



HAWTHORN

Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended As Part Of The Plat Of Hawthorn, An Addition In Kosciusko County, Indiana

MNS Land Development, Inc., and Indiana corporation, hereby declares that it is the owner of the real estate shown and described in this plat and does hereby layoff, plat and subdivide said real estate in accordance with the information shown on the plat, being the certified plat attached hereto and incorporated herein. The subdivision shall be known as Hawthorn, an Addition in Kosciusko County, Indiana.

The Lots are numbered from 1 to 75, inclusive. All dimensions are shown in feet and decimals of feet. All streets and easements specifically shown or described are hereby expressly dedicated to public use for their usual and intended purpose.

1. **Definitions.** The terms hereinafter set forth shall have the following meanings:

- a. "Developer" shall mean MNS Land Development, Inc., its successor or successor in interest in any person, firm or corporation designated by it or its said successor or successors.
- b. "Lot" shall mean either any of said Lots as platted or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more Lots or parts of one or more Lots as platted upon which a Living Unit or other structure may be erected in accordance with the restrictions hereinafter set forth.
- c. "Living Unit" shall mean all or any portion of a building designated and intended for use and occupancy as a residence by a single family.
- d. "Owner" shall mean and refer to the holder, whether one or more persons or entities, of the fee simple title to any Lot or living unit situated in the Addition.
- e. "Lessee" shall mean and refer to a person leasing from an Owner, whether one or more persons or entities, of any "Living Unit" situated in the Addition.
- f. "Association" shall mean and refer to the Hawthorn Community Association.
- g. "Member" shall mean any person who may be entitled and obligated to hold one or more memberships in the Hawthorn Community Association.
- h. "Membership" shall mean any membership in the Hawthorn Community Association entitled to one

vote and one assessment as hereinafter set forth. A member may hold one or more memberships.

- i. "Common Area" shall mean and refer to those areas of land shown on any recorded subdivision plat and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition.
 - j. "Pedestrian Right-of Way" shall mean any area which is shown on the recorded plat of said Addition for the purposes of a pedestrian traffic system and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition.
 - k. "Street" shall mean any street, avenue, roadway, cul-de-sac or boulevard of whatever name which is shown on the recorded plat of said Addition, and which has been heretofore and is hereby, dedicated to the public for the purpose of a public street or boulevard purposes.
 - l. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain other approvals in connections with improvements and developments.
2. **Use.** No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached Living Unit for use by a single family. Each Living Unit shall include not less than a two-car garage, which shall be constructed as a part of said structure and attached thereto. Each Living Unit shall have at least one-third masonry, brick or stone on the front evaluation.
3. **General Contractor.** No contractor shall be allowed to construct a residential structure on a Lot in Hawthorn other than Millwood Homes, LLC, unless written approval is provided by Developer.

4. **Construction Time.** The construction of a Living Unit on a Lot in Hawthorn shall be commenced within twelve months after the date of closing of the purchase of the Lot. All Living Units constructed on any Lot shall be completed as to all exterior construction and finish, including landscaping and seeding of the lawn and installation of the driveway within six months after commencement of construction and must be complete prior to occupancy.

5. **No Mobile/Manufactured/Modular Housing.** No Living Unit shall be erected on any Lot in Hawthorn other than one which is framed on site. No mobile, manufactured or modular Living Unit shall be permitted on any Lot.

6. **Driveways.** All driveways from the street to the garage shall be of concrete and not less than 16' in width.

7. **Minimum Area.** No Living Unit shall be erected or permitted on any Lot having a ground floor area upon the foundation, exclusive of open porches, breezeways or garage, of less than 1,400 square feet in the case of a one-story Living Unit, nor less than 800 square feet on the main floor and 800 square feet on the second floor for a Living Unit of more than one story.

8. **Building Lines and Minimum Floor Elevation.** No Living Unit of structure shall be erected, placed or located on any Lot nearer to the front Lot line (or nearer to the side Lot line on corner Lots) than the minimum building set-back line as shown on the attached plat. No Living Unit or structure shall be located nearer than 10' to any side Lot line. No Living Unit or structure shall be located on any interior Lot nearer than 25' to the rear Lot line. On a corner Lot, no building or structure shall be located nearer than 15' to an interior Lot line. No tree, shrub, planting or other obstruction shall be permitted which obstructs a clear

the minimum floor elevation of a Living Unit shall be as stated on the plat.

