534575

VOL 924 PAGE 265
RECORDED

FIRST AMENDED

DECLARATION OF RESTRICTIONS

for

CREEKSIDE ESTATES

1995 MAR -7 AM 8:45

Ronald H. Voigt
REGISTER OF DEEDS
OZAUKEE COUNTY, WI

This declaration, made this 6th day of MARCH, 1995 by **CREEKSIDE LAND COMPANY, LLC**, a Wisconsin corporation, hereinafter called "Developer".

The Developer owns all of the lots in Creekside Estates, a Subdivision located in the Village of Grafton, Ozaukee County, Wisconsin (the "Subdivision"). The Developer hereby declares that the covenants and restrictions set forth herein shall be construed as covenants running with the land and for the mutual benefit of the landowners or owners of any Lot, part or parcel thereof, except Outlot 1 as depicted on the Plat, and the Developer hereby imposes the following covenants, conditions and restrictions as to the use of said Lots and as to the construction of improvements thereon.

1. **DEFINITION OF TERMS**.

A. **"Attached"** shall mean incorporated into the primary dwelling structure with at least one common wall.

B. **"Cars"** shall mean standard size automobiles.

C. **"Family"** shall mean one or more than one person living, sleeping, cooking or eating on the premises as a single housekeeping unit, and shall exclude a group or groups of persons where three or more persons thereof are not household employees or related by blood, adoption or marriage.

D. **"Lot"** shall mean any Lot in the plat of Creekside Estates as recorded with the Ozaukee County Register of Deeds and shall not include any platted Outlot.

E. **"Outlot"** shall mean a parcel designated as an Outlot on the Subdivision plat.

F. **"Structure"** shall mean and include, but not be limited to, buildings, walls, fences, swimming pools, tennis courts, playground equipment, storage sheds, rubbish burners or any other similar items, the construction of which may not necessarily require a building permit.

2. **GENERAL PURPOSE**.

The general purpose of this Declaration is to help assure that CREEKSIDE ESTATES will become and remain an attractive residential area and in furtherance of such purpose: to preserve and maintain

high aesthetic standards for all improvements, as well as the natural beauty of certain open spaces and Common Areas within CREEKSIDE ESTATES; to help assure the best use and most appropriate development and improvement of each Lot to protect owners of Lots against use of surrounding Lots which may detract from the residential value or enjoyment of their Property; to guard against the erection or maintenance of garish or poorly designed or proportioned structures; to obtain a harmonious and aesthetically pleasing blend of materials, structures and color schemes; to insure a residential development of CREEKSIDE ESTATES consistent with high aesthetic standards and the purpose for which each such Lot is platted; to encourage and secure the erection of attractive residential structures with appropriate location on the Lots; to prevent installation of improvements which may adversely affect the aesthetic appearance of a Lot or surrounding area; to ensure a proper and consistent set-back of structures and buildings for aesthetic appearance and to avoid blockage of views for other properties; to secure and maintain a proper spatial relationship of buildings, structures and other improvements; and to otherwise secure mutual enjoyment of benefits for owners and occupants of residential property within CREEKSIDE ESTATES.

3. **LAND USE AND BUILDING TYPE**.

A. **Lot Use and Buildings**. No Lot shall be used for any purpose except for residential purposes. No structures may be erected, moved, altered or placed on any part or parcel other than a residential dwelling not to exceed two and one-half (2-1/2) stories in height on the front elevation, with an attached private garage for at least two (2) cars, and for not more than three (3) cars.

B. **Restriction on Existing Dwellings**. No existing dwelling or other structure heretofore erected and situated upon land outside of the development may be moved onto any Lot or parcel of land within this development without the written permission of the Architectural Control Committee as hereinafter designated.

C. **Exterior Appearances**. All exteriors must be of natural materials. Garage doors should be placed on side or rear elevation of home, unless written approval of the Architectural Control Committee is obtained.

D. **Prohibition on Fencing on Keup Road Landscape Easement**. No fences shall encroach upon any portion of the Landscape Easement adjacent to Keup Road, unless the same are approved by the Homeowner's Association, are uniform in nature, and are approved by the Village of Grafton.

