

DECLARATION OF COVENANTS AND RESTRICTIONS OF

CREEKSIDE WOODS PROPERTY OWNERSHIP

SECTION 1

THIS DECLARATION made this 31st day of August, 1989, by LAND INNOVATORS COMPANY, an Indiana Limited Partnership (Declarant) and CORA L. GRAHAM a/k/a CORA LOUISE GRAHAM.

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant and, Cora L. Graham a/k/a Cora Louise Graham, are the aggregate owners in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as "Tract" or "Creekside Woods, Section 1").

B. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Tract shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

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) "Additional Tract" means that real estate or any part of it described in Paragraph 19 of this Declaration.

(b) "Applicable Date" means the date determined pursuant to Paragraph 7 of this Declaration.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined.

The Articles of Incorporation are incorporated herein by reference.

(d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.

(e) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.

(f) HOA Easements. Refers specifically to Easements herein described which will or may appear on the final Plat of Creekside Woods, Section I, as well as on the Final Plat of additional areas of Creekside Woods. Title to the realty on which such Easements are imposed will remain with the Lot owner on which such Easement appears with the right in the Declarant (so long as Declarant owns any Lots) the HOA, its designated representatives along with members of the Marion County Department of Public Works (in the case of the Lakes and the HOA Utility and Drainage Easements to have ingress and egress in and upon such Easements.

The easements aforesaid are now detailed with any rights stated inuring to the Declarant until the Applicable Date and thereafter to the HOA:

HOA - Utility and Drainage Easements (Storm Water)

These Easements exclude the Lakes, but specifically encompass the storm water system within Creekside Woods which in combination with all other Lakes, handle the surface water drainage of Creekside woods. The maintenance of the storm water system and the Easement areas serving such storm water system will become and be the responsibility of the HOA. Such maintenance responsibility shall exclude grass cutting which remains the responsibility of the Lot owner through which the easement is located.

HOA - Landscape and Wall Easement

These Easements contemplate and grant, but do not require, the right to install double entrance walls plus mounding and of landscape plantings to be maintained by the HOA, including grass cutting and watering.

HOA - Island Easements

The Declarant shall reserve this Easement from the Dedication of Right of Way to the Department of Transportation of Harlon County, City of Indianapolis, for a green area landscape island which may include lighting and a water sprinkling system to be maintained by the HOA. The HOA shall also be responsible for any utility expense for such water and/or lighting as a common expense.

HOA - Landscaping Easement

These Easements located on the German Church Road perimeter of Creekside Woods shall contain mounding and landscaping in compliance with a zoning commitment for Creekside Woods as now exist or may hereafter be modified. The HOA shall be responsible to maintain the integrity of such mounding and replace any dead landscaping caused by unhealthy plants, disease or the elements. The cutting of grass on the mounding, plus the watering of the grass and the plantings therein, shall be the responsibility of the Lot owner upon which such Easement is impressed. Lot owners shall not be entitled to place any additional plantings within this Easement without the written consent of the Architectural Review Board.

(g) Retention Lake's) - Use and Maintenance Obligation

There are One or more separate bodies of water within this or other Sections of the Creekside Woods Subdivision which serve as retention or drainage areas and outlets for surface water which are designated on plats presently recorded or to be recorded as "Retention Lake" (hereinafter called "Lake"). One such "Lake" also serves as a retention or drainage area and outlet for surface water from a section(s), presently platted or Grassy Creek and lots of Creekside Woods abutting this described "Lake" (hereinafter referred to as "Common Lake").

All lot owners who abut a given "Lake, including the "Common Lake" by accepting a Deed to said Lot assume the responsibility of maintaining said Lake on an equal pro rata basis based on the total number of Lots that abut the Lake unless stated otherwise herein. This maintenance obligation shall commence when a given Lake is accepted and/or approved by the Department of Public Works of Marion County and with the termination of the 3 year maintenance bond as called for under the Marion County Subdivision Ordinance. Said Lot owners shall have the right to use the Lake they abut for fishing so long as it is done solely from the Lot owners land bank. None of the owners herein described, relative to the Lake applicable to them, shall have the right to use such Lake for any other purpose including, but not limited, wading, boating, swimming or fishing from within the Lake.

