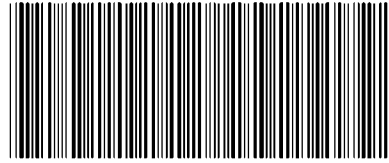


Mary Kozak  
Berks County Recorder of Deeds

Berks County Services Center 3<sup>rd</sup> Floor  
633 Court Street  
Reading, PA 19601  
Office: (610) 478-3380 ~ Fax: (610) 478-3359  
Website: www.countyofberks.com/recorder

**INSTRUMENT # 2021057270**

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**PARCEL ID(s):** (See doc for additional parcel #'s)

68449102669395  
68449102786017  
68449102750625

**SUBMITTED BY:**  
Summers Nagy Law Offices  
35 S DUKE ST

YORK, PA 17401-1401  
(717) 812-8100

**\* PROPERTY DATA:**

\*\* PLEASE SEE DOCUMENT OR INDEX FOR PROPERTY DATA

**FEES / TAXES:**

RECORDING FEES: DECLARATION	\$29.50
RECORDS IMPROVEMENT FUND	\$5.00
WRIT TAX	\$0.50
ADDITIONAL PAGE FEE	\$164.00
PARCEL ID FEE	\$30.00
<b>Total:</b>	<b>\$229.00</b>

**INSTRUMENT #: 2021057270**

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I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office in Berks County, Pennsylvania.



**Mary Kozak**  
Recorder of Deeds

**OFFICIAL RECORDING COVER PAGE**

Page 1 of 46

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**THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT**

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**Prepared by and  
Return To:**

**Jill E. Nagy**  
Summers Nagy Law Offices  
200 Spring Ridge Drive, Suite 202  
Wyomissing, PA 19610

**Parcel ID#:**

68-4491-02-66-9395  
68-4491-02-78-6017  
68-4491-02-75-0625

**Property Address:**

McIntosh Farms  
Adams Road and Ida Red Drive  
Ontelaunee Township  
Berks County, Pennsylvania

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**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
MCINTOSH FARMS II HOMEOWNERS ASSOCIATION**

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCINTOSH FARMS II HOMEOWNERS ASSOCIATION

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made as of November 11, 2021, by **FORINO CO, L.P.**, a Pennsylvania limited partnership as owner in fee simple of the Property (hereinafter described) (the "Declarant").

### ARTICLE I. DEFINITIONS

1. All capitalized terms used in this Declaration shall have the meaning given to them in the Index of Defined Terms that is attached hereto and incorporated herein by this reference. Any such term used in this Declaration and not otherwise defined shall have the meaning as provided by the Act.

### ARTICLE II. SUBMISSION OF PROPERTY TO DECLARATION

2. The Declarant, the owner in fee simple of the property described in Exhibit "A" attached hereto, located in the County Berks, Pennsylvania, for itself, its successors, and assigns, hereby submits the Property, including all easements, rights, and appurtenances and improvements erected or to be erected on it to the provisions of the Act and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, that the Property is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the Act and the covenants, obligations, conditions, easements, duties and other provisions created, declared and contained in this Declaration (as amended from time to time).

### ARTICLE III. DESCRIPTION, BOUNDARIES AND EASEMENTS

1. **The Community.** The Community shall consist of the Lots within the Property as described in Exhibit "A-2" attached hereto and made a part hereof, the Common Facilities as referred to in Article IV and defined in the appendix hereto, and any Controlled Facilities as referred to in Article IV and defined in the appendix hereto, together with the easements, rights and appurtenances belonging thereto.

2. **Plats and Plans.** The Plats and Plans, incorporated by reference, show each Lot and identifies each of the Common Facilities in the Community.

3. **Boundaries and Identification of Each Unit.** Each Unit shall consist of the subdivided residential Lot as designated on the Plan with a Building for which an occupancy permit has been, or is anticipated to be, issued by the Ontelaunee Township. The boundaries of each Unit, including the Unit's identifying number, are shown on the Plan. Recording data, if it exists pertaining to Association easements, relative to this community is listed on Exhibit "B" attached hereto.

## ARTICLE IV: COMMON FACILITIES

1. **Common Facilities.** Common Facilities shall consist generally of all real estate not included within the title lines of any Unit, and any improvements on such real estate to be owned by the Association, and shall include the following (to the extent not dedicated to the Ontelaunee Township or any applicable municipal or private authority) as shown on the Plat or Plan:

- (a) **Stormwater Management Facilities:** Except as may be otherwise provided herein, the Stormwater Management Facilities (including Detention Basins) located on Open Space shall be Common Facilities. Stormwater facilities within unit boundaries shall remain with the Unit.

2. **Stormwater Management System – Operation and Maintenance.** Upon approval of Declarant’s notice of termination for the NPDES Permit by the Commonwealth Department of Environmental Protection or the Berks County Conservation District, as applicable, pursuant to Section 5205(16.1) of the Act, the Association shall become responsible for compliance with all terms and conditions of any approval relating to the Stormwater Management Facilities, or stormwater maintenance agreements. Such obligation shall include, but not be limited to, long-term operation and maintenance of the post-construction stormwater best management practices in accordance with the applicable requirements detailed in Exhibit “D” – Storm Water Best Management Practices – Operations and Maintenance Agreement.

The Declarant’s obligations for the Stormwater Management Facilities under the NPDES Permit, the Land Development Plans or this Declaration shall end as of approval of the notice of termination. The Association shall not be required to maintain stormwater facilities on individual lots. The Association, through its Executive Board and duly authorized officers, shall execute any documents required by Ontelaunee Township, the Pennsylvania Department of Environmental Protection or any other applicable governmental agency to facilitate transferring from the Declarant to the Association ownership of the Stormwater Management Facilities and the obligation for maintenance the Stormwater Management Facilities (regardless of the location of such Stormwater Management Facilities) as stated herein.

3. **Controlled Facilities.** The Controlled Facilities are facilities not owned by the Association but can be the responsibility of the Association. As shown on the Plats and Plans, these include undedicated streets shown on the Plan, accompanying street sidewalks and front/rear lawns located in whole or part on a Lot. The Association shall be responsible for the day-to-day maintenance of such facilities, including, but not limited to, mowing and snow plowing. Individual driveways and service walks are not Controlled Facilities and shall be maintained, including specifically and without limitation, ice and snow removal, by Owners.

## ARTICLE V. EASEMENTS

1. **Grant of Easements.** The Property and any portion, Lot or Building therein, shall be owned, held, transferred, conveyed, assigned, sold, leased, occupied, used and enjoyed subject to the easements as shown on the Plans and set forth in this Article and any and all other easements of record. Subject to the appropriate approvals by the Ontelaunee Township, the Declarant reserves unto itself, its successors and assigns, the right to relocate, change or modify from time to time, the location of any easement either granted or reserved herein and are listed on Exhibit "B".

2. **Declarant Easements.** The Declarant reserves unto itself, its successors and assigns, the following easements with respect to the Property:

- (a) **Development Easements:** A blanket and non-exclusive easement in, upon, through, under, over and across the Property for the purpose of construction, installation, maintenance and repair of any improvements to the Property, for ingress and egress therefrom, for the use of all roadways and parking areas, and for the utilization of existing and future models for sales promotion and exhibition until the expiration of two (2) years from the date the last Lot is sold and conveyed in the normal course of business.
- (b) **Drainage Easements:** The Declarant reserves a perpetual, blanket and non-exclusive easement in, upon, over, under, across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading and/or the improvements located upon the Property. No individual Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Property. This easement shall be held by the Declarant so long as any Lot owned by the Declarant remains unsold. This easement shall then be held by the Association for so long as the Association is the record owner of lands designated as Common Facilities. For a period of ten (10) years from the date of conveyance of each Unit and the Common Facilities, the Declarant reserves an easement and right, but not the obligation, for the benefit of the Declarant, its agents, employees and contractors, on, over and under the ground within that Unit to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance or to address other concerns raised by the Ontelaunee Township. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil and/or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected Unit or the Common Area or cause the affected Unit to be restored, as nearly as practicable, to the condition in which it was found prior to the exercise of such right. The Declarant shall give timely notice of intent to take such action to the Owner of each Unit to be entered, unless, in the sole opinion of the Declarant, an emergency exists which precludes the ability to provide such notice. Declarant shall have the right and privilege to enter upon the Property and any Lot at any time to (i) correct any violations of ordinances, including set back requirements or other construction-related matters, and (ii) change the grade of the ground to transition the grade to adjacent areas

and/or install or change drainage control devices so as to alleviate any possible drainage or runoff problems, and (iii) to repair, maintain or replace any entrance improvements, Community signage or associated landscaping.

- (c) **Maintenance, Correction, Modification or Repair:** Declarant shall have the right and privilege to enter upon the Property and any Lot at any time to (i) correct any violations of ordinances, including set back requirements or other construction-related matters, (ii) change the grade of the ground to transition the grade to adjacent areas and/or install or change drainage control devices so as to alleviate any possible drainage or runoff problems, and (iii) to repair, maintain or replace any Common Facility including any utility facility, entrance improvements, Community signage or associated landscaping.
- (d) **Maintenance Period Easements:** The Declarant reserves to itself its successors and assigns, a perpetual, nonexclusive right and easement to enter upon each and every Lot and Common Area until the later of two (2) years after the sale of the last Lot in the Community by Declarant, or the expiration of the statutory maintenance period following dedication of public improvements as set forth in Section 509 of the Pennsylvania Municipalities Planning Code, as amended, 53 P.S. 10509, for the purpose of completing any landscaping as required by Ontelaunee Township and further to make such modifications in grading and/or drainage on any Lot as may be necessary in the discretion of the Declarant, its successors or assigns, and/or Ontelaunee Township Engineer for satisfactory storm water management.
- (e) **Declarant's Easements for Construction:** Declarant hereby reserves unto itself, until the later of two (2) years after the sale of the last Lot in the Community by Declarant, or the expiration of the statutory maintenance period following dedication of public improvements as set forth in Section 509 of the Pennsylvania Municipalities Planning Code, as amended, 53 P.S. 10509, the right and privilege with respect to the construction of Units or Common Facilities, or any other improvements, to go upon such portions of the Property as may be reasonably necessary: (i) for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of a Unit or any other Common Facilities; (ii) at any time with reasonable prior notice, to conduct grading activities and change the existing grade to match or tie in to the grading of the adjacent Lots; (iii) to correct any violations of ordinances, including setback requirements or other construction related matters; and (iv) for the purpose of discharging the Declarant's obligations or exercising the Declarant's rights. This Section shall not be amended without the prior written consent of the Declarant.

