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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR  
CREEKSIDE CROSSING  
CONDOMINIUMS

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SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

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FOR TRANSFER

CHICAGO TITLE



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TABLE OF CONTENTS

	<u>Page</u>
1. <u>Definitions</u> .....	1
2. <u>Declaration</u> .....	3
3. <u>Description of Buildings</u> .....	3
4. <u>Legal Description and Percentage Interest</u> .....	4
5. <u>Description of Condominium Units</u> .....	4
6. <u>Common Area and Facilities</u> .....	4
7. <u>Limited Areas and Facilities</u> .....	5
8. <u>Ownership of Common Areas and Percentage of Interest</u> .....	6
9. <u>Encroachment and Easements for Common Areas</u> .....	6
10. <u>Real Estate Taxes</u> .....	6
11. <u>Utilities</u> .....	6
12. <u>Association of Owners</u> .....	6
13. <u>Maintenance, Repair and Replacements</u> .....	7
14. <u>Alterations, Additions and Improvements</u> .....	7
15. <u>Insurance</u> .....	8
16. <u>Casualty and Restoration</u> .....	10
17. <u>Covenants and Restrictions</u> .....	13
18. <u>Amendment of Declaration</u> .....	14
19. <u>Acceptance and Ratification</u> .....	16
20. <u>Negligence</u> .....	16
21. <u>Expandable Condominium and Declarant's Reserved Rights</u> .....	16
22. <u>Granting of Easements</u> .....	19
23. <u>Reservation of Rights to the Use of the Common Areas</u> .....	19
24. <u>Easement for Utilities and Public and Quasi Public Vehicles</u> .....	20
25. <u>Initial Management</u> .....	20
26. <u>Costs and Attorneys' Fees</u> .....	20
27. <u>Waiver</u> .....	21
28. <u>Severability Clause</u> .....	21
29. <u>Enforcement</u> .....	21

30. Pronouns .....21  
31. Floor Plans .....21



CHICAGO TITLE

**DECLARATION OF CONDOMINIUM OWNERSHIP**

**Creekside Crossing Condominiums**

This Declaration, made this 29 day of November, 2004, by CREEKSIDE CROSSING, LLC, a(n) Indiana limited liability company (the "Declarant"),

**WITNESSETH:**

**WHEREAS, the following facts are true:**

A. Declarant is the sole owner of the fee simple title to certain real estate, located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

B. Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "Tract" or "Phase I").

C. Declarant, by execution of this Declaration, hereby creates the Creekside Crossing Condominiums upon the Tract, subject to the provisions of the Condominium Law of the State of Indiana under the terms and conditions of this Declaration.

**NOW, THEREFORE, Declarant hereby makes this Declaration as follows:**

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

(a) "Act" means the Condominium Law of the State of Indiana, Indiana Code §32-25-1 et. seq., as such Act may be amended. The Act is incorporated herein by reference.

(b) "Applicable Date" means the date determined pursuant to Section 3.02 of the By-Laws.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(d) "Association" means Creekside Crossing Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Condominium Units, such Association being more particularly described in Paragraph 12 of this Declaration.

(e) "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 any subsequent Board of Directors elected by the Members in accordance with the By-Laws of the Association.

(f) "Building" means any structure on the Tract in which one or more Condominium Units are located. The Buildings are more particularly described and identified on the Plans and in paragraph 3 of this Declaration. "Building" also includes 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, and will be identified in supplemental declarations and on plans that will be filed therewith.

(g) "By-Laws" means the Code of By-Laws of the Association providing for the administration and management of the Property and restrictions on its use, as required by and in conformity with the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.

(h) "Common Areas" means the common areas and facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.

(i) "Common Expense" means expenses for administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and the Limited Areas (to the extent provided herein), and all sums lawfully assessed against the Members of the Association.

(j) "Condominium Unit" means each one of the living units constituting Creekside Crossing, 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 which may be submitted and subjected to the Act and this Declaration by supplemental declarations as herein provided. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

(k) "Co-owners" means the owners of all the Condominium Units.

(l) "Creekside Crossing" means the name by which the Tract, which is the subject of this Declaration and which the Association manages, shall be known.

(m) "Declarant" means and refers to Creekside Crossing, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates 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 Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(n) "Garage Unit" means and refers to each one of the Garage Units in Creekside Crossing, being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration, and each additional Garage Unit which may be submitted and subjected to the Act and this Declaration by supplemental declarations as provided herein.

(o) "Limited Areas" means the limited common areas and facilities as defined in paragraph 7 of this Declaration or those parts of the Common Areas limited to the use of certain Condominium Units.

(p) "Member" means a member of the Association.

(q) "Mortgagee" means the holder of a first mortgage lien on a Condominium Unit.

(r) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Condominium Unit, including Declarant.

(s) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as specifically expressed in paragraphs 4 and 8 of this Declaration.

(t) "Percentage Vote" means that percentage of the total vote accruing to all the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

(u) "Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, Garage Units and property of every kind and nature whatsoever, real, personal and mixed, located upon the Tract and used in connection with the operation, use and enjoyment of Creekside Crossing, but does not include the personal property of Owners.

(v) "Plans" means the floor and building plans and finished floor elevations of the Buildings and Condominium Units and a site plan of the Tract and Buildings prepared by Melton Packard & Associates, certified by Donald M. Gwinnup, Jr., a registered professional engineer, under date of November 22, 2004, all of which are incorporated herein by reference.

(w) "Phase I" means the real estate described in paragraph B of the recitals above.

(x) "Tract" means the real estate described in paragraph B of the recitals above and such other portions of the Real Estate which have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or a supplemental declaration as herein provided

2. Declaration. Declarant hereby expressly declares that the Property shall be a condominium project in accordance with the provisions of the Act.

3. Description of Buildings. There is one (1) Building of two stories in height containing sixteen (16) Condominium Units on the Tract as of the date hereof, and the clubhouse and swimming pool as shown on the Plans. The Building(s) is(are) identified and referred to in the Plans and in the Declaration as Building(s).

4. Legal Description and Percentage Interest. Each Condominium Unit is identified on the plans by a Building number and Unit number. The legal description for each Condominium Unit shall consist of the Building number and Unit number as shown on the Plans, and shall be stated as "Building \_\_, Unit \_\_in Creekside Crossing Condominiums in Marion County, Indiana". The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined shall be that percentage interest included in each Condominium Unit as set forth on Exhibit C attached hereto and made a part hereof.

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 but not limited to 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, appliances, and cabinets 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. Also, 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 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 measured between the interior unfinished surface of the floors, roofs and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or roof surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, 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 roof surfaces of the Condominium Unit.

6. Common Area and Facilities. "Common Areas" means (1) the Tract, (2) the foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings, (3) the yards, gardens, sidewalks and parking areas, except to the extent the same are otherwise classified and defined herein a part of the Condominium Unit or Limited Areas, (4) central electricity, gas, water, air conditioning and sanitary sewer serving the Buildings (including those located in the interior of the Building), if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Buildings unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Condominium Unit, (7) all streets that are not dedicated, (8) floors, roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (9) recreational facilities, if any, and (10) all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Condominium Unit.

7. Limited Areas and Facilities. Limited Areas and those Condominium Units to which use thereof is limited are as follows:

(a) Balconies, patios, porches, storage areas and sidewalks serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they are attached or appertain.

(b) 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.

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

(d) Parking spaces, Garage Units or storage areas on the Plans as designated on the deed from Declarant to an Owner shall be limited for the use of the Owner of the Condominium Unit being conveyed and thereafter such right to use the applicable parking space or storage areas shall pass with title to such Condominium Unit even though not expressly mentioned in the document passing title. Ownership of parking spaces and storage areas pass only with title to the Condominium Unit. Garage Units may be freely transferred, independent of a Condominium Unit, provided that the transferee is an Owner of a Condominium Unit. Only a person or entity who is a current Owner of a Condominium Unit can own a Garage Unit. Although the Percentage Interest of any Owner having a Garage Unit or storage areas will not change as a result of such Owner having a Garage Unit or storage areas, such Owner shall have an additional amount added to his Regular Assessment (as defined in the By-Laws) to account for the cost of maintaining the Garage Units. The Board of Directors shall determine the Additional Assessment which shall be the same for all owners of Garage Units. In addition, the Owner of a Garage Unit shall be responsible for the maintenance of the garage door(s).

(e) The halls, corridors, lobbies, stairs, stairways, entrances and exits of each Building, if any, (except those located within the interior of Condominium Units) shall be limited to the use of the Condominium Units of such Building served by such halls, corridors, lobbies, stairs, stairways, entrances, and exits.

8. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in Paragraph 4 of this Declaration. The Percentage Interest of each Condominium Unit shall be a percentage equal to the number of square feet per Condominium Unit divided by the total number of square feet for all of the Condominium Units which, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and which constitute a part of Creekside Crossing. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and Mortgagees and then only if 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 Creekside Crossing, and the Association upon which the Co-owners are entitled to vote.

9. Encroachments and Easements for Common Areas. If, by reason of the location, construction, settling or shifting of a Building, any Common Area or Limited 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 Co-owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, 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 of ingress and egress from such Owner's Condominium Unit with such right being perpetual and appurtenant to the ownership of the Condominium Unit.

10. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. 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 (or the Property and any other portions of the Real Estate) as a whole, then each Owner shall pay his proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest.

11. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, including sanitary sewer and water, shall be

treated as and paid as part of the Common Expenses, unless otherwise agreed by a majority of the Percentage Vote of Owners.

12. Association of Owners. Subject to the rights of Declarant reserved in paragraph 25 hereof and obligations of the Owners, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner of a Condominium Unit 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 an Initial Board of Directors 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 such Initial Board of Directors who shall serve for the period provided in the By-Laws. Each person serving on the Initial Board of Directors, 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 purpose 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 of Directors shall be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose (unless he is actually an Owner of a Condominium Unit and thereby a member of the Association).

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. Subject to the provisions of paragraph 25 of the Declaration and Section 3.07(a) of the By-Laws, the Board of Directors shall at all times provide for professional management of the Creekside Crossing unless all Mortgagees give their prior written approval for self-management.

All Owners and occupants of the Condominium Unit shall be deemed to have granted the right of entry thereto to the Declarant, the Association, the Managing Agent or any other person authorized by the Board when, in the reasonable judgment of the Declarant or the Association, there has been a violation by such Owner or occupants of the covenants, conditions and restrictions set forth in the By-Laws or this Declaration; provided, that, except in the event of an emergency, the request for such entry has been made in advance and is at a time reasonably convenient to the Owner. In the event of an emergency, no notice is required.

13. Maintenance, Repairs and Replacements. Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his own Condominium Unit and to the extent provided in this Declaration or the By-Laws for the Limited Areas reserved for his use. Each Owner shall repair any defect occurring in his Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Area. Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas shall be furnished by the Association as part of the Common Expenses, except as otherwise provided herein or in the By-Laws.

The Board of Directors shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate.

The Board of Directors or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

14. Alterations, Additions and Improvements. No Owner shall make any alterations or additions to or which would affect the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alteration in or to his respective Condominium Unit and within the boundaries thereof which would affect the safety or structural integrity of the Building in which the Condominium Unit is located nor shall any Owner change the color of any of the Common Areas or Limited Areas without the prior written approval of the Board of Directors. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No such change shall increase the number of Condominium Units nor change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans executed by the Declarant and recorded in the Office of the Recorder of Marion County, Indiana. Such supplement to the Plans need not be approved by the Association or any other Owners.

15. Insurance. The Co-Owners, through the Association, shall purchase a master casualty insurance policy, using generally acceptable insurance carriers, affording fire and extended coverage insurance, insuring the Property in an amount equal to the full replacement value of the improvements which, in whole or in part, comprise the Common Areas and Limited Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Directors, the Board of Directors may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name each Owner and, if applicable, the Mortgagee of each Owner, as insureds and shall be for the benefit of each such Owner and Mortgagee in accordance with the following terms and conditions:

All proceeds payable as a result of casualty losses sustained, which are covered by insurance purchased by the Association as hereinabove set forth, shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors, only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the

Association, as provided in the By-Laws, shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under the said master casualty insurance policy. The Association shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Owner appoints the Association to act for and on behalf of the Owners for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability and the performance of all other acts necessary to accomplish such purposes.

No Owner or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Unit and/or Common Areas. The Association shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Owner appoints the Association to act for and on behalf of the Owners for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability and the performance of all other acts necessary to accomplish such purposes.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy shall not be terminated for non-payment of premiums without at least ten (10) days prior written notice to Mortgagees and to the Association and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, (ii) 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 16 of this Declaration, and (iii) an agreed amount endorsement or an inflation guard endorsement to the extent such are commonly required by prudent institutional mortgage investors in the metropolitan Indianapolis area.

The Co-owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as required by the Act and as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Creekside Crossing, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of Creekside Crossing.

Such policy shall provide that it may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and all Mortgagees.

The Co-owners, through the Association, shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any managing agent acting on behalf of the Association.

The premiums for all such insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his Mortgagee jointly.

Each Owner shall be solely responsible for loss or damage to the contents of his Condominium Unit and any Garage Unit(s), however caused (including, but not limited to, all floor, ceiling and wall coverings and fixtures, light fixtures, appliances and betterments and improvements installed by him) and his personal property stored elsewhere on the Property, and the Association shall have no liability to the Owner for loss or damage to the contents of any Condominium Unit or Garage Unit(s). Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary, including but not limited to: (1) personal liability insurance provided all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association, and (2) casualty insurance upon his Condominium Unit and Garage Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

16. Casualty and Restoration.

(a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the

Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the Buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the Buildings" means a determination, made by a vote of two-thirds (2/3) of all Co-owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such thirty (30) day period, or if the determination of whether or not there has been a complete destruction of all the Buildings has not been made within such thirty (30) day period, then it shall be conclusively presumed that the Co-owners determined that there was not a complete destruction of all of the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

In the event of substantial damage to or destruction of any Condominium Unit or any part of the Common Areas, the affected Mortgagee or Mortgagees shall be given timely written notice of such damage or destruction and, notwithstanding any other provision of the Declaration or By-Laws, the Property shall not be removed from the Act without the approval of fifty-one percent (51%) of the Mortgagees.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Act, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in proportion to the ratio that the damage to such Condominium Unit bears to the total damage of all Condominium Units. Any such amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For purposes of subparagraph (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Condominium Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(d) If, under subparagraph (a) above, it is determined by the Co-owners at the special meeting of the Association referred to therein that there has been a complete destruction of all of the Buildings, the Co-owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-owners at said special meeting that there has been a complete destruction of all of the Buildings unless by a vote of two-thirds (2/3) of all of the Co-owners a decision is made to rebuild, reconstruct and repair the Buildings. If two-thirds (2/3) of all of the Co-owners vote and decide that the

Buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of all of the Buildings, less than two-thirds (2/3) of all of the Co-owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Section 28 of the Act and, in accordance with Section 21 of the Act:

(i) the Property shall be deemed to be owned in common by the Owners;

(ii) the undivided interest in the Property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

(iii) any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property; and

(iv) The Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desire.

