

**THIRD AMENDMENT TO DECLARATION OF RESTRICTIONS
UPON LOTS IN THE GRAHAMVILLE SUBDIVISION
PHASE I AS PLOTTED IN
ERIE COUNTY MAP NUMBER 2005-196
NOW
WHISTLE RUN SUBDIVISION**

WHEREAS, the Grahamville Subdivision Phase I as Plotted in Erie County Map Number 2005-196 (the "Grahamville Subdivision") is located in North East Borough, Pennsylvania, and

WHEREAS, a map of the Grahamville Subdivision is recorded in the office of the Recorder of Deeds of Erie County, Pennsylvania as map number 2005-196, and

WHEREAS, the lots in the Grahamville Subdivision are governed by and subject to a certain Declaration of Restrictions which is dated September 30, 2005 and is recorded in the office of the Recorder of Deeds of Erie County, Pennsylvania on October 4, 2005 in Erie County, Pennsylvania Deed Book 1275 Page 1252 (the "Declaration of Restrictions"), and

WHEREAS, the lots in the Grahamville Subdivision are further governed by and subject to a certain Joinder of Property Owners in Whistle Run Subdivision to Second Amendment to Declaration of Restrictions of Grahamville Subdivision Phase I as Plotted in Erie County Map No. 2005-196, Now Whistle Run Subdivision, which is dated June 1, 2011 and recorded in the office of the Recorder of Deeds of Erie County, Pennsylvania on June 7, 2011 as Instrument No. 2011-012716, and

WHEREAS, the lots in the Grahamville Subdivision are further governed by and subject to a certain Second Amendment to Declaration of Restrictions of Grahamville Subdivision Phase I as Plotted in Erie County Map No. 2005-196 Now Whistle Run Subdivision, which is dated June 1, 2011 and is recorded in the office of the Recorder of Deeds of Erie County, Pennsylvania on June 15, 2011 as Instrument No. 2011-013314, and

WHEREAS, the lots of the Grahamville Subdivision, now Whistle Run Subdivision are further governed by and subject to a certain Citation Correction for Declaration of Restrictions upon lots in the Grahamville Subdivision Phase I as Plotted in Erie County Map Number 2005-196 Now Whistle Run Subdivision as in the office of the Recorder of Deeds of Erie County, Pennsylvania on January 4, 2018 and recorded as Instrument No. 2018-000687, on January 10, 2018, and

WHEREAS, the Declaration of Restrictions is in effect until December 31, 2025, and

WHEREAS, the Grahamville Subdivision Property Owners Association consists of the owners of the lots in the Grahamville Subdivision, and

*Orton & Arden
3.50*

WHEREAS, David L. Thornton reserved the right to modify or amend any of the restrictions set forth in the Declaration of Restrictions for so long as he owns at least ten lots in the Grahamville Subdivision, and

WHEREAS, as of the date of filing of this Third Amendment to Declaration of Restrictions, David L. Thornton owns at least ten lots in the Grahamville Subdivision, and

WHEREAS, it is the intention of David L. Thornton that the restrictions be extended and amended a further period of twenty (20) years, to December 31, 2045, and they may be further extended for further periods per the terms hereof, and

WHEREAS, it is the further intention of David L. Thornton that this Third Amendment to Declaration of Restrictions be binding upon the lot owners of the Grahamville Subdivision, their heirs, executors, successors and assigns, and further that these restrictions which are being renewed at this time shall be covenants that run with the land.

These restrictions shall be as follows:

ALL LOTS IN THE GRAHAMVILLE SUBDIVISION PHASE I AS PLOTTED IN ERIE COUNTY MAP NUMBER 2005-196 ARE AND SHALL BE SUBJECT TO THE FOLLOWING RESTRICTIONS:

**RESTRICTION AGAINST
OBSTRUCTION OF
PRIVATE RIGHTS OF WAY**

1) That portion of the Thornton Grahamville Subdivision located within the premises acquired from Joseph Ferko, et ux, by deed recorded in Erie County at Record Book 1029 at page 1718 and designated on the "Location Map" as Parcel 006, constitutes a replot of that portion of the "Orchard Park Addition to North East Borough" which plot was recorded at Erie County Map Book 2 at page 161 on February 8, 1917 lying south of Grahamville Street. The areas depicted upon the Thornton Grahamville Subdivision Map recorded at 2005-196 as "Franklin Street" from the South boundary of Grahamville Street to the South boundary of the subdivision (excluding that portion within the boundaries of Wellington Street); "David Street" from the East boundary of Washington Street to the West boundary of Jefferson Street; and the