3. **Association Easements.** The Association shall have the following easements for the benefit of the entire Community:

- (a) **Maintenance of Common Facilities and Controlled Facilities:** A perpetual and exclusive easement over the entire Property for the maintenance of the Common Facilities and any Controlled Facilities, including that which currently or may hereafter encroach upon a Lot.
- (b) **Stormwater Management Easements on Specific Lots:** There is hereby reserved for the benefit of the Association and each of the Units in the Community, perpetual, non-exclusive easements as shown on the Plan for the free and uninterrupted natural flow and drainage of surface waters over the easement area and into any storm water detention basins, pipes, swales, channels or other natural or artificial means to convey surface waters from any portion of the Property.
- (c) **Inspection and Remedy:** The Executive Board or any manager or managing agent, or their respective agents or employees shall have the perpetual and non-exclusive right of access to each Lot and Unit (i) to inspect same, (ii) to remedy any violations of the provisions of this Declaration, the Bylaws or any Rules and Regulations of the Association, and (iii) to perform any work required in connection with the maintenance, repairs or replacements of or to the Common Facilities or any equipment, facilities or fixtures affecting or serving other Lot(s) or Unit(s) or Common Facilities; provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

4. **Easement in Favor of Ontelaunee Township.** Ontelaunee Township and any pertinent public authorities, and their agents and employees, shall have the irrevocable right and easement to have access to the Common Facilities to perform such obligations as may be necessary to complete, maintain, repair or replace the Common Facilities in the event that the Declarant or Association fails to do so.

#### **ARTICLE VI. CONSTRUCTION OF COMMUNITY AND DECLARANT CONTROL.**

1. **Declarant to Construct Community.** Declarant has agreed to construct the improvements to the Community, including Common Facilities, in material accordance with the Plan that has been approved by Ontelaunee Township (as the Plan may be amended or modified). In the exercise of its rights and obligations under the Plan, Declarant has reserved the rights contained in this Article and in this Declaration.

2. **Completion of Common Facilities.** The Declarant will complete the Common Facilities not later than the last conveyance by Declarant of a Unit included in the Community. Until such completion, the Declarant shall be solely responsible for real estate taxes assessed against or allocable to such incomplete Common Facilities. The Declarant guarantees completion of these Common Facilities that are indicated on the Plat as "MUST BE BUILT".

3. **Conveyance of Common Facilities.** All Common Facilities consisting of land not required by the Plan and designated as Common Facilities to be improved, graded, or disturbed in any way from their natural state will become Common Facilities upon the recording of this Declaration. The Declarant shall convey the Common Facilities to the Association at any time and from time to time, but not later than the date of the last conveyance by Declarant of a Unit included in the Community. This obligation to convey will be binding upon the Declarant and any successor in interest of the Declarant in the portion of the Community consisting of such Common Facilities, whether or not the successor succeeds to any special declarant rights of Declarant. The Common Facilities will be owned by the Declarant, prior to such conveyance. Declarant shall convey the Common Facilities to the Association by delivery of a fee simple deed of special warranty to the Association, which will be recorded. No consideration shall be payable by the Association, other than the Association's acceptance of such deed or deeds. The Association shall accept any such deed duly tendered and may not seek to evade its responsibilities by attempting to raise to accept any such deeds.

4. **Period of Declarant Control.**

- (a) **Continuation:** The period of Declarant Control shall begin with the filing of this Declaration and shall end as provided in sub-section (e) below.
- (b) **Sole Right:** Until the sixtieth (60th) day after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Board.
- (c) **First Transition:** Not later than sixty days after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Declarant, at least one member of the Board, but not less than twenty-five percent (25%) of the Board, shall be elected by Owners other than Declarant, as provided in the Bylaws.
- (d) **Second Transition:** Not later than sixty days after the conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, not less than thirty-three percent (33%) of the Board shall be elected by Owners other than Declarant, as provided in the Bylaws.
- (e) **Termination:** This period of Declarant Control shall terminate not later than the earlier of (i) seven (7) years after the date of the first conveyance of a Unit; or (ii) sixty (60) days after seventy-five percent (75%) of the Units have been conveyed to Owners other than the Declarant; or (iii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business. At that time, all members of the Board appointed by the Declarant shall resign, and the Owners shall elect successor members as provided herein and in the Bylaws. The Declarant shall have no obligation after the termination period to pay common expenses for lots where homes are not constructed.



5. **Reservation of Special Declarant Rights.** Declarant hereby reserves to itself as Special Declarant Rights, the right to:

- (a) Maintain offices, model homes and signs in the Community.
- (b) Use easements through the Common Facilities or Controlled Facilities for the purpose of making improvements in the Community.
- (c) Appoint or remove an officer of the Association or a member during any period of Declarant Control.

6. **Non-Interference with Declarant.** Declarant or its representatives, successors or assigns will undertake the work of constructing Units and completing the Common Facilities. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and welfare of the Property as a residential community. As used in this Section and its subparagraphs, the words "its representatives, successors and assigns" specifically do not include purchasers of Units. In order that Declarant's work may be completed and the Community established as a fully occupied residential community as rapidly as possible, no Unit Owner shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

## ARTICLE VII. COMMUNITY GOVERNMENT.

1. **The Association.** The Association is the governing body for all of the Owners and, except as otherwise provided in this Declaration, is responsible for the maintenance, repair, replacement, cleaning, sanitation, management, operation and administration of the Common Facilities and the making of any additions or improvements to the Common Facilities and Controlled Facilities. The Association shall have all powers granted to it by the Act and by law, including without limitation the power to assign its right to future income, including its right to receive common expense assessments, in those circumstances reasonably determined to be necessary by the Executive Board. The duties of the Association shall be undertaken as provided herein and in the Bylaws, but nothing herein contained shall be construed so as to preclude the Association from delegating any of these duties to a manager or agent or to another Person subject to the authority of the Executive Board. The Common Expenses incurred or to be incurred for the maintenance, repair, replacement, insurance, administration, management, operation and use of the Common Facilities and the making of any additions or improvements to the Common Facilities shall be assessed by the Association against, and collected from, the Owners in accordance with this Declaration and the Act.

### 2. **Membership in Association.**

- (a) **Membership.** Owners shall become members of the Association upon acceptance of the deed to their Unit. Membership in the Association shall be limited to the Owners of the Community.
- (b) **Rights and Privileges.** Every Owner as a member of the Association shall be entitled to all of the rights and shall be bound by all of the obligations

accompanying membership, provided that any Owner who is holding the interest in a Unit merely as security for the performance of an obligation shall not be a member.

- (c) **Voting Power:** Each Unit in the Community shall have one vote. When more than one Person holds an interest or interests in any Unit, all such Persons shall be members, and the vote for such Unit shall be exercised as provided in this Declaration and in the Bylaws.
- (d) **Good Standing:** Only those Owners in good standing and entitled to vote shall be considered "Owners" for purposes of (i) obtaining a quorum, or (ii) determining the percentage of Owners voting on a matter, or (iii) voting on a matter. An Owner shall be deemed to be "in good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all Assessments made or levied against the Owner and against his Unit by the Executive Board together with all interest, costs, attorneys' fees, penalties and other expenses, if any, chargeable to the Owner and against his Unit, at least five (5) days prior to the date fixed for such annual or special meeting.
- (e) **Leaseholds:** In the event an Owner shall lease or permit another to occupy his Unit in accordance with the provisions of this Declaration, the tenant shall not vote in the affairs of the Association, except as the Owner shall permit the tenant or occupant to exercise by proxy its vote as a member. Lease terms must be for a minimum of one (1) year.
- (f) **Termination of Membership:** Every lawful transfer of title to a Unit shall include membership in the Association and, upon making such transfer, the previous Owner's membership shall automatically terminate. Except as otherwise expressly provided herein or in the Act, membership in the Association may not be assigned or transferred without the transfer of legal title to a Unit and any attempt at such assignment or transfer thereof shall be void and of no effect.
- (g) **Sale of Unit:** Membership in the Association shall automatically terminate when an Owner sells, transfers or otherwise conveys his Unit.

### 3. **Executive Board.**

- (a) **Directors:** Subject to the provisions of the Act, this Declaration and the Bylaws, the Executive Board shall have the power to act on behalf of the Association. The Executive Board shall initially consist of three (3) members appointed by the Declarant. The initial Directors shall be appointed, removed, and replaced from time to time by the Declarant without the necessity of obtaining resignations. On the 60th day after twenty-five percent (25%) of the total Units to be included in the Community are conveyed to Owners other than Declarant, the Executive

Board shall be increased to five (5) Directors in the manner provided in (b) below.

- (b) **Meetings and First Election Meeting:** At the First Election Meeting, the Owners shall elect two (2) Owners to serve on the Board, and the Declarant shall appoint three (3) Directors. The Owner-elected Directors shall serve until the next annual meeting of the Association, which shall occur at least one hundred and eighty (180) days after the First Election Meeting. At that meeting, one Owner-elected director shall be elected for a two (2) year term, and one shall be elected to a one (1) year term, so that going forward, their terms are staggered.

4. **Non-Liability of Board or Committee Members.** Neither the Architectural Review Committee, any advisory committees nor the Executive Board, nor any member thereof, nor their duly authorized representatives shall be liable to the Association, or to any Unit Owner for any loss, damage or injury arising out of or in any way connected with the performance of the duties hereunder, unless due to the willful misconduct or bad faith of the AR Committee, advisory committee or Executive Board or any such member or representative.

#### ARTICLE VIII. ARCHITECTURAL REVIEW

1. **Creation of the Architectural Review Committee.** The Executive Board may create an Architectural Review Committee (the "AR Committee"), which may consist of up to three (3) members, as may be determined by the Executive Board. The rules and regulations of the Architectural Review Committee will be set forth in the Bylaws.

2. **Architectural Review.**

- (a) **Regulated Activities:** The AR Committee shall review and enforce the restrictions set forth herein and shall otherwise insure that all structures in the Community shall exist in general harmony and character with each other and the topography, vegetation and other natural features. Notwithstanding the above, the Executive Board shall have no power or authority with respect to Units still owned or any improvements made by the Declarant.
- (b) **Ontelaunee Township Approval:** Notwithstanding anything to the contrary contained herein, any construction shall be subject to all rules, regulations and ordinances of Ontelaunee Township, including the issuance of a building permit and/or zoning permit where applicable.
- (c) **Non-Applicability to Declarant:** The rights granted to the Executive Board are intended to preserve the aesthetic appeal of the Community once it has been constructed by Declarant. This section does not grant to the Executive Board the right to review and approve or disapprove any work being performed by Declarant. However, the Executive Board shall have the right to review and approve the proposed alterations or improvements of any other Owner once the Unit has been conveyed by the Declarant.

