

200700016716  
Filed for Record in  
HENDRICKS COUNTY IN  
PAUL T HARDIN  
06-28-2007 At 01:53 pm.  
DECLARATION 38.00

**Cross References**

This instrument burdens real estate located in Hendricks County, state of Indiana, known as Hession Fields, a subdivision in Lincoln and Brown Townships, Hendricks County, Indiana, the plat of which is recorded December 16, 2004, as instrument number 200400038228 in the office of the recorder of Hendricks County, Indiana. This Declaration amends and restates a previously recorded Declaration of Covenants, Conditions and Restrictions for Hession Farms dated and recorded December 16, 2004 as instrument number 200400038229 in the Office of the Recorder of Hamilton County, Indiana; (Collectively the "Original Declaration").

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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HESSION FIELDS (FORMERLY KNOWN AS HESSION FARMS)**

**THIS AMENDED AND RESTATED DECLARATION** (hereinafter called "the Declaration" or "this Declaration"), is made effective on this 27<sup>th</sup> day of June, 2007, by The Estridge Development Company, Inc. (hereinafter called "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of the real estate in HENDRICKS County, Indiana, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"), as subsequently amended as provided below; and

**WHEREAS**, Declarant is in the process of creating on the Real Estate a residential community to be commonly known as **HESSION FIELDS**, or such other name as the Declarant determines; and

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the values and amenities in the Development, including, without limitation, the technological infrastructure and devices, and Communication Services and Utility Services available to and within the Development, and

**WHEREAS**, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering the common facilities located on the Property, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance, and repairs as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof, and

**WHEREAS**, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a non-profit corporation under the name "**HESSION FIELDS HOMEOWNERS ASSOCIATION, INC.**", or a similar name, as such agency for the purpose of exercising such functions;

**NOW, THEREFORE**, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

1. **Drainage and Utility Easements** - There are strips and parcels of ground as shown on the plat marked Landscape, Drainage and/or Utility Easement ("L, DU & SE") which are hereby reserved for the use of landscaping, public utilities, including but not limited to drainage structures, swales and improvements, and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, laterals, ducts, swales, drains, lines, cables, wires, and the like, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities as the Declarant or the owner of record after

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sale, may deem necessary along, through, in, over and under the strips of land (easements) shown on this plat. The Declarant, and/or the Property Owner's Association shall have the right to negotiate and grant additional easement rights through and upon said reserved easement areas as are reasonable and necessary to benefit the residents and/or to reasonable resolve disputes involving a lot owner. However, no Lot Owner shall make any changes within the areas reserved as such easements without the permission of the Declarant and/or the Hendricks County Surveyor's Office, as applicable and/or Town of Brownsburg.

2. **Building and Grounds Maintenance** – The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;
- c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
- d) Cut down and remove dead trees;
- e) Where applicable, prevent debris, foreign material, toxic, hazardous, or damaging materials or substances, from entering drainage areas, swales, and/or storm sewers;
- f) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly or detracting from the value of the general neighborhood;
- g) Regularly treat or cause to be treated the lawn areas against weed and insect infestation;
- h) Comply fully with all provisions of these Covenants, the Zoning and Development Stipulations applicable to the development, including all Addendums and exhibits thereto (hereinafter collectively referred to as the "Zoning Commitments"), and the rulings and decisions of the Declarant, the Association, and/or the Architectural Control Committee.

In the event that any owner of a lot shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Covenants and Restrictions, the Property Owners Association, the Declarant or the owner or owners of any lot in the immediate neighborhood 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 the improvement(s) situated thereon, if any, conform to the requirements of these Covenants and Restrictions. The cost thereof shall be an expense of the lot owner, and if paid by another party shall be collectible from the lot owner via a lien which may be filed against said lot in the amount of said expense, plus interest, court costs and reasonable attorney fees related thereto. Neither the Declarant, nor the owner or owners of any lot in the immediate neighborhood, nor any of their agents, employees or contractors, shall be liable for any damage which may result from any such maintenance work performed hereunder.

3. **Setback Lines** – Front building setback lines ("BL") shall be established on the plat; but shall not be less than those set forth in the Zoning Commitments. The minimum rear yard and side yard shall not be less than the applicable standards and/or the Zoning Commitments. In the event a building is erected on more than one single lot, these restrictions shall be based on the lot width at the Building Line of the combined lots, and shall apply to the side lines of the extreme boundary of the multiple lots. In the event of a discrepancy between this Declaration and a recorded plat, this Declaration shall control.

