

10. (111)

DECLARATION OF ADDITIONAL COVENANTS
FOR CERTAIN LOTS IN CREEKSIDE ADDITION
TO HARTFORD CITY, INDIANA

Creekside Company, LLC, hereby declares that it is the owner in fee simple of Lots Numbered 1 through 11 and Lots Numbered 56 through 71 in the Creekside Addition to Hartford City, Indiana, according to the recorded Plat thereof. In addition to the protective restrictions and covenants contained in the "Dedication, Protective Restrictions, Covenants and Easements as a Part of Creekside Addition to Hartford City, Indiana", Creekside Company, LLC, does hereby impress said aforementioned lots with additional protective restrictions, agreements and covenants which are:

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Creekside Villas Association, Inc., an Indiana Not-For-Profit Organization, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the aforesaid lots or part thereof, which is a part of the properties hereinafter defined including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the aforesaid Lots Numbered 1 through 11 and Lots Numbered 56 through 71, in the Creekside Addition to Hartford City, Indiana, according to the recorded Plat thereof and such other Lots in said subdivision, the Owners of which shall elect, as hereinafter provided, to adopt this Declaration of Additional Covenants.

Section 4. "Plat" shall mean and refer to the aforesaid recorded Plat of Creekside Addition to Hartford City, Indiana, recorded in the Office of the Recorder of Blackford County, Indiana.

Section 5. "Lot" shall mean and refer to either or any part of Lots Numbered 1 through 11 and Lots Numbered 56 through 71, upon the recorded Plat of the Creekside Addition to Hartford City, Indiana.

ARTICLE II

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Monthly assessments or charges; and
- (b) Special assessments for improvements and operating deficits; and
- (c) Special assessments, as provided in Articles III and IV; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless such successors expressly assume the same.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement and maintenance of the properties and the living units situated thereon, payment of insurance premiums, and for other purposes as specifically provided herein.

Section 3. Maximum Monthly Assessments.

- (a) Until January 1, 199__, the maximum monthly assessment on any lot shall be Thirty Dollars (\$30.00) per lot.
- (b) From and after January 1, 199__, the maximum monthly assessments may be increased each calendar year not more than twelve percent (12%) above the maximum assessment for the previous year without a vote of the membership.
- (c) From and after January 1, 199__, the maximum monthly

assessment may be increased above twelve percent (12%) by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors of the Association may fix the monthly assessments at an amount not in excess of the maximum.

(e) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and maintenance of the properties and the living units thereof.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessments shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessments. Both monthly and special assessments for capital improvements and operating deficits must be fixed at a

uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates.

The monthly assessments provided for herein shall commence as to each Lot on the first day of the first month following the conveyance of such Lot by Declarant. The Board of Directors shall fix any increase in the amount of the monthly assessments at least thirty (30) days in advance of the effective date of such increase. No special assessments shall be made against any Lot prior to the aforesaid date on which monthly assessments against it first commence. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such lot assessed, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the

same or to foreclose the lien against the Lot, or both, and there shall be added to the amount of such assessments the costs of preparing and filing the Complaint in such action; and in the event a Judgment is obtained such Judgment shall include interest on the assessments as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action in favor of the prevailing party.

No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien mortgage and any purchase money mortgage. Sale or transfer of any Lot shall not affect the assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any said mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

ARTICLE III

MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements within his living unit, including the heating and air conditioning system and any partitions and interior walls. Each Owner shall repair any defect occurring within his living unit which, if not repaired, might adversely affect the adjoining living unit. He also shall be responsible for the maintenance, repair and replacement of all windows in his residence and also the doors leading into the residence, including garage doors, and any and all other maintenance, repair and replacements of the improvements on his Lot which the Association is not required to perform;

provided, that any change in the color of exterior doors and garage doors, window frames and other exterior of a living unit which is the Owner's obligation to maintain must be first approved in writing by the Board of Directors of the Association. No Owner shall make any alterations or additions to the exterior of his living unit nor perform exterior maintenance thereof required to be performed by the Association without the prior written approval of the Board of Directors of the Association. Further, no Owner shall make any alterations to and within his respective living unit which would affect the safety or structural integrity of the building in which the living unit is situated or to which it is attached.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Driveways. The Association shall be responsible for the maintenance, repair and repaving of all driveways and service walks within the boundaries of each Lot subject to assessments hereunder.

Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the driveways and service walks provided in Section 2 above, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces of living units, and other exterior improvements, lawns, shrubs, trees, trash removal and snow removal from the paved portions of said driveways and service walks. Such exterior maintenance shall not

include glass surfaces, doors and doorways, windows, and window frames.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE IV

INSURANCE

Section 1. Casualty Insurance. Each Owner of a Lot shall be responsible for, shall purchase and continuously maintain a casualty insurance policy or policies affording fire and extended coverage insurance insuring such Owner's properties and all living units thereon, in an amount equal to the full replacement cost.

Certificates or evidence of such insurance coverage shall be filed with and be kept on file with the Association. The Association will at least annually review the amount and type of such insurance and upon written notice and request each Owner shall purchase such additional insurance as the Board of Directors of the Association in its discretion deems necessary to provide the insurance coverage herein required. If an Owner fails to provide such requested additional insurance coverage, the Association shall cause such full replacement value to be determined by a qualified appraiser and shall purchase any required additional insurance and the cost of such appraisal and additional insurance shall be levied against and included in the monthly maintenance assessments for such Lot.