## ARTICLE IX. USE RESTRICTIONS

1. **Declarant Exemption.** The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work contemplated by the Plan. The restrictions of this Article shall therefor not be binding upon Declarant in the performance of any work in the Community, whether that work is required by the Plan or not.

2. **Rules and Regulations.** The Executive Board may, from time to time, promulgate reasonable Rules and Regulations that do not conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property. Further, any rules and regulations herein shall not be intended to interfere with the Township's property maintenance ordinances, noise ordinances or other nuisance ordinances that may be enacted from time to time.

3. **Restricted Uses.** The following uses and improvements are prohibited or restricted unless hereinafter specifically permitted with the prior approval of the Declarant or the Association:

- (a) **Unit Maintenance by Owner:** Each Unit Owner or occupant shall maintain his Unit in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any Rules and Regulations which may be applicable hereunder or under law. See attached Exhibit "E"
- (b) **Quiet Enjoyment:** No Unit Owner or occupant of any Unit shall carry on, or permit to be carried on, any practice on his Unit or on the Property which unreasonably interferes with the quiet enjoyment of another Unit or the Common Facilities by the Owner or occupant of any other Unit, or which creates or results in a hazard or nuisance on the Property.
- (c) **Rubbish; Outdoor Storage:** No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept in the Lot or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or by the Executive Board, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Unit Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.
- (d) **Maintenance Rights and Obligations:** Each Owner shall maintain his Unit in a manner satisfactory to the Association and in accordance with the Declaration and Rules and Regulations of the Association. Each Owner's maintenance responsibility shall include but not be limited to landscape

maintenance as well as the removal of snow from all service walks, porches, and driveways. In the event that a Unit is not so maintained, the Association shall have the right to enter upon the Unit to maintain the same, after giving the Unit Owner at least fifteen (15) days written notice to cure any maintenance problems or deficiencies. In the event that the Association exercises its right of entry for maintenance purposes, the Association shall have the right to assess the particular Unit Owner for the cost of such maintenance. The Association, by its Executive Board, shall have the right to establish Rules and Regulations governing the maintenance of any Unit.

- (e) **No Further Regulation of Declarant Property:** Nothing herein shall give the Executive Board authority to regulate, control or determine external design, appearance, use or location of portions of the Property under development, or to be developed, or Units under construction, or to be constructed, marketed or sold by the Declarant.
- (f) **Restrictions on Use of Common Facilities:** The Executive Board may prohibit or restrict the use of the Common Facilities from time to time, on a non-discriminatory basis, if and to the extent required for safety or other valid reasons.
- (g) **Temporary Structure:** No used, previously created, or temporary house structure or house trailer, and no temporary, or permanent out buildings (excluding sheds) may ever be placed, erected, or allowed to remain on the Units or Common Facilities, except by the Declarant or during construction activities approved as provided in this declaration.
- (h) **Vehicles and Trailers.** No commercial or other no-passenger vehicle (except for one pick-up truck or a small van), motorhome, motorcoach, travel trailer, trailer, mobile home or the like shall be parked or stored on any lot of 10,000 square feet or less within the subdivision unless such item is parked or stored within a permanently enclosed structure nor shall any such item be parked overnight in any street, alley, way or the like within the subdivision.
- (i) **Parking on Grass.** Parking on the grass is not permitted for periods in excess of 48 hours. Parked vehicles are not to block any sidewalks and/or driveways. Parked vehicles are not to impair or deny access to other Owners' driveways.

#### 4. **Leasing of Units.**

- (a) **Declarant Rights:** Declarant reserves the right to lease any and all of the Units owned by Declarant subject only to the provisions of this Section.
- (b) **Conditions to Leasing:** No Unit Owner shall be permitted to lease his Unit unless such Unit Owner has complied with the relevant provisions of this Declaration, the Bylaws and any applicable Rule and Regulations of the Association. All leases must be in writing for a term not to be less than one (1) year and approved by the Association, which approval shall not be unreasonably withheld. All leases shall provide that the lessee shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association, as may from time to time be promulgated by the Executive Board. The leasing of a Unit shall not affect the liability of the Unit Owner with respect to his obligations under this Declaration, the Bylaws and such Rules and Regulations.

#### ARTICLE X. MAINTENANCE AND REPAIR OBLIGATIONS

1. **Maintenance Obligations of Owners.** Each Owner shall be obligated, at its cost and expense, to maintain and repair its Unit in a neat, safe, sanitary and attractive condition, in accordance with the provisions of this Declaration, the Rules and Regulations, and all applicable laws. See Exhibit "E"

2. **Maintenance Obligations of Association.** In general, the Association shall have the obligation to maintain all Common Facilities located on the Property. The expenses of same shall be Common Expenses. All Common Maintenance Obligations shall be performed at such times and in such manner as shall be determined by the Board or by any applicable governmental approvals or regulations. See Exhibit "E"

#### ARTICLE XI. INSURANCE

1. **Casualty Insurance.**

- (a) **Coverage.** Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall cause to be maintained, to the extent reasonably available, property insurance on the Common Facilities insuring against fire and extended coverage perils and all other perils customarily covered by standard extended coverage endorsements in such amount as the Association may determine, but in no event less than One Hundred (100%) percent.
- (b) **Disposition of Proceeds.** The insurance coverage with respect to the Common Facilities shall be written in the name of, and the proceeds thereof shall be payable to, the Association. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessment made by the Association. In the event of damage to or destruction of any

part of the Common Facilities, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Unit Owners to cover the additional costs of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Owners.

## **ARTICLE XII. BUDGETS, ASSESSMENTS AND COLLECTIONS.**

1. **Creation of Lien and Personal Obligation of Assessments.** The Declarant for each Unit owned by it within the Property hereby covenants, and each Unit Owner by acceptance of a deed for a Unit, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association its proportionate share as shown on Exhibit "C": (i) Common Assessments for Common Expenses, and (ii) Special Assessments. Each such assessment, together with interest, costs, and reasonable attorneys' fees (if the assessment is not timely paid), will be the personal obligation of the person who was the Unit Owner of the Unit at the time when the assessment fell due, and if the assessment remains unpaid, the entire outstanding balance of the assessment will become effective as a lien against the Unit from the due date of the delinquent installment pursuant to section 3315 of the Act. Subject to provisions of this Declaration protecting first Mortgagees, the personal obligation for delinquent assessments as disclosed in the Resale Certificate will pass to the successors-in-title of the Unit Owner. The Executive Board will establish one or more separate accounts into which will be deposited all assessments paid to the Association, and from which disbursements will be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration.
2. **Power to Assess.** The Association, acting through the Executive Board in accordance with the Bylaws, has the power to fix and determine, from time to time, the sum or sums necessary and adequate to provide for the General Common Expenses, including, but not limited to, any amounts that are necessary for uncollectible assessments, budget deficits, any reserves that are hereinafter described, and any additional reserves that the Executive Board may deem necessary or prudent, and any other expenses specifically provided for in the Act, this Declaration, or the Bylaws. The Executive Board will establish one or more separate accounts (each, an "Operating Fund") into which will be deposited all such assessments paid to the Association, and from which disbursements will be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration.
3. **Date of Commencement of Monthly Assessment.** Monthly Assessments provided for herein will commence with the first day of the month after settlement on the first Unit to a non-Declarant purchaser or the first of the month after the first assessment is made by the Association or such later date as designated by Declarant. The Executive Board will arrange for the preparation of an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from

the Operating Fund, and distribute a copy of each such statement to each Member, and to each first Mortgagee who has filed a written request for copies of it with the Executive Board, in the manner provided in the Bylaws of the Association. At least thirty (30) days prior to the beginning of each fiscal year, the Executive Board will prepare and distribute the Budget to the Unit Owners. The Declarant shall not pay monthly assessments for lots until such time a home is constructed.

4. **Surplus.** The Budget of the Association will segregate capital expenses from General Common Expenses. Any amounts accumulated from Common Assessments and Special Assessments and income from the operation of the Common Facilities to which General Common Expenses pertain in excess of the amount required for actual General Common Expenses will be paid into the Capital Reserve Fund.

5. **Special Assessments.** If the Budget proves to be insufficient to cover the actual General Common Expenses for the related fiscal year for any reason (including, by way of illustration and not limitation, any Unit Owner's nonpayment of his or her assessment), the Executive Board has the power, at any time (and from time to time) it deems necessary and proper, to levy one or more Special Assessments against each Unit Owner.

6. **Payment of Assessments.** Each Owner must pay all assessments levied by the Association. Such assessments will be due and payable on a monthly basis as designated by the Executive Board.

7. **Failure to Fix New Assessments.** If the Executive Board fails to fix new Monthly Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners will continue to pay the same sums they were paying for the Monthly Assessments during the fiscal year just ended and these sums will be deemed to be the new Monthly Assessments for the succeeding fiscal year. If the Executive Board changes the Monthly Assessment at a later date, the new Monthly Assessment will be treated as if it were a Special Assessment under this Declaration.

8. **No Exemption by Waiver.** No Unit Owner may exempt himself or herself from liability with respect to the General Common Expenses by waiver of the enjoyment of the right to use any of the Common Facilities or by the abandonment of his or her Unit or otherwise.

9. **Liability Related to Assessments.**

- (a) All sums assessed by the Association as a Monthly Assessment or Special Assessment will constitute the personal liability of the Unit Owner of the Unit so assessed and also will, until fully paid, constitute a lien against the Unit pursuant to section 5315 of the Act. The Association may take action for failure to pay any assessment or other charges pursuant to sections 5314 and 5315 of the Act. Any assessment, or installment thereof, not paid within five (5) days after due will accrue, and any delinquent Unit Owner must pay, a late charge in the amount of five percent (5%) of the overdue assessment or installment in addition to interest at the rate of fifteen percent



(15%) per annum or any greater amount permitted by applicable law from the date the assessment was due. In addition to any late charges assessed in accordance with section 5314 of the Act or this Declaration, the delinquent Unit Owner will be obligated to pay (i) any fines that may be assessed for nonpayment of fees and assessments, and (ii) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (iii) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien. These expenses and amounts, together with accrued interest, will be deemed to constitute part of the delinquent assessment and will be collectible as such.

- (b) Notwithstanding anything provided above (but subject to the provisions of section 5407(c) of the Act), upon the voluntary sale, conveyance, or any other voluntary transfer of a Unit or any interest therein, the grantee will be jointly and severally liable with the grantor for all unpaid Monthly Assessments and Special Assessments that are a charge against the Unit as of the date of consummation of the sale, conveyance, or transfer, but such joint and several liability will be without prejudice to the grantee's right to recover from the grantor the amount of any unpaid Monthly Assessments and Special Assessments that the grantee may have paid, and until any of the Monthly Assessments and Special Assessments are paid, they will continue to be a lien against the Unit, which may be enforced in the manner set forth in section 5315 of the Act.