Southerly extension of Jefferson Street labeled "easement" in Lot No. 9 (which areas are partially located within Lots 1, 3, 4, 5, 6, 7, 39, 40, 45, 46 and 9) are subject to the restriction that no use be made of said areas that is inconsistent with the utilization of said areas as private rights of way appurtenant to lots in the Orchard Park Addition as originally plotted. The imposition of the within restriction shall not constitute a grant, renewal, or revival of any private rights of way previously extinguished by conveyance to David L. Thornton or his predecessors in title or by operation of law or otherwise. Said areas are not plotted or planned for improvement and acceptance as public streets but only for the purpose of identifying areas subject to the within restriction. No private rights-of-way in plotted but unopened streets of the Orchard Park Addition lying North of Grahamville Street or in "Franklin Street," "David Street" or the "easement" in Lot No. 9 by reason of the depiction thereof on the Thornton Grahamville Subdivision Map shall arise in favor of the owner of any lot in Thornton Grahamville Subdivision or for any other reason. In the event all private rights of way in the depicted areas have been or are hereafter terminated by any means whatsoever, then the within restriction shall lapse absolutely.

**RESTRICTION AGAINST
OBSTRUCTION OF RIGHT OF WAY**

2) That portion of "Franklin Street" as is depicted within the boundaries of Lots 1, 3, 4 and 5 is under and subject to a right of way determined to exist by reason of proceedings at Erie County Docket No. 2431-A-1984 and no use shall be made of said area which is inconsistent with the utilization of said rights of way under the terms of said court decision. In the event that said right of way is terminated by any means whatsoever, then the within restriction shall lapse absolutely.

**RESTRICTION AGAINST
MODIFICATION OF
STORMWATER MANAGEMENT
SURFACE CONTOUR**

3) The Stormwater Management Plan as approved by North East Borough, which is incorporated herein by reference, requires the maintenance of certain surface contours for the purpose of control of stormwater. Said contours have been established on the ground and no modification thereof is permitted without the explicit written approval of North East Borough and David L. Thornton.

**RESTRICTION AGAINST
DEVELOPMENT IN
PROPOSED DETENTION BASIN AREA**

4) No activities shall be conducted upon those portions of Lots 1, 3, 4, 5 and 6, which are designated as "Proposed Detention Basin Areas" which are inconsistent with the utilization of said areas as detention basin areas.

**LIABILITY FOR DAMAGES
DURING CONSTRUCTION**

5) In the event that construction activities, including but not limited to the transport of construction material to or from a construction site, damage any highways, including curbs and stormwater control devices, utility installations, sidewalks, structures or landscaped areas, then the contractor whose actions or failure to act caused the damage shall be responsible for the repair of any such damages. In the event that said contractor does not repair any damage or make provision for the repairs satisfactory to David L. Thornton or the property owner of the property to which the damage was done with fifteen (15) days, then in that event, the property owner who secured the services of the contractor shall thereafter be responsible to repair same

within fifteen (15) days. In the event the property owner shall fail to repair same or make arrangements satisfactory to David L. Thornton or the owner of the property to which the damage was done within fifteen (15) days, then David L. Thornton or the property owner of the damaged property may repair same in which event the contractor and property owner who secured the services shall be jointly and severally liable for the repair costs to David L. Thornton or the property owner of the damaged property. The within provision is by way of additional relief and shall not limit or exclude any other remedy available to David L. Thornton or the property owner whose property was damaged or their subrogees.