In the event a Homeowner's organization is created for the Grassy Creek Subdivisions which mandates membership therein such organization shall solely determine the timing and nature of the maintenance obligation of the Lot owners around Common Lake. The allocations of cost for such obligation shall be on an equal pro rata basis to the Lot owners who abut and surround the Common Lake with the exception that the aggregate of such cost assigned to the Lot owners whose Lots in Grassy Creek surround the Common Lake shall become a common expense of such Homeowner's organization and therefore a financial obligation of such Homeowner's organization. The rights to the use of Common Lakes shall not inure to such organization or its members (other than those who abut Common Lake) as a result of this provision.

(h) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement as detailed in Items 1 (f) and 1 (g), and all sums lawfully assessed against the Members of the Corporation.

(i) "Corporation" also known as HOA means Creekside Woods Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 6 of this Declaration.

(j) "Declarant" shall mean and refer to Land Innovators Company, an Indiana Limited Partnership, 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

(k) "Dwelling Unit" means the living units located upon a Lot.

(l) "Lake". These Lakes, one of which is hereafter defined as Common Lake, separately and in the aggregate, are designed to handle the surface water drainage requirements of Creekside Woods and should not be construed as assuring that water will be in the Lakes at all times or that any particular level of water will be contained therein.

(m) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Creekside Woods, Section or upon the recorded Final Plat, if any, of the Additional Tract Or any part thereof and upon which one (1) Dwelling Unit is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(n) "Member" means a member of the Corporation.

(o) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(p) "Creekside Woods, Section I" means the name by which the Tract, as described in Paragraph A above, which is the subject of this Declaration, and shall be known.

(q) "Creekside Woods" means Creekside Woods, Section 1 and any additional area or section submitted to this Declaration by a Supplemental Declaration as provided herein.

(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 Lot.

(s) "Tract" means the real estate described in Paragraph A above and such portions of the Additional Tract for which a Final Plat has been recorded in the Office of the Recorder of Marion County, Indiana, and which has been subjected to this Declaration by a Supplemental Declaration as provided herein.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Creekside woods, Section I. Creekside Woods, Section I consists of ___ Lots numbered ___ through___, as designated on the Final Plat. The legal description for each Lot in Creekside woods, Section I shall be as follows:

Lots 1 - 82 in Creekside Woods, Section I, a subdivision in Marion County, Indiana, as per plat thereof recorded August 15, 1989 as Instrument Number 89-79160, in the Office of the Recorder of Marion County, Indiana.

4. Common Area. There are no Common Areas in Creekside Woods.

5. Easement for Utilities and Public and Quasi-Public Vehicles. An easement is 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, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on above, across and under the roofs and exterior walls of the: Dwelling Units. In the event any utility furnishing service

should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

6. Corporation, Membership, Voting, Functions.

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot: provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:

- i. the date upon which the written resignation of the Class B Members is delivered to the resident Agent of the Corporation;
- ii. thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or;
- iii. August 3, 1999.

(c) Functions. The corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, and administration of the HOA Easements and to pay any other necessary expenses and costs in connection with these areas, and to perform such other functions as may be designated by it to perform under this Declaration.

7. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointee by Declarant as provided in subparagraph (b) of this Paragraph 7.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: John Whitlock, David Compton and Judy Seeley (hereinafter referred to as the "Initial Board") all of whom have been or shall be appointed by Declarant. Notwithstanding any- thing to the contrary contained in, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, 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 Lot, or by acquisition of any interest in a Dwelling Unit by any type or juridical 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 of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging HOA Easements, or merger/consolidation of the Corporation with another corporation. 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. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation 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 shall be deemed or considered a Member of the Corporation not an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) 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 Lot or Dwelling Unit may be represented on the board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. 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 herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) 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 votes entitled to be cast 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.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement as required within the HOA Easements, and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, 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, provided any such management Agreement shall be for a term of three (3) years or less and

shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Other than the Initial Management under Paragraph 8 any decision thereafter to employ a professional property management Agent shall require the prior consent of the Owners of at least sixty-seven percent (&71) of the vote and fifty-one percent (51% of the vote) of Mortgagees. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection and surveillance of the HOA Easements, unless the same are otherwise the responsibility or duty of Owners of Lots; 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 anyone site or roving guards, security service or security system for protection or surveillance, And the same need not be furnished;
- (ii) the duties delineated under HOA Easements (Item 1f);
- (iii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (iv) preparation of the proposed 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,
- (v) 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,
- (vi) keeping a current, accurate and detailed record of receipts and expenditures affecting the HOA Easements and the business and affairs of the Corporation, specifying and itemizing the Common Expenses, all records and vouchers- (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of II first mortgage at any time during normal business hours;
- (vii) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (viii) paying any other necessary expenses and costs in connection with the HOA Easements; and
- (ix) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, an audited financial statement for the immediately preceding fiscal year.