4. **Use Restrictions** – All lots in this subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof except for home occupations approved by the Town of Brownsburg. Without prior approval of the Architectural Control Committee, no structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single family dwelling, one story or multi-storied, not to exceed thirty-five (35') in height. Plans for each

residence must be submitted for review by Declarant, and are subject to Declarant's right to reject or approve same. There shall be no carports permitted; nor any side gravel or dirt drives. No structure shall be located in any drainage, sewer, or utility easement, other than a fence which shall be subject to removal at the Lot Owner's expense, in order to access said easement area. There shall be no above ground swimming pools permitted. No antennae shall be permitted other than a satellite dish less than thirty inches (30") in diameter. No satellite dish shall be located on the front elevation of the home or in the front yard. No RV's, trailers, boats or boat trailers, or unlicensed vehicles may be stored outside. No side gravel drives or gravel parking areas shall be permitted.

a) Outbuildings - There shall be no outbuildings (with or without a permanent foundation) permitted.

**5. Common Area, Lakes, Landscaping and Retention Areas, Street Lights, Snow Removal** - The Plat indicates Blocks of land and/or areas indicated as Common Areas, some of which contain ponds/lakes, landscaped areas, entry improvements and signage, common improvements, etc, which shall be conveyed by the Declarant to Hession Fields HOA, Inc., the entity established as the property owner's association (hereinafter the "Association"), as hereinafter provided.

The ponds/lakes and drainage easements thereto shall become a part of the storm water drainage system of Hession Fields and shall run to the applicable department for the Town of Brownsburg and/or Hendricks County. No lot owner or other person, firm or corporation shall alter, impair or impede the drainage system and all lot owners shall be subject to regulation by the public authority having jurisdiction and by the Association as hereinafter set forth. The retention ponds/lakes shall be for drainage and passive recreational purposes only; and no wading, swimming, boating therein, nor ice skating thereupon, are permitted. However, fishing in one or more of the retention lakes MAY be permitted pursuant to rules and regulations established by the Association.

The Association, as hereinafter described, shall own identified Blocks and/or Common Areas and/or landscaped areas and, through its Bylaws and regulations, control the water quality and condition of any retention lake located thereupon. The landscaping contained upon such Common Areas, and any other improvements, including but not limited to any perimeter fencing on said Common Areas, the subdivision signage, other landscaped and/or common areas, and any structures related to the entrances, shall be regularly planted, replanted, and/or maintained by the Association for the beautification of Hession Fields. Landscaping may also be designed and installed by the Declarant at various points within the Common Areas, the edge of the right-of-way and/or along the perimeter of the Development. The care and maintenance of any such landscaping shall all be the responsibility of the Association.

Any type of recreational facility or area which is conveyed to the Association, shall be managed, maintained, and be the full responsibility of the Association, subject to any restrictions imposed by the Declarant at the time of transfer.

Decorative street lights may be installed by the Declarant/developer at the main entrance and street intersections within the subdivision, during the initial development of the subdivision. These lights shall be maintained by the Association, which shall also pay all utility costs related thereto.

The Association shall supplement the government supplied snow removal services as necessary, and shall pay all costs related to hiring private contractors as required.

**6. Property Owners Association** - A property owners association is or shall be created (the "Association"), as an Indiana nonprofit corporation to be named Hession Fields HOA, Inc., prior to the completion of the subdivision. The Articles and Bylaws of the Association are incorporated herein as necessary, by reference.

**7. Power of Assessment and Collection** - The Association shall have all the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy uniform annual assessments and other special assessments against the lots within the Development as set forth herein and in the Bylaws of the Association.

**8. Membership and Voting Rights** – Every owner of a lot shall be a member of the Association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot, and a Class B member shall be the owner of any un-conveyed lot which is identified as a lot on either a recorded Plat or on a Plat which has been granted preliminary plat approval ("platted lot"). Each reference to a lot shall be deemed to be to either a conveyed lot, a platted lot, or an un-platted lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

8.1 **Class A.** Every person, group of persons or entity, other than the Declarant, who is a record owner of a fee interest in any conveyed lot shall, by this Declaration, be subject to assessment by the Association and shall be classified as a Class A member; provided, however, that any such person, group, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any lot, then the vote for the membership appurtenant to such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the event agreement is not reached, the vote attributable to such lot shall not be cast.

