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PORTER COUNTY  
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LINDA D. TRINKLER  
RECORDER

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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS AND**  
**RESTRICTIONS**  
**FOR**  
**HAWTHORNE SUBDIVISION**

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464-0088 ✓

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AMENDED AND RESTATED

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

HAWTHORNE SUBDIVISION

2004-22081 9-30-04

2004-031149 Plat 48-C-2

*THIS DECLARATION*, made this 13<sup>th</sup> day of November, 2004 by Hawthorne Communities, LLC, an Indiana limited liability company (hereinafter referred to as the "Developer").

WITNESSETH

Whereas, the Developer is the owner of the real estate legally described herein and commonly known as Hawthorne Subdivision; and

Whereas, the Developer desires Hawthorne Subdivision to develop as a residential community; and

Whereas, the Developer desires to promote the orderly development of the subdivision and to provide for the maintenance thereof by subjecting the real estate owned by the Developer to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the subdivision and real estate comprising the development; and

Whereas, the Developer deems it desirable to subject the real estate to the said covenants, restrictions, conditions, reservations, easements, charges and liens for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the subdivision; and

Whereas, "Hawthornes LLC" has submitted and recorded that certain Declaration of Covenants and Restrictions for Hawthorne Subdivision dated September 30, 2004 and recorded September 30, 2004 as Document No. 2004-032081 in the Office of the Recorder of Porter County, Indiana (hereinafter referred to as the "Original Declaration") and said "Hawthorne LLC" does not exist and was mistakenly executed by Developer in said name; and

Whereas, Developer desires to restate the Original Declaration and to amend the same by this Amended and Restated Declaration, it being the intent of the Declarant that this instrument shall extinguish and vacate the Original Declaration and substitute in its place this instrument in all respects; and

*NOW THEREFORE*, the Developer hereby declares that all of the platted lots and real estate located within the Subdivision as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the said lots situated therein and that Developer as owner of the real estate herein described and for the purposes set forth, hereby extinguishes and vacates the Original Declaration, and DECLARES AS FOLLOWS:

## Article I

### DEFINITIONS

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

**Section 1. "Association"** shall mean and refer to Hawthorne Homeowners Association, Inc., an Indiana not for profit corporation.

**Section 2. "Board"** shall mean the Board of Directors of the Association.

**Section 3. "Committee"** shall mean the Architectural Control Committee for the Subdivision which is created and shall have the authority and duties as provided for herein.

**Section 4. "Developer"** shall mean Hawthorne Communities, LLC, an Indiana limited liability company, their successors and assigns, if any such successor or assignee acquires the undeveloped portion of Hawthorne Subdivision, from the Developer for the purpose of development.

**Section 5. "Lot"** shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a residential structure could be constructed, whether or not one has been constructed.

**Section 6. "Maintenance"** shall mean the exercise of reasonable care, including buildings, roads, easements of ingress and egress, drainage easements, water detention or retention

easements, utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

**Section 7. "Owner"** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including the Developer, and including contract sellers, but not including contract purchasers.

**Section 8. "Member"** shall mean every person or entity holding membership in the Association.

**Section 9. "Subdivision"** shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section 1.

## Article II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERE TO, DELETIONS THEREFROM

**Section 1. Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Porter County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

A parcel of land in the Southeast Quarter of Section 6, Township 35 North, Range 5 West bounded and described as follows: Beginning at the Southeast corner of said Southeast Quarter and running thence North along the East line of said Southeast Quarter 1204.5 feet to an iron pipe; thence South 89E57' 30" West 1765.5 feet; thence South 00E 34' 51" East 676.27 feet to the approximate Easterly top of bank of the Flint Lake Garden Terrace Drain; thence along said approximate top of bank the following 5 courses: South 59E 01' 14" East 80.88 feet; South 42E 42' 32" East 52.25 feet; South 11E 43' 20" East 175.12 feet; South 21E 58' 28" East 138.78 feet; South 46E 13' 07" East 122.09 feet; thence South 00E 37' 51" East 60.50 feet and crossing said Flint Lake Garden Terrace Drain to the South line of said Southeast Quarter; thence North 89E 22' 09" East along said South line 1489.73 feet to the Point of Beginning containing 46.91 acres more or less.