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Twenty Thousand Dollars (\$20,000) then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are

included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Twenty Thousand Dollars (\$20,000), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Condominium Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board of Directors as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Directors it may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

(h) If any Condominium Unit or portion thereof or any of the Common Areas is made the subject of a condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the affected Mortgagee or Mortgagees shall be given timely written notice of such proceeding or proposed acquisition. The Association shall represent the Owners in any condemnation proceeding or any negotiation settlements or agreements with the condemning authority for acquisition of the Common Areas or any part thereof. In the event of a taking or acquisition of part or all of the Common Areas by a condemning authority, the award or proceeds of settlement shall be payable to the Association to be held in trust for the Owners and Mortgagees as their interests may appear and the provisions of the Declaration relating to restoration and allocation of funds in the event of a casualty shall be applicable in the event of a condemnation.

17. **Covenants and Restrictions.** The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited 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 by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any 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 November 30, 2011 the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (including any recreational facilities but not including individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the Property, 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 construction and sale of Condominium Units (whether within Creekside Crossing or as a model unit for other condominium projects being developed by Declarant), or to promote or effect sales of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to 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.

18. **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.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the Percentage Vote. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the

Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

(e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred percent (100%) of the Co-owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws except for changes pursuant to paragraph 21 herein, or (2) the provisions of paragraph 16 of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws or (3) the provisions of paragraph 12 regarding the obligation of the Board of Directors to provide professional management for Creekside Crossing or (4) the provisions of paragraph 15 providing for no priority of an Owner or other person over a Mortgagee as to insurance or condemnation proceeds, or (5) the provisions of paragraph 23 with respect to the rights to use the common areas, or (6) which change would negatively impact the value or appearance of the Property, without the Declarant's approval.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association shall include an affidavit stating that Owners representing seventy-five percent (75%) of the aggregate of Percentage Vote or such other amount as required by this Declaration have approved the amendment and shall be recorded in the Office of the Recorder of Marion 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 Co-owners, the Association, the Board of Directors, any Mortgagees or any other person at any time prior to the Applicable Date 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, or (ii) such amendment or supplement is made to implement expansion of the Property and Creekside Crossing pursuant to Declarant's reserved rights to expand the same as set forth in paragraph 21 hereof, or (iii) such amendment is necessary 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 & Urban Development, the Federal Housing Association, the Veteran's 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 or (iv) such amendment is necessary to correct clerical or typographical errors or to clarify Declarant's original intent or (v) such amendment is necessary to implement any changes in Creekside Crossing permitted to be made by Declarant under this Declaration or (vi) such amendment is necessary to more equitably provide for assessments where Condominium Units have special features such as elevators and Garage Units.

(h) Special Requirements. Notwithstanding anything to the contrary contained herein, unless specifically controlled by a more restrictive provision under Indiana law or contained herein, the Association shall not, without the prior written notice to all Mortgagees and the prior written consent of at least two-thirds (2/3) of the Mortgagees (based upon one vote for each mortgage owned of the Condominium Units) and of the Owners (other than Declarant) be entitled to:

(i) by act or omission, seek to abandon or terminate the Property from the Act;

(ii) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Areas;

(iii) partition or subdivide any Condominium Unit;

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this clause);

(v) use hazard insurance proceeds for losses to any part of the Property (whether to Condominium Units or to Common Areas) for other than the repair, replacement or reconstruction of such Property, except as provided in paragraph 16 of this Declaration in case of substantial damage to the Condominium Units.

(i) HUD Approval. Notwithstanding anything elsewhere contained herein or in any other document, so long as HUD insures any mortgage on any Condominium Unit, HUD shall have the right to review and approve amendments or changes to the Declaration and related documents relating to the expansion of Creekside Crossing.

19. 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, corporations, partnerships, trusts, associations, or other legal entities 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.

20. **Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, (including but not limited to damage caused by any pet or any automobile) 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 his use, misuse, occupancy or abandonment of his Condominium Unit, Garage Unit(s), or its appurtenances or of the Common Areas or Limited Areas.

21. **Expandable Condominium and Declarant's Reserved Rights.** Creekside Crossing 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 Creekside Crossing in accordance with the provisions of the Act and the following provisions:

(a) The real estate described and defined herein as the Tract (in paragraph B of the introductory recitals of this Declaration) is the real estate being subjected to the Creekside Crossing Condominiums by this Declaration and constitutes the first phase of the general plan of development of the Real Estate. The balance of the Real Estate is the area into which expansion of Creekside Crossing may be made by Declarant. The maximum number of Condominium Units which may be developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration, shall be one hundred twenty-eight (128). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, Creekside Crossing may be expanded by Declarant to include additional portions of the Real Estate in one (1) or more additional phases by the execution and recording of one (1) or more amendments or supplements to this Declaration; provided, however, that 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 Creekside Crossing 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 such expansion is done on or before November 30, 2011. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Creekside Crossing beyond the Tract (as defined and described in paragraph B of the introductory recitals of this Declaration) or any other portions of the Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by amendments or supplements to this Declaration as provided above. Any Condominium Units constructed in such expansion area shall be consistent with the quality of construction of the Condominium Units constructed in the previous phases. Prior to expansion to an additional phase, the improvements in such expansion phase shall be substantially complete.

(b) The Percentage Interest which will appertain to each Condominium Unit in Creekside Crossing as Creekside Crossing may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration) shall be equal to the square

footage of the Condominium Unit divided by the total square footage of all the Condominium Units which, from time to time, have been subjected and submitted to this Declaration and then constitute a part of Creekside Crossing.

(c) Simultaneously with the recording of amendments or supplements to this Declaration expanding Creekside Crossing, Declarant shall record new Plans as required by the Act. Such amendments or supplements to this Declaration 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 on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the amendment or supplement to the Declaration incorporating those changes has been recorded.

(d) When the amendment or supplement to the Declaration incorporating the addition of Condominium Units or expansion of 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 described in the Declaration and shall attach to the reallocated Percentage Interests in the 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 Interest appertaining to additional Condominium Units being added by the amendment or supplement to the Declaration are subject to mortgage liens upon the recordation of the amendment or supplement to the Declaration.

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 appurtenant to each Condominium Unit to the percentages set forth in each such amendment or supplement to this Declaration recorded pursuant to this paragraph 21. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power to said attorney-in-fact and shall be deemed to reserve to said attorney-in-fact the power to shift and reallocate from time to time the percentages of ownership in the Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded amendment or supplement to this Declaration.

Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each such amendment or supplement to this Declaration that is recorded as follows:

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

(ii) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded amendment or supplement to this Declaration and upon the recording of each such amendment or supplement to this Declaration, shall thereby be deemed to be released and

divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each such recorded amendment or supplement to this 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 appurtenant to each Condominium Unit shall, upon the recording of each amendment or supplement to this Declaration be divested pro tanto to the reduced percentage set forth in such amendment or supplement to this 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 amendment or supplement to this Declaration.

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

(v) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas included in land to which Creekside Crossing is expanded by a recorded amendment or supplement to this Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such Additional Common Areas and the ownership of any such Condominium Unit and lien of any such mortgage shall automatically include and attach to such additional Common Areas as such amendments or supplements to this Declaration are recorded.

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

(vii) The recording of any such amendment or supplement to this 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 amendment or supplement to this Declaration are and shall be deemed to be in accordance with the Act and for purposes of this Declaration and the Act, any changes in the respective Percentage Interest in the Common Areas as set forth in each such amendment or supplement to this 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 21 to comply with the Act as it may be amended from time to time.

22. Granting of Easements. The Board of Directors is granted the authority to grant easements to utility companies (excluding transportation companies but including cable TV and satellite TV companies) upon such terms and conditions and for such consideration as it deems appropriate.

23. Reservation of Rights to the Use of the Common Areas.

(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 an amendment or supplement to this Declaration and the owner or owners of such portion or portions of the Real Estate not so subjected to the Declaration or to the Act develop single or multi-family dwelling units on such portions then the owner or owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the roads, the recreational facilities and associated facilities, for the use of the persons and families living in such dwelling units upon the same terms and conditions as the use of such Common Areas by the owners of the Condominium Units, their families 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 living units so entitled to utilize such facilities in proportion to all of the living units on the Real Estate. The owner or owners of such living units shall make payments for the usage provided herein to the Association at the same time as the Owners of the 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 and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property and any portions of the Real Estate which are not part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate which are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate which are not part of the Property, to use the Property for marketing purposes for Creekside Crossing and other condominium projects which are being developed by Declarant and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate which are not part of the Property.

24. Easement for Utilities and Public and Quasi Public Vehicles. All 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, shall have the right to enter upon the streets, Common Areas and Limited Areas of Creekside Crossing in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to water, sewers, gas, telephones, television, data transmission services and electricity on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other lines and utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement the electric, television, data transmission services and telephone utilities are

expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric, telephone, television, data transmission and other necessary wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Buildings.

25. Initial Management. As set forth in the By-Laws, the Initial Board of Directors consists and will consist of persons selected by Declarant. Such Board of Directors may enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) or a third party for a term not to exceed one (1) year with either party having the right to terminate upon thirty (30) days notice under which the management company 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 Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement may be renewed by the parties for additional terms of one (1) year. In the event no management agreement exists because of termination or otherwise, the Association shall thereupon and thereafter resume performance of all the management duties, obligations and functions. Notwithstanding anything to the contrary contained herein prior to the Applicable Date, Declarant shall have, and Declarant hereby reserves to itself (either through a management company or otherwise), the exclusive right to manage the Property and to perform all the functions of the Association.

26. Costs and Attorneys' Fees. In any proceeding arising because of failure of an 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.

27. 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 Areas or by abandonment of his Condominium Unit.

28. 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 affect the rest of this Declaration or the attached By-Laws.

29. Enforcement. The provisions of this Declaration, the By-Laws, the Articles of Incorporation or the Statute may be enforced by the Association or by any aggrieved Owner through court proceedings for injunctive relief, for damages or for both.

30. Pronouns. 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.



## EXHIBIT A

### Land Description Creekside Crossing Overall

Part of the Southwest Quarter of the Southeast Quarter of Section 24, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Commencing at a Harrison monument found marking the Southwest corner of said Southeast Quarter; thence North 00 degrees 15 minutes 21 seconds East along the West line of said Southeast Quarter 760.06 feet to a 5/8 inch rebar with cap stamped "BANNING ENG LS29800001" set (herein referred to as "rebar set"), said point being the POINT OF BEGINNING; thence continue North 00 degrees 15 minutes 21 seconds East along said West line 567.99 feet to a rebar set at the Northwest corner of the South Half of said Southeast Quarter; thence North 89 degrees 33 minutes 34 seconds East along the North line thereof 663.53 feet to a rebar set, said point being on an existing fence line; thence South 00 degrees 28 minutes 32 seconds West generally along said fence line 1110.12 feet to a 5/8 inch rebar with a "SCHNEIDER ENG FIRM #0001" cap found (herein referred to as "rebar found"); thence South 89 degrees 32 minutes 39 seconds West 100.00 feet to a rebar found; thence South 00 degrees 27 minutes 21 seconds West 217.82 feet to a MAG nail with "LS9800001" tag (herein referred to as "nail set") on the South line of said Southeast Quarter; thence South 89 degrees 32 minutes 39 seconds West along said South line 320.01 feet to a nail set; thence North 00 degrees 15 minutes 21 seconds East parallel with said West line 760.06 feet to a rebar set; thence South 89 degrees 32 minutes 39 seconds West parallel with said South line 238.50 feet to the POINT OF BEGINNING.

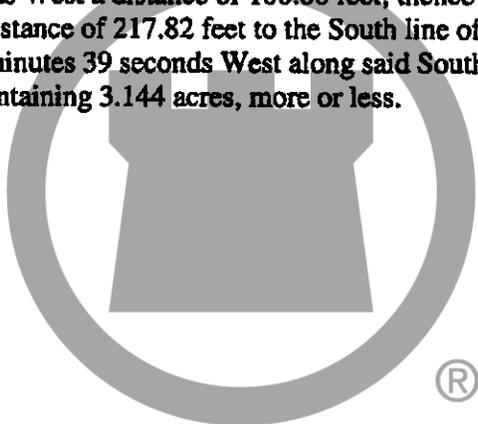
CHICAGO TITLE

## EXHIBIT B

### Land Description Creekside Crossing Phase One

Part of the Southwest Quarter of the Southeast Quarter of Section 24, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Commencing at a Harrison monument found marking the Southwest corner of said Southeast Quarter; thence North 89 degrees 32 minutes 39 seconds East along the South line of said Southeast Quarter a distance of 238.50 feet to the Point of Beginning; thence North 00 degrees 15 minutes 21 seconds East parallel with the West line of said Southeast Quarter a distance of 380.00 feet; thence South 89 degrees 44 minutes 39 seconds East a distance of 421.34 feet; thence South 00 degrees 28 minutes 32 seconds West a distance of 156.97 feet; thence South 89 degrees 32 minutes 39 seconds West a distance of 100.00 feet; thence South 00 degrees 27 minutes 21 seconds West a distance of 217.82 feet to the South line of said Southeast Quarter; thence South 89 degrees 32 minutes 39 seconds West along said South line 320.01 feet to the POINT OF BEGINNING, containing 3.144 acres, more or less.



# CHICAGO TITLE

EXHIBIT C

Creekside Crossing Condominiums

<u>Building No.</u>	<u>Unit</u>	<u>Square Footage</u>	<u>Percentage Interest</u>
1-8950 Hunter's Creek Drive	101	1,405	6.53
1-8950 Hunter's Creek Drive	102	1,405	6.53
1-8950 Hunter's Creek Drive	103	1,100	5.11
1-8950 Hunter's Creek Drive	104	1,340	6.23
1-8950 Hunter's Creek Drive	205	1,535	7.13
1-8950 Hunter's Creek Drive	206	1,535	7.13
1-8950 Hunter's Creek Drive	207	1,100	5.11
1-8950 Hunter's Creek Drive	208	1,340	6.23
1-8940 Hunter's Creek Drive	101	1,100	5.11
1-8940 Hunter's Creek Drive	102	1,340	6.23
1-8940 Hunter's Creek Drive	103	1,405	6.53
1-8940 Hunter's Creek Drive	104	1,405	6.53
1-8940 Hunter's Creek Drive	205	1,100	5.11
1-8940 Hunter's Creek Drive	206	1,340	6.23
1-8940 Hunter's Creek Drive	207	1,535	7.13
1-8940 Hunter's Creek Drive	208	1,535	7.13

TOTAL SQUARE FOOTAGE, PHASE I = 21,520



TOTAL PERCENTAGE, PHASE I = 100.00

CHICAGO TITLE

CONSENT OF MORTGAGEE

The undersigned, being the holder of existing mortgages and other security on the real estate described in the above and foregoing Declaration as follows:

See Exhibit A to Declaration

hereby consents to the recording of the above and foregoing Declaration of Creekside Crossing Condominiums and the submission of the real estate described therein to the provisions of the Condominium Law of the State of Indiana, and further agrees that its mortgage and other security with respect to the Tract shall be subject to the provisions of the Act and the above and foregoing Declaration and Exhibits attached thereto and the documents incorporated therein; provided, however, except and to the extent that the mortgage and other security are modified by this Consent, such mortgage and other security shall remain in full force and effect.

