



DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,  
 LIMITATIONS, EASEMENTS AND APPROVALS APPENDED  
 OF THE PLAT OF HAWTHORNE PARK, SECTION IV  
 A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

Doc. No.	Receipt No.	202060271 23615
DCFD		3.00
MISL		1.00
PLAT		26.00
PLAT		9.00
Total		39.00

RECORDED  
 08/02/2002 13:47:34  
 RECORDER  
 PATRICIA J CRICK  
 ALLEN COUNTY, IN

Plat Cab D Pg. 199  
 NPT Development Corp., an Indiana corporation, by Joseph L. Zehr, its President, declares that it is the owner of the real estate shown and legally described in this plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference in this document. The platted Subdivision shall be known and designated as Hawthorne Park, Section IV, a Subdivision in Perry Township, Allen County, Indiana.

The lots are numbered from 113 through 154 inclusive, and all dimensions are shown in feet and decimals of a foot on the Plat. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

#### PREFACE

Hawthorne Park, Section IV, is part of a tract of real estate which is currently planned to be subdivided into a maximum of 269 residential lots. In addition to the recordation of the Plat and this document, there will be recorded articles of incorporation of Hawthorne Park Community Association, Inc., it being Developer's intention that said association be bound by its articles of incorporation and bylaws.

Section 1. **DEFINITIONS.** The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 **"Articles".** The articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

1.2 **"Association".** Hawthorne Park Community Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

1.3 **"Board of Directors".** The duly elected board of directors of the Association.

1.4 **"Bylaws".** The bylaws adopted by Hawthorne Park Community Association, Inc., and all amendments to those bylaws.

1.5 **"Committee".** The Architectural Control Committee established under section 5 of these Covenants.

1.6 **"Common Area".** All real property owned by the Association for the common use and enjoyment of Owners.

1.7 **"Covenants".** This document and the restrictions, limitations and covenants imposed under it.

1.8 **"Developer".** The initial Developer is NPT Development Corp., an Indiana corporation. The Initial Developer shall have the absolute right to transfer a block of lots upon which there are no permanent structures to a successor in title, and upon such transfer, the transferee shall be and shall be designated as "Developer" as to that block of Lots for all purposes.

1.9 **"Lot", and in plural form, "Lots".** Any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance, ~~as provided~~, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot shall be considered a "Lot"

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under these Covenants unless the tract has a frontage of at least 85 feet in width at the established front building line as shown on the Plat.

1.10 Owner, and in the plural form, "Owners". The record owner(s) (whether one or more persons or entities) of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.11 Plan Commission. The Allen County Plan Commission, or its successor agency.

1.12 Plat. The recorded secondary plat of Hawthorne Park, Section IV.

1.13 Subdivision. The platted Subdivision of Hawthorne Park, Section IV.

## Section 2. PROPERTY RIGHTS.

2.1 Owners' Easements of Enjoyment. Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and passes with the title to every Lot, subject to the following rights which are granted to the Association.

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

2.1.2 To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against an Owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any published rule of the Association.

2.1.3. To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family, and tenants or contract purchasers who reside on the Owner's Lot.

## Section 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

3.2 The Association shall have the following two classes of voting memberships:

3.2.1 Class A. Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

3.2.2 Class B. Class B membership consists of Developer. The Class B member shall be entitled to 494 votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.2.2.1 When fee simple title to all Lots have been conveyed by Developer; or

Section 4. Covenant for Maintenance Assessments

4.1 Creation of the Lien and Personal Obligation of Assessments.

Each Owner, except Developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvement, such assessments to be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision, and for the improvement of facilities in the Subdivision. In addition, assessments shall be levied to provide for the proportionate burden of the maintenance of the common impoundment basin into which the Subdivision's surface waters drain.

4.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be Five Hundred Dollars (\$500.00) per Lot exclusive of annual fee for Pool Membership. Subsequent assessments may be made as follows:

4.3.1 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than 8% above the annual assessment for the previous year, without a vote of the membership.

4.3.2 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

4.4 Special Assessments For Capital Improvements. In addition to the annual assessments authorized in Section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement in the Common Area, including fixtures and related personal property; provided that any such assessment shall require the vote or written assent of 75% of each class of members of the Association; and provided, further, that no such special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain the Common Area, or pay its pro-rata share of the cost of maintaining the common impoundment basin.

