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ALLEN COUNTY RECORDER

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**DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,
LIMITATIONS, EASEMENTS AND APPROVALS OF
THE PLAT OF THE PRESERVES OF CARROLL CREEK, SECTION II
A SUBDIVISION IN EEL RIVER TOWNSHIP, ALLEN COUNTY, INDIANA**

Plat Cab G Pg 6

**THIS DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,
LIMITATIONS, EASEMENTS AND APPROVALS OF THE PLAT OF THE
PRESERVES OF CARROLL CREEK, SECTION II, A SUBDIVISION IN EEL RIVER
TOWNSHIP, ALLEN COUNTY, INDIANA (the "Restrictions") is executed by Carroll Creek
Development Company, Inc. ("Developer") as of the 19 day of 3, 2008:?**

PREFACE

The Preserves of Carroll Creek, Section II comprises a tract of real estate which is subdivided in 29 residential lots, all included and known as the Preserves of Carroll Creek, Section II. Each Owner of a Lot in any section of the Preserves of Carroll Creek is a member of Carroll Creek Homeowner's Association, Inc., and shall be bound by its Articles of Incorporation, By-Laws and these Restrictions. The provisions herein contained are for the mutual benefit and protection of the Owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owners of land included therein, their respective legal representatives, successors, grantees and assigns.

SECTION 1. DEFINITIONS. The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended.

1.1 **"Appropriate Zoning Authority"** shall mean, with respect to any action regarding the administration of the zoning ordinance applicable to the Lots, the appropriate administrator or agency with authority to administer the zoning laws of which are deemed to have jurisdiction over the Lots, or where such administrator or agency lacks the capacity to take the action or fails to take such action, the governmental official or body, administrative or judicial, in which authority is vested under applicable law to hear appeals from or review of such action or inaction or has the capacity to administer such zoning ordinance, and such term shall apply to the legal successors in interest to such administrator, agency or bodies.

1.2 **"Articles"** shall mean and refer to the articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

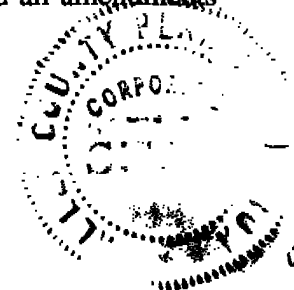
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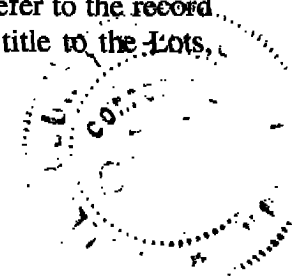
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- 1.3 **“Association”** shall mean and refer to Carroll Creek Homeowner’s Association, Inc. an Indiana not-for-profit corporation, and its successors and assigns.
- 1.4 **“Board or Directors”** shall mean and refer to the duly elected board of directors of the Association.
- 1.5 **“Bylaws”** shall mean and refer to the By-Laws initially adopted by Carroll Creek Homeowner’s Association, Inc., and all amendments to thereto.
- 1.6 **“Committee”** shall mean and refer to the Architectural Control Committee established under Section 5 of these covenants.
- 1.7 **“Common Area”** shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners, including the existing swimming pool, as designated on the Plat. Common area shall also be deemed to include the dedicated streets and sidewalks as shown on the Plat, whether or not owned by the Association.
- 1.8 **“Covenants”** shall mean and refer to this First Amendment of the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals of the Plat of The Preserves of Carroll Creek, a Subdivision in Eel River Township, Allen County, Indiana document and the restrictions, limitations, and covenants imposed under it.
- 1.9 **“Developer”** shall mean and refer to Carroll Creek Development Company, Inc. an Indiana corporation, and its successors and assigns.
- 1.10 **“Dwelling Unit”** shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenance
- 1.11 **“Lot”, and in the plural form “Lots”** shall mean and refer to any of the platted lots in the Plat, or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more Lots or parts 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 a 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 60 feet in width at the established front building line as shown on the Plat.
- 1.12 **“Managing Agent”** shall have the meaning ascribed to such term in Section 4.4 hereof.
- 1.13 **“Owner”, and in the plural form, “Owners”** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to the Lots,

