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Linn County Iowa
JOAN MCCALMANT RECORDER
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THIS INSTRUMENT PREPARED BY: STEPHEN C. NELSON
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RESTRICTIVE COVENANTS
FOR
CREEK VIEW ADDITION
TO MARION, LINN COUNTY, IOWA

Homes at Creekside, Inc., an Iowa corporation ("Creekside" or "Developer") is the contract purchaser and developer of the real estate located in Marion, Linn County, Iowa and legally described as follows:

Lots 1 through 36, Creek View Addition to the City of Marion, Linn County, Iowa

(the "Addition", which shall also include any adjacent subdivisions which the Developer agrees to subject to the terms and provisions of the Restrictive Covenants).

Developer declares, covenants and agrees with and for the benefit of all persons to whom Developer has contracted to sell or may later sell any lot, lots or land in the Addition (who, by acceptance of title, shall be deemed to have consented to these Restrictive Covenants) and for the benefit of itself and the respective successors, assigns, heirs and legal representatives that each and all of the lots in the Addition shall be held, transferred, sold, conveyed and occupied subject to the following, conditions, covenants, restrictions, reservations and easements (the "Covenants").

1. GENERAL PURPOSES: The primary purpose of these Covenants is to promote the harmonious development of the real estate within the Addition, to preserve the scenic nature of each lot within the Addition and to insure the congenial design of the buildings to be included in the Addition which will provide a residential subdivision of the highest quality and character.

2. BUILDING AND STRUCTURES: Only the following buildings and structures shall be permitted upon any numbered lot in the Addition:

- a. One dwelling which shall be used for residential purposes only.
- b. An attached two to three stall garage which shall not be used for commercial purposes.

c. Such other accessory buildings and structures, including, but not limited to a swimming pool, Jacuzzis, hot tubs and greenhouses which are approved in writing by Developer.

d. Fences must be pre-approved in writing by the Developer and meet the following standards:

- i. The color must be black, bronze, aluminum, and either chain link or wrought iron;
- ii. The height cannot exceed 5 feet;
- iii. The spacing of horizontal/vertical rails must be a minimum of 2 inches;
- iv. The fence can only be located in a rear yard; and
- v. Fences must be maintained in a neat and attractive condition.

e. The exteriors of all buildings and structures shall be compatible with the natural surroundings. For this purpose natural materials such as wood, stone and brick shall be utilized when possible. In all cases, the front elevation of a dwelling unit must be at least 40% masonry and/or glass (excluding front-loading garages from the calculation). Steel or other siding may be used if approved by Developer.

f. Elevated decks and brick/concrete patios are allowed but may not exceed 250 square feet in size.

3. DWELLING SIZE: No dwelling shall be erected or altered on any lot in the Addition with less than 1,500 square feet of livable area (excluding the garage area) for a one story dwelling and not less than 2,000 square feet above grade for a two-story dwelling (excluding the garage area) of more than one story, all exclusive of the basement, garage, attic, porches (enclosed or otherwise) and accessory buildings. Developer may approve less square footage for a one story dwelling with walkout basement at Developer's sole discretion. No dwelling may exceed two stories in height (exclusive of the basement) unless approved in writing by Developer.

4. BUILDING AND STRUCTURE SETBACKS: A site plan shall be submitted to the Developer for approval or modification which shall comply with the following requirements.

- a. The dwelling, including all porches and other projections, shall be set (i) no closer than twenty-five feet (25') from the front lot lines and (ii) except for the attached dwellings that are permitted on the Site Development Plan, no closer than 10 feet from the side lot. However, Developer reserves the right to waive the side yard restrictions provided that in no event shall the side yard distances be less than 7 feet.
- b. No wall, swimming pool, tennis court, greenhouse, or other building or structure shall be located closer than ten (10') feet from any side lot line unless prior written approval is first obtained from Developer. However, in no event shall the setback distance be less than the requirements of the City of Marion, Iowa.

5. USE: No commercial or business use of any kind shall be permitted in, on or upon any building, structures or land included in this Addition except for home occupations permitted in writing by Developer or by the City of Marion, Iowa. The lots, other than any out lots, shall be used solely for residential purposes.

