

#202096652
RECORDED
11/19/2002 15:30:33
RECORDER
PATRICIA J CRICK
ALLEN COUNTY, IN

**CORRECTED AND AMENDED
DECLARATION OF CONDOMINIUM OWNERSHIP
OF
THE COVES OF CARROLL CREEK**

THIS DECLARATION, made this 13th day of November, 2002, by CJB THE COVES, L.L.C., an Indiana limited liability company (the "Declarant"),

Doc. No. 202096652
Receipt No. 36625
F. C.
DCFD 3.00
MISL 130.00
MISL 1.00
Total 134.00

02 20548
AUDITORS NUMBER

RECITALS

A. Declarant is the sole owner of fee simple title to the real estate, and such appurtenant easements and interests that benefit such real estate, located in Fort Wayne, Indiana, Allen County, Indiana, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein (collectively, the "Real Estate").

B. Declarant desires to subject the Real Estate to an Horizontal Property Regime under the general development plan as depicted on **Exhibit "B"** (the "General Development Plan"). ORIGINAL DECLARATION DOCUMENT NO. 201056271

C. Declarant desires to implement the Horizontal Property Regime as an "expandable condominium" under the procedures and subject to the terms provided by Indiana Code 32-1-6-12.1 of the Act (as defined below), and to convert portions of the Real Estate, from time to time, to a condominium as provided by the Horizontal Property Law of the State of Indiana.

DECLARATION

1. **Definitions.** The following terms, as used in this Declaration shall mean the following, unless the context clearly requires otherwise:

"Act" means the Horizontal Property Law of the State of Indiana, Indiana Code 32-1-6-1, et seq., as amended. The Act is incorporated herein by reference.

"Applicable Date" means the earliest of (a) five (5) years from the date of the sale of the first Condominium Unit in The Coves of Carroll Creek Condominiums; or, (b) four (4) months after seventy-five percent (75%) of the Condominium Units that may be developed on the Real Estate have been conveyed to purchasers, or (c) the date Declarant files of record in the Office of the Recorder of Allen County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Paragraph A of this Declaration, to expand or further expand The Coves of Carroll Creek Condominiums.

"Association" means The Coves of Carroll Creek Owners Association, Inc., an Indiana nonprofit corporation, being the Association of Owners of The Coves of Carroll Creek Condominiums particularly described in Paragraph 12 hereof.

AUDITORS OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.

NOV 19 2002


AUDITOR OF ALLEN COUNTY

134
20

"Board of Directors" or "Board" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Owners in accordance with the By-Laws.

"Building" means any structure located on a portion of the Real Estate in which one or more Condominium Units are located, including any additional structure containing one or more Condominium Units which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. The initial and additional Buildings to be built shall be more particularly described and identified on Plans to be prepared and filed with the Office of the Recorder of Allen County and in Supplemental Declaration(s) to this Declaration.

"By-Laws" means the By-Laws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration and incorporated herein by reference as **Exhibit "C"**.

"Constitutional Majority" means those Owners eligible to cast not less than sixty-seven percent (67%) in the aggregate of the Percentage Vote eligible to be cast by the Owners.

"Common Areas" means the common areas and facilities defined in Paragraph 6 of this Declaration.

"Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Common Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

"Condominium Unit" means each one of the living units constituting The Coves of Carroll Creek Condominiums, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration, and each additional living unit that may be submitted and subjected to the Act and this Declaration by Supplemental Declaration(s) as herein provided, together with the undivided interest in the Common Areas and Limited Common Areas appertaining to each such unit.

"The Coves of Carroll Creek" or "The Coves of Carroll Creek Condominiums" means the name by which the Property and Regime shall be known.

"Declarant" means CJB The Coves, L.L.C., an Indiana limited liability company, and any successors and assigns of it whom it designated in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

"Insurance Trustee" means such bank with trust powers authorized to do business in Allen County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards.

“Limited Common Areas” means the limited common areas and facilities defined in Paragraph 7 of this Declaration.

“Majority of Mortgagees” means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least fifty-one percent (51%) of the Percentage Vote allocated to Mortgaged Units.

“Majority of Owners” and “Majority of the Percentage Vote” means the Owners entitled to cast more than fifty percent (50%) of the Percent Votes in accordance with the applicable percentages set forth in this Declaration.

“Mortgaged Unit” means a Condominium Unit that is subject to the lien of a mortgage held, insured or guaranteed by a Mortgagee.

“Mortgagee” means the holder, insurer or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the By-Laws.

“Owner” means a Person who or which owns the fee simple title to a Condominium Unit.

“Percentage Interest” means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Common Areas appertaining to each Condominium Unit as specifically expressed in Paragraph 8 of this Declaration.

“Percentage Vote” means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof.

“Person” means an individual, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof.

“Plans” means the General Development Plan (which depicts the Real Estate that Declarant intends to subject to the Act, the areas into which expansion of the condominium development may be made, and the general plan of development), and the floor plans (showing the layout, elevation, location, unit numbers and dimensions of the initial and subsequent Buildings and Condominium Units), that shall be prepared and certified by a registered architect or licensed professional engineer and shall certify that such Plans are accurate copies of portions of the plans of the building(s) as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of the building(s), and shall include a verified statement by registered architect or licensed professional engineer that such plans fully and accurately depict the layout, location, unit numbers and dimensions of the condominium units as built, which shall be recorded prior to the first conveyance of any condominium unit, and as such plans may be supplemented and amended to reflect the addition of Buildings and Condominium Units as contemplated by Paragraph 16.

“Property” means those portions of the Real Estate and appurtenant easements, the Condominium Units, the Building(s), and all other improvements, and property of every kind and nature whatsoever, real or personal, that shall be formally subjected to the Regime upon filing of the Plans and that shall be used in connection with the operation, use and enjoyment of The Coves of Carroll Creek Condominiums, excluding the personal property of Owners.

“Regime” means The Coves of Carroll Creek Condominiums, a horizontal property regime created by this Declaration pursuant to the Act.

“Restoration” means construction, reconstruction, building, or rebuilding of the Buildings, the Condominium Units, the Common Areas and the Limited Common Areas to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, where appropriate, new materials of like kind and quality.

“Supplemental Declaration” means any supplement or amendment to this Declaration that may be recorded by Declarant and that imposes and extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act or this Declaration.

“Tract” means such portions of the Real Estate that shall be identified as Tract 1, Tract 2 and continuing successively, as have, as of any given time, been subjected to the Act by this Declaration, by a Supplemental Declaration, and filing of the Plans as herein provided.

2. **Declaration.** Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. **Description of Buildings.** As depicted on the General Development Plan, there shall be Buildings containing Four (4) Condominium Units each on the Real Estate. In Supplemental Declarations, such buildings shall be identified on the Plans as Building 1, Building 2, etc. The flood protection grades for Buildings 1, 2, 17, and 18 shall be 838.1. The flood protection grades for Buildings 6, 7, 19, 20, 21, and 22 shall be 838.2. A description of the initial Buildings and the Condominium Units contained therein shall be set forth in the Plans, copies of which shall be attached to the First Supplemental Declaration, and subsequent Buildings and Condominium Units shall be identified in subsequent Supplemental Declarations.

4. **Legal Description.** Each Condominium Unit shall be identified on the Plans by a distinct number which identifies the Condominium Unit. The legal description for each Condominium Unit shall consist of the number for such Condominium Unit as shown on the Plans, and shall be stated as “Condominium Unit (the identifying number) in The Coves of Carroll Creek Horizontal Property Regime”.

5. **Description of Condominium Units.**

(a) **Appurtenances.** Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, without limitation, all fixtures, facilities, utilities, equipment,

appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. The spaces attached to each Building designated garage and storage spaces and the driveways leading to such spaces as shown on the Plans are considered a part of and for the exclusive use of the Condominium Unit of such Building to which such garage and storage space appertains as indicated on the Plans, and shall be considered as Limited Common Area hereinafter defined in Paragraph 7. The interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls (except load-bearing walls) and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

(b) **Boundaries.** The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction. The vertical boundaries shall run from the upper surfaces of the interior, unfinished surfaces of the lowest floors or subfloors to the interior unfinished surfaces of the highest ceilings and the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior load-bearing walls (including windows and doors) of each Condominium Unit. In the event any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit, because of inexactness of construction, settling after construction, Restoration, or any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

6. **Common Area and Facilities.** "Common Areas" mean (a) the land on which the Buildings shall be located, (b) the foundations, roofs and exterior wall surfaces of the Buildings, (c) the clubhouse including all furniture and fixtures, pool, yards, gardens, open spaces, landscaping, lakes, ponds, storm water pipes, inlets, manholes and other storm drainage improvements and facilities, woodland areas, sidewalks, streets, roads, driveways, and parking areas, except to the extent the same are otherwise classified and defined herein as Limited Common Areas, (d) central electricity, telephone, cable, gas, water, sanitary sewer lines, mains serving the Condominium Units, (e) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other Common Areas unless separately metered to a particular Condominium Unit, (f) master television antenna or other telecommunication systems with connecting wiring and outlets to each Condominium Unit, if any, (g) pipes, ducts, insulation, electrical wiring and conduits and public

utilities lines that serve more than one Condominium Unit, (h) the recreational facilities, if any, located on the Tract, (i) subfloors, ceilings and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units, walls and floors between the garage and the Condominium Unit, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas, (j) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Condominium Units, including those areas and facilities expressly classified and defined herein as Limited Common Areas but excluding such areas that are part of a Condominium Unit.

7. **Limited Common Areas and Facilities.** "Limited Common Areas" means those Common Areas and facilities of a Tract to which use thereof is limited to a Condominium Unit Owner as follows:

(a) The entranceways through which access to a Condominium Unit is obtained shall be limited to the use of the Condominium Unit served by such entranceway.

(b) Balconies, patios, decks and porches, storage areas, if any, together with any area around such patios, deck or porch or in the garage area specifically shown and designated on the Plans and any fences and gates therein enclosing or surrounding the same, and the driveways and sidewalks serving a particular Condominium Unit to which there is direct access shall be limited to the use of the Condominium Unit served by such facilities.

(c) Air conditioning compressors, if any, attached to, or located in, a Building are limited to the use of the Condominium Units to which they are connected.

(d) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.

(e) Any other areas designated and shown on the Plans as Limited Common Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

8. **Ownership of Common Area and Percentage Interest.** Each Owner shall have an undivided interest in the Common Areas and Limited Common Areas equal to such Owner's respective Percentage Interest. The Percentage Interest in the Common Areas and Limited Common Areas appertaining to each Condominium Unit shall be set forth in an Exhibit to be attached to a Supplemental Declaration. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of The Coves of Carroll Creek Condominiums. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Common Areas shall be of a permanent nature and shall not be altered except in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to The Coves of Carroll Creek Condominiums and the Association upon which the Owners are entitled to vote.

9. **Encroachments and Easements for Common Areas.** If, by reason of the location, construction, Restoration, settling or shifting of a Building, any Common Area or Limited Common Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event, an easement shall be deemed to exist and run to the Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Common Area.

Each Owner shall have an easement in common with the Owner of all other Condominium Units to use all pipes, wires, ducts, flues, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Condominium Unit and any Limited Common Area designated for use in connection therewith, and shall have the right to the horizontal and lateral support of his Condominium Unit. Such rights shall be appurtenant to and pass with the title to each Condominium Unit.