**Section 2. Platting and Subdivision Restrictions.** The Developer shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

**Section 3. Additional Real Estate.** Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as single family residential lots, and (c) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their prorata share of Association expenses. The addition at any time or from time to time of all or any portion or portions of the real estate to the scheme of this Declaration shall be made and evidenced by filing in the Office of the Recorder of Porter County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in the Subdivision.

**Section 4. Retractable Real Estate.** At the sole election of the Developer, all of the real estate specifically described in Section 1 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions thereof at different times; provided, however that no real estate may be withdrawn which has been developed. All Owners, mortgagees and the Association are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of any portion of the plat of the Subdivision not developed in which the Developer has withdrawn from this Declaration.

### Article III

#### PROPERTY RIGHTS

**Section 1. Right of Entry.** The Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.



## Article IV

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**Section 1. Purpose of the Association.** The primary purpose of the Association shall be to insure high standards of maintenance and operation of all property and real estate in the Subdivision, including that property reserved by the Developer for the detention and management of storm water easements, to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. In addition, the Association shall consider its primary purpose to manage and support financially all real estate owned by the Association, if any, as well as the storm drainage detention easements located within the Subdivision.

**Section 2. Creation of the Association.** As soon as is practicable following the recordation of this Declaration, Developer shall cause the Association to be incorporated as an Indiana Not-for-Profit Corporation. Prior to the appointment of the Board of Directors by the Developer, responsibility for the control of the Association shall remain the exclusive responsibility and obligation of the Developer or its designated agents and employees.

**Section 3. Membership.** Every Owner, including the Developer, at all times so long as the Owner owns all or any part of the property subject to this Declaration, shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

**Section 4. Classes and Voting.** The Association shall have such classes of membership, which classes shall have such voting rights, as are set forth in the Articles of Incorporation.

**Section 5. Board of Directors.** The Association shall have a Board of three (3) Directors who shall constitute the Board of Directors.

- (a) The Directors and Officers of the Association shall not be liable to any Owner for any mistake of judgment or any acts or omissions made in good faith by such Director or Officer. The Owners shall indemnify and hold harmless each of the Directors or Officers against all liability arising out of contracts made by such Directors or Officers on behalf of the Owners and Members of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration.
- (b) The Board shall have the authority to and shall obtain comprehensive public liability insurance, as it shall deem desirable,

and other liability insurance or insurances as it may deem appropriate in the circumstances. The premiums for such insurance shall be an expense to be paid by the Association.

**Section 6. Powers and Duties of the Association.** The Board of Directors of the Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law in this Declaration:

- (a) To own, maintain and otherwise manage the storm drainage detention basins located within the Subdivision and vacant and unimproved property, if any, and to do any and all other things necessary or desirable in the sole judgment of the Officers or Directors of the Association.
- (b) To care for and maintain the landscaping, plantings and signs located within the Subdivision in a good and neat appearance.
- (c) Removal of snow and ice from the "knuckles" or expanded area of the public streets within the Subdivision.
- (d) To make such improvements to the facilities under its control within the Subdivision, and to provide such other facilities and services as may be authorized from time to time by the affirmative vote of a simple majority of the Members of the Association acting in accordance with its constitution and Bylaws provided, however, that any such actions so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable and exclusive residential community.
- (e) Until such time as the Board of Directors is duly elected, all the powers and duties enumerated above shall be exercised exclusively by the Board of Directors, as appointed by the Developer. The Developer, at Developer's discretion may appoint Owners to serve on the Board of Directors at such time as it deems appropriate. The first elected Board shall be elected not later than one year after 100% of those Lots which have been subjected to this Declaration have been sold and title has been conveyed from the Developer to an Owner. All Owners of record who have been subjected to this Declaration shall be eligible to vote for said Board. All Directors of the first elected and all subsequent Boards of Directors of the Association, shall

be nominated and elected pursuant to the Bylaws of the Association.