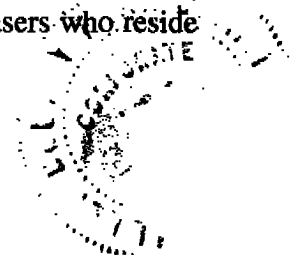


including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

- 1.14 **“Plan Commission”** shall mean and refer to the Allen County Plan Commission, or its successor agency.
- 1.15 **“Plat”** shall mean the collective plat drawings on file with the Allen County, Indiana Recorder’s Office for The Preserves of Carroll Creek, Section 1.
- 1.16 **“Pool Committee”** shall mean and refer to the committee established by the Board of Directors for the purposes of overseeing and managing that certain swimming pool and bath house constructed within the Subdivision and available for the use and enjoyment of all members of the Association.
- 1.17 **“Subdivision”** shall mean and refer to that particular subdivision comprised of twenty-nine (29) Lots, all as shown on the Plat, and more commonly referred to as The Preserves of Carroll Creek, Section II.

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 passes with the title to every Lot, subject to the following rights which are granted to the Association:
 - 2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area;
 - 2.1.2 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 the Owner’s Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association;
 - 2.1.3 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 Class A 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.

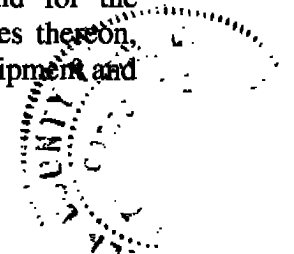


SECTION 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- 3.1** Every Owner of a Lot 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 Class A.** 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 Class B.** Class B membership consists of Developer. The Class B member shall be entitled to a number of votes which Class A members are entitled to exercise plus one additional vote (thereby giving the Class B members control) until such time as Developer no longer owns Lots within the Preserves of Carroll Creek Subdivision as described below or December 31, 2013, whichever shall occur first. In the event Developer sells all Lots within the Preserves of Carroll Creek and subsequently annexes additional lands, Developer shall, at that time, receive a number of votes necessary to maintain control pursuant to the formula set forth herein.

SECTION 4. COVENANT 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 or charges; and (2) special assessments for capital improvements. Such assessments are to be established and collected as provided in this First Amendment and the Bylaws. 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. 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 Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision, to maintain the property values of the Lots, and for the improvement and maintenance of the Common Area and the facilities thereon, including, but not limited to, repair, maintenance, the cost of labor, equipment and



materials, supervision, security, lighting, pool facilities, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Board of Directors of the Association in connection therewith. In addition, assessments shall be levied to provide for the proportionate burden of the maintenance of the common retention basin into which the Subdivision's surface waters drain as shown on the Plat.

4.3 **Maximum Annual Assessments.** The maximum annual assessment shall be Two Hundred Dollars (\$200.00) per Lot. Subsequent assessments may be made as follows:

4.3.1 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 maximum annual assessment from the previous year without a vote of the members of the Association.

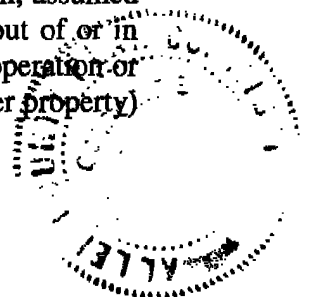
4.3.2 The maximum annual assessment may be increased by a percentage in excess of ten percent (10%) only by the vote or written assent of a majority of the members of the Association.