EXECUTED this 29 day of November, 2004.

Hills Financial Group, a limited partnership

By: Hills Developers, Inc. an Ohio corporation

By: *Ian Guttman*  
Printed: Ian Guttman  
Title: Vice President

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Ian Guttman, by me known and by me known to be the Vice President of Hills Developers, Inc., on behalf of Hills Financial Group who acknowledged the execution of the foregoing DECLARATION OF CREEKSIDE CROSSING CONDOMINIUMS on behalf of said entities.

WITNESS my hand and Notarial Seal this 29 day of November, 2004.

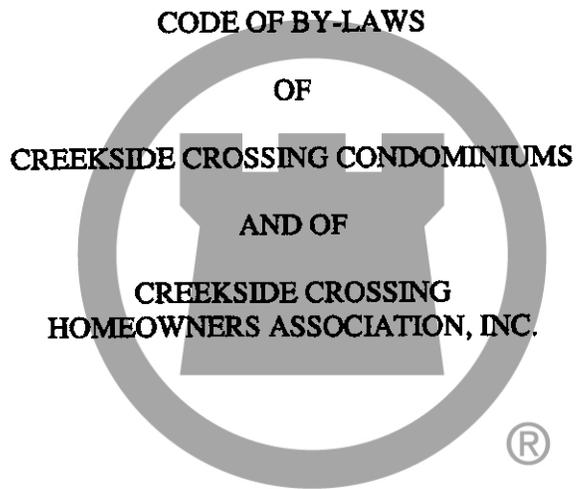


WENDY S. BASSMAN  
Notary Public - State of Ohio  
My Commission Expires  
June 19, 2005

*Wendy S Bassman*  
Notary Public  
Wendy S. Bassman  
(Printed Signature)

My Commission Expires: June 19, 2005  
My County of Residence: Hamilton County





CHICAGO TITLE

TABLE OF CONTENTS

	<u>Page</u>
<b><u>ARTICLE I Identification and Applicability</u></b> .....	1
Section 1.01. Identification and Adoption .....	1
Section 1.02. Name, Principal Office and Resident Agent.....	1
Section 1.03. Individual Application .....	1
<b><u>ARTICLE II Meetings of Corporation</u></b> .....	1
Section 2.01. Purpose of Meetings .....	1
Section 2.02. Annual Meetings.....	2
Section 2.03. Special Meetings.....	2
Section 2.04. Notice and Place of Meetings .....	2
Section 2.05. Voting and Conduct of Meetings.....	2
<b><u>ARTICLE III Board of Directors</u></b> .....	4
Section 3.01. Management.....	4
Section 3.02. Initial Board of Directors .....	4
Section 3.03. Additional Qualifications.....	5
Section 3.04. Term of Office and Vacancy.....	5
Section 3.05. Removal of Directors .....	5
Section 3.06. Duties of the Board of Directors.....	6
Section 3.07. Powers of the Board of Directors.....	6
Section 3.08. Limitation on Board Action .....	7
Section 3.09. Compensation .....	8
Section 3.10. Meetings.....	8
Section 3.11. Waiver of Notice.....	8
Section 3.12. Quorum .....	8
Section 3.13. Non-Liability of Directors .....	8
Section 3.14. Additional Indemnity of Directors.....	9
Section 3.15. Bond.....	9
<b><u>ARTICLE IV Officers</u></b> .....	10
Section 4.01. Officers of the Association .....	10

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Corporation at least seven (7) days prior to the date of the annual meeting. Notwithstanding the foregoing, nominations will be accepted at the annual meeting from those Owners in attendance at the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. 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. The foregoing provisions are subject to the provisions of Section 3.02 hereof.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the Percentage Vote.

(6) Adjournment.

(g) Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation if he is 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 in consideration of 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 Corporation and Creekside Crossing shall be governed and managed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). The Board of Directors shall be composed of three persons. No person shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 3.02 hereof.

Section 3.02. Initial Board of Directors. The initial Board of Directors shall be Ian Guttman, Gregg Hotham and Steve Ranshaw (herein referred to as the "Initial Board"), 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 or the Declaration or the Act or elsewhere (a) the Initial Board shall hold office until (1) \_\_\_\_\_, 2011, or (2) the date Declarant files for record in the Office of the Recorder of Marion County, Indiana an instrument waiving or releasing its reserved right as set forth in paragraph 21 of the Declaration to expand or further expand Creekside Crossing, whichever of the above is earliest, or (3) at such earlier date as Declarant may determine (such date when the Initial Board shall no longer hold office being herein referred to as 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 determined as provided above, every such vacancy shall be filled by a person 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 shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, 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, 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 person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Condominium Unit may be represented on the Board of Directors by more than one person at a time.

**Section 3.04. Term of Office and Vacancy.** Subject to the provisions of Section 3.02 hereof, the members of the Board of Directors shall be elected at each annual meeting of the Corporation in accordance with this Section. 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 provided in Section 3.02 hereof. After the Applicable Date, the Board of Directors will consist of five (5) members, elected by the Owners. Because the terms of not less than one-third (1/3) of the Directors must expire annually, the Directors elected by the Owners at the first meeting after the Applicable Date shall be elected to staggered terms of the following lengths: two Directors shall be elected to a one (1) year term and three (3) Directors shall be elected to a two (2) year term. The three (3) Directors with the most votes shall be the Directors who shall serve the two (2) year term. A Director elected at the first meeting on or after the Applicable Date shall serve for the term which he/she has been elected and shall remain a Director until the earlier of (a) the next annual meeting of Owners and until a successor is elected, or (b) until the Director's earlier resignation, removal from office or death.

Each Director elected by the Owners after such first meeting shall serve for a two (2) year term and shall remain a Director until the earlier of (a) the next annual meeting of Owners and until a successor is elected or (b) until the Director's earlier resignation, removal from office or death.

A Director may be re-elected or reappointed for additional terms.

**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 of a majority of the Percentage Vote at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor 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 Owners and until his successor is duly elected and qualified.

**Section 3.06. Duties of the Board of Directors.** The Board of Directors shall provide for the administration of Creekside Crossing Condominiums, the maintenance, upkeep and replacement of the Common Areas and Limited Areas (unless the same are otherwise the responsibility or duty of Owners of Condominium Units), the establishment of a budget and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board shall, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "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 Areas, unless the same are otherwise the responsibility or duty of Owners of Condominium Units; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, 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 Creekside Crossing, removal of garbage and waste, and snow removal from the Common Areas;

(c) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Areas and, where applicable, the Limited Areas;

(d) surfacing, paving and maintaining private streets, parking areas and sidewalks to the extent the same are not included in a Condominium Unit or constitute Limited Areas;

(e) assessment and collection from the Owners of the Owner's share of the Common Expenses;

(f) preparation of the annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(h) procuring and maintaining for the benefit of the Owners, the Corporation and the Board the insurance coverages required under the Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable.

**Section 3.07. Powers of the Board of Directors.** The Board of Directors 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, including keeping a record and minutes of all meetings; provided, however, except as otherwise provided in Paragraph 25 of the Declaration, any management agreement shall be terminable by the Corporation for cause upon sixty (60) days written notice and any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods.

(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 of Directors;

(c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of Creekside Crossing;

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

(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.

(h) to adopt an annual budget for each fiscal year for the purpose of estimating the total amount of Common Expenses for such fiscal year.

**Section 3.08. Limitation on Board Action.** After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Two Thousand Five Hundred Dollars (\$2,500.00) without the Board amending the budget, after notice to (but not approval of) the Owners, except that in the following cases such amendment and notice shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) proposed contracts and proposed expenditures set forth in the annual budget; and

(c) expenditures necessary to deal with emergency conditions in which the Board of Directors 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 such except to such extent as may be expressly authorized by a majority of the Percentage Vote. 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.** Regular meetings of the Board of Directors 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 meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons 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 Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Marion County, Indiana, or any of the contiguous counties, 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 thereat, shall, as to such Manager, 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. 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 3.13. 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 Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of Creekside Crossing or the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of Creekside Crossing or the Corporation 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 Creekside Crossing shall provide that the Board of Directors 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 Interest.

**Section 3.14. Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him 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 Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, unless it is determined by a majority of the Percentage Vote that such Director was 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 Corporation or statements or advice made by or prepared by the Managing Agent of Creekside Crossing or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation 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 failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 3.15. Bond.** The Board of Directors shall require the Managing Agent, Treasurer, employees, officers and agents handling or responsible for funds of or administered on behalf of the Corporation to have surety bonds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wilful misapplication and other acts of fraud or dishonesty in an amount not less than the estimated maximum amount of funds, including reserve funds, in the custody of the Corporation or the Managing Agent, as the case may be, at any given time, but in no event less than a sum equal to three (3) months aggregate assessments on all Condominium Units, plus reserve funds. Such bonds shall also specifically include protection for any insurance proceeds received for any reason by the Board.

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 or expressions. The expense of any such bonds, except those maintained by the Managing Agent, shall be a Common Expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Corporation and to all Mortgagees.

## ARTICLE IV Officers

**Section 4.01. Officers of the Association.** The principal officers of the Corporation 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 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 Corporation shall be elected annually by the Board at the initial meeting of each new 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 Corporation. He shall preside at all meetings of the Corporation and of 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 and disband committees from among the Owners as he may deem necessary to assist in the affairs of the Corporation 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 these 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 Corporation 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 as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation 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 from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Corporation. He shall immediately deposit all funds of the Corporation 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 Corporation. 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 of Directors may, from time to time, designate and elect from among the Owners 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 of Directors may prescribe.

## **ARTICLE V Assessments**

**Section 5.01. Annual Accounting.** Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 5.02. Proposed Annual Budget.** Annually, on or before the end of each fiscal year, the Board of Directors shall adopt an annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year. Such budget shall separately specify the amount that will be necessary to maintain, repair and replace the carports and garages, if any. Such budget may not increase by more than twenty percent (20%) of the previous annual budget without the approval of a majority of the Owners. A copy of such budget shall be furnished to each Owner at or prior to December 1 of each year. The annual budget as presented to the Owners at the annual meeting of the Corporation shall be the basis for the Regular Assessments (hereinafter defined) and Additional Assessments (as hereinafter defined) during such fiscal year. The annual budget, the Regular Assessments, Additional Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular and Additional Assessments shall, in addition, be established to include the establishment and maintenance of an adequate replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare an 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.

**Section 5.03. Regular Assessments and Additional Assessments.** The annual budget as adopted by the Board shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain an assessment against each

Condominium Unit based on the Percentage Interest of each Condominium Unit and an Additional Assessment against each Owner of a Garage Unit(s). Immediately following the adoption of the annual budget (1) each Owner shall be given written notice of the assessment against his respective Condominium Unit (herein called the "Regular Assessment") and (2) each Owner of a Garage Unit(s) shall be given written notice of the assessment applicable to such Owner's Garage Unit(s) as provided in paragraph 7(d) of the Declaration (herein called "Additional Assessment"). The aggregate amount of the Regular Assessments and Additional 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 and Additional Assessment (as applicable) against each Condominium Unit shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment and Additional 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 quarterly, semi-annually or annually, in advance. The Regular Assessment and Additional Assessment (as applicable) for the current fiscal year of the Corporation shall become a lien on each separate Condominium Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment or Additional Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment or Additional Assessment for the current fiscal year in whole or in part based upon a previous budget and thereafter, before the annual budget and Regular Assessment and Additional Assessment are finally determined and approved, 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 and Additional 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 and Additional Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 8.02 hereof prior to the final determination and adoption of the annual budget and Regular Assessment and Additional 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 and Additional 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 installments of Regular Assessments and Additional Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

**Section 5.04. 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 of each Condominium Unit (herein called "Special

Assessment"). 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, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration.

**Section 5.05. Failure of Owner to Pay Assessments.**

(a) No Owner may exempt himself from paying Regular Assessments, Additional Assessments and Special 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 Areas, of the Buildings, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Condominium Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments, Additional Assessments or Special Assessments when due, the 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. Upon the failure of an Owner to make payments of any Regular Assessments, Additional Assessments or Special Assessments, within ten (10) days after such are due, the Board, in its discretion may (1) impose a late charge of up to twenty-five percent (25%) of the amount in default, (2) accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary, (3) eliminate such Owner's right to use the recreational facilities, and (4) eliminate such Owner's right to vote. 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 Corporation of reasonable rental for such Condominium Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments, Additional Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, 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.

(b) Notwithstanding anything contained in this Section or elsewhere in the Declaration and these By-Laws, the lien for any Regular Assessment or Special Assessment shall be subordinate to the lien of any Mortgagee and any sale or transfer of a Condominium Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or

Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the 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 Regular Assessments, Additional Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments, Additional Assessments or Special 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 subject Condominium Unit from which it arose), as provided in the Act.

**Section 5.06. Regular Assessments Prior to Applicable Date.** The purpose of this section is to provide for the maintenance and upkeep of Creekside Crossing and for the payment of the Common Expenses during the period prior to the Applicable Date. Accordingly, and notwithstanding any other provision contained in the Declaration, these By-Laws, the Act or otherwise, prior to the Applicable Date the annual budget and all Regular Assessments, Additional Assessments and Special Assessments shall be established solely by the Initial Board.

At the closing on the purchase of a Condominium Unit, the purchaser is required to pay a sum equal to two (2) full months of the initial Regular Assessments and Additional Assessments (if applicable) due on his or her Condominium Unit as his or her initial contribution to the working capital of the Association. This sum is not an advance payment of Regular Assessments or Additional Assessments (if applicable); rather the sum is allocated to a working capital fund to meet unforeseen expenditures and operating expenses or to purchase any additional equipment or services. While the Declarant is in control of the Association, it cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs. When control of the Association is transferred to the Condominium Unit Owners, the working capital fund shall be transferred to the Association for deposit to a segregated fund. After control of the Association is transferred to the Condominium Unit Owners, the Declarant shall be responsible to collect the initial contribution to the working capital account and forward such funds to the Association. Additionally, at the closing, each purchaser of a Condominium Unit is required to pay a pro-rata share of the Regular Assessments and Additional Assessments (if applicable) due in the month of closing.