## Article V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of Lien and Personal Obligation of Assessment.** The Developer, for each Lot owned by it within the Subdivision, hereby covenants and each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair; such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of ten (10%) per cent per annum, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge on the real estate and shall be a continuing lien upon the Lot or Lots against which each such assessment is made, and shall also be the personal obligation of the Owner.

**Section 2. Purpose of Assessment.** The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision, including but not limited to the following:

- A. Maintenance and repair of all storm drains, drainage easements, storm water detention or retention easements, sanitary sewers, parks, private roads, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Porter County, Indiana.
- B. Removal of snow and ice from the "knuckles" or expanded area of the public streets within the Subdivision.
- C. Reimbursement to the Developer for the initial landscaping of the Common Area which may be made one lump sum or paid in no more than five (5) equal annual installments at the election of the Association. No interest shall be paid by the Association for this obligation.
- D. Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner. The policy limits shall be set by the

Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

E. Worker's compensation insurance to the extent necessary to comply with the Indiana law, and any other insurance deemed necessary by the Board;

F. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration, or by law, or which shall be necessary or proper in the opinion of the Board for the benefit of the Owners, or for the enforcement of these restrictions.

**Section 3. Uniform Rate of Assessment.** The initial annual assessment shall be Two Hundred Forty Dollars (\$240.00). All regular and special assessments shall be at a uniform rate for each Lot in the Subdivision without adjustment for size of Lots, or the number of residents.

**Section 4. Special Assessments for Capital Improvements and Major Repairs.** In addition to the annual assessment, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-third (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

**Section 5. Date of Commencement of Annual Assessments: Due Date.** The assessments for which provision is herein made shall commence on the first day of the month, or as fixed by the Board to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due date of any assessment shall be fixed in the resolution authorizing such assessment and any such assessment shall be payable in advance in one (1) annual payment unless such other periods are determined by the Board.

**Section 6. Duties of the Board of Directors.** The Board shall fix the date of commencement, and the amount of the assessment against each Lot for each assessment, at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. Written notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said

assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Effect of Non-Payment of Assessment: The Lien, Personal Obligation, Remedies of Association.** If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner's heirs, devisees, personal representatives and assigns, and shall also be continuing personal obligation of the Owner against whom the assessment is levied.

If the assessment is not paid within sixty (60) days after the delinquency date the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of such assessment the cost of any such action (including a reasonable attorneys' fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

**Section 8. Subordination to Lien of Mortgages.** The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No such sale or transfer or proceeding in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

## Article VI

### EXTERIOR MAINTENANCE ASSESSMENT

**Section 1. Exterior Maintenance.** The Association may provide upon any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, downspouts, exterior building surfaces, and yard clean-up and/or maintenance; provided, however, that ten (10) days written notice must first be given to the Owner of any such Lot or Lots of the need of such clean-up and/or maintenance.

**Section 2. Assessment of Cost.** The cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed, or, in the opinion of the Board, against the Lot or Lots benefitting from same. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney's fees, and cost of collection, as provided for the other assessments of the Association and shall be subordinate to mortgage liens as provided for herein.

**Section 3. Access at Reasonable Hours.** For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Lots or the exterior of any improvements thereon at reasonable hours any day except Sunday.

## Article VII

### ARCHITECTURAL CONTROL COMMITTEE

**Section 1. Power of Committee.** There is hereby created an Architectural Control Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Developer shall function as and grant all approvals and variances provided for herein until Developer conveys the last Lot which Developer owns in the Subdivision, except that Developer may elect to delegate and assign such duties and responsibilities to the Committee prior to that time. The Committee shall be composed of no less than three (3) individuals appointed by the Board to serve at the Board's pleasure. Two-thirds (2/3rds) of the Committee shall also be Members of the Association. A majority of members of the Committee shall constitute the decision of the Committee.

A. In General. No dwelling, house, building, structure or improvement of any type or kind shall be constructed or placed on any Lot in the Subdivision without the prior approval which shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. In addition, such plans and specifications shall show the proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1" - 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required elsewhere in these Restrictions.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;

(ii) The design (exterior and interior), color scheme or construction materials of a proposed improvement (including, without limitation the type, color and material of all doors) is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(iii) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of the other Owners.

C. Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Subdivision.

**Section 2. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. Should the Committee fail to act within the specified time, the requirements of this

Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for the disapproval.

**Section 3. Liability of Committee.** Neither the Committee nor any agent thereof, nor the Developer, nor the Association, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

**Section 4. Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

## Article VIII

### USE RESTRICTIONS

**Section 1. Residential Use.** The real estate subject to these covenants and restrictions may be used for single family residential living units and for no other purpose. There shall be no more one (1) principal dwelling on any one (1) Lot. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvements shall be erected upon any Lot without prior approval of the Committee as elsewhere herein provided. No accessory building shall be erected prior to erection of the principal dwelling or house. In the event that one or more Lots are developed or held unimproved as a single unit, the provisions of these covenants and restrictions including the levy of assessments shall apply thereto as a single Lot. No dwelling or other structure or improvement shall be erected, altered, placed, or permitted to remain on any site not including at least one (1) full platted Lot according to the recorded plat or plats of the Subdivision.

**Section 2. No Temporary Building.** No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the written consent of the Developer, or of the Association after Developer has conveyed the last Lot which Developer owns in the Subdivision.

**Section 3. Antennae.** No above-ground communication, electric or television lines or cable shall be placed by any Owner anywhere in the Subdivision other than within homes or dwellings. No television or radio antenna, earth station dish, pole, wire, rods, satellite dish, or other device used in connection with the reception or transmission of any television, radio or any other electrical signal shall be erected or maintained on the exterior of any home or dwelling or on any part of a Lot except that certain facilities may be allowed or mandated by the Telecommunications



Act of 1996 and rules and regulations promulgated thereunder by the Federal Communication Commission, which presently permits dishes of not more than one (1) meter under certain circumstances. Any permitted satellite dish must be properly screened from the view of surrounding Lots and the location and screening of the satellite dish must be approved by the Committee.

**Section 4. Boats and Motor Vehicles.** No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a fully enclosed building and totally isolated from public view.

**Section 5. Trees.** Each Lot must have at least two (2) trees growing upon it in the front yard within one (1) year of the date that the dwelling is occupied. No tree or shrub, the trunk of which exceeds four (4) inches in diameter, shall be cut down or otherwise destroyed without the prior express written consent of the Committee.

**Section 6. Artificial Vegetation or Yard Ornaments.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee. No ornament, displays or other freestanding decorations or ornamentation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee

**Section 7. Automobile Storage Areas.** All homes erected upon a Lot shall have a garage attached to and architecturally consistent with the home. No automobile garage shall be permanently enclosed or converted to other use without the substitution of another enclosed automobile storage area upon the Lot. No carports shall be permitted unless approved by the Committee and all garages shall be at least adequate to house two (2) standard size American automobiles. All garages must have doors that are to be maintained in useable condition.

**Section 8. Clothes Drying Area.** No portion of any Lot which shall be visible from any public street shall be used as a drying or hanging area for laundry of any kind.

**Section 9. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. However, dogs, cats and other common household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time.

**Section 10. Rubbish, Trash and Garbage.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot, except in sanitary containers located in appropriate areas concealed from public view.

**Section 11. Fences, Hedges and Walls.** No fence, hedge, wall or other dividing instrumentality over four (4) feet high in height, measured from the ground on which it stands, shall be constructed or maintained on any Lot unless approved by the Committee, except fences erected by the Developer along the Subdivision boundaries or easement areas.



**Section 12. Nuisances.** Nothing shall be done or maintained on any Lot which may be or become a nuisance to the neighborhood.

**Section 13. Signs.** No sign of any kind shall be displayed to public view on any Lot, except for the following:

A. Any Owner, or a sales agent for an Owner, may place one professional sign on any Lot or Lots advertising the Lot or Lots for sale.

B. Owners shall not display or place any sign of any character, including "for rent" signs except that a sign displaying the word "open", not to exceed two square feet, may be displayed during any time the Owner or his designated representative is in attendance.

The size and design of all signs shall be subject to approval by the Committee.