4.4 **Special Assessments.** In addition to the annual assessments authorized above, 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: (a) any new construction, or repair or replacement of an existing capital improvement made upon or to the Common Area, including fixtures and related personal property; or (b) employing a managing agent or real estate management company (the "Managing Agent") to manage the business and affairs of the Association. Any special assessment levied pursuant to this Section 4.4 shall require the vote or written assent of fifty-one percent (51%) of the members of the Association; provided, however, 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 retention basin shown on the Plat.

4.5 **Note and Quorum for any Action Authorized Under Subsection 4.3 and 4.4.** Any action authorized under Section 4.3 and 4.4 shall be taken at a meeting of the Association called for this purpose, written notice of which shall be sent to all members no 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 the 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.



- 4.6 **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 or yearly basis.
- 4.7 **Date of Commencement of Annual Assessment/Due Dates.** The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.
- 4.8 **Effect of Nonpayment of Assessments/Remedies of the Association.**
- 4.8.1 Any assessment not paid within 30 days after its due date will be charged a late fee in the amount of \$25.00 for each month, or part thereof, outstanding after the due date up to a maximum late fee amount of \$300.00.
- 4.8.2 The Association may bring an action at law against each Owner personally obligated to pay the same, may bring an action to foreclose the lien against the Owner's Lot, or may do both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot. 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.
- 4.9 **Subordination of Assessment of Lien to first Mortgages. Liens.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien against it. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- 4.10 **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 and other property).



for the transmission, delivery or furnishing of water, or for the collection, transmission and disposal of liquid and solid waste, and sewage, and /or the ownership of any real estate or easements or other rights with respect to real estate owned 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 plan or equipment.

4.11 Club Assessment.

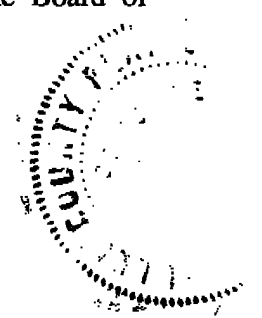
4.11.1 A swimming pool and bath house has been constructed within that certain subdivision commonly known as the Lakes of Carroll Creek, which facilities are owned and operated by the Association and available for use by members of the Association.

4.11.2 There is hereby established a "Club Operating Fund" with respect to the operation and maintenance of said swimming pool and bath house (the "Club Assessment"), which shall be a part of the annual assessment set forth in this Section. The Club Assessment shall be charged against each Lot, regardless of whether a Dwelling Unit has been constructed upon said Lot. No Owner may waive or otherwise escape personal liability for the assessments provided for herein by nonuse of the pool, bath house, or Common Areas or by abandonment of the Owner's Lot.

4.11.3 The portion of the Annual Assessment attributable to the Club Operating Fund shall be established as follows:

(a) The Pool Committee shall establish a budget for the Club Operating Fund 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 presented to the Board of Directors at a meeting to be held not later than December 31st of each preceding calendar year. The Board of Directors shall post in the newsletter and on the Association web site 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) The 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, utilities, equipment, supervision, taxes, insurance and other items necessary or desirable in the opinion of the Board of Directors of the Association.



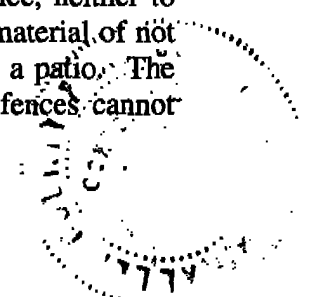
SECTION 5. ARCHITECTURAL CONTROL

5.1 **The Committee.** The Architectural Control Committee shall be comprised of such Owners as the Board of Directors of the Association designate by the Board from time to time or pursuant to such rule as established by the Board.