(g) 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:

- (i) to employ a Managing Agent to assist the Board in performing its duties;
 - (ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
 - (iii) 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 the Corporation;
 - (iv) to employ, designate, discharge and remove such personnel as in the Judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
 - (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs there from;
- and
- (vi) to open and maintain a bank account or accounts in the name of the Corporation.
 - (h) 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 \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (i) contracts for replacing or restoring portions of the HOA Easements damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received,
- (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(iii) 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.

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) 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 the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) 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, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) 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.

(l) Bond. The board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other Officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

8. Initial Management. The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such other

corporation or entity as appropriate) will provide supervision, management and maintenance of the HOA Easements, and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the HOA Easements and perform all the functions of the Corporation.

9. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract and Additional Tract or part thereof as a whole, Without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract and Additional Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Tract and Additional Tract or part thereof assessed as a Whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract and Additional Tract or part thereof assessed as a whole based upon the ratio that the square footage of all improved lots.

10. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as 'part of the Common Expense unless otherwise determined by the Corporation.

11. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the HOA Easements shall be furnished by the Corporation as detailed in Item 1 (f), as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition except as modified by Item 1 (f).

Notwithstanding any obligation or duty of the corporation to repair or maintain aforesaid 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, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacement 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. If not paid by such Owner upon demand by the Corporation the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's lot is subject.

If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, exclusive of dwelling maintenance, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the" Corporation, its agents and

employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work. contemplated herein.

12. Architectural Control

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use and location of improvements on the Real Estate in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. No improvements, alterations, repairs, excavation, changes in grade or other work which In any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, change in the HOA - Landscaping Easement, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

(e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design of the Dwelling Units nor for maintaining the HOA Easements without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the board of Directors in accordance with the provisions of this Declaration.

13. Assessments

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, 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 servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be

amended in whole or in part by a majority vote of the Owners, provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement of the HOA Easements, which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement within the HOA Easements 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 a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%), of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter. Payment of these installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget, then:

- (i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
 - (ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;
- provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may

not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 16 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be or who may rely thereon shall be bound by such final determinations. Quarterly installments of Regular 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.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose who may rely thereon shall be bound by such final purpose, and further provided that the Declarant shall not be any Owner's Agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 7 of this Declaration, 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 Lot, prorated in equal shares (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 and 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 this Declaration.

(e) Regular Assessments Prior to the Applicable Date. During the period that Dwelling Units are being constructed within the Tract or any Additional Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this subparagraph. The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph B of this Declaration. So long as such management agreement (or similar Agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) 1 year after the date of execution, the quarterly Regular Assessment shall not exceed Fifty Dollars (\$50.00) (The "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, Declarant guarantees that the quarterly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20% increase in the Guaranteed Charge for each year. Such

adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such quarterly charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient the replacement reserve fund, if any such fund exists. That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to any replacement reserve created shall be held by the initial Board and if required, applied to the replacement required in the HOA Easements. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date. Payment of Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the quarterly period next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each quarterly period thereafter during the period prior to the Applicable Date. DECLARANT SHALL ONLY BE RESPONSIBLE FOR REGULAR ASSESSMENT FOR LOTS OWNED BY DECLARANT FOR 25% OF THE REGULAR ASSESSMENT. PROVIDED, HOWEVER, SUCH PAYMENT BY DECLARANT FOR LOTS WITHIN A PARTICULAR FINAL PLAT SHALL NOT COMMENCE UNTIL THE FIRST LOT IN SUCH AREA SUBJECT TO SUCH FINAL PLAT IS CONVEYED BY DECLARANT TO A NEW OWNER. Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid. management agreement described in Paragraph 8 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the HOA Easements or by abandonment of the Lot 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 person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise Provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring 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 from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the Date such assessments were due until paid at the rate equal to the prime Interest rate then being charged by Indiana National Bank & Trust Company of Indianapolis to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another National Bank in

Marion County, Indiana selected by the Board of Directors). The lien of the Assessments provided for herein shall be subordinate to the line of any first mortgage.

