

SECOND RESTATEMENT AND AMENDMENT TO PROTECTIVE COVENANTS FOR HAWTHORN HILLS SUBDIVISION

THIS 2ND RESTATEMENT AND AMENDMENT TO PROTECTIVE COVENANTS FOR HAWTHORN HILLS SUBDIVISION, made and entered into this 8th day of January, 2004, by the undersigned owners of lots located in Hawthorn Hills Subdivision, which Subdivision is located approximately three miles west of Hendersonville, North Carolina, on the north side of U. S. Highway 64;

WHEREAS, that property known as HAWTHORN HILLS SUBDIVISION was subjected to a Declaration of Protective Covenants on November 19, 1963, recorded in Deed Book 416, Page 686, which covenants were supplemented by instrument dated December 30, 1983 as recorded in Deed Book 636, Page 11, all references herein being made to the Henderson County Registry, Restatement and Amendment to Protective Covenants on April 23, 1999 as recorded in Deed Book 994, Page 646;

WHEREAS, the Declaration of Protective Covenants for Hawthorn Hills, both originally and as amended, provides that a majority of the Lot Owners may change said covenants in whole or in part;

WHEREAS, the undersigned are owners of lots which are subject to said covenants, which lots constitute more than sixty-seven (67) percent of the lots subject to said covenants to which votes are allocated;

WHEREAS, said undersigned owners join in this instrument, together with the Developer, Browning Enterprises, Inc., for the purpose of amending and restating said covenants;

NOW, THEREFORE, THE UNDERSIGNED PARTIES, in consideration of the mutual advantages accruing to each, do hereby make and establish the following Restatement and Amendment to Protective Covenants of Hawthorn Hills Subdivision.

The property which is subject to these Protective Covenants is more particularly identified as that property appearing on the following recorded plats:

Plat Cabinet A, Slides: 15-A, 18-A, 26, 50-A, 51, 73, 77-A,
221, 231, 285, 308, 319-A, and 351;

Plat Cabinet ^C_A Slides: 109-A (but excepting and not including Lot 11 and Lot 12 of Block A as appears on said plat slide 109-A, and also excepting and excluding all of that un-numbered lot on said plat side, upon which Lake Virginia is located), 113-A, 136, 162, 169, 179, 188, 195, 218-A, 222, 226-A, 243-A,

253-A, 262, 298-A, 305, 308, 312, 331-A, and 345-A, and
in addition,

That area bounded by Hawthorn Drive and Lots 1, 16 and 19 of Block E on recorded
plats of Hawthorn Hills Subdivision; all of which shall be hereinafter referred to
Collectively as the "Property."

ARTICLE I: DEFINITIONS

1. **ASSOCIATION:** shall mean that non-profit incorporated Association of property owners established for the purpose of administering the rights, duties and obligations of the owners of lots in the Hawthorn Hills Subdivision which are subject to these Covenants. The name of the Association shall be the Hawthorn Hills Property Owners Association, hereinafter called "the Association."
2. **BUILDING COMMITTEE:** The Building Committee shall mean that Committee the duties and authority of which are described in Article VI herein, and which is established pursuant to the By-Laws of the Association.
3. **COMMON ELEMENTS:** shall mean any portion of the Property which is owned or leased by the Association and held for the common benefit of all Lot Owners.
4. **COMMON EXPENSES:** shall mean expenditures made by the Association, or financial liabilities of the Association, together with any allocation to reserves.
5. **COMMON EXPENSE LIABILITY:** shall mean the liability for common expenses allocated to each lot by the Association.
6. **COVENANTS:** where the first letter thereof is capitalized, shall mean this instrument, titled "Second Restatement and Amendment to Protective Covenants for Hawthorn Hills."
7. **DEVELOPER:** shall mean Browning Enterprises, Inc., a North Carolina corporation.
8. **LOT:** shall mean and refer to any physical portion of the Property which is designated for separate occupancy or ownership, whether or not numbered, except those lots which are not sufficient, pursuant to applicable zoning regulations or Health Department regulations, to allow for the construction of a residence thereupon.
9. **LOT OWNER:** shall mean any person who owns a lot, including the Developer, but not including the Association, and also not including any person having an interest in a lot solely as security for an obligation.

10. PERSON: shall mean any natural person, corporation, trust, estate, partnership, or other legal entity.

11. PROPERTY: shall mean all of that real property appearing on any of the various recorded plat slides enumerated above as constituting the property which is subject to these covenants.

ARTICLE II: VOTING

1. Allocation. Each lot shall have one vote in matters affecting the Property. Such vote shall be cast by the Lot Owner thereof.

