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JOHN MCGAULEY

ALLEN COUNTY RECORDER

FORT WAYNE, IN

**AMENDED AND RESTATED DECLARATION OF EASEMENTS AND
PROTECTIVE COVENANTS, RESTRICTIONS AND LIMITATIONS FOR
WEST HAMILTON ESTATES, A SUBDIVISION IN
ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA**

Aboite Twp

This Amended and Restated Declaration of Easements and Protective Covenants, Restrictions and Limitations for West Hamilton Estates, a Subdivision in Aboite Township, Allen County, Indiana (the "Amended Declaration") is executed this 3rd day of September, 2013, by WEST HAMILTON ESTATES ASSOCIATION, INC., an Indiana nonprofit corporation ("Declarant").

Recitals

WHEREAS, the original Declaration of Easements and Protective Covenants, Restrictions and Limitations for West Hamilton Estates, a Subdivision in Aboite Township, Allen County, Indiana, was recorded in the Office of the Recorder for Allen County, Indiana, on August 29, 1985, as Document No. 85-024075 ("Original Declaration");

WHEREAS, Declarant is the duly formed and authorized association created by Section 11 of the Original Declaration;

WHEREAS, Eighty Percent (80%) or more of the Owners, as defined in Section 32(b)(ii) of Original Declaration, have approved certain modifications to the Original Declaration in compliance with the terms and conditions contained in Section 32(b)(ii) of the Original Declaration; and

WHEREAS, the modifications to the Original Declaration include a new table of contents and, for clarity, the Declarant desires to include the table of contents and the modifications by virtue of an amendment and restatement of the Original Declaration in its entirety.

NOW, THEREFORE, Declarant hereby states and declares that (a) eighty-percent (80%) of the Owners, as defined in the Original Declaration, have approved certain modifications to the Original Declaration pursuant to the terms and conditions of Section

dms.us.52608666.01

SEP 04 2013

Stacy O'Day
STACY O'DAY
ALLEN COUNTY ASSESSOR

ALLEN COUNTY RECORDER
SEP 4 2013

SEP -4 2013

Jera K. Klutz
ALLEN COUNTY RECORDER

3871(6)

32(b)(ii); (b) attached hereto as Exhibit A are the Amended and Restated Declaration of Easements and Protective Covenants, Restrictions and Limitations for West Hamilton Estates, a subdivision in Aboite Township, Allen County, Indiana, which includes the new table of contents and modifications thereto; and (c) this Amended Declaration has been approved in accordance with the terms and conditions of Section 32(b)(ii) of the Original Declaration and shall amend and replace the Original Declaration in its entirety.

IN WITNESS WHEREOF, this Declaration has been executed by Declarant effective as of the first date above written.

WEST HAMILTON ESTATES ASSOCIATION, INC.,
an Indiana nonprofit corporation

By: *J. A. Bomberger*
Jon A. Bomberger, President

"Declarant"

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 3rd day of September, 2013 personally appeared Jon A. Bomberger, the President of West Hamilton Estates Association, Inc., an Indiana nonprofit corporation, and acknowledged the execution of the above and foregoing Amended and Restated Declaration of Easements and Protective Covenants, Restrictions and Limitations for West Hamilton Estates, a subdivision in Aboite Township, Allen County, Indiana, on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date above written.

My Commission Expires: _____

NOTARY PUBLIC
STATE OF INDIANA

Julia E. Harber
Notary Public

JULIA E. HARBER (Printed Name)
NOTARY PUBLIC
Resident of ALLEN COUNTY, INDIANA County, Indiana
MY COMMISSION EXPIRES NOVEMBER 3, 2017

This instrument was prepared by Jon A. Bomberger, Attorney at Law, Faegre Baker Daniels LLP, 111 E. Wayne Street, Suite 800, Fort Wayne, Indiana 46802.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Jon A. Bomberger

EXHIBIT A

(See attached)



**AMENDED AND RESTATED DECLARATION OF EASEMENTS AND
PROTECTIVE COVENANTS, RESTRICTIONS AND LIMITATIONS FOR
WEST HAMILTON ESTATES, A SUBDIVISION IN
ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA**

dms.us.52608666.01

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**WEST HAMILTON ESTATES ASSOCIATION
EASEMENTS AND PROTECTIVE COVENANTS
RESTRICTIONS AND LIMITATIONS**

All of the lots in the plat of West Hamilton Estates, from henceforth to be known as "Subdivision", shall be subject to and impressed with the easements and protective covenants, restrictions and limitations hereinafter set forth, which shall be considered a part of every conveyance of any lot or portion thereof in the Subdivision without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners and occupiers, present and future, of any and all lots in said Subdivision and they call run with and bind the land and shall inure to the benefit of and be enforceable by the owners and occupiers of any lot or lots in the Subdivision and their respective legal representatives, heirs, successors, grantees and assigns. The owners and occupiers, present or future, of any lot or lots in the Subdivision shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also to damages for any injury resulting from any violation thereof; but there shall be no right of reversion, re-entry or forfeiture of title resulting from any violation.