10. **Casualty and Restoration.** In the event of damage or destruction of the Property by fire or other cause, the following provisions shall be applicable:

(a) **Partial Destruction.** In the event that less than all of the Buildings are completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Property to be promptly repaired and restored in accordance with this Declaration and the original Plans and specifications. The proceeds of the insurance carried by the Association shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Condominium Units based on their Percentage Interest. If any Owner, or Owners, refuses or fails to make the required payments, the other Owners shall (or the Association, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

(b) **In the Event of Complete Destruction.** In the event of complete loss or destruction of all the Buildings, this Regime shall terminate, the Property shall be deemed owned in common by the Owners and the provisions of Section 28 of the Act shall apply.

(c) **Determination of Complete Destruction.** It shall be conclusively presumed that complete destruction of all Buildings did not occur unless it is determined by a Constitutional Majority at a special meeting of the Association held within thirty days following the date of damage or destruction that all Buildings have been completely destroyed together with written consents of the Majority of Mortgagees.

11. **Condemnation.** If at any time or times during the continuance of this Regime, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) **Representation.** The Association, or the Insurance Trustee, if so appointed by the Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph.

(b) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Insurance Trustee as trustee for all Owners and their Mortgagees according to their respective interests therein.

(c) **Total Taking.** In the event that the entire Property is taken or condemned, or sold or otherwise disposed of or in lieu of or in avoidance thereof, this Horizontal Property Regime shall terminate. The Condemnation Award shall be apportioned among the Owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Insurance Trustee and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Insurance Trustee shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) **Partial Taking.** In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Horizontal Property Regime shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) the total amount allocated to the taking of or injury to the Common Areas and Limited Common Areas shall be apportioned among the Owners in proportion to their respective Percentage Interests;

(ii) the total amount allocated to the severance damages shall be apportioned to the Owners of those Condominium Units that were not taken or condemned;

(iii) the respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner of the particular Condominium Unit involved; and

(iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Insurance Trustee determines to be equitable in the circumstances.

If any allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any assessments made pursuant to this Declaration or the By-Laws.

(e) **Reorganization.** In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by the Majority of Mortgagees.

(f) **Restoration and Repair.** Anything to the contrary in this Paragraph 11 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof and any Condominium Unit, Common Area or Limited Common Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by the Majority of Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Common Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Common Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in

accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Paragraph 10(a) shall apply.

(g) **Alternative Valuation in Event of Total Taking.** In the event the amount of the Condemnation Award is determined in negotiation, judicial decree or otherwise according to the value of individual Condominium Units as separately determined, the Condemnation Award shall be apportioned, with respect to such Condominium Units, according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Common Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

12. **Association of Owners.** Subject to the rights of Declarant reserved in paragraph 19 hereof, the maintenance, repair upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner shall, automatically upon becoming an Owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board as defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the By-Laws. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purposes of the Statute (as defined in the By-Laws) and of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner for any other purpose (unless he is actually an Owner and thereby a member of the Association).

An individual designated by an Owner that is not a natural Person shall be deemed a member of the Association for the purpose of qualifying for membership on the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property (exclusive of the Condominium Units except to the extent herein or in the By-Laws otherwise provided).

13. **Covenants and Restrictions.** The covenants and restrictions applicable to the use and enjoyment of the Condominium Units, the Common Areas and Limited Common Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or the Association. Present or future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be

entitled to damages for and injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the date described in Paragraph 16 hereof as the date upon which Declarant's right to expand the Property and The Coves of Carroll Creek Condominiums terminates, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of a Tract, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the renovation and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conduct of any business or activity attendant thereto, including, without limitation, model Condominium Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

14. **Amendment of Declaration.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Notice.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.

(c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) **Adoption.** Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

Notwithstanding anything to the contrary contained herein, there shall be no amendment of the By-Laws or the Declaration, nor any significant change in the basic exterior style of any building without the prior approval of the Advisory Plan Commission of Allen County and the appropriate member government through the planned development process, which includes the possibility of consideration as a minor modification by the Administrative Officer of that jurisdiction.

(e) **Restrictions on Amendments.**

(i) The unanimous consent of all Owners and the approval of all holders of all liens affecting any of the Condominium Units shall be required to (1) terminate the Regime, or (2) alter interests in the Common Areas or Limited Common Areas, except as otherwise provided in Paragraph 16 hereof.

(ii) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees shall be required to amend materially any provisions of the Declaration, By-Laws or equivalent organizational documents of the Regime or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

- (A) voting rights;
- (B) increases in assessments that raise the previously assessed amount by more than twenty five (25%) percent, assessment liens or subordination of such liens;
- (C) reductions in reserves for maintenance, repair and replacement of the Common Areas;
- (D) hazard or fidelity insurance requirements;
- (E) responsibility for maintenance and repair;
- (F) expansion or contraction of the Regime or the addition, annexation or withdrawal of property to or from the Regime except as provided for in Paragraph 16;
- (G) redefinition of the boundaries for any Condominium Unit;
- (H) the interest in the Common Areas or Limited Common Areas;
- (I) convertibility of Condominium Units into Common Areas or Common Areas into Condominium Units;
- (J) imposition of any restrictions on the leasing of Condominium Units;
- (K) imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium Unit.
- (L) restoration or repair of the Property (after damage or partial condemnation in a manner other than that specified in the Declaration, By-laws or equivalent documents of the Regime, or as prescribed pursuant to the Act.

(iii) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees shall be required to amend any provisions included in the Declaration, By-Laws or the equivalent organizational documents of the Regime that are for the express benefit of Mortgagees.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Allen County, Indiana, and such amendment shall not become effective until so recorded.

(g) **Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made to implement expansion of the Property and The Coves of Carroll Creek Condominiums pursuant to Declarant's reserved rights to so expand the same as set forth in Paragraph 16 hereof, (iii) such amendment or modification is necessary to conform this Declaration to requirements of applicable public authorities, including but not limited to the Advisory Plan Commission of Allen County, (iv) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (v) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (vi) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be.

Each deed, mortgage or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 14 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

15. **Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and

regulations as each may be amended or supplemented from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

16. **Expandable Condominium and Declarant's Reserved Option Not to Expand.** The Coves of Carroll Creek Condominiums is and shall be an "expandable condominium", as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and The Coves of Carroll Creek Condominiums in accordance with the provisions of the Act and the following provisions:

(a) The real estate that shall be described and defined as Tract 1 in the First Supplemental Declaration shall be the real estate subjected to the Regime by this Declaration and shall constitute the first phase of the General Development Plan, containing such number of Buildings as Declarant shall elect, with four Condominium Units each. The Real Estate described in Exhibit "A" is the area into which expansion of The Coves of Carroll Creek Condominiums may be made by Declarant. The maximum number of Condominium Units that may be developed on the Real Estate shall be eighty-eight (88). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, The Coves of Carroll Creek Condominiums may be expanded by Declarant in one (1) or more additional phases by the execution and recording of one (1) or more Supplemental Declarations; but no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding The Coves of Carroll Creek Condominiums to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as additional phases are developed within five (5) years and all such phases are added to the horizontal property regime within ten (10) years from date of recording hereof. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand The Coves of Carroll Creek Condominiums to any portion of the Real Estate that Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental Declarations as provided above.

(b) The Percentage Interest that will appertain to each Condominium Unit in The Coves of Carroll Creek Condominiums as The Coves of Carroll Creek Condominiums may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest that appertains to each of the Condominium Units included in this original Declaration) shall be equal and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been subjected and submitted to this Declaration and then constitute a part of The Coves of Carroll Creek Condominiums.

(c) Simultaneously with the recording of Supplemental Declarations expanding The Coves of Carroll Creek Condominiums, Declarant shall record Plans as required by the Act. Such Supplemental Declarations shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas and Limited Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when each Supplemental Declaration incorporating those changes has been recorded.

(d) When the Supplemental Declaration incorporating the creation or addition of Condominium Units or expansion of Common Areas and Limited Common Areas, or both, is recorded, all liens including but not limited to mortgage liens shall be released as to the Percentage Interests in the Common Areas and Limited Common Areas described in this Declaration and shall attach to the reallocated Percentage Interests in the Common Areas and Limited Common Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interests appertaining to additional Condominium Units being added by the Supplemental Declaration are subject to mortgages and liens upon the recordation of the Supplemental Declaration.

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit to the percentages set forth in each Supplemental Declaration recorded pursuant to this Paragraph 16. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a consent to and acknowledgment of, and grant of (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded Supplemental Declaration.

(f) Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each recorded Supplemental Declaration, as follows:

(i) The portion of the Real Estate described in each such Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each Supplemental Declaration and upon the recording thereof such Percentage Interest shall thereby be and be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each recorded Supplemental Declaration.

(iii) Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage

interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall, upon the recording of each Supplemental Declaration, be divested by so much as the reduced percentage set forth in such Supplemental Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded Supplemental Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each deed, mortgage or other instrument affecting a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas and Limited Common Areas included in land to which The Coves of Carroll Creek Condominiums is expanded by a recorded Supplemental Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and Limited Common Areas and the ownership of any such Condominium Unit and lien of and such mortgage shall automatically include and attach to such additional Common Areas and Limited Common Areas as such Supplemental Declarations are recorded.

(vi) Each Owner shall have a perpetual easement appurtenant to his Condominium Unit for the use of any additional Common Areas described in any recorded Supplemental Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted in the Limited Common Areas to the Owners of specific Condominium Units as may be provided in such Supplemental Declaration, and each Owner of a Condominium Unit described in any recorded Supplemental Declaration shall have a perpetual easement appurtenant to his Condominium Unit for the use of all Common Areas (except Limited Common Areas) described in this Declaration as supplemented or amended prior to the date of such recorded Supplemental Declaration.

(vii) The recording of any Supplemental Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Supplemental Declaration are and shall be deemed to be in accordance with the Act and, for the purposes of this Declaration and the Act, any change in the respective Percentage Interests in the Common Areas and Limited Common Areas as set forth in each Supplemental Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Paragraph 16 to comply with the Act as it may be amended from time to time.

(x) Assessments, method of payment and enforcement thereof on Condominium Units built as an expandable Condominium Unit pursuant to any Supplemental Declaration shall be governed by the same provisions pertaining to Assessments as set forth in the By-Laws.

(xi) Voting rights of an Owner in an expandable Condominium Unit created by Supplemental Declaration shall vest upon becoming a Member of the Association as prescribed by the By-Laws.

(g) In the event Declarant elects to expand the Property and The Coves of Carroll Creek Condominiums, all improvements constructed on the Real Estate shall be consistent with the General Development Plan and the improvements constructed on each expansion tract (one or more of which may be referred to herein in the singular as the "Expansion Parcel") shall be consistent with the improvements then located on the Real Estate and forming a part of the Regime in terms of structure type and the quality of construction. No lien arising in connection with Declarant's ownership of, and construction of improvements on, any such Expansion Parcel shall adversely affect the rights of existing Owners or the priority of first mortgages on Condominium Units in the existing Property. All taxes and other assessments relating to the Expansion Parcel covering any period prior to the addition of the Expansion Parcel shall be paid by or otherwise satisfactorily provided for by Declarant.