2. Method of Voting. Any vote may be cast by the designated person at a meeting, either in person or by proxy, or may be cast in writing.

ARTICLE III: MAINTENANCE OF PROPERTY

1. Each lot shall bear a pro rata share in the cost of maintenance of the Common Elements, and the Lot Owner of each lot shall be responsible for the payment of such share. The amount of these costs shall be the common expenses as set forth by the Association.

2. Those roads owned by the Developer shall remain the responsibility of the Developer until such time as the Association shall accept a deed for the same from the Developer.

ARTICLE IV: RESTRICTIONS

1. All lots in the Property except those designated on recorded plats of the Property as "Reserved and dedicated or common use," or other or similar designation, shall be used for detached single family residential use only. No residence shall exceed two stories in height.

2. No condominiums, town houses, cluster houses, or multiple family dwellings shall be built upon the Property.

3. The Building Committee, acting pursuant to instruction of and as an agent of the Board of Directors, shall have the authority to approve or disapprove of all plans or requests for waiver of any particular restriction. Such approval shall not be unreasonably withheld. A final determination of the Building Committee may be appealed to the full Board of Directors for hearing de novo, provided that such request for appeal is provided in writing to the President of the Association within 15 days of the Building Committee's final determination from which appeal is sought. The Board of Directors shall set a time for hearing the appeal no more than 45 days from the date the Board receives notice of appeal, and shall provide notice of the hearing to the homeowners by mailing notice

thereof at least 20 days prior to the chosen date for the hearing. Following discussion of the matter before the Board, the Board members present at the hearing shall vote on whether to overturn the Building Committee decision. A 2/3's majority of the Board members present must vote in favor of overturning the Building Committee's decision or in the alternative, in favor of allowing the waiver sought. The final determination of the Board of Directors at large shall be the final decision of the Association.

4. Each dwelling and garage must meet the requirements set forth in these covenants. No dwelling, garage, fence, or other structure shall be erected on any lot without prior written approval of the plans and specification therefor by the Building Committee. All such plans must show the location of all buildings to be placed or erected or altered on any lot. All residences shall be constructed of at least twenty-five (25) percent brick, brick veneer, or stone veneer, that no concrete or cinder blocks be used on any exposed surfaces, and that no fence or wall shall be erected, placed or altered upon any lot nearer to any street than the minimum building or setback line, unless the Building committee shall in writing waive this requirement. The Building committee shall have complete discretion in all respects of approval or disapproval of all plans, or requests for waiver; provided, however, that such approval shall not be unreasonably withheld; and any final decision of said Building Committee may be appealed pursuant to Article IV, Paragraph

5. Garages may not open to the front lot line unless the Building Committee grants written permission, which shall be based upon topological or access reasons. No garage shall be larger than required to house four (4) four-wheeled passenger vehicles. Each home shall have a garage of such size as is suitable for housing at least ~~one (1)~~ ^{two (2)} four-wheeled passenger vehicles.

6. No trade, business, or commerce shall be carried on upon any lot; nor shall there be carried on upon any lot any noxious or offensive activity.

7. No animals shall be raised, bred, or kept on any lot, with the exception of dogs, cats and other common household pets; provided, however, that such common household pets shall not be kept, bred, or maintained for commercial purposes; and provided further that all such animals must be confined at all times to the lot where the owner of said pet reside, except when such pet is on a leash.

8. No modular or mobile home shall be erected or moved onto a lot. This restriction does not prohibit the use of prefabricated parts of any structure such as, by way of example, and not by way of limitation, prefabricated trusses, window and door units, or other similar material.

9. No structure of temporary character, trailer, mobile home, travel trailer, basement, tent, shack, garage, or any other outbuilding shall be used as a residence, either temporary or permanent. A construction office or materials storage shed may be placed upon a lot temporarily during such time as the principal dwelling is under construction; following completion of construction, no shed shall be placed upon the property for any reason. Recreational trailers, motor homes, portable camping equipment, mobile equipment,

boats, and boat trailers may be stored on a lot provided that they are housed completely within an enclosed garage. No vehicle shall be parked or stored outside of a structure unless said vehicle is in daily or weekly use. Motor homes may be parked adjacent to the residence of the owner of said motor home for periods not to exceed 72 hours for the purpose of loading and unloading.

10. Dwellings constructed after the date of these covenants shall have a living area of not less than 1800 square feet exclusive of porches, garages, and basements.

11. No television or other electronic antenna, or electronic device shall be erected or maintained on any lot where such equipment is visible from any street or any lot in the Subdivision. Dish antennas no greater than 24 inches in diameter are permitted, but must be located on and affixed to the residence.

12. No outside clotheslines shall be permitted on any lot where they are visible from the street or the ground floor of any residence.