HOMEOWNERS' ASSOCIATION

6) Maintenance and operation of the stormwater management facilities as installed in accordance with the stormwater management plan for Thornton Grahamville Subdivision as submitted to and approved by the North East Borough, shall be the responsibility of the Grahamville Subdivision Property Owners Association, which shall be an incorporated association consisting of the owners of the lots in Grahamville Subdivision. The Grahamville Subdivision Property Owners Association shall be governed by majority vote, with each lot having one (1) vote regardless of the number of owners thereof. The Association shall meet at least annually to determine the amount of annual assessments for maintenance of the stormwater management facilities and the maintenance of the Association property and any other related Association expenses and to designate two members of the Association as treasurer and co-treasurer to collect the assessments and disburse the same. The owner or owners of any lot who should fail to pay any assessment within sixty (60) days of the due date shall be subject to suit for recovery of the assessment by the Association and the assessment shall be a lien on the property until paid, shall bear interest at the rate of twelve (12%) percent per annum and the

Association may recover costs of collection, including reasonable attorney's fees. The lien of the Association shall be subject and subordinate to any mortgages given by a property owner upon a lot or lots of the subdivision. Assessments shall be equal for each lot and more than one (1) assessment may be made in any year if necessary. The owners of any five lots may call for an Association meeting by giving not less than ten (10) days written notice to the other lot owners. The members of the Association may, by majority vote: establish by-laws consistent with he within restrictions; enforce any restrictions established hereunder and extend, modify or amend restrictions set forth in the section entitled "Other Restrictions" after expiration of the amended period thereof, on December 31, 2045.

EXCLUSION OF EXISTING STRUCTURES

7) Lot 65 is excluded from application of the restrictions set forth hereinafter under "Other Restrictions."

OTHER RESTRICTIONS

8) No structure shall be erected, altered, placed or constructed upon any lot except for single and multi-family residential dwellings, retirement homes, and related outbuildings. All single-family structures shall have an attached garage for not less than two nor more than four vehicles; all multi-family structures shall have an attached garage for not less than one nor more than two vehicles per unit. Retirement homes may be erected and occupied on all lots fronting Wellington Street west of Jefferson Street. Any number of the described lots may be combined with each other to provide a site or sites for retirement homes. Retirement homes are not required to have attached or separate garages.

The following enumerated lots may be occupied as a single family or multi-family dwellings and more specifically, multi-family dwellings may be built and occupied on lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47. In addition, the following lots located west of Jefferson Street and fronting on Wellington Street may be occupied as a single family dwellings, multi-family dwellings, or retirement homes and more specifically, retirement homes may be built and occupied on lots numbered as 8, 9, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

For purposes of the Homeowners' Association, the owner of a retirement home shall be considered the owner of each of the lots combined for the site of the retirement home and the combined lots shall be subject to assessment and exercise a vote for each lot combined.

9) Any residence erected upon a lot in the subdivision shall have a pitched roof with a minimum pitch of four feet vertical rise for each twelve (12) feet horizontal coverage.

10) Any residence erected upon the property shall have not less than 1400 square feet for a single family or 1200 square feet per unit for multi-family housing of enclosed above ground finished living area excluding any breezeway, porches, garage or basements. For split-level residences, ground floor living areas may be considered as "above ground finished living area" in the discretion of David L. Thornton notwithstanding that the lower portion thereof is below ground. Retirement homes which may be built and occupied on Lots numbered as 8, 9, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47, shall not be subject to the living area requirements set forth in this paragraph.

11) No residence, outbuildings or attached structure shall be constructed with an exterior of concrete blocks or cinder blocks.

12) All buildings erected thereon shall be of sound and safe construction with finished exterior coverings.

13) No more than one accessory building may be placed on any lot and shall not exceed 120 square feet in area and twelve feet in height. Any accessory building shall be constructed in a style that matches the architectural design and style of the residence. The design of the accessory building and the material used in the construction of the accessory building shall conform to the design of the residence and materials used in construction of the residence. Siding and roofing materials of the accessory building shall conform to the siding and roofing materials of the residence. The accessory building must be required to comply with applicable municipal zoning ordinances.

14) Sidewalks conforming to municipal requirements and concrete driveways must be installed before occupancy of a residence; or if inclement weather delays installation, sufficient funds shall be escrowed for that purpose with an escrow agent acceptable to David L. Thornton until such time as weather permits completion. Concrete driveways may have wearing surfaces of brick, stone or other paving material, excluding asphalt, provided same is approved by David L. Thornton. A lending institution or an attorney at law licensed in the Commonwealth of Pennsylvania are acceptable escrow agents without any additional approval.

