

**DECLARATION OF COVENANTS
GOVERNING
HAWTHORN WOODS SUBDIVISION**

Knoefler Development, Inc. hereinafter referred to as the "Developer", being the owner and developer of the real estate contained within the boundaries of Hawthorn Woods Subdivision as the same is recorded in the records of the Vigo County Recorder's Office.

The real estate which is hereby made and shall henceforth be subject to these protective covenants and restrictions as herein set forth in the real estate in Hawthorn Woods Subdivision ("Subdivision"), and which real estate is located in Lost Creek Township, Vigo County, Indiana, is more particularly described as follows, to-wit:

A part of the Southeast Quarter of Section 8, Township 12 North, Range 8 West, of the 2 nd P.M., Lost Creek Township, Vigo County, Indiana, more particularly described as follows:

Beginning at a stone (found) at the Southwest Corner of said Southeast Quarter; thence North 0 degrees 18 minutes 04 seconds West (assumed bearing) on the West line of said Quarter Section a distance of 1645.00 feet; thence North 90 degrees 0 minutes 00 seconds East 233.13 feet; thence South 81 degrees 27minutes 55 seconds East 50.00 feet to a point on a curve to the right; thence along the arc of said curve to the right an arc distance of 52.18 feet (central angle 7 degrees 25 minutes 05 seconds, radius 403.01 feet, chord N 12 degrees 14 minutes 37 seconds East 52.14 feet); thence South 70 degrees 00 minutes 52 seconds East 150.16 feet; thence North 34 degrees 39 minutes 37 seconds East 246.11 feet; thence South 60 degrees 27 minutes 00 seconds East 381.02 feet; thence South 55 degrees 42 minutes 17 seconds East 247.95 feet; thence South 48 degrees 38 minutes 14 seconds East 282.71 feet; thence South 89 degrees 53 minutes 32 Seconds West 397.51 feet; thence South 0 degrees 18 minutes 04 seconds East 1320.88 feet to a point in the South line of said Southeast Quarter; thence along and upon said South line on a bearing of South 89 degrees 46 minutes 42 seconds West 924.00 feet to the point of beginning, containing 37.51 acres, more or less.

Subject to a county road easement off the South side thereof (Old Maple Avenue).

(Commonly known as Phase I of Hawthorn Woods Subdivision, Vigo County, Indiana).

The Developer desires to subject said real estate to the following covenants and restrictions which covenants and restrictions shall apply to and bind the owners thereof, their successors and interest, grantees and assigns of whatever nature, and shall be held, transferred, sold or otherwise conveyed subject to the following covenants and restrictions:

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EGA Date 02/14/2003 Time 13:57:50
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Vigo County Recorder
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1. For the purposes of further insuring that the land so platted is developed as an area of high standards, the Committee (as hereinafter described), reserves the right (i) to control the design and placement of buildings, structures and other improvements placed on each lot in the Subdivision, as well as (ii) to make, from time to time, such written exceptions to one or more of these reservations and covenants as the Committee shall deem appropriate and proper. However, any such exception or waiver shall not constitute an exception or waiver for any other lot, lots, parcel or parcels within the Subdivision.

Whether or not the provisions of the Covenants (or any of them) are specifically stated in any conveyance of a lot or lots (or part(s) thereof) made before now or hereafter made by the Developer or future owner(s) of any lot(s)—or part(s) thereof—in the Subdivision, the purchaser/owner and/or occupant of each and every lot and/or part(s) thereof, by acceptance of a deed thereto, or by taking possession thereof, covenants and agrees that no building, wall, fence or other structure shall be erected or placed upon such lot and/or part(s) thereof unless and until the building plans, the specifications therefore, and plot and drainage plan(s) have been approved in writing by the Committee. Each such building, wall, fence, mail box, address sign or structure shall be placed on said lot(s) only in accordance with the building plans, specifications and plot and drainage plan(s) so approved. Refusal of approval of building plans, specifications or plot and drainage plans by the Committee may be based on any or no grounds, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. No alteration of the exterior appearance of the buildings, walls, fences or structures on any Subdivision lot(s) shall be made without like approval. If the Committee shall fail to approve or disapprove the plans, specifications and/or plot plans within thirty (30) days after written request therefore is delivered to the Committee, then such approval shall not be required, provided, however, that no building, wall, fence, mailbox, address sign or other structure shall be erected on any Subdivision lot(s) which violates any provision of the Plat or any of the provisions herein.