5.2 **Review - Prohibitions.** No building, fence, wall, swimming pool, hot tub, spa, flag pole, landscape retaining wall higher than two (2) feet above grade, or any other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition, change or alteration be made to a structure until the plans and specifications showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the Architectural Committee in writing as to the structure's harmony of external design and location in relation to the surrounding structures and topography in the Subdivision. The Committee's approval or disapproval as required in these covenants shall be in writing. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed or maintained upon any Lot, and no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent. Neither the Committee nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee to recover any damages or to require the Committee to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein. Notwithstanding anything to the contrary in the foregoing provisions, Developer shall retain sole control over the approval of all original construction of Dwelling Units in the Subdivision.

5.3 **Architectural Standards.** The following provides additional detail on specific items:

5.1.1 **Fences.** Chain link fences are NOT permitted. The only fencing permitted shall be a split rail (two rails high) or picket fence, neither to exceed four (4) feet in height, or a privacy fence of wood material of not more than six (6) feet in height surrounding or adjacent to a patio. The finish is to be stain or natural earth tone color. Privacy fences cannot



extend beyond the front line of the house. Front yard fences are not permitted except for corner lots. All fence posts (meaning the inside of the fence rails) are to be facing the homeowner's Lot. All fencing must be approved by the Committee in writing. All fencing shall conform to the standards and ordinances established by the local zoning authority or its successor agency.

- 5.1.2 **Pools.** No above-ground pool temporary or permanent which requires a filtration system or other above-ground pool which is more than six (6) feet in diameter and 18 inches deep shall be placed or maintained on any Lot. Any above-ground pool which is less than six (6) feet in diameter and 18 inches deep must be drained and stored in the garage after its daily use. No in-ground swimming pool, hot tub or spa, or any fence proposed to contain said pool, hot tub or spa, may be placed or maintained on any Lot without the prior written approval of the Committee and shall be subject to the pertinent portions of the applicable zoning ordinance. Any Owner of a Lot containing a swimming pool, hot tub or spa must cover said swimming pool, hot tub or spa with a cover that, at a minimum, will supersede any fencing required under the pertinent portions of the applicable zoning ordinance. Approval must be granted by the Appropriate Zoning Authority or any successor agency and the Committee before construction can start.
- 5.1.3 **Recreational Equipment/Structures.** Recreational equipment and structures are permitted in back yards only. Tree houses are not permitted. Swing sets must be made primarily of wood and/or wood products. Notwithstanding these guidelines, all recreational equipment/structures must be submitted to the Architectural Control Committee for approval.
- 5.1.4 **Communications Equipment.** No communications receiver, such as antennae, dishes or disks, etc. may be larger than two (2) feet in diameter or located more than six (6) feet from the Dwelling Unit, or extend six (6) feet above the highest point of the roof. No radio or television antenna with more than 30 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 solar panels (attached, detached or free-standing) are permitted on the Lot.
- 5.1.5 **Maintenance of Lots.** Each Lot, including, but not limited to, the Dwelling Unit and the exterior paint or roof condition, must be kept neat and sightly and in good care, and the landscaping upon such Lot shall not be permitted to become overgrown or unsightly. Such maintenance responsibilities include, but are not limited to, pruning and trimming all trees, shrubs, and landscaping on a routine basis, promptly removing snow and ice from all sidewalks and driveways located on an Owner's Lot, routinely mowing all grass areas located on an Owner's Lot, removing

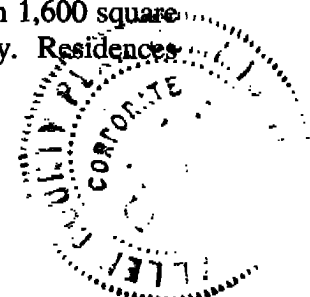
leaves, and keeping weeds to a minimum. The Board of Directors of the Association is empowered to adopt such rules and regulations which will establish minimum standards and criteria by which the landscaping, lawns and undeveloped portions of all Lots are to be maintained within the Subdivision. All Owners grant to the Association the right to undertake any maintenance, upkeep or landscaping of their Lots in a manner which is required pursuant to such rules adopted by the Board of Directors of the Association. All Owners further agree to reimburse the Association for any expense actually incurred in connection with such maintenance, upkeep or landscaping of a Lot and the Association is empowered to encumber said Lot with a lien pursuant to the process set forth in Section 4 of this First Amendment.

