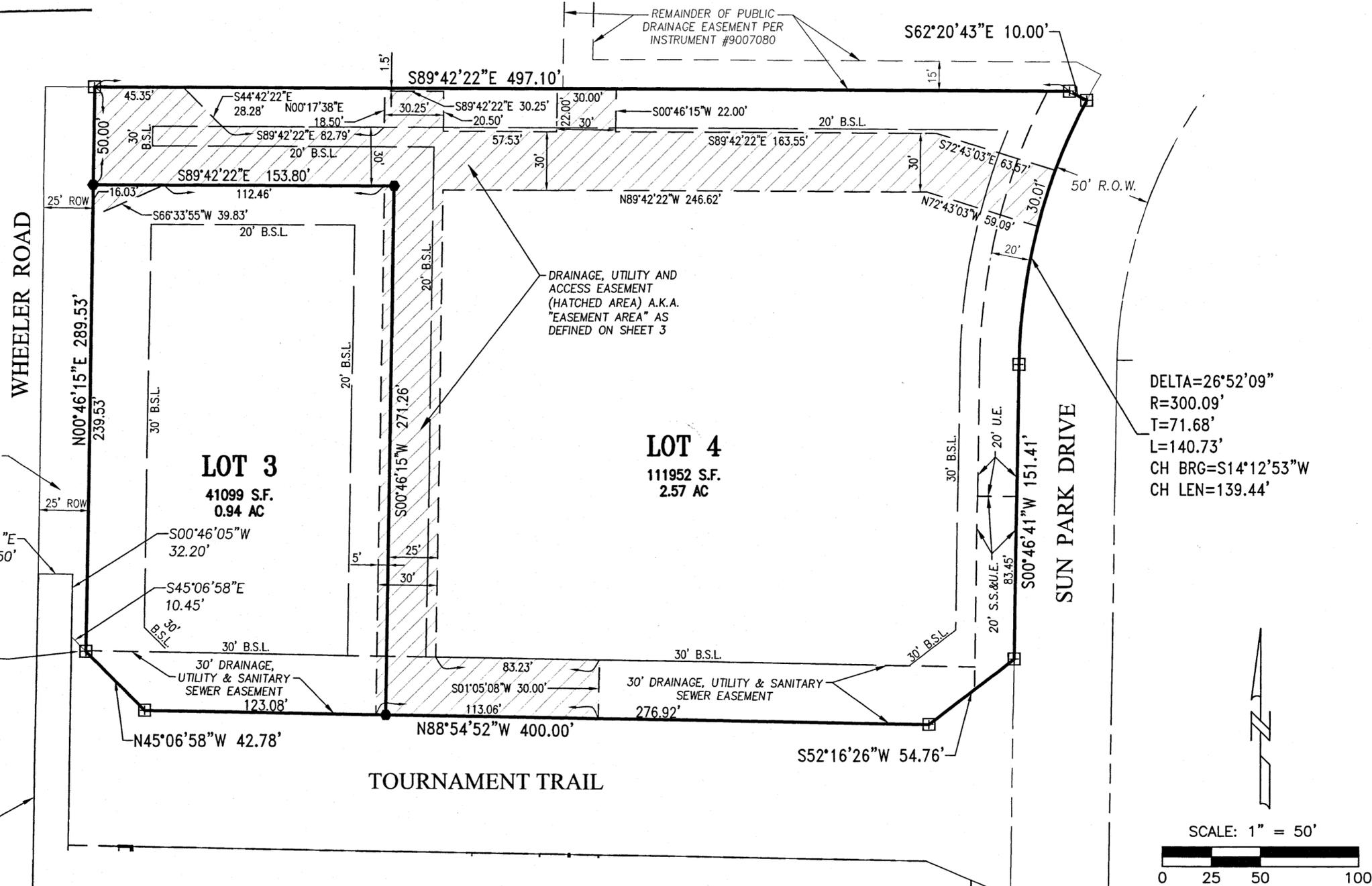


Plat Cabinet # PC5 Slide 182

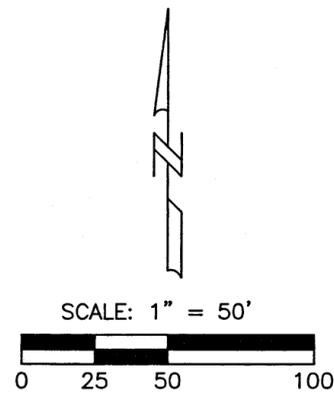
REPLAT OF LOT 3 OF 32 AT 31-HENKE CENTER SECONDARY PLAT

