Owner shall erect on a Lot, or grant to any entity the right, license or privilege to erect or use, or permit the use of, overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities, installed for any residence or other structure on a Lot, connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.

13.6 Surface Drainage Easements. Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition, and the County Surveyor (or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

13.7 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

13.8 Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

13.9 Workmanship. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

13.10 Driveways. All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width.

13.11 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and granted to all public utility companies, the owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of

gas main, water main and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

13.12 Storm Water Runoff. No rain and storm water runoff or such things as roof water, street, pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from the storm water and surface water runoff sewer systems. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

13.13 Completion of Infrastructure. Before any residence on a Lot shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Plan Commission or by any aggrieved Owner.

13.14 Certificate of Compliance. Before a Lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the improvement location permit and certificate of compliance required by the Allen County Zoning Ordinance.

13.15 Enforcement. The Association, Developer and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these covenants. Failure by the Association, Developer or an Owner to enforce any provisions in the Covenants shall in no event be deemed a waiver of the right to do so later.

13.16 Invalidation. Invalidation of any one of these Covenants by judgement or court order shall not affect any other provisions, and such provisions shall remain in full force and effect.

13.17 Duration of Covenants. These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of 10 years.

13.18 Amendments. Any provision of the Covenants may be amended, but such amendment is subject to the following requirements and limitations:

13.18.1 After primary residences are constructed on all Lots in the Subdivision and certificates of compliance are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of the Lots in the Subdivision of The Lakes of Carroll Creek.

13.18.2 Until primary residences are constructed on all Lots in the Subdivision and certificates of compliance are issued for those residences, in order to amend the Covenants, Developer, in addition to those persons whose signatures are required under Section 13.18.1, also must sign the amendatory document.

13.18.3 Notwithstanding the provisions of Section 13.18.1, Developer and its successors and assigns shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded, to amend any of the Covenant provisions (except section 13.2) without approval of any Owners.

13.18.4 In order for any amendment of these Covenants to be effective, the approval of the Plan Commission shall be required.

13.18.5 There may be incorporated as part of these Covenants, and, where applicable, the Articles and By-Laws of the Association, any and all provisions which now or hereafter may be required under the regulations or guidelines of FNMA, FHLMC, GNMA, VA and FHA so as to make any first mortgage encumbering a Unit eligible for purchase by FNMA, FHLMC, or GNMA, and eligible under VA or FHA, and such provisions shall supersede any conflicting matters contained in these Covenants, the Articles or By-Laws, except to the extent compliance with any regulation, or guideline is waived by FNMA, FHLMC, GNMA, VA or FHA. Should FNMA, FHLMC, GNMA, VA or FHA require an amendment of these Covenants, the Articles or By-Laws, then such amendment may be made and filed by the Association without regard to any other provisions herein contained regarding amendments, and without any requirement for securing the consent of any Unit Owner.

13.19 **Subdivision.** No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoined Lot (thus decreasing the size of such adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under Section 13.4.

13.20 **Attorney Fees and Related Expenses.** In the event the Association, Developer, an Owner, or the Plan Commission is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

13.21 **Sidewalks.** Plans and specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of all of the Lots. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalks to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of compliance for such Lot. This Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Should a certificate of compliance be issued to Developer for a Lot on which a sidewalk must be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant with respect to that Lot.

13.22 **Flood Protection Grades.** In order to minimize potential damage to residences from surface water, minimum flood protection grades are established. All residences on such shall be constructed so that the minimum elevation of a first floor, or the minimum sill elevation of any opening below the first floor equals or exceeds the applicable minimum flood protection

grade established. Flood protection grades for Lots 225 through 236 inclusive shall be 842.5; and Lots 262 through 265 inclusive shall be 844.8There are no minimum flood protection grades for Lots 237 through 261.

13.23 **Mandatory Solid Waste Disposal.** The Association shall be obligated to contract for disposal of garbage and other solid waste and may pay for the cost of such disposal through assessments established under Section 4. An Owner who privately arranges for solid waste disposal to service the owner's Lot shall not be excused from payment of any part of an assessment attributable to the cost of waste disposal for which the Association contracts under this Section 13.23.

13.24 **Geothermal Systems.**

13.24.1 Owners of Lots in the Subdivision shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service residences located on the Owner's Lots, and the right to use the Association property as described below:

(a) A System with a loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lots.

(b) A System which uses and discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lots.

13.24.2 Any systems so installed must:

(a) Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations.

(b) Satisfy reasonable requirements of the Allen County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and obtain approval from the Association.

(c) Be installed according to approved guidelines of, and by technicians certified by, the International Ground Source Heat Pump Association.

13.24.3 Any Owner using property owned by the Association for the purpose as described in Section 13.24.1 agrees to indemnify and hold the Association harmless from and against all claims, losses, damages, and judgements (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with the Systems.

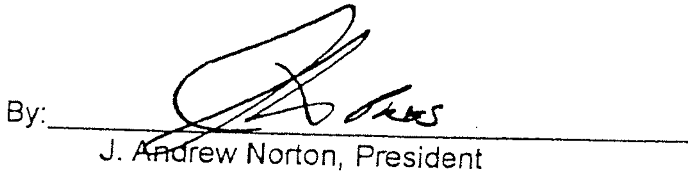
Section 14. ALLEN COUNTY FAIRGROUNDS.

Owners of Lots in the Subdivision and their successors-in-title hereby acknowledge that the Subdivision is adjacent to the site of the Allen County Fairgrounds, (the "Fairgrounds") and by virtue of owning a Lot in the Subdivision, said Owners waive their right to bring claims against the Allen County Fairgrounds, Inc. or its successors or assigns, when it is conducting any Fairgrounds

activities and operations, including, but not limited to, any claims regarding any associated noises, odors or traffic. The Owners of Lots in the Subdivision and their successors-in-title further waive and release any and all rights, which they may have or hereafter have to remonstrate against or otherwise object to, interfere with, or oppose any pending or future construction or activity of the Allen County Fairgrounds, Inc. on the Fairgrounds. The Owners of Lots in the Subdivision and their successors-in-title further waive and release any and all rights which they may have or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any application or proposal to develop, construct, expand or obtain approval for future activities of the Allen County Fairgrounds, Inc. on the Fairgrounds.

IN WITNESS WHEREOF, Carroll Creek Development Co., Inc., an Indiana corporation, by its duly authorized President, J. Andrew Norton, has signed this document on this 7 day of July 2003.

CARROLL CREEK DEVELOPMENT CO., INC.



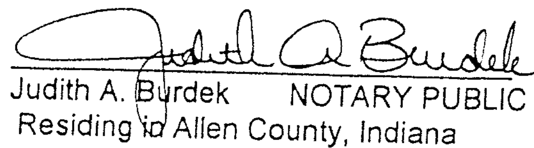
By:____________________________
J. Andrew Norton, President

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 7 day of July, 2003, personally appeared J. Andrew Norton, known to me to be the duly authorized President of Carroll Creek Development Co., Inc. and acknowledged the execution of the above and foregoing as his voluntary act and deed and on behalf of said corporation for the purposes and uses set forth in this document.

WITNESS my hand and notarial seal.

My Commission Expires:
June 1, 2008



Judith A. Burdek NOTARY PUBLIC
Residing in Allen County, Indiana

This instrument prepared by: Timothy L. Claxton, Burt, Blee, Dixon & Sutton, Attorney No. 14523-02