**10. Unpaid Assessments Upon Execution Sale Against a Unit.** Any unpaid assessments that cannot be promptly collected from the former Unit Owner may be reassessed by the Executive Board as a General Common Expense to be collected from all of the Unit Owners, including (by way of illustration and not limitation) the purchaser who acquired title at the sheriff's sale, his or her successors and assigns, and any holder of a mortgage who comes into possession of a Unit by deed in lieu of foreclosure or assignment in lieu of foreclosure.

**11. Subordination of Certain Charges.** Any fees, charges, late charges, fines, and interest that may be levied by the Association pursuant to sections 5320(10), (11), and (12) of the Act will be subordinate to any first lien Mortgage.

**12. Acceleration.** If a Unit Owner is in default in the payment of the charges or monthly installments of assessments described in this Article XII for sixty (60) days, the Executive Board may, in addition to all other remedies contained in the Act or this Declaration, accelerate all other charges and monthly installments of assessments to become due for the next twelve (12) months on the basis of the Budget for the fiscal year in which the default occurs and assuming the same Budget for the following year; however, a Mortgagee registered with the Secretary of the Association pursuant to this Declaration that is foreclosing pursuant to a first lien Mortgage will be entitled to automatic subordination of such sums in excess of the amounts that are prior in lien or payment to mortgage liens under the Act.

13. **Assignment of Income Rights.** The Association may assign its rights to future income, including payments made on account of assessments for General Common Expenses, to secure any loan obtained by the Association for repairs, replacements, or capital improvements to the Common Facilities, provided that any such assignment is authorized by the vote of not less than fifty-one percent (51%) of the members of the Executive Board.

14. **Declarant's Rights to Contribute to the Operating Funds of the Association.** Declarant shall have the right, in its sole discretion and from time to time, to contribute to the operating funds of the Association. At the option of the Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to the Declarant at the direction of the Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

15. **Transfer Fee.** A \$250.00 non-refundable contribution to the general fund (capital reserves) of the Association (i.e. transfer fee) shall be paid by the purchaser of a Unit (or an undivided interest in such Unit) at the closing of each sale or resale of a Unit. Notwithstanding the foregoing, this contribution shall not be due from (i) any grantee who is the spouse, former spouse or registered domestic partner of the grantor; (ii) any entity that is wholly owned by the grantor; (iii) any grantee to whom the Unit is conveyed by a deceased grantor by will or through the laws of intestacy; or (iv) any grantee who obtains title to a Unit pursuant to judicial or non-judicial foreclosure of any first priority deed to secure debt of record (provided that such contribution to the working capital fund of the Association/transfer fee shall be due upon any subsequent sale or transfer by such grantee). The Transfer Fee amount may be revised from time to time by the Executive Board.

### **ARTICLE XIII. RIGHTS AND OBLIGATIONS OF MORTGAGEES AND LENDERS.**

1. **Notices Upon Request.** If a prior written request is made to the Association by a Mortgagee, then the Association shall agree to give written notice of to the Mortgagee of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws, which default is not cured within thirty (30) days after the Association gives notice to the Mortgagor of such default. The Association may give such notice to the last known address of the Mortgagee and shall not be required to seek out the identity or new address for the Mortgagee if the last known address is invalid.

2. **Notice of Amendments; Casualty; Condemnation.** The Association shall give to all Mortgagees who have made a prior written request to the Association:

- (a) Thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, and prior to the effective date of any termination of an agreement for professional management of the Community Property

following a decision of the Unit Owners to assume self-management of the Community.

- (b) Immediate notice following any damage to the Common Facilities whenever the cost of reconstruction exceeds Fifty Thousand Dollars (\$50,000); or as soon as the Board learns of any threatened condemnation proceeding.

The Association may give such notice to the last known address of the Mortgagee and shall not be required to seek out the identity or new address for the Mortgagee if the last known address is invalid.

3. **Payments by Mortgagees.** Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Facilities; and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property. The Association agrees that any such Mortgagee making such advance shall be entitled to immediate reimbursement therefor from the Association.

#### ARTICLE XIV. RIGHTS GRANTED TO ONTELAUNEE TOWNSHIP

1. **Right to Make Repairs and Perform Maintenance.** The Municipality shall be a third-party beneficiary of the provisions of the Community Documents that require the Declarant and/or the Association to substantially complete and/or provide for the Common Facilities and require the Declarant and/or the Association to maintain and repair the Common Facilities. In the event that the Declarant and/or the Association shall at any time fail to maintain or repair the Common Facilities or any of the facilities or improvements provided thereon, or shall at any time fail to perform any other obligation of maintenance or repair with respect thereto which is imposed upon it by the Community Documents (including as set forth in the Plan), the Municipality, in addition to those rights which the Municipality may have under law, by and through its governing body may, but it need not, elect to make such repairs or perform such maintenance in order to protect the public safety and welfare and to maintain compliance by the Community with the final Subdivision Plan approved by the Municipality. Except in the event of an emergency endangering life or property, before commencing such action, the Municipality shall give the Association thirty (30) days prior written notice of the Municipality's intention so to act, and the Municipality shall withhold implementation of its action if the Association shall commence performance of the required repair or maintenance prior to the expiration of said notice period and for so long as the Association shall promptly, continuously and diligently pursue such repair or maintenance.

2. **Costs of Repairs and Maintenance.** The cost of any performance of repairs or maintenance by the Municipality as permitted under Article 14 Section 1 shall be paid by the Declarant and/or the Association as applicable, within thirty (30) days after written demand. Any

amounts not paid as aforesaid shall constitute a municipal lien and/or a municipal real estate tax lien upon the Common Elements and/or portably against each Unit.

## ARTICLE XV. COMPLIANCE AND ENFORCEMENT

1. **Compliance and Breach.** The Board shall have the authority to exercise any and all remedies provided in this Declaration, or as otherwise may be provided by law, to enforce compliance with or remedy any violation of the Community Documents, including the right to bring a suit at law or in equity to compel compliance therewith, to restrain or abate any violation thereof or to recover damages for such violation. The Association shall be entitled to recover the reasonable costs of enforcement, including attorney's fees, from any Unit Owner or other person violating this Declaration, the Bylaws or any Rules and Regulations. The Board may establish reasonable fines for any such violation.

2. **Enforcement by Unit Owners: Procedures.**

- (a) The Association shall have the sole and exclusive right and authority to enforce the covenants in this Declaration relating to the payment of Assessments by Unit Owners, and no Unit Owner shall have the right to bring any action at law or in equity to compel any other Unit Owner(s) to pay Assessments or other sums payable by one or more Unit Owners hereunder; provided, however, that nothing herein shall be construed to prevent one or more Unit Owners from commencing an action on behalf of or in the right of the Association, or to compel the Association to collect Assessments from any Unit Owners who have failed to pay Assessments if the Association shall have failed or refused to make reasonable efforts to collect such Assessments from the delinquent Unit Owners without reasonable cause.
- (b) No Unit Owner shall have the right to bring any action at law or in equity to enforce any of the other terms, covenants, restrictions or provisions of this Declaration, or of the By-Laws or the Rules and Regulations.

3. **Remedies Cumulative: No Waiver.** All rights and remedies provided for herein, or as otherwise may be available at law or in equity, shall be cumulative and may be pursued individually, together, at one time or from time to time, as the Board of the Association deems appropriate in its sole discretion. No waiver of and no delay or forbearance in the enforcement of any provisions of this Declaration shall be construed as or shall constitute a waiver of the right to do so. Neither the Association nor any Unit Owner shall be deemed to have waived any right of enforcement or any breach or default of the provisions of this Declaration on the part of any Unit Owner or occupant unless such waiver shall be in writing, and then only to the extent expressly set forth in such waiver.

4. **Substitute Performance.** The Association may, after fifteen (15) days prior written notice, without being liable to any Unit Owner, enter upon any Unit, for the purpose of enforcing by peaceful means the provisions of this Declaration or the other governing documents, or for the purpose of maintaining or repairing any such Unit if for any reason whatsoever the Owner thereof fails to maintain or repair any such Unit as required by this Declaration. The cost

of any such maintenance and repairs incurred by the Association shall be an obligation of the Owner, shall be a lien on the Unit, and may be collected as permitted herein for assessments and other charges,

#### ARTICLE XVI. AMENDMENTS TO DECLARATION.

1. **Right to Amend Declaration.** Except as limited or as otherwise permitted by Section 5219 of the Act or this Declaration, this Declaration may be amended by the vote of the Unit Owners holding sixty-seven percent (67%) of the allocated votes in the Association. Any proposed amendments to this Declaration that would affect the specific rights of Ontelaunee Township or Declarant that are granted herein shall not be effective unless also approved in writing by the Township or the Declarant (as applicable).

2. **Declarant's Joinder for Specific Amendments.** Except to the extent expressly permitted or required by other provisions of the Act, without the unanimous consent of all Unit Owners affected, no amendment may create or increase any Special Declarant Rights, alter the terms or provisions governing the completion or conveyance or lease of Common Facilities or increase the number of Units or change the boundaries of any Unit, the Common Expense liability or voting strength in the Association allocated to a Unit, or the uses to which any Unit is restricted. In addition, no Declaration provisions pursuant to which any Special Declarant Rights have been reserved to the Declarant shall be amended without the express written joinder of the Declarant in such amendment.

3. **Curative Amendments.** If any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats and Plans which is defective or inconsistent with any other provision hereof or thereof or with the Act, the Board may, at any time and from time to time, effect such amendment without the approval of the Unit Owners, upon receipt by the Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of the Act, together with a like opinion from an independent registered architect or licensed professional engineer in the case of any such amendment to the Plan. Each such amendment shall be effective upon the Recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgments by one or more officers of the Board.

#### ARTICLE XVII. GENERAL PROVISIONS.

1. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order in no way affects any other provisions which shall remain in full force and effect. In the event any provision of this Declaration is determined by any court order to be invalid, enforcement of the Declaration as revised by such court order shall be prospective only.

2. **Parties Bound.** Each present and future Unit Owner, occupant and Mortgagee of a Unit, shall be subject to and shall comply with the provisions of the Act, this Declaration, the Plan, the Bylaws, the Rules and Regulations, and the deed to such Unit. The acceptance of a deed or mortgage to any Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, the Plan, the Bylaws, the Rules and Regulations

and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee or Mortgagee. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or mortgage thereof.

3. **Continuing Effect.** The covenants and restrictions of its Declaration shall run with and bind the Property, and all inure to the benefit of and be enforceable by the Unit Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns and the Association.

