



DAVID BRENTON'S TEAM

RE/MAX Select, REALTORS

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DECLARATION OF COVENANTS AND RESTRICTIONS

Grassy Creek
Property Ownership
Section I

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MARION COUNTY AUDITOR

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DECLARATION OF COVENANTS AND RESTRICTIONS OF
GRASSY CREEK PROPERTY OWNERSHIP

SECTION 1

THIS DECLARATION made this 15th day of August, 1989, by LAND INNOVATORS COMPANY, an Indiana Limited Partnership (Declarant) and RALPH B. SMITH and RAY B. SMITH.

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant and, Ralph B. Smith and Ray B. Smith, 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 "Grassy Creek, 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.

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 Grassy Creek shall contain mounding and landscaping in compliance with a zoning commitment for Grassy Creek 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) and Common Lake

There are one or more separate bodies of water within this or other Sections of the Grassy Creek 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 to be platted, of a subdivision to be known as Creekside Woods with lots of 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

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 Grassy Creek 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 Grassy Creek, Section 1 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) "Grassy Creek, Section 1" 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) "Grassy Creek" means Grassy Creek, 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.

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 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:

1. the date upon which the written resignation of the Class B Members is delivered to the resident agent of the Corporation;
2. 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;
3. August 31, _____, 19 99.

(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 its duties relative to the Common Lake 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 IS, OR IS DEEMED ~~TO BE~~ IN

other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor 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

- (ii) the duties delineated under HOA Easements (Item 1f) and Retention Lakes (Common Lake (Item 1(g)));
 - (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 Common Lake 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 a 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 Common Lake; 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

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

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 Common Lake 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 and Common Lake shall be furnished by the Corporation as detailed in Items 1(f) and 1(g), 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) and/or Item 1(g).

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

(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 and Common Lake 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

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:

budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. 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, 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

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 and/or Common Lakes. 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 Common Lake 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

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 name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms 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, a 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 shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual

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 the 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.

behalf of the Corporation, 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 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 and Common Lake ("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

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 and Common Lake 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.

- (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 and Common Lake, or (3) right to use the HOA Easements and Common Lake, or (4) annexation of property to Grassy Creek (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.

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) 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 Grassy Creek, Section I, Declarant is the owner of certain real estate described in the attached Exhibit B which is incorporated herein by reference and which is located contiguous to Grassy Creek, 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 Plats 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

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 and/or Common Lake.

22. Costs and Attorneys' Fees. In any proceeding arising because of failure of 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 Common Lake 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, paragraphs and subparagraphs of this Declaration are inserted herein for

STATE OF INDIANA)
)
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State personally appeared Ralph B. Smith, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Grassy Creek, Section I.

Witness my hand and Notary Seal this 15TH day of AUGUST, 1989.

Judy K. Seeley
Notary Public

My Commission Expires:
APRIL 6, 1990

JUDY K. SEELEY
(Printed)

County of Residence: MARION

STATE OF INDIANA)
)
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State personally appeared Ray B. Smith, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Grassy Creek, Section I.

Witness my hand and Notary Seal this 15TH day of AUGUST, 1989.

Judy K. Seeley
Notary Public

My Commission Expires:
APRIL 6, 1990

JUDY K. SEELEY
(Printed)

County of Residence: MARION

This instrument was prepared by:
Raymond Good
Attorney at Law
SCHNORR, GOOD & OLVEY
144 N. Delaware Street
Indianapolis, Indiana 46204-2551
(317) 636-1100
L754/755-8/14/89

Part of the Southeast Quarter of Section 9, Township 15 North, Range 5 East of the Second Principal Meridian, Warren Township, Marion County, Indiana and described as follows:

Beginning at the Southeast corner of said Southeast Quarter;
thence South 89 degrees 52 minutes 50 seconds West along the South line of said Southeast Quarter a distance of 744.30 feet to a point 594.00 feet East of the Southwest corner of the Southeast Quarter of said Southeast Quarter;
thence North 00 degrees 02 minutes 46 seconds East parallel with the West line of said quarter, quarter 440.00 feet;
thence South 89 degrees 52 minutes 50 seconds West parallel with the South line of said quarter, quarter 594.00 feet to the West line of said quarter, quarter;
thence North 00 degrees 02 minutes 46 seconds East along said West line 893.70 feet to the Northwest corner of said quarter, quarter and also being the South line of the North half of said Southeast Quarter;
thence South 89 degrees 57 minutes 16 seconds West along said South line 1337.23 feet to the Southwest corner of said North half;
thence North 00 degrees 05 minutes 32 seconds East along the West line of said North half 580.21 feet;
thence North 89 degrees 59 minutes 28 seconds East 24.75 feet;
thence North 00 degrees 05 minutes 32 seconds East 87.50 feet to the North line of the South half of the North half of said Southeast Quarter;
thence South 89 degrees 59 minutes 28 seconds West along said North line 2048.62 feet to the West line of said Southeast Quarter;
thence North 00 degrees 05 minutes 32 seconds East along said West line 500.00 feet;
thence South 89 degrees 58 minutes 19 seconds East parallel with the North line of said Southeast Quarter 600.00 feet;
thence South 00 degrees 05 minutes 32 seconds West 200.00 feet;
thence South 89 degrees 58 minutes 19 seconds East 400.00 feet;
thence South 00 degrees 05 minutes 32 seconds West 299.36 feet to the South line of the North half of said Southeast Quarter;
thence North 89 degrees 59 minutes 28 seconds East along said South line 673.37 feet;
thence North 30 degrees 58 minutes 21 seconds East 777.26 feet to the North line of said Southeast Quarter;
thence South 89 degrees 58 minutes 19 seconds East along said North line 600.00 feet to the Northeast corner of said Southeast Quarter;
thence South 00 degrees 00 minutes 00 seconds West along the East line of said Southeast Quarter 2663.96 feet to the point of beginning and containing 97.687 acres more or less.

EXCLUDING EXHIBIT A ATTACHED

EXHIBIT "B"

LAW OFFICES

HYATT & ROSENBAUM

A Professional Association
1901 Broad Ripple Avenue
Indianapolis, Indiana 46220-2327
(317) 259-6600
Fax (317) 259-6607

Stephen J. Hyatt

William T. Rosenbaum

April 16, 1998

Mr. Jim Ludlum, President
Grassy Creek Homeowners Assn., Inc.
817 S. Timber Creek Drive
Indianapolis, Indiana 46239

Dear Jim:

Enclosed is a recorded copy of the Amendments to the Grassy Creek Declaration. I apologize that this took so long to complete, however, when I submitted it the first time I was not aware that it was necessary for me to first receive the approvals of the Township Assessor, the Department of Metropolitan Development, and the County Auditor. Those have now all been received and this amendment has been duly recorded.

Very truly yours,



William T. Rosenbaum

WTR:db
Enclosure

cc: Dave Compton
Dennis Thrush

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APR 16 1998

JUN 15 1998
MARION COUNTY RECORDS



AMENDMENTS TO DECLARATION OF
COVENANTS AND RESTRICTIONS OF
GRASSY CREEK PROPERTY OWNERSHIP

The following are Amendments to the Declaration of Covenants and Restrictions of Grassy Creek Property Ownership dated August 15, 1989 and recorded on September 1, 1989 in the Office of the Recorder of Marion County, Indiana as Instrument No. 89-86321.

Land Innovators Company, an Indiana Limited Partnership, as declarant under said Declaration now makes the following amendments pursuant to the authority granted in Paragraph 18(b) of said Declaration to correct clerical or typographical errors and/or to clarify unintended ambiguities as follows:

1. Paragraph 1(g) shall read as follows:

Retention Lake and Common Lake

There are three bodies of water within the Grassy Creek Subdivision which serve as retention or drainage areas and outlets for surface water which are designated on recorded plats as "Retention Lakes" (all three lakes may hereinafter be referred to as "Lakes" or as "Lake"). Two such "Lakes" also serve as a retention or drainage area and outlet for surface water from the Creekside Woods Subdivision, with lots of Grassy Creek and lots of Creekside Woods abutting these described "Lakes" (both common lakes may hereinafter be referred to as "Common Lakes" or as "Common Lake").

All lot owners who abut a given "Lake", including the "Common Lakes", 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 three 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 bank of the lot owner's land. None of the owners herein described, relative to the lake applicable to them, shall have the right to use such lakes for any other purpose; including, but not limited to, wading, boating, swimming or fishing from within the lake.