Section 2. Liability Insurance. The Association shall 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. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall obtain any other insurance required by law to be maintained, including but not limited to Workman's Compensation Insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such liability insurance hereinabove described shall be paid by the Association and the pro rata cost thereof shall become a separate monthly assessment to which each Lot owned by Association members shall be subject under the terms and provisions of Article II. Each Owner of a Lot conveyed to him by Declarant shall repay to the Association at the time his Lot is conveyed to him an amount equal to thirteen (13) monthly liability insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the purchase of insurance as herein provided or shall use such funds to repay the premiums of required insurance.

Section 4. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property and the contents of his living unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him), and for his personal liability.

Section 5. Casualty and Restoration. Damage to or destruction of any living unit, lot or other improvements due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Owner under no lien construction contract and the proceeds of insurance, if any, shall be applied for that purpose.

Section 6. Insufficiency of Insurance Proceeds. If the insurance proceeds received by an Owner as a result of any such fire or any other casualty are not adequate to cover the costs of repair and reconstruction of any living unit suffering casualty damage, or in the event there are no proceeds, the costs of restoring the damage and repairing and reconstructing any living unit so damaged or destroyed shall be borne by the respective Owner or Owners of such living unit to the full extent of the additional costs and expenses of such restoration, repair or reconstruction over and above the insurance proceeds allocable to said living unit. If any Owner refuses or fails to make the required repairs necessary to restore any casualty damage, and shall leave his living unit in a state of disrepair, the Association shall complete the restoration and pay the cost thereof through an assessment against the other Owners which assessment shall be considered a special assessment constituting a lien on the living units of that Owner or those Owners who refuse or fail to make such repairs or restoration at the time required by the Association's Board of Directors and the Association may, in the same manner as provided for the collection of other assessments, foreclose such lien or otherwise proceed to collect the amount thereof from said defaulting Owners for the benefit of and on behalf of the other Owners who have paid such additional costs of restoration or repair.

For the purposes of Section 5 above, repair, reconstruction and restoration of any living unit shall mean construction or rebuilding as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

ARTICLE V

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of a living unit upon the properties and placed on or abutting upon the dividing line between the Lots, as such dividing line was created by the conveyance of said unit, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this

Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article III hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VI

ENCROACHMENTS AND EASEMENTS

Section 1. Encroachment. If, by reason of the location, construction, settling or shifting of a building, any part of a building consisting of a living unit appurtenant to a Lot (hereinafter in this Article VI referred to as the "encroaching lot") now encroaches or shall hereafter encroach upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the encroaching Lot for the maintenance, use and enjoyment of the encroaching Lot and all appurtenances thereto.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving his Lot.

Section 2. Easement for Maintenance. The Association shall have the irrevocable right to have access to each living unit (servient unit) from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any wall, roof or other structural component of an adjacent living unit (dominant unit) which shares a common roof or common wall with the servient unit and is accessible from or through such servient unit.

The Association shall also have such irrevocable right of access to each living unit for the purpose of making emergency repairs therein necessary to prevent damage to an adjacent living unit. In the event that the Association is not required under the terms of these covenants to perform the necessary repair, maintenance or replacement of the wall or other structural component of a dominant unit or it fails to commence the work of such repair, maintenance or replacement within a reasonable time after demand therefor by the Owner of the dominant unit, then the Owner of said dominant unit shall have for the purposes of performing such work the same irrevocable right of access to the servient unit as is granted herein to the Association.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants herein enumerated, Declarant, any persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at

any time by an instrument recorded in the Office of the Recorder of Blackford County, Indiana, signed by the then Owners of at least sixty percent (60%) of the Lots; provided, however, none of the rights of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declarant may also be amended by Declarant, if it then has any ownership interest in the properties, at any time within two (2) years after the recordation hereof, except that Declarant shall not affect any of the following changes without the approval of sixty percent (60%) of the first mortgagees of the Lots (based upon one (1) vote for each mortgage) or sixty percent (60%) of the Owners of the Lots:

- (a) Change in the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (b) Change the provisions herein governing the exterior maintenance of living units, walks, lawns, etc.;
- (c) Allow the Association to maintain fire and extended insurance coverage on living units in an amount less than the full insurable value thereof (based on current replacement cost).

This Declaration shall be effective and binding for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Blackford County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Notice to Mortgagees. The Association upon request, shall provide written notification to any lender holding a first mortgage or purchase money mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, which default has not been cured within sixty (60) days.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Additional Covenants to be executed on this 1st day of July, 1994.

CREEKSIDE COMPANY, LLC

By Ralph E. Biggs
Ralph E. Biggs


Arthur D. Headler
Arthur D. Headler

Robert J. Barry
Robert J. Barry

STATE OF INDIANA,
COUNTY OF BLACKFORD, SS:

Before me, the undersigned Notary Public, in and for said County and State, this 1st day of July, 1994, personally appeared Creekside Company, LLC, by Ralph E. Biggs, Arthur D. Headler and Robert J. Barry, All of the managing members, and acknowledged the execution of the foregoing Declaration of Additional Covenants for the uses and purposes therein contained.

~~IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.~~

 My commission expires:
June 21, 1996

Linda Rogers
Linda Rogers Notary Public
Resident of Blackford County, Indiana.

This instrument prepared by Robert J. Barry, Attorney at Law.