15) No residence placed or erected on any part of said property shall be occupied for residential purposes in any manner prior to completion of the exterior.

16) Construction of any dwelling shall be completed within one (1) year of the date of commencement of construction.

17) No temporary buildings may be placed on any lot.

18) All lawn, shrubbery, gardens or any other type of vegetation growing on the lots or surrounding any buildings shall be kept up in a neat and orderly fashion so it would not appear unclean or obnoxious to the eye. No vegetable gardens shall be maintained upon the property prior to completion of a residence.

19) No lot shall be used in whole or in part for any commercial purpose nor shall any lot be used whole or in part for storage of any property or object that will cause such lot to appear in an unclean or untidy condition, or that will be obnoxious to the eye, nor shall any activity be carried on or substance kept upon any lot that will emit foul or obnoxious odors or that will cause an unreasonable noise or which may become a nuisance to the neighborhood. No horses, cattle, sheep, goats, hogs, poultry or other livestock shall be kept or maintained upon any part of the property provided; however, the keeping of domestic pets for personal but not commercial purposes shall be permitted. For purposes of enforcement and interpretation of this restriction, the conduct of professions commonly conducted at and in the residence of the practitioner and the conduct and operation of retirement homes shall not be considered commercial purposes.

20) All utility service lines including telephone, gas, electric and water shall be installed below ground.

21) The sanitary sewer system for the subject subdivision is not designed to provide sanitary sewer connections to facilities located below grade as established in the plans for said sanitary sewer system on all lots. No sanitary sewer connections shall be made except in conformance with the sanitary sewer system plan filed with the municipality and no below grade facilities shall be installed unless the sewage collection lines as installed will accept the discharge from said below grade facilities.

22) Prior to commencement of construction of any structure including fences and decks upon the subject premises, the plans therefore including exterior elevations thereof shall be submitted to David L. Thornton or the homeowner's association as hereafter provided for approval of compliance with the restrictions set forth herein and the aesthetic acceptability of the proposed structure. Failure to notify the owner to the contrary within thirty (30) days of delivery of proposed plans to the office of Thornton of disapproval shall constitute approval. No action shall be brought by reason of violation of the within restrictions more than one year after completion of the construction of any improvements. In the event of the death or incapacity of David L. Thornton, approvals hereunder shall be secured from his successor in interest. David L. Thornton or his successor in interest may designate the homeowners' association to exercise the approval right established in this paragraph.

23) No residence or other structure shall be erected upon any lot formed by re-subdivision of plotted lots, which lot has an area of less than 10,000 square feet.

24) No commercial or private oil or gas wells shall be drilled and no sand, gravel or earth, other than the amount necessary to improve the premises, shall be removed from any lot in the Subdivision. Any sand, gravel or earth removed shall first be offered to David L. Thornton without compensation.

25) Radio and television antennas shall not exceed the height of the principal structure upon the premises by more than six (6) feet nor shall any such antenna be located in the front of any property. A satellite dish may be attached to the exterior of the residences or shall be placed in the rear or side yard of the property within the building set back lines applicable to the residence located upon such lot.

26) Front yard fences shall not exceed four (4) feet in height. No chain link fences are permitted.

27) All fences and decks shall be constructed of maintenance free material which shall consist of a man-made material such as composite, vinyl, aluminum, plastic and wood synthetics.

28) Above ground and in-ground swimming pools are permitted providing they are enclosed with security fencing with a minimum height of four (4) feet.

29) No unlicensed or uninspected motor vehicles nor any trailers, boats, motor homes or campers shall be stored outdoors upon the subject premises. A vehicle shall be considered to be "stored" at the subject premises when owned by the owner or any one of the said owners of the premises or it is located at the premises during any part of the day for a period in excess of twenty-one continuous days in any one calendar year.

30) All surface and subsurface water control measures, whether temporary during construction or permanent, including but not limited to gutters, downspouts, sump pump outflow, land contouring, and erosion control devices, shall be installed and maintained in accordance with storm water control plans and permits approved by municipal and state agencies having jurisdiction over such activities as the same are issued and released from time to time.

31) All lots shall be graded and seeded not later than the first planting season after occupancy of the dwelling.

