

State I.D. Nos. 79-02-36-200-009.000-023
79-02-36-200-010.000-023
79-02-36-100-004.000-023

DECLARATION OF RESTRICTIONS AND COVENANTS

This Declaration of Restrictions and Covenants upon Real Estate ("the Declaration") is made this 27th day of May, 2014 by the City of West Lafayette, Indiana ("City").

WITNESSETH:

WHEREAS, the City is the fee simple owner of the following described real estate ("Real Estate"), located in Tippecanoe County, Indiana, to-wit:

Commencing at the northwestern corner of a 40 acre tract as recorded in Deed Record 269, page 229 in the Office of the Recorder for Tippecanoe County, Indiana (ORTCI), said point of commencement being on the western line of said Northeast Quarter; thence North 89°54' East along the northern line of said 40 acre tract for 159.81 feet to the POINT OF BEGINNING; thence North 43°55'46" East for 208.62 feet; thence North 89°54' East for 353.28 feet to the centerline of Yeager Road; thence South 0°45' East along the centerline of Yeager Road for 150.00 feet to the northern line of said 40 acre tract; thence South 89°54' West along the northern line of said 40 acre tract for 499.98 feet to the point of beginning, containing 1.47 acres, more or less.

ALSO:

Part of the Northeast Quarter of Section 36, Township 24 North, Range 5 West, in Wabash Township, Tippecanoe County, Indiana, described as follows:

Beginning at the northwestern corner of a 40 acre tract as recorded in Deed Record 269, Page 229, in the Office of Recorder for Tippecanoe County, Indiana, said point of beginning being on the western line of said Northeast Quarter; thence North 89°54' East along the northern line of said 40 acre tract for 368.45 feet;

thence South 43°55'46" West for 523.82 feet to the western line of said Northeast Quarter and the western line of said 40 acre tract; thence North 0°46' West along the western line of said 40 acre tract and the western line of said Northeast Quarter for 376.64 feet to the point of beginning, containing 1.59 acres, more or less.

SUBJECT TO Right of Way for County Road 140 West along entire West side of subject property.

SUBJECT TO Grant of Perpetual Easement for tile drain dated October 7, 1908, recorded October 17, 1908 as Deed Record 130, Page 431, from Mary A. Kirkhoffe, as Grantor; to David W. Hanger and Thomas J. Gwinn, as Grantees. Said Easements are described as follows: A perpetual easement for the purpose of maintaining a tile drain where the same is now located and constructed in a northwesterly and southeasterly direction, across the following described real estate in said County of Tippecanoe, to-wit: The South half of the North half of the Northeast Quarter of Section Thirty-six (36), Township Twenty-four (24) North, Range Five (5), containing forty (40) acres.

SUBJECT TO roadways, easements and restrictions of record, if any.

ALSO:

Part of the Northwest Quarter of Section 36, Township 24 North, Range 5 West, in Wabash Township, Tippecanoe County, Indiana, described as follows:

Commencing at the southeastern corner of the said Northwest Quarter; thence westwardly along the southern line of said Northwest Quarter for 1,346.33 feet, to the northeastern corner of a 23.0 acre tract (less exceptions) as recorded in Deed Record 77-898 in the Office of Recorder for Tippecanoe County, Indiana (ORTCI), and the POINT OF BEGINNING; thence South 89°52' West along the southern line of said Northwest Quarter and the northern line of the said 23.0 acre tract for 166.53 feet; thence North 29°35'50" East for 315.00 feet; thence North 0°05'50" East for 379.00 feet; thence North 5°00'24" West for 194.76 feet; thence North 6°15'38" West for 144.20 feet; thence North 81°38'27" East for 150.04 feet; thence South 69°15'10" East for 173.72 feet; thence North 68°14'25" East for 374.42 feet; thence North 43°55'46" East for 1,018.16 feet to the eastern line of said Northwest Quarter and the western line of a 40 acre tract as recorded in Deed Record 269, Page 229, in the ORTCI, said point being South 0°46' East and 163.37 feet from the northwestern corner of said 40 acre tract; thence South 0°46' East along the eastern line of said Northwest Quarter and the western line of said 40 acre tract for 213.27 feet; thence South 43°55'46" West for 1,289.39 feet; thence South 10°55'46" West for 96.50 feet; thence South 37°25'46" West for 237.15 feet; thence South 68°25'46" West for 58.52 feet; thence South 29°35'50" West for 432.16 feet to the point of beginning, containing 11.99 acres, more or less.