4.5 Notice and Quorum for Any Action Authorized Under Subsections 4.3 and 4.4. Any action authorized under Sections 4.3.2 and 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, and may be collected on a monthly or yearly basis.

**4.7 Date of Commencement of Annual Assessments Due Dates.** The annual assessments allowed under Section 4.3 shall commence as to all Lots then subject to an assessment, on the first day of the month following the first conveyance of a Lot by Developer. The first annual assessment shall be pro rated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.

**4.8 Effect of Nonpayment of Assessments/Remedies of the Association.**

4.8.1 Any assessment not paid within 30 days after its due date shall bear interest from the due date at the rate of 12% per annum, or at the legal rate of interest in Indiana, whichever is higher.

4.8.2 The Association may bring an action at law against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association shall also be entitled to recover the attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 4.

**4.9 Subordination of Assessment Lien to First Mortgage Liens.**

The lien of the assessments made under the Covenants shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due after the initiation of such proceedings and prior to such sale or transfer.

**Section 5. ARCHITECTURAL CONTROL**

5.1 No building, fence, wall, in-ground swimming pool, or other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition, change, or alteration be made to a structure on a Lot until the plans and specifications showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the Committee in writing as to the structure's harmony of external design and location in relation to surrounding structures and topography in the Subdivision. The Committee shall be composed of three members, the first Committee members to be: Glenn Conkling, Orrin R. Sessions, and Eric T. Zehr. A majority of the Committee may appoint a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to appoint a successor.

5.2 The Committee shall have the exclusive authority and responsibility to review plans for construction of all primary residences in the Subdivision. The Committee may delegate to the Board of Directors (or to such other entity designated in the Articles or Bylaws) the authority and responsibility to review plans for construction of fences and other structures (excluding primary dwellings) in the Subdivision. Such delegation shall be made in writing, signed by a majority of the Committee members, and delivered or mailed to the Association's registered office.

5.3 After primary residences are constructed on all Lots in the Subdivision, the Board of Directors (or other entity designated under its Articles or Bylaws) shall succeed to the Committee's responsibilities under this Section 5 to review subsequent construction, modifications and additions of structures in the Subdivision.

5.4 In the event the Committee (or Board of Directors or other entity acting under Sections 5.2 or 5.3), fails to approve or disapprove the design and location of a proposed structure within 30 days after said plans and specifications have been submitted to it, approval will not be required, and approval under this Section 5 will be deemed to have been given.

## See amendment 5.5 Fenced

### Section 6 GENERAL PROVISIONS

6.1 Use. Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. A garage shall be built as part of the residence, shall have a floor area of not less than 660 square feet, and shall have one or more doors with an aggregate width of not less 24 feet.

6.2.1 6.2 Dwelling Size. No residence shall be built on: Lots 113 through 154 having a ground floor area upon the foundation, exclusive of one-story open porches, breezeways or garages, of less than 2,000 square feet for a one-story residence, or less than 2,400 square feet of total living area, (excluding one-story open porches, breezeways and garages), for a residence that has more than one story.

6.3 Building Lines. No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than a distance of 7 feet to an interior Lot line, and no dwelling shall be located on an interior Lot nearer than 25 feet to the rear Lot line.

6.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than 85 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 10,000 square feet.

6.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear 10 feet of each Lot. No Owner shall erect on a Lot, or grant to any person, firm or corporation the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.

6.6 Surface Drainage Easements. Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor(or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

6.7 Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision.

6.8 Temporary Structures. No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be constructed, erected, located or used on any Lot for any purpose (including use as a residence), either temporarily or permanently; provided, however, that basements may be constructed in connection with the construction and use of a single-family residence building.

6.9 Outside Storage. No boat, boat trailer, recreational vehicle, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked ungaraged on a Lot for periods in excess of 48 hours, or for a period which in the aggregate is in excess of 8 days per calendar year. The term "truck" as used in this Section 6.9 means every motor vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

6.10 Free-Standing Poles. No clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, with the exception of a flag pole displaying the United States Flag and a permanent basketball pole, shall be constructed, erected, or located or used on a Lot, provided however, that the installation and location thereof must be approved by the Committee under Section 5.