**Section 14. Miscellaneous.** No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep Owner's Lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner as provided for herein, and such entry shall not be deemed a trespass.

**Section 15. Size Requirements.** The minimum square footage of living space dwellings constructed on Lots in the Subdivision, exclusive of porches, terraces, garages, carports, accessory buildings, or basements, or portions thereof, or similar facilities not designed for regular and continuous habitation, shall be 2,000 square feet for one story or ranch style homes and 2,400 square feet for two story homes. Bi-levels and tri-levels shall not be permitted.

**Section 16. Residential Setback Requirements.** No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision except as provided herein and in compliance with all local zoning ordinance provisions. All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the front yard setback lines as established in the plat or plats of the various portions of the Subdivision.

**Section 17. Yard Lights.** Each Owner of a Lot in the Subdivision shall install a yard light with a dusk to dawn photo cell on the Lot when the dwelling or house is constructed upon said Lot.

**Section 18. Sidewalks.** Each Owner shall install and place an approved sidewalk on each Lot prior to the time of occupancy of the dwelling located on each Lot in the Subdivision.

**Section 19. Swimming Pools.** No above ground swimming pool shall be permitted on any Lot in the Subdivision. In-ground swimming pools shall first be approved by the Committee.

**Section 20. Exterior Construction.** All structures shall be required to meet the following minimum standards for exterior materials in the construction:

A. Roofing materials shall be made of premium asphalt shingles, wood shakes, slate or simulated slate, standing seam metal, tile, or similar premium roofing material. The minimum roof pitch shall be 6/12.

B. All exterior walls of the principal structure on all Lots (the dwelling) shall be constructed using 2 x 4 stud construction.

C. In the event vinyl siding materials shall be used on any dwelling or any improvement on any Lot, the siding shall be .44 mil or better quality. All siding material, regardless of material, shall extend to no less than eight inches (8") above grade.

D. All exterior chimneys on the front elevation of the structure facing any street must be of brick, stone, or other similar type material, and in no case shall exterior chimneys be sided with metal.

E. All driveways shall have a dust-free surface of Portland cement concrete, brick, cobblestone or other similar type material. No asphaltic concrete driveways shall be permitted, unless approved by the Committee.

F. No structure shall have metal prefabricated flues that extend above the highest roof line. No solar panels shall be permitted anywhere on any Lot.

Exterior construction material shall be approved by the Committee.

**Section 21. Heating Plants.** Every dwelling or house in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation.

**Section 22. Diligence in Construction.** Every dwelling, house or other structure whose construction or placement on any Lot in the Subdivision is begun shall be completed within nine (9) months after the beginning of such construction or placement and the Lot sodded or seeded within one (1) year. No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage.

**Section 23. Time in Which to Build Structures.** An Owner of a Lot within the Subdivision must commence construction of the dwelling or house within two (2) calendar years after the Owner's purchase of the Lot or the Developer's sale of said Lot if the Owner did not purchase the Lot from the Developer directly. If construction does not begin or if a dwelling or house is not completed upon a Lot within the prescribed time, the Developer shall have the option to repurchase such Lot for a price, in cash, equal to the Owners' cost basis in the Lot, without paying the cost of improvements up to the time of repurchase. This option shall expire if Developer has not notified the Owner of Developer's intent to exercise the option prior to the time of commencement of the construction.

**Section 24. Prohibition of Used Structures.** All structures constructed or placed on any Lot in the Subdivision shall be constructed with substantially all new material, and no used structures shall be relocated or placed on any such Lot.

**Section 25. Necessary Exceptions for Development.** Developer, or the transferees of Developer, shall undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rent, or other disposition of the dwellings is essential to the establishment and welfare of the Subdivision as an on-going residential community. In order that such work may be completed and the Subdivision established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, Developer's transferees, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise. Owner, upon commencement of construction of any residence, dwelling unit or other structure, which is not prohibited by this Declaration shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this Section, the words, "its transferees" specifically exclude purchasers of an individual Lot or Lots improved with completed residences or intended for construction at a later date by someone other than the Developer.