17. **Granting and Amendment of Easements.** After the Applicable Date, the Board of Directors is granted the authority to grant such easements and to amend easements encumbering the Common Areas upon such terms and conditions and for such consideration as they deem appropriate.

18. **Reservation of Rights and Restrictions to the Use of the Common Areas; Easements for Public Utility Services and Facilities; Other Easements and Encumbrances.**

(a) If, at any time, and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration and such portion or portions of the Real Estate not so subjected to this Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portions of the Real Estate, including without limitation their families, tenants and guests, shall have the benefit of such portion of the Common Areas comprising the streets, driveways and other roads and utilities for the use of the Persons occupying such dwelling units upon the same terms and conditions as the owners of the Condominium Units, their families, tenants and guests. The owner or owners of such portions of the Real Estate shall then pay for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage and based on the number of dwelling units so entitled to use such facilities in the proportion that the number of dwelling units on the Real Estate exclusive of Condominium Units on any

Tract bears to the sum of (i) such number of dwelling units plus (ii) the number of Condominium Units. The owner or owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time and in the same manner as the Owners of Condominium Units pay their assessments to the Association.

(b) Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Common Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing all customary and necessary public utility facilities and installations to serve the Property and any portions of the Real Estate that are not part of the Property, including but not limited to water, sanitary sewer, electricity, telephone, cable television or other telecommunication services, as originally installed or as such may be improved or modified from time to time; to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate that are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate that are not part of the Property; to make sidewalk improvements, and repairs thereto, within the Property and any such portions of the Real Estate that are not part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate that are not part of the Property. The foregoing easement shall be a transferable easement, and, as reasonably requested by public or private utility companies or other applicable Persons, Declarant may at any time and from time to time grant and convey such easements by separate instruments to establish and confirm such easement rights to the satisfaction of such public or private utility companies or other Persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Common Areas, to supply utility and telecommunication services to the Property and any portions of the Real Estate that are not part of the Property and to permit public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Common Areas of The Coves of Carroll Creek Condominiums in the performance of their duties.

(c) The streets and roads of the Property shall be privately owned and maintained by the Owners as an element of the Common Areas. In addition, use of the private streets and roads shall be limited to rights of ingress and egress as provided in Paragraph 9 above, and otherwise allowed by this Declaration. Sidewalks shall be installed on both sides of Sweetwater Drive, Crosswinds Court, and Water's Edge Way. Vehicular parking may be allowed on only one-side of the right of way of the streets and roads of the Property, as designated by the Association in its sole and absolute discretion. All vehicular parking shall be strictly limited to those areas specifically set aside and designated as parking areas in the Plans or in the driveways and aprons appurtenant to each Condominium Unit.

(d) All streets within this development are private streets and have not been dedicated to the public for acceptance and maintenance. Acceptance of the street rights-of-

way and their improvements by the public for maintenance shall not occur unless repaired, or replaced to the standards of the accepting body in effect at the time of dedication and acceptance. The accepting body shall not be responsible for any costs incurred in said construction, reconstruction, repair or replacement. This Declaration runs with the land and shall be recorded in such form as is approved by the Allen County Plan Commission and the following provisions shall apply to the private streets within this Development:

(i) The Board of Commissioners of Allen County shall never be obligated to accept a public dedication, deed, or any other conveyance of any private street in this development.

(ii) The Allen County Highway Department shall never be obligated to maintain or repair any private street within this development, and the Allen County Highway Department shall never be required to accept any private street in this development into the Allen County Highway Maintenance Program.

(iii) A legally-formed community association comprised of all owners of lots in the Development, as well as each such owner individually, shall be jointly and severally obligated to maintain and repair each private street in this Development.

(iv) The Development's community association and all owners of lots in the Development should jointly and severally indemnify and hold harmless Allen County, Indiana, the Board of Commissioners of Allen County, and the Allen County Plan Commission, against any loss, damage, or liability arising from claims or suits for personal injury or property damage involving the design, construction, use or maintenance of any private street in this Development.

(v) While the use of a private street in this Development may be restricted to owners of lots in the Development, or their invitees and licensees, an express easement is hereby granted to public and quasi-public agencies for use of such private streets by emergency, utility, and school vehicles and personnel, and for any other purpose the Allen County Plan Commission reasonably believes is necessary or appropriate.

19. **Initial Management.** As set forth in the By-Laws, the Initial Board of Directors consists and will consist of Persons selected by Declarant until the Applicable Date. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than the Applicable Date, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Common Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement

remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

The Initial Board may extend the management agreement beyond the Applicable Date providing the contract includes a right of termination without cause that the Association can exercise at any time after the Applicable Date. Any professional management contract, including without limitation any such contract with the Declarant, shall not require the payment of any penalty or an advance notice of more than ninety (90) days as a condition to the right of termination. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

20. **Assessments and Limitation on Declarant's Liability for Assessments.** Owners are obligated to contribute pro rata in the same percentages as their established Percentage Interest in Common Areas and Limited Common Areas set forth in Paragraph 8 of this Declaration to the usual and ordinary maintenance and replacement reserve fund to assure continuous and adequate maintenance of The Coves of Carroll Creek Condominiums as prescribed by the Act, and the assessment procedures and the method of collection and enforcement set forth under Article VI of the By-Laws attached to this Declaration. Provided, however, Declarant or its successors in interest, as an Owner, shall be excused from payment of assessments from the date this Declaration is recorded until the first day of the twenty-fourth (24th) calendar month following the month in which the closing of the sale of the first Condominium Unit in any Tract occurs; such provision shall also apply to assessments for Condominium Units owned by Declarant in Buildings located in subsequent Tracts committed to the Regime by Supplemental Declarations. Provided, further, that if the annual expenses of the Owner's Association incurred under the assessment procedure exceed the amount assessed against the other Unit Owners (excluding the Declarant), then the Declarant or its successor shall pay the excess required during this twenty-four (24) month period on an annual basis. Prior to the Applicable Date, Declarant shall bear all expenses incurred with respect to any Tract arising out of construction or other activities on any portion of the Real Estate not included in that Tract, including but not limited to road damage and clean-up of debris caused by construction traffic, connection to any utility lines or mains located on that Tract and damage to, or deterioration of, grass, trees, fences or other portions of the Property due to construction off site or the state of areas under development.

21. **Sale or Lease of Condominium Unit by Owners.**

(a) **Lease.** It is in the best interests of all the Owners that those persons residing in The Coves of Carroll Creek Condominiums have similar proprietary interests in their Condominium Units and be Owners. For the purpose of maintaining the congenial and residential character of The Coves of Carroll Creek Condominiums, no Owner including the Declarant shall lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit unless such lease is in writing and is for a term in excess of six (6) months. Any such lease shall be made explicitly subject to the terms of this Declaration and the By-Laws.

(b) **Sale.** The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell or lease his Condominium Unit free of any such restriction.

(c) **Statement of Regular or Special Assessments.** No less than five (5) business days prior to the sale of any Condominium Unit by an Owner, other than the Declarant, such Owner must request the Board of Directors to issue a written statement of all assessed and unpaid Regular and Special Assessments due from such Owner in a form suitable for recording. The Board of Directors may, by an instrument of incumbency authorize one or more members of the Board, or the Treasurer of the Association, to sign such written statement. The recording of such written statement with a Unit Deed shall operate to discharge the Unit from any lien for any other Regular and Special Assessments unpaid as of the date of such statement.

22. **Right of Action.** Subject to the provisions of Paragraph 28, the Association and any aggrieved Owner (as further defined herein) shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right against the Association.

For purposes of this Declaration an "aggrieved Owner" shall mean an Owner whose rights are affected or infringed by any such alleged failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors in a manner different from the rights of all other Unit Owners. Any Owner who alleges that he is an "aggrieved Owner" shall first notify the Board of Directors of such Owner's aggrieved status and request a special meeting of the Board of Directors to be held within thirty (30) days of such request (or within five (5) days in an emergency situation) to establish to the Board and the Association that such Owner is "aggrieved" within the meaning hereof, prior to the commencement of any right of action commenced hereunder.

23. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of any Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

24. **Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Common Areas or by abandonment of his Condominium Unit.

25. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

26. **Rules of Interpretation.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the

masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

27. **Floor Plans.** The Plans setting forth the layout, location, identification numbers, and dimensions of the Condominium Units and the Property shall be incorporated into Supplemental Declaration(s) by reference, and shall be filed in the office of the Recorder of Allen County, Indiana.

28. **Exculpation.** This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made on the part of Declarant ("Representations"), while in form purporting to be the Representations of Declarant, are nevertheless each and every one of them, made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally but are made and intended for the purpose of binding only the Tracts; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or its Directors and Officers, on account of this instrument or on account of, in connection with or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit as a condition to the acquisition thereof.

PLEASE SEE NEXT PAGE FOR SIGNATURE OF DECLARANT
AND
ACKNOWLEDGEMENT OF SAME

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

DECLARANT:

CJB THE COVES, L.L.C.

By: *Charles J. Burnworth*
Charles J. Burnworth, Managing Member

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

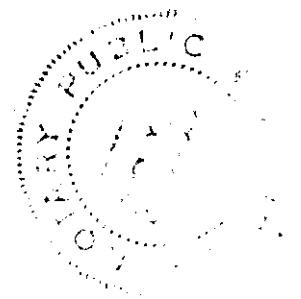
Before me, a Notary Public in and for said county and state, personally appeared **Charles J. Burnworth**, known to me to be the Managing Member of **CJB THE COVES, L.L.C.**, an Indiana limited liability company, and acknowledged the execution of the foregoing for and on behalf of said company.

Witness my hand and Notarial Seal this 13th day of November, 2002.

