

ROBERT T. IVES

33-14

91-22943

HERITAGE VALLEY VILLAGE

Supplementary Declaration of
Covenants and Restrictions for Brookside

This Heritage Valley Village Supplementary Declaration of Covenants and Restrictions, hereinafter referred to as "Supplementary Declaration" is made this day by Heritage Partners, an Indiana partnership, and Coolman & Coolman, Inc., an Indiana corporation, hereinafter collectively referred to as "Declarant".

PREAMBLE.

WHEREAS, the Declarant is the owner of the real property described hereinafter and has created thereon a neighborhood service district within the community of Heritage Valley Village, a Planned Residential Development, as more specifically defined in the Porter County Zoning Ordinance known as Brookside; and

WHEREAS, the real property described hereinafter has been or by this Supplementary Declaration shall be subject to the development plan and covenants and restrictions heretofore recorded for Heritage Valley Village, which Declaration of Covenants and Restrictions, hereinafter referred to as the "Declaration", was recorded in the Office of the Recorder of Porter County, Indiana on the 10th day of September, 1979, as Index No. 61969 in Miscellaneous Record 79 at Page 259.

NOW, THEREFORE, the Declarant declares that the real property described hereinafter is and shall be held, transferred, sold, conveyed and/or occupied subject to the covenants, restrictions, easements, charges and liens as hereinafter set forth in this Supplementary Declaration.

Article I

Neighborhood Designation

Section 1. All of the lots described in the plat of Brookside as set forth on the attached Exhibit "A," which is hereby incorporated by reference and made a part hereof, are hereby designated as a neighborhood service district of Heritage Valley Village hereinafter to be known as "Brookside".

Article II

Property Subject to the Supplementary Declaration

Section 1. The following described real estate shall constitute that portion of Heritage Valley Village to be known as Brookside, to-wit:

Lots 127 thru 140 inclusive and 216 thru 224 inclusive of Heritage Valley Phase 6 as recorded in Plat File 11-B-1F in the Office of the Recorder of Porter County.

Article III

Definitions

Section 1. "Assessment" shall mean that portion of the cost of the operation of the Common Areas which is to be paid by each Owner as determined by the Board of Directors.

Section 2. "Association" shall mean and refer to the Brookside Homeowners Association, Inc., an Indiana nonprofit corporation and/or its successors and assigns.

Section 3. "Board of Directors and/or Neighborhood Council" shall mean the group of individuals elected by the Association members or appointed by the Declarant authorized and directed to manage and operate the Common Areas. Until such time as all the lots in Brookside have been sold, the Board of Directors shall be appointed by the Declarant.

Section 4. "By-laws" shall mean the by-laws of the Association, duly adopted by the Board of Directors and as may be amended from time to time.

Section 5. "Common Area" shall mean and refer to all real property and improvements thereon owned or leased by the Association or over which the Association has an easement for maintenance excepting lots and dwelling units thereon for the common and mutual use and enjoyment of the Owners.

Section 6. "Common Expenses" shall mean (a) all sums lawfully assessed against the Owners of the Association; (b) expenses of administration, maintenance repair and/or replacement of the Common Areas; (c) expenses agreed upon as Common Expenses

by the Association; (d) expenses declared Common Expenses by this Supplementary Declaration, and/or by the Association's by-laws.

Section 7. "Declarant" shall refer to Coolman & Coolman, Inc. and Heritage Partners, the owners and developer of the entire planned residential community known as Heritage Valley Village and the neighborhood service district known as Brookside.

Section 8. "Declaration" shall mean and refer to the Declaration of Covenants and Restrictions, Heritage Valley Village recorded in the Office of the Recorder of Porter County, Indiana on September 10, 1979, in Book 79, at Page 259 as Index No. 61969.

Section 9. "Lot" shall mean and refer to any plot of land shown on the development plan with the exception of Common Area as defined herein and as shown on the amended final plat for Brookside.

Section 10. "Neighborhood Service District" shall mean and refer to a portion of the properties which is a coherent and defined geographic area within which the Owners and occupants by virtue of the provisions contained in the governing documents may share the enjoyment of certain services or rights of use which are not enjoyed by all residents of the planned unit development known as Heritage Valley Village and with respect to this Supplementary Declaration shall refer specifically to Brookside, which area is more specifically set forth in Exhibit "A."

Section 11. "Owner" shall mean and refer to the record holder of the fee simple title to any lot whether one or more persons or entities.

Section 12. "Owners" shall mean and refer to the Owners of lots located within Brookside, all of whom shall be members of the Association.

Section 13. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof.