8.2 **Class B.** The Class B members shall be the Declarant, and shall be entitled to three (3) votes for each platted lot owned. Declarant shall have the automatic right to plat, record and sell said lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: 1) 90% of lots containing homes are deeded to homeowners; or 2) January 1, 2015. In the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, Class B memberships existing, if any, at time of cancellation, shall automatically become Class A memberships excepting such Class A memberships applicable to said lots shall not be subject to assessment or lien of assessment until the lot is conveyed.

**9. Covenant Accepting Assessments** – Each owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: 1) annual assessments or charges imposed by the Association, and 2) special assessments for capitol improvements, other reasonable expenses of the Association, or the collection of damages against certain lots and/or lot owners as herein and/or in the Bylaws. All such assessments are to be established and collected as provided herein and in the Bylaws of the Association.

**10. Commencement of Assessments/Dues** – Without regard to any other provisions to the contrary, each conveyed lot shall be subject to assessment as of the date of the initial conveyance of the Lot. The first year's assessment/dues shall be adjusted (pro-rated) according to the number of days remaining in the annual assessment period after the date of initial conveyance of the Lot; and shall be paid by the purchaser/builder at (or at the time of) the closing on the initial conveyance of the Lot. Separately, at (or at the time of) the initial closing on the transfer of the completed home and Lot (or the Lot only, if applicable) to the actual initial homeowner, the homeowner shall pay an additional one time fee or charge to the Association in the amount of One Hundred and Fifty and No/100 Dollars (\$150.00). Unless otherwise authorized by the Board, the Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period and provide the membership due notice thereof. Annual assessments may be made payable at more frequent periods than one (1) year by resolution of the Board of Directors of the Association.

**11. Declarant's Exemption from Assessments, and Right to Collect Advances** – The Declarant, as owner of platted or unplatted lots, shall be exempt from any and all assessments. The Declarant shall advance any deficits in usual or ordinary expense until such time as the assessments upon lots with homes thereon is sufficient to meet such expense. However, the Declarant shall have the right to recover any such advances made by the Declarant to cover such deficits, from the receipt/collection of any assessments which were assessed prior to date upon which control of the Association is actually turned over to the residents by the Declarant (hereinafter the "Turnover Date").

12. **Uniform Rates** – Both annual and special assessments shall be fixed at a uniform rate for all similarly situated lots, unless said special assessment(s) are necessary to reimburse the Association for funds spent in enforcement of these covenants against specific lot(s), whereupon said uniform rate requirement for similarly situated homes shall not apply, or as otherwise specified herein. Prior to the Turnover Date, those conveyed lots which do not contain a home may be assessed at a lower rate than conveyed lots containing a home; but in such case the annual assessment shall still be at a uniform rate for all similarly situated lots which do not contain a home. Upon the Turnover Date, the assessment for all conveyed lots which do not contain a home shall increase to the annual assessment applicable to conveyed lots containing a home; and such increase (which shall be due within thirty (30) days after the Turnover Date, shall be pro-rated according to the number of days remaining in the annual assessment period. After the Turnover Date, the annual assessments shall be uniform for all conveyed lots, without regard to whether or not each lot contains a home.

13. **Right to Increase Annual Assessments** – Because of uncertainties in usual and ordinary common property expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unusual, one-time, or unforeseeable operating expenses, the Board of Directors of the Association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of membership. However, any such increases shall be documented by normal accounting procedures and an explanation of the amount and basis for the increase shall be distributed to the membership.

The maximum annual assessment per lot may be increased above the maximum percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose.

14. **Liens, Charges and Subordination** – Every Lot Owner (except Declarant) shall pay all applicable assessments against their respective Lot(s), without regard to said Lot Owner's objections to the action or inaction of the Association and/or the Declarant. No Lot Owner may escape said liability by alleging that he did not use or enjoy the common area(s), recreational facilities, etc. Any charge levied or assessed against any lot, together with interest, reasonable attorney's fees and other charges and costs hereinafter provided, shall become and remain a lien upon that lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure, action personally against the liable lot owner, or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge and late charges at the time legal action is instituted, be obliged to pay the expense or costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting same. Every owner of a lot in the subdivision and any person who may acquire any interest in such a lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid; and shall be held to have conclusively covenanted to pay the Association all charges that the Association shall make pursuant to these Covenants and Restrictions.