Prior to application for improvement/building permits from Vigo County, Indiana for the construction/alteration of a residential dwelling in the Subdivision, building plans, specifications and plot plan shall be submitted to the Committee for prior written approval. Such approval shall, during the development period as signified by the Developer, include building design, color and location, as well as plans for private drives, tree preservation methods and proposed landscaping. (Conformity and harmony of external design with existing structures in the Subdivision with respect to the topography and finished ground elevations, the destruction/preservation of trees and vegetation and any other matter as may effect the environment and ecology of the Subdivision, as well as the preservation of streets and the surface and subterranean draining systems within the Subdivision, shall all be proper areas of concern for the Committee). All residences built in the subdivision shall be built by the Developer or a contractor approved by the Committee, who has experience in custom construction in Vigo County, Indiana of housing comparable to the standards contemplated by these Covenants.

2. Each lot of the Subdivision shall be used only for single-family residence purposes. There shall not exist on any such lot at any time more than one such residence. No duplex, apartment building, condominium or detached structure shall be permitted in the subdivision. No trailer, tent, shack, barn, or temporary building shall hereafter be constructed/erected on any of said lots in the Subdivision. Guest houses, pool houses or detached garages of any kind, which are hereafter constructed/erected on any Subdivision lot, must be specifically approved by the Committee.

Detached buildings are allowed providing that the buildings have foundations and that the

buildings' exteriors are constructed of brick, stone, wood, or stucco; color coordinated to match residence; no smaller than 8' x 10'; no larger than 24' x 24'; single story; non-residential; and approved by the Committee.

3. No professional office, business, trade or commercial activity of any kind shall be conducted in any building or on any portion of the property covered by these covenants, except as specifically permitted hereby. It is specifically declared that the Developer or its designated representative may maintain an office and buildings for the sale of lots and for construction purposes for all phases of the Subdivision.

4. The minimum square footage of living space of a residential dwelling constructed on any lot in the Subdivision, exclusive of porches, terraces, attics, carports, garages or basements below ground level, shall be two thousand two hundred (2200) square feet of ground floor living area for a 1-story structure, or two thousand six hundred (2600) square feet of floor area if higher than 1-story—and each dwelling shall have no less than a two car attached garage. The exterior of the houses should be predominately brick, stone, wood or stucco, however, the Committee may make exceptions that are required by architectural and/or structural considerations.

5. No building, or any part thereof, including garages or porches, shall be erected so as to violate the setback lines shown on the Plat. Notwithstanding anything apparently to the contrary contained in this Declaration, the Committee shall have the right to permit (before construction commences) reasonable modifications of the setback requirements where, in its discretion, strict enforcement of setback provisions would work a hardship, provided, however, that no setback lines shall violate any current provision of the Vigo County Subdivision Control Ordinance.

After the date of this indenture, none of the lots in the Subdivision shall at any time be divided into more than two building sites and no building site shall be less in area than the area of the smallest lot platted in the Subdivision. A single lot together with a contiguous portion or portions of one or more other lots in the Subdivision may be used for one building site. Where one lot and a fraction of another

lot are acquired for a single residence site, the side lot lines shall refer only to the lot lines bordering the adjoining property owners.

6. The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associated with Construction Activity. Owners and builders acknowledges that Builder has received a copy of the plan and Builder agrees to take all applicable erosion control measures contained therein as the plan applies to "land disturbing activity" undertaken by Builder or Builder's subcontractors. Owners and their builders agree to take all applicable erosion control measures, and agree to comply with the terms of the Developer's plan and the provisions of Rule 5 of 327 IAC 15 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.

The Owners and the Builders shall indemnify and hold Developer, the Committee and the Association 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 Owners, Builders, Owners' and Builders' employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer and the requirements and conditions of Rule 5 of 327 IAC 15.

The Owners, the Committee and the Association of the Subdivision recognize that the Subdivision is being developed in Phases and the Owners, Committee and/or Association agree to and shall cooperate with Developer in the construction of all phases of the Subdivision.

Maintenance of remaining erosion control measures shall be the responsibility of the owner(s) of the lots in said Subdivision and/or the Committee after the Developer has terminated land disturbing activities.