- 5.1.6 **Poles**. No clothesline or clothes poles, or any other free-standing, semi-permanent or permanent poles, rigs or devices, regardless of purpose, including a free-standing temporary or portable basketball pole shall be installed, erected, located or used on a Lot.
- 5.1.7 **Garbage, Trash and Laundry**. No Lot shall be used or maintained as a dumping ground for rubbish, debris or other unsightly materials or objects. Garbage and trash shall be placed in sanitary containers, which shall be concealed and contained within the Dwelling Unit. Additionally, no clothes, sheets, blankets, rugs, laundry or other related things may be hung out or exposed on any Lot.
- 5.1.8 **Use of Other Structures and Vehicles**. No structure of a temporary character, trailer, boat or boat trailer, camper or camping trailer, tent, shack, truck, camper shell, recreational vehicle, shed, barn kennel, gazebo, dog house, or other outbuilding shall be allowed, used or located on any Lot, or adjacent to any Lot, street or public right-of-way within the Subdivision at anytime, or used as a residence, either temporarily or permanently. A "truck" is defined for this purpose as one which is rated one-ton or greater.
- 5.1.9 **Additional Rules**. From time to time, the Board of Directors of the Association may adopt additional rules and guidelines pertaining to the restrictions and prohibitions for the design, construction, materials, elevation and topography of any improvement constructed upon a Lot and the maintenance of such Lot as provided pursuant to Section 5.1.5 above. Such rules and guidelines shall, to the extent non-inconsistent with the provisions of this Declaration, be considered part of this First Amendment.
- 5.1.10 **Amortization of Nonconforming Uses or Structures**. Any violation of the terms and conditions contained herein existing as of the Effective Date (as defined herein) of this Restatement, either as a result of the amendment of the Original Restrictions or by virtue of a variance from the Original

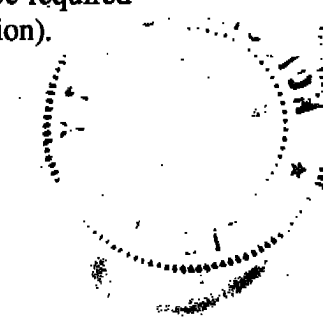
Restrictions granted, approved, or otherwise acquiesced in by the Developer, shall be permitted to continue to exist until the earlier of the following: (a) the Owner sells, transfers, conveys, or assigns the Owner's right, title, and interest in and to the Lot; (b) use of the nonconforming use or structure has been discontinued for a period of twelve (12) months or more, at which time the use or structure will be considered abandoned; (c) the nonconforming structure has been substantially damaged by fire or other cause.

SECTION 6. GENERAL PROVISIONS

- 6.1 **Use.** 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 not less than a two-car garage, which shall be built as part of the residence and attached to it.
- 6.2 **Time for Building Completion And Restoration.** Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such construction. No improvement which was partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
- 6.3 **Home Occupation.** No Lot shall be used for any purpose 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 indicated 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 the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling unit; and (d) no mechanical or electrical equipment is used provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation; and (e) baby sitting; and (f) day care. Daycare rules and regulations are governed by the State of Indiana, not the Association.
- 6.4 **Dwelling Size.** 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 2,350 square feet for a one-story residence, or less than 1,600 square feet on the ground floor of a residence that has more than one-story. Residences built prior to this amended square foot change are exempt.