6.11 Signs. No sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than one square foot, or one sign of not more than five square feet advertising a Lot for sale or rent, or signs used by a builder to advertise a Lot during the construction and sales periods.

6.12 Antennas. No radio or television antenna with more than 24 square feet of grid area, or that attains a height in excess of 6 feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot. No satellite receiving disk or dish in excess of 20 inches in diameter shall be permitted on a Lot, further provided, that the installation and location of any dish or disk must be approved by the Committee under Section 5.

6.13 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

6.14 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

6.15 Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

6.16 Workmanship. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

6.17 Driveways. Driveways for houses with front load garages shall be poured concrete and shall not be less than 16 feet in width from street to garage. Driveways for houses with end load garages shall be poured concrete and shall not be less than 14 feet in width from street to garage.

6.18 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and granted to all public utility companies, the owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and

remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

6.19 Storm Water Runoff. No rain and storm water runoff or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

6.20 Completion of Infrastructure. Before any residence on a Lot shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Plan Commission or by any aggrieved Owner.

6.21 Certificate of Occupancy. Before a Lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the improvement location permit and certificate of compliance required by the Allen County Zoning Ordinance.

6.22 Enforcement. The Association, Developer and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association, Developer or an Owner to enforce any provisions in the Covenants shall in no event be deemed a waiver of the right to do so later.

6.23 Invalidation. Invalidation of any one of these Covenants by judgment or court order shall not affect the remaining provisions, and such provisions shall remain in full force and effect.

6.24 Duration of Covenants. These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of 10 years.

6.25 Amendments. Any provision of these Covenants may be amended, but such amendment is subject to the following requirements and limitations:

6.25.1 After primary residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of the Lots in the Subdivision and by the owners of at least 75% of the lots in future sections, if any, of Hawthorne Park, Section IV. For purposes of this Section 6.26.1, the term "owner" shall have the same meaning with respect to Lots in such future sections, as the term "Owner" is defined in Section 1.10.

6.25.2 Until primary residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, in order to amend the Covenants, Developer, in addition to those persons whose signatures are required under Section 6.25.1, also must sign the amendatory document.

6.25.3 Notwithstanding the provisions of Section 6.25.1, Developer and its successors and assigns (as successor Developers) shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded, to amend any of the Covenant provisions (except Section 6.2) without approval of the Owners.

6.25.4 In order for any amendment of these Covenants to be effective, the approval of the Plan Commission shall be required.

6.26 Subdivision. No lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under Section 1.9.

Section 7. Attorney Fees and Related Expenses. In the event the Association, Developer, an Owner, or the Plan Commission is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

Section 8. Sidewalks. Plans and specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of Lots 113, 121 through 125, and 130 through 146 as shown on the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. This Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Should a certificate of occupancy be issued to Developer for a Lot on which a sidewalk must be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant with respect to that Lot.

Section 9. Flood Protection Grades. In order to minimize potential damage to residences from surface water, minimum flood protection grades are hereby established as set forth below. All residences on such Lots shall be constructed so that the minimum elevation of the first floor, or the minimum sill elevation of any opening below the first floor, equals or exceeds the applicable minimum flood protection grade established in this Section 9. The flood protection grades shall be Mean Sea Level and shall be as follows:

Lots <u>130</u> through <u>139</u>	<u>817.2</u> feet mean sea level
Lots <u>148</u> through <u>154</u>	<u>813.1</u> feet mean sea level
Lot <u>147</u>	<u>821.5</u> feet mean sea level

Section 10. Mandatory Solid Waste Disposal. The Association shall be obligated to contract for disposal of garbage and other solid waste to and may pay for the cost of such disposal through assessments established under Section 4. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be excused from payment of any part of an assessment attributable to the cost of waste disposal for which the Association contracts under this section 10.

Section 11. Geothermal Systems.

11.1 Owners of Lots in the Subdivision shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service residences located on the Owner's Lots, and the right to use the Association property described below:

11.1.1 A System with a closed loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lots.

11.1.2 A System which uses and discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lots.

11.2 Any Systems so installed must:

11.2.1 Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations.