7. Before excavation commences for any residence, the owner or the owner's contractor shall rough in the permanent driveway and white rock same. Thereafter, construction traffic for that residence shall be limited to the white rock area(s). The owner or the owner's contractor shall take all precautions to keep erosion of the lot at a minimum and, in any case, if dirt from the lot finds its way onto any street in the Subdivision, the Developer and/or the Association reserve the right to have that dirt cleaned up and removed at a cost, in each instance, of \$100.00 to the owner of the lot (the same shall constitute a lien the same as an assessment by the Association). This restriction is necessary to control dirt, silt and soil for the Subdivision. Extra and unneeded dirt from excavation on any lot may not be removed from the Subdivision without the prior consent of the Committee.

8. The Hawthorn Woods Design Committee (referred throughout this document as the "Committee") shall be composed initially of the representatives of the Developer, an Indiana corporation, and after completion of the development (as signified by the Developer by a document stating such recorded in the Vigo county Recorder's Miscellaneous Record) and acting on votes of a simple majority of a quorum (where the (3) members present in person or by proxy constitute a quorum). The Committee shall consist of five (5) members of the Association as elected for one year terms by the members of the Association.

9. Unless parked in an enclosed garage, no truck(s), boat(s), motor home(s), mobile home(s), trailer(s), camper(s) or commercial-type vehicle(s) shall be stored or parked on either any Subdivision lot or parked on any street in the Subdivision except while engaged in transporting goods or services to and from a residence in the Subdivision. Also, no motor vehicle(s) may be parked overnight on any street in the Subdivision.

10. No horses, cattle, swine, goats, poultry, or other animals, except household pets, shall be kept on any Subdivision lot. Outside animal or pet pen(s) or area(s) shall be acceptable to the Committee. No permanent clothes line or drying yard shall be permitted on any Subdivision lot unless concealed by hedges or lattice work or screening acceptable to the Committee. No breeding of animals for commercial purposes or as a hobby shall be allowed on any lot of the Subdivision.

11. All walls or fences to be hereafter erected must be approved by the Committee, in writing,

before construction, but in any event chain-link fencing will not be allowed.

12. No boundary wall, except those now existing or to be built by the Developer along the Subdivision's boundaries (and except security fences constructed by the Association) shall be constructed with a height of more than six (6) feet. No wall of any height shall hereafter be constructed on any lot in the Subdivision until after the height, type, design and approximate location therefore shall have been approved in writing by the Committee. The heights or elevations of any walls shall be measured from the then existing elevations of the land at and along the applicable points or lines.

13. No geothermal heating systems shall extend beyond the lot lines and geothermal heating systems shall not extend into the utility easements without approval in writing by the Committee.

14. Developer has constructed a surface and subterranean drainage system for the buildings in the Subdivision. Developer has constructed laterals to the subterranean system for almost all of the lots in the Subdivision. The down spouts from each residence shall be connected to the laterals, and not discharged on to the roads.

15. Maintenance of the surface of any right-of-way for a street from the edge of its hard surface to the property line of a Subdivision lot shall be the responsibility of the owner(s) of the lot whose property line abuts said street right-of-way.

16. All driveways leading from the street to the garage located on any lot shall be constructed out of blacktop, asphalt, or concrete. However, only one driveway is allowed per dwelling house. Driveways are not allowed for storage structures unless incorporated with an existing driveway and approved by the Committee.

17. No obnoxious, offensive, deleterious, or objectionable odors, sounds, light or activity of any kind shall be permitted to exist which could be an annoyance or nuisance to a lot owner and/or to the Subdivision.

18. Any conveyance of property within the Subdivision shall be made subject to taxes, liens, and other assessments, if any, levied or assessed by against said property in or prior to the year in which same is conveyed, and shall be subject to all covenants, easements, reservations, restrictions and limitations imposed by governmental authority and/or hereunder.

19. Inasmuch as the Developer contemplates that the Association will assume maintenance responsibilities for the Subdivision's subterranean drainage system, as well as all drainage swales, ditches and culverts and the lakes which are a part of the Subdivision's overall drainage system, the following covenants shall apply to and run with all land within the Subdivision:

- A. Drainage swales, pipes and ditches along dedicated roadways and within the right-of-way, dedicated drainage easements, other natural drainage areas in the Subdivision are hereby dedicated as a drainage easement and is not to be altered, dug out, filled in, tilled, or otherwise changed without the written permission of the County Engineer. Property owners (i.e. Subdivision lot owners) must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from

roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water.

- B. Any property owner altering, changing, or damaging these drainage swales, ditches or underground drains will be held responsible for such action and will be given 10 days notice by registered mail to repair said damage, after which time, if no action is taken, the Association will cause said repairs to be accomplished, and the bill for such repairs will be sent to the affected property owner for immediate payment.

20. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain on any lot in the Subdivision. All trash setout for pickup must be in trash cans or hard containers. All trash cans or hard containers shall have lids. Trash bags are not allowed to prevent animals from tearing them apart. No garbage container(s), trash barrels, trash container(s) or ash pit(s) shall be permitted on any lot unless same is/are subterranean or enclosed in a fashion approved beforehand by the Committee.

Lots, without houses, shall have their grass and weeds kept at a maximum height of 18 inches except in wooded areas more than 25 feet from roadway curbs.

21. All claims against the Developer and/or the Committee and/or the Association for damages, if any, arising out of the approval or non-approval of buildings/plans, construction, reconstruction, alteration, maintenance and repair of utilities, street and/or common area lighting system(s), or on account of any temporary or other inconvenience caused thereby, are hereby waived by each owner and/or occupant of property within the Subdivision.

22. No elevated tank(s) of any kind shall be erected, placed or permitted on any part of the Subdivision. Any tanks or containers for use in connection with any residence constructed on any lot(s), including tanks containers for the storage of garbage, must be buried or walled sufficiently to conceal them from the view of neighboring lots. Plans for all enclosures of this nature must be approved in writing by the Committee prior to construction.

23. Electrical service lines, natural gas lines, telephone and cable television lines shall be placed underground and no outside utility lines of any nature shall be placed overhead. In the event the Subdivision is not served by cable, then antennas and satellite dishes are acceptable if 24" or less in diameter.

24. No residence dwelling erected upon any lot shall be occupied in any manner while in the course of construction or at any time prior to its being fully completed, as herein required. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, specifications and plot plan, and all other covenants, conditions, reservations and restrictions herein set forth or on the Plat. All construction shall be completed within twelve (12) months from the start thereof, provided, however, the Committee may (as previously set forth in Section 1 hereof) extend such time when, in its opinion, conditions warrant such extension. Unless the prior written consent of the Committee is given, rental of any guest house, hereafter constructed pursuant to special authorization of the Committee, is prohibited, the occupancy thereof being limited to either non-paying guests or servants. Regular, continuous occupancy of any residence in the Subdivision shall be limited to its owner and/or its

owner's immediate family.

25 It is intended that all Subdivision streets, as shown on the Plat of the Subdivision, shall be accepted into the Vigo County highway system as soon as the duly appointed Engineer of Vigo County, Indiana provides a signed statement that said streets comply with and meet the specifications for dedicated streets or roadways under the provisions of the Vigo County Subdivision Control Ordinance.

26. For the purpose of maintaining the Subdivision streets, traffic control, and any other general purpose within the Subdivision and all general planning of roadway areas and common community areas of every kind and nature required or desired within the Subdivision for the general use and benefit of all lot owners, each and every lot owner in the Subdivision, agrees to join and shall (i) become a member of the Association, and (ii) be subject to the duly enacted By-Laws of the Association.

27. Each and every Subdivision lot's owner (meaning in the indenture, either single or joint ownership of a given Subdivision lot) may be assessed annually by the Association or its respective successor(s) and/or assign(s), for certain services provided to the Subdivision, including, but not necessarily limited to:

- (A) Maintenance of the Subdivision streets before their acceptance into the Vigo County Highway System;
- (B) Maintenance of the Subdivision's drainage system;
- (C) Maintenance of the Subdivision's Erosion Control Measures;
- (D) Maintenance and operation of street lights;
- (E) Maintenance of swales and pipes located on property owned and/or maintained by the Association otherwise not currently located on individually owned lots;
- (F) Mosquito control and/or snow removal;
- (G) Common areas, cul de sacs and landscaping; and
- (H) Entrance and other Subdivision signs.

The cost thereof or charges therefore shall be divided equally among the forty (40) lots in the Subdivision with partial lots being prorated to the owners based on the percentage owned by each.

Assessments or charges set forth above, together with any and all other assessments authorized by the Association—including a reasonable charge for membership, postage and supplies—shall be made on March 1 of each calendar year, and payment in full shall be made to the Association on or before May 1 of the same calendar year. In the event payment is not made, the Association may file an affidavit entitled "Notice of Lien" with the Recorder of Vigo County setting forth the name and address of the owner, the legal description of the owner's real estate within the Subdivision, a description of the charges assessed and the amount of said charges, which lien shall run in the favor of the Association. In the event suit is required to obtain or enforce a lien under this indenture, then the Association shall be entitled to recover reasonable interest as then permitted by applicable statute (at the time of the filing of the lien) from and after May 1 of the year of said assessment, and reasonable attorney fees and legal costs associated therewith.