E. **Prohibition of Structures on Keup Road Landscape Easement**. No structure shall encroach upon any portion of the Landscape Easement adjacent to Keup Road, unless the same are

approved by the Homeowner's Association, if any, and are approved by the Village of Grafton.

4. **PLANS AND SPECIFICATIONS.**

A. **Building Plans.** No buildings, main or accessory, or fences, walls or other structures shall be erected, placed or altered on any parcel until the construction plans and specifications, and a plan showing the location of the proposed structure, (collectively, the "Building Plans") shall have been approved by the Architectural Control Committee as to employment and quality of materials, harmony of exterior design with existing structures, as to the effect on the general aesthetics of the area, and as to location with respect to topography, grading, drainage and finish grading elevations. All plans and specifications shall be drawn by a licensed, professional engineer, architect or other professional or shall be in proper form so as to enable the Architectural Control Committee to ensure compliance with the terms of this Declaration of Restrictions. The Architectural Control Committee shall be provided with an adequate grading plan and erosion control plan showing slopes, existing drainage and proposed drainage patterns. Approval shall be as provided in section 8. hereof. The Architectural Control Committee may require a drainage design and pattern that will not necessarily follow property boundaries but will be designed to facilitate the overall drainage of Creekside Estates.

B. **Landscape Plan.** A Landscape Plan prepared by a qualified person or firm showing the proposed development of the entire Lot shall be submitted to the Architectural Control Committee for written approval at the same time as the Building Plan. Written approval of the Architectural Control Committee must be obtained before commencement of landscape improvements. Arrangements shall be made for adequate surface drainage and provide for grass seeding or sodding in accordance with the approved Landscape Plan. All existing trees on Lots not in the immediate building pad space shall be preserved by walls or islands and with proper grading and protected during construction except those approved for removal under the Landscape Plan approved by the Architectural Control Committee. Notwithstanding anything herein to the contrary, the Committee may grant variances, in writing, to professional builders who are building for sale and not under contract.

C. **Building Size and Type.** All dwellings erected in said development shall be single family residences and contain not less than the following schedule of area at first floor level, at perimeter of base ,exclusive of porches, garages, bays, patios, breezeways, utility rooms, etc. that is to say:

(1) Lots 15 through 23:

(a) 2,200 square feet for a one-story dwelling,

(b) 2,650 square feet for a two-story dwelling, of which not less than 1,000 square feet shall be on the second floor,

(c) split-level homes allowed only upon individual review and approval by the Architectural Control Committee.

(2) All other Lots in Subdivision:

(a) 1,900 square feet for a one-story dwelling,

(b) 2,400 square feet for a two-story dwelling, of which not less than 900 square feet shall be on the second floor,

(c) split-level homes allowed only upon individual review and approval by the Architectural Control Committee.

D. **Architectural Style.**

(1) Various houses constructed within the subdivision shall not be limited to a single architectural style.

(2) Building plans for each home shall be subject to review by the Architectural Control Committee to confirm, in addition to any other items referred to in these restrictions, that each portion of the home will exhibit uniform architectural style and material at all elevations.

(3) The Architectural Control Committee shall further review the plans for each home in the subdivision for uniformity and authenticity of architectural style.

(4) The Architectural Control Committee shall have the authority to require modifications to plans for homes to be constructed in the subdivision to ensure compliance with the terms of this article as well as any other requirements of these restrictions.

5. **CONSTRUCTION PROCEDURES.**

A. **Building Completion and Maintenance, Temporary Structures.** No structure shall remain uncompleted for more than one (1) year from the date of commencement of the building.

(1) Rough grading of the surface of any Lot or parcel of land in said Subdivision, upon which any building shall be constructed, shall be completed before said building may be occupied, except that in the case of construction commenced after September 1st, rough grading must be completed within forty (40) days after ground has thawed or prior to occupancy, whichever is later.

(2) Within one (1) year from date of completion or occupancy, whichever occurs first, of any building on a Lot within the Subdivision, the surface of such a Lot shall be finally graded to meet master grade requirements, and the lawn area of such Lot shall be seeded or sodded by the Lot owner all in accordance with the approved Landscape Plan, at his expense. Maintenance and water of trees, removal and replanting will be Lot owner's obligation.