4. **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community. In case of inconsistencies in the governing documents of the Community, then the articles of incorporation of the Association shall have precedence over this Declaration; this Declaration in turn has precedence over the Bylaws of the Association; and the Bylaws have precedence over any rules and regulations adopted by the Association. The section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. All Exhibits attached hereto are hereby made a part hereof.

5. **Covenant Running with the Land, Constructive Notice and Acceptance.** The provisions of this Declaration shall at all times hereafter be appurtenant to, affect and bind the Property and are intended to be covenants running with the land with regard to the Property. This Declaration shall be Recorded, and when so Recorded, every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

*[Signatures appear on following page.]*

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

**DECLARANT:**

BY *Lisa L. Hermanovich*

Attest: *Suzanne Haupt*

By: LISA L. HERMANOVICH

Its: PRESIDENT

[CORPORATE SEAL)

**ACKNOWLEDGMENT**

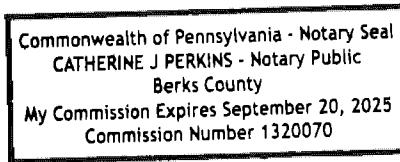
COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF BERKS :

On this day, November 11, 2021, before me, a notary public, the undersigned officer, personally appeared Lisa L. Hermanovich, who acknowledged himself/herself to be the VICE President, the of Forino Co LP, a Pennsylvania limited partnership, and that he/she in such Township, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself/herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Catherine J Perkins  
Notary Public

My Commission Expires: 9/30/2025





## INDEX OF DEFINED TERMS

The following terms when used in this Declaration shall have the meanings given to them by this Section:

*“Act”* shall mean the Pennsylvania Uniform Planned Community Act, 68 P.S. §§5101 et seq., as amended.

*“Assessments”* shall mean those assessments, payable by the Owners upon notification by the Association as provided herein. Each Assessment shall be separate and payable by the Owner of the Lot against which the Assessment is levied.

*“Association”* shall mean McIntosh Farms II Homeowners Association, a Pennsylvania non-profit corporation, being an association of all Owners (including the Declarant while it owns a Lot subject to this Declaration).

*“Authority”* shall mean a municipal authority (including a joint municipal authority) providing services to the Community.

*“Board”* shall mean the Executive Board as it may from time to time be constituted.

*“Building”* shall mean a structure constructed upon a Lot.

*“Bylaws”* shall mean the Bylaws of the Association that have been or will be adopted by the Executive Board for the management of the affairs of the Association, as amended from time to time.

*“Capital Reserve Fund”* shall mean the fund created by the Association.

*“Common Assessments”* shall mean those general, limited and special assessments as determined and levied by the Association from time to time for the payment of the debts and obligations of the Association.

*“Common Facilities”* shall include the Common Facilities and the Controlled Facilities, and those other facilities that the Association may hereafter own, acquire, construct or control and designate as Common Facilities or Controlled Facilities.

*“Common Facilities”* shall mean the real estate and attached improvements to be made, and which will be owned by the Association.

*“Common Expenses”* shall mean the expenses and financial liabilities of the Association, and future expenses that may be reasonably anticipated, together with any allocations for reserves and capital items, for which the Owners may be liable pursuant to this Declaration or the Bylaws. In the discretion of the Association and in accordance with this Declaration and the Act, Common Expenses may be designated as “General” (benefiting all Owners) or “Limited” (benefiting fewer than all Owners).

*"Common Maintenance Obligations"* shall mean the obligations of the Association to maintain and repair the Common Facilities, and to perform those other duties that may be required hereunder or may be necessary or desirable for the maintenance and improvement of the Community.

*"Common Receipts"* shall mean the funds collected from Owners as Assessments and receipts designated as common by the provisions of this Declaration and the Bylaws.

*"Common Surplus"* shall mean the excess of all Common Receipts over all Common Expenses.

*"Controlled Facilities"* shall mean any real estate and attached improvements within the Community, whether or not a part of a Unit, that is not a Common Facility, and for which the Association may be obligated to maintain, improve, repair, replace, regulate, manage, insure or otherwise control.

*"Declarant"* means Forino Co., L.P. or its successors and assigns.

"Declarant Control" means the time period described in Article VI in which Declarant has reserved various rights with respect to the Community.

*"Declaration"* means this document, as it may be amended from time to time.

*"Detention Basins"* shall mean the areas within the Property, whether in Open Space or within the Lot lines of any Unit, that are intended to be used as stormwater detention basins as part of the Stormwater Management Facilities, all as further depicted on the Plan and described herein.

*"Drainage Systems"* shall mean any pipes, swales, channels, conduit or any other natural or artificial means and all parts and components thereof, which have been or will be constructed and laid within the Stormwater Management Facilities for the purpose of conveying storm water runoff from the roads and other impervious surfaces to detention basins and certain other Stormwater Management Facilities.

*"Executive Board"* or *"Board"* shall mean a group of individuals who shall manage and administer the business affairs and operation of the Association on behalf of the Members.

*"Lot"* shall mean each of the 150 numbered parcels of land shown on the Plan, and all structures that are or will be erected thereon.

*"Manager"* shall mean the person or firm, if any, appointed by the Association as its agent to perform certain management obligations of the Association.

*"Member"* shall mean the Owners of each Unit who are required to be members of the Association as provided in the Bylaws.

*"Mortgage"* shall mean any mortgage on a Lot or other part of the Property.

“*Mortgagee*” shall mean a lender who holds a first mortgage on a Unit.

“*Mortgagor*” shall mean a Unit Owner who has granted a first mortgage on his Unit.

“*NPDES Permit*” means that certain National Pollutant Discharge Elimination System Permit No. PAC060250, issued on December 8, 2019, as amended, and all attachments, plans and supplements relating thereto, which regulates stormwater controls during construction activities on the Property.

“*Open Space*” shall mean the land within areas designated as Open Space on the Plan (if any).

“*Operating Account*” shall mean the accounts created for receipts and disbursements of the Association, pursuant to Section 12.01 hereof.

“*Owner*” shall mean the record Owner of any Unit, excluding those persons having an interest merely as security for the performance of an obligation. Multiple Owners of a single Unit shall together be deemed one Owner for purposes of this Declaration.

“*Person*” shall mean any natural individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.

“*Plan*” shall mean a plan titled “McIntosh Farms II” (the “Plan”) which was approved and recorded in the Recorder's Office of Berks County, Pennsylvania as Number 2020022312 et seq. on July 7, 2020. The contents of the Plan are incorporated herein by this reference.

“*Plat*” shall mean the plan showing various aspects of the Community as required by the Act, which will be delivered to each prospective Owner with a public offering statement, prior to or at the time of the signing of an agreement of sale for a Unit in the Community.

“*Property*” shall mean the entire parcel of real estate (including all Additional Real Estate that may or may not be added) on which the Community may be situated, as further described in the legal description attached as Exhibit A-1 hereto.

“*Recorded*” shall mean that an instrument has been duly recorded in the Office of the Recorder of Deeds in and for Berks County, Pennsylvania.

“*Rules and Regulations*” shall mean rules and regulations that may be adopted from time to time by the Association to govern the Community and its affairs.

“*Special Assessment*” shall mean a charge levied against some or all of the Unit Owners to pay for Common Expenses not covered by the Common Assessment.

“*Special Declarant Rights*” shall mean the rights that Declarant has reserved to itself under this Declaration.

“*Stormwater Management Facilities*” shall mean, as the context requires, any and all stormwater management or Detention Basins or other containment structures, stormwater diversion and/or

discharge structures, Drainage Systems, and any other structures, devices, berms, walls, basins and other improvements, installed or to be installed or constructed in accordance with the Plan for the purpose of collection, transmission, containment, diversion and/or discharge of stormwater, including also any inlets, outlets, headwalls, end walls, pipes or piping, and any and all other structures or facilities to be constructed or installed on any part of the Property or on any easements appurtenant thereto or on any Lot or Lots for the purpose of managing and/or controlling stormwater runoff, as the same may be modified, reconstructed, enlarged, altered or replaced from time to time.

*“Unit”* shall mean and refer to each of the Lots, the boundaries of which shall be the boundaries of such Lots as depicted on the Plan, together with the improvements and Buildings built on the Lot (if applicable) and the other legal rights and obligations associated with ownership of that Lot. Each Unit is given a Unit number as depicted on the Plan. When Units include a party wall, the boundary of such Unit shall be the center of the party wall separating one dwelling from another.

*“Unit Assessment”* shall mean a charge against a particular Owner and his Lot directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest and expenses of collection thereon as provided for in this Declaration.

EXHIBIT "A"

PROPERTY

## FORINO CO., L.P.

**McINTOSH FARMS II – OVERALL BOUNDARY DESCRIPTION**

ALL THAT CERTAIN tract of land situate north of Gernants Church Road (T-713) and east of Adams Road (T-715) in Ontelaunee Township, Berks County, Commonwealth of Pennsylvania, being known as McIntosh Farms II as shown on subdivision plans prepared for Forino Co., L.P. by C2C Design Group (Project # FOR-MCF-02 dated November 2, 2021), intended to be recorded, and being more fully bounded and described in accordance with said plans as follows:

BEGINNING AT A POINT at the intersection of Adams Road (60 feet wide) with Gernants Church Road (60 feet wide);

Thence along the centerline of Adams Road, North  $36^{\circ}40'37''$  West, 150.23 feet;

Thence crossing the eastern one half of Adams Road and extending along lot 16 of the McIntosh Farms subdivision (Plan recorded as Instrument # 2020022312 Berks County records), North  $53^{\circ}19'23''$  East, 212.51 feet;

Thence continuing along lot 16, North  $36^{\circ}40'37''$  West, 114.40 feet to a corner of lot 15;

Thence along the rear of lots 15 and 14, North  $27^{\circ}50'34''$  West, 218.04 feet;

Thence continuing along lot 14, South  $55^{\circ}41'16''$  West, 110.09 feet to a corner of lot 13;

Thence along lot 13, North  $36^{\circ}40'37''$  West, 195.46 feet to a point in the southern right-of-way line of Sunglo Drive (50 feet wide);

Thence along the southern right-of-way line of Sunglo Drive, North  $53^{\circ}19'23''$  East, 82.54 feet;

Thence crossing Sunglo Drive at the terminus of its construction as part of the McIntosh Farms subdivision and along the rear of lots 12 through 5 of said subdivision, North  $36^{\circ}40'37''$  West, 975.80 feet to a corner of lot 4;

Thence along lot 4 and part of lot 3, North  $34^{\circ}37'48''$  West, 191.60 feet;

Thence continuing along lot 3 and along lot 2 and lot 1, North  $38^{\circ}45'34''$  West, 243.24 feet to a point on the southern right-of-way line of Ida Red Drive (60 feet wide);

Thence along lot 1 by the southern right-of-way line of Ida Red Drive, South  $53^{\circ}10'43''$  West, 19.37 feet;