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer
12 day of March, 2014
Dawn Coverdale Auditor of Hamilton County
Parcel # _____

2014008848 PLAT \$30.00
03/12/2014 08:51:38A 3 PGS
Mary L. Clark
HAMILTON County Recorder IN
Recorded as Presented



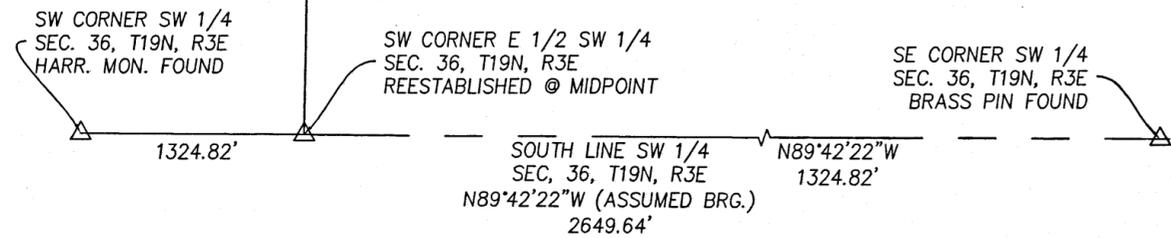
DELTA=26°52'09"
R=300.09'
T=71.68'
L=140.73'
CH BRG=S14°12'53\"/>



- LEGEND:
- - 5/8" DIAMETER REBAR SET w/CAP MARKED "WEIHE ENGR 0012"
 - - 4" SQUARE CONCRETE MONUMENT SET
 - U.E. - UTILITY EASEMENT
 - D.E. - DRAINAGE EASEMENT
 - D. & L.E. - DRAINAGE & LANDSCAPE EASEMENT
 - S.S. & U.E. - SANITARY SEWER & UTILITY EASEMENT
 - R.O.W. - RIGHT OF WAY
 - V.W. - VARIABLE WIDTH

NOTE: THE SETBACKS AND EASEMENTS SHOWN ON LOT 3 OF 32 AT 31 HENKE CENTER AND THAT PORTION OF THE EASEMENT DESCRIBED IN INSTRUMENT NO. 9007080 CONTAINED WITHIN SAID LOT ARE HEREBY REPLACED BY THE EASEMENTS AND SETBACKS SHOWN HEREON.

SOURCE OF TITLE:
INST. #2011-28816
INST. #1987-11534



This instrument prepared for:
JG3 Properties, LLC
PO Box 1185
Carmel, IN 46082

This instrument prepared by: **Brady Kuhn**

WEIHE ENGINEERS
Land Surveying | Civil Engineering
Landscape Architecture

10505 N. College Avenue
Indianapolis, Indiana 46280
weihe.net
317 | 846 - 6611
800 | 452 - 6408
317 | 843 - 0546 fax
ALLAN H. WEIHE, P.E., L.S. - FOUNDER

LOCATION: H:\2013\130440\Surveying\Plat\WI130440.dwg
LAYOUT: SW
DATE/TIME: March 11, 2014 - 12:31pm
PLOTTER: EPL

REPLAT OF LOT 3 OF 32 AT 31-HENKE CENTER SECONDARY PLAT

RESTRICTIONS AND COVENANTS

The Owners of Lots 3 and 4 shall be subject to the following restrictions and covenants:

1. The Plat shall designate a certain Drainage, Utility and Access Easement (collectively, the "Easement Area") for the benefit of Lots 3 and 4.

2. **Drainage Easement.** No part of the Storm Sewer Easement shown on the attached Plat shall be on the surface of the Easement Area, with the exception of grade level non-protruding caps, plates, grates, manhole covers, or similar covers of sizes and in locations approved by the Owner of Lot 4 prior to installation.

3. **Construction.** The Owner of Lot 4 and the Owner of Lot 3 shall share equally the actual cost of construction of the storm sewer, paved roadways and the dumpster area located in the Easement Area (collectively, the "Improvements") exceed as noted below. The construction of the storm sewer shall be completed by the Owner of Lot 4 by using a contractor mutually acceptable to the Owner of Lot 4 and the Owner of Lot 3. The construction contract for such work shall be signed by both the Owner of Lot 4 and the Owner of Lot 3. The costs for the storm sewer shall be split, with the Owner of Lot 4 being responsible for 55% of the cost and the Owner of Lot 3 being responsible for 45% of the cost.