13. Grass and weeds shall be cut on all lots to prevent an unsightly appearance. This is the obligation of the Lot Owner and shall be done at his expense.

14. No lot may be used as a dumping ground for waste. Trash, garbage, and other refuse shall be kept in sanitary containers. All incinerators or other equipment for the disposal or storage of such material shall be kept in a clean and sanitary condition. During construction periods, building trash and debris shall be removed periodically and shall not be allowed to accumulate in an unsightly manner.

15. No fence, wall, hedge or planting that obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, in the case of rounded property, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot located within ten (10) feet from the intersection of the street property line with the edge of the driveway or alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

16. Driveways serving dwellings shall have a minimum width of nine (9) feet and shall be surfaced with asphalt, concrete, or other hard surface pavement. Final surfacing of driveways must be completed within five (5) months of the completion of construction. If required to meet North Carolina Department of Transportation standards, a culvert shall be installed where any driveway enters a road located upon the property.

17. No lot shall be subdivided so as to increase the total number of lots greater than the number established by the corresponding recorded plat upon which said lot appears. This restriction shall not prevent the combining of one or more lots by a homeowner to form one building site or prevent minor adjustments of property lines. In the event one or

more adjacent lots are acquired by the same Owner, for the purpose of forming one building site, then for the purpose of interpreting and applying these covenants, the exterior line of the entire contiguous parcel shall be considered the property lines of that parcel. If after combining lots, the Owner of such lots subsequently re-establishes the original lot lines, restrictive covenants shall be applied as if the combination had never occurred.

18. Setback requirements for construction occurring after the date of these Covenants shall be the same as those setbacks specified by the applicable Henderson County Zoning Ordinance, or as shown on recorded plats, whichever is greater, and shall be applied at the time that the construction occurs. Notwithstanding any provision to the contrary, no building shall be located nearer than 25 feet to any inside lot line. In cases of unusual topographic conditions, the Building Committee may approve a variance of not more than twenty (20) percent; such written approval to be recorded in the Henderson County Registry.

19. All outside construction work, grading and cleanup of a building site shall be completed within one year from the date construction begins. Grading of a site shall constitute commencement of construction.

20. No sign of any kind shall be displayed to the public view on any lot except: one sign of not more than five (5) square feet advertising the property for sale or for rent, signs of such size that may be used by a builder to advertise the property during the construction and sales period, and one (1) sign of conventional size that indicates the property is protected by a security system.

21. No lot may be used as access or utility access to any other property, except as provided in Article VIII.

22. An 80 percent majority vote is required in order to approve the acceptance of a deed by the Association.

ARTICLE V: OBLIGATION OF OWNERS

1. The Owner of each lot shall be responsible for payment of that Lot's pro-rata share of Common Expenses as provided herein, and in the By-Laws of the Association. The Association shall propose a budget for the subsequent calendar year at the annual meeting of the Association; this budget shall set out common expenditures. Copies of the proposed budget for the subsequent calendar year shall be provided to the Owners not less than two weeks prior to the annual meeting of the Association. At that meeting, the budget shall be approved by a majority of the votes present at the meeting in person or by proxy. If the budget is not approved, the budget for the preceding year shall remain in effect until a new budget is approved.

2. The Owner of each lot shall pay, for each lot owned, the assessment established as a result of the adoption of the budget for that particular year. Failure to pay such

assessments within ninety (90) days of notice that the assessments are due shall constitute delinquency; the Association shall have the right to enforce the payment thereof by bringing a civil action against the owner for payment of such delinquent amount. The Association shall be the proper party to bring such an action, and shall have the standing to act in its own name. Any judgment for payment of such delinquent assessment will include, with the Court's approval, all costs of the action, including reasonable attorney's fees actually incurred.

ARTICLE VI: BUILDING COMMITTEE

1. The Building Committee shall consist of three persons elected by the Lot Owners at the annual meeting of the Association, for one-year terms, which three persons shall themselves be Lot Owners; provided that for the first three annual meetings which take place following the date of these Covenants, the Developer or the Developer's representative shall constitute one of these three persons, with the remaining two to be elected by the Lot Owners. Lot Owners may be elected to successive terms.
2. All plans and specifications shall be submitted to, and approved in writing by, the Building Committee for approval before construction is begun. This requirement includes plans for exterior alterations subsequent to the initial construction, which shall require Building Committee written approval prior to commencement. The Building Committee shall review all plans and specifications thus submitted, and shall give written approval or disapproval of the plans pursuant to their interpretation of the Building Committee Guidelines. Approval shall not be unreasonably withheld, and any final determination of the Building Committee may be appealed to the Board of Directors pursuant to the provisions of Article IV, Paragraph 3.
3. In those cases that do not require a variance from these Covenants, the majority vote of members of the Building Committee shall determine the approval or disapproval. The granting of a variance from these covenants shall require unanimous approval by all of the members of the Building Committee. Any final decision of the Building Committee may be appealed to the Board of Directors pursuant to the provisions of Article IV, Paragraph 3.