The Grassy Creek Homeowners Association, Inc. shall solely determine the timing and nature of the maintenance obligation of the lot owners around the Lakes. The allocation of cost for this lake maintenance obligation shall be on an equal pro-rata basis of the lot owners who abut and surround each Lake. The aggregate of the cost of maintaining the Common Lakes which is assigned to the lot owners in Creekside Woods shall become a financial obligation of the Creekside Woods Homeowners Association, Inc. The rights to the use of any Lake shall not inure to the Corporation or its members (other than those who abut a Lake) as a result of this provision.

2. Paragraph 1(l) shall be amended as follows:

"Lake". The Lakes, two of which are hereafter defined as Common Lakes, separately and in the aggregate, are designed to handle the surface water drainage requirements of Grassy Creek and Creekside Woods and should not be construed as insuring that water will be in the lakes at all times or that any particular level of water will be contained therein.

3. A new Paragraph 1(t) shall provide as follows:

"Creekside Woods" means the real estate platted as any of the sections of Creekside Woods, a subdivision in Marion County, Indiana.

4. Paragraph 3 of the Declaration shall be amended to provide as follows:

Description of Grassy Creek. Grassy Creek, Section I consists of 57 lots numbered 1 through 57, as designated on the recorded plat. The legal description for each lot in Grassy Creek, Section I shall be as follows:

Lot ____ in Grassy Creek, Section I, a subdivision in Marion County, Indiana, as per plat thereof recorded August 23, 1989, as Instrument No. 89-82009 in the Office of the Recorder of Marion County, Indiana.

Grassy Creek, Section II consists of 59 lots numbered 58 through 116, as designated on the recorded plat. The legal description for each lot in Grassy Creek, Section II shall be as follows:

Lot ____ in Grassy Creek, Section II, a subdivision in Marion County, Indiana, as per plat thereof recorded June 29, 1992, as Instrument No. 92-84582 in the Office of the Recorder of Marion County, Indiana.

Grassy Creek, Section III consists of 54 lots numbered 117 through 170, as designated on the recorded plat. The legal description for each lot in Grassy Creek, Section III shall be as follows:

Lot ____ in Grassy Creek, Section III, a subdivision in Marion County, Indiana, as per plat thereof recorded June 5, 1996, as Instrument No. 96-75225 in the Office

of the Recorder of Marion County, Indiana.

5. Paragraph 7(a) of the Declaration shall be revised to provide as follows:

(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 or she is, or is deemed in accordance with this Declaration to be, an owner, including a person appointed by declarant as provided in subparagraph (b) of this Paragraph 7.

6. The first paragraph of Paragraph 11 of the Declaration shall provide as follows:

Maintenance, repairs, replacement and upkeep of the HOA Easements and Lakes shall be furnished by the corporation as detailed in Items 1(f) and 1(g), as a part of its duties.

7. Paragraph 17(i) of the Declaration shall be amended to provide as follows:

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 have the duty and authority to govern the recreational use of the Lakes and Commons Lakes.

IN WITNESS WHEREOF, the undersigned has caused these Amendments to Declaration to be executed this 4TH day of FEBRUARY, 1998.

LAND INNOVATORS COMPANY, an
Indiana Limited Partnership

By: R.N. Thompson
R.N. Thompson, General Partner

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, personally appeared R.N. Thompson, General Partner of Land Innovators Company, an Indiana Limited Partnership, who acknowledged the execution of the foregoing Amendments to the Declarations of Covenants and Restrictions of Grassy Creek on behalf of said limited partnership.

Witness my hand and Notarial Seal this 4th day of FEBRUARY, 1998.

Judy K. Kiemeier
Notary Public
JUDY K. KIEMEIER
Printed Name

My commission expires: APRIL 8, 1998

My county of residence: MARION

This Instrument Prepared by: William T. Rosenbaum, Attorney at Law, 1901 Broad Ripple Avenue, Indianapolis, Indiana 46220

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APPROVED THIS 9th
DAY OF APRIL 19 98
ASSESSOR OF WARREN TOWNSHIP
Christine Stewart DRAFTSMAN

