

Covenants

For

Hawthorne Hills First Replot

Misc. Record 169p. 819 (11 pages)

Hamilton County

This document referred to in Document No.

200100027892

5-15-2001

34975

SUPPLEMENTAL DECLARATION OF RESTRICTIONS FOR FIRST REPLAT OF A PART OF HAWTHORNE HILLS SUBDIVISION

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This Supplemental Declaration, made this 14th day of June 1982, by Compucom Development Corporation, an Indiana corporation (hereinafter referred to as "the Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner of certain land described in Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Real Estate"), and

WHEREAS, the Real Estate, together with certain other contiguous real estate, was platted in 1959 as a subdivision commonly known as the Hawthorne Hills Subdivision, the plat of which was recorded on October 14, 1959, as Instrument No. 5494, Book 2, page 167, in the Office of the Recorder of Hamilton County, Indiana, and

WHEREAS, the above referenced plat contains various restrictions which run with the platted land, and

WHEREAS, the Developer intends to replat portions of the Hawthorne Hills Subdivision and in connection therewith, desires to impose additional, mutual and beneficial restrictions on the Real Estate pursuant to a general plan or scheme of improvement for the benefit of the lots and lands in the Real Estate and the future owners thereof.

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and land located within the Real Estate as described in Exhibit A hereto, as they become replatted, are hereby held and shall be held, conveyed, hypothecated or encumbered, leased, used, occupied and improved subject to the existing plat restrictions for the Hawthorne Hills Subdivision as recorded in 1959 and referred to herein (a copy of said plat restrictions is set forth in Exhibit B which is attached to, fully incorporated herein, and made a part hereof), and the Real Estate is further subject to the following supplemental restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of lots and land in the Real Estate and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate and of each of said lots situated therein. All of the Supplemental Restrictions contained herein shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title, interest, legal or equitable, in and to the Real Estate or any part or parts thereof, subject to said Supplemental Restrictions and shall inure to the benefit of the Developer and every one of the Developer's successors in title to the Real Estate. The Developer specifically reserves unto itself the right and privilege prior to the recording of any replat of the Hawthorne Hills Subdivision, or any additional land owned by the Developer, to exclude any real estate so described from the Real Estate to be encumbered by these Supplemental Restrictions or to include additional real estate.

RECEIVED FOR RECORD JUN 15 9 22 PM '82 MARY L. CLARK RECORDER HAMILTON CO., IND.

This Instrument Recorded June 16 1982 MARY L. CLARK RECORDER HAMILTON COUNTY, IN

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1. DEFINITIONS. The following are the definitions of the terms as they are used in this Supplemental Declaration of Restrictions.

A. "Committee" shall mean the Hawthorne Hills Development Control Committee composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole discretion at any time hereafter, relinquish to any group or organization the power to appoint and remove one or more members of the Committee.

B. "Lot" shall mean any parcel of residential real estate described by one of the replats of the real estate which is recorded in the Office of the Recorder of Hamilton County, Indiana.

C. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer, by the President or a Vice President thereof.

D. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a lot but excluding those persons having such interest merely as security for the performance of an obligation.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot within the Real Estate is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots unless approved by the Developer, its successors or assigns.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the lots prior to the erection thereon of a single family dwelling house and in no event shall any such accessory outbuilding or temporary structure which may be constructed upon a residential lot under these Supplemental Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Developer and such decision shall be binding on all parties.

D. Subdivision of Lots. No lot within the Real Estate shall be divided or subdivided in order to provide for an additional lot or lots.

E. Other Restrictions. All lots within the Real Estate shall be subject to the easements, restrictions and limitations of record as set forth in the Plat of the Hawthorne Hills Subdivision, recorded on October 14, 1959, as Instrument No. 5494, Book 2, page 167 in the Office of the Recorder of Hamilton County, Indiana. A copy of said Plat Restrictions

is hereby incorporated by reference and set forth in Exhibit B hereto. Nothing contained in these Supplemental Restrictions shall be construed or interpreted to negate the existing restrictions referred to herein and set forth in Exhibit B hereto.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Real Estate, as referred to in Exhibit B, exclusive of porches, terraces, garages, carports, accessory buildings, or basements shall be eighteen hundred (1,800) square feet as opposed to 1,500 square feet.