Jeana Mann
Jeana Mann, Notary Public

My Commission Expires: 10/8/2007

My County of Residence: Randolph



This instrument prepared by Jeana Mann, Assistant Controller, Sovereign Developments, L.L.C., Agent for CJB The Coves, LLC, 3417 West Bethel Avenue, Suite "E", Muncie, Indiana 47304, (765)286-4444

EXHIBIT A

[Perimeter Legal Description of Entire Parcel of Real Estate]

EXHIBIT A - LEGAL DESCRIPTION

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

COMMENCING at a P.K. nail in the center of Carroll Road marking the Southwest corner of said Southeast Quarter; thence North 00 degrees 28 minutes 53 seconds East (assumed bearing based on the South line of said Southeast Quarter being North 90 degrees 00 minutes 00 seconds West and basis of bearings to follow), a distance of 40.00 feet along the West line of said Southeast Quarter to a 5/8 inch steel rebar with Karst identification cap set on the North right-of-way line of Carroll Road; thence North 90 degrees 00 minutes 00 seconds East, a distance of 18.26 feet along said North right-of-way line to a 5/8 inch steel rebar with Karst identification cap set at the Point of Beginning of the herein described tract; thence North 00 degrees 28 minutes 53 seconds East, a distance of 75.00 feet parallel with said West line to a 5/8 inch steel rebar set with Karst identification cap; thence North 04 degrees 42 minutes 15 seconds West, a distance of 202.00 feet to a 5/8 inch steel rebar with Karst identification cap set on said West line; thence North 00 degrees 28 minutes 53 seconds East, a distance of 200.28 feet along said West line to a 5/8 inch steel rebar with Karst identification cap set at the point of curvature of a tangent curve concave to the East, with a radius of 250.00 feet; thence Northerly along said curve an arc distance of 174.53 feet, through a central angle of 40 degrees 00 minutes 00 seconds, the chord of which bears North 20 degrees 28 minutes 53 seconds East, a chord distance of 171.01 feet to a 5/8 inch steel rebar set with Karst identification cap; thence North 40 degrees 28 minutes 53 seconds East, a distance of 231.93 feet to a 5/8 inch steel rebar with Karst identification cap set at the point of curvature of a tangent curve concave to the West, with a radius of 325.00 feet; thence Northerly along said curve, an arc distance of 261.02 feet, through a central angle of 46 degrees 00 minutes 59 seconds, the chord of which bears North 17 degrees 28 minutes 24 seconds East, a chord distance of 254.06 feet to 5/8 inch steel rebar set with Karst identification cap; thence North 05 degrees 32 minutes 06 seconds West, a distance of 136.98 feet to the point of curvature of a tangent curve concave to the East, with a radius of 275.00 feet; thence Northerly along said curve an arc distance of 18.16 feet, through a central angle of 03 degrees 46 minutes 59 seconds, the chord of which bears North 03

Continued on next page

EXHIBIT A - CONT'D

degrees 38 minutes 37 seconds West, a chord distance of 18.15 feet to a 5/8 inch steel rebar set with Karst identification cap; thence North 89 degrees 42 minutes 52 seconds East, a distance of 443.77 feet to a 5/8 inch steel rebar with Karst identification cap set on the West line of a 12.025 acre tract described in Document Number 880045672 in the Office of the Recorder of Allen County, Indiana; thence South 01 degrees 20 minutes 25 seconds West, a distance of 465.82 feet along said West line to a railroad rail post; thence North 74 degrees 43 minutes 43 seconds East, a distance of 181.30 feet along a South line of said 12.025 acre tract to a 5/8 inch steel rebar set with Karst identification cap; thence South 89 degrees 21 minutes 11 seconds East, a distance of 191.46 feet along a South line of said 12.025 acre tract to a 5/8 inch steel rebar with Karst identification cap set on the West line of Tract II of a roadway described in Document Number 980090419 in said Recorder's Office; thence South 01 degrees 18 minutes 51 seconds West, a distance of 792.32 feet along said West line to a 5/8 inch steel rebar with Karst identification cap set on the North right-of-way line of Carroll Road; thence South 90 degrees 00 minutes 00 seconds West, a distance of 1039.12 feet along said North right-of-way line to the Point of Beginning, containing 22.928 acres (998753.600 square feet), more or less.

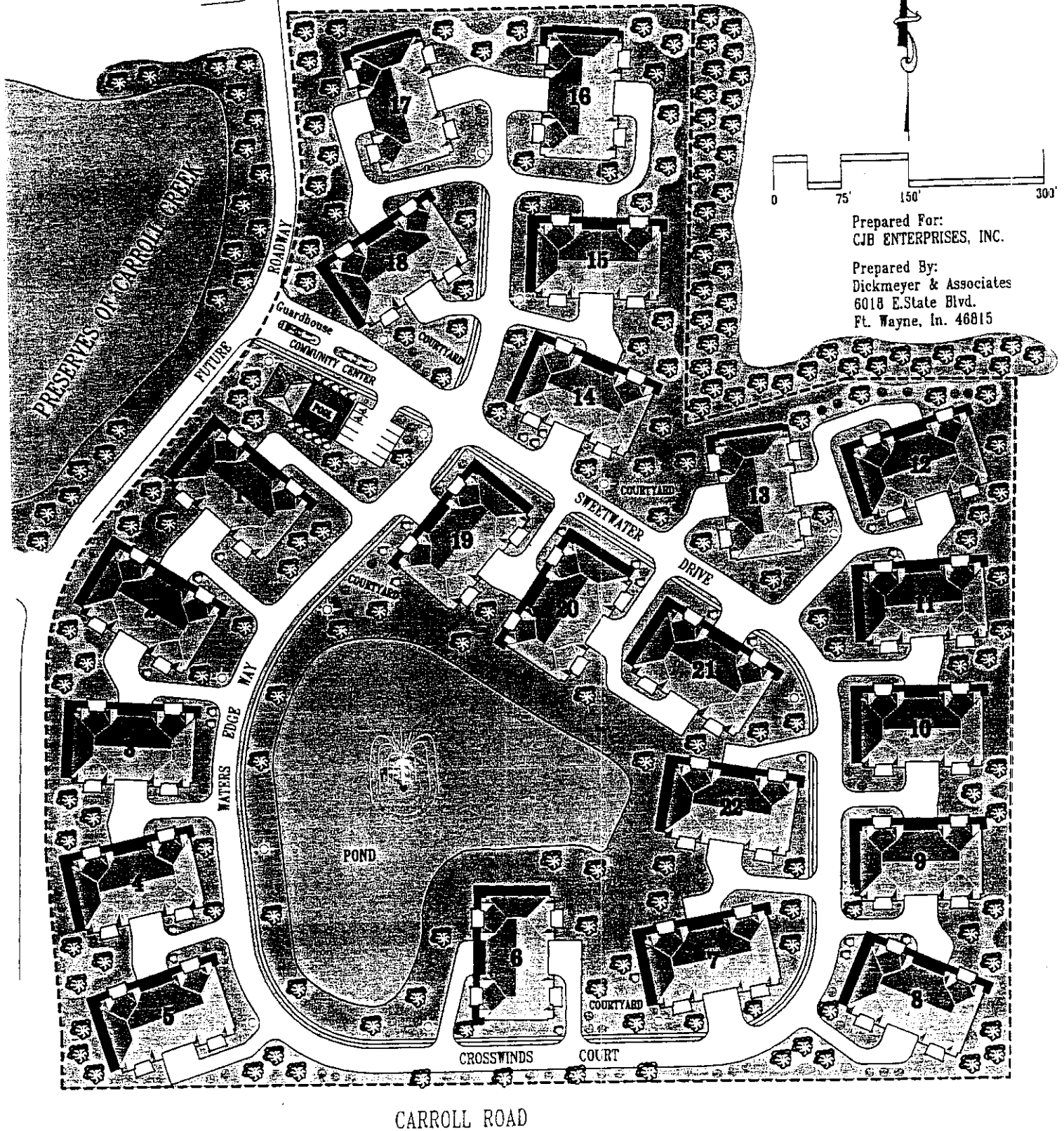
END OF EXHIBIT A

EXHIBIT B

[General Development Plan]

The Coves of CARROLL CREEK

Note: Conceptual plan -- actual development may vary.



Prepared For:
CJB ENTERPRISES, INC.

Prepared By:
Dickmeyer & Associates
6018 E. State Blvd.
Ft. Wayne, In. 46815

EXHIBIT C

[Code of Bylaws of The Coves of Carroll Creek Condominiums]

**CODE OF BY-LAWS
OF
CARROLL CREEK CONDOMINIUMS
AND
CARROLL CREEK OWNERS ASSOCIATION, INC.**

TABLE OF CONTENTS

ARTICLE I	Identification and Applicability.....	1
Section 1.01.	Identification and Adoption.....	1
Section 1.02.	Additional Definitions.....	1
Section 1.03.	Individual Application.....	2
ARTICLE II	Meetings of Association.....	2
Section 2.01.	Purpose of Meetings.....	2
Section 2.02.	Annual Meetings.....	2
Section 2.03.	Special Meetings.....	2
Section 2.04.	Notice and Place of Meeting.....	2
Section 2.05.	Voting.....	3
Section 2.06.	Conduct of Meetings.....	4
ARTICLE III	Board of Directors.....	5
Section 3.01.	Management.....	5
Section 3.02.	Initial Board of Directors.....	5
Section 3.03.	Additional Qualifications.....	5
Section 3.04.	Term of Office and Vacancy.....	5
Section 3.05.	Removal of Directors.....	6
Section 3.06.	Duties of the Board of Directors.....	6
Section 3.07.	Powers of the Board of Directors.....	7
Section 3.08.	Limitation on Board Action.....	8
Section 3.09.	Compensation.....	8
Section 3.10.	Meetings.....	8
Section 3.11.	Waiver of Notice.....	9
Section 3.12.	Action Without a Meeting.....	9
Section 3.13.	Quorum.....	9
Section 3.14.	Non-Liability of Directors.....	9
Section 3.15.	Additional Indemnity of Directors.....	9
Section 3.16.	Transactions Involving Affiliates.....	10
Section 3.17.	Bonds.....	10
ARTICLE IV	Officers.....	11
Section 4.01.	Officers of the Association.....	11
Section 4.02.	Election of Officers.....	11
Section 4.03.	The President.....	11
Section 4.04.	The Vice President.....	11
Section 4.05.	The Secretary.....	11
Section 4.06.	The Treasurer.....	12
Section 4.07.	Assistant Officers.....	12
ARTICLE V	Management.....	12
Section 5.01.	Maintenance, Repairs and Replacements.....	12

Section 5.02.	Right of Entry	14
Section 5.03.	Alterations and Additions	14
Section 5.04.	Real Estate Taxes	14
Section 5.05.	Utilities	14
Section 5.06.	Limitation of Liability	14
Section 5.07.	Negligence	15
Section 5.08.	Costs and Attorneys' Fees	15
ARTICLE VI Assessments		15
Section 6.01.	Proposed Annual Budget	15
Section 6.02.	Regular Assessments	15
Section 6.03.	Special Assessments	17
Section 6.04.	Reserve for Replacements	17
Section 6.05.	Working Capital Fund	17
Section 6.06.	General Operating Reserve.....	18
Section 6.07.	Failure of Owner to Pay Assessment	18
Section 6.08.	Waiver of Lien Upon Foreclosure	19
Section 6.09.	Initial Budgets and Assessments	19
ARTICLE VII Restriction, Entry and Rules and Regulations		19
Section 7.01.	Restrictions on Use	19
Section 7.02.	Right of Board to Adopt Rules and Regulations	21
Section 7.03.	Enforcement	22
ARTICLE VIII Insurance.....		22
Section 8.01.	Coverage	22
Section 8.02.	Definition	23
Section 8.03.	Form.....	23
Section 8.04.	Allocation of Insurance Proceeds	25
Section 8.05.	Distribution of Insurance Proceeds	25
Section 8.06.	Association as Owner's Agent	26
Section 8.07.	Individual Policies - Recommendation of Declarant.....	26
Section 8.08.	Certificates	27
ARTICLE IX Damage or Destruction		27
Section 9.01.	Procedure for Restoration or Repair.....	27
Section 9.02.	Estimate of Cost.....	27
Section 9.03.	Plans and Specifications	27
Section 9.04.	Sealed Bids.....	27
Section 9.05.	Responsibility	27
Section 9.06.	Construction Funds	27
Section 9.07.	Certificates	27
Section 9.08.	Insurance Trustee.....	28

ARTICLE X Fiscal Management.....	28
Section 10.01. Fiscal Year.....	28
Section 10.02. Books of Account.....	28
Section 10.03. Inspection.....	28
Section 10.04. Auditing.....	28
Section 10.05. Annual Financial Statement.....	28
Section 10.06. Execution of Association Documents.....	28
 ARTICLE XI Amendment to By-Laws.....	 29
Section 11.01. Procedure.....	29
Section 11.02. Amended and Restated By-Laws.....	29
 ARTICLE XII Mortgages.....	 29
Section 12.01. Notice to Association.....	29
Section 12.02. Notices to Mortgagees.....	30
Section 12.03. Notice of Unpaid Assessments.....	30
Section 12.04. Financial Statements.....	30
 ARTICLE XIII Miscellaneous.....	 30
Section 13.01. Membership Certificates.....	30
Section 13.02. Personal Interests.....	31

**CODE OF BY-LAWS OF
CARROL CREEK CONDOMINIUMS
AND
CARROLL CREEK OWNERS ASSOCIATION, INC.**

ARTICLE I

Identification and Applicability

Section 1.01. **Identification and Adoption.** These By-Laws are adopted simultaneously with the execution of a certain Declaration creating Carroll Creek Condominiums to which these By-Laws are attached and made a part. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. Except as otherwise provided in Section 1.02 hereof, the definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Paragraph 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. The By-Laws shall also constitute the By-Laws of the Association.