Thence crossing Ida Red Drive and extending along lot 87 of "The Harvest" subdivision (Plan Book Volume 275, page 83), land now or formerly of Nathan J. Blanski and Jennifer L. Blanski,

North 36°49'17" West, 270.69 feet to a corner of land now or formerly of Ontelaunee Orchards, Inc. (Record Book Volume 3029, page 1696);

Thence along land now or formerly of Ontelaunee Orchards, Inc., North 54°30'18" East, 3009.19 feet to a point in line of land now or formerly of the William C. Adams Trust, Ruth Alice Adams Trustee (Record Book Volume 2115, page 2349);

Thence along said land now or formerly of the William C. Adams Trust the three (3) following courses:

1. South 41°03'20" East, 548.67 feet to a point in the bed of Ida Red Drive;
2. Leaving Ida Red Drive, South 53°50'42" West, 996.10 feet; and
3. South 37°28'30" East, 802.76 feet to a corner of land now or formerly of Adams Brothers (Record Book Volume 3293, page 2189);

Thence along said land now or formerly of Adams Brothers the two (2) following courses:

1. South 46°53'17" West, 915.75 feet; and
2. South 34°37'03" East, 399.59 feet to a corner of land now or formerly of Shirley Armpriester (Instrument # 2016017071);

Thence along said land now or formerly of Armpriester the two (2) following courses:

1. South 28°10'41" West, 719.79 feet; and
2. South 29°57'25" East, 155.64 feet to a point in Gernants Church Road;

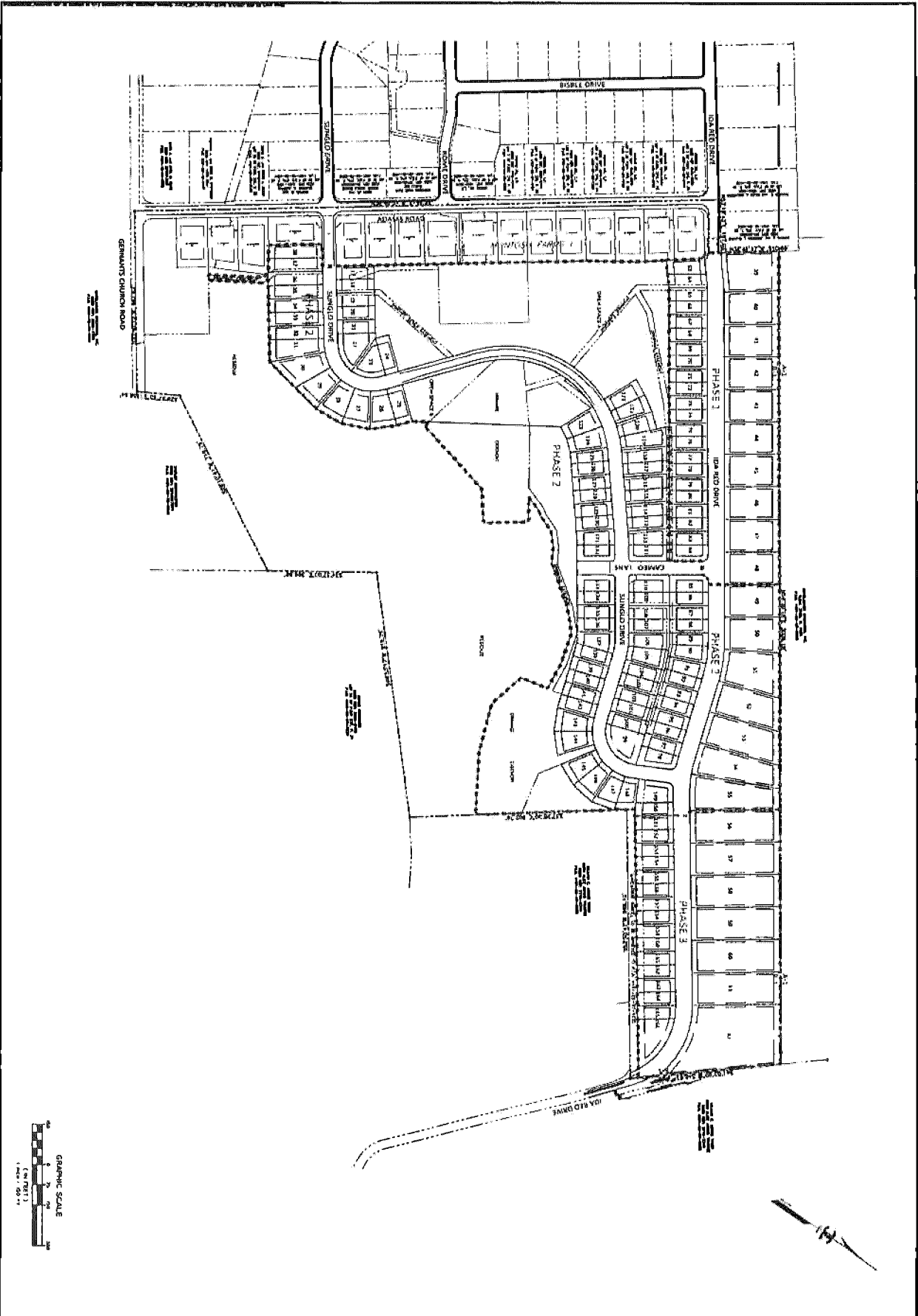
Thence in and along Gernants Church Road, South 53°40'12" West, 667.93 feet to The Point of Beginning.

CONTAINING IN AREA 99.360 acres.

Being Berks County Tax Parcels 4491-02-66-9395, 4491-02-78-6017 and 4491-02-75-0625.

BEING THE SAME PREMISES which Ontelaunee Orchards, Inc. granted and conveyed to Forino Co., L.P. by deed dated April 21, 2006, and recorded in Record Book Volume 4873, page 2444 at the Berks County, PA Recorder of Deeds office.

ALSO, BEING PART OF THE SAME PREMISES which Ontelaunee Orchards, Inc. granted and conveyed to Forino Co., L.P. by deed dated February 4, 2005, and recorded in Record Book Volume 4528, page 1096 at the Berks County, PA Recorder of Deeds office.



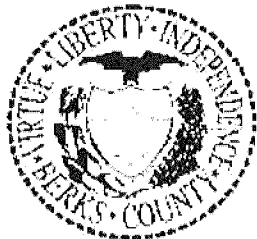
MCINTOSH FARMS II FORINO CO.,LP. ONTARIO TOWNSHIP BERKS COUNTY, PA	OVERALL SUBDIVISION PLAN <b>C2C DESIGN GROUP</b> 37 East Penn Avenue Warrington, PA 19388 610.882.0000 www.c2cdg.com	C2C DESIGN GROUP Civil Engineering and Surveying Solutions from Concept to Construction	1	04/20/2021	REVISED SURVEY REPORT TO SHOW REVISIONS TO LOT 37	CD
			2	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			3	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			4	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			5	07/20/2021	REVISED PER SURVEY COMMENTS	CD
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			7	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			8	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			9	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			10	07/20/2021	REVISED PER SURVEY COMMENTS	CD
			11	07/20/2021	REVISED PER SURVEY COMMENTS	CD
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50-1



EXHIBIT "B"

RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES

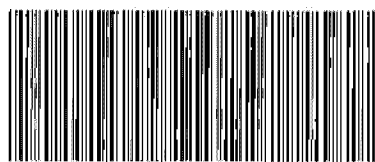


**Mary Kozak**  
**Berks County Recorder of Deeds**

Berks County Services Center 3<sup>rd</sup> Floor  
 633 Court Street  
 Reading, PA 19601  
 Office: (610) 478-3380 ~ Fax: (610) 478-3359  
 Website: www.countyofberks.com/recorder

**INSTRUMENT # 2020044154**

RECORDED DATE: 11/20/2020 08:39:06 AM



4965874-00160

**Document Type:** RIGHT OF WAY / EASEMENT

**Transaction #:** 5643356  
**Document Page Count:** 3  
**Operator Id:** dfuoco

**PARCEL ID(s):** (See doc for additional parcel #'s)

68449102750625  
 68449102669395  
 68449102786017

**SUBMITTED BY:**  
 Signature Abstract  
 1100 BERKSHIRE BOULEVARD SUITE 100

WYOMISSING, PA 19610  
 (610) 376-1818

**\* PROPERTY DATA:**

Municipality:	ONTELAUNEE TOWNSHIP	ONTELAUNEE TOWNSHIP	ONTELAUNEE TOWNSHIP
School District:	SCHUYLKILL VALLEY	SCHUYLKILL VALLEY	SCHUYLKILL VALLEY

\*\* PLEASE SEE DOCUMENT OR INDEX FOR ADDITIONAL PROPERTY DATA

<b>CONSIDERATION/SECURE AMT:</b>	<b>\$0.00</b>
<b>TAXABLE AMOUNT:</b>	<b>\$0.00</b>
<b>FEES / TAXES:</b>	
RECORDING FEES: RIGHT OF WAY / EASEMENT	\$26.25
RECORDS IMPROVEMENT FUND	\$5.00
JUDICIAL FEE	\$40.25
WRIT TAX	\$0.50
PARCEL ID FEE	\$30.00
<b>Total:</b>	<b>\$102.00</b>

**INSTRUMENT #: 2020044154**  
 Recorded Date: 11/20/2020 08:39:06 AM

I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office in Berks County, Pennsylvania.



**Mary Kozak**  
**Recorder of Deeds**

**OFFICIAL RECORDING COVER PAGE**

**PLEASE DO NOT DETACH**

**THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT**

NOTE: If document data differs from cover sheet, document data always supersedes.  
 \*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

PREPARED BY: Anita Staaf  
Met Ed Company  
P O Box 16001  
Reading, PA 19612-6001

PREMISES: McINTOSH FARMS, Adams Rd  
and Ida Red Dr, Ontelaunee Township,  
Parcel ID# 68449102750625,  
68449102669395 and 68449102786017.

Anita Staaf  
Met Ed Company  
P O Box 16001  
Reading, PA 19612-6001

DOCUMENT NO.	ORDER NO.	NOTIFICATION NO. 346479251	GRID NO. 249659C41521
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The undersigned,

Forino Co., LP

("the Grantor") with a principal business address of

555 Mountain Home Rd, Sinking Spring, PA 19608

is the owner of a real estate development known as McINTOSH FARMS  
in the Township of Ontelaunee, County of Berks, State of Pennsylvania,  
having a Tax Parcel Identification Number of 68449102750625, 449102669395, 449102786017 (the Development).