11.2.2 Satisfy reasonable requirements of the Allen County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and have the approval of Hawthorne Park Community Association, Inc.

11.2.3 Be installed according to approved guidelines of, and by technicians certified by, the International Ground Source Heat Pump Association.

11.3 Any Owner using property owned by the Association for the purpose described in Section 1.1 agrees to indemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with the Systems.

12. Club Membership, Operating Fund Assessment. The Developer plans to construct a bathhouse and swimming pool within Hawthorne Park, which facilities will be owned and operated by the Association, and which will be available exclusively for use by members of the Association. Upon the substantial completion of the bathhouse and swimming pool as determined by the Board of Directors of the Association, a Club Operating Fund will commence:

12.1 All Villaminium Lot Owners in Hawthorne Park shall be entitled, at their option, to membership and usage of the bathhouse and swimming pool, and shall pay as a part of such membership the same Club Assessment as the Single-Family Lot Owner Members. Such Club Assessment shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of Owner of such Lot, and may be collected in accordance with the provisions of this section.

12.2 All Single-Family Lot Owners within Hawthorne Park, Section IV, except those owned by the Developer and those Villaminium Lot owners who chose not to be a member pursuant to the above, shall be charged a Club Assessment (in addition to the Annual Assessments and Special Assessments provided in Section 4), with respect to the operation and maintenance of said facilities. This Club Assessment will be assessed against each lot owner irrespective of whether a Dwelling Unit is located thereon. Such Club Assessments shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of Owner of such Lot, and may be collected in accordance with the provisions of this section.

12.3 Except for the first Club Assessment, the due date shall be established by the Board of Directors of the Association. All Club Assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such Club Assessments. All members shall be subject to all rules and regulations governing Membership and use as may be established by the Association from time to time.

12.4 The amount of the annual Club Assessment shall be established as follows:

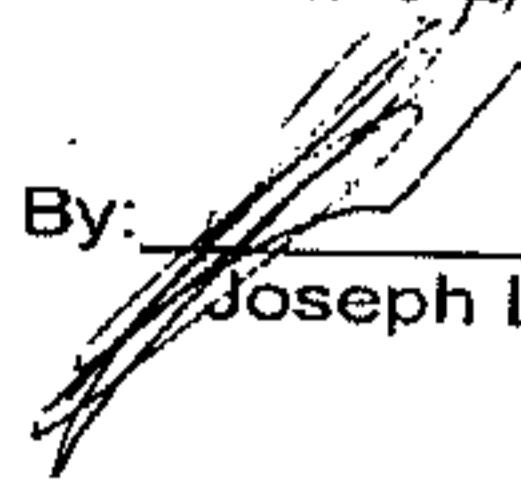
12.4.1 Commencing prior to the substantial completion of the bathhouse and swimming pool, the Board of Directors of the Association shall establish a budget for the fiscal year and shall determine therefrom the annual Club assessment for each lot required to meet said budget. Such budget and Club Assessment for each fiscal year shall be established by the Board of Directors. The Board of Director shall mail to all Association members a copy of a proposed budget and notice of the proposed Club Assessment.

12.4.2 Said Club Operating Fund shall be used exclusively for the

purpose of operating and maintaining said bathhouse and swimming pool as well as all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Board of Directors of the Association.

IN WITNESS WHEREOF, NPT Development Corp., an Indiana corporation, by its duly authorized President, Joseph L. Zehr, Owner of the Real Estate, has signed this document on this 20<sup>th</sup> day of March, 2002.

**NPT Development Corp.**

By: 

Joseph L. Zehr, President

STATE OF INDIANA      )  
                            )  
COUNTY OF ALLEN      ) SS

Before me, a Notary Public in and for said County and State, this 20<sup>th</sup> day of March, 2002, personally appeared Joseph L. Zehr, known to me to be the duly authorized President of NPT Development Corp., and acknowledged the execution of the above and foregoing as his voluntary act and deed and on behalf of said corporation for the purposes and uses set forth in this document.

Witness my hand and notarial seal.

  
\_\_\_\_\_  
Joan Willman, Notary Public  
Resident of Allen County, Indiana

My Commission Expires:  
July 6, 2009

This instrument was prepared by Tom Blee, Attorney at Law.