Section 14. "Supplementary Declaration" shall mean and refer to this Supplementary Declaration of Covenants and Restrictions for Brookside recorded in the Office of the Recorder

of Porter County, Indiana on the 13th day of December,
1991 as Index No. 91-22943 in Book 132, at Page 19.

Article IV

Neighborhood Assessments

Section 1. Purpose of Assessments. The neighborhood assessment for Brookside shall be used for the exclusive benefit of the lot owners within Brookside to operate and maintain the Common Areas, to promote, preserve, and protect the character of the neighborhood and to, in general, provide for and promote the health, safety, and welfare of the Owners of lots in Brookside. Specifically, the assessment shall provide for the maintenance of the pond, creeks, courtyards, entrance, street lights, Common Area utilities, Common Area fences, street furniture, walkways, green belts, as well as any and all Common Areas contained within the Neighborhood Service District and specifically designated on the attached plat, Exhibit "A," which plat has been recorded in the Office of the Recorder of Porter County, Indiana, in Plat File 11-B-1F on the 10th day of August, 1989. The assessments shall provide for landscaping, lawn mowing, snow removal, if appropriate, trash collection, pond treatment, creek maintenance and/or the maintenance, street light repair and/or replacements of Common Area fencing, street lights, trees, shrubs and any and all other improvements placed in or constructed on the Common Areas. The assessment shall also be utilized to pay for any and
* all general administrative costs and Common Expenses of the Association.

Section 2. Method and Basis of Assessment. The method and basis of assessment shall be as follows:

A. General Assessment. Each lot shall be assessed equally, with the initial assessment being set at the sum of twenty dollars (\$20.00) per lot per month, with the first payment due and payable on the first day of the first month immediately following the transfer of title from Declarant to the initial Owner. The initial assessment shall not be increased by an amount greater than ten percent (10%) per month without the

~~approval of two-thirds of the Owners until such time as the Declarant shall have sold all of the lots located in Brookside and transferred control of the Association to the Owners. In addition, until such time as all of the lots have been sold, the Declarant shall not be required to pay the monthly assessment on lots owned by the Declarant provided further, however, that the Declarant shall be obligated to pay for any and all operating deficits incurred until such time as the control of the Association has been transferred to the Owners.~~

B. Special Assessment. The Association may levy a special assessment against the Owners applicable to that year and/or payable over not more than three (3) years for the purpose of defraying in whole or in part the cost of any construction, maintenance, repair, and/or replacement of Common Area improvements upon the approval of a two-thirds vote of the Owners.

C. Restoration Assessment. The Association may levy a Restoration Assessment upon any lot whose Owner fails to maintain such lot or who fails to pay the assessments required by this Supplementary Declaration. Restoration shall be limited to the amount necessary to meet the cost of restoration and/or the amount of delinquent assessments including the cost of collection. A Restoration Assessment shall not be imposed unless same is approved by a two-thirds vote of the Owners.

Section 3. Effect of Non-Payment of Assessments. Any assessment not received by the Association within ten (10) days after the due date shall be deemed delinquent and the Association may declare the remaining unpaid portion of the annual assessment immediately due and payable and assess an additional late charge of no more than twelve percent (12%) of the amount due compounded annually. A notice of intent to hold an assessment lien may be filed with regard to any delinquent assessments and the lien obtained pursuant to this Supplementary Declaration for the unpaid assessments shall be enforced in the same manner and following the same procedures as are applicable under the provisions for the enforcement of mechanics' and/or materialmen's

liens. The Association shall be entitled to collect, in addition to the delinquent assessment, any accrued interest, and all of the costs incurred in collecting same, including court costs and reasonable attorney fees.

Section 4. General Assessment for Heritage Valley Village. In the event that the Association referred to in Article III of the original Heritage Valley Village Declaration of Covenants and Restrictions is formally organized and/or the Board of Directors of the association for the entire planned residential development determines that a community-wide assessment shall be imposed, the Owners of lots in Brookside shall pay their proportionate share of such general assessment as provided for in Article IV of the Declaration. Any such assessment shall be in addition to and other than the neighborhood assessment referred to herein which shall be reserved exclusively for the development and operation of the Neighborhood Service District known as Brookside.

Article V

Brookside Homeowners Association, Inc.

Section 1. Organization. The Association is a nonprofit corporation organized and existing under the laws of the State of Indiana and the Association shall be charged with the duties and vested with the power and authority as prescribed by law and as set forth in this Supplementary Declaration. The Association shall take title to and provide for the operation and maintenance of the Common Areas located in the Neighborhood Service District, known as Brookside.

Section 2. Membership. Each owner of record of a lot in Brookside shall be a member of the Association.