Grantor has requested METROPOLITAN EDISON COMPANY, a Pennsylvania corporation, (the "Grantee"), to install an electrical/communication system in the Development which is more fully shown on Plan Number FOR-MCF-01 entitled McINTOSH FARMS and dated 06/19/2019, a copy of which is:  attached hereto and made a part hereof; or  recorded, or about to be recorded in Final Plan (Plat) Book \_\_\_\_\_, Page \_\_\_\_\_, County Records, and incorporated herein by reference.

Grantor, for valuable consideration, the receipt of which is hereby acknowledged and intending to be legally bound, hereby grants, covenants and agrees as follows:

Grantor, as of this date, represents that no lots in the Development have been sold or agreement for the sale thereof have been entered into except none

Grantor hereby grants and conveys to Grantee a permanent easement and uninterrupted right, from time to time, to construct, reconstruct, operate, inspect, renew, maintain, replace, improve, redesign, alter, repair, relocate, add to, extend and remove an overhead, underground and/or ground level electric/communication system described below as may be deemed necessary or convenient by Grantee for electric, CATV and communication purposes for the use and benefit of the Development (including any further subdivision of the lots contained therein) and/or adjoining lands.

The system may include, without limitation, poles, crossarms, guy wires, guy stubs, anchors, street lights and standards, transformers, transformer pads, switching compartments, conduits, conductors, ducts, wires, cables, fibers, pedestals, terminal boxes, hand-holes, manholes and other related equipment and apparatus (the "Facilities"), which, in addition to serving Development lots, may be installed along, within or across all streets, alleys, roads and all other public places, including yards, parking lots and open spaces, and to all buildings of or on the Development.

Grantor further grants and conveys to Grantee the right, from time to time in the Development, to trim, cut and/or remove such trees, tree branches, shrubs, roots, vegetation, structures and/or other objects or obstructions, which are within fifteen (15) feet of any wire strung or above ground structure or, which, in the sole judgement of the Grantee, interfere with the installation of, or in the safe, proper or convenient use, maintenance, operation of, or access to, the Facilities, including, without limitation, the removal of such trees, and/or tree branches which overhang or endanger any of the Facilities. Further, Grantee shall have the right to make such excavations to accomplish the above purposes and to enter upon the Development shown on said Plan (Plat) and, insofar as Grantor's rights shall extend, within any public street, alley thereof or bounding the same, without notice for all the purposes hereof.

Grantor covenants not to construct, place, maintain or use structures of any kind, or plant shrubs or trees within fifteen (15) feet of either side of the center line of the Facilities, as installed; raise or lower the ground elevation of the land above or beneath the Facilities; grow beneath overhead Facilities any vegetation or trees, except compatible species identified by Grantee; or obstruct access to, remove structural support from, divert or impound water to or on, or otherwise interfere with, the Facilities.

The rights and obligations hereunder shall be binding upon and inure to the benefit of the Grantor and Grantee and their heirs, executors, administrators, successors, assigns, licensees and lessees, as the case may be.

Grantor has executed this Easement this 28 day of October, 2020.

WITNESS / ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

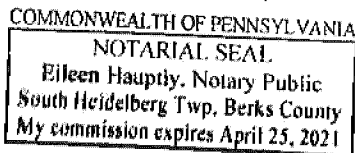
Form Co. L.P.  
Anthony Formis (Seal)  
Anthony Formis, Sole Member, General Partner (Seal)

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Berks

} ss.

On this the 28 day of October, 2020 before me, the undersigned officer, personally appeared Anthony Formis, Sole Member, General Partner of Formis Co. L.P. known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and Official Seal.



Eileen Hauptly

Title Officer

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF \_\_\_\_\_

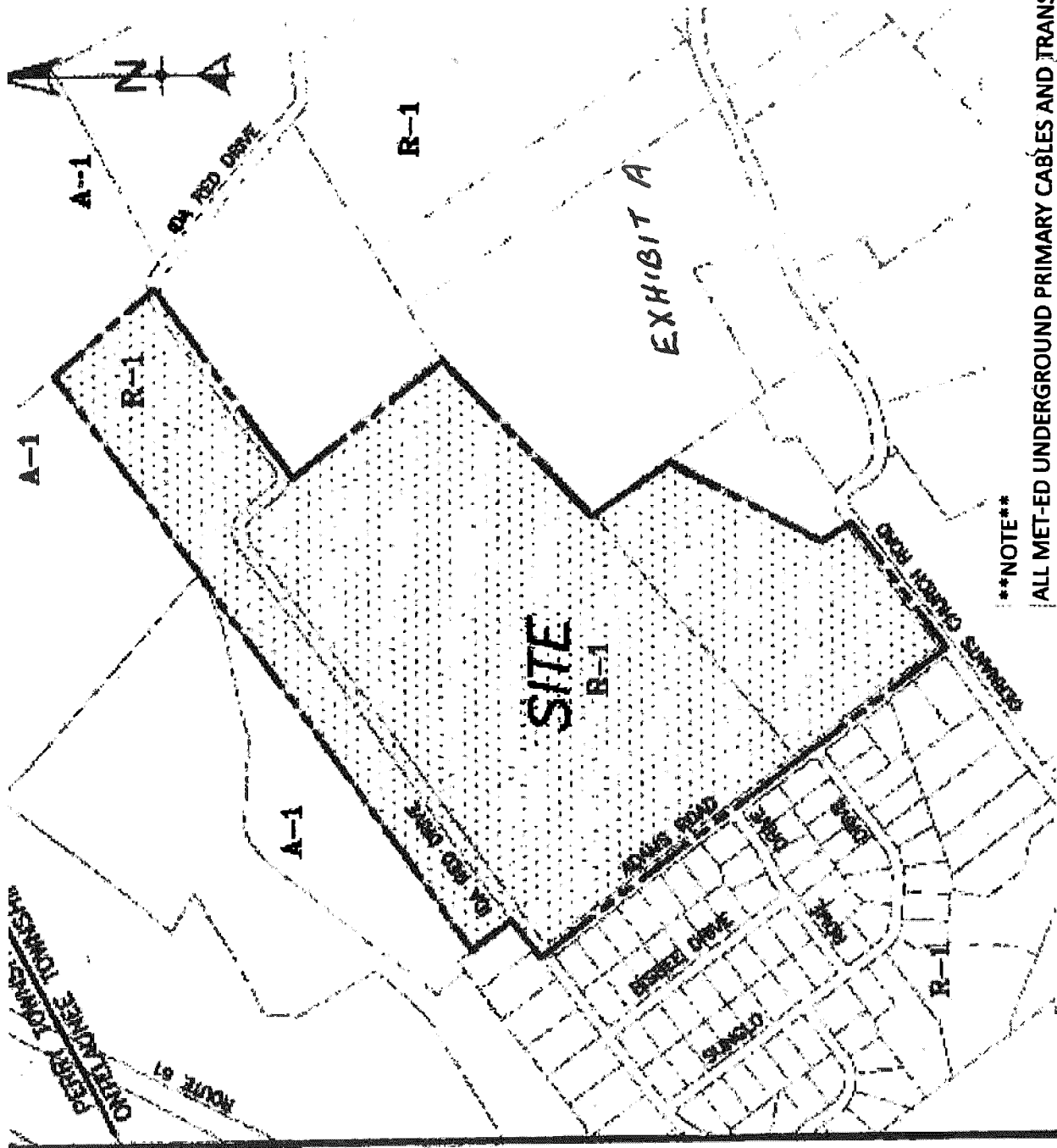
} ss.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that he as such \_\_\_\_\_ being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as \_\_\_\_\_.

In Witness Whereof, I have hereunto set my hand and Official Seal.

\_\_\_\_\_  
\_\_\_\_\_

Title Officer



\*\*NOTE\*\*

ALL MET-ED UNDERGROUND PRIMARY CABLES AND TRANSFORMERS WILL BE INSTALLED ALONG EXISTING AND FUTURE ROAD RIGHT OF WAYS

## EXHIBIT "C"

11/11/2021

Transfer Fee/Capital Reserves - \$250.00 Per Ownership Transfer

Assessments \$250.00 per Year

**McIntosh Farms II Homeowners Association  
Estimated Budget of Operation**

Account Name	Total
<b>Operating Income &amp; Expense</b>	
<b>Income</b>	
Association Income (\$250 x 150)	37,500.00
HOA Initiation Fees (\$250/Transfer)	0.00
Interest Income (Capital Reserves)	0.00
Late Fee	0.00
<b>Total Operating Income</b>	<b>37,500.00</b>
<b>Expense</b>	
Snow Removal (Common Area Sidewalks)	5,000.00
Landscape & SWM Maintenance	14,000.00
SWM Inspections	1,000.00
Legal & Accounting	500.00
Administration	750.00
Real Estate Taxes	7,500.00
Insurance Policy - Property &	1,500.00
Insurance Policy - D&O	1,500.00
Management Fees (Professional - TBD)	5,000.00
<b>Total Operating Expense</b>	<b>36,750.00</b>
<b>NOI - Net Operating Income</b>	<b>750.00</b>

EXHIBIT "D"  
STORM WATER BEST MANAGEMENT PRACTICES – OPERATIONS AND  
MAINTENANCE AGREEMENT

Prepared by and Return to:  
Elizabeth A. Magovern, Esquire  
Hartman Valeriano Magovern & Lutz  
1025 Berkshire Boulevard, Suite 700  
Post Office Box 5828  
Wyomissing, PA 19610

Premises: Lands on Adams Rd, Ida Red Road  
Ontelaunee Township, Berks County, PA

Parcel ID#: 68-4491-02-75-0625 (17.07 ac)  
68-4491-02-66-9395 (57.01 ac)  
68-4491-02-78-6017 (20.65 ac)

**STORMWATER CONTROLS AND BEST MANAGEMENT  
PRACTICES OPERATIONS AND MAINTENANCE AGREEMENT**

THIS AGREEMENT ("Agreement") is made this 9<sup>th</sup> day of November, 2021, by and between, **FORINO CO., L.P.**, a Pennsylvania limited partnership with an address of 555 Mountain Home Road, Sinking Spring, Pennsylvania 19608 (hereinafter referred to as the "Landowner") and **ONTELAUNEE TOWNSHIP**, a Township of the Second Class, with an address of 35 Ontelaunee Drive, Reading, Pennsylvania 19605 (hereinafter referred to as the "Township").