Section 1.02. **Additional Definitions.** Notwithstanding any other definition in the Declaration, the following terms as used in these By-Laws shall have the following meanings:

- a. "Articles" means the Articles of Incorporation of the Association.
- b. "Assessment" means all sums lawfully assessed against the Owners or as declared or authorized by the Act, the Declaration, any Supplementary Declaration, the Articles, or these By-Laws.
- c. "Declaration" means the Declaration of Condominium Ownership of Carroll Creek, as may be amended.
- d. "Directors" means all the members of the Board of Directors and "Director" means any individual member thereof.
- e. "Initial Board" means those individuals appointed by Declarant as Directors pursuant to the power reserved to Declarant by Section 3.02 in their capacity as the Board of Directors.
- f. "Managing Agent" means a reputable and recognized professional property management agent employed by the Board pursuant to Section 3.06.
- g. "Majority Vote" means a majority of the Percentage Vote present and voting at any duly constituted meeting of the Members.

h. "Member" means a member of the Association and "Members" means more than one member of the Association.

i. "Regular Assessment" means the Assessment levied pursuant to Section 6.02.

j. "Special Assessment" means the Assessment levied pursuant to Section 6.03.

k. "Statute" means the Indiana Nonprofit Corporation Act of 1991, as amended.

Section 1.03. **Individual Application.** All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Condominium Unit or any part of the Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, the Articles, these By-Laws and the Act, and to any rules and regulations adopted by the Board as herein provided.

ARTICLE II

Meetings of Association

Section 2.01. **Purpose of Meetings.** At least annually, and at such other times as may be necessary, the meetings of the Owners shall be held for the purpose of electing the Board (subject to the provisions of Section 3.02 hereof), approving the annual budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, the Articles, these By-Laws, the Act or the Statute.

Section 2.02. **Annual Meetings.** The annual meeting of the Members shall be held on a date established by the Board pursuant to notice provided in accordance with these By-Laws within six (6) months of the close of each fiscal year of the Association. At the annual meeting, the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Directors in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. **Special Meetings.** A special meeting of the Members may be called by resolution of the Board or upon a written petition of Owners who have not less than ten percent (10%) of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association (references herein to an officer shall be to that officer of the Association) and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. **Notice and Place of Meeting.** Except with respect to the Initial Board, all meetings of the Members shall be held at any suitable place in Allen County, Indiana, as may be designated by the Board. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary to each Member entitled to vote there at not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the

Owners at the addresses of their respective Condominium Units and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Association with its name and address in accordance with Section 12.01 of these By-Laws. Attendance at any meeting in person by agent or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. **Voting.**

a. **Number of Votes.** All Persons who own a Condominium Unit shall jointly (and not severally) be entitled to cast one vote for each Condominium Unit they own on each matter coming before the meeting as to which they are entitled to vote.

b. **Multiple Owners.** Where the Owner of a Condominium Unit constitutes or consists of more than one Person, or is a partnership, there shall be only one voting representative entitled to all of the Percentage Vote allocable to that Condominium Unit. At the time of acquisition of title to a Condominium Unit by a multiple Owner or a partnership, those Persons constituting such Owner or the partners shall file with the Secretary an irrevocable proxy appointing one of such Persons or partners as the voting representative for such Condominium Unit, which shall remain in effect until all of those Persons constituting such multiple Owner or a majority of the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Owner no longer owns such Condominium Unit. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (a) of this Section 2.05, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Condominium Unit.

c. **Voting by Corporation or Trust.** Where a corporation or trust is an Owner or is otherwise entitled to vote, a trustee may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation may cast the vote to which the corporation is entitled. The secretary of the corporation, or a trustee of the trust, so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary stating who is authorized to vote on behalf of said corporation or trust.

d. **Proxy.** An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary prior to the commencement of the meeting.

e. **Pledges.** If the vote of an Owner or Owners has been pledged by mortgage, security agreement, conditional assignment, or other instrument, an executed copy of which has been filed with the Secretary, only the pledgee shall be entitled to cast

the vote of such Owner or Owners upon those matters upon which the Owner or Owners vote is so pledged.

f. **Quorum.** Except in the Declaration, these By-Laws, the Act or the Statute, a Majority of Owners shall constitute a quorum at all meetings of the Members.

Section 2.06. **Conduct of Meetings.**

a. **Annual Meeting.** The President shall act as the chairman of all annual meetings of the Association if present. At all annual meetings, the chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

i. **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a Majority Vote.

ii. **Treasurer's Report.** The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

iii. **Budget.** The proposed budget for the current fiscal year shall be presented to the Owners for approval or amendment.

iv. **Election of Board of Directors.** After the Applicable Date, nominations for the Board may be made by any Owner from those Persons eligible to serve. Such nominations must be in writing and presented to the Secretary at least seven (7) days prior to the date of the annual meeting. Voting for the Board will be by paper ballot. The ballot shall contain the name of each Person nominated to serve as a member of the Board. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those Persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot. Prior to the Applicable Date, the nomination and election of the Board shall be governed by the provisions of Section 3.02 hereof.

v. **Other Business.** Other business may be brought before the meeting only by decision of the Board of Directors or upon a written request of an Owner submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting, except that such written request may be waived at the meeting if agreed by a Majority of Owners.

vi. **Adjournment.**

b. **Special Meeting.** The President shall act as chairman of any special meetings of the Association if present. The chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be

the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE III

Board of Directors

Section 3.01. **Management.** The affairs of the Association and Carroll Creek Condominiums shall be governed and managed by the Board of Directors. Prior to the Applicable Date, the Board shall be composed of three (3) individuals; after the Applicable Date, the Board shall be composed of five (5) individuals. Except with respect to the Initial Board of Directors, no individual shall be eligible to serve as a Director unless such person is, or is deemed in accordance with the Declaration to be, an Owner, including an individual appointed by Declarant as provided in Section 3.02 hereof.

Section 3.02. **Initial Board of Directors.** The initial Board of Directors shall be Charles J. Burnworth, Gail W. Allread and Linda L. Burnworth, all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws, the Declaration, the Act or the Statute (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Condominium Unit or by acquisition of any interest in a Condominium Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which appointment shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which Members are entitled to vote under the Declaration, these By-Laws, the Act, the Statute or otherwise. This Appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 3.03. **Additional Qualifications.** Where an Owner consists of more than one individual or is not a natural Person, then one of the individuals constituting the multiple Owner, or a partner, an officer or the trustee of a Owner shall be eligible to serve on the Board, except that no single Condominium Unit may be represented on the Board by more than one individual at a time.

Section 3.04. **Term of Office and Vacancy.** Subject to the provisions of Section 3.02 hereof, two (2) members of the Board shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date. After the Applicable Date, each member of the Board of Directors shall be elected for a term of two (2) years, except that at the first election after the Applicable Date two (2) Directors shall be elected for a one (1) year term, and three (3) for a two (2) year term so that the terms of at least two (2) of the Directors shall expire annually. There shall be separate nominations for the office of each Director to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 3.02 hereof as to

the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05. The Director so filling a vacancy accordance with the Members and shall serve until the next annual meeting of until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.05 Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote or a Majority of Owners at a special meeting of the Members duly called and constituted for that purpose. In such case, successors shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Members or until a successor is duly elected and qualified.

Section 3.06. Duties of the Board of Directors. The Board shall provide for the administration of Carroll Creek Condominiums, the maintenance, repair, upkeep and replacement of the Common Areas and Limited Common Areas (unless the same are otherwise the responsibility or duty of the Owners of Condominium Units pursuant to the Declaration, By-Laws or any other document constituting the operating documents of the Regime), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Association, employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

- a. protection, surveillance and replacement of the Common Areas and Limited Common Areas, including, without limitation, the enforcement of the prohibition of vehicular parking in the right-of-way of streets and roads on the Property, unless the same are otherwise the responsibility or duty of the Owners of Condominium Units; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- b. procuring of utilities used in connection with Carroll Creek Condominiums, removal of garbage and waste, and snow removal from the Common Areas;
- c. landscaping, painting, decorating, furnishing, maintaining and repairing the Common Areas, and, where applicable, the Limited Common Areas;
- d. surfacing, paving and maintaining drives, parking areas and sidewalks;
- e. washing and cleaning of exterior window surfaces of the Condominium Units;
- f. assessment and collection from the Owners of the Owner's share of the Common Expenses;
- g. preparation of the proposed annual budget;

h. preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;

i. keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses;

j. procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverages required by Section 8.01 and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

k. making available to Owners and Mortgagees current copies of the Declaration, By-Laws and rules and regulations governing Carroll Creek Condominiums ("Organizational Documents") and any other books, records and financial statements of the Association. The Board shall also make available to prospective purchasers of Condominium Units current copies of the Organizational Documents and the most recent annual audited financial statement if such statement has been prepared. "Available" means available for inspection upon request during normal business hours or under other reasonable circumstances. Upon written request by the United States Department of Housing and Urban Development or the Veterans Administration, the Board shall also prepare and furnish within a reasonable time an audited financial statement for the Association for the immediately preceding fiscal year.

Section 3.07. Powers of the Board of Directors. The Board shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

a. to employ a Managing Agent to assist the Board in performing its duties;

b. to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board;

c. to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board may be necessary or desirable in connection with the business and affairs of Carroll Creek Condominiums;

d. to employ, designate, discharge and remove such personnel as in the judgment of the Board may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and, where applicable, the Limited Common Areas;

e. to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

f. to open and maintain a bank account or accounts in the name of the Association; and

g. to adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

Section 3.08. **Limitation on Board Action.** After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00 without obtaining the prior approval of a Majority of Owners, except that in the following cases such approval shall not be necessary:

- a. contracts for replacing or restoring portions of the Common Areas or Limited Common Areas damaged or destroyed by fire or other cause where the cost thereof is payable out of insurance proceeds actually received;
- b. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- c. expenditures necessary to deal with emergency conditions in which the Board reasonably believes there is insufficient time to call a meeting of the Owners.