Ten percent (10%) of the Regular Assessment paid prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

It is understood that Declarant shall be obligated to pay that portion of the Regular Assessment and Additional Assessment applicable to an unoccupied Condominium Unit for those Condominium Units which Declarant owns and which are in those portions of Creekside Crossing which from time to time have been submitted by Declarant to the Declaration.

**Section 5.07. Maintenance and Repairs.** Every Owner shall promptly perform all maintenance and repair within his own Condominium Unit which, if neglected, would affect the

value of 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 Limited Areas as applicable, and all equipment serving the same. Such maintenance, repairs and replacements which each Owner is responsible to make personally and at his own expense include, but are not necessarily limited to, water lines, gas lines, plumbing and electric lines which service the Owner's Condominium Unit only and are located within exterior walls of the Condominium Unit including any lines in the area from below the floor to above the roof if they are within an extension of the exterior walls of the Condominium Unit; all partitions and interior walls, ceilings and floors; appliances, to include garbage disposals, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment (whether located wholly or partially inside or outside the Condominium Unit), doors, garage doors (for those Owners with Garage Units), screens and windows (including exterior and interior of all glass and screen surfaces), lamps, and interior and exterior grouting and/or caulking and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof.

If, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant or other occupant or visitor of such Owner, or of an Owner's pet or automobile, damage shall be caused to the Common Areas or to a Condominium Unit or Limited Area owned by or reserved for the use of others, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. Maintenance, repairs and replacements to the Common Areas or the Condominium Units or Limited Areas shall be subject to the rules and regulations adopted from time to time by the Board.

To the extent that equipment, facilities and fixtures within any Condominium Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Condominium Units or any Common Areas or Limited Areas, then the use thereof by the owner of such Condominium Unit shall be subject to the rules and regulations adopted from time to time by the Board. The authorized representatives of the Corporation or Board of Directors or the Managing Agent for the Corporation, shall be entitled to reasonable access to any Condominium Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or Limited Areas or any parts thereof, or any equipment, facilities or fixtures affecting or serving other Condominium Units or any Common Areas or Limited Areas.

#### ARTICLE VI Restrictions, Entry and Rules and Regulations

Section 6.01. Restrictions on Use. The following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Areas and the Property shall be applicable to Creekside Crossing and are in addition to those set forth in the Declaration:

(a) All Condominium Units shall be used exclusively for residential purposes and no Condominium Unit may be partitioned or subdivided. No more than four (4) persons

may occupy any Condominium Unit as a residence at any one time unless the Board of Directors grants express written permission.

(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 supplement or amendment to the Declaration, without the consent of the Board of Directors.

(c) Nothing shall be done or kept in any Condominium Unit or in the Common Areas or Limited Areas which 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 Areas which will result in a cancellation of insurance on any Building or any part of the Common Areas or contents thereof, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

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

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or patio doors or placed on the outside walls of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board.

(f) No animals of any kind shall be raised, bred, or kept in any Condominium Unit or in the Common Areas or Limited Areas, except that pet dogs, cats or customary household pets may be kept in a Condominium Unit, subject to the rules and regulations adopted by the Board on behalf of the Association (the "Rules and Regulations), provided that it is not kept, bred or maintained for any commercial purpose, and provided that it is kept subject to the Rules and Regulations of the Association. Dogs, cats, or other household pets must be kept within the confines of the Owner's Condominium Unit except when being held on hand leash by the person attending the animal. A Condominium Unit Owner shall be responsible for cleaning up after his/her household pet. Notwithstanding the above, the Board and/or the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pet. Additionally the right of an occupant to maintain an animal in a Condominium Unit shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental affect on the Condominium Unit or other Condominium Units or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Areas or Limited Areas.

(g) Nothing shall be done or permitted in any Condominium Unit which will impair the structural integrity of any Building or which would structurally change any Building

or which 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 which might cause injury to the reputation of Creekside Crossing or which might be a nuisance, annoyance, inconvenience or damaging to other Owners and occupants of Condominium Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(h) No Owner may hang anything inside or outside his window or patio doors which will show any color other than white or beige tones on the outside. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property.

(j) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Property or any Condominium Unit without the prior written consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Property in connection with any unsold or unoccupied Condominium Units.

(k) All Owners and members of their families, their guests, 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 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 Areas.

(l) Except for vehicles being used by Declarant or by persons providing services to the Declarant, the Corporation or an Owner, no boats, campers, trailers of any kind, buses, mobile homes, trucks (other than 3/4 ton or less pick-up trucks), motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent (1) the parking or storage of such vehicles completely enclosed within a Garage Unit and (2) the driving or using of such vehicles for ingress and egress to and from such Owner's Condominium Unit provided the shortest route to and from a public road is used. No repair work shall be done on the Property on any vehicles, including passenger automobiles.

(m) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Areas, except with express written permission from the Board and if such permission is granted, such Owner shall be obligated to maintain any such

trees or landscaping. No owner shall be allowed to install any fence of any kind, including, but not limited to, an "invisible fence" in any of the Common Areas or Limited Areas.

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

(o) All garbage, trash and refuse shall be deposited only in covered sanitary containers or dumpsters placed by the Corporation on the Common Areas. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for deposit in the appropriate sanitary containers. No open fires shall be permitted on any part of the Property other than fires in charcoal grills or other similar devices located within the Limited Areas.

(p) Common Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(q) No Owner may rent or lease his Condominium Unit for transient or hotel purposes.

(r) Any Owner who leases a Condominium Unit shall lease the entire Condominium Unit and shall have a written lease with a term of at least six (6) months and such lease shall provide that the lease is subject to the provisions of the Declaration, the By-Laws and the Rules and Regulations as adopted by the Board and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. A copy of the lease shall be delivered to the Corporation or Managing Agent.

(s) An Owner may lease a Garage Unit to another Owner of a Condominium Unit, provided that the lease shall be for the entire Garage Unit and shall have a written lease with a term of at least six (6) months with such lease providing that the lease is subject to the provisions of the Declaration, the By-laws and the Rules and Regulations, as adopted by the Board, and any failure of the lessee to comply with the terms of such document shall be a default under the lease. A copy of the lease shall be delivered to the Corporation or Managing Agent.

(t) Any seasonal or holiday decorations or lights which are visible from the Common Area or Limited Common Area may only be displayed for no more than thirty (30) days prior to and thirty (30) days after such holiday.

**Section 6.02. Compliance with Covenants, Conditions and Restrictions.** Every Owner, mortgagee, lessee or other occupant of a Condominium Unit shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the By-Laws and with the Rules and Regulations in relation to the use and operation of the Tract. A violation committed by any persons residing in, occupying or visiting a Condominium Unit at the behest

or with the implied or express permission of the Owner or any other occupant of the Condominium Unit, or committed by any agent, employee, business invitee, or contractor of the Owner or of any person occupying a Condominium Unit, shall be attributed to that Condominium Unit and the Owner thereof. Failure to comply with any of said covenants, conditions and/or restrictions shall be grounds for withdrawal by the Board of Directors of privileges with respect to the use of any of the Common Areas by any defaulting Owner and by his tenants, invitees, guests and all members of his family and/or his tenant's family. The Board may also prohibit any Owner from entering into any new lease of his Condominium Unit with anyone so long as he is in default in the performance of any of his obligations under the Declaration, By-Laws, or Rules and Regulations. An action seeking a declaratory judgment, the recovery of sums due for damages, or injunctive relief, or any or all of them may be maintained by any interested party, including and Owner against any other Owner, or any person entitled to occupy a Condominium Unit who refuses to comply or threatens to refuse to comply with any provisions of this Declaration, the By-Laws, the Rules and Regulations, or any other document establishing ownership or control over any part of the Tract.

After giving not less than ten (10) days prior written notice to an Owner who has not complied, and after giving such party the opportunity to be heard by the Board of Directors, the Board of Directors shall have the right to impose a fine of not more than One Hundred Dollars (\$100) for the second violation attributable to a particular owner in a calendar year against that Owner and the Condominium Unit in which such Owner holds an ownership interest. For a third violation attributable to the same Owner in the same calendar year (whether or not this third violation involves the same term or provision of the above-described condominium instruments as the first or second violations), the Board of Directors, after giving the above-described notice and opportunity to be heard, may levy a fine against that Owner and the Condominium Unit in which such Owner holds an ownership interest in an amount not in excess of Two Hundred Dollars (\$200). For the fourth and every subsequent such violation of said condominium instruments by the same Owner in the same calendar year (whether these violations involve the same provisions as the previous violations), the Board of Directors, after giving the above-described notice and opportunity to be heard, may levy a fine against that Owner and the Condominium Unit in which such Owner holds an ownership interest in double the amount of the fine for the immediately preceding violation in that calendar year.

All fines described above, any fines imposed by the Board of Directors and any and all expenses incurred by the Corporation in enforcing any of the terms and provisions of the condominium instruments, including reasonable attorney's fees, may be levied as a special assessment against the Owner in question and his Condominium Unit.

Any action brought by the Corporation hereunder may be brought in its own name, in the name of its Board of Directors or in the name of the Managing Agent. In any case of flagrant or repeated violation by an Owner, he may be required by the Board of Directors to give sufficient surety or sureties for his future compliance with the covenants, conditions and restrictions contained in this Declaration and with the By-Laws and Rules and Regulations.

**Section 6.03. Right of Entry.** All Owners and occupants of a Condominium Unit shall be deemed to have granted the right of entry thereto to the Managing Agent or any other person authorized by the Board in case of any emergency originating in or threatening his Condominium Unit or the Building in which it is located, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter his Condominium Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

**Section 6.04. Right of Board to Adopt Rules and Regulations.** The Board may promulgate such additional rules and regulations regarding the operating of the Property, including but not limited to the use of the Common Areas and Limited 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, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

#### **ARTICLE VII Amendment to By-Laws**

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 18 of the Declaration. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Marion 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.

#### **ARTICLE VIII Mortgages** ®

**Section 8.01. Notice to Association.** Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and 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, these 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 he otherwise may be entitled by virtue of the Declaration, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as herein above provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Declaration or these By-Laws which is not cured within thirty (30) days. Any Mortgagee shall have the right to inspect the books and records of the Corporation during normal business hours.

A guarantor or insurer of a Mortgage may, upon written request to the Corporation giving the Corporation its name and address, receive from the Corporation any notice that would be given to a Mortgagee.

Section 8.02. Notice of Unpaid Assessments. The Corporation shall, upon request of a 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 Regular Assessments, Additional Assessments or Special Assessments against the Condominium Unit, which statement shall be binding upon the Corporation 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 5.03 hereof.

#### ARTICLE IX Miscellaneous

Section 9.01. Fiscal year. The fiscal year of the Corporation shall be the calendar year.

Section 9.02. Membership Certificates. Each member of the Corporation shall receive a certificate from the Corporation, signed by the president or vice-president, and secretary or assistant secretary thereof, stating that he is a member of the Corporation. Such certificates shall be non-transferable and a member's certificate shall become void and of no force and effect upon sale by a member of his Condominium Unit. Such membership certificates shall be in a form and style determined by the Board.

Section 9.03. Personal Interests. No member of the Corporation shall have or receive any earnings from the Corporation as a result of being an officer or director of the Corporation except a member may receive principal and interest on moneys loaned or advanced to the Corporation as provided in the Act.

Section 9.04. Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the President or in his absence the Treasurer. Any one of the documents heretofore mentioned in this section for use outside the ordinary course of business of the Corporation or any notes or bonds of the Corporation shall be executed by and require the signature of the President and Secretary.

**Section 9.05. Financial Statement.** Upon the written request from any entity that has an interest or prospective interest in any Condominium Unit, the Corporation shall prepare and furnish to such entity within a reasonable time an audited financial statement of the Corporation for the immediately preceding fiscal year.



CHICAGO TITLE

**This instrument prepared by Tammy K. Haney, Esquire, Bose McKinney & Evans LLP,  
600 East 96th Street, Suite 500, Indianapolis, Indiana 46240.**

576167 APR 11 2005

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SUPPLEMENTAL DECLARATION OF  
CONDOMINIUM OWNERSHIP CREEKSIDE CROSSING CONDOMINIUMS

THIS SUPPLEMENTAL DECLARATION made this 23 day of March, 2005, by CREEKSIDE CROSSING, LLC, an Indiana corporation ("Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to the following described real estate located in Marion County, Indiana, to-wit:

See legal description attached hereto, made a part hereof and marked Exhibit A.

(Hereinafter referred to as "Phase Two")

B. On November 29, 2004, Declarant executed a Declaration of Condominium Ownership Creekside Crossing Condominiums which was recorded in the Office of the Recorder of Marion County, Indiana on December 21, 2004, as Instrument No. 2004-235308 (the "Declaration"). Attached to the Declaration is the Code of By-Laws of Creekside Crossing Condominiums. The Declaration, all Supplemental Declarations and By-Laws are incorporated herein by reference and all of the terms and definitions as described therein are hereby adopted and shall have the same meaning in this Supplemental Declaration.

C. Phase Two is part of the Real Estate described in paragraph A of the recitals of the Declaration. Paragraph 21 of the Declaration provides that all or part of the Real Estate may be annexed to Creekside Crossing Condominiums, incorporated into the Declaration and the Owners thereof become members of Creekside Crossing Condominium Homeowner's Association, Inc. in accordance with the conditions in paragraph 21 of the Declaration and the filing of the Supplemental Declaration by Declarant. All conditions relating to the annexation of Phase Two to the Tract of Creekside Crossing Condominiums have been met, and Declarant, by execution of this Supplemental Declaration, hereby incorporates Phase Two into Creekside Crossing Condominiums.

NOW, THEREFORE, Declarant makes this Supplemental Declaration as follows:

1. Declaration. Declarant hereby expressly declares that Phase Four and all appurtenant easements, Condominium Units, Buildings, improvements and property of every kind and nature whatsoever, real, personal and mixed, located thereon is hereby annexed to and becomes a part of Creekside Crossing Condominium as if such originally had been included in the Declaration, and shall hereafter be held, transferred, sold conveyed and occupied subject to the covenants, restrictions and provisions of the Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors, as each may be amended from time to

time. Phase Two hereafter and for all purposes shall be included in the definition of "Tract" as defined in paragraph 1(x) of the Declaration.

2. Description of Buildings. There shall be one (1) Building containing thirty-six (36) condominium Units in Phase Two as shown on the Supplemental Plans for Phase Two. The Building is identified and referred to in the Supplemental Plans and in this Supplemental Declaration as Building Two. Creekside Crossing Condominiums or the Tract now has two (2) Buildings containing sixty (60) Condominium Units.

3. Percentage Interest. The Percentage Interest of each Condominium Unit in the Tract (as now defined) is as set forth in Exhibit B attached hereto and made a part hereof. Exhibit B as attached hereto is the correct listing of the Buildings and Units in Creekside Crossing Condominiums, such Buildings being Buildings 1 and 2.

4. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of a Condominium Unit shall constitute an agreement that the provisions of the Supplemental Declarations, the Declaration, the Act, the By-Laws and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by each Owner, tenant and 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 if those provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

5. Supplemental Plans. The Supplemental Plans include floor and building plans and elevations of the Buildings, Condominium Units, clubhouse and swimming pool and a site plan of Phase Two and the Buildings thereon prepared by Melton-Packard & Associates, certified by Donald M. Gwinnup, a registered professional engineer under date of March 17, 2005, all of which is incorporated herein by reference. The Supplemental Plans setting forth the layout, location, identification and dimension of the Condominium Units identified in this Supplemental Declaration are incorporated into the Declaration, added to the plans filed with the Declaration, and have been filed in the Office of the Recorder of Marion County, Indiana in Condominium Plan File, as of 4-11-05, 2005 as Instrument No. 05-54594.

7. Miscellaneous. All capitalized terms not defined herein shall be defined as set forth in the Declaration. To the extent not amended by this Supplemental Declaration, all other terms, provisions and conditions of the Declaration remain the same.

EXECUTED the day and year first above written.

CREEKSIDE CROSSING, LLC.

By:   
Ian Guttman, Vice-President

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared IAN GUTTMAN, by me known and by me known to be the VICE-PRESIDENT of CREEKSIDE CROSSING, LLC, who acknowledged the execution of the foregoing SUPPLEMENTAL DECLARATION OF CONDOMINIUM OWNERSHIP FOR CREEKSIDE CROSSING CONDOMINIUMS on behalf of said corporation.

WITNESS my hand and Notarial Seal this 23 day of March, 2005.



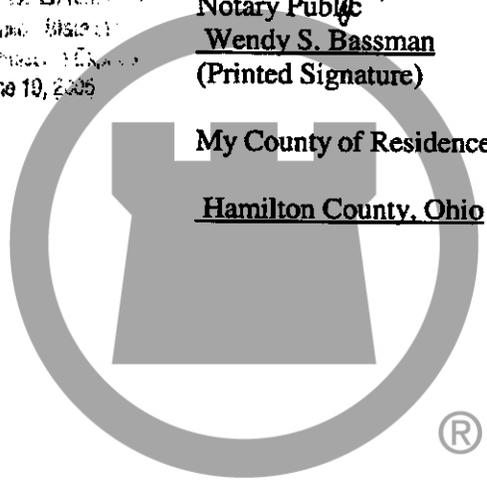
WENDY S. BASSMAN  
Notary Public - Hamilton County, Ohio  
My Commission Expires June 19, 2005

Wendy S. Bassman

Notary Public  
Wendy S. Bassman  
(Printed Signature)

My Commission Expires:  
June 19, 2005

My County of Residence:  
Hamilton County, Ohio



CHICAGO TITLE

This instrument prepared by: Tammy K. Haney, Attorney at Law, Bose-McKinney & Evans, 600 East 96<sup>th</sup> Street, Suite 500, Indianapolis, IN 46240



APPROVED THIS 8th  
DAY OF April 20 05  
PERRY TOWNSHIP ASSESSOR  
John R. George GIS MANAGER

CONSENT OF MORTGAGEE

The undersigned, the HILLS FINANCIAL GROUP, A LIMITED PARTNERSHIP, being the holder of existing mortgages and other security on the real estate described in the above and foregoing Supplemental Declaration as follows:

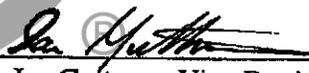
See Exhibit A to Supplemental Declaration

hereby consents to the recording of the above and foregoing Supplemental Declaration of Condominium Ownership for Creekside Crossing Condominiums and the submission of the real estate described therein to the provisions of the Condominium Law of the State of Indiana, and further agrees that its mortgage and other security with respect to the Tract shall be subject to the provisions of the Act and the above and foregoing Supplemental Declaration and Exhibits attached thereto and the documents incorporated therein; provided, however, except and to the extent that the mortgage and other security are modified by this Consent, such mortgage and other security shall remain in full force and effect.

EXECUTED this 23 day of March, 2005.

HILLS FINANCIAL GROUP, A LIMITED PARTNERSHIP

By: Hills Developers, Inc., general partner

By: 

Ian Guttman, Vice-President

CHICAGO TITLE

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared IAN GUTTMAN, by me known and by me known to be the VICE-PRESIDENT of HILLS DEVELOPERS, INC., the general partner of HILLS FINANCIAL GROUP, A LIMITED PARTNERSHIP who acknowledged the execution of the foregoing SUPPLEMENTAL DECLARATION OF CONDOMINIUM OWNERSHIP FOR CREEKSIDE CROSSING CONDOMINIUMS on behalf of said bank.

WITNESS my hand and Notarial Seal this 23 day of March, 2005.



WENDY S. BASSMAN  
Notary Public - State of Ohio  
My Commission Expires  
June 19, 2005

Wendy S. Bassman  
Notary Public

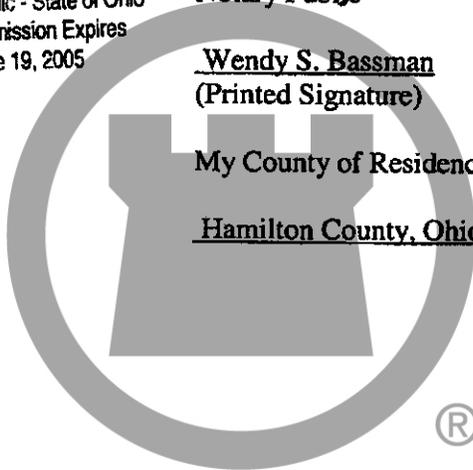
Wendy S. Bassman  
(Printed Signature)

My Commission Expires:

June 19, 2005

My County of Residence:

Hamilton County, Ohio



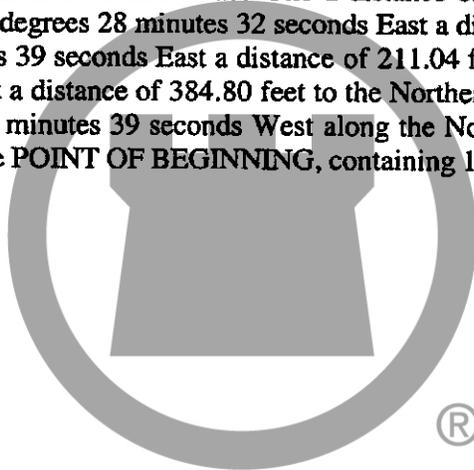
CHICAGO TITLE

EXHIBIT A

LEGAL DESCRIPTION OF PHASE TWO  
CREEKSIDE CROSSING CONDOMINIUMS

Part of the Southwest Quarter of the Southeast Quarter of Section 24, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Commencing at a Harrison monument found marking the Southwest corner of said Southeast Quarter; thence North 89 degrees 32 minutes 39 seconds East along the South line of said Southeast Quarter a distance of 238.50 feet to the Southwest corner of Creekside Crossing Phase One; thence North 00 degrees 15 minutes 21 seconds East along the West line of said Phase One a distance of 380.00 feet to the Northwest corner thereof; thence South 89 degrees 44 minutes 39 seconds East along the North line of said Phase One a distance of 210.31 feet to the Point of Beginning; thence North 00 degrees 28 minutes 32 seconds East a distance of 384.80 feet; thence South 89 degrees 44 minutes 39 seconds East a distance of 211.04 feet; thence South 00 degrees 28 minutes 32 seconds West a distance of 384.80 feet to the Northeast corner of said Phase One; thence North 89 degrees 44 minutes 39 seconds West along the North line of said Phase One a distance of 211.04 feet to the POINT OF BEGINNING, containing 1.864 acres, more or less.



CHICAGO TITLE

**EXHIBIT B**

**Creekside Crossing Condominiums**

<b>Building No. &amp; Address</b>	<b>Unit</b>	<b>Square Footage</b>	<b>Percentage Interest</b>
1-8950 Hunter's Creek Drive	101	1,405	2.03
1-8950 Hunter's Creek Drive	102	1,405	2.03
1-8950 Hunter's Creek Drive	103	1,100	1.59
1-8950 Hunter's Creek Drive	104	1,340	1.94
1-8950 Hunter's Creek Drive	205	1,535	2.22
1-8950 Hunter's Creek Drive	206	1,535	2.22
1-8950 Hunter's Creek Drive	207	1,100	1.59
1-8950 Hunter's Creek Drive	208	1,340	1.94
1-8940 Hunter's Creek Drive	101	1,100	1.59
1-8940 Hunter's Creek Drive	102	1,340	1.94
1-8940 Hunter's Creek Drive	103	1,405	2.03
1-8940 Hunter's Creek Drive	104	1,405	2.03
1-8940 Hunter's Creek Drive	205	1,100	1.59
1-8940 Hunter's Creek Drive	206	1,340	1.94
1-8940 Hunter's Creek Drive	207	1,535	2.22
1-8940 Hunter's Creek Drive	208	1,535	2.22

2-8901 Hunter's Creek Drive	101	1,405	2.03
2-8901 Hunter's Creek Drive	102	1,405	2.03
2-8901 Hunter's Creek Drive	103	1,405	2.03
2-8901 Hunter's Creek Drive	104	1,405	2.03
2-8901 Hunter's Creek Drive	205	1,535	2.22
2-8901 Hunter's Creek Drive	206	1,535	2.22
2-8901 Hunter's Creek Drive	207	1,405	2.03
2-8901 Hunter's Creek Drive	208	1,405	2.03
2-8901 Hunter's Creek Drive	309	1,535	2.22
2-8901 Hunter's Creek Drive	310	1,535	2.22
2-8901 Hunter's Creek Drive	311	1,405	2.03
2-8901 Hunter's Creek Drive	312	1,405	2.03
2-8911 Hunter's Creek Drive	101	1,100	1.59
2-8911 Hunter's Creek Drive	102	1,100	1.59
2-8911 Hunter's Creek Drive	103	1,100	1.59
2-8911 Hunter's Creek Drive	104	1,340	1.94
2-8911 Hunter's Creek Drive	205	1,100	1.59
2-8911 Hunter's Creek Drive	206	1,100	1.59
2-8911 Hunter's Creek Drive	207	1,100	1.59

2-8911 Hunter's Creek Drive	208	1,340	1.94
2-8911 Hunter's Creek Drive	309	1,100	1.59
2-8911 Hunter's Creek Drive	310	1,100	1.59
2-8911 Hunter's Creek Drive	311	1,100	1.59
2-8911 Hunter's Creek Drive	312	1,340	1.94
2-8921 Hunter's Creek Drive	101	1,100	1.59
2-8921 Hunter's Creek Drive	102	1,340	1.94
2-8921 Hunter's Creek Drive	103	1,405	2.03
2-8921 Hunter's Creek Drive	104	1,405	2.03
2-8921 Hunter's Creek Drive	205	1,100	1.59
2-8921 Hunter's Creek Drive	206	1,340	1.94
2-8921 Hunter's Creek Drive	207	1,535	2.22
2-8921 Hunter's Creek Drive	208	1,535	2.22
2-8921 Hunter's Creek Drive	309	1,100	1.59
2-8921 Hunter's Creek Drive	310	1,340	1.94
2-8921 Hunter's Creek Drive	311	1,535	2.22
2-8921 Hunter's Creek Drive	312	1,535	2.22
Clubhouse		N/A	N/A
TOTAL		69,090	99.9

**Total square footage Phase Four: 69,090**

**Total Percentage Interest: 99.9%**



**CHICAGO TITLE**

(g) W1

**FIRST AMENDMENT TO CODE OF BY-LAWS OF  
CREEKSIDE CROSSING CONDOMINIUMS AND OF  
CREEKSIDE CROSSING HOMEOWNERS ASSOCIATION, INC.**

This First Amendment is made this 12th day of September, 2005 by Creekside Crossing, LLC, an Indiana limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, the following facts are true:

A. On January 13, 2005, Declarant filed of record in the Office of the Recorder of Marion County, Indiana as Instrument No. 2005-0006687, a Declaration of Condominium Ownership for Creekside Crossing Condominiums, as amended by Supplemental Declaration of Condominium Ownership for Creekside Crossing Condominiums recorded April 11, 2005 in the Office of the Recorder of Marion County, Indiana as Instrument No. 2005-0054595 (collectively, the "Declaration").

B. The Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. (the "By-Laws") was adopted and made a part of the Declaration and recorded with the Declaration.

C. Declarant is executing this First Amendment pursuant to Article VII of the By-Laws and Paragraph 18(g) of the Declaration.

E. Declarant desires to amend the By-Laws to complete and modify certain information contained in the By-Laws.

NOW THEREFORE, the By-Laws are amended to read as follows:

1. Section 1.02 of the By-Laws is amended to read as follows:

"The name of the corporation is Creekside Crossing Homeowners Association, Inc. (hereinafter referred to as the "Corporation"). The post office address of the principal office of the Corporation is Creekside Crossing, 8950 Hunter's Creek Drive, #101, Indianapolis, Indiana, 46227; the name and post office address of its Resident Agent is Tammy K. Haney, Bose McKinney & Evans LLP, 600 East 96<sup>th</sup> Street, Suite 500, Indianapolis, Indiana, 46240. The location of the principal office of the Corporation, or the designation of its Resident Agent, or both, maybe changed at any time or from time to time when authorized by the Board of Directors by filing with the Secretary of State on or before the day any such change is to take effect or as soon as possible after the death of its Resident Agent or other unforeseen termination of its agent."

09/15/05 11:42AM NANDA MARTIN MARION CTY RECORDER LHM 12.00 PAGES: 2

Inst # 2005-0153480



9

SUPPLEMENTAL DECLARATION OF  
CONDOMINIUM OWNERSHIP CREEKSIDE CROSSING CONDOMINIUMS

THIS SUPPLEMENTAL DECLARATION made this 9th day of November, 2007, by HILLS HOMES OF INDIANA, LLC, an Indiana limited liability company former known as CREEKSIDE CROSSING, LLC, an Indiana limited liability company ("Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to the following described real estate located in Marion County, Indiana, to-wit:

See legal description attached hereto, made a part hereof and marked Exhibit A.

(Hereinafter referred to as "Phase Three")

B. On November 29, 2004, Declarant executed a Declaration of Condominium Ownership Creekside Crossing Condominiums which was recorded in the Office of the Recorder of Marion County, Indiana on December 21, 2004, as Instrument No. 2004-235308. A Supplemental Declaration of Condominium Ownership Creekside Crossing Condominiums was executed on March 23, 2005 and recorded in the Office of the Recorder of Marion County, Indiana, on April 11, 2005 as Instrument No. 2005-0054595. A First Amendment to Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. executed on September 12, 1995 and recorded in the Office of the Recorder of Marion County, Indiana on September 15, 2005 as Instrument No. 2005-0153480 (the Declaration, the Supplemental and the First Amendment shall be referenced collectively herein as the "Declaration"). Attached to the Declaration is the Code of By-Laws of Creekside Crossing Condominiums. The Declaration, all Supplemental Declarations and By-Laws are incorporated herein by reference and all of the terms and definitions as described therein are hereby adopted and shall have the same meaning in this Supplemental Declaration.