The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. In addition, no sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an office of the Association of the payment status of the assessments on a specified lot, and/or that certain assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and for the improvement and maintenance of the properties owned or operated by the Association.

15. **Suspension of Privileges** – Notwithstanding any other provision contained herein or in the Bylaws, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the

facilities of the Association of any member or associate member; (i) for any period during which any of the Association's charges owed by the member or associate member remains unpaid; (ii) during the period of any continued violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, Bylaws or rules and regulations of the Association.

16. **Mortgage Rights** – Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned) or the Class A members have given their prior written approval, the Association shall not:

16.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Development, common property or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Development by the Association shall not be deemed a transfer within the meaning of this clause.

16.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

16.3 By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the homes on lots, the exterior maintenance of the dwellings on lots, the maintenance of common fences or common driveways or the upkeep of lawns and plantings in the Development.

16.4 Fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost).

16.5 Use hazard insurance proceeds for losses to common property for other than repair, replacement or reconstruction of such improvements.

16.6 Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

16.7 First mortgagees of homes on lots may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such common property, and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

16.8 No provision of the constituent documents shall give an owner or any other party priority over any rights of first mortgagees of homes within the Development pursuant to their mortgages in the case of a distribution to homeowners of insurance proceeds or condemnation awards for losses to or taking of common property.

17. **Temporary Structures** – No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence or for business purposes, except that used by Declarant or builder(s) during the construction upon and development of the property.

18. **Nuisances** – No farm animals, fowls, or domestic animals (maintained for food or for commercial purposes) shall be kept or permitted on any lot or lots in the subdivision. No noxious, unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which is, may be or may become an annoyance or nuisance. Other than those occasions where a dog or domestic animal ("pet") is on a leash being exercised and/or under the direct control of the owner or occupant of a dwelling in Hession Fields, no pet shall be allowed outside the boundaries of its owner's lot. In addition, the owner or occupant of a dwelling shall only

allow a pet in their possession to be out of their direct control outside of the dwelling, if such pet is either (1) kept within a securely fenced area in the rear yard, or; (2) on a secure leash or chain which restricts such pet to the rear yard at least ten feet away from any border on the lot.

19. **Architectural Control** – There shall be created an initial architectural control committee appointed by the Declarant. At that point in time when the Declarant elects to do so (no later than the point in time that the homes have been completed and sold to private homeowners on 90% of the lots), the initial committee shall turn over authority to the Association, which shall then appoint three (3) persons to serve as the architectural control committee from among its members. In any case, the Declarant shall retain sole right to approve plans for original construction of a residence on any lot until all the homes have been built on all the lots. The initial committee, and/or the replacement committee appointed after control is given over to the Association, is referred to hereinafter as the "Committee". The Committee shall regulate the external design, appearance, use, location and maintenance of lands which are subject to these Covenants and Restrictions, and the improvements thereon, in such a manner as to comply with the provisions of the Zoning Commitments and these Covenants and Restrictions, to preserve and enhance values, and to maintain a harmonious relationship among structures and the vegetation and topography.

The Committee shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth above to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving. The Committee shall apply the guidelines and standards in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any request, the Committee shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Board if resubmitted.

19.1 **Generally** – No dwelling, building, fence, structure, addition, remodeling, reconstruction, or improvement of any type or kind shall be constructed or placed on any lot in the subdivision without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner or builder for the owner of the lot requesting authorization by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction improvement. Such plans shall include plot plans showing 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 Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

19.2 **Sight Visibility** – Without prior Committee approval, and even then only if in compliance with applicable standards of the town of Brownsburg and/or Hendricks County, and the Zoning Commitments, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the street 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 points twenty-five feet (25') from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten feet (10') from intersection of a street line with the edge of a driveway pavement or alley line. No tree or landscaping shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19.3 **Fences, Walls and Screening** – It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the Development. Undue obstruction of view of other amenities from adjoining properties will be taken into consideration by the Committee when reviewing fences for approval. The only fencing allowed shall be in the rear yard. Therefore, fences shall not be nearer to the front of a dwelling than the rear foundation line of the dwelling, with the exception of

an area along one side of the home as reasonably necessary to connect to a side door on a home or a garage service door.