(3) Outbuildings, whether of a temporary or permanent nature, shall be approved by the Architectural Control Committee and shall be consistent with the design and materials of the principal structure. Statues and flag poles are specifically prohibited from being placed in this subdivision. No structure of a temporary character (including by way of description and not by way of limitation, trailer, basement, tent, shack, storage shed, garage, barn or other outbuilding) shall be placed on or used on any Lot within said Subdivision at any time without the plans, specifications and location therefore having been first submitted to and approved in writing by the Architectural Control Committee. In the event that the Architectural Control Committee does not approve or disapprove the plans and specifications referred to in this paragraph in writing within thirty (30) days following receipt thereof, the said plans and specifications shall be deemed to have been disapproved by the Architectural Control Committee.

(4) All buildings and structures shall be adequately painted, maintained and kept in a good and proper condition.

B. **Ground Fill.** All ground fill excess or other fill removed in connection with any construction or other work whatsoever, performed or done in said Subdivision, including but not limited to home construction, etc., shall, if not used by the land owner upon the building site from which originally removed, be delivered to such other place, site or location within said Subdivision as shall be designated by the above noted Architectural Control Committee. If the Architectural Control Committee fail or neglects within 48 hours to notify owners of the place in which fill is to be delivered, the owner may dispose of said fill at his own discretion. Failure to comply with this paragraph shall render owners liable to Developer for damages equal to the cost of acquiring the same amount and quality of fill improperly disposed of, plus the cost of delivering the same from its source to the Lot designated.

C. **Maintenance of Roadway and Adjoining Property.** It shall be the responsibility of each Lot owner to repair any damage to and remove any debris from the roadway of said development caused by the owner's general contractor or subcontractors. Each Lot buyer must use only their Lot for construction purposes. Any damage to adjoining Lots by construction trucks or equipment will be charged to Lot owner or other person for whom construction is being performed and will be collectible by the Developer or the owner of the damaged Lot.

D. **Driveways.** The owner shall install a hard surface driveway within one (1) year of the date of occupancy.

E. **Roofing Materials.** All roofs installed on a principal structure or garage shall consist of wood, tile or three dimensional asphalt or fiberglass shingles. Dimensional shingles must be approved by the Architectural Control Committee.

F. **Underground Wiring.** Any telephone, electrical or other utility wiring installed in, on or about subject premises, shall be installed underground only.

G. **Lot Maintenance Prior to Construction.** Lot owners shall be responsible to maintain their property in a reasonably neat appearance prior to the commencement of construction. If the Architectural Control Committee determines, in its sole discretion, that such maintenance is not being performed the Committee may cause such maintenance to be performed and the Lot owner shall be liable for the cost of such maintenance.

6. **EASEMENTS.** No buildings, plantings, berms or other structures or objects shall occupy any of the area dedicated upon the plat for utility or drainage easements, if such occupancy interferes with the establishment, maintenance or purpose of said easements.

7. **PROHIBITED ITEMS.**

A. **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No noxious odors shall be permitted to escape from any home, Lot or building site and no activity which is, or may become a nuisance or which creates unusually loud sounds or noises shall be permitted in any home, Lot or building site. Trash, garbage or other wastes shall not be kept except in a sanitary container which shall be screened from public view.

B. **Subdivision Prohibited.** No parcel shall be divided into smaller parcels without the prior written consent of the Architectural Control Committee, it being the intent and purpose of the developer to develop the area in accordance with the

development plan approved by the Village of Grafton Village Board. The provisions of this paragraph may be waived by the Architectural Control Committee whenever it determines that such waiver shall be in the best interest of the over-all development.

C. **Antennas, Satellite Dishes and Solar Collectors.** No external television antenna, similar aerial, satellite dish or solar collectors shall be erected or installed in the Subdivision.

D. **Natural, Prairie and Wild Yards.** Yards shall not be left in their natural or wild state, except to the extent required by the environmental regulations described at Section 15 of these restrictions or except as approved by the Architectural Control Committee. In the event a Lot owner fails to mow and maintain his property, the Architectural Control Committee may cause such maintenance to be performed and charges therefore shall be a lien against the property in favor of the Architectural Control Committee or its assigns.