C. Phase Three is part of the Real Estate described in paragraph A of the recitals of the Declaration. Paragraph 21 of the Declaration provides that all or part of the Real Estate may be annexed to Creekside Crossing Condominiums, incorporated into the Declaration and the Owners thereof become members of Creekside Crossing Condominium Homeowner's Association, Inc. in accordance with the conditions in paragraph 21 of the Declaration and the filing of the Supplemental Declaration by Declarant. All conditions relating to the annexation of Phase Three to the Tract of Creekside Crossing Condominiums have been met, and Declarant, by execution of this Supplemental Declaration, hereby incorporates Phase Three into Creekside Crossing Condominiums.

NOW, THEREFORE, Declarant makes this Supplemental Declaration as follows:

FOR TRANSFER  
SUBJECT TO FIRST LITIGATION  
707317 DEC-45  
MARION COUNTY  
BILLIE J. BREAU

1. Declaration. Declarant hereby expressly declares that Phase Three and all appurtenant easements, Condominium Units, Buildings, improvements and property of every kind and nature whatsoever, real, personal and mixed, located thereon is hereby annexed to and becomes a part of Creekside Crossing Condominium as if such originally had been included in the Declaration, and shall hereafter be held, transferred, sold conveyed and occupied subject to the covenants, restrictions and provisions of the Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors, as each may be amended from time to time. Phase Three hereafter and for all purposes shall be included in the definition of "Tract" as defined in paragraph 1(x) of the Declaration.

2. Description of Buildings. There shall be one (1) Building containing sixteen (16) condominium Units in Phase Three as shown on the Supplemental Plans for Phase Three. The Building is identified and referred to in the Supplemental Plans and in this Supplemental Declaration as Building Three. Creekside Crossing Condominiums or the Tract now has Three (3) Buildings containing sixty-eight (68) Condominium Units.

3. Percentage Interest. The Percentage Interest of each Condominium Unit in the Tract (as now defined) is as set forth in Exhibit B attached hereto and made a part hereof. Exhibit B as attached hereto is the correct listing of the Buildings and Units in Creekside Crossing Condominiums, such Buildings being Buildings 1, 2 and 3.

4. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of a Condominium Unit shall constitute an agreement that the provisions of the Supplemental Declarations, the Declaration, the Act, the By-Laws and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by each Owner, tenant and 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 if those provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

5. Supplemental Plans. The Supplemental Plans include floor and building plans and elevations of the Buildings, Condominium Units, clubhouse and swimming pool and a site plan of Phase Three and the Buildings thereon prepared by Stoepelwerth & Associates, certified by David J. Stoepelwerth, a registered professional engineer under date of 10-1-07, ~~2007~~, all of which is incorporated herein by reference. The Supplemental Plans setting forth the layout, location, identification and dimension of the Condominium Units identified in this Supplemental Declaration are incorporated into the Declaration, added to the plans filed with the Declaration, and have been filed in the Office of the Recorder of Marion County, Indiana in Condominium Plan File, as of \_\_\_\_\_, 2007 as Instrument No. 2007-117413.

7. Miscellaneous. All capitalized terms not defined herein shall be defined as set forth in the Declaration. To the extent not amended by this Supplemental Declaration, all other terms, provisions and conditions of the Declaration remain the same.

EXECUTED the day and year first above written.

HILLS HOMES OF INDIANA, LLC FORMERLY  
KNOWN AS CREEKSIDE CROSSING, LLC

By: *Ian Guttman*  
Ian Guttman, Vice-President

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared IAN GUTTMAN, by me known and by me known to be the VICE-PRESIDENT of HILLS HOMES OF INDIANA, LLC, FORMERLY KNOWN AS CREEKSIDE CROSSING, LLC, who acknowledged the execution of the foregoing SUPPLEMENTAL DECLARATION OF CONDOMINIUM OWNERSHIP FOR CREEKSIDE CROSSING CONDOMINIUMS on behalf of said limited liability company.



WITNESS my hand and Notarial Seal this 9th day of November, 2007.

WENDY S. BASSMAN  
Notary Public, State of Ohio  
My Commission Expires  
June 19, 2010

*Wendy S Bassman*  
Notary Public  
Wendy S. Bassman  
(Printed Signature)

My Commission Expires:  
June 19, 2010

My County of Residence:  
Hamilton County, Ohio



CHICAGO TITLE

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Tammy K. Haney

This Instrument prepared by and after recording return to Tammy K. Haney, Attorney at Law, Bose McKinney & Evans LLP, Meridian Corporate Plaza Two, 301 Pennsylvania Parkway, Suite 300, Indianapolis, Indiana 46280.

APPROVED THIS 27th  
DAY OF November 20 07  
PERRY TOWNSHIP ASSESSOR  
John R. George GIS MANAGER

CONSENT OF MORTGAGEE

The undersigned, the HILLS FINANCIAL GROUP, A LIMITED PARTNERSHIP, being the holder of existing mortgages and other security on the real estate described in the above and foregoing Supplemental Declaration as follows:

See Exhibit A to Supplemental Declaration

hereby consents to the recording of the above and foregoing Supplemental Declaration of Condominium Ownership for Creekside Crossing Condominiums and the submission of the real estate described therein to the provisions of the Condominium Law of the State of Indiana, and further agrees that its mortgage and other security with respect to the Tract shall be subject to the provisions of the Act and the above and foregoing Supplemental Declaration and Exhibits attached thereto and the documents incorporated therein; provided, however, except and to the extent that the mortgage and other security are modified by this Consent, such mortgage and other security shall remain in full force and effect.

EXECUTED this 9th day of November, 2007.

HILLS FINANCIAL GROUP, A LIMITED  
PARTNERSHIP

By: Hills Developers, Inc., general partner

By:  \_\_\_\_\_  
Ian Guttman, Vice-President

CHICAGO TITLE

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared IAN GUTTMAN, by me known and by me known to be the VICE-PRESIDENT of HILLS DEVELOPERS, INC., the general partner of HILLS FINANCIAL GROUP, A LIMITED PARTNERSHIP who acknowledged the execution of the foregoing SUPPLEMENTAL DECLARATION OF CONDOMINIUM OWNERSHIP FOR CREEKSIDE CROSSING CONDOMINIUMS on behalf of said bank.

WITNESS my hand and Notarial Seal this 9th day of November, 2007.



WENDY S. BASSMAN  
Notary Public, State of Ohio  
My Commission Expires  
June 19, 2010

Wendy S. Bassman  
Notary Public

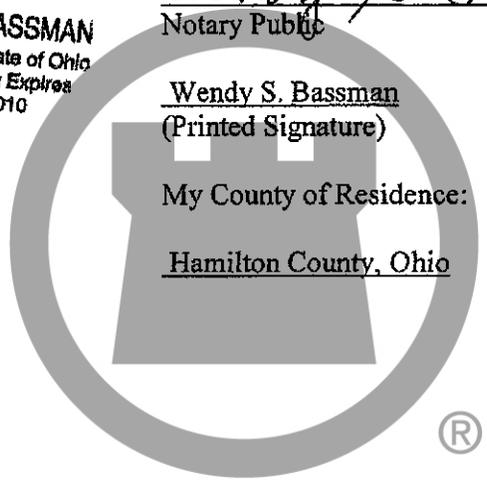
Wendy S. Bassman  
(Printed Signature)

My Commission Expires:

June 19, 2010

My County of Residence:

Hamilton County, Ohio



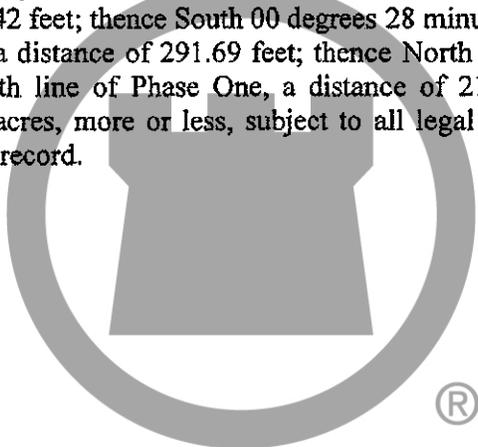
CHICAGO TITLE

EXHIBIT A

Land Description  
Creekside Crossing Phase Three

Part of the Southwest Quarter of the Southeast Quarter of Section 24, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Commencing at a Harrison Monument found marking the Southwest corner of said Southeast Quarter; thence North 89 degrees 32 minutes 39 seconds East 238.50 feet to the Southwest corner of Creekside Crossing Phase One; thence North 00 degrees 15 minutes 21 seconds East along the West line of Phase One a distance of 380.00 feet to the POINT OF BEGINNING of this description; thence continuing North 00 degrees 15 minutes 21 seconds East parallel with the West line of said Southeast Quarter a distance of 292.50 feet; thence South 89 degrees 31 minutes 28 seconds East 211.42 feet; thence South 00 degrees 28 minutes 32 seconds West along the West line of Phase Two a distance of 291.69 feet; thence North 89 degrees 44 minutes 39 seconds West along the North line of Phase One, a distance of 210.30 feet to the place of beginning, containing 1.414 acres, more or less, subject to all legal highways, rights-of-ways, easements, and restrictions of record.



CHICAGO TITLE

**EXHIBIT B**

**Creekside Crossing Condominiums**

<b>Building No. &amp; Address</b>	<b>Unit</b>	<b>Square Footage</b>	<b>Percentage Interest</b>
1-8950 Hunter's Creek Drive	101	1,405	1.55%
1-8950 Hunter's Creek Drive	102	1,405	1.55%
1-8950 Hunter's Creek Drive	103	1,100	1.22%
1-8950 Hunter's Creek Drive	104	1,340	1.48%
1-8950 Hunter's Creek Drive	205	1,535	1.70%
1-8950 Hunter's Creek Drive	206	1,535	1.70%
1-8950 Hunter's Creek Drive	207	1,100	1.22%
1-8950 Hunter's Creek Drive	208	1,340	1.48%
1-8940 Hunter's Creek Drive	101	1,100	1.22%
1-8940 Hunter's Creek Drive	102	1,340	1.48%
1-8940 Hunter's Creek Drive	103	1,405	1.55%
1-8940 Hunter's Creek Drive	104	1,405	1.55%
1-8940 Hunter's Creek Drive	205	1,100	1.22%
1-8940 Hunter's Creek Drive	206	1,340	1.48%
1-8940 Hunter's Creek Drive	207	1,535	1.70%
1-8940 Hunter's Creek Drive	208	1,535	1.70%
2-8901 Hunter's Creek Drive	101	1,405	1.55%
2-8901 Hunter's Creek Drive	102	1,405	1.55%
2-8901 Hunter's Creek Drive	103	1,405	1.55%
2-8901 Hunter's Creek Drive	104	1,405	1.55%
2-8901 Hunter's Creek Drive	205	1,535	1.70%
2-8901 Hunter's Creek Drive	206	1,535	1.70%
2-8901 Hunter's Creek Drive	207	1,405	1.55%
2-8901 Hunter's Creek Drive	208	1,405	1.55%
2-8901 Hunter's Creek Drive	309	1,535	1.70%
2-8901 Hunter's Creek Drive	310	1,535	1.70%
2-8901 Hunter's Creek Drive	311	1,405	1.55%
2-8901 Hunter's Creek Drive	312	1,405	1.55%
2-8911 Hunter's Creek Drive	101	1,100	1.22%
2-8911 Hunter's Creek Drive	102	1,100	1.22%

Building No. & Address	Unit	Square Footage	Percentage Interest
2-8911 Hunter's Creek Drive	103	1,100	1.22%
2-8911 Hunter's Creek Drive	104	1,340	1.48%
2-8911 Hunter's Creek Drive	205	1,100	1.22%
2-8911 Hunter's Creek Drive	206	1,100	1.22%
2-8911 Hunter's Creek Drive	207	1,100	1.22%
2-8911 Hunter's Creek Drive	208	1,340	1.48%
2-8911 Hunter's Creek Drive	309	1,100	1.22%
2-8911 Hunter's Creek Drive	310	1,100	1.22%
2-8911 Hunter's Creek Drive	311	1,100	1.22%
2-8911 Hunter's Creek Drive	312	1,340	1.48%
2-8921 Hunter's Creek Drive	101	1,100	1.22%
2-8921 Hunter's Creek Drive	102	1,340	1.48%
2-8921 Hunter's Creek Drive	103	1,405	1.55%
2-8921 Hunter's Creek Drive	104	1,405	1.55%
2-8921 Hunter's Creek Drive	205	1,100	1.22%
2-8921 Hunter's Creek Drive	206	1,340	1.48%
2-8921 Hunter's Creek Drive	207	1,535	1.70%
2-8921 Hunter's Creek Drive	208	1,535	1.70%
2-8921 Hunter's Creek Drive	309	1,100	1.22%
2-8921 Hunter's Creek Drive	310	1,340	1.48%
2-8921 Hunter's Creek Drive	311	1,535	1.70%
2-8921 Hunter's Creek Drive	312	1,535	1.70%
3-8920 Hunters Creek Drive	101	1,406	1.55%
3-8920 Hunters Creek Drive	102	1,406	1.55%
3-8920 Hunters Creek Drive	103	1,094	1.21%
3-8920 Hunters Creek Drive	104	1,343	1.48%
3-8920 Hunters Creek Drive	205	1,500	1.66%
3-8920 Hunters Creek Drive	206	1,498	1.65%
3-8920 Hunters Creek Drive	207	1,094	1.21%
3-8920 Hunters Creek Drive	208	1,379	1.52%
3-8910 Hunters Creek Drive	101	1,094	1.21%
3-8910 Hunters Creek Drive	102	1,343	1.48%
3-8910 Hunters Creek Drive	103	1,406	1.55%
3-8910 Hunters Creek Drive	104	1,406	1.55%

<b>Building No. &amp; Address</b>	<b>Unit</b>	<b>Square Footage</b>	<b>Percentage Interest</b>
3-8910 Hunters Creek Drive	205	1,094	1.21%
3-8910 Hunters Creek Drive	206	1,379	1.52%
3-8910 Hunters Creek Drive	207	1,500	1.66%
3-8910 Hunters Creek Drive	208	1,498	1.65%
Clubhouse		N/A	N/A
<b>TOTAL</b>		<b>90,530</b>	<b>100.00%</b>

Total square footage Phase Three: 90,530

Total Percentage Interest: 100.00%



**CHICAGO TITLE**

13  
#

Cross Reference: Instrument Nos. 2004-235308, 2005-6687, 2005-153480

**SECOND AMENDMENT  
TO  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
CREEKSIDE CROSSING CONDOMINIUMS  
AND TO  
CODE OF BY-LAWS  
OF CREEKSIDE CROSSING CONDOMINIUMS  
AND OF  
CREEKSIDE CROSSING HOMEOWNERS ASSOCIATION, INC.**

This Second Amendment to Declaration of Condominium Ownership for Creekside Crossing Condominiums and Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. ("Second Amendment") is made this 17th day of March, 2009.