Other than the fencing installed by Declarant, fencing which abuts the outside perimeter of the subdivision must be of a uniform style, design, color, and height. Other than fencing installed by the Declarant, no fencing shall be installed on the exterior street side of any perimeter mounding. The Committee will discourage fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other lot owners. Approved fencing may be privately installed but must be constructed to professional levels of quality. Fences installed by nonprofessionals will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences or screens must be submitted to the Committee for approval. Cedar Wood, Vinyl and/or Ornamental Iron ONLY shall be used as fence material.

**19.4 Height Restriction** – The Declarant is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the Development is damaged by the proliferation of fences of excessive height.

The Committee, therefore, may approve rear perimeter fences up to six (6) feet in height which otherwise meet these guidelines. The Committee will give consideration to a deviation in their height limit where the rear line of the lot abuts a public roadway or other clearly unique circumstance exists. The use of six foot (6') fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area may be permitted. The guidelines for specific fence height restrictions are as follows:

- a) Property fencing and walls shall not exceed six feet (6') above grade unless otherwise approved by the Committee.
- b) The Committee will not ordinarily approve a proposed fence which exceeds six feet (6') in height unless the rear line of that lot abuts a roadway or offers some other circumstances clearly unique to that lot.
- c) Patio screens/privacy fences shall not exceed six feet (6') in height except for pools and other recreational fences as provided therein.
- d) There shall be no fencing, walls or other structures erected and maintained in any area designated 100 year flood way upon Federal Flood Hazard Maps and the plats of Hession Fields.
- e) Fences located within any drainage, sewer, or utility easement shall be subject to removal at the Lot Owner's expense, in order to access said easement area.

**19.5 Power of Disapproval** – The Committee may refuse to grant permission to construct, place or make any requested improvement when :

- a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of the applicable restrictions and/or the Zoning Commitments.
- b) 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.
- c) The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the other lot owners.

**19.6 Duties of Committee** – The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of the submitted



material shall be retained by the Committee, or copies thereof in a reduced form, for its permanent files and the second copy returned to applicant. 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 for such disapproval.

19.7 Liability of Committee – Neither the Committee, any thereof or the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to suitability or advisability of design, engineering, and/or method of construction or the materials used.

20. Construction Standards – Single family detached dwellings, and any additions thereto, shall be substantially similar to, or exceed, the minimum square footages of livable space, the roof pitch, the percentage of brick on the front elevation, and/or the architectural character of the front elevation, as set forth in the Zoning Commitments, and also to following restrictions:

- a) No heat pumps, air conditioning units or gas meters will be installed in or on the front of a dwelling.
- b) No unfinished windows or doors will be allowed.
- c) All gutters and down-spouts other than copper must be painted or coated.
- d) All roof and fireplace flashing other than copper must be painted or coated.
- e) All metal roof or range vents will be painted or coated to blend with roof color. Every effort should be made to locate such vents to the rear of the dwelling.
- f) All basement and crawl space sump pumps must discharge in compliance with Hendricks County standards.
- g) Every effort should be made to locate all plumbing vent stacks to the rear of the dwelling, and to paint such stacks to match the roof or siding.
- b) All basements shall be constructed of poured walls.
- i) Any addition or reconstruction shall comply with the provisions of this Declaration.

21. Driveway and Sidewalks – All driveways shall be paved simultaneously with the construction of the dwellings; and the width of the drive, type of construction and materials must be in compliance with Town of Brownsburg and/or Hendricks County standards and approved in advance by the Committee. Prior to occupancy of the dwelling, all lots must have a sidewalk across the front (and side on corner lots) property line constructed to Town of Brownsburg and/or Hendricks County standards and approved in advance by the Committee. Sidewalks at property lines are to meet flush with no abrupt change in grade from one lot to another.

22. Mailboxes and Lights – All mailboxes shall be of uniform design and colors, with an ornamental post, in accordance with the standards set forth by the Committee; and shall be installed by the builder simultaneously with the construction of the dwelling. All homes shall have a garage light on the exterior of the home or in the front yard which will operate by photocell or similar device from dusk to dawn.

23. Signs – Except for marketing and permanent signs that the Declarant may place at the project entrance or entrances, signage placed by the builders at the entrance or on the model lots, and the provisions contained in Paragraph 28 of these Covenants, no sign of any kind shall be displayed to the public view on any lot; except that one sign of not more than six (6) sq. ft. in size may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

24. Garbage and Refuse Disposal – No lot shall be used or maintained as dumping ground for trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in public view.