E. **No Exterior Vehicular Storage.** Boats, snowmobiles, motorcycles, all-terrain vehicles or recreational vehicles shall not be stored outside on the premises. The outside storage or parking of commercial vehicles is expressly prohibited and any such vehicle must be housed in a garage.

8. **ARCHITECTURAL CONTROL COMMITTEE.**

A. **Membership and Function.** So long as Creekside Land Company, LLC shall own any Lots or Outlots in the Subdivision commonly known as CREEKSIDE ESTATES, the authority and functions of the Architectural Control Committee shall be lodged in and exercised by Nick Didier and Roger Schiller or their designates. At such time as Creekside Land Company, LLC no longer owns any of said land, the Architectural Control Committee shall consist of three (3) Lot owners elected by the Lot owners in said development, each Lot representing one (1) vote. The vote of the majority of the members of the Architectural Control Committee shall be the controlling vote and shall be construed to be the vote of the entire Committee. Members of the Committee shall serve for three (3) years or until their successors have been duly elected. Due notice of the election of such successors shall be filed in the office of the Register of Deeds for Ozaukee County. The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within thirty (30) days after two (2) identical sets of plans and specifications have been submitted to it, approval will be deemed to have been obtained insofar as required by Paragraph 4. hereof only; all other provisions of these restrictions to have full force and effect. Action by said Committee shall be final and conclusive as to persons then or thereafter owning lands in said development. The Architectural Control Committee shall have exclusive jurisdiction

to determine whether the area requirements of a one-story building or a two-story building apply to a particular proposed structure, and shall likewise have the power, in its exclusive judgment and discretion, to reduce the foregoing minimum requirements as to area at finish grade elevation by not more than ten (10%) percent of the area herein before specified. Any such action by such Committee shall be final and conclusive.

B. **Fences and Outbuildings.** Fences and outbuildings shall require prior approval of the Architectural Control Committee. The design, location, construction materials and size and height of fences and outbuildings shall be considered and the Architectural Control Committee may grant or withhold their approval of the same in their sole discretion.

9. **MAINTENANCE.** Each owner of a parcel shall maintain at his own expense buildings, improvements and landscaping in good repair and a clean condition, including without limitation, the mowing of lawns, trimming of plants, re-painting and repair of structures, repairing of drive and walk surfaces and such other measures so as to maintain a clean and orderly environment within the parcels subject to this declaration, and in accordance with the declared general purposes of the Declaration. There shall be no brush piles, trash or unnatural accumulations of debris stored, accumulated or located on the parcels hereinbefore described; provided, however, that appropriately screened and maintained compost bins may be allowed by the Architectural Control Committee upon application by a Lot owner.

10. **ACTIVITY SALES.** No more than one (1) garage, rummage or similar sale shall be conducted on any Lot in any one (1) twelve (12) month period and the duration thereof shall not exceed three (3) days.

11. **RECREATIONAL VEHICLES.** The operation of all-terrain vehicles, snowmobiles, dirt bikes or other motorized recreational vehicles is expressly prohibited, except that such vehicles may be operated for the purpose of moving them onto trailers for purposes of transport.

12. **FIREWOOD.** Firewood shall not be stacked or otherwise stored on the exterior of the premises except as follows:

A. **Firewood.** Firewood may be stacked along the rear of the home or garage. Homes on corner Lots shall shield the view of this wood from the street by way of landscaping or fence.

B. **Proximity to Building.** Firewood may not be stacked at a distance exceeding four (4) feet from the home or garage.

C. **Quantity.** The quantity of wood stacked or otherwise stores on the exterior of the premises may not exceed two (2) face

cords. (A face cord is four (4) feet high, eight (8) feet long and two (2) feet wide.)

13. **SIGNS**. No signs of any kind shall be displayed to the public view of any Lot except one professional sign of not more than a total area of two (2) square feet, or one sign of not more than a total area of six (6) square feet advertising the property for sale or rent, or a sign used to advertise the property during the construction and sale period. All signs shall be located at least ten (10) feet from any front, side or rear Lot lines.