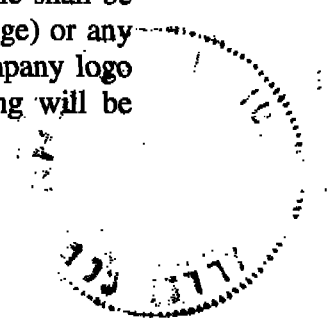


- 6.5 **Building Lines.** No structure shall be located on a Lot nearer to the Lot lines, than the minimum building setback lines shown on the Plat. Rear yard setback shall be 25 feet. ~~Minimum side yard setback shall be 7 feet.~~ In addition, no Dwelling Unit shall be located nearer than a distance of five (5) feet to an interior lot line; provided, however, the aggregate of both side yards shall be a minimum of twelve (12) feet.
- 6.6 **Minimum Lot Size.** No residence shall be erected or placed on a Lot having a width of less than 100 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 12,500 square feet.
- 6.7 **Building Materials.** All Dwelling Units and other permitted structures shall be constructed and kept in a substantial and good workmanlike manner and of new materials. All house fronts shall be constructed with thirty percent (30%) natural materials, except soffits, and all other sides shall be of natural material, vinyl, or wood grain siding. No roll siding, asbestos siding or siding containing asphalt or tar as one of its main ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lot, and no roll roofing of any description or character shall be used on the roof of any Dwelling Unit or other permitted structure on any of said Lots. All exterior building surfaces, materials and colors shall be approved by the Committee.
- 6.8 **Landscaping.** All Owners shall landscape, or cause to be landscaped, their Lot, at a minimum, in a manner so as to remain consistent with the aesthetic integrity of the landscaping contained on the Lots, as defined by the Association. Said landscaping shall be completed, or caused to be completed, by each Owner within one hundred eighty (180) days after the date of said Owner's certificate of occupancy, as issued by the Allen County Building Department, authorizing the Owner's occupancy of the house. Notwithstanding anything contained herein to the contrary, each Owner shall have planted at least twelve (12) shrubs (including four (4) planted at the front of the Lot) and shall have graded and seeded the entire Lot, excluding that part of any Lot covered by buildings, concrete, or appropriate landscape plantings.
- 6.9 **Landscape/Utility Easements.** Easements for the installation and maintenance of utilities and landscaping, screening and mounding across Lots 10 through 20 inclusive are reserved as shown on the Plat. Utilities and landscaping shall be installed by the developer and utility companies and maintained by the Lot Owners. No Owner of a Lot shall erect or grant to any person, firm or corporation, the right, license of 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).



- 6.10 **Utility Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown in the Plat and over the rear twenty (20) feet of each Lot. No owner of a Lot shall erect or grant to any person, firm or corporation, 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 three (3) wires and have a capacity of not less than one hundred (100) 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.
- 6.11 **Surface Drainage Easements.** Surface drainage easements and Common Area used for drainage purposes as shown on the Plat, including detention ponds, are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easements and common areas 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.
- 6.12 **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there 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 may otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells, musical instruments, 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.
- 6.13 **Garages.** All Dwelling Units must have at least a two-car attached garage.
- 6.14 **Signs.** No sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than one square foot or one sign of not more than five square feet, advertising a Lot for sale, political candidate signs or signs used by a builder to advertise a Lot during the construction and sales periods.