The construction of the roadways and dumpster area shall be completed by the Owner of Lot 4, or a contractor of the Owner of Lot 4's choosing. The Owner of Lot 4 shall use commercially reasonable efforts to have the Improvements completed on or before July 15, 2014. The costs to be shared by the Owner of Lot 3 and the Owner of Lot 4 for these Improvements shall be those costs actually charged for the construction of the Improvements, without markups. The Owner of Lot 3 shall promptly pay all invoices submitted by the Owner of Lot 4 or any contractor for its share of the costs in connection with construction of the Improvements. Any amounts not paid by the Owner of Lot 3 when due shall accrue interest at the Default Rate.

4. **Maintenance.** The Owner of Lot 4 shall maintain including, without limitation, cleaning and snow removal, repair, improve, service, or replace the Improvements and Easement Area ("Maintenance Action"), provided that no Maintenance Action with costs in excess of \$10,000.00 shall be commenced without the express consent of the Owner of Lot 3 which consent shall not be unreasonably conditioned, withheld or delayed. All fees, charges, costs, expenses and other obligations ("Maintenance Expenses") related to a Maintenance Action shall be shared by the Owner of Lot 3 and the Owner of Lot 4 and shall be paid in a timely manner, in accordance with Paragraph 7.

5. **Real Estate Taxes and Assessments.** The Owner of Lot 4 and the Owner of Lot 3 shall equally share the expense of all real estate taxes and assessments relating to the Easement Area. The taxes and assessment for the Easement Area shall be equal to the total taxes and assessment for land for Lot 4 multiplied by a fraction, the numerator of which is the amount of square feet in the Easement Area on Lot 4 and the denominator of which is the total amount of square feet of land on Lot 4 (the "Total Easement Area T&A"). Said taxes and assessments shall be paid in a timely manner, in accordance with Paragraph 7.

6. **Insurance.** The Owner of Lot 4 shall carry public liability and casualty insurance, in commercially reasonable amounts, in connection with its use of the Easement Area and Improvements (the "Insurance Costs").

7. **Payment of Shared Expenses.** The Owner of Lot 3 shall be responsible for 26.9% and the Owner of Lot 4 shall be responsible for 73.1% of the Maintenance Expenses, Total Easement Area T&A, and Insurance Costs (the "Shared Expenses"). The Owner of Lot 4 shall bill the Owner of Lot 3 for its proportionate share of the Shared Expenses. If the Owner of Lot 3 fails to repay the Owner of Lot 4 within thirty (30) days after demand for payment of such Shared Expenses, such amount shall become immediately due and payable (including costs and expenses of collection, including reasonable attorneys' fees) by the Owner of Lot 3 to the Owner of Lot 4 and bear interest at eighteen percent (18%) per annum (the "Default Rate").

8. **Indemnification.** The Owner of Lot 3 and the Owner of Lot 4 shall save, hold each other harmless and indemnify each other from and against any and all claims, demands, losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees) arising from or relating to the willful act or negligence of such indemnifying party or its respective employees, agents, contractors, tenants, customers and invitees in connection with the use of the Easement Area and Improvements.

9. **Defaults and Remedies.** In the event of a breach, or an attempted or threatened breach, by either the Owner of Lot 3 or the Owner of Lot 4 of any of the terms, covenants or agreements hereof, the other Lot Owner shall be entitled forthwith to full and adequate relief by injunction and/or all other available legal and equitable remedies. Notwithstanding the foregoing, if either the Owner of Lot 3 or the Owner of Lot 4 shall fail to cure such breach within sixty (60) days after written notice of such breach from the non-breaching party to the breaching party, then the non-breaching party may (i) cure (but is under no obligation to cure) such default and (ii) recover from the breaching party all costs and expenses associated therewith, including reasonable attorneys' fees and cost, together with interest from the date the non-breaching party incurred such costs and expenses at the Default Rate.

10. **Mechanic's Liens.** The Owner of Lot 3 covenants that it will take all actions necessary to prevent any mechanic's lien(s) from being filed against the Easement Area or Lot 4 in connection with any work performed by or for the Owner of Lot 3. In the event any such lien against the Easement Area or Lot 4 or any part thereof is filed on account of any work done by or on behalf of the Owner of Lot 3, the Owner of Lot 3 will promptly take such actions as are necessary on its part to have the lien discharged of record, and shall indemnify and defend the Owner of Lot 4 against any and all claims arising in connection with such lien(s), including, but not limited to, costs and reasonable attorneys fees. Nothing contained herein shall constitute the Owner of Lot 4's authorization or consent to the creation by the Owner of Lot 3 of any lien on the Easement Area or Lot 4 or any part thereof.