25. **Private Swimming Pools** – Only permanent in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring lots. All fencing shall conform to state, county and municipal regulations and the provisions of these Covenants and Restrictions, and shall be of harmonious design to the dwelling and adjoining properties. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

26. **Enforcement of Restrictions** – In the event there shall be more any violation or attempted violation of any of these covenants and/or restrictions, it shall be lawful for the undersigned, the Association, or for any person owning any real property in this subdivision, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Declarant nor the Association shall be liable for damages of any kind to any person failing either to abide by, enforce or carry out any of these covenants and restrictions.

No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation to a violation of any one or more of these covenants and 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 covenants and restrictions.

27. **Additional Acquired Property** – This Declaration shall apply to all sections of Hession Fields, as each section is platted; including but not limited to any additional real estate which is added to the development after the date of this Declaration. Any and all plat(s) for any section(s) of Hession Fields shall be subject to this Declaration simply by reference to the originally recorded Declaration, as amended, in each such Plat. However, even in the absence of such reference, unless otherwise provided for such sections, all sections of Hession Fields shall be deemed subject to this Declaration.

28. **General Provisions** – The Declarant may amend these Covenants and Restrictions at any time prior to the conveyance of 100% of the lots, subject to those mortgagee's rights set forth in paragraphs 14 and 16 above. In addition, these Covenants and Restrictions may be amended at any time by the owners of at least two-thirds of lots subject to these Covenants and Restrictions, subject to those mortgagees' rights set forth in paragraphs 14 and 16 above, provided however, that until all the lots are sold in this subdivision any such amendment of these Covenants and Restrictions shall require prior written approval of the Declarant. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph and recorded in the Hendricks County Recorder's Office.

29. **Homes Constructed on a Ravine** – The owner of any lot in Hession Fields releases and holds harmless the Town of Brownsburg, County of Hendricks, State of Indiana, for any potential erosion to any lot in Hession Fields which may be caused by the construction of a home thereon or for any other causation, foreseeable or unforeseeable.

30. **Effect of Becoming an Owner** – The owners of any lot subject to these Covenants and Restrictions, by acceptance of a deed conveying title thereto of the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every covenant, restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of Declarant with respect to these Covenants and Restrictions; and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Declarant and to and with the owners and subsequent owners of each of the lots affected by these Covenants and Restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

31. **Titles** – The underlined titles preceding the various paragraphs and subparagraphs of the Covenants and Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Covenants and Restrictions. Wherever and whenever applicable, the singular form of any work 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.

32. **Severability** - Every one of the covenants and restrictions is hereby declared to be independent of, and severable from, the rest of the covenants and restrictions and of and from every other one of these covenants and restrictions, and of and from every combination of the covenants and restrictions.

Therefore, if any of the covenants or 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 the covenants and restrictions.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 27<sup>th</sup> day of June, 2007.

Estridge Development Company, Inc.

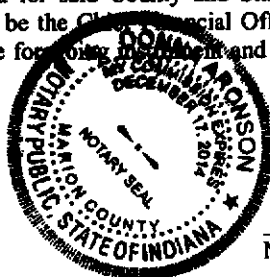
Michael J. Keller  
Michael J. Keller  
Chief Financial Officer

STATE OF INDIANA )  
                                  )     SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State this 27<sup>th</sup> day of June, 2007, personally appeared Michael J. Keller, known to be to be the Chief Financial Officer of Estridge Development Company, Inc., who acknowledges the execution of the foregoing instrument and consent on behalf of such entity and by its authority for the purposes set forth therein

12.17.2014  
My Commission Expires

MARION  
County of Residence



Donna Aronson  
Notary Public, Signature

DONNA ARONSON  
Notary Public, Printed

Return recorded instrument to: Estridge Development Company, Inc.  
14300 Clay Terrace Boulevard, Suite 200  
Carmel, Indiana 46032

This instrument prepared by: Bryan D. Stumpf, AICP, RLA  
Estridge Development Company  
14300 Clay Terrace Boulevard, Suite 200  
Carmel, Indiana 46032

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.

Bryan D. Stumpf  
Bryan D. Stumpf

**EXHIBIT "A"**  
**LEGAL DESCRIPTION HESSION FIELDS, RESIDENTIAL**

**TRACT I**

The East half of the Southeast quarter of Section 1, Township 16 North, Range 1 East, containing 80 acres, more or less.