6. ALTERING SIZE OF LOTS: No lot shall be subdivided. Developer reserves the right to alter the size of lots before the lots are conveyed.

7. TEMPORARY BUILDING AND STRUCTURES: No accessory building, garage, shed, tent, trailer, or temporary structure of any kind shall be erected or maintained prior to the commencement of or after completion of construction of the dwelling on the lot. No such temporary building or structure, including a basement, shall be used for temporary or permanent residence purposes.

8. NUISANCE: No owner of any lot shall do or permit any act which is, may be, or might become a nuisance on the lot.

9. EXTERIOR MAINTENANCE: Each property owner shall maintain the land and exterior of their dwelling in a neat and aesthetically pleasing manner. Without the written permission of the Developer, no property owner shall remove any trees from a lot except for trees within 15 feet of the dwelling and garage.

10. GARBAGE AND REFUSE: No garbage, rubbish or trash shall be kept on any lot, except in sanitary containers. No rubbish container shall be visible from the street except on pick up days and one day before and one day after pick up day. Should any materials, vehicles or other objects be located on a lot which the Developer deems to be detrimental to health, safety and welfare of the residents of the Addition or tends to depreciate the property values within the Addition, then the Developer may give the owner of the lot written notice requiring the removal of the same within ten days. If the materials, vehicles or other objects are not removed within the ten day period, Developer is authorized to remove the same, without any liability whatsoever to the owner of the lot on which the same is located, and to assess the cost of such removal to the owner of the lot, including attorneys' fees and court costs.

11. ANIMALS: No animals shall be kept upon any lot, except for household pets such as dogs, cats and birds in reasonable numbers and maintained under sanitary and nuisance free conditions. The term "reasonable numbers" shall be deemed to mean not more than two dogs per dwelling unit and not more than three animals per dwelling unit and if any animals have offspring, then the number of animals may be increased by the number of offspring for a period of four months. Exterior dog runs and dog kennels are not permitted. "Invisible fences" for animals are encouraged. No such animals shall be maintained in the Addition for any commercial use or purpose. All pets shall be confined to the property of the owner or kept on leash. Dangerous animals are not allowed in the Addition. The owner of each lot will control noise so as to not disturb other residents.

12. SIGNS, ANTENNAE, AND FLAGPOLES: No signs, posters, billboards or advertising displays of any kind shall be permitted on any lot except for a name and address sign or a for sale sign of a size, appearance and location acceptable to Developer. No television or radio antennae or similar structure shall be erected or maintained on any lot as a separate structure, meaning apart from the dwelling and no such structure attached to a dwelling shall extend beyond a height of ten (10) feet. Flagpoles of a size, appearance and location are acceptable subject to the written approval of the Developer. A satellite dish of up to 24" in diameter is allowed provided it is of a color to blend with surroundings and is not placed on the front of a dwelling. The owner of each lot will design and place the satellite dish so that it will be as unobtrusive as possible.

13. PARKING AND STORAGE OF VEHICLES: There shall be no continual parking or storage of a motor vehicle, trailer, camper, boat or any equipment, movable or stationary, on the roads and drives designated in the final plat of this Addition. No motor vehicle, trailer, camper, boat or other equipment shall be parked or stored upon any lot for more than 48 hours except in an enclosed structure.

14. UTILITY LINES, EASEMENTS, RIGHTS OF WAY:

- a. Easements are reserved in locations and for purposes set forth in the recorded plat of the Addition. Full rights of ingress and egress over, under and upon any part of the easements are reserved for purposes of installing and servicing the utilities to each lot.
- b. All utility, communication, and television lines and cables shall be placed and maintained underground.
- c. No lot owner shall reserve or grant any easement or right-of-way in, upon, under or over the owner's lot for any purposes without the prior written approval of Developer; provided, however, this restriction shall not apply to Developer.