Section 3.09. **Compensation.** No Director shall receive any compensation for his services as a Director except to such extent as may be expressly authorized by a Majority of Owners. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.10. **Meetings.**

- a. **Organization Meeting.** The Board shall meet each year within ten (10) days following the date of the annual meeting of the Association, at such time and place as shall be fixed at the annual meeting, for the purpose of organization, election of officers and consideration of any other business that may properly be brought before the meeting, and no notice shall be necessary to any newly elected Directors in order legally to constitute such meeting if a quorum is present.
- b. **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meeting of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.
- c. **Special Meetings.** Special meetings may be called by the President or any two (2) members of the Board. The Director or Directors calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the members of the Board. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Except with respect to the Initial Board, such meeting shall be held at such place and at such time within Allen County, Indiana, as shall be designated in the notice.

Section 3.11. **Waiver of Notice.** Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken there at, shall, as to such Director, constitute a waiver of notice of the time, place

and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. **Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a consent in writing setting forth such actions so taken is signed by all Directors and such written consent is filed with the minutes of the proceedings of the Board.

Section 3.13. **Quorum.** At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.14. **Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any Persons arising out of contracts made by the Board on behalf of Carroll Creek Condominiums or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of Carroll Creek Condominiums or the Association and that in all matters the Board is acting for and on behalf of the Owners as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his Percentage Interest. Every contract made by the Board or the Managing Agent on behalf of Carroll Creek Condominiums shall provide that the Board and the Managing Agent, as the case may be, are acting as agent for the Owners and shall have no personal liability thereunder, except in their capacity as Owners (if applicable) and then only to the extent of their Percentage Interests.

Section 3.15. **Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any individual, his heirs, assigns and legal representatives made a party to any action, suit or proceeding by reason of the fact that such person is or was a Director, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a Majority of Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any officer or employee thereof, or any accountant, attorney or other person employed by the Association to render advice or service unless such director had actual knowledge of the falsity or incorrectness thereof; nor shall a

Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board.

Section 3.16. **Transactions Involving Affiliates.** No contract or other transaction between the Association and one or more of its Directors, or between the Association and any Person (including Declarant and/or shareholders or members of Declarant) in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or are otherwise interested shall be void or voidable because such Director or Directors are present at the meeting of the Board that authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose if:

- a. the contract or transaction is between the Association and Declarant or any affiliate of Declarant entered into prior to the Applicable Date; or
- b. the fact of the affiliation or interest is disclosed or known to the Board or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- c. the fact of the affiliation or interest is disclosed or known to the Owners, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- d. the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Affiliated or interested Directors may be counted in determining the presence of the quorum of any meeting of the Board thereof that authorizes, approves or ratifies any contract or transaction, and may vote there at to authorize any contract or transaction with like force and effect as if they were not so affiliated or not so interested.

Section 3.17. **Bonds.** Blanket fidelity bonds shall be maintained by the Association for all officers, directors and employees of the Association or all other persons handling, or responsible for, funds of or administered by the Association. Where the Managing Agent has the responsibility for handling or administering funds of the Association, the Managing Agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association and the Association shall be named as an additional obligee thereon. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond. In no event, however, may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Condominium Units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms of expressions. The expense of all such bonds shall be a Common Expense. The bonds may not be canceled or substantially modified without thirty (30) days notice in writing to the Association, the Insurance Trustee and each servicer of a FNMA (Fannie Mae) owned mortgage in the Property.

ARTICLE IV

Officers

Section 4.01. **Officers of the Association.** The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. **Election of Officers.** The officers of the Association shall be elected annually by the Board at its duly called annual meeting of the Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. **The President.** The President shall be elected from among the Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Owners as he or she may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. **The Vice President.** The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the president during the absence or disability of the President. The Vice President shall also perform such other duties as the By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. **The Secretary.** The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, including without limitation, keeping the minute book for the Association wherein resolutions of the Board of Directors shall be recorded, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. **The Treasurer.** The Board shall elect a Treasurer who shall maintain a correct and complete record of accounts showing accurately at all times the financial condition of the Association and who shall perform such other duties incident to the office of Treasurer. The Treasurer shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. The Treasurer shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in

the name of the Association. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

Section 4.07. **Assistant Officers.** The Board may, from time to time, designate and elect from among the Members an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board may prescribe.

ARTICLE V

Management

Section 5.01. **Maintenance, Repairs and Replacements.**

a. **Condominium Units.** Each Owner shall, at its own expense, be responsible for the maintenance, repairs, decoration and replacement of its own Condominium Unit, except as may otherwise be provided herein. Each Owner shall promptly perform all maintenance and repair within its Condominium Unit which, if neglected, might adversely affect the Property. In addition, each Owner shall furnish, and shall be responsible at his own expense for the maintenance, repairs and replacements of, his Condominium Unit and appurtenant Limited Common Areas, and all equipment serving the same except to the extent otherwise provided herein.

b. **Maintenance Exceptions.** Maintenance, repairs and replacements for which each Owner is not individually responsible are water lines, gas lines, plumbing and electric lines that service the Owner's Condominium Unit only and are located within or without exterior walls of the Condominium Unit including any lines in the area from below the floor to above the ceiling if they are within an extension of the exterior walls of the Condominium Unit; all air conditioning and heating equipment which are not wholly contained within the Condominium Unit and which were a part of original construction, except for total replacement of the mechanical components of fixtures serving a single Condominium Unit such as a lavatory, toilet, bath, whirlpool, etc. Such foregoing mechanical maintenance by the Association is for usual and ordinary mechanical maintenance of original construction and where such repair is the result of willful or negligent misuse by the Owner then a reasonable service charge shall be added to the Owner's next payment of the regular Assessment collectable and enforceable as provided for herein.

c. **Appurtenant Maintenance.** Each Owner shall be responsible for the interior surface of the doors, screens and windows which are part of such Owner's Condominium Unit, interior grouting and/or caulking and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof. In the event that the maintenance or repair of any Condominium Unit is reasonably necessary in the discretion of the Board to protect the Common Areas or Limited Common Areas, or to preserve the appearance or value of the Property, or is otherwise in the interest of the general welfare of the Owners, the Board shall have the power to undertake such maintenance or repair; but no such maintenance or repair shall be undertaken without a

resolution by the Board and reasonable written notice to the Owner of the Condominium Unit proposed to be maintained. The cost of any such maintenance or repair shall be assessed against the Condominium Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of the Condominium Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Section 6.06 hereof.

d. **Certain Limited Common Areas.** Each Owner shall, at its own expense, be responsible for the replacement of the air conditioning compressor, installed to service such Owner's Condominium Unit, and for the decoration and general maintenance of any balcony, patio, deck, landscaped area or porch to which there is direct access from the interior of such Condominium Unit. Any balcony, patio, deck, or porch shall be kept free and clean of snow, ice and any other accumulation by the Owner of such Condominium Unit who shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All other repairs or replacements in, to or with respect to such balcony, patio, deck, landscaped area or porch shall be made by the Association, and the cost thereof shall be a Common Expense.

e. **Common Areas and Limited Common Areas.** All maintenance, repairs and replacements to the Common Areas and Limited Common Areas (except as otherwise provided in the Declaration, a Supplemental Declaration, or these By-Laws) shall be furnished by the Association as part of the Common Expenses. The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Common Areas.

f. **Private Streets and Roadways.** All streets within this development are private street and have not been dedicated to the public for acceptance and maintenance. Acceptance of the street rights-of-way and their improvements by the public for maintenance shall not occur unless repaired, or replaced to the standards of the accepting body in effect at the time of dedication and acceptance. The accepting body shall not be responsible for any costs incurred in said construction, reconstruction, repair, or replacement.

Section 5.02. **Right of Entry.** The Board of Directors, the Managing Agent, or any other Person authorized by the Board or the Managing Agent shall have the right, at reasonable times and upon reasonable prior notice (except in cases of emergency in which event no notice shall be required), to enter into each individual Condominium Unit for the purposes of inspection of the Common Areas and Limited Common Areas appurtenant thereto and replacement, repair and maintenance of the same.

Section 5.03. **Alterations and Additions.** No Person shall make any alterations or additions to the Common Areas or Limited Common Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alteration or addition within the boundaries of his Condominium Unit that would affect the safety or structural integrity of the Building in which the Condominium Unit is located.

Notwithstanding anything to the contrary contained herein, there shall be no amendments to these By-Laws or the Declaration, nor any significant change in the basic exterior style of any building without prior approval of the Area Plan Commission of Allen County and the appropriate member government through the planned development process, which includes the possibility of consideration as a minor modification by the Administrative Officer of that jurisdiction.

Section 5.04. **Real Estate Taxes.** Real estate taxes are to be separately taxed to each Condominium Unit as provided in the Statute. In the event that for any year real estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay its proportionate share thereof in accordance with such Owner's respective Percentage Interest. If real estate taxes are assessed on the Tract and other portions of the Real Estate, then the tax for the Tract shall be allocated on a proportionate Tract shall be allocated on a proportionate value basis as shall be determined by the Board of Directors.

Section 5.05. **Utilities.** Each Owner shall pay for the utilities that are separately metered and serving such Owner's Condominium Unit. Utilities that are not separately metered shall be treated as and paid as part of the Common Expenses, unless, after the Applicable Date, alternative payment arrangements are authorized by a Majority of Owners.

Section 5.06. **Limitation of Liability.** The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for out of the Common Expenses, or for injury or damage to person or property caused by the elements or by the Owner of any Condominium Unit, or any other Person, or resulting from electricity, water, snow or ice that may leak or flow from any portion of the Common Areas or Limited Common Areas or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles that may be stored upon any of the Common Areas or Limited Common Areas. No diminution or abatement of Assessments for Common Expenses shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Limited Common Areas, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

Section 5.07. **Negligence.** Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of such Owner's guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, or occupancy or abandonment of its Condominium Unit or its appurtenances or of the Common Areas or Limited Common Areas.

Section 5.08. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by, or to comply with any provisions of, the Declaration, the Act, these By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

ARTICLE VI

Assessments

Section 6.01. **Proposed Annual Budget.** Annually, on or before the date of the annual meeting of the Association, the Board shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a Majority Vote; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall include the amounts required for funding the reserve accounts required by Section 6.04 and 6.05. The failure or delay of the Board to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon an amount no greater than one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 6.02. **Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash required for the Common Expenses in the current fiscal year and required reserve amounts as set forth in said budget, contain a proposed assessment against each Condominium Unit based on the Percentage Interest of each Condominium Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Condominium Unit. In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners to reflect the Assessment against each Condominium Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as herein above provided. The Regular Assessment against each Condominium Unit shall be paid in advance in equal monthly installments, commencing on the first day of each calendar month. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay monthly assessments semi-annually or annually, in advance.

a. If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the

current fiscal year to the date of the next payment of the Regular Assessment that is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal Year.

b. If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the foregoing adjustments shall be made by a cash payment by or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

c. The Regular Assessments shall be payable in advance and shall commence at the time of closing and delivery of deed. In computing the initial payment the amount of the Regular Assessments shall be calculated by apportioning the payment based upon a thirty (30) day month until the due date for payment of the next Regular Assessment occurs.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Condominium Unit as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, and sells, conveys or transfers his Condominium Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Condominium Unit from payment of the Regular Assessment for such Condominium Unit as finally determined, and such Owner and his successor as Owner of such Condominium Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 21(c) of the Declaration or Section 12.03 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible therefor to Owners for the same.