B. Fences. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Real Estate, any fence must be approved by the Developer as to size, location, height and composition before it may be installed.

C. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Real Estate shall be of material other than tar paper, rollbrick siding or any other similar material.

D. Heating Plants. Every house in the Real Estate must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house.

E. Diligence in Construction. Every building whose construction or placement on any residential lot in the Real Estate is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

F. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Real Estate shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

G. Maintenance of Lots and Improvements. The Owner of any lot in the Real Estate shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:

(i) Mow such portion of the lot upon which grass has been planted at such times as may be reasonably required.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

H. Yard Lights. The Owner of every lot in the Real Estate shall install a front yard light on his lot at the time that a home is constructed on the lot. The type of light and location of the light is subject to approval by the Developer.

I. Developer's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Real Estate shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Supplemental Restrictions, the Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Supplemental Restrictions. The cost therefor to the Developer shall be collected in any reasonable manner from the Owner. Neither the Developer nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

J. Prohibition on Removal of Trees. No tree of a diameter in excess of six inches shall be removed by any owner of any lot in the Real Estate without the prior consent of the Developer. At the time of the submission by each owner of the plans of the proposed residential structure to the Developer in accordance with the provisions of paragraph 6 of these Supplemental Restrictions, each such owner shall indicate upon the plot plan to be submitted at such time the location and size of all trees proposed to be removed as a result of such construction. The removal of such trees must be approved by the Developer.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Nuisances. No outside toilets shall be permitted on any lot in the Real Estate (except during a period of construction and then only with the consent of the Developer). By purchase of a lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Developer in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Neither the Developer, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Septic Systems. Each lot owner shall be required to install a septic system as approved by the Hamilton County Health Department. This system together with a finger system, and peripheral subsurface drain tile, shall be installed in strict compliance with the following procedure.

(i) The lot owner shall submit to the Developer detailed plans and specifications to include the following items. These plans and specifications shall be submitted at the same time that house plans are submitted pursuant to paragraph 6 of these Restrictions.

(aa) Location of septic system.

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(bb) Location of the finger system (which is to be located in the immediate area of a certified percolation test).

(cc) Location of water well.

(dd) Location of peripheral subsurface drain tile. The peripheral subsurface drain tile shall abut the finger system.

(ee) Direction of surface water flowage on the lot.

(ff) Details of construction.

(ii) The lot owner will specify the contractor who is to install the sewage system, finger system and peripheral subsurface drain tile. The contractor is to be bonded, experienced and competent in these types of installations.

(iii) The septic system, finger system and peripheral subsurface drain tile are to be installed in accordance with approved plans and specifications as provided herein and these installations shall be left uncovered for inspection by a registered engineer approved by the Developer.

5. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be carried on on any lot in the Real Estate, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Real Estate.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structure in the Real Estate without the prior written approval of the Developer.

C. Animals. No animals shall be kept or maintained on any lot in the Real Estate except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Garbage, Trash and Other Refuse. No Owner of a lot in the Real Estate shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his lot.

E. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Real Estate shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Real Estate at any time, except at the times when refuse collections are being made.

F. Model Homes. No Owner of any lot in the Real Estate shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

G. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot, except upon lands specifically designated by the Developer for camping purposes, and then only subject to such rules as may be adopted by the Developer for the use of camping areas.

H. Ditches and Swales. It shall be the duty of every Owner of every lot in the Real Estate on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the Developer. The size and location of the culvert to be installed must be specified on the plot plan as required by Paragraph 6 of these Restrictions and shall be subject to the approval of the Developer.

6. APPROVAL OF PLANS BY THE DEVELOPER.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Real Estate without the prior approval of the Developer. Such approval shall be obtained only after written application has been made to the Developer by the Owner of the lot requesting authorization from the Developer. Such written application shall be in the manner and form prescribed from time to time by the Developer, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Developer may require. There shall also be submitted, where applicable, the permits or reports required under paragraph 4 of these Restrictions.