14. **ANIMALS**. No animals, livestock, pigeons or poultry of any kind shall be kept, raised or bred on any Lot, except that no more than two dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, or allowed to annoy any neighbors. Such household pets shall be contained on the premises of the owner thereof.

15. **ENVIRONMENTAL REGULATIONS**.

A. **Wetland Regulations.** The areas designated as "Wetland" on the Subdivision Plat shall be subject to the following restrictions:

(1) There shall be no snowmobiling, operation of all-terrain or any other type of motorized or non-motorized vehicle, discharge of firearms, or keeping or maintaining of any domestic animals.

(2) There shall be no cutting of live trees, bushes, flowers, fauna or vegetation without the prior written approval of the Architectural Control Committee.

(3) There shall be no excavation, depositing of fill, removal of fill, construction of ponds, or any type of construction, nor any other activity which would interfere with the current state of the wetland area without the prior written approval of the Architectural Control Committee.

(4) There shall be no disposal of trash or debris, nor the construction of any building, nor the storage of any materials of any type or nature.

It is the intent of these restrictions to ensure that the wetland areas shall be used only for wildlife habitat, storm water retention and the growth of natural flora and fauna. Any interference or interruption thereof shall not be permitted. Each wetland area shall be for the private use and benefit only of the owner of the Lot on which that wetland area exists. In addition to the foregoing, the wetland areas shall be subject to all statutes,

regulations and ordinances of the United States, the State of Wisconsin, Ozaukee County and the Village of Grafton.

B. **Woodland Regulations.** The areas designated as "Woodland" on the Subdivision Plat shall be subject to the following restrictions:

(1) Trees may be clear cut only within roof lines, thirty (30) feet outside house lines and within a driveway area not more than twenty-five (25) feet in width.

(2) Not more than twenty-five percent (25%) of the live trees measuring two (2) inches or greater in diameter at four (4) feet above the ground shall be removed from any Lot, except from those areas described in the previous subparagraph.

(3) There shall be no disposal of trash or debris, nor the construction of any building, nor the storage of any materials of any type or nature.

C. **Primary Environmental Corridor Restrictions.** Lands lying within designated environmental corridors shall be preserved and protected by prohibiting the following:

(1) Grading, filling and excavation.

(2) Erection of Buildings.

(3) Removal or destruction of any vegetative covers except dead and diseased vegetation and various weeds as defined by the local municipality.

(4) Introduction of plants not indigenous to the existing environment of the preservation are.

(5) Grazing by domesticated animals.

D. **Tree Preservation.** There shall be no cutting of live trees within 75 feet of the high water mark of the creek other than that authorized or performed by or on behalf of the Architectural Control Committee.

16. **HOMEOWNERS' ASSOCIATION.**

A. **Existence.** At such time as the developer has conveyed seventy-five percent (75%) of the original Lots of Creekside Estates, the Developer shall create an association to be known as Creekside Estates Homeowners' Association. Each Lot owner in Creekside Estates shall be a member of said Association and shall be entitled to one (1) vote for each Lot owned. The purpose of the Association shall be for the enforcement of these restrictions except to the extent that the Architectural Control

Committee is specifically delegated enforcement responsibility. The Association shall also maintain the entrance areas to the Subdivision and the planting easement located on lots 1 and 3 through 10 inclusive as shown on the plat. Such easement shall be a planting easement only granted in favor of the Association for the sole purposes of planting and maintaining plantings and the grass in the planting easement area. All other rights with respect to said area are reserved to the individual lot owners and their invitees.

B. **Officers.** The members of the Association shall elect three individuals who shall serve as officers of the Association. Each officer shall serve for a period of two years, or until a successor is elected.