ALSO:

The South half of the Northeast quarter of Section 1, Township 16 North, Range 1 East, containing 80 acres, more or less.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT:

A part of the Northeast quarter of Section 1, Township and Range aforesaid, said part being described as follows, to-wit: Beginning at the Southeast corner of the Northeast quarter of said Section 1; thence West along the South line thereof 1356.7 feet; thence North parallel with east line of said Section 1, 204.5 feet; thence east parallel with the south line of aforesaid Northeast quarter of Section 1, 676.3 feet; thence deflecting 0 degrees 23 minutes left 680.4 feet to a point in the East line of said Section 1; thence South along said East line 209.0 feet to the beginning point of this description, said part being subject to all legal rights of way and containing in all 6.40 acres, and containing in the above described tract, exclusive of said exception 73.60 acres, more or less. Subject to all easements, restrictions and rights of way.

ALSO:

A part of the Northeast quarter of Section 1, Township 16 North, Range 1 East, of the Second Principal Meridian in Indiana, said part being described as follows, to-wit:

Beginning at the Southeast corner of the Northeast quarter of said Section 1; thence West along the South line thereof 1356.7 feet; thence North parallel with the East line of said Section 1, 204.5 feet; thence East parallel with the South line of aforesaid Northeast quarter of Section 1, 676.3 feet; thence deflecting 0 degrees 23 minutes left 680.4 feet to a point in the East line of said Section 1; thence South along said East line 209.0 feet to the beginning point of this description, said part being subject to all legal rights of way and containing in all 6.40 acres.

EXCEPT:

A part of the Northeast Quarter of Section 1, Township 16 North, Range 1 East in Hendricks County, Indiana, more particularly described as follows: Beginning at the Southeast corner of said Northeast Quarter Section, said point being marked by a railroad spike over 53 seconds West along the South line of said Northeast Quarter 178.00 feet to a 5/8" rebar with yellow cap set, stamped "Benchmark Surveying, Inc." (herein after referred to as 5/8" rebar set, thence North 00 degrees 17 minutes 25 seconds West parallel with the East line of said Quarter Section 229.00 feet to a 5/8" rebar set; thence North 89 degrees 47 minutes 53 seconds East parallel with the South line of said Quarter Section 178.00 feet to railroad spike set in the East line of said Northeast Quarter Section; thence South 00 degrees 17 minutes 25 seconds East along said East line 229.00 feet to the Point of Beginning of the description, containing 0.94 acres, more or less. \*an existing stone; thence South 89 degrees 47 minutes.

Subject to an easement for drainage and utility purposes being a strip of land 15 feet in width, 7.5 feet on each side of the following described center line:

A part of the Northeast Quarter of Section 1, Township 16 North, Range 1 East in Hendricks County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northeast Quarter Section; thence South 89 degrees 47 minutes 53 seconds West along the South line of said Quarter Section 37.5 feet to the point of beginning of said center line; thence North 00 degrees 17 minutes 25 seconds West 229.00 feet, parallel with the East line of said Quarter Section

and there terminating. The sides of said easement being extended or shortened to terminate in the North and South boundaries of the above-described real estate.

**EXCEPT:**

Beginning at the Northwest corner of the intersection of County Road 600 North and County Road 900 East and running along the western right of way line of County Road 900 East a distance of 604.92 feet; thence South 88 degrees 38 minutes 19 seconds West 1028.9 feet; thence South 01 degree 21 minutes 41 seconds East parallel to the West right of way line of County Road 900 East a distance of 604.92 feet; thence along the Northern right of way line of County Road 600 North 1028.59 feet to the point of beginning.

More commonly known as: 6540 N. C.R. 900 E., Brownsburg, IN 46112

Subject also to all roadways, easements, rights of way, legal drains, restrictions, covenants, and agreements of record and current taxes not delinquent.



\* 2 0 1 0 1 7 6 4 2 2 \*

201017642

PAUL T HARDIN  
HENDRICKS COUNTY RECORDER  
08/18/2010 02:55:45PM

### Cross References

This instrument burdens real estate located in Hendricks County, State of Indiana, known as Hession Fields, a subdivision in Lincoln and Brown Townships, Hendricks County, Indiana, the plat of which is recorded December 16, 2004, as instrument number 200400038228 in the Office of the Recorder of Hendricks County, Indiana. This instrument amends a previously recorded Amended and Restated Declaration of Covenants, Conditions and Restrictions for Hession Fields dated and recorded June 28, 2007, as instrument number 200700016716 in the Office of the Recorder of Hendricks County, Indiana; (Collectively the "Amended and Restated Declaration").