Section 6.03. **Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in these By-Laws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Condominium Unit, prorated in accordance with the Percentage Interest on each Condominium Unit. Without

limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures or to pay for the cost of any repair or reconstruction of damage caused by fire or other cause or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described herein or in the Declaration.

Section 6.04. **Reserve for Replacements.** The Board of Directors shall cause to be established and maintained a reserve fund for replacements by the allocation and payment to such reserve fund not less often than annually of an amount determined by the Board to be sufficient to meet the costs of periodic maintenance, repair, renewal and replacement of the Common Areas and Limited Common Areas, including, but not limited to, painting the exterior of buildings, repairing or replacing the recreational facilities, and resurfacing, repairing or replacing streets, parking areas, sidewalks, roofs landscaped areas and other facilities and appurtenances. In determining the amount, the Board shall take into consideration the expected useful life of such Common Areas and Limited Common Areas, projected increases in the cost of materials and labor, interest to be earned by such funds, and the advice of Declarant, the Managing Agent and consultants the Board may employ. Such fund shall be conclusively deemed to be a Common Expense. Such fund shall be deposited in an interest bearing account with a bank or savings and loan association authorized to conduct business in Allen County, Indiana. The reserve for replacements may be expended only for the purpose of effecting the periodic maintenance, repair, renewal or replacement of the Common Areas and Limited Common Areas and equipment of the Property. The Board shall annually review the adequacy of the reserve fund. The proportionate interest of any Owner in any reserve for replacements shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit.

Section 6.05. **Working Capital Fund.** To meet unforeseen expenditures or to purchase any additional equipment or services, Declarant shall establish a working capital fund equal to two months of the initial estimated Common Expenses for each Condominium Unit in the initial Tract. In each subsequent Tract that may be created by Supplemental Declaration a like working capital fund contribution shall be made. Any amounts paid into this fund shall not be considered as advance payments of Regular Assessments. Each Condominium Unit's share of the working capital fund shall be collected at the time the sale of the Condominium Unit is closed and shall be transferred to the Association for deposit to the segregated fund. Within sixty (60) days after closing has been held for the first Condominium Unit in each Tract (including Supplemental Declarations), the Declarant shall pay each unsold Condominium Unit's share of the working capital fund to the Association. The Declarant shall then reimburse itself for this payment from the funds collected at closing when the unsold Condominium Units are sold.

Section 6.06. **General Operating Reserve.** The Board of Directors may establish and maintain a reserve fund for general operating expenses of a non-recurring nature by the allocation and payment to such reserve fund not less frequently than annually of such amount as the Board in its discretion determines to be reasonable under the circumstances. Such fund shall be conclusively deemed to be a Common Expense. Such fund shall be deposited in an interest bearing account with a bank or savings and loan association authorized to conduct business in Allen County, Indiana. The general operating reserve may be expended only for operating contingencies of a non-recurring nature. The proportionate interest of any Owner in any reserve fund for general operating expenses shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit.

Section 6.07. **Failure of Owner to Pay Assessments.** No Owner may exempt himself from paying Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, in the proper case, of the Limited Common Areas, of the Buildings, and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Condominium Unit belonging to such Owner. Each Owner shall be personally liable for the payment of his Percentage Interest of all Assessments. Where the Owner constitutes more than one person, the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, a lien for such Assessment on the Owner's Condominium Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law; provided, however, any lien for delinquent Assessments or other charges that the Association has on a Condominium Unit will be subordinate to a first mortgage on the Condominium Unit if the mortgage was recorded before the delinquent Assessment was due. Upon the failure of an Owner to make timely payments of any Assessment when due, the Board may, in its discretion, assess late fees in a reasonable amount to be determined by the Board from time to time and/or accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Condominium Unit, and the Board shall be entitled to the appointment of the receiver for the purpose of preserving the Condominium Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment without foreclosing or waiving the lien securing the same. In any action to recover an Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Condominium Unit.

Section 6.08. **Waiver of Lien Upon Foreclosure.** Notwithstanding anything to the contrary contained in the Declaration and these By-Laws, any sale or transfer of a Condominium Unit to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any Person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Assessment as to such installments that became due prior to such sale, transfer or conveyance, but

extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Condominium Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the Condominium Unit from which it arose), as provided in the Act.

Section 6.09. **Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act, in the Statute or otherwise, until the Applicable Date the annual budget and all Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 3.02 hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Assessments until the Applicable Date.

ARTICLE VII

Restriction, Entry and Rules and Regulations

Section 7.01. **Restrictions on Use.** The following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Common Areas and the Property shall be applicable to Carroll Creek Condominiums:

- a. All Condominium Units shall be used exclusively for residential purposes and for occupancy by a single family or by no more than three (3) unrelated persons, excepting Declarant specifically reserves the right to use a Condominium Unit as a sales office or sales area.
- b. No additional buildings shall be erected or located on the Tract other than the Buildings designated in the Declaration or a supplement or amendment to the Declaration, and shown on the Plans or plans filed with such a supplement or amendment to the Declaration, without the consent of the Board of Directors, excepting Declarant reserves the right to maintain a mobile office for construction, marketing or management.
- c. Nothing shall be done or kept in any Condominium Unit or in the Common Areas or Limited Common Areas that will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Areas or Limited Common Areas that will result in a cancellation of insurance on any building or any part of the Common Areas or contents thereof, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- d. Vehicular parking shall not be allowed in the right-of-way of the streets and roads of the Property, and shall be limited strictly to those areas specifically set aside and designated as parking areas in the Plans.

e. No nuisance shall be permitted and no waste shall be committed in any Condominium Unit, Common Areas or Limited Common Areas.

f. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls or balcony of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or be placed upon the exterior wall or roofs or any other parts of any Building without the prior consent of the Board; provided, however, Owners may install satellite dishes which are no larger than twenty-four (24) inches in diameter provided that each such Owner obtains approval from the Board with respect to the location of the installation of such satellite dish. Interior window and door drapes or coverings shall be of a neutral translucent color and texture or of the same color of the exterior facade surrounding the window or door.

g. Nothing shall be done or permitted in any Condominium Unit that will impair the structural integrity of any Building or that would structurally change any Building or that would affect the exterior appearance of any Condominium Unit, except as otherwise provided in the Declaration or these By-Laws. No Condominium Unit shall be used in any unlawful manner or in any manner that might cause injury to the reputation of Carroll Creek Condominiums or that might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Condominium Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of and loud speakers, electrical equipment, amplifiers or other equipment or machines or loud person.

h. The Common Areas and Limited Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Area or Limited Common Areas.

i. All Owners, guests, tenants or invitees, and all occupants of any Condominium Unit or other Persons entitled to use the same and to use and enjoy the Common Areas and Limited Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Condominium Units, the Common Areas and Limited Common Areas; including but not limited to rules relating to the keeping of animals, the parking or storage of vehicles or trailers and other matters incidental to the use of the Common Areas and Limited Common Areas.

j. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Common Areas, except with express permission from the Board.

k. No Owner shall be allowed to place or cause to be placed or stored in the lobbies, vestibules, stairways, hallways or areas of a similar nature and used for a similar purpose, of both the Common Areas and Limited Common Areas, any furniture or objects of any kind, without the consent of the Board.

l. All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit (including the garage) or in an inconspicuous place within the Limited Area appurtenant thereto and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. In the event trash chutes are provided within the Building then such chute shall be used by the Owners in a clean and sanitary manner that does not clutter the flooring and discharge point into the chute. In the event such garbage, trash or refuse is too bulky to place within the trash chute then garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

m. No "for sale," "for rent" or "for lease" signs or other advertising display shall be maintained or permitted on the property without the prior consent of the Board except that the right to place or display such signs is reserved to Declarant and the Association with respect to unsold or unoccupied Condominium Units.

n. Common Areas and Limited Common Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the provisions of the Declaration, these By-Laws and the rules and regulations from time to time adopted by the Board.

o. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his Condominium Unit free of any such restriction.

Section 7.02. **Right of Board to Adopt Rules and Regulations.** The Board may promulgate such rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas and Limited Common Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board. The Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

Section 7.03. **Enforcement.** The Declarant, the Board, or in a proper case, an aggrieved Owner shall have the right of enforcement of all restrictions and regulations adopted pursuant to this Article VII. An "aggrieved Owner" shall mean an Owner whose rights are affected or infringed by any such alleged failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors in a manner different from the rights of all other Unit Owners. Any Owner who alleges that he is an "aggrieved Owner" shall first notify the Board of Directors of such Owner's aggrieved status and request a special meeting of the Board of Directors to be held within thirty (30) days of such request (or within five (5) days in an emergency situation) to establish to the Board and the Association that such Owner is "aggrieved" within the meaning hereof, prior to the commencement of any right of action commenced hereunder. Any costs including reasonable attorneys fees may be recovered from any Owner for violation thereof; however, any reservation of right to the use of summary abatement or similar means to enforce restrictions against a Condominium Unit or its use shall require that judicial proceedings be instituted before any items of construction can be altered or demolished.

ARTICLE VIII

Insurance

Section 8.01. **Coverage.** The Board of Directors on behalf of the Owners shall obtain, maintain and pay the premiums upon, as a Common Expense, and keep in full force and effect at all times the following insurance coverage underwritten by companies duly authorized to do business in Indiana:

a. Casualty or physical damage insurance in an amount equal to the full insurable replacement cost of all buildings and property owned by the Association with either a "guaranteed replacement cost" endorsement or a "replacement cost" endorsement and "inflation guard" endorsements, and if the policy includes a co-insurance clause an "agreed amount", without deduction or allowance for depreciation (as determined annually by the Board with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement together with coverage for Common Expenses with respect to Condominium Units, during any period of repair or construction; and

(ii) such other risks as are customarily covered by an "all risk" endorsement or "broad form" coverage with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm, water damage, machinery, explosion or damage, and such other insurance as the Board may from time to time determine.

b. Comprehensive public liability insurance in such amounts as may be considered appropriate by the Board including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, and any and all other liability incident to the ownership and/or use of the Property or any portion thereof. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under the insurance policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Limited Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Association.

(i) Such liability insurance shall contain no provisions relieving the insurer from liability for loss occurring while the hazard is increased, whether or not within the knowledge or control of the Board, or because of any breach of any warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them.

(ii) Such liability insurance shall provide that such policy may not be canceled or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the

Board, the Insurance Trustee, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer.

c. Workmen's compensation and employer's liability insurance in respect to employees of the Association in the amounts and in the form necessary to comply with any applicable law.

d. Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

The provisions of this Section 8.01 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or the Board may deem appropriate from time to time.

Section 8.02. **Definition.** As used in Section 8.01, the term "all buildings and improvements" means, without limitation, the Common Areas, Limited Common Areas, and the standard separation walls, fixtures, pipes, wires, conduits and installations installed in Condominium Units as of the date of initial sale by Declarant, as shown on the Plans as amended from time to time, and replacements thereof, but does not mean any fixtures, alterations, installations or additions in or to a Condominium Unit made by an individual Owner of that Condominium Unit and not shown on the Plans.