(ii) Power of Disapproval. The Developer may refuse to grant permission to construct, place or make the requested improvement, when:

(aa) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Supplemental Restrictions or the plat restrictions as shown in Exhibit B hereto.

(bb) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

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

(iii) Power to Grant Variances. The Developer may allow reasonable variances or adjustments of these Supplemental Restrictions where literal application would result in unnecessary hardship, but any such variance

or adjustment shall be granted in conformity with the general intent and purposes of these Supplemental Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Real Estate.

B. Duties of Developer. The Developer shall approve or disapprove proposed improvements within 30 days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Developer for its permanent files. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

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

D. Inspection. The Developer may inspect work being performed with its permission to assure compliance with these Supplemental Restrictions and applicable regulations.

7. REMEDIES.

A. In General. Any party to whose benefit these Supplemental Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Supplemental Restrictions, but the Developer shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Supplemental Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Supplemental Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Supplemental Restrictions.

8. EFFECT OF BECOMING AN OWNER.

The Owners of any lot subject to these Supplemental Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Supplemental Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer with respect to these Supplemental Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer and to and with the Owners and subsequent owners of each of the lots affected by these Supplemental Restrictions to keep, observe, comply with and perform such Supplemental Restrictions and agreements.

9. TITLES.

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The underlined titles preceding the various paragraphs and subparagraphs of these Supplemental Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of these Supplemental Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

10. DURATION.

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until July 1, 2000, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the numbered lots in the Real Estate.

11. SEVERABILITY.

Every one of these Supplemental Restrictions is hereby declared to be independent of, and severable from, the rest of the Supplemental Restrictions and of and from every other one of the Supplemental Restrictions, and of and from every combination of the Supplemental Restrictions.

Therefore, if any of these Supplemental Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of these Supplemental Restrictions.

IN WITNESS WHEREOF, the Developer has caused this Supplemental Declaration of Restrictions to be executed as of the day and year first above written.

COMPUCOM DEVELOPMENT CORPORATION

ATTEST:

Ken Giffin
Ken Giffin, Secretary
STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

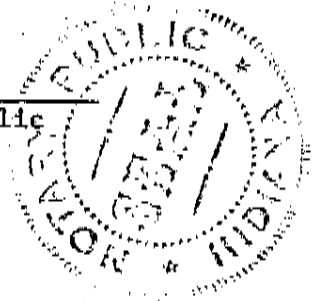
By Hayes T. O'Brien
Hayes T. O'Brien, President

Before me, a Notary Public in and for said County and State, personally appeared Hayes T. O'Brien and Ken Giffin, the President and Secretary respectively of Compucom Development Corporation, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of Compucom Development Corporation.

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Witness my hand and Notarial Seal this 14th day of June, 1982.

Cheri L. Graf
Cheri L. Graf Notary Public



My Commission Expires June 17, 1984

My County of Residence Is Hamilton

This instrument was prepared by Hayes T. O'Brien, attorney at law.

EXHIBIT A

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Lots and part of lots in Hawthorn Hills, the plat of which was recorded October 14, 1959, in Plat Book 2 on pages 167 and 168 in the Office of the Recorder of Hamilton County, Indiana, which said plat lies in the Southeast Quarter of Section 5, Township 17 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Lots 1, 5 through 9, 13 through 16, 19 through 23 and 74 through 76 in said Hawthorn Hills. Also, part of Lots 2 and 10 in said Hawthorn Hills more particularly described as follows:

Beginning at the Northeast corner of said Lot 10; thence along the East line of said Lot 10 and said Lot 2 South 00 degrees 00 minutes 18 seconds East 325.70 feet to the Southeast corner of said Lot 2; thence along the South line of said Lot 2 South 89 degrees 31 minutes 05 seconds West 70.00 feet; thence parallel with the East line of said Lots 2 and 10 North 00 degrees 00 minutes 18 seconds West 325.70 feet to a point on the North line of said Lot 10 which bears South 89 degrees 31 minutes 05 seconds West 70.00 feet from the point of beginning; thence along the North line of said Lot 10 North 89 degrees 31 minutes 05 seconds East 70.00 feet to the Point of Beginning, containing 22,800 square feet, more or less.