9. Further Subdivision. No Lot shall be further subdivided. This shall not prevent the use of more than one Lot as a single building site so long as the additional Lot or portion of a Lot, after combination, may only be transferred as a whole. After such combination, the combined Lots will be treated under these restrictions as a single Lot.

10. Yard Light. Each Living Unit will cause an automatically controlled yard light or other illuminating device to be illuminated continuously from dusk to dawn and to be installed in the front yard 15' (plus or minus 1") from the street curb. Such yard light or illuminating device will be of such design and construction as shall be approved by the Architectural Control Committee; said Committee shall also have the authority to approve a change in the location of said yard light or illuminating device.

11. Signs. No sign shall be erected or permitted, except one professional sign of not more than 1' square, or one sign of not more than 5' advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

12. Fences. No wire, metal or chain link fences will be permitted on any Lot. Permitted fences shall be in conformity with the Kosciusko County Zoning Ordinance. Chain link fence back stops for play areas owned and maintained by the Hawthorn Community Association will be permitted. Household pets shall be contained within a Lot by fences described in this paragraph or by underground containment fences.

13. Exterior Antenna. No exterior antenna of any type shall be allowed on any Lot except a satellite dish of a diameter of 24 inches or less if located in an inconspicuous area on the Lot or Living Unit and to the rear of the Living Unit.

14. Swimming Pools. No above-ground swimming pools shall be permitted on any Lot. In-ground swimming pools shall be permitted, but shall not be located nearer than ten feet to a side Lot line or nearer than twenty-five feet to the rear Lot line and shall be surrounded by fencing not less than four feet high.

15. Gas and Fuel Tanks. No storage tanks of any nature shall be located on any Lot except tanks not exceeding in a thirty pound capacity to be utilized with grills for outdoor cooking.

16. Landscaping. Upon completion of a Living Unit, each Lot shall have a minimum of six shrubs and two shade trees having a minimum diameter of two inches and shall be planted in the street side yard.

17. Refuse and Garbage Containers. Refuse, waste and garbage shall be placed by the front street line of the Lot for removal not more than 24 hours prior to the scheduled time of removal. All garbage shall be placed in a covered container for removal. Refuse and waste shall be kept screened and hidden from view except on the day of removal.

reusive by reason of odor, fumes, dust, smoke, noise or pollution or which constitutes a nuisance or which is hazardous by reason of fire, explosion or in violation of the laws of the State of Indiana or any subdivision thereof. No Lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except as household pets, providing the same are not kept, bred or maintained for any commercial purpose. All owners shall keep weeds, brush or grass mowed and removed from their Lot and upon failure to do so, the Association may have such weeds, brush or grass mowed and removed and the cost and expense thereof shall be paid by the Owner.

19. No Temporary Living Unit. No structure of a temporary character, trailer, boat, boat trailer, camper, or camping trailer, mobile home, basement, tent, garage, barn, tool shed, or other outbuildings shall be either used or located on any Lot or used as a residence either temporarily or permanently. One accessory building may be approved for each Lot, the type and location to be approved by the Architectural Control Committee.

20. Utilities. No Living Unit shall be connected with distribution facilities provided by electrical, television, internet or telephone services, except by means of wires, cable or conduits situated beneath the surface of the ground, except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave Hawthorn and except for such housings, pedestals or facilities as may be appropriate for connection of utility services for individual Lots. Nothing herein shall be construed to prohibit street lighting or yard lighting services by underground wire cable.

21. Parking. All vehicles parked on a Lot shall be parked on the driveway or in a garage and may not be parked elsewhere on the Lot. A boat on a boat trailer, a boat trailer, travel trailer, camping trailer or motor home may be parked on the driveway of a Lot for not more than one continuous prior of 48 hours, unless located within a garage. Commercial vehicles, including school buses, shall not be parked on any Lot or on any street except during deliveries or construction.