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding any- thing contained in the Declaration, the Articles or the By-Laws, any sale or transfer of a lot 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 installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling 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 or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of Any Regular 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 Lot from which it arose).

14. Mortgages

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, 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 the name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the term of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at 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 this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, and proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, "which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 13 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any charges against the HOA Easement which are in default and (2) to pay any overdue premiums on hazard insurance for the HOA Easement or to secure ne" hazard insurance for the HOA Easement on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.

(d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Creekside Woods. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

15. Insurance

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Corporation's improvements within the HOA Easements in an amount consonant with the full replacement value of these improvements. 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. Such insurance coverage shall be for the benefit of each (Owner and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth. All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation 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 Corporation or Board of Directors, as appropriate, and 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 Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received. 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 Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation. Each Owner shall otherwise be solely responsible for loss or damage to his Dwelling Unit, the contents of his Dwelling Unit and Lot however caused and his personal property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for loss or damage to that Dwelling Unit, the contents of any Dwelling Unit or any "personal property stored elsewhere on the Tract. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single Occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come act as agents or employees of any of the foregoing, with respect to the Tract. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained including, but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned

or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent charges 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 Corporation who is required to send notices of meetings of the Corporation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his Own expense as he may deem necessary

16. Restoration of HOA Easement ("Improvements"). In the event of damage to or destruction of any of the Improvements herein titled due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the "Improvements". or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the "Improvements" so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein. For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the "Improvements" 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.

17. Covenants and Restrictions. The following Covenants and Restrictions on the use and enjoyment of the Lots, Dwelling Units and HOA Easements shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such 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 Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted Violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.

(b) No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the HOA Easements which will result in a cancellation of insurance or increase in insurance on any part of the HOA Easements, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit, the HOA Easements or on any Lot. The Board of Directors determination as to what is a nuisance shall be conclusive.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit 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 Architectural Review Board.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the HOA Easements or Common Lake, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an owner shall be fully liable for any injury or damage to persons or property, including the HOA Easements, caused by his pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Tract within ten (10) days after written notice from the Board to the respective Owner to do so.

(f) The HOA Easements shall be kept free and clear of rubbish, debris and other unsightly materials.

(g) 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 Tract.

(h) 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 Tract, any Lot or any Dwelling Unit without the prior 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 Tract in connection with any unsold or unoccupied Lots and Dwelling Units.

(i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the HOA Easements 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 HOA Easements. The HOA shall not however have the duty or authority to govern the recreational use of the Lakes and Common Lakes.

(j) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, mini bikes, or mopeds shall be permitted, parked or stored anywhere within the Tract except as otherwise specifically permitted by the Board. No repair work shall be done on the Tract on any vehicles, including passenger automobiles.

(k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the HOA Easements, except with express permission from the Board.

(l) The HOA Easements shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(m) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

(n) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease. Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Tract (other than individual Dwelling Units and Lots owned by Persons other than Declarant), 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 of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling 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. Declarant shall have the right to remove the same from the Tract at any time.

18. Amendment of Declaration.

- (a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:
- i. Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
 - ii. Resolution. A resolution to adopt a proposed amendment may be proposed by the board of Directors of Owners having in the aggregate at least a majority of the votes of all Owners.
 - iii. 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.
 - iv. 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 votes of all Owners. In the event any Lot or Dwelling 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 hereof.
 - v. Special Amendments. No amendment to this Declaration shall be adopted which changes (a) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 15 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 16 of this Declaration with respect to reconstruction or repair of the HOA easements and Common Area in the event of Fire or any other casualty or disaster, or (4) the provisions of Paragraph 12 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 13 of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.
 - vi. Additional Special Amendments. No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the HOA Easements, or (3) right to use the HOA Easements, or (4) annexation of property to Creekside Woods (other than as provided in Paragraph 19), or (5) the leasing of Dwelling Units, or (6) termination of the applicability of this Declaration, or (7) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least seventy-five percent (75%) of the votes of Owners and the Consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages. (vii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
 - vii. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.
- (b) Amendments by Declarant. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban

Development, 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, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendment. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the Declarant no longer hold or controls title to any part or portion of the Tract.

