

TOWNSHIP OF LOWER MACUNGIE
Lehigh County, Pennsylvania

RESOLUTION NO. 2023-55
(Duly Adopted November 16, 2023)

RESOLUTION TO ACCEPT FROM BROOKSIDE COUNTRY CLUB OF ALLENTOWN, PA A CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS OVER AN APPROXIMATE 90 ACRE PARCEL OF LAND KNOWN AS THE BROOKSIDE COUNTRY CLUB TO BE USED EXCLUSIVELY AS A GOLF COURSE WITH RELATED OUTDOOR RECREATIONAL USES AND ACCESSORY STRUCTURES AND/OR NATURAL, SCENIC, FORESTED, RECREATIONAL AND OPEN SPACE USES

WHEREAS, Brookside Country Club of Allentown, PA (“Owner”) is the sole owner in fee simple of certain real property in Lehigh County, Pennsylvania, containing approximately One Hundred and Twenty-Five (125) acres, more or less, located at 3324 Brookside Road, Macungie, Pennsylvania, Lehigh County Tax Map Parcel No. 547491163822-1 (the “Property”), which Property includes a proposed Conservation Easement Area, containing approximately ninety (90) acres, more or less, of real property; and

WHEREAS, Owner submitted to the Borough of Macungie (“Borough”) a 66-lot subdivision and preliminary/final land development plan for the Property, said plan being prepared by Colliers Engineering and Design, entitled “Major Subdivision Plans for Kay Builders, The Fields at Brookside” dated August 11, 2021, last revised January 3, 2022, and consisting of 53 sheets (hereinafter referred to as the “Plan”); and,

WHEREAS, the Borough issued a conditional final Plan approval letter on March 10, 2022, providing for certain requirements and conditions Owner needed to comply with in order to proceed with the Plan, with one such requirement being the execution and recording of a Conservation Easement; and,

WHEREAS, frontage improvements along Willow Lane and open space preservation, namely the Conservation Easement Area, are located in Lower Macungie Township; and,

WHEREAS, the Conservation Easement Area is more particularly described in the legal description and shown on the Conservation Exhibit Plan prepared by Colliers Engineering and Design dated September 28, 2022, both attached hereto, marked Exhibit “A” and incorporated by reference as if set forth in full; and

WHEREAS, the Board of Commissioners of Lower Macungie Township approved the preliminary/final land development plan for the Property through the adoption of Resolution 2022-62, on September 15, 2022; and,

WHEREAS, one condition of the approval was that Owner prepare and execute a Conservation Easement over Brookside Country Club, which Conservation Easement is intended to provide that the Brookside Country Club will remain open space in perpetuity; and,

NOW, THEREFORE, in consideration of the above, the Board of Commissioners of Lower Macungie Township does hereby resolve as follows:

1. The Conservation Easement and Declaration of Restrictive Covenants offered to the Township, as third-party beneficiary, for the +/- 90-acre parcel of land located at 901 Willow Lane, Macungie, Pennsylvania 18062, a copy of which is attached to this Resolution as Exhibit "B" and incorporated by reference as if set forth in full, is hereby accepted.
2. The proper officers of the Township are authorized to incorporate this Resolution as an exhibit to the Conservation Easement and Declaration of Restrictive Covenants and to record same in the Office of Recorder of Deeds, Allentown, Lehigh County, Pennsylvania.

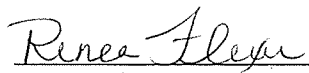
RESOLVED, this 16th day of November, 2023.

BOARD OF COMMISSIONERS
TOWNSHIP OF LOWER MACUNGIE

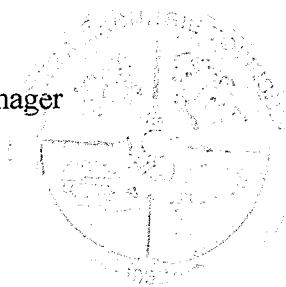
By: 

Brian P. Higgins, President

ATTEST:



Renea Flexer, Secretary and Assistant Township Manager



Prepared By: Patrick M. Armstrong, Esquire
Grim, Biehn & Thatcher
104 S. Sixth