## Article IX

### TRANSFER OF UNIMPROVED LOTS

**Section 1. Developer's Right of First Refusal.** So long as Developer owns at least one Lot in the Subdivision, no Lot and no interest therein, upon which a single family residence has not been constructed shall be sold or transferred unless and until the Owner of such Lot shall have first offered to sell such Lot or Lots to Developer and Developer has waived, in writing, the right to purchase said Lot.

**Section 2. Notice to a Developer.** Any Owner or Owners intending to make a bona fide sale of a Lot or any interest therein shall give to Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the "Proposed Contract"). Within thirty (30) days of receipt of such notice and information, Developer shall either exercise, or waive exercise of, the right of first refusal. If Developer elects to exercise the right of first refusal, Developer shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:

- A. The price to be paid, and the terms of payment shall be that stated in the Proposed Contract or other terms agreed to by the Owner;
- B. The sale shall be closed within thirty (30) days after the delivery or making of the Developer's agreement to purchase.

**Section 3. Certificate of Waiver.** If Developer shall elect to waive the right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, Developer's waiver shall be evidenced by a certificate executed by Developer in recordable form which shall be delivered to the Owner or the Proposed Contract purchaser.

**Section 4. Unauthorized Transactions.** Any sale of a Lot, or any interest therein, upon which a single-family residence has not been constructed, without notice to Developer and waiver of Developer's right of first refusal as aforesaid, shall be void.

**Section 5. Exceptions.** This Article shall not apply to a transfer to or sale by any bank, life insurance company, Federal or State savings and loan association, or real estate investment trust which acquires its title as a result of owning a purchase money mortgage upon the Lot concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings; nor shall this Article apply to a sale by any such institution which so acquires title. Neither shall this Article require the waiver by Developer as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

## Article X

### GENERAL PROVISIONS

**Section 1. Duration and Remedies for Violation.** The covenants and restrictions of this Declaration shall run with and bind the real estate submitted pursuant to Article II hereof, and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifteen (15) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless amended as provided for elsewhere in this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give the Developer, Association, or Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Developer and/or the Association in seeking such enforcement but attorney fees specifically shall not be allowed to an Owner enforcing these restrictions, unless granted by a Court and based upon an independent finding of entitlement to such damages.

**Section 2. Owner's Obligation to Maintain and Repair.** Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction.

**Section 3. Compliance with Soil Erosion Control Plan.**

(a) The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with Construction Activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Developer's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as,

those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

**Section 4. Notices.** Any notices required to be sent to any Member or Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 5. Severability.** Invalidation of any one or more of these covenants and restrictions by judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 6. Amendment.** This Declaration may be amended, modified or terminated at any time and from time to time upon the execution and recordation of an instrument executed by Owners holding not less than two-thirds (2/3) of the voting interests of the membership, provided that so long as Developer is the Owner of any Lot or any property affected by this Declaration, said amendment shall not be effective without Developer's express written joinder and consent.

**Section 7. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 8. Effective Date.** This Declaration shall become effective upon its recordation in the Office of the Recorder of Porter County, Indiana.

*IN WITNESS WHEREOF*, the Developer has caused this Declaration of Covenants and Restrictions to be executed on the date first written above.

HAWTHORNE COMMUNITIES, LLC, an  
Indiana limited liability company

By: \_\_\_\_\_

Stephen Young  
Member

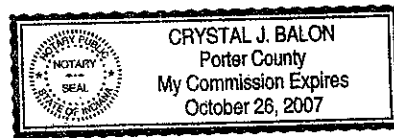
STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF PORTER     )

Before me, the undersigned, a Notary Public for Porter County, State of Indiana, personally appeared Stephen Young, a Member of Hawthorne Communities, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing instrument to be his free and voluntary act on behalf of the Company. Signed and sealed this 12<sup>th</sup> day of November, 2004.

My Commission Expires:

Crystal J. Balon Notary  
Public

County of Residence: Porter



This Instrument Prepared By:

Todd A. Leeth  
Hoeppner Wagner & Evans LLP  
103 E. Lincolnway  
Post Office Box 2357  
Valparaiso, Indiana 46384  
(219) 464-4961

November 5, 2004 (2:37PM)

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