Section 8.03. **Form.** Casualty insurance shall be carried in a form or forms naming as the insured the Association for the use and benefit of the Owners according to the loss or damage to their respective Condominium Units and Percentage Interest and payable in case of loss to the Insurance Trustee. Every such policy of insurance shall:

a. provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;

b. contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them;

c. provide that such Policy may not be canceled or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, the Insurance Trustee, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;

d. contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other Person under them;

e. provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be

exercisable in the event the Owners do not elect to restore pursuant to Paragraph 10 of the Declaration;

f. provide that the policy is primary in the event an Owner has other insurance covering the same loss.

g. contain a standard mortgagee clause which shall:

(i) provide that any reference to a mortgagee in such policy shall mean and include any Mortgagee, whether or not named therein and, where applicable, name as mortgagee Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or their respective servicers, successors and assigns;

(ii) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any Persons under any of them;

(iii) waive any provision invalidating such mortgagee clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay and premium thereon, and any contribution clause;

(iv) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee; and Public liability and property damage insurance shall be carried in a form or forms naming as the insured the Board of Directors as trustee for each individual Owner, the Association, the Board of Directors, the Managing Agent, and any Person acting on behalf of the Association, and providing for payment of any proceeds therefrom to the Insurance Trustee. The Board shall promptly upon effecting such insurance deposit with each Owner a current certificate of such insurance, without prejudice to the right of and Owner to maintain additional public liability insurance for his Condominium Unit.

Section 8.04. Allocation of Insurance Proceeds. In the event of damage or destruction by fire or other cause to any part of the Property covered by insurance written in the name of the Board as trustee for Owners and their Mortgagees, the following provisions shall apply:

a. Common Areas and Limited Common Areas. Proceeds on account of damage to Common Areas and Limited Common Areas shall be allocated among the Owners in accordance with their respective Percentage Interests.

b. Condominium Units. Proceeds on account of damage to Condominium Units shall be allocated as follows:

(i) If the Building in which the damaged Condominium Unit is located is to be restored, insurance proceeds shall be allocated to such Condominium Unit in the proportion that the cost of Restoration of such Condominium Unit bears to the cost of Restoration to all damaged Condominium

Units, such cost to be determined by the Board. In determining such cost, the Board shall not take into consideration the cost of repairing any items specifically excluded from insurance coverage pursuant to the provisions of Section 8.02.

(ii) In the Building in which the damaged Condominium Unit is located is not to be restored, insurance proceeds shall be allocated to such Condominium Unit in accordance with the agreed amount of the replacement cost of such Condominium Unit.

(iii) In the event a mortgage endorsement has been issued with respect to a particular Condominium Unit, the amount of the insurance proceeds allocated to the Owner of such Condominium Unit shall be held in trust for the Mortgagee and the Owner as their interests may appear, but no Mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be restored or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and Mortgagee pursuant to the provisions of these By-Laws.

Section 8.05. **Distribution of Insurance Proceeds.** Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their Mortgagees as their respective interests appear, in the following manner:

a. **Expense of Trust.** All expenses of the Insurance Trustee shall be first paid or provision made therefor.

b. **Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof pursuant to the provisions of Article IX. Any proceeds remaining after defraying such costs shall be retained by the Association and added to the reserve for replacements established pursuant to the reserve for replacements established pursuant to Section 6.04 except that, with respect to a Condominium Unit in which there was damage to items excluded from insurance coverage pursuant to Section 8.02, the Owner of such Condominium Unit shall be entitled to receive out of such remaining proceeds his pro-rata share thereof determined according to his Percentage Interest.

c. **Failure to Reconstruct or Repair.** If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with Section 21 of the Act.

d. **Certificate.** In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners and their respective shares of the distribution, and, with respect to the names of mortgagees, may rely upon a certificate from an attorney-at-law who, or a title insurance company which, has examined the Mortgage Records in the office of the Recorder of Allen County, Indiana, as to the names of the holders of mortgages of record.

Section 8.06. **Association as Owner's Agent.** The Association, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each Owner of a mortgage or other lien upon a Condominium Unit and for each owner of any other interest in the Property to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

Section 8.07. **Individual Policies - Recommendation of Declarant.** Any Owner or Mortgagee may obtain additional insurance (including a "condominium unit-owner's endorsement" for acquired at the expense of the Lender) at his own expense. Such insurance shall provide that it shall be without contribution as against the insurance maintained by the Board. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 8.03(d). If an insured loss is sustained on the Property and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this Section, the Owner shall assign the proceeds of the personally purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed as provided in Section 8.05. The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy insuring against loss or damage to personal property used or incidental to the occupancy of the Condominium Unit, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium unit owner's endorsement" covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the Owner.

Section 8.08. **Certificates.** Shall cause to be issued to each Owner, or Mortgagee, a certificate of insurance evidencing the insurance coverage maintained by the Association.

ARTICLE IX

Damage or Destruction

Section 9.01. **Procedure for Restoration or Repair.** In the event of damage or destruction to the Common Property by fire, other cause, or as a result of condemnation, and Restoration or repair of the Property is required or authorized pursuant to Paragraph 10 or Paragraph 11 of the Declaration, such Restoration or repair shall be undertaken in accordance with the provisions of this Article.

Section 9.02. **Estimate of Cost.** Promptly after the occurrence of the damage or destruction to the Property that the Association has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage after the Applicable Date to any structure exceeding \$25,000.00, the Board shall retain the services of an architect and/or Construction Manager to supervise the Restoration or repair and the disbursement of the construction funds.

Section 9.03. **Plans and Specifications.** Any Restoration or repair must be either substantially in accordance with the Plans or according to plans and specifications approved by a Majority of Owners, and if damaged Property contains any Condominium Units, by all of the Owners of the damaged Condominium Units, which approval shall not be unreasonably withheld.

Section 9.04. **Sealed Bids.** After the Applicable Date, the Board shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the Restoration or repair of the damaged Property.

Section 9.05. **Responsibility.** If the damage is only to those parts of a Condominium Unit for which the responsibility of maintenance and repair is that of an Owner, then the Condominium Unit Owner shall be responsible for the cost of Restoration and repair unless such damage is specifically covered by the insurance purchased by the Board, in which event the Association shall be responsible for said costs.

Section 9.06. **Construction Funds.** The funds for payment of the costs of Restoration or repair, which shall consist of the proceeds of insurance held by or payable to the Insurance Trustee, such amounts from the reserve for replacements as are authorized by the Board for the purpose of Restoration or repair, and the funds collected by the Board from Special Assessments against Owners, shall be deposited with the Insurance Trustee who shall apply or disburse the same in payment of the costs of Restoration or repair as provided in this Article.

Section 9.07. **Certificates.** The Insurance Trustee may rely upon a certificate from the Board to determine whether or not the damaged Property is to be restored or repaired and upon a certificate from the architect employed by the Board to supervise the Restoration or repair, or, if such Restoration or repair is undertaken prior to the Applicable Date, from Declarant or the Board, with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

Section 9.08. **Insurance Trustee.** The Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, nor for the failure to collect any insurance proceeds or condemnation awards. The duty of the Insurance Trustee shall be to receive such proceeds or awards as are paid and to hold the same in trust for the purposes herein and in the Declaration stated, and for the benefit of the Owners and their Mortgagees as herein and in the Declaration provided.

ARTICLE X

Fiscal Management

Section 10.01. **Fiscal Year.** The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

Section 10.02. **Books of Account.** Books of account of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practices, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses.

Section 10.03. **Inspection.** All books, records and accounts, and all vouchers accrediting the entries made thereupon, shall be available for examination by an Owner or a Mortgagee or

any duly authorized agent or attorney of an Owner or Mortgagee at any time during normal business hours for purposes reasonably related to his interest as an Owner.

Section 10.04. **Auditing.** Unless otherwise agreed by a Majority of Owners, at the close of each fiscal year, the books and accounts of the Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards.

Section 10.05. **Annual Financial Statement.** Prior to the annual meeting of the Association, the Board of Directors shall cause to be prepared and delivered to the Owners an annual financial statement, certified to by the Treasurer, showing all income and all disbursements of the Association during the previous fiscal year. To the extent possible, such financial statement shall be based upon the report prepared pursuant to Section 10.04. The requirements of this Section 10.05 shall be satisfied if the Board causes to be delivered to each Owner prior to the annual meeting of the Association a copy of the report prepared pursuant to Section 10.04.

Section 10.06. **Execution of Association Documents.** With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other individuals as are from time to time so authorized by the Board, provided however that all checks from the Association's reserve account or working capital fund shall require the signature of two Board Members.

ARTICLE XI

Amendment to By-Laws

Section 11.01. **Procedure.** Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements as amendments to the Declaration, as set forth in Paragraph 14 of the Declaration. Amendments to the By-Laws shall be considered as amendments of the Declaration and shall be recorded in the Office of the Recorder of Allen County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration there shall be no amendment of the Declaration or these By-Laws prior to the Applicable Date without the consent and approval of Declarant.

Section 11.02. **Amended and Restated By-Laws.** An amended and restated By-Laws, containing the original By-Laws and all amendments theretofore made, may be executed any time or from time to time by a majority of the then Board of Directors and shall, upon recording in the office of the Recorder of Allen County, Indiana, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original By-Laws and the various amendments thereto.

Notwithstanding anything to the contrary contained herein, there shall be no amendment of these By-Laws or the Declaration, nor any significant change in the basic exterior style without prior approval of the Area Plan Commission of Allen County and the appropriate

member government through the planned development process, which includes the possibility of consideration as a minor modification by the Administrative Officer of that jurisdiction.

ARTICLE XII

Mortgages

Section 12.01. **Notice to Association.** Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee shall notify the Secretary thereof and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, the By-Laws or the Act shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration, these By-Laws or the Act shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled to vote by virtue of the Declaration, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

Section 12.02. **Notices to Mortgagees.** The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under Section 12.01 of the By-Laws notice of any of the following:

- a. Any proposed termination of the Regime or any condemnation or casualty loss that affects either a material portion of Carroll Creek Condominiums or the Condominium Unit securing its mortgage;
- b. Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Condominium Unit on which said Mortgagee holds a mortgage, if said delinquency continues for more than sixty (60) days;
- c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- d. Any proposed action that requires the consent of a specified percentage of Mortgagees; and,
- e. Any proposed amendment of the Organizational Documents effecting a change in (i) the boundaries of any Condominium Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas or Limited Common Areas appertaining to any Condominium Unit or the liability for Common Expenses appertaining thereto, (iii) the Percentage Vote appertaining to a Condominium Unit or (iv) the purposes for which any Condominium Unit or the Common Areas are restricted.

Section 12.03. **Notice of Unpaid Assessments.** The Association shall, upon request of the Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Condominium Unit, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Condominium Unit, which statement shall be

binding upon the Association and the Owners, and any Mortgagee or grantee of the Condominium Unit shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement or as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 6.02 hereof.

Section 12.04. **Financial Statements.** Upon the request of any Mortgagee, the Association shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to Section 10.04 and 10.05 of these By-Laws.

ARTICLE XIII

Miscellaneous

Section 13.01. **Membership Certificates.** Each Member shall automatically become a member of the Association upon delivering of title to a Condominium Unit. Such membership shall be nontransferable and membership shall automatically transfer to the new owner.

Section 13.02. **Personal Interests.** No Member shall have or receive any earnings from the Association, except a Member who is an officer, director or employee of the Association may receive fair and reasonable compensation for his services as officer, director or employee, and a Member may also receive principal and interest on monies loaned or advanced to the Association as provided in the Statute.

[END OF BY-LAWS]