15. SUBMISSION OF PLANS: No construction of any dwelling, building or structure shall be commenced, nor shall any addition, change, alteration or modification made to a building, structure or dwelling (other than interior alterations) until the (a) site plan (b) grading plan and (c) construction plans and specifications which shall show the nature, kind and description of the improvement, including but not limited to, design, size, materials, color scheme and proposed location, have been submitted to and approved in writing by Developer. Developer specifically retains the right, in Developer's absolute and sole discretion, to reject any of the plans, specifications and other aspect of the proposed improvement which in Developer's opinion is not suitable or desirable for the Addition. Within seven days of submission of all of the documents to Developer, Developer shall render its written decision.

16. COMMON AREAS: The common areas shall include:

- a. All trails and easement areas shown on the final plat of the Addition;
- b. The out lots and green areas within the Addition which are not dedicated to the City of Marion, Iowa; and
- c. All street lights, entry signage and features, fences, trees, plantings, signs and other amenities located on land or easements within the Addition which are not designated as a numbered lot.

17. THE ASSOCIATION: Ownership of a lot or lots in the Addition shall automatically invoke membership in Creekview Owners Association, Inc., an Iowa non-profit homeowners association (the "Association"). Ownership of each lot shall be subject to the applicable terms of the Articles of Incorporation and By-Laws of the Association, including the provision made for assessments against all lots in the Addition. Ninety (90) days after a lot has been closed and conveyed, the owner or owners of the lot shall commence payment of monthly assessments to the Association to be placed in a reserve account by the Association. After the Developer has closed and conveyed 15 lots in the Addition, the owners of each lot shall pay assessments to the Association for the purpose of paying real estate taxes for the common areas, and insurance premiums and repair, maintenance, landscaping and replacement expenses for improvements in the common areas, including but not limited to, the open areas where trails, utility easements, green areas, and private drives are located. The Association shall also be responsible to mow the lawns and remove snow from the driveways of each lot in the Addition unless the Association votes to change the responsibility to the respective lot owners. The assessments allocated to each lot in the Addition will not be equal and will be based upon factors, including but not limited to, size of each lot, the location of fences and the grade of each lot. Developer reserves the right to assign and convey additional common area to the Association and to add the owners of lots in other adjacent additions as members of the Association. The Association reserves the

right to allocate and assess the respective owners of lots that are specifically affected or benefited by an Association expenditure.

18. THE OWNERS: The owners of each lot in the Addition are deemed to covenant, by acceptance of such owners' deed or real estate contract for the lot, whether or not it is so expressed in the deed or the real estate contract, to pay assessments to the Association for the repair, replacement, improvement, maintenance, construction, acquisition and landscaping of the common areas and for the mowing and snow removal from the driveways on lots in the Addition. Developer will not share in any of those costs and expenses for lots within the Addition that have not been sold. The payment for any damage to common areas caused by the negligence or willful conduct of a lot owner or persons using a lot with the consent of the owner of the lot shall be the responsibility of the respective lot owner. Any such damage to the common areas shall be due and payable in full within 30 days from the date the repair work is completed.

19. EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES: Any assessment not paid within 30 days after the due date shall be deemed to be in default and shall bear interest from the due date at the rate of 15% per annum; however, if that interest rate is in excess of the highest legal interest rate permissible under Iowa law, the interest rate shall be reduced to the highest legal interest rate permitted under Iowa law. If the owners of any lot fail or refuse to pay any assessment when due, the assessment shall constitute a lien on the lot for which the assessment has not been paid and shall be a personal liability of the lot owner. The lien may be established and perfected by the Association or by an owner of a lot who is not in default filing a Notice of Lien signed by an officer of the Association or such lot owner and recorded in the office of the Recorder of Linn County, Iowa. A copy of the Notice of Lien shall be mailed to the owners of the lot in default by certified mail, return receipt requested. The lien may be enforced in the same manner as a mechanic's lien is enforced under the Iowa Code with all expenses of collection, including attorney's fees and court costs, being chargeable to the owners in default. Such lien shall remain a lien until paid in full and shall be released by an affidavit filed in the office of the Recorder of Linn County, Iowa by the Association or by the owner who files the Notice of Lien. The Association may pursue any and all other remedies at law or in equity. No owner or owners of any lot may waive or otherwise escape liability for assessments described in this Declaration on the basis of non-use of common areas.