West Hamilton Estates, Inc., shall be known hereafter as "Developer" for purposes of this document.

1. Use. All lots in the Subdivision shall be used only for single-family residential purposes, but domestic servants employed by a resident owner may also reside in the dwelling. No more than one single-family dwelling, together with outbuildings to be used solely in connection with such residential use and not in violation of the other provisions of these restrictions, shall be construed or maintained on a lot.
2. Subdivision of Lots. No lot may be subdivided, except that a lot may be divided into two parts where each part is under common ownership and use with an entire, contiguous lot, in which case the part and the entire lot with which it is contiguous shall be treated as one lot for the purposes of these covenants and restrictions.
3. Building Lines. No building shall be located on any lot nearer the front, side or rear lot line than the building lines shown on the plat. When building lines for a lot are not shown on the plat, that lot shall have the following building lines: front --- 100 feet, rear --- 40 feet, and each sideline --- 15 feet, provided that the aggregate sidelines width shall be a minimum of 35 feet.
4. Architectural Control.
 - a. In order to insure for a quality environment and to protect the value of all property, owners' plans and specifications for each dwelling, outbuilding, fence, or wall to be placed or altered on any lot must be submitted to the Architectural Control Committee prior to construction. The submission must include the drawings of the structure including elevations for all sides and

floor plans if appropriate, a description of materials on the F.H.A. form 2005, or superseding forms, comparable information, site plan showing placement of dwelling, outbuilding, fence, or wall on site with dimensions to perimeter of site and grade elevations. Quality of workmanship and materials, harmony of exterior design with existing structures in the subdivision, and location with respect to topography and to finished grade elevations established by the Committee will be reviewed and approved by the Architectural Control Committee.

- b. No dwelling shall be permitted, the ground floor area of which, exclusive of open porches, breezeways, and garages, that is less than twenty-four hundred (2400) square feet in the case of a one story residence, or in the case of a dwelling of more than one story, twenty nine hundred (2900) square feet, with the first floor including a minimum of eighteen hundred (1800) square feet.
- c. Garages must include a minimum of seven hundred twenty (720) square feet. Garage doors opening onto the street side are prohibited. Because of the terrain, variances may be necessary. Variances must be reviewed and approved by the Architectural Control Committee.
- d. No communication receiving or transmitting device or equipment shall be used on any lot which interferes with the reception on any other lot without the prior written consent of the ACC, which consent may be withheld or, once given, revoked for any reason.
- e. The Architectural Control Committee shall approved or disapprove construction plans and specifications and locations of structures as provided in this paragraph 4. The Committee's approval or disapproval shall be in writing. If the Committee, or its designated representative, fails to approve or disapprove them, as required by these provisions, within thirty (30) days after the plans and specifications and plot plan have been submitted to it and if no suit to enjoin the construction is commenced prior to the completion thereof, approval will not be required and the applicable provisions hereof shall be deemed to have been fully complied with.
- f. The Architectural Control Committee shall be composed of three members appointed by West Hamilton Estates Association. The majority of such Committee may designate a representative to act for it. Neither the members of the Committee nor its representatives shall be entitled to any compensation for services performed pursuant thereto.
- g. Mailboxes selected by lot owners of the subdivision will be box #121 (large rural mailbox) designed by Bacova Guild Mailboxes. These boxes will be placed on posts designed and installed by West Hamilton Estates, Inc., or its designee in compliance with postal regulations. The lot owner shall be

responsible for the purchase of the box, the post, and the costs of installation of both.

5. Platted Utility Easements.

- a. All lots in the Subdivision shall be subject to the easements indicated upon the recorded plat, which may be used, subject to the provisions of Paragraph 7 below, for the installation, construction, maintenance, operation, servicing, repair, removal and replacement of (i) poles, wires and conduits, and the necessary and proper attachments in connection therewith, for the transmission of electricity for light, power, telephone and other purposes, (ii) surface and storm water sewers and drains, (iii) sanitary sewers, (iv) pipe lines for supplying gas, water and heat, and (v) for any other municipal, public or quasi-public utility.
- b. Any municipal, public or quasi-public utility engaged in supplying one or more of the above utility services shall have the right to enter upon the strips of land subject to said easements for any purpose for which said easements may be used. All structures, shrubbery, trees and other installations located within said easements shall be subject to the paramount right of each such utility to use said easements as provided herein and the removal of any obstruction by any utility shall in no way obligate the utility in damages or to restore the obstruction.

6. Utility Easements in Streets. Utility easements in all platted streets are reserved for use, subject to the provisions of Paragraph 7 below, by municipal, public and quasi-public utilities and by Developer, and its successors and assigns, for the installation, construction, maintenance, operation, servicing, repair, removal and replacement of utility plant, subject to the reasonable regulation by any governmental body having jurisdiction of the streets and subject to the obligation of any such utility which installs plant in any street or road easement to repair and return the pavement of such street to at least as good a condition as existed prior to such work.

7. Prohibition of Overhead Utility Facilities. All utility wires, cables, conduits, pipes and other facilities within the Addition shall be located underground within the utility easements provided hereby, except that:

- a. Poles and overhead facilities may be used to the extent reasonably necessary at those places where distribution facilities enter and leave the Subdivision, and
- b. Housing, pedestals and other facilities may be above the surface of the ground to the extent permitted by Paragraph 8 below and to the extent otherwise necessary for the installation and operation of the utility services, but shall be

constructed and maintained at as low a height and in as inconspicuous a manner as is practicable.

8. Utility Service Entrances. All utility service entrances running from any utility plant within a platted easement or a street to any structure on a lot shall be located underground, except for such housing, pedestals or other facilities as may be appropriate or necessary for connection, servicing and maintenance of such utility service entrance. Such housing, pedestals and other facilities shall be constructed and maintained at as low a height and in as inconspicuous a manner as is practicable. Each owner shall, at the time of the installation of any such service entrance, furnish to the utility for its records a drawing or other description accurately showing the location underground of the service entrance from the easement or street to the owner's structure. Each utility having plant in any easement or street shall have control over the installation of all connections to its plant for service entrances serving lots. Each such installation shall be left open for inspection and approval by the utility.
9. Sewer System. Sewers on lots in said Subdivision shall be connected to the sanitary sewage system according to the plans and specifications of the Developer. No surface water is to be induced into the sanitary sewage system.
10. Storm Drainage Easement. The storm drainage easement shown on the plat is for use for the surface drainage of surface water falling onto the land platted as the Subdivision. The easement shall be kept open, except for culverts and bridges necessary for roads, drives and walkways. No structure may be placed in an easement except (a) roads, drives and walkways where they cross an easement, (b) culverts and bridges permitted by this paragraph, (c) structures which are necessary to control erosion within the easement, (d) utility facilities where a utility easement and a storm drainage easement coincide, and (e) dams for ponds which will be confined at all times to the lot on which the dam is located. The Association shall have the right to repair and maintain land and structures within such easement when necessary or desirable for their use and for such drainage and shall have the right to make assessments therefore, but only against those lots which drain into such easement. Any public authority having jurisdiction over storm drainage within the Subdivision shall have such right to repair and maintain, or to require repair and maintenance of land and structures within such easements as is provided by law from time to time, but the Association shall be afforded a reasonable time to make such repairs and maintenance before the public authority may act.
11. West Hamilton Association.
 - a. The Developer shall cause an Indiana not-for-profit corporation to be formed with the name West Hamilton Estates Association. The owners of each lot in the Subdivision shall be deemed to be a member of the Association and all owners of each lot shall be entitled to one vote for each lot owned by them.