22. Common Areas. Certain playgrounds, flood control areas, green ways and pedestrian right-of-ways designated on the plats shall be installed for the benefit of all the Owners and Lessees in Hawthorn. Subject to the rules and regulations of the Association, each Owner and Lessee shall have a right and easement of enjoyment in and to said Common Areas. The Developer may retain legal title to the common areas until such time as it has completed improvements thereon, after which time it shall convey the same to the Association and the Association shall accept said conveyance and thereafter be responsible for the maintenance thereof. The rights and easements of enjoyment in the Common Areas shall be subject to the following.

- a. The right of the Developer to borrow money and to mortgage any part or parts of Hawthorn in connection therewith.
- b. The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment of any Member for any period during which any assessment remains unpaid.
- c. The right of the Associations to dedicate or trans-

agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors of the Association, and subject to acceptance of such assignee.

23. Approval of Improvements by Architectural Control Committee. In order to maintain harmonious structural design and Lot grades, no Living Unit building or improvements shall be erected, permitted or altered on any Lot (and construction shall not be commenced) until the construction plans and specifications, and a site plan showing the location of the structure on said Lot and grade elevations, have been approved by the Architectural Control Committee. The Developer initially. The Developer shall have the right, at such time as it may elect, to relinquish its right to designate the members of the Architectural Control Committee to the Association. Two sets of plans of each improvement, with detailed front, side and rear elevations and floor plans showing square footage and grade elevations, shall be submitted to the Architectural Control Committee at the Developer's office or such other place as may be designated. The Committee's approval or disapproval of said plans shall be in writing; in the event the Committee, or its designated representative, shall fail to approve or disapprove said plans within 30 days after all necessary instruments, documents and other information have been submitted, then approval to the request as submitted shall be substantially completed before said building shall be used or occupied as a Living Unit. All improvements shall be constructed in accordance with the plans and specifications as approved by the Architectural Control Committee and any improvements not so constructed shall be subject to immediate removal at Owner's expense. The provisions hereinbefore provided for violation or attempted violation of any of these covenants and restrictions shall be applicable hereto. In addition, before any Lot or tract within the Addition may be used or occupied, said user or occupier shall first obtain the Improvement Location Permit and Certificate of Occupancy required by the Kosciusko County Zoning Ordinance. Further, before any Living Unit within the Addition shall be used and occupied, the Developer shall have installed all improvements serving the Lot whereon said living unit is situated, as set forth in Developer's plans filed with the Kosciusko County Plan Commission.

24. Easements. Easements are hereby expressly reserved and dedicated with dimensions, boundaries and locations as designated on the attached plat for the installation and maintenance of public utilities (including but not limited to, water, gas, telephone, electricity, and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

a. Any utility company and the Developer, its successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvement installed by an authorized utility.

b. No buildings or structures located in the Addition shall be connected with distribution facilities provided by electrical, television or telephone services, except

surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Addition, and except for such housing, pedestals or facilities as may be appropriate for connection of utility services for individual Lot owners). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables.

c. No individual water supply system, or individual sewage disposal system, shall be installed, maintained or used in the Addition except in conformity with state and local rules and regulations. No sanitary sewage shall at any time be discharge or permitted to flow into the storm water and surface water runoff sewer system.

d. Easements for surface water runoff shall be maintained in a manner conducive to the purpose of such easement and shall be maintained by the Association of any proper public authority to which this duty is delegated. No obstruction shall be placed in any surface drainage easements.

25. Hawthorn Community Association. There will be organized by the Developer forthwith an unincorporated not-for-profit association, only one such association to be recognized and approved by the Developer, with the same to be known as the Hawthorn Community Association.

a. **Membership.** One membership shall be created for each Lot planned in Hawthorn.

b. **Membership Transfer.** Memberships will transfer from the Developer to his grantee upon delivery of the deed.

c. **Continuing Membership.** The purchaser of any Lot or Living Unit in Hawthorn shall be a member of said Association and shall continue to be a member of said Association so long as he continues to be the Owner of the Lot in Hawthorn for the purposes herein mentioned. Membership shall pass with the ownership of the land or living unit.

d. **Transfer of Membership Rights and Privileges to Lessee.** Each owner, or in lieu thereof, each Lessee of a living unit (with the written consent of such Owner to the Association), shall be a member of the Association and have the right to the Owner's vote and privileges. Membership, Where assigned to a Lessee, will pass with the lease except the Owner may withdraw his membership assignment to the Lessee at his discretion by a 60-day notice in writing to the Association.