20. SUBORDINATION OF ASSESSMENT LIENS TO MORTGAGES: Notwithstanding any other provisions of this Declaration, the assessment liens provided in this Declaration shall be subject to and subordinate to the lien of any first mortgage or first deed of trust encumbering the lot. The sale or transfer of any lot shall not affect assessment liens. No sale or transfer of a lot shall relieve such lot or the owners of such lot from liability for assessments thereafter becoming due or from the lien of such assessments. A sale or transfer of any lot pursuant to a mortgage foreclosure or any proceedings in lieu of such foreclosure of a mortgage lien shall extinguish an assessment lien as to the payments that become due prior to such sale or transfer of the lot.

21. DEVIATIONS BY AGREEMENT WITH DEVELOPER: Developer reserves the right to enter into agreements with the owner or owners of any lot or lots (without the consent of the owners of other lots or adjacent or adjoining property) to deviate from any or all of these Covenants, provided there are practical difficulties or particular hardships evidenced by the owner or owners desiring such deviation, and any such deviation shall not materially adversely affect other lots in the Addition.

22. DURATION: These Covenants shall continue and be binding for an initial period of 21 years from the date of recording of this Declaration and thereafter for successive 21 year periods provided that a majority of the votes of the members of the Association vote to renew these covenants.

23. RUNNING WITH THE LAND: The Covenants shall run with the land and bind Developer, its successors, grantees and assigns and all parties claiming by, through or under Developer.

24. REMEDIES FOR VIOLATION COVENANTS: Developer, its successors and assigns, the Association and the owner or owners of any lot within the Addition shall have the right, jointly and separately, to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the Covenants in addition to the right to bring an ordinary action for damages. In no event shall the failure of Developer or the Association to enforce any of the Covenants as to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation.

25. SEVERABILITY: If a court of competent jurisdiction shall hold invalid or unenforceable any part of any Covenant or provision contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

26. MODIFICATION: Any proposed change, modification or addition to these Covenants shall be presented to the owners of the lots within the Addition. If such change, modification or addition is approved in writing by at least the owners of 75% of the lots within the Addition, such modification when filed with the Recorder of Linn County shall be binding and shall be in full force and effect for all purposes.

Dated: March 31, 2006.

HOMES AT CREEKSIDE, INC.

By: [Signature]
Jon Dusek, President

STATE OF IOWA)
) ss:
COUNTY OF LINN)

This instrument was acknowledged before me on March 31, 2006, by Jon Dusek, President of Homes at Creekside, an Iowa corporation.



[Signature]
NOTARY PUBLIC - STATE OF IOWA

CONSENT AND JOINDER

Anace Aossey is the titleholder of the real estate described in the foregoing Restrictive Covenants and Creekside Developers, LLC, an Iowa limited liability company, is the contract purchaser of the real estate described in the Restrictive Covenants. Anace Aossey and Creekside Developers, LLC join in and consent to the recording of the foregoing Restrictive Covenants. Polly Aossey, the wife of Anace Aossey, releases all rights of dower, homestead, and distributive share in connection with the real estate described in the foregoing Restrictive Covenants.

Anace Aossey
Anace Aossey

Polly Aossey
Polly Aossey

CREEKSIDE DEVELOPERS, LLC

By: Jon Dusek
Jon Dusek, Manager

STATE OF IOWA)
COUNTY OF LINN) ss:

This instrument was acknowledged before me by Anace Aossey and Polly Aossey, husband and wife, on the 15th day of March, 2006.



Jan M. Bender
NOTARY PUBLIC - STATE OF IOWA

STATE OF IOWA)
COUNTY OF LINN) ss:

This instrument was acknowledged before me by Jon Dusek, Manager of Creekside Developers, LLC, an Iowa limited liability company.



Jan M. Bender
NOTARY PUBLIC - STATE OF IOWA

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