**WITNESSETH:**

WHEREAS, on November 29, 2004, Creekside Crossing, LLC, an Indiana limited liability company ("Declarant") executed a Declaration of Condominium Ownership for Creekside Crossing Condominiums which was recorded in the Office of the Recorder of Marion County, Indiana ("Recorder") on December 21, 2004 as Instrument No. 2004-235308, and re-recorded on January 13, 2005 as Instrument No. 2005-6687 as supplemented by a Supplemental Declaration of Creekside Crossing Condominiums - Phase Two recorded April 11, 2005 in the Office of the Recorder as Instrument No. 2005-0054595, and as further supplemented by a Supplemental Declaration of Creekside Crossing Condominiums - Phase Three recorded December 4, 2007 in the Office of the Recorder as Instrument No. 2007-0167412 and amended by a First Amendment to Code of By-Laws of Creekside Crossing Condominiums and Creekside Crossing Homeowners Association, Inc. recorded September 15, 2005 in the Office of the Recorder as Instrument No. 2005-153480 (collectively, the "Declaration");

WHEREAS, the Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. ("By-Laws") was adopted simultaneously with the execution of the Declaration and is attached and made a part thereof;

WHEREAS, Declarant desires to amend Section 5.07 of the By-Laws relating to initial funding of the Working Capital Fund; and

WHEREAS, Declarant is executing this Second Amendment pursuant to Article VII of the By-Laws and Section 18 of the Declaration.

NOW, THEREFORE, the By-Laws are amended as follows:

1. The Recitals set forth above are hereby incorporated by reference. In the event of any inconsistency between the provisions of this Second Amendment and the Declaration or the By-Laws, the terms and provisions of this Second Amendment shall govern and control. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Declaration or By-Laws, as applicable.
2. The second paragraph of Section 5.06. of the By-Laws is hereby deleted in its entirety and replaced with the following:

At the initial closing on the purchase of a Condominium Unit, the purchaser is required to pay a sum, established by Declarant, which sum shall not be less than one sixth (1/6) of the then current annual Regular Assessment and Additional Assessment (if applicable) due on such Condominium Unit nor greater than the current annual Regular Assessment and Additional Assessment (if applicable) due on such Condominium Unit, as such purchaser's initial contribution to the working capital of the Association. This sum is not an advance payment of Regular Assessments or Additional Assessments (if applicable) and will not be held in any trust or reserve account. While the Declarant is in control of the Association, Declarant cannot use any of the working capital funds to defray Declarant's expenses, reserve contributions, or construction costs. Such working capital funds shall be available for immediate use by and shall be used by the Association for Common Expenses. After control of the Association is transferred to the Condominium Unit Owners, the Declarant shall be responsible to collect the initial contribution to the working capital account and forward such funds to the Association. Additionally, at the closing, each purchaser of a Condominium Unit is required to pay a pro-rata share of the Regular Assessments and Additional Assessments (if applicable) due in the month of closing.

3. All provisions of the Declaration and By-Laws not expressly modified or amended hereby remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment as of the day and year first above written.

HILLS HOMES OF INDIANA, LLC, an Indiana limited liability company formerly known as CREEKSIDE CROSSING, LLC, an Indiana limited liability company

By: \_\_\_\_\_

Printed: Ian Guttman

Title: Vice President

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for the State of Ohio, personally appeared Ian Guttman, known to me to be the Vice President of Hills Homes of Indiana, LLC, an Indiana limited liability company formerly known as Creekside Crossing, LLC, an Indiana limited liability company, Declarant, who acknowledged the execution of the foregoing Second Amendment on behalf of said limited liability company.



Witness my hand and seal this 17th day of March, 2009.  
**WENDY S. BASSMAN**  
Notary Public, State of Ohio  
My Commission Expires  
June 19, 2010

Wendy S. Bassman  
Printed: Wendy S. Bassman  
Notary Public

My Commission expires: June 19, 2010 My county of residence: Hamilton

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Tammy K. Haney

~~\*~~ This Instrument prepared by Tammy K. Haney, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

CHICAGO TITLE

3  
ML

Cross Reference: Instrument Nos. 2004-235308, 2005-6687, 2005-153480, 2009-31025

**AMENDED AND RESTATED SECOND AMENDMENT  
TO  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
CREEKSIDE CROSSING CONDOMINIUMS  
AND TO  
CODE OF BY-LAWS  
OF CREEKSIDE CROSSING CONDOMINIUMS  
AND OF  
CREEKSIDE CROSSING HOMEOWNERS ASSOCIATION, INC.**

This Amended and Restated Second Amendment to Declaration of Condominium Ownership for Creekside Crossing Condominiums and Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. ("Second Amendment") is made this 29<sup>th</sup> day of July, 2009.

WITNESSETH:

WHEREAS, on November 29, 2004, Creekside Crossing, LLC, an Indiana limited liability company ("Declarant") executed a Declaration of Condominium Ownership for Creekside Crossing Condominiums which was recorded in the Office of the Recorder of Marion County, Indiana ("Recorder") on December 21, 2004 as Instrument No. 2004-235308, and re-recorded on January 13, 2005 as Instrument No. 2005-6687 as supplemented by a Supplemental Declaration of Creekside Crossing Condominiums – Phase Two recorded April 11, 2005 in the Office of the Recorder as Instrument No. 2005-0054595, and as further supplemented by a Supplemental Declaration of Creekside Crossing Condominiums – Phase Three recorded December 4, 2007 in the Office of the Recorder as Instrument No. 2007-0167412 and amended by a First Amendment to Code of By-Laws of Creekside Crossing Condominiums and Creekside Crossing Homeowners Association, Inc. recorded September 15, 2005 in the Office of the Recorder as Instrument No. 2005-153480 (collectively, the "Declaration");

WHEREAS, on March 23, 2009, Declarant filed of record in the Office of the Recorder of Marion County Recorder as Instrument No. 2009-31025, a Second Amendment to Declaration of Condominium Ownership for Creekside Crossing Condominiums and Creekside Crossing Homeowners Association, Inc. (the "Second Amendment");

WHEREAS, the Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. ("By-Laws") was adopted simultaneously with the execution of the Declaration and is attached to and made a part thereof;

WHEREAS, Declarant desires to amend Section 5.06 of the By-Laws relating to initial funding of the Working Capital Fund; and

WHEREAS, Pursuant to Article VII of the By-Laws and Section 18 of the Declaration, Declarant is amending and restating the Second Amendment.

NOW, THEREFORE, the By-Laws are amended as follows:

1. The Recitals set forth above are hereby incorporated by reference. In the event of any inconsistency between the provisions of this Amended and Restated Second Amendment and the Declaration or the By-Laws, the terms and provisions of this Second Amendment shall govern and control. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Declaration or By-Laws, as applicable.
2. The second paragraph of Section 5.06 of the By-Laws is hereby deleted in its entirety and replaced with the following:

At the initial closing on the purchase of a Condominium Unit, the purchaser is required to pay a sum, established by Declarant, which sum shall not be less than one sixth (1/6) of the then current annual Regular Assessment and Additional Assessment (if applicable) due on such Condominium Unit nor greater than the current annual Regular Assessment and Additional Assessment (if applicable) due on such Condominium Unit, as such purchaser's initial contribution to the working capital of the Association. This sum is not an advance payment of Regular Assessments or Additional Assessments (if applicable) and will not be held in any trust or reserve account. While the Declarant is in control of the Association, Declarant cannot use any of the working capital funds to defray Declarant's expenses, reserve contributions, or construction costs. Such working capital funds shall be available for immediate use by and shall be used by the Association for Common Expenses. After control of the Association is transferred to the Condominium Unit Owners, the Declarant shall be responsible to collect the initial contribution to the working capital account and forward such funds to the Association. Additionally, at the closing, each purchaser of a Condominium Unit is required to pay a pro-rata share of the Regular Assessments and Additional Assessments (if applicable) due in the month of closing.

3. All provisions of the Declaration and By-Laws not expressly modified or amended hereby remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amended and Restated Second Amendment as of the day and year first above written.

HILLS HOMES OF INDIANA, LLC, an Indiana limited liability company formerly known as CREEKSIDE CROSSING, LLC, an Indiana limited liability company

By: *Ian Guttman*  
Printed: Ian Guttman  
Title: Vice President

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for the State of Ohio, personally appeared Ian Guttman, known to me to be the Vice President of Hills Homes of Indiana, LLC, an Indiana limited liability company formerly known as Creekside Crossing, LLC, an Indiana limited liability company, Declarant, who acknowledged the execution of the foregoing Amended and Restated Second Amendment on behalf of said limited liability company



Witness my hand and seal this 29 day of June, 2009.

WENDY S. BASSMAN  
Notary Public, State of Ohio  
My Commission Expires  
June 19, 2010

*Wendy S. Bassman*  
Printed: Wendy S. Bassman  
Notary Public

My Commission expires: 6/19/2010 My county of residence: Hamilton

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Tammy K. Haney

*\** This Instrument prepared by Tammy K. Haney, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

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**RECEIVED**

Cross Reference: 2004-235308

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2005-6687

2005-0054595

2005-153480

2007-0167412

2009-0076184

**MARION COUNTY ASSESSOR**

**THIRD AMENDMENT TO DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR CREEKSIDE CROSSING CONDOMINIUMS  
AND TO CODE OF BY-LAWS OF CREEKSIDE CROSSING CONDOMINIUMS AND  
OF CREEKSIDE CROSSING HOMEOWNERS ASSOCIATION, INC.**

This Third Amendment to Declaration of Condominium Ownership for Creekside Crossing Condominiums and to Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. is made this 9th day of December, 2009, by Hills Homes of Indiana, LLC, an Indiana limited liability company, formerly known as Creekside Crossing, LLC, an Indiana limited liability company pursuant to name change recorded as Instrument No. 2007-0001797 ("Declarant").

**WITNESSETH:**

WHEREAS, the following facts are true:

A. On November 29, 2004 Creekside Crossing, LLC, an Indiana limited liability company executed a Declaration of Condominium Ownership for Creekside Crossing Condominiums which was recorded in the Office of the Recorder of Marion County, Indiana ("Recorder") on December 21, 2004 as Instrument No. 2004-235308 and re-recorded on January 13, 2005 as Instrument No. 2005-6687 as supplemented by a Supplemental Declaration of Creekside Crossing Condominiums - Phase Two recorded April 11, 2005 in the Office of the Recorder as Instrument No. 2005-0054595, a Supplemental Declaration of Creekside Crossing Condominiums - Phase Three recorded December 4, 2007 in the Office of the Recorder as Instrument No. 2007-0167412 and a First Amendment to Declaration of Condominium Ownership for Creekside Crossing Condominiums and to Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. recorded September 15, 2005 in the Office of the Recorder as Instrument No. 2005-153480 and an Amended and Restated Second Amendment to Declaration of Condominium Ownership for Creekside Crossing Condominiums and to Code of By-Laws of Creekside Crossing Condominiums and of Creekside Crossing Homeowners Association, Inc. recorded on July 6, 2009 in the Office of the Recorder as Instrument No. 2009-0076184.

B. The change of name of Creekside Crossing, LLC to Hills Homes of Indiana, LLC is recorded as Instrument No. 2007-0001797 of the miscellaneous official records of Marion County, Indiana. Based upon such change of name, Hills Homes of Indiana, LLC is the

**FILED**

*Billie J. Swartz*

C. Pursuant to Section 18 of the Declaration, Declarant desires to amend the Declaration relating to the rights of Declarant regarding the expansion and development of Creekside Crossing and/or the Real Estate.

NOW THEREFORE, the Declaration is amended as follows:

1. Paragraph 17 is deleted in its entirety and replaced with the following:

**Covenants and Restrictions.** The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited 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 by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any 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 December 21, 2014 (the "Expansion Period") the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (including any recreational facilities but not including individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the Property, 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 construction and sale of Condominium Units (whether within Creekside Crossing or as a model unit for other condominium projects being developed by Declarant), or to promote or effect sales of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to 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.

2. Paragraph 18(e) is deleted in its entirety and replaced with the following:

**Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred percent (100%) of the Co-owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws except for changes pursuant to paragraph 21 herein, or (2) the provisions of paragraph 16 of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws or (3) the provisions of

paragraph 12 regarding the obligation of the Board of Directors to provide professional management for Creekside Crossing without the approval of Declarant for so long as Declarant owns any part of the Property or the Real Estate or (4) the provisions of paragraph 15 providing for no priority of an Owner or other person over a Mortgagee as to insurance or condemnation proceeds without the unanimous approval of 100% of the Co-Owners, and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws, or (5) the provisions of paragraph 23 with respect to the rights to use the Common Areas, without the approval of Declarant for so long as Declarant owns any part of the Property or the Real Estate, or (6) which change would negatively impact the value or appearance of the Property, without the approval of Declarant for so long as Declarant owns any part of the Property or the Real Estate, or (7) the provisions of paragraph 32, without the approval of Declarant, which approval may be withheld by Declarant in Declarant's sole discretion for so long as Declarant owns any part of the Property or the Real Estate.

3. Paragraph 18(g) is deleted in its entirety and replaced with the following:

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 Co-owners, the Association, the Board of Directors, any Mortgagees or any other person at any time prior to the Applicable Date 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, or (ii) such amendment or supplement is made to implement expansion of the Property and Creekside Crossing pursuant to Declarant's reserved rights to expand the same as set forth in paragraph 21 hereof, or (iii) such amendment is necessary 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 & Urban Development, the Federal Housing Association, the Veteran's 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 or (iv) such amendment is necessary to correct clerical or typographical errors or to clarify Declarant's original intent or (v) such amendment is necessary to implement any changes in Creekside Crossing permitted to be made by Declarant under this Declaration or (vi) such amendment is necessary to more equitably provide for assessments where Condominium Units have special features such as elevators and Garage Units or (vii) to amend the provisions of paragraphs 23 or 32.

4. Paragraph 21(a) is deleted in its entirety and replaced with the following:

Expandable Condominium and Declarant's Reserved Rights. Creekside Crossing 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 Creekside Crossing in accordance with the provisions of the Act and the following provisions:

- (a) The real estate described and defined herein as the Tract (in paragraph B of the introductory recitals of this Declaration) is the real estate being subjected to the Creekside Crossing Condominiums by this Declaration and constitutes the first phase of the general plan of development of the Real Estate. The balance of the Real Estate is the area into which expansion

of Creekside Crossing may be made by Declarant. The maximum number of Condominium Units which may be developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration, shall be one hundred twenty-eight (128). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, Creekside Crossing may be expanded by Declarant to include additional portions of the Real Estate in one (1) or more additional phases by the execution and recording of one (1) or more amendments or supplements to this Declaration; provided, however, that 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 Creekside Crossing 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 such expansion is done on or before December 21, 2014. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Creekside Crossing beyond the Tract (as defined and described in paragraph B of the introductory recitals of this Declaration) or any other portions of the Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by amendments or supplements to this Declaration as provided above. Any Condominium Units constructed in such expansion area and made part of the Property, shall be consistent with the quality of construction of the Condominium Units constructed in the previous phases. Prior to expansion to an additional phase, the improvements in such expansion phase shall be substantially complete. Nothing in this Paragraph 21 shall effect the reservation of rights set forth in Paragraph 23.