26. Assessments. Developer, for each Lot owned by it within the Addition, 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 conveyance, shall be deemed to covenant and agree to pay to the Hawthorn Community Association the Maintenance Fund assessments and charges as hereinafter provided.

a. **Maintenance Fund.** The "Maintenance Fund" assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents

maintenance of the green ways, sidewalks, playgrounds and all other Common Areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

b. The Maintenance Fund assessment as herein provided shall commence to accrue and become a lien upon any said Lots or Living Units as soon as title thereto has been divested from Developer, or when a Lot or Living Unit shall be erected thereon, whichever shall first occur, and shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such assessments.

c. The amount of said Maintenance Fund assessment is established as follows:

i. The annual assessment for the calendar year starting January 1, 2005, shall be \$ _____ per assessable membership.

ii. For each year thereafter, commencing with the year beginning January, 2006, the Board of Directors of the Association shall establish a budget for such calendar year and shall determine the annual membership assessment required to meet said budget. Such budget and assessment for each such calendar year shall be established by the Board of Directors at a meeting to be held not later than October 31st of each preceding calendar year. The Board of Directors shall then mail to all Association members a copy of said budget and notice of the ensuing year's assessment not later than November 15th of the year prior to the year to which the assessment is applicable.

iii. The amount of the assessment set by the Board of Directors for any such calendar year may be changed by the members of the Association at a meeting duly called for that purpose as hereinafter provided. The President or Secretary of the Association shall call a meeting of the membership of the Association, to be held prior to December 31st of the year prior to the year to which assessment if applicable, upon receipt, prior to November 30th, of a written petition for assessment review bearing the signatures of at least 20% of the memberships of the Associations. The President or Secretary of the Association shall give at least 15-day written notice of such meeting to all members.

iv. Any change so adopted in the amount of the assessment set by the Board of Directors must have the assent of 2/3 of the memberships of the Association who are voting in person or by proxy at a meeting duly called for such purpose. At any meeting a quorum of not less than 50% of all memberships shall be required.

together with interest thereon and costs of collection as hereafter provided, shall be a lien upon the property against which each assessment is made. Each such assessment, together with interest thereon and costs of collection, shall also be the personal obligation of the person or persons who was/were the owner(s) of such property at the time when the assessment fell due. The obligation of the assessment is upon the owner of the property or the Living Unit and is not transferred, even though the owner may transfer the membership and voting rights in Hawthorn Community Association, as hereinbefore provided. If the assessments are not paid on the due date, then such assessments shall be a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns, however, the personal obligation of the then owner to pay such assessment shall remain a personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within 60 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 8% per annum. And the Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing such action. The lien of the assessments as provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property, taxes and assessments for public improvements.

27. Duration and Alteration. These protective covenants, restrictions and limitations shall be construed as, and shall be covenants running with the land and shall be binding upon all Owners and Lessees of land in said Addition and all persons claiming under thereof and thereafter shall be automatically extended for successive periods often years each. The protective covenants, restrictions and limitations (but not the easements) may be changed, abolished or altered in part by written instrument signed by the Owners of not less than 75% of the memberships of the Hawthorn Community Association; and may be changed, altered or amended by the Developer within two years from and after the date of recording hereof. All said amendments, changes or alterations, however, shall have the prior approval of the Kosciusko County Plan Commission or its successors.

28. Waiver. The failure of either the Developer or an Owner to enforce any covenant contained herein or right arising from any covenant contained herein shall in no case be deemed a waiver of that right or covenant.

29. Severability. Invalidation of any one of these provisions shall in no way affect any of the other provisions which shall remain in full force and effect.

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