32) The subject "Other Restrictions" set forth in Paragraphs 8 through 31 are applicable to all lots in the Thornton Grahamville Subdivision except Lot No. 65.

OTHER PROVISIONS

33) In the event that any one or more of the provisions, conditions, covenants and restrictions set forth herein shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, covenants and restrictions herein set forth shall continue unimpaired and in full force and effect.

34) Enforcement of the covenants contained herein shall be by proceedings at law or equity against any person or persons violating or attempting to violate any covenants, either to restrain or recover damages.

35) It is the intention of David L. Thornton that the restrictions contained herein be extended to December 31, 2045, and they may be further extended for further periods thereafter by a majority vote of the Association approving such an extension and it be recorded in the proper office for the recording of such papers.

36) David L. Thornton reserves the right to extend the Pine Tree Lane into North East Township for the development of residential building lots therein and at his option to designate lots located upon said extension and/or having access thereto as Phase Two of Thornton Grahamville Subdivision subject to all restrictions set forth herein including membership in the Homeowner's Association.

37) Whenever reference is made hereunder to David L. Thornton, said reference shall, in the event of the unavailability of David L. Thornton, whether by absence, incapacity, or death, shall refer to his successor in interest. David L. Thornton or his successor in interest may by assignment delegate any right hereunder to the Homeowner's Association but only by written assignment, which specifically references the within restriction and individually identifies the rights assigned.

PERIOD OF RESTRICTIONS

38) The within restrictions shall run with the land and inure for the benefit of all or any present and future owners of the subject premises and of other lots in the section of the subdivision of which it is a part and shall be binding upon successive owners, their heirs, executors and assigns until December 31, 2045, at which time all the within restrictions shall lapse absolutely, except those set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 33, 34, 35, 36, 37 and 38 shall not so lapse but remain in full force and effect. (Paragraphs 1 and 2 in accordance with the terms thereof and Paragraphs 3, 4, 5, 6, 7, 33, 34, 35, 36, 37 and 38 in perpetuity).

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SIGNATURE APPEARS ON FOLLOWING PAGE

IN WITNESS WHEREOF and with the intent to be legally bound DAVID L.

THORNTON hereunto sets his hand and deal this 6 day of June, 2023.

David L. Thornton

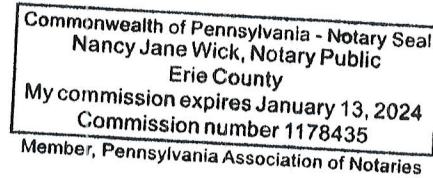
COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF ERIE :

On this, the 6 day of June, 2023, before me, a Notary Public, the undersigned officer, personally appeared David L. Thornton, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public



2023-009075



ERIE COUNTY CLERK OF RECORDS
RECORDER OF DEEDS DIVISION

Aubrea Hagerty-Haynes,
Clerk of Records

Erie County Courthouse | 140 W. Sixth St., Suite 121, Erie, PA 16501 | Phone: 814-451-6246
Fax: 814-451-6213 | www.eriecountypa.gov | recorder@eriecountypa.gov

Certification Page
DO NOT DETACH
This page is now part of this legal document.

Instrument Number: 2023-009075

RECEIPT FOR PAYMENT

Record Date: 6/12/2023

Instrument Type: AGREEMENT

Record Time: 04:20:04

Receipt No.: 1345951

Receipt Distribution

Fee/Tax Description	Payment Amount
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AGREEMENT	33.00
AGREEMENT - WRIT	.50
CO REC MGT ACCT	2.00
ROD REC MGT ACCT	3.00

Check# 3203	\$38.50
Total Received.....	\$38.50

Recording Page Count: 15

Paid By Remarks: ORTON & ORTON/THORNTON/GRAHAMVILLE SUBDIVISION/TM

I HEREBY **CERTIFY** THAT THIS DOCUMENT IS RECORDED IN THE RECORDER OF DEEDS OFFICE OF ERIE COUNTY, PENNSYLVANIA

AUBREA HAGERTY-HAYNES
ERIE COUNTY CLERK OF RECORDS

NOTE: Some information subject to change during the verification process and may not be reflected on this page.