Any of the aforesaid charges and assessments, whether annual or special, shall run with the land and shall become liens on the lot or lots of the owner(s) at the time of attachment.

28. But for any exception hereafter made as hereinbefore provided, all of the foregoing covenants, conditions, reservations and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on any property in the Subdivision or any owner thereof provided, however, these covenants, conditions, reservations and restrictions shall be automatically extended for a period of five (5) years and, thereafter, in successive five-year periods, unless on or before January 1, 2013 or the end of one of such extension periods, as the case may be the owners of a majority of the lots then platted in the Subdivision (through action by the Association, if then formed) shall by written instrument, duly recorded, declare a modification or termination of same. Although these covenants, conditions, reservations and restrictions may expire as herein provided, any and all then in-place remedies for breach of these covenants, conditions, reservations or restrictions committed or suffered prior to such expiration shall be absolute. Any lien(s) coming into existence before termination of the aforesaid covenants, conditions, reservations and restrictions shall survive such termination until released by the Association.

29. A breach by the owner of any Subdivision lot(s) of any of the covenants, conditions, reservations or restrictions established hereunder may be enjoined by appropriate proceedings by the Developer, the Association or by the owner(s) of another lot or other lots in the Subdivision, as the case may be, but not by any other person or entity.

In the event that the Committee or the owner(s) of another lot or lots, as the case may be, is/are required to employ legal counsel to successfully enforce (via voluntary or involuntary (e.g. court-ordered) compliance) any of the foregoing covenants, conditions, reservations or restrictions, all costs incurred in such enforcement, including reasonable attorney fees and expenses, shall be paid by the owner(s) of the lot or lots violating said covenants, conditions, reservations or restrictions, together with court costs. The party so employing counsel to successfully enforce any of said covenants, conditions, reservations and restrictions shall have a lien upon any such Subdivision lot or lots subject to said proceedings in order to secure the payment of all such sums.

No delay or omission on the part of the Association or the owner(s) of one or more lots in the Subdivision to exercise any of the rights, powers or remedies provided for herein shall be construed as a waiver thereof or acquiescence to any particular breach. Except for certain statutory rights which may exist in favor of the Vigo County Area Plan Commission, no right of action shall accrue nor shall any actions be brought or maintained by anyone whatsoever against the Developer, the Committee, and/or the Association for or on account of its failure(s) to bring any action(s) for a breach of these covenants, conditions, reservations or restrictions or for imposing restrictions herein which may be unenforced by the Developer, the Committee and/or the Association.

30. In the event that any one or more of the foregoing covenants, conditions, reservations or restrictions (including any provision, word, sentence, paragraph or section) shall be declared, for any reason, null and void by a court of competent jurisdiction, such final judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions, reservations and restrictions (including provisions, words, sentences, paragraphs and sections within the same section or covenant) unless the meaning of same is/are substantially changed by the voidance. All remaining covenants, conditions, reservations and restrictions (and provisions thereof) not so expressly held to be void shall continue unimpaired and in full force and effect. In the event any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then and in that event, such term(s) shall be reduced to a

period of time which shall not violate the reason, rule or law supporting such declaration.

IN WITNESS WHEREOF, Grantor has caused these Declarations of Covenants to be executed this 14th day of February, 2003.

KNOEFLER DEVELOPMENT, INC.

Gene N. Knoefler
Gene N. Knoefler, President

ATTEST:

Diane L. Knoefler
Diane L. Knoefler, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

Before me, a Notary Public, in and for said County and State, personally appeared GENE N. KNOEFLER and DIANE L. KNOEFLER, the President and Secretary, respectively of Knoefler Development, Inc., who acknowledged execution of the foregoing Declaration of Covenants Governing Hawthorn Woods Subdivision for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 14th day of February, 2003.

Lanita L. Shafer
Notary Public
Printed: LANITA L. SHAFER

My Commission Expires:

May 27, 2009

County of Residence:

Vigo

This instrument was prepared by Richard J. Shagley, Attorney, WRIGHT, SHAGLEY & LOWERY, 500 Ohio Street, P.O. Box 8448, Terre Haute, Indiana 47808-8448.