- 6.15 **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 Lot.
- 6.16 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose. Pets may not be left outside unattended for prolonged periods of time and must be restrained from running on other's property, including the Common Areas. An Owner shall be strictly liable for any damage or injury to any person, the Common Areas, any Lot, and/or any Dwelling Unit caused by his pet. The tethering of pets in an unfenced area does not constitute "attended." Pets should be walked in an area not common to residents, and pet leavings on the main grounds and walks should be picked up by the pet's owner and disposed of in a proper receptacle. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Subdivision upon ten (10) days' written notice from the Board to the respective Owner.
- 6.17 **Outside Storage.** No Lot shall be used or maintained as a dumping ground for rubbish (including, without limitation, dirt, leaves, yard waste, and trash). Garbage, trash and refuse shall be placed in sanitary containers, which shall be concealed and contained within the Dwelling Unit or otherwise visually screened so that said sanitary containers are not visible from the front of any Dwelling Unit in the Subdivision. Outside storage of firewood must be visually screened so that the firewood is no visible from the front of any Dwelling Unit. Any fencing or visual barrier constructed in connection with the outside storage of sanitary containers or firewood shall be subject to the approval of the Architectural Control Committee. No outside incinerators shall be kept or allowed on a Lot.
- 6.18 **Fires.** No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted to burn upon any street roadway or Lot in the Subdivision.
- 6.19 **Driveways.** All driveways from the street to the garage shall be poured concrete and not less than 16 feet in width.
- 6.20 **Vehicles and Parking.** No vehicles of any nature shall be parked on any portion of any Lot or other area within the Subdivision except on the surfaced parking area of a driveway located upon a Lot. No vehicle which is inoperable shall be habitually or repeatedly parked or kept on any Lot (except in the garage) or any street. Any vehicle used for employment purposes containing a company logo thereon must be kept parked in the driveway or garage. No parking will be

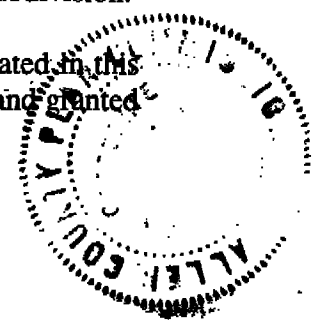


permitted on sidewalks at any time; nor shall any parking be permitted on any street or roadway within the Subdivision, except as follows:

- 6.20.1 This section shall not apply to emergency vehicles or to construction, service, and delivery vehicles parked in a street or roadway for periods necessary to perform the service or delivery in question;
- 6.20.2 A moving van shall be permitted to park in the streets or roadways located in the Subdivision, but only for the purpose of loading and unloading and at no time shall same park in the during the hours of 9:00 p.m. to 6:00 a.m.;
- 6.20.3 Vehicles necessary for the maintenance, care or protection of a Lot shall be permitted to park in the streets or roadways located in the Subdivision but only for the time period during which the maintenance, care or protection is being provided;
- 6.20.4 Notwithstanding anything contained herein to the contrary, Owners and their respective guests and invitees shall have the right, at reasonable times before, during, and after functions held by an Owner at his or her Dwelling Unit to the extent that the driveway located upon the Lot has insufficient parking to accommodate such vehicles.

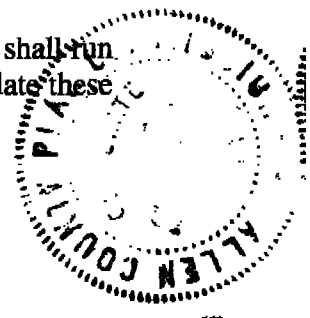
If, after the Association's giving such notice as may be required by Indiana Statutes, as amended from time to time, an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Subdivision, the Association shall have the option and right to have the vehicle towed away at the vehicle owner's expense. By this provision, each Owner 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 Lot 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, or visitors as owner(s) of the vehicle (as such, the Lot Owner is liable for the vehicle violations of his/her family, lessees, guests, and visitors), and the charge shall be collected as provided in this Section.

- 6.21 **Subdivision of Lots.** No Lot or combination of Lots may be further subdivided unless seventy-five percent (75%) of the Lot Owners have approved by signing an instrument of approval and until said approval has been obtained from the Appropriate Zoning Authority.
- 6.22 **Individual Utilities.** No individual water supply system or individual sewage disposal system shall be installed, maintained or used on a Lot in the Subdivision.
- 6.23 **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 or 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.