- (c) (c) Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

19. Annexation of Additional Tract. In addition to Creekside Woods, Section I, Declarant is the owner of certain real estate described in the attached Exhibit D which is incorporated herein by reference and which is located contiguous to Creekside Woods, Section I. At any time prior to August 31, 1999, Declarant, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or any part thereof (except as modified by zoning commitments filed relative to such additional tracts) and file one or more Supplemental Declarations and Final Plat for such Additional Tract or part thereof. Improvements (excluding Dwelling Units within the area to be annexed must be substantially completed or bonded under the Marion county Subdivision Ordinance prior to annexation. In the event the Additional Tract or any part of it is platted in a manner as herein stated, the Owners of such Lots in the Additional Tract or parts thereof, shall have the same rights and obligations as the Owners herein, and the Corporation shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein. In the event Declarant decides not to develop or plat the Additional Tract or any part of it in a manner described, Declarant shall file a Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein; provided, however, any part of the Additional Tract for which a Supplemental Declaration has not been filed by Sept. 1, 1999 • shall be automatically removed from the possibility of having a common entity which provides for the maintenance, repair, replacement, administration and operation of such part of the Additional Tract, unless such is established by the Owners in the Tract and those in the Additional Tract.

Regardless of the method of development of the Additional Tract and whether or not all or any part of the Additional Tract comes within the jurisdiction of the Corporation or subject to the Declaration, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Tract not coming within the jurisdiction of the Corporation or subject to the Declaration, the right and easement to enter upon and if necessary tie into the HOA Easements of Creekside Woods, Section I to either continue the landscape plan mandated by zoning commitments in the HOA - Landscaping Easements and/or the surface drainage requirements in aggregating the capacity in HOA - Utility and Drainage Easements. The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Corporation, shall be obligated to pay shall be equal

to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until such Lot has been conveyed by Declarant or the Dwelling Unit thereon is occupied for residential purposes.

20. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, 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 be binding on any person having at any time any interest or estate in a Lot or the Tract 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 Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

21. 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 to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his misuse of the HOA Easements.

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

23. 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 HOA easements or by abandonment of his Lot.

24. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

25. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

26. Interpretation. The captions and titles of the various articles, sections, subsections, paragraph and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in the interpreting or construing this Declaration or any provision hereof. Any conflict between this Declaration and the Plat Covenants shall be resolved by this Declaration as the controlling document. 27. The Plat. The Final Plat of Creekside Woods, Section I is incorporated into this Declaration by reference and has been filed in the office of the Recorder of Marion County, Indiana, as of the 15th day of August, 1989, as Instrument No• 89-79160.

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

[Signature] Cora L. Graham Cora L. Graham a/k/a

Cora Louise Graham LAND INNOVATORS COMPANY BY:

[Signature] R. N. Thompson R. N. Thompson General Partner

STATE OF INDIANA)) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared R. N. Thompson, General Partner of Land Innovators Company, an Indiana Limited Partnership, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Creekside Woods, Section I on behalf of said Corporation. WITNESS my hand and Notarial Seal this 31st day of August, 1989.

My Commission Expires: April 6, 1990 County of Residence: Marion

[Signature] Judy K. Seely

[Printed] Judy K. Seeley

STATE OF CALIFORNIA)) SS
COUNTY OF SAN DIEGO)

Before me, a Notary Public in and for said County and State personally appeared Cora L. Graham a/k/a Cora Loise Graham, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Creekside Woods, Section 1.

Witness my hand and Notary Seal this 22nd day of August, 1989

My Commission Expires:

10-4-91

Country of Residence: SD

[Signature} Brigitta S. Segreto, Notary Public

[Printed: Brigitta Segreto

This instrument was prepared by: Raymond Good -Attorney at Law SCHNORR, GOOD &OLVEY 144 N. Delaware Street
Indianapolis, Indiana 46204-2551 (317) 636-1100 L757/758-8/16/89