C. **Assessments.** The officers of the Association shall establish such annual assessment as necessary to maintain the planting easement areas and carry out such other responsibilities as the Association shall have. Said assessment shall be levied against each Lot in Creekside Estates in an amount not to exceed $100.00 per Lot, per year. The maximum annual assessment may be changed only by the written authorization of a majority of the members of the Association. Said assessments shall be levied on a calendar year basis, in advance. In the event the assessment is not paid within sixty (60) days of the date of levy, the outstanding balance shall be a lien against the subject Lot and shall also be the personal obligation of the owner or owners at the time of said assessment. The Association may bring an action at law against the owner obligated to pay same or to foreclose the lien against the property and there shall be added to the amount for such assessment the costs of collections, including reasonable attorney fees. Upon request, the Association shall furnish to any Lot owner a written certificate signed by a representative of the Association setting forth the status of any assessments against any Lot in Creekside estates. Said certificates shall be conclusive evidence as to the payment of any and all assessments therein stated to have been paid.

D. **Developer Owned Lots.** Notwithstanding any other provisions in this section, no assessment shall be levied against any unimproved Lot owned by the original developer which has not previously been conveyed by the developer.

17. **LIGHT POSTS AND MAIL BOXES.** Each purchaser of a Lot shall be required to purchase and install a light post and mail box. This will be in a style approved by the Architectural Control Committee. Said expenditure shall be in addition to the purchase price of the Lot. No change in said light post or mail box shall be allowed in the absence of approval by the Architectural Control Committee.

18. **LOCAL ORDINANCES**. All Lots shall be subject to all ordinances, zoning laws and other restrictions of the Village of Grafton, Ozaukee County and State of Wisconsin applicable thereto In the event of any conflict between these restrictions and any statues, ordinances or municipal regulations, compliance with the more restrictive provisions shall be required.

19. **DURATION AND ENFORCEMENT**. The restrictions herein contained shall be deemed to be covenants running with the land and shall be binding on all parties and persons having an interest in the land affected hereby for a period of twenty-five (25) years from the date this Declaration of Restrictions shall be recorded, after which time this Declaration of Restrictions shall be automatically extended for a successive period of five (5) years unless an instrument signed by the owners of a majority of Lots has been submitted to the Village of Grafton Village Board for approval and subsequently recorded changing said covenants in whole or in part or reducing the term. Notwithstanding the foregoing, the terms of Section 15 of these restrictions and all of the easements for utilities and landscaping shall remain in perpetuity. The restrictions and covenants herein contained may be enforced by proceedings at law or in equity against any person or persons violating or attempting to violate the same; provided, however, that no action shall be commenced to enforce such restrictions or restrain the violation thereof unless such action is commenced, within one (1) year after the completion of the building complained of. Invalidity of any of the covenants or restrictions herein contained by any judgment or court order shall in no way affect any of the provisions herein contained which shall remain in full force and effect.

20. **AMENDMENT**. Any of the foregoing restrictions, protections, covenants, charges or provisions may be annulled, waived, changed, modified, or amended at any time by written declaration setting forth such annulment, waiver, change modification or amendment, executed by the owners of at least sixty percent (60%) of the Lots and with the consent of Creekside Land Company, LLC, as long as it shall own any of the land in said Subdivision.

IN WITNESS WHEREOF, the undersigned has executed this Agreement this 6th day of MARCH, 1995.

Creekside Land Company, LLC
a Wisconsin limited liability company

By _____
Nick Didier, Member

Attest _____
Roger Schiller, Member

NOTARY PUBLIC SUSAN D. ALBRINCK STATE OF WISCONSIN

STATE OF WISCONSIN)
) SS
OZAUKEE COUNTY)

Personally came before me this 6th day of March, 1995, the above named Nick Didier and Roger Schiller members of Creekside Land Company, LLC, a Wisconsin limited liability company, to me known to be the persons who executed the foregoing instrument and acknowledged the same by its authority.

Susan D. Albrinck

Notary Public, State of Wisconsin
Mycommission: August 6, 1995

The undersigned as transferrees of one of the lots in the subdivision hereby agree to the Amended Declaration of Restrictions.

Kenton E. Rosenberg

Pamela K. Rosenberg

STATE OF WISCONSIN)
) SS
COUNTY OF OZAUKEE)

Personally came before me this 1 day of March, 1995, the above named Kenton E. Rosenberg and Pamela K. Rosenberg, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
Mycommission: 11-9-97

This instrument was drafted by
Attorney Paul M. Dimick