The remainder of Paragraph 21 remains unchanged and in full force and effect.

5. Paragraph 23 is deleted in its entirety and replaced with the following:

23. Reservation of Rights to the Use of the Common Areas.

(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 an amendment or supplement to this Declaration and the owner or owners of such portion or portions of the Real Estate not so subjected to the Declaration or to the Act develop single or multi-family dwelling units on such portions then the owner or owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the roads, the recreational facilities and associated facilities, for the use of the persons and families living in such dwelling units upon the same terms and conditions as the use of such Common Areas by the owners of the Condominium Units, their families 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 living units so entitled to utilize such facilities in proportion to all of the living units on the Real Estate. The owner or owners of such living units shall make payments for the usage provided herein to the Association at the same time as the Owners of the Condominium Units pay their assessments to the Association. Such development may include the creation of a homeowners or similar association.

(b) Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property and any portions of the Real Estate which are not part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate which are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate which are not part of the Property, to use the Property for marketing purposes for Creekside Crossing and other condominium projects which are being developed by Declarant and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate which are not part of the Property.

(c) In furtherance of the rights reserved and the easements retained in Paragraph 23, the Association shall grant any specific easements and enter into any other agreements necessary to give effect to the rights retained in this Paragraph 23 upon request by Declarant.

6. Paragraph 29 is deleted in its entirety and replaced with the following:

29. Dispute Resolution

(a) Introduction

The Association, Owners, Declarant, and all persons subject to this Declaration (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving matters such as the initial construction and development of the Property and the Real Estate, the repair, restoration or replacement of the Property and the Real Estate, and Declarant's contributions to the Assessments, working capital fund and the budget, including Common Expenses. To that end, and to avoid the financial and emotional costs associated with litigation, the Parties agree that should a Claim (as defined below) arise out of or be in relation to the Property and the Real Estate or any Governing Documents (as defined below), and the Parties are unable to resolve the Claim through direct discussion, the Parties shall attempt in good faith to resolve the Claim promptly by mediation between the Parties. If the mediation does not prove successful, either Party may seek to resolve the Claim through proceedings in any Court which has jurisdiction over the Claim. Accordingly, each Party covenants and agrees that this Article applies to all Claims.

(b) Definitions

(i) "Claim" means any grievance or dispute between Parties involving the Property, Real Estate or Governing Documents, except Exempt Claims as they are defined below. "Claims" include, without limitation:

A. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.

- B. Claims relating to the rights and/or duties of Parties under the Governing Documents.
  - C. Claims relating to the design, construction, or maintenance of the Property and the Real Estate.
- (ii) "Claimant" means any Party having a Claim against any other Party.
- (iii) "Exempt Claims" refers to grievances or actions which are exempt from this Article, "Exempt Claims" include:
- A. The Association's claim for Assessments due from an Owner (other than Declarant) or for an Owner's (other than Declarant's) compliance with this Declaration, and any action by the Association (i) to collect Assessments from an Owner (other than Declarant) or (ii) force compliance of an Owner (other than Declarant) with this Declaration; all of which shall be governed by Paragraph 26 of the Declaration and Article V of the Code of By-Laws.
  - B. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
  - C. Enforcement of the easements, architectural control and use restrictions of this Declaration.
  - D. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.
  - E. A dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of applicable law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.
  - F. To the extent an Exempt Claim under subparagraph A is not resolved by Paragraph 26 and Article V of the Code of By-Laws, such Exempt Claims and all the Exempt claims shall be resolved through proceedings in any Court which has jurisdiction over such Exempt Claim, unless the Parties shall agree to a different method of resolving such Exempt Claim.

- (iv) **“Respondent”** means any Party responding to a Claim.
- (v) **“Governing Documents”** means, singly or collectively as the case may be, this Declaration, the Plans, the Bylaws and the Articles, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.
- (c) **Mediation**
  - (i) **Notice.** Claimant must notify Respondent of his demand for mediation of his Claim in writing (the “Claim Notice”), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Claim Notice is given pursuant to this Section.
  - (ii) **Location of Mediation.** The location of any mediation will be Marion County, Indiana.
  - (iii) **Choice of Mediator.** Once a Respondent receives a Claim Notice, the Respondent will have twenty (20) days to respond to the Claimant’s Claims. Within ten (10) days after the Respondent submits his response, both Parties must also exchange a list of five (5) acceptable mediators. The mediation will be conducted by a single mediator mutually agreed to by the Parties from the mediator list. If the Parties do not have a mutually agreeable mediator on their lists, the Parties will have to reach an agreement upon a mediator with the only requirement being that the mediator must have experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. The Parties will have ten (10) days to agree to a mediator after the lists have been exchanged.
  - (iv) **Role of Mediator.** Once the date of the first formal mediation session is set, the mediator may require the Parties to submit (a) a mediation statement clarifying the disputed issues, as well as each Party’s position and a summary of arguments supporting that position, and (b) the name and title of the person or persons who will attend and have authority to make settlement decisions binding on the respective Parties. At all times during the mediation process, the mediator will maintain impartiality, though he may give his views, opinions or settlement proposals as a means to move the dispute toward resolution. However, the mediator’s views, opinions, and settlement proposals shall not be deemed to be legal advice.

Information exchanged during the mediation is confidential unless it otherwise would be discoverable or admissible at another legal proceeding.

- (v) **Waiver of Mediation.** If Claimant does not submit the required list of mediators, cannot reach an agreement with Respondent as to an acceptable mediator within the ten days after the lists of mediators have been exchanged, ever fails to attend a formal mediation session, or in any other way fails to participate in the mediation process, the Claimant will be deemed to have waived the Claim and the Respondent will be released and discharged from any and all liability to Claimant on account of the Claim.
- (vi) **Enforcement of Resolution.** Any settlement of a Claim through initial negotiation or subsequent mediation will be documented in writing and signed by the Parties. Any settlement agreement that they may enter into during the mediation process is fully binding and enforceable by any Court with jurisdiction of the Claim. Thus, if any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit to enforce the agreement without the need to again comply with the procedures set forth in this Section. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.
- (vii) **Termination of Mediation.** If the Parties do not settle the Claim within sixty (60) days after the Claim Notice, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may institute proceedings in any Court with jurisdiction of the Claim.
- (viii) **Partial Resolution of Claims.** If the Parties were able to resolve some, but not all, of the Claims at issue at the mediation, then the issues that were resolved will be documented in writing and signed by the Parties as provided in sub-paragraph (vi) above. These claims will not be at issue in any subsequent Court proceedings and shall be enforced in the same manner as discussed in sub-paragraph (vi) above.
- (ix) **Allocation of Costs.** Each Party bears all of its own costs incurred prior to and during the proceedings described above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.
- (d) **Declarant's Right to Cure.** INDIANA CODE SECTION 32-27-3 CONTAINS IMPORTANT REQUIREMENTS THE ASSOCIATION OR AN OWNER MUST FOLLOW BEFORE THE ASSOCIATION OR AN OWNER MAY FILE

A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST DECLARANT. SIXTY (60) DAYS BEFORE THE ASSOCIATION OR AN OWNER FILES A LAWSUIT, THE ASSOCIATION OR AN OWNER MUST DELIVER TO DECLARANT A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS THE ASSOCIATION OR AN OWNER ALLEGES ARE DEFECTIVE AND PROVIDE DECLARANT THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. THE ASSOCIATION OR AN OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY DECLARANT. HOWEVER, IF THE ASSOCIATION OR AN OWNER UNREASONABLY REJECTS A REASONABLE WRITTEN OFFER AND COMMENCES AN ACTION AGAINST DECLARANT, A COURT MAY AWARD ATTORNEY'S FEES AND COSTS TO DECLARANT. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER INDIANA STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT THE ASSOCIATION OR AN OWNER ABILITY TO FILE A LAWSUIT.

THE PARTIES AGREE THAT THE FOREGOING RIGHT TO CURE SHALL APPLY TO ANY CLAIM RELATED TO DEFECTIVE CONSTRUCTION. PRIOR TO PROVIDING A CLAIM NOTICE FOR MEDIATION OR ARBITRATION OR ATTEMPTING TO COMMENCE A LAWSUIT RELATED TO DEFECTIVE CONSTRUCTION, SUCH PARTY SHALL COMPLY WITH THE REQUIREMENTS OF THIS SUBPARAGRAPH (D).

7. A new paragraph 32 is added as follows:

32. DECLARANT'S ADDITIONAL RESERVED RIGHTS.

(a) General Reservation and Construction. No Mortgagee, other Owner, or the Association may prevent or interfere with the rights contained in this Paragraph 32 that Declarant hereby reserves exclusively unto itself and its successors and assigns. The terms and provisions of this Paragraph 32 must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property and Real Estate. The rights in this Paragraph 32 are in addition to any other rights reserved in this Declaration by Declarant, specifically including but not limited to Paragraph 23.

(b) Purpose of Expansion Period. This Paragraph 32 gives Declarant certain rights during the Expansion Period to ensure a complete and orderly buildout and sellout of Creekside Crossing, which is ultimately for the benefit and protection of Owners and Mortgagees.

(c) Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of buildings, Condominium Units, Common Areas and Limited Areas.

(d) **Architectural Control.** During the Expansion Period, Declarant has the absolute right to exercise architectural control over the Property and the Real Estate. Neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named), may involve itself with the approval of improvements, alterations, modifications or other physical changes on the Property or Real Estate. Each Owner, by accepting an interest in or title to a Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property or the Real Estate enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market the Property or the Real Estate. Accordingly, each Owner and the Association acknowledges and agrees that - during the Expansion Period - no improvements will be started or progressed on any Common Area, Limited Area, any part of the Property or any part of the Real Estate without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons (such as Declarant's own employees) from time to time to act on its behalf in reviewing and responding to applications. During the Expansion Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Paragraph 32 to any person or persons deemed by Declarant to be qualified to exercise architectural control. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

(e) **Completion.** During the Expansion Period, Declarant has (1) the right to complete or make improvements indicated on any development plan; and (2) an easement and right to erect, construct, and maintain on and any part of the Property or Real Estate owned by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Real Estate.

(f) **Promotion.** During the Expansion Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property and the Real Estate, including items and locations that are prohibited to other Owners. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property and the Real Estate. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - to promote the sale of Condominium Units, or the Real Estate.

(h) **Offices.** During the Expansion Period, Declarant reserves for itself the right to use Condominium Units and models owned by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service,

construction, and leasing of the Property and the Real Estate and/or Declarant's developments or other products located outside the Property and the Real Estate.

(i) Access. During the Expansion Period, Declarant has an easement and right of ingress and egress in and through the Property and the Real Estate for purposes of constructing, maintaining, managing, and marketing the Property and the Real Estate.

(j) Utility Easements. During the Expansion Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property and the Real Estate for utilities, roads, and other purposes necessary for the proper development and operation of the Property and the Real Estate.

(k) Successor Declarant. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Real Estate, or for all purposes and all of the Real Estate. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Office of the Recorder of Marion County. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

(l) In furtherance of the rights reserved and the easements retained in Paragraph 32, the Association shall grant any specific easements and enter into any other agreements necessary to give effect to the rights retained in this Paragraph 32 upon request by Declarant.

8. Paragraph 3.02 of the Code of By-Laws is deleted in its entirety and replaced with the following:

Initial Board of Directors. The initial Board of Directors shall be Chad Peterson, Chris Lebling and Kevin Junker (herein referred to as the "Initial Board"), 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 or the Declaration or the Act or elsewhere (a) the Initial Board shall hold office until (1) December 21, 2014, or (2) the date Declarant files for record in the Office of the Recorder of Marion County, Indiana an instrument waiving or releasing its reserved right as set forth in paragraph 21 of the Declaration to expand or further expand Creekside Crossing, whichever of the above is earliest, or (3) at such earlier date as Declarant may determine, or (4) the date when seventy-five percent (75%) of all planned Condominium Units have been conveyed by Declarant to Owners (such date when the Initial Board shall no longer hold office being herein referred to as 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 determined as provided above, every such vacancy shall be filled by a person 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 shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, 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, 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.

The President of the Association shall call a special meeting as soon as possible after the date when parties to whom the Declarant has conveyed Condominium Units first hold twenty-five percent (25%) of the total Percentage Vote that would exist if the maximum number of Condominium Units that could be submitted to the Declaration were so submitted. At such meeting, the Owners, other than the Declarant, shall elect a fourth member to the Board of Directors who shall be an Owner or otherwise eligible to be a director under this Code of By-Laws. At a special meeting which shall be called by the President of the Association as soon as possible after the date when parties to whom the Declarant has conveyed Condominium Units first hold fifty percent (50%) of the total Percentage Vote that would exist if the maximum number of condominium units that could be submitted to the Declaration were so submitted. The Owners other than the Declarant shall elect a fifth member to the Board of Directors who shall be an Owner or otherwise eligible to be a director under the Code of By-Laws. None of the Declarant's appointees to the Initial Board of Directors need be Owners of a Condominium Unit. All other Directors must be either an Owner or a spouse of an Owner, except if an Owner is a corporation, partnership, joint venture or other entity, then the Director may be an officer, partner, joint venturer or like individual affiliated with such Owner.

9. To the extent not amended by this Second Amendment, all other terms, provisions and conditions of the Declaration and the Code of By-Laws remain the same.

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CHICAGO TITLE

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

Hills Homes of Indiana, LLC, an Indiana limited liability company, formerly known as Creekside Crossing, LLC, an Indiana limited liability company

By: [Signature]  
Printed: Ian Guttman  
Title: Vice President

OHIO  
STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Ian Guttman, by me known to be the Vice President of Hills Homes of Indiana, LLC, an Indiana limited liability company, formerly known as Creekside Crossing, LLC, an Indiana limited liability company who acknowledged the execution of the foregoing Third Amendment on behalf of said limited liability company.

WITNESS my hand and Seal this 9<sup>th</sup> day of December, 2009.



[Signature]  
Notary Public - Signature  
HARRY R. SCHNEIDER, Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 127.08 O.R.C.  
Notary Public - Printed

My Commission Expires: \_\_\_\_\_  
My County of Residence: Hamilton

\*  
This instrument prepared by: Tammy K. Haney, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Tammy K. Haney