The vote for any membership which is held by more than one person may be exercised by any one of them unless any objection or protest by any other holder of such membership is made prior to the completion of the vote, in which case the vote for such membership shall not be counted.

Section 3. Board of Directors. The management of the affairs of the Association shall be vested in a Board of

Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by this Supplementary Declaration directed or required to be exercised or done by the members.

The Board of Directors shall consist of three (3) members who shall be at least twenty-one (21) years of age. The Board shall be divided into three terms of office so that at the time of the initial election of the Board, one shall be elected for one year, one shall be elected for two years, and the third shall be elected for a period of three years, and thereafter each member shall be elected for three-year terms. ~~Until such time as the Declarant has transferred ownership of all of the lots in Brookside, the Board of Directors shall be appointed by the Declarant.~~ Any vacancy on the Board shall be filled by a vote of the majority of the remaining directors and the director so elected shall serve until the next annual meeting of the Association, at which time the membership shall elect a director to fill the unexpired portion of the term of the vacancy. ~~As long as the Declarant owns lots in Brookside, no vacancy shall be filled without the approval and consent of the Declarant.~~

The Board of Directors shall adopt resolutions for the regulation and management of the property and affairs of the Association, prepare an annual budget, establish the annual assessments, enter into contracts for and on behalf of the Association, grant easements, employ such agents and staff as are necessary to implement the resolutions of the Association, and enforce the governing documents.

Article VI

Protective Covenants

Section 1. Only one building shall be erected or placed upon any numbered lot, and such building shall never be used or occupied for any purpose except for a private single-family

residence, except for home occupations which have no external evidence of their existence if permitted by applicable zoning regulations.

Section 2. No lot shall be re-subdivided so that more than one single-family home may be built on any lot area as platted.

Section 3. No building shall be erected, placed, or altered on any numbered lot in the subdivision until the building plan, specifications and plat plan showing the location of such building have been approved in writing as to conformity and harmony of the existing design in the neighborhood service district by the Architectural Control Committee of Heritage Valley Village Association, Inc. In the event the committee fails to approve or disapprove such design and location within thirty (30) days after such plans and specifications have been submitted to it, such approval will not be required, and this covenant shall be deemed to have been fully satisfied.

Section 4. No garbage, ashes, firewood or refuse receptacle or clothes drying equipment shall be placed, left or kept on any lot so as to be exposed to view from the street right of way creating an unsanitary condition and/or constituting a nuisance.

Section 5. No animals, fowls or pets which prove themselves to be a nuisance or detriment to the neighborhood shall be kept or maintained on any of said lots and in no instance shall a pet be allowed to run at large.

Section 6. No trash burning shall be permitted on any lot, nor shall any fuel giving off black smoke or strong or obnoxious odors be used.

Section 7. No motor vehicle, travel trailer, boat, motorcycle, snowmobile, or other recreational vehicle shall be permitted to be stored on any lot unless it is housed within a fully-enclosed permanent building.

Section 8. Any building erected upon a lot shall be completed, including landscaping, within one year from the date of issuance of the improvement location permit by the appropriate zoning administrator.

Section 9. No tree greater than four inches (4") in diameter as measured twelve inches (12") from the ground nor any trees generally referred to as flowering trees located in the front yards may be cut or removed without approval from the Architectural Control Committee of the Association.

Article VII

Common Areas

Section 1. ~~The Common Area shall be those areas owned by the Association, indicated as Common Areas on the plat, Exhibit "A", and deeded to the Association by the Declarant.~~ The Common Areas shall be maintained by the Association for the use and benefit of all Owners within the Neighborhood Service District. No Owner shall in any manner interfere with and/or prevent any other Owner from the use and enjoyment of the Common Areas.

Section 2. The Association shall establish such rules and regulations as it deems necessary from time to time with regard to the use, maintenance and operation of the Common Areas.

Article VIII

Easements

Section 1. Easements of various widths for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat attached as Exhibit "A." No building material, refuse, or fill dirt may be placed within such easements in such a manner that the drainage of any lot or other lots in the development is prevented. An easement is hereby granted to GTE North, Inc., City of Valparaiso, Valparaiso Department of Waterworks, Northern Indiana Public Service Company, Lakeshore Cable Vision, and any other public utility directly serving this land, severally, and to their respective successors and/or assigns, to install, lay, erect, construct, renew, operate, repair, replace, and maintain sewers, water mains, gas mains, conduits, cables, poles and wires, either overhead or underground with all necessary braces, guys, anchors, and other appliances in, upon, along, and over the strip or

strips of land designated by dotted lines on the plat and marked utility and drainage easements for the purpose of serving the public in general with sewer, water, gas, electric, television and/or telephone service, including the right to use the streets where necessary and to overhang lots with aerial service to serve adjacent lots together with the right to enter upon said easements for public utilities at all times for any and all of the purposes aforesaid and to trim and keep trimmed any trees, shrubs, or saplings that interfere with any such utility equipment. No permanent building shall be placed on said easements, but the same may be used for fences, gardens, shrubs, landscaping and other purposes that do not interfere with the use of said easement for such public purposes.