## AMENDMENT TO DECLARATION

This Amendment to Declaration ("Amendment") is made effective as of this 10<sup>th</sup> day of August, 2010, by The Estridge Development Company, Inc., an Indiana corporation ("Declarant").

**1. Recitals.** Declarant has previously executed and recorded that certain "Amended and Restated Declaration of Covenants, Conditions and Restrictions of Hession Fields (formerly known as Hession Farms)" that was recorded in the Office of the Recorder of Hendricks County, Indiana as instrument number 200700016716 (the "Declaration"). Under Section 28 of the Declaration, Declarant reserved the right to amend the Declaration under certain circumstances. Simultaneously with the execution and delivery of this Amendment, Declarant has conveyed the real property more particularly described on the attached Exhibit A ("Section 2") to RH of Indiana, L.P., an Indiana limited partnership ("RH"), and as a condition to such conveyance, RH has required that Declarant exercise its power and authority to so amend the Declaration as more particularly set forth in this Amendment. Any references to capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Declaration.

**2. Amendment.** Declarant hereby amends the Declaration as follows:

2.1 Notwithstanding anything in the Declaration to the contrary, (i) RH shall also be considered as a Class B member of the Association for all purposes under the Declaration, and (ii) RH shall have the same rights and privileges granted to Declarant in Section 8.2 of the Declaration.

2.2 Notwithstanding anything in the Declaration or the Bylaws to the contrary, RH shall have no obligation to pay assessments or dues to the Association, whether annual or special, and the obligation of the owner of any platted or un-platted lot owned by RH shall commence at such time as the initial closing on the transfer of title to a completed home and lot to its initial homeowner, at which time the owner of such lot shall be obligated to pay a pro-rated portion of the assessments or dues that would otherwise be attributable to such lot for the balance of the then current annual assessment period along with the one-time fee referenced in Section 10 of the Declaration.

2.3 Notwithstanding anything in the Declaration to the contrary, RH shall have no obligation to submit plans or specifications for any single-family homes it may build on lots in Section 2 to the architectural control committee referenced in Section 19 of the Declaration, and RH may build single-family on lots in Section 2 without the consent of the Association, the Committee, or the Declarant. After RH conveys an individual lot in Section 2 to a customer of RH, however, any such lot shall automatically be subject to the Committee and the approvals and procedures set forth in Section 19 of the Declaration for all improvements made to such lot after the date of that conveyance.

2.4 Notwithstanding anything in the Declaration to the contrary, from and after the date of this Amendment and for so long as RH owns at least one "platted lot," as defined in Section 8 of the Declaration, no amendment to the Declaration made by the Declarant under the provisions of Section 28 of the Declaration shall be valid unless and until it has been approved by RH in writing and such consent has been executed by RH and recorded.

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In witness whereof, Declarant has executed this Amendment as of the date set forth above.

The Estridge Development Company, Inc.

By: Matthew A. Cohoat  
Name: Matthew A. Cohoat  
Title: Chief Operating Officer

STATE OF INDIANA )  
 ) SS  
COUNTY OF HAMILTON )

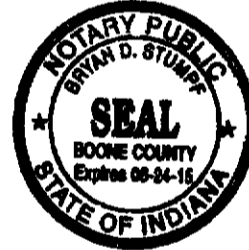
Before me, a notary public in and for the State and County aforesaid, personally appeared Matthew A. Cohoat, the Chief Operating Officer of Estridge Development Company, Inc., an Indiana corporation, known to me or proven by satisfactory identification to be the person who executed and acknowledged the foregoing instrument as his/her free act and deed on behalf of such corporation.

In witness whereof I have set my hand and seal on August 10, 2010.

Bryan D. Stumpf  
Notary Public  
My Commission Expires: 06-24-15

This Amendment Prepared By:

W. Russell Wilson, Esq.  
Frost Brown Todd LLC  
2200 PNC Center  
201 E. Fifth Street  
Cincinnati, OH 45202-4182



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless otherwise required by law. W. Russell Wilson