- 6.24 **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.
- 6.25 **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 only, and Developer is responsible for any external utility infrastructure development to the Lot boundary, 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 an aggrieved Owner.
- 6.26 **Certificate of Occupancy.** Before a Lot may be used or occupied, the Owner shall first obtain from the Allen County Zoning Administrator the improvement location permit and certificate of occupancy required by the Allen County Zoning ordinance or its successor agency.
- 6.27 **Enforcement.** The Association and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the terms of these covenants and restrictions. Failure by the Association, or by any Owner, to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter. To the extent the Association recovers a money judgment against an Owner, such judgment shall be a charge on his Lot and a continuing lien thereon. In addition to its other rights and remedies, the Association may file publicly a lien of non-compliance against the violating party and his Lot.
- 6.28 **Invalidation.** Invalidation of any one of these Restrictions by Judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 6.29 **Duration of covenants.** The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date these



covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these covenants and restrictions may be amended by an instrument signed by an authorized officer of the Association following a meeting of the Owners in which a quorum is present and three-fourths (3/4) of all Owners, either at the meeting or within thirty (30) days thereof, give their written consent to such amendment. All such amendments must also be approved by the Allen County Plan Commission or its successor agency.

SECTION 7. 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 restrictions covenant, limitation, easement, condition, reservation lien, or charge new or subsequently imposed by the provisions of this First Amendment, 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.

SECTION 8. 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 Lots within the subdivision. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. A violation of this section is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Sidewalks must be maintained and repaired within 30 days of noticeable deterioration or upon written notice from the Board.

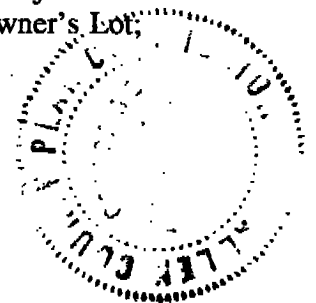
SECTION 9. FLOOD PROTECTION GRADES. In order to minimize potential damage to residences from surface water, minimum flood protection grades are established as shown below:

Lots 50, 51	839.5
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All residences shall be constructed so that minimum elevation of a first floor, or the minimum sill elevation of any opening below the first floor equals or exceeds the minimum flood protection grade established.

SECTION 10. GEOTHERMAL SYSTEMS.

- 10.1 **General.** Owners of Lots in the Subdivision shall have the right to install and maintain geothermal heating and cooling systems with a loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lots ("Systems") to service the Dwelling Unit located on the Owner's Lot; provided, however, that any System must:



- 10.1.1 Satisfy regulations of the Indiana Department of Natural Resources and all applicable federal, state, and local laws, ordinances, and regulations;
- 10.1.2 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;
- 10.1.3 Be installed according to approved guidelines of and by technicians certified by the International Ground Source Heat Pump Association; and
- 10.1.4 Be approved by the Architectural Control Committee in the manner provided in Section 5 hereof.

Any Owner using property owned by the Association for the purpose as described in this Section 10.5 agrees to indemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigations expenses) cause by, or resulting from, the Owner's use of association property in connection with the Systems.

- 10.2 **Nonliability**. Notwithstanding anything contained herein to the contrary, the Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any pond or other bodies of water within the Subdivision.

IN WITNESS WHEREOF, these Restrictions were executed as of the date set forth above.

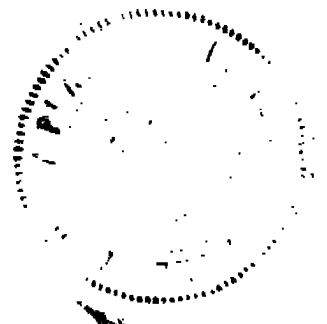
CARROLL CREEK DEVELOPMENT
COMPANY, INC.

By: _____

J. Andrew Norton
Pres.

Its: _____

President



STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared J. Anderson Norton, the President of Carroll Creek Development Company, Inc., and acknowledged the voluntary execution of the above and foregoing instrument on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 10th day of November, 2008.

Janet C. Harris
Janet C. Harris, Notary Public

My Commission Expires: June 8, 2016

My County of Residence: Durham

Prepared by and...
I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.
Todd Ramsey
(name printed, stamped or signed w/print)