Section 2. Those portions of the Common Areas upon which Common Area improvements have been installed and/or constructed shall have been installed and/or constructed for the benefit of all Owners and by virtue of this Supplemental Declaration there is hereby granted cross easements by and between all Owners of record to each other for the purpose of the enjoyment and use of the Common Areas. There is further hereby granted to the Association an easement of ingress and egress over any portion of the area subjected to this Declaration including any individual lot to any and all of the Common Areas for the purpose of installation, maintenance, repair, and/or replacement of the Common Area improvements, including but not limited to the right to install, construct, renew, repair, maintain and replace Common Areas and any improvements located therein, i.e. street lights, walkways, ponds, courtyards, and such landscaping and plantings as may be determined to be appropriate from time to time.

Section 3. There is specifically reserved an easement over Lots 127, 140, 216 and 224 of Heritage Valley Phase 6, as recorded in Plat File 11-B-1F in the Office of the Recorder of Porter County, as designated on Exhibit "A," in favor of the Association to provide ingress and egress to and from the front entrance feature for purposes of the installation, maintenance, repair, improvement and/or replacement of the entrance sign,

landscaping, fence and/or such other Common Area type improvements installed as a part of the Brookside entrance. The location of the entrance shall be on or about the area depicted on Exhibit "A."

Section 4. There is further reserved an easement in favor of the Association over, across, in or through any and all dedicated public right of ways, as shown on Exhibit "A," including but not limited to Sugar Creek Court and Stoney Creek Court for the purpose of the installation, maintenance, repair, improvement and/or replacement of the street courtyard landscapings, street lights and/or any other Common Area or Common Area improvements located within and/or adjacent to any dedicated public right of way.

Article VIII

Maintenance Contracts

Section 1. At the time of the filing of this Supplementary Declaration it is the intent of the Declarant to provide an optional landscaping and maintenance contract for the benefit of individual Owners. The Declarant may develop a flexible maintenance package to provide Owners the opportunity to have their individual lots maintained by offering lawn mowing services, tree, shrub and/or landscape maintenance services, snow removal, and such other ordinary and customary home maintenance items as may be determined appropriate from time to time. This service shall be optional and the cost shall be determined upon the services to be provided between the Owner and the Declarant and/or a maintenance management company arranged by or through the Declarant. This service may be expanded from time to time and/or may be terminated at any time upon the sole determination of the Declarant.

Article IX

General Provisions

Section 1. Term. The foregoing Supplementary Declaration, Covenants and Restrictions for Brookside are to run with the land described herein and shall be binding on all parties and all

persons owning said land until December 31, 2011, at which time said Supplementary Declaration of Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless the Owners by a vote of two-thirds of the Owners of the lots covered by this Supplementary Declaration of Covenants and Restrictions agree to change the same in whole or in part.

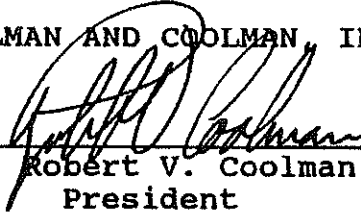
Section 2. Enforcement. The right to enforce the terms and conditions of this Supplementary Declaration by any appropriate action, either seeking damages or equitable relief, is hereby reserved to the Association and the several Owners of the lots subject hereto and to their respective heirs, assigns or successors in interest.

Section 3. Severability. Invalidation of any one of the foregoing covenants and restrictions shall in no way affect any of the other covenants or restrictions which shall remain in full force and effect.

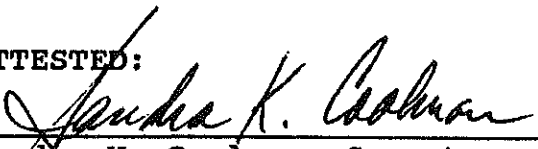
Section 4. Interpretation. This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the property by providing a common plan for the development thereof.

IN WITNESS WHEREOF, the Declarant has executed this Supplementary Declaration on the 13th day of DECEMBER, 1991.

COOLMAN AND COOLMAN, INC.

By: 
Robert V. Coolman,
President

ATTESTED:


Sandra K. Coolman, Secretary