11. **Rights Reserved to the Owner of Lot 4.** The Owner of Lot 4 reserves the following rights and privileges, and the Owner of Lot 3 acknowledges the Owner of Lot 4's following reserved rights and privileges:

- To use the Easement Area for any and all uses and purposes, including, without limitation, access, installation of, driveways, roads, parking areas, curbs, or sidewalks, grass, shrubbery, trees, and other landscaping, lighting, non-masonry fencing, utility lines, pipes, sprinklers, drains, and related improvements; provided, however, that the Owner of Lot 4 shall not (i) erect any building or other permanent structure (except as listed herein) on the Easement Area, and (ii) materially and substantially interfere with the rights and privileges granted to the Owner of Lot 3 by this Agreement.
- To relocate the storm sewer in the Easement Area, or any part thereof, to any location on Lot 4, within or outside the Easement Area, upon not less than ninety (90) days prior written notice to the Owner of Lot 3. Any relocation shall continue to provide drainage for Lot 3 of substantially equivalent capacity to that which existed prior to such relocation. The Owner of Lot 3 shall cooperate with the Owner of Lot 4 in connection with any such relocation, provided that the Owner of Lot 4 shall pay all costs of any such relocation made at its own request, that such relocation shall be compatible with the construction, use, operation and engineering of the Improvements and, to the extent commercially reasonable, shall avoid or minimize any interruption of utility services to the Owner of Lot 3. In the event of any such relocation, the parties agree to amend this Plat to the extent necessary to reflect of record any change in the location or configuration of the Easement Area.

12. **Easements Not Exclusive.** The rights and privileges granted herein to the Owner of Lot 3 are not exclusive. The Owner of Lot 4 covenants that it will not grant or convey to any other party any easement, right or interest in the Easement Area that would materially and adversely conflict with the Owner of Lot 3's rights and privileges hereunder, provided that this covenant shall not be deemed to prevent the Owner of Lot 4 from using or granting easements, rights or interests to others for the use of the Easement Area for utility lines, pipes or any other uses or purposes listed in Paragraph 11 above, or for any other use or purpose that is not in conflict with the Owner of Lot 3's rights and privileges hereunder.

13. **Assignment.** The rights, privileges and obligations of the parties under this Agreement may be alienated, transferred or assigned by either party without the other party's consent, provided that (a) any such transaction shall be made by an instrument in recordable form referring to this Agreement under which the assignee or transferee shall expressly accept, assume and agree to be bound by all of the terms and conditions of this Agreement, and (b) in the case of a transfer or assignment by the Owner of Lot 3, the transaction shall be made only in connection with a conveyance, lease, mortgage or other transfer of Lot 3.

14. **Successors and Assigns.** All of the easements, rights and obligations herein created, granted or imposed shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns, lessees, and mortgagees, as owners of title to or any interest in Lot 3 or Lot 4, or any part thereof.

15. **Covenants Running With Land.** The easements and all rights, covenants, conditions, and restrictions set forth in this Agreement are appurtenances, running with the land, unless and until the easements and other rights hereunder shall have been abandoned by the Owner of Lot 3 or its successors or assigns or this Agreement is terminated as otherwise provided herein.

16. **Amendment and Termination.** This Agreement may be amended or terminated only by a written instrument executed by the Owner of Lot 4 and the Owner of Lot 3 or by an order of competent judicial authority.

17. **Attorneys' Fees.** If at any time this Agreement becomes the subject of any legal action or proceedings between the parties in or before any court, arbitrator, mediator, or other adjudicator (whether pursuant to legal process, court order, voluntary submission, agreement, or consent), the non-prevailing party shall be responsible for all costs and expenses incurred by the prevailing party in connection with such action or proceedings, including but not limited to any and all court costs, arbitration, mediation, and other fees and costs, and all reasonable attorneys' fees, expert witness fees, and other costs.

SOURCE OF TITLE:
INST. #2011-28816
INST. #1987-11534

Sheet 3 of 3

This instrument prepared for:

JG3 Properties, LLC
PO Box 1185
Carmel, IN 46082

This instrument prepared by: Brady Kuhn

WEIHE
ENGINEERS
Land Surveying | Civil Engineering
Landscape Architecture

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