WITNESSETH

**WHEREAS**, the Landowner is the owner of certain real property located in Ontelaunee Township, Berks County, Pennsylvania, comprised of the following three parcels:

- 1) Approximately 20.65 acres of land located on Ida Red Road, as further described in that deed recorded May 10, 2006 in the Office of Recorder of Deeds for Berks County at Deed Book Volume 4873 Page 2444, and being identified as Property Identification Number 68449102786017;
- 2) Approximately 57.01 acres of land located on Adams Road, being a portion of lands described in that deed recorded February 7, 2005 in the Office of Recorder of Deeds for Berks County at Deed Book Volume 4528 Page 1096, being a portion of the Residue lands shown on the Plan recorded at Instrument Number 2020022312, and being identified as Property Identification Number 68449102669395; and
- 3) Approximately 17.07 acres of land located on Adams Road, being a portion of lands described in that deed recorded February 7, 2005 in the Office of Recorder of Deeds for Berks County at Deed Book Volume 4528 Page 1096, being a portion of the Residue lands shown on the Plan recorded at Instrument Number 2020022312, and being identified as Property Identification Number 68449102750625;

(collectively referred to hereinafter as the "Property"); and

**WHEREAS**, the Landowner is proceeding to build and develop the Property with 24 single family detached lots, 126 single family semi-detached lots, 2 open space parcels, and one annexation parcel, along with the associated driveways, roadways, stormwater management facilities, utilities, and related improvements; and



**WHEREAS**, the Final Plans for “McIntosh Farms II”, as prepared by C2C Design Group, Project # FOR-MCF-02, dated September 24, 2020, last revised November 2, 2021, containing 60 plan sheets (hereinafter referred to as “Plan”), which Plan is intended to be recorded, provides for management of stormwater within the confines of the Property through the use of Best Management Practices (“BMPs”); and

**WHEREAS**, the Township and Landowner and their successors and assigns, agree that the health, safety, and welfare of the residents of the Township and the protection and maintenance of water quality require that on-site stormwater Best Management Practices be constructed and maintained on the Property; and

**WHEREAS**, for the purposes of this Agreement, the following definitions shall apply:

BMP – “Best Management Practice”; activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Municipal Stormwater Management Ordinance, including but not limited:

- *Infiltration Trench* – A linear stormwater BMP consisting of a continuously perforated pipe at a minimum slope in a stone-filled trench intended to promote recharge of stormwater into the soil.
- *Seepage Pit* – A subsurface storage facility that temporarily stores and infiltrates stormwater runoff from the roofs of structures.
- *Rain Garden* – An excavated shallow surface depression planted with specially selected native vegetation to capture, treat and/or infiltrate stormwater runoff.
- *Detention Basin* – An impoundment that stores and controls the discharge rate of stormwater runoff.
- *Infiltration Basin* – A shallow impoundment that stores and infiltrates stormwater runoff over a level, uncompacted area with relatively permeable soils.
- *Vegetated Roof* – A veneer of vegetation that is grown on and covers an otherwise conventional flat or pitched roof ( $\leq 30^\circ$  slope), endowing the roof with hydrologic characteristics that more closely match surface vegetation.
- *Pervious Pavement* – A permeable surface paving course underlain by a uniformly-graded stone bed which provides temporary storage for discharge rate control and/or infiltration of storm water runoff.
- *Wet Pond* – An impoundment that includes a substantial permanent pool for water quality treatment and additional capacity above the permanent pool for temporary runoff storage.
- *Constructed Wetland* – A shallow marsh system planted with emergent vegetation designed to treat stormwater runoff.
- *Soil Amendment* – The process of improving disturbed soils and low organic soils by restoring soil porosity and adding a soil amendment, such as compost, for the purpose of reestablishing the soil’s long-term capacity for stormwater infiltration and pollutant removal.
- *Capture and Reuse* – A wide variety of water storage techniques designed to capture precipitation, temporarily store and reuse the water for a variety of applications.
- *Vegetated Swale* - A broad, shallow, trapezoidal or parabolic channel, densely planted with a variety of trees, shrubs, and/or grasses designed to attenuate and/or infiltrate runoff volume from adjacent impervious surfaces, allowing some pollutants to settle out in the

process. Check dams may be used to further enhance attenuation and infiltration opportunities in steeper slopes.

- *Grassed Swale* – A relatively broad, shallow channel, densely planted with grass, designed to convey stormwater runoff and in some cases to attenuate and/or infiltrate runoff volume from adjacent impervious surfaces, allowing some pollutants to settle out in the process. Check dams may be used to further enhance attenuation and infiltration opportunities in steeper slopes.

**WHEREAS**, the Township requires, through the implementation of the Plan, that stormwater management BMPs as required by said Plan and the Township's Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, its successors and assigns.

**NOW, THEREFORE**, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Recitals and terms and conditions as therein set forth, shall specifically be made part of this Maintenance Agreement.
2. The BMPs shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.
3. The Landowner shall operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Township and in accordance with the specific maintenance requirements noted on the Plan.
4. The Landowner hereby grants and conveys to the Township easements and/or rights-of-ways of such dimensions as are reasonably necessary for access for periodic inspections by the Township and maintenance, if required.
5. The Landowner, its successors and assigns, hereby grant permission to the Township, its authorized agents, and employees to enter upon the Property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. Whenever possible, the Township shall notify the Landowner prior to entering the property. Upon entry on to the Property, the Township hereby releases and holds harmless Landowner from any personal injury, death or property damage resulting from the Township's inspection of the BMP(s) except for those damages caused by the negligence of Landowner and Landowner's authorized agents.
6. In the event that the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Township, the Township or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). Prior to Township entering the Property to maintain the BMP(s), Township shall endeavor to give Landowner at least thirty (30) days advance written notice, except in the case of a threat to health or safety in the judgment of the Township, or where required by State or Federal laws or regulations imposing a duty on the Township to take action. This provision shall not be construed to allow the Township to erect any permanent

structure on the land of the Landowner. It is expressly understood and agreed that the Township is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Township.

7. In the event that the Township, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within ten (10) days of receipt of an invoice from the Township. In the event of a dispute regarding costs incurred by the Township in performing said work, the procedures set forth in the Pennsylvania Municipalities Planning Code, Section 510(g) shall be followed.
8. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) by the Landowner, its successors and assigns; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
9. The Landowner, its assigns, and other successors in interest shall release the Township's employees and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or Township. In the event that a claim is asserted against the Township, its designated representatives, or employees, the Township shall promptly notify the Landowner, and the Landowner shall defend, at its own expense, any suit based on the claim. If any judgment or claims against the Township's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.
10. The Landowner, its assigns, and other successors in interest shall indemnify the Township, its employees and designated representatives against any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Township for the construction, presences, existence or maintenance of the BMPs by the Landowner, its successors or assigns, or the Township's agents or employees.
11. The Township shall inspect the BMP(s) at a minimum of once every three (3) years for a period of ten (10) years commencing with year one (1) to ensure their continued functioning.
12. The Landowner shall be responsible for payment of all reasonable costs incurred by the Township in inspecting the BMP(s). The Township's expenses shall be paid by the Landowner to the Township within ten (10) days of receipt of a bill for the expenses incurred.
13. The following Post Construction Stormwater Best Management Practices (BMP), at a minimum, have been provided for this project:

- a. Detention/Infiltration Basins
- b. Vegetated Swales
- c. Soil Amendment and Restoration, and
- d. Landscaping and Native Tree Planting.

- 14. Landowner agrees that it is responsible for and will reimburse to the Township the Township Solicitor's charges for legal services rendered in connection with the preparation and recording of this Agreement.
- 15. This Agreement will be interpreted according to the laws of the Commonwealth of Pennsylvania.
- 16. This Agreement shall be recorded at the Office of the Recorder of Deeds of Berks County, Pennsylvania, shall be evidence of the obligations of the parties concerning the Property, and shall constitute a covenant running with the Property and/or equitable servitude and shall be binding on the Landowner, its assigns and any other successors in interest to the Property, in perpetuity.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first indicated hereinabove.

(SEAL)

LANDOWNER: FORINO CO., L.P.

By: Anthony Forino  
SIGNATURE  
Anthony Forino  
PRINT NAME  
sole member general Partner  
TITLE

(SEAL)

BOARD OF SUPERVISORS OF  
ONTELAUNEE TOWNSHIP,  
BERKS COUNTY, PENNSYLVANIA

By: Kenneth M. Stoudt  
 Kenneth M. Stoudt, Chairman

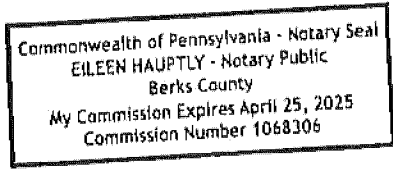
ATTEST:

Kim Berger  
 Kim Berger, Secretary

STATE/Commonwealth of PA :  
 : ss.  
COUNTY OF Berks :

On this, the 8 day of November, 2021, before me, the subscriber, a Notary Public, personally appeared Anthony Forino, who acknowledged himself/herself to be the sole mbr. Gen. Ptnr of FORINO CO., L.P., and that he/she as such sole mbr. Gen. Ptnr, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of FORINO CO., L.P. by himself/herself as sole mbr Gen Ptnr.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



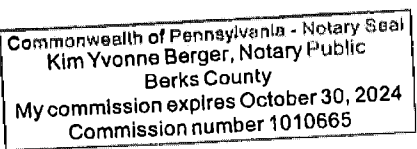
Eileen Hauptly  
Notary Public

My Commission Expires: 4-25-2025

COMMONWEALTH OF PENNSYLVANIA :  
 : ss.  
COUNTY OF BERKS :

On this, the 9th day of November, 2021, before me, the subscriber, a Notary Public, personally appeared KENNETH M. STOUT, who acknowledged himself to be the Chairman of the Board of Supervisors of Ontelaunee Township, and that he as such Chairman, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Township by himself as Chairman.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kim Y Berger  
Notary Public

My Commission Expires: 10-30-24

## EXHIBIT "E"

MCINTOSH FARMS II COMMUNITY HOMEOWNERS ASSOCIATION –  
MAINTENANCE SCHEDULE

COMPONENT	HOA RESPONSIBILITIES	OWNER RESPONSIBILITIES
DRIVEWAYS	None	Maintaining, Repairing Replacing and Cleaning
EXTERIOR MAINTENANCE- ROOFING-SIDING- FLASHING-FASCIA- GUTTERS-DOWNSPOUTS	None	Maintaining, Repairing, Replacing, Cleaning
COMMON AREA SIDEWALKS (IF ANY)	Snow Removal, Maintain, Repair	None
LANDSCAPE BEDS, TREES, SHRUBS, AS ORIGINALLY INSTALLED BY BUILDER	None	Watering, Mulching, Pruning & Repair
SERVICE WALKS	None	Cleaning, Maintaining, Snow and Ice Removal
COMMON AREA LAWNS	Mowing	None
PATIOS & DECKS	None	Cleaning, Ice melting, Repair and Maintaining
STORM WATER CONVEYANCE AND FACILITIES	Repair and Maintenance	Must keep conveyance systems free of Structures and Debris.