Also, part of Lots 4 and 12 in said Hawthorn Hills more particularly described as follows: Beginning at the Northwest corner of said Lot 12; thence along the North line thereof North 89 degrees 31 minutes 05 seconds East 105.00 feet; thence parallel with the East line of said Lot 12 and said Lot 4 South 00 degrees 00 minutes 18 seconds East 325.70 feet to a point on the South line of said Lot 4; thence along the South line of said Lot 4 South 89 degrees 31 minutes 05 seconds West 105.00 feet to the Southwest corner of said Lot 4; thence along the West line of said Lot 4 and said Lot 12 North 00 degrees 00 minutes 18 seconds West 325.70 feet to the Point of Beginning, containing 34,200 square feet, more or less.

Also, part of Lot 18 in said Hawthorn Hills more particularly described as follows: Beginning at the common Northerly corner of said Lot 18 and said Lot 19; thence along the common lot line thereof South 25 degrees 54 minutes 33 seconds East 147.73 feet (measured) 154 feet (Plat) to the common Southerly corner of said lots; thence crossing through said Lot 18 North 57 degrees 40 minutes 18 seconds West 252.12 feet to a point on the Northerly line of said Lot 18; thence along the Northerly line of said Lot 18 South 89 degrees 15 minutes 00 seconds East 148.50 feet to the Point of Beginning, containing 9,803 square feet, more or less.

Also, part of Lot 73 in said Hawthorn Hills more particularly described as follows: Beginning at the common Westerly corner of said Lot 73 and said Lot 74; thence along the Westerly line of said Lot 73 North 04 degrees 38 minutes 55 seconds West 48.46 feet; thence North 73 degrees 03 minutes 38 seconds East 172.89 feet to a point on the Easterly line of said Lot 73 which bears North 16 degrees 56 minutes 23 seconds West 70.00 feet from the Southeast corner of said Lot 73; thence along the Easterly line of said Lot 73 South 16 degrees 56 minutes 23 seconds East 70.00 feet to said Southeast corner of Lot 73; thence along the Southerly line of said Lot 73 South 80 degrees 06 minutes 25 seconds West 184.60 feet (measured) 190 feet (Plat) to the Point of Beginning, containing 10,506 square feet, more or less.

EXHIBIT BBOOK 169 PAGE 829

There are strips of ground normally 5 feet in width, except those along the West and North limits of the area which are 10 feet in width, shown on the within plat marked "Utility Easements" which are hereby reserved for use by Public Utilities for the installation and maintenance of utility structures, subject to civil authority. No permanent or other structure shall be erected or maintained on said strips. The owners of lots in this addition shall take title subject to the rights of the public utilities and to those of owners of lots in this addition to said easements herein granted for ingress and egress in, along, across, and through the strips of ground so reserved.

All lots shall be residential lots, on which only one single family dwelling with garages and accessory buildings of capacity and useage, normal thereto, may be erected.

No structure other than fences not exceeding 3 feet 6 inches in height, or attached open porches, shall be erected nearer to the front lot line than the building line shown in the plat, and no building shall be nearer to the side lot line than 15% of the lot width or 15 feet, whichever is lesser, subject, however, to all zoning ordinances.

No residence shall be erected on any lot which has an area of less than 20,000 square feet, or a width of less than 100 feet at the front building set back line.

No noxious or offensive trade or activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

No trailer, tent, basement, shack, garage, barn or other outbuildings erected on any lot or parcel herein shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

This Instrument Recorded June 16 1982
MARY L. CLARK, RECORDER/HAMILTON COUNTY, IND.

No private sewage disposal method shall be employed or maintained, except that a sanitary septic tank and adequate absorption bed of type and construction approved in writing by the Indiana State Board of Health, may be used until such time as a sanitary sewer system is available.

Until an approved water supply system shall be available in said area, individual wells shall be permitted, providing location, sufficiency of supply, and purity is approved by Indiana Board of Health.

No dwelling shall be permitted unless the ground floor area of the main structure, exclusive of open porches and garages, shall be not less than 1500 square feet in the case of one story structures, nor not less than 1200 square feet in the case of one and one-half, two, or two and one-half story structures. The ground floor area shall be the floor area which has an elevation nearest to the elevation of the highway in front of the dwelling.