ARTICLE VII: HOMEOWNERS ASSOCIATION

1. Immediately following the date of these Covenants there shall be formed a homeowners association called Hawthorn Hills Property Owners Association, which shall be a non-profit corporation authorized by the Office of the Secretary of State of North Carolina. Each Lot Owner shall be a member of the Association, and shall be subject to the by-laws, rules and regulations of the Association as they are promulgated and amended from time to time.
2. The Association shall have the power and duties set out herein, including the duty and authority to determine common expenditures, propose a budget, levy and collect

assessments for common expenditures, control the maintenance of common elements, review building proposals as set forth in these Covenants through its Building Committee, and to enforce the restrictions, covenants and obligations set out herein. The Association shall have such other duties and authorities as set forth in N.C.G.S. 47E3-102 as amended.

ARTICLE VIII: EASEMENT IN FAVOR OF DEVELOPER

1. The Developer shall have the following rights in addition to those of a Lot Owner: The Developer reserves an easement seven and one-half feet wide along all side and rear lot lines of all lots, for the installation and maintenance of public utilities and drainage facilities. The Developer also reserves, for itself and public utilities, surface and subsurface utility and access easements to be located within the rights of way of all streets in the Property. The Developer or a public utility using an easement for its intended purpose shall be responsible for restoration of the easement surface following disturbance as a result of exercise or use of such easement. Such restoration shall not include replacement of trees or shrubs. No other easement or right of access shall be conveyed, granted or otherwise transferred to any person or entity through or over any lot without the written permission of the Developer, and no lot shall be used as access to any adjacent land not owned by the Developer. Notwithstanding the above, the Developer reserves the right to dedicate access or utility rights of way to adjacent property through lots owned by the Developer as a means of access to other property owned by the Developer upon the date of these Covenants and lying adjacent to the Property.

ARTICLE IX: MEMBERSHIP AND ASSESSMENTS

1. Each Lot Owner, by virtue of ownership of a lot, shall be a member of the Association; such membership shall be appurtenant to the ownership of a lot and may not be separated therefrom.
2. Any assessment levied for common expenditures shall be assessed against each lot, whether or not one Lot Owner shall own more than one lot. Each lot shall be assessed the same amount. A lot designated on a recorded plat of the Property as "reserved for common use," or the like, shall have no vote and be charged no assessments.
3. The Association shall have the authority to grant an exception to voting and assessments.

ARTICLE X: AMENDMENT

These Covenants may be amended by affirmative vote signed by Lot Owners of lots to which at least sixty-seven (67) percent of the votes in the Association are allocated, at the time of the proposed amendment. Such amendment shall be valid when properly executed by such Lot Owners, and recorded in the Office of the Register of Deeds of Henderson County.

ARTICLE XI: MERGER WITH OTHER PLANNED COMMUNITY

1. By agreement of the Lot Owners as provided in paragraph 2 of this Article, the planned community which consists of the Property described herein may be merged or consolidated into a single planned community with a theretofore distinct and separate planned community, provided only that such communities share a geographical boundary which allows vehicle traffic a right of way to travel from one community to the other.
2. An agreement of this planned community to merge or consolidate pursuant to paragraph 1 of this Article may be accomplished pursuant to the provisions of North Carolina General Statute 47E-2-121, as amended and existing at the time of proposed merger or consolidation.

ARTICLE XII: MISCELLANEOUS

1. The Association, any Lot Owner, or the Developer may institute legal proceedings against any person violating or threatening to violate these Covenants.
2. A judicial determination that one or more of the provisions of these Covenants are unenforceable shall not affect the validity of the remaining provisions included herein.
3. The failure by any person to bring such action shall not constitute a waiver of such portion of the Covenants violated.
4. The provisions of Chapter 47E of the North Carolina General Statutes referred to as the "Planned Community Act," as amended from time to time, shall be applicable to these Covenants and to the Property.
5. These Covenants shall run with the land and shall be binding until January 1, 2009, at which time these Covenants shall automatically be extended for successive periods of ten (10) years unless amended as set forth herein, or unless terminated pursuant to the provisions of N.C.G.S. 47E-2-188 as amended.

Executed this, the day and year first above written.

/s/ Original signatures on file with Registered Copy
Henderson County (NC) Deed Book #1173 (page 55)