- b. The Association shall have responsibility and authority for proper maintenance and repair of common areas in the Subdivision, including riding walking, and emergency easements, pond area, dams and culverts and any areas in the Subdivision to which it may have title. Such responsibility shall include the cutting of grass and weeds, the removal of snow and ice and the installation, maintenance and operation of street lights.
 - c. The Association may make contracts to carry out its responsibilities and shall have the power to pay taxes and other charges on land and other property owned by it from time to time.
 - d. From time to time the Association shall make an assessment upon each lot in the Subdivision for the payment of the expenses incurred in carrying out its responsibilities, in an amount equal to the sum obtained by dividing such expenses by the number of lots in the Subdivision in order to raise funds in advance to enable the Association to perform its responsibilities.
 - e. Records shall be kept by the Secretary of the Association of all action taken by the Association, including all contracts entered into and all expenses incurred.
 - f. Any disputes concerning allocation of expenses hereunder which are not resolved by the Association within three months after the dispute arises shall be resolved by the Developer, or if the Developer is not in existence, then by an arbitrator chosen by the Board of Directors of the Association, which determination shall be conclusively binding upon all persons.
12. Private Roads. No private driveways or roads may connect with any other private driveway, easement, or platted, dedicated or other type road outside the Subdivision.
13. Natural Areas.
- a. In the case of lots numbered 1, 2, 3, 4, 14, 15, 19, 20, 21 and 25 at least 60% of the wooded area on the lot (exclusive of wooded areas lying within platted utility easements other than storm drainage easements), as shown on the plat of said subdivision attached to this instrument and made a part hereof, shall be kept in its natural condition except for trails. Such wooded areas shall be called "natural areas". The purpose of this provision is to preserve the wooded and natural character of the land, to allow natural reforestation, and to preserve wildlife habitats. This provision shall not prohibit the removal of dead trees. Notwithstanding the provisions of this paragraph, the provisions of paragraph 10 shall control as to all land lying within a storm drainage easement. The Architectural Control Committee shall have sole authority to resolve disputes arising under this provision and its determination shall be conclusively binding upon all interested persons.
 - b. No live, healthy hardwood trees 16" or more in diameter shall be cut down on any lot or community area except for those required to be removed for

approved construction or unless specifically authorized by the Architectural Control Committee.

14. Lien for Lot Assessments, and Payment. Assessments against a lot in the Subdivision pursuant to the provisions in this instrument shall be payable by the owner thereof to the Treasurer of the West Hamilton Estates Association within 60 days from the time that notice of such assessment has been mailed to the owner. Each assessment shall be and remain a lien upon the lot until full payment thereof, subject only to first mortgages, real estate taxes, public improvement assessments, and easements created hereby. All payments of assessments shall be noted on the books of the Association and, on request, the Treasurer or other authorized officer of the Association shall furnish to any owner of a lot in the Subdivision a certificate showing whether any assessment against any lot remains unpaid. Such certificate may be relied upon by the lot owner, any prospective purchaser and any mortgagee. The lien of any past-due assessment may be foreclosed in the same manner as mortgages are foreclosed. Assessment shall be payable without relief from valuation and appraisal laws and with reasonable attorneys fees.
15. West Hamilton Estates Community Area. The community area shown on the plat as Block "A", "B", and "C" are for the exclusive use of the owners and occupiers of the lots in the Subdivision and their invitees, subject to such reasonable rules and regulations as may be imposed by the Developer or the Association.
16. Outdoor Lighting. No permanent outdoor light source shall be located more than 12 feet above ground level, except in the case of lights installed in or attached to and located underneath the eaves of a structure. All outdoor light sources in excess of 1,500 lumens shall be installed so that the direct rays therefrom are confined to the lot upon which the source is located. No outdoor light source shall exceed 4,500 lumens. All outdoor light sources located within 25 feet of each other shall be deemed to be one light source for the purposes of this paragraph. A light source shall be deemed to be outdoor unless it is located within a completely enclosed building. The provisions of this paragraph shall not apply to street lighting installed by the Developer or the West Hamilton Estates Association.
17. Motorized Vehicles. No motorized vehicles (including without limitation snowmobiles, trailbikes, or motorcycles) shall be permitted on any of the riding and walking easements, except such as are necessary in connection with utility uses, nor on community areas.
18. Oil, Gas, and Mining. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

19. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.
20. Animals. No animal of any kind shall be kept, raised or bred on any lot except that dogs, cats and other household pets may be kept, provided that they are not kept, raised or bred for commercial purposes. Owners of lots shall confine their pets to their lots and shall not permit them to roam unattended through the Subdivision or permit them to trespass upon lots of others. All residents are responsible for collection and disposal of their pet's solid waste and shall have their pets on leash when said pet is not on owner's lot.
21. Signs. No signs of any kind shall be displayed to public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by builders to advertise the property during the period of construction and sale.
22. Storage Tanks. All fuel and other storage tanks shall be installed underground or concealed within the dwelling or garage.
23. No Hunting, Shooting, Trapping. No hunting, shooting, or trapping shall be allowed in the Addition.
24. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used or maintained on any lot at any time as a residence, either temporarily or permanently; nor shall any building be moved into or upon any lot for such purpose.
25. Storing of Equipment. No truck, boat, motor home, camping or other trailer, or other equipment or machinery of any kind shall be kept on any lot unless fully screened from adjacent lot owners and public view by an appropriate fence or screen.
26. Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other refuse or debris and the same shall not be kept except in sanitary containers while awaiting removal from the premises. All incinerators or other equipment for storage or disposal of such material shall be kept in a clean and sanitary condition and shall either be located within the dwelling or garage or underground or shall be fully screened from public view by an appropriate fence or screen.
27. Driveways. All driveways must be asphalt or concrete.
28. Burning of Materials. The burning of papers, grass and other materials shall not be allowed except in receptacles approved by the Association. Either the Developer or the Association may order discontinuance of all burning during the

time as it reasonably believes that such burning would be hazardous because of weather conditions.

29. Culverts. Each lot owner shall provide and install a 12" x 30' (or larger if required by the Allen County Highway Department) tube at the point where the driveway crossed the grass swale in the street right-of-way.
30. Completion of Utilities Before Occupation. All street, drainage and utility improvements serving a lot which are required by the plans and specifications filed by the Developer with the Allen County Plan Commission shall be installed before any dwelling house on the lot in the Subdivision is used or occupied.
31. Compliance with Zoning Laws. Before any lot may be used and occupied, such user or occupier shall first obtain from the applicable governmental authority such improvement location and/or occupancy permits as may be required by applicable zoning or other ordinances.
32. Duration and Alteration.
 - a. 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 of any land within the Subdivision and all persons claiming under them; and except as provided in subparagraph (b) below, shall continue in existence for a period of 25 years from the date of the recording hereof and thereafter shall be automatically extended for successive periods of 10 years each; provided, however, that nothing contained in this paragraph shall limit or alter in any way whatsoever any right, statutory or otherwise, to vacate the plat or any portion thereof.
 - b. The protective covenants, restrictions and limitations (but not public utility easements) may be changed or abolished, in whole or in part, at any time as follows: (i) The introductory provisions of these covenants and the provisions of paragraphs 1, 4, 9, 30, 31, 33, 34 and 35 may be changed by the written agreement of all of the owners of all of the lots in the Subdivision, and (ii) The provisions of all of the other paragraphs may be changed by the written agreement of all of the owners of at least 80 percent of all of the lots in the Subdivision subject in each case, however, to such approvals of governmental authorities as may be required by law at any time. The provisions of any amendment shall become effective upon the recording of a copy of the agreement making such amendment in the Office of the Recorder of Allen County, Indiana.
33. Investigation and Compliance. The Developer and the officers of the Association shall have the right of access to all lots at all reasonable times and in a reasonable manner to investigate and determine compliance with the provisions of these covenants.

34. No Waiver. The failure of any interested party to enforce the provisions of these covenants shall not constitute a waiver of the right to enforce them on another occasion and no delay in enforcement shall constitute a waiver of the right of enforcement so long as violations continue.
35. Severability. Invalidation of any one of these provisions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.
36. Lot Subdivision. No lot or combination of lots within this subdivision may be further subdivided unless and until approval therefore has been obtained from the Allen County Plan Commission.
37. Flood Protection Grade. In order to minimize potential damages from surface water, flood protection grades are established as set forth below: All dwellings shall be constructed at or above the minimum flood protection grades. Such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. The flood protection grades for lots 1, 14, 15, 16, 19, 20, and 29 are above the Mean Seal Level as follows:
- | | |
|---------------------|--------------|
| Lot 1 | - 775.0 feet |
| Lots 14, 15, and 16 | - 808.0 feet |
| Lots 19 and 20 | - 800.0 feet |
| Lot 29 | - 780.0 feet |
38. Storm Water Drainage. The Association of Owners created by paragraph 11, above, shall be obligated to maintain, repair and/or replace, if necessary, the storm water drainage system and the Storm Water Detention System (labeled on the plat as Storm Water Management areas) consisting of the Storm Water Basins in Blocks A, B, and C as shown on the face of the Plat together with their outlets and water level control structures. The owner of any lot, or the Allen County Drainage Board shall have the right to order the Association of owners to carry out its obligation to maintain, repair and/or replace the storm water drainage system and Storm Water Detention System improvements, as above provided, and to assess the owners of all lots equally with the costs thereof.