WHEREAS, American Suburban Utilities, Inc., an Indiana corporation ("ASU"), is constructing an underground sanitary sewer line of which part of the sewer line runs adjacent to the Real Estate ("Project");

WHEREAS, the Project requires the elimination of certain trees and plantings along the course of the Project which will impact the floodways along the Project site;

WHEREAS, the Indiana Department of Natural Resources (“DNR”) has given their approval for the Project if ASU implements a mitigation plan to replace trees and plantings being removed because of the Project;

WHEREAS, the City has agreed to participate in the mitigation plan by accepting trees and plantings on its Real Estate to replace those trees and plantings that were required to be removed along the project route (“Mitigation Site”); and

WHEREAS, one of the conditions of the Project’s permit requires the City to execute, record and file this Declaration on the Mitigation Site to ensure that the Mitigation Site will be preserved.

NOW, THEREFORE, in consideration of the foregoing and for the purpose of protecting the ecological value and integrity of the Mitigation Site, the City hereby declares and impresses upon the Real Estate the following restrictions and covenants:

1. Improvements. There shall be no improvements made to the Mitigation Site, except in accordance with a permit issued by the DNR. The Mitigation Site shall not be used for any residential activity. The Real Estate shall also never be used for any mineral, oil and gas or other natural resource production.
2. Vegetation. Except in accordance with a permit issued by or otherwise approved by the DNR, the cutting or harvesting of trees, wood products or otherwise altering the natural vegetation of the Mitigation Site is prohibited; this includes clearing, earth moving, grading, timbering, cultivation, grazing, pasturing, dredging, filling, channeling, pumping, diking, impounding or other related activities.
3. Waste. The dumping, storage or disposal of trash, garbage, sewage, debris, or other refuse of any nature whatsoever is prohibited.
4. Remedies. If the DNR determines that the City is in violation of the conditions of this Covenant, or that a violation is threatened, the DNR shall provide written notice to the City identifying the violation, or the threatened violation, and stating the actions necessary to correct the violation. If, for a 30-day period after the date of the written notice, the City continues to violate the conditions of this Covenant, or if the City does abate the violation and commence implementation of the corrective or restorative measures requested by the DNR within such 30-day period, or does not complete the corrective or restorative measures within a reasonable time, the DNR may bring an action in law or in equity, including but not limited to an action

for specific performance or declaratory judgment, to enforce the terms of this Covenant. The preceding remedies of the DNR are cumulative and not exclusive.

5. Persons Bound. These covenants, terms, conditions, and restrictions shall be binding upon, and shall inure to the benefit of the City and the DNR and their respective successors, and assigns, and shall continue as a covenant running with the Real Estate in perpetuity, unless terminated pursuant to the terms hereof. These restrictions are enforceable against the City and all present and future owners, tenants, and other holders of any interest in the Real Estate except for interests in existence at the time this instrument becomes effective. The terms "City" and "DNR", when used herein, shall be deemed to refer to City or DNR, as the case may be, and their respective successors and assigns.

6. Termination. Notwithstanding any other provision hereof, this Covenant shall terminate:

(a) without any further action or agreement by the parties hereto upon the tenth (10th) anniversary of the date on which the DNR provides written notice to the City that the mitigation measures have been successfully established on the Real Estate.

(b) if, at any time prior to the termination date set forth in paragraph (a), (i) the City applies for and the DNR issues a permit which allows construction or other modifications in the Mitigation Site subject to establishment of a new mitigation site, or (ii) the City and the DNR otherwise agree in writing that this Covenant shall be released and no longer apply to the Mitigation Site identified herein.

7. Property Conveyance. Any conveyance of title, easement, or other interest in the Mitigation Site shall be subject to compliance with the restrictions described in paragraphs 1 through 3, above.

8. Severability. If any provision of this Declaration, or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

9. Governing Law. This Declaration shall be construed for all purposes under the laws of the State of Indiana. Any subsequent amendment to or repeal of any state law or order, which authorizes this Declaration, shall not affect the restrictions placed on the Mitigation Site under this Declaration, or the rights retained by the City or subsequently held by its successors or assigns.

IN WITNESS WHEREOF, the City of West Lafayette, Indiana by its Board of Public Works and Safety has executed this Declaration of Restrictions and Covenants on the day first above written.

City of West Lafayette, Indiana
Board of Public Works and Safety

JOHN R. DENNIS, Mayor

BRADLEY W. MARLEY

JONATHAN C. SPEAKER

SARA G. BOOKER

SHAWN R. LITTLE

ATTEST:

JUDITH C. RHODES,
Clerk-Treasurer

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. Thomas L. Brooks, Jr.

This instrument prepared by: Thomas L. Brooks, Jr. of the firm MAYFIELD AND BROOKS, 8 North Third Street, Suite 405, P.O. Box 650, Lafayette, IN 47902-0650; Telephone: (765) 423-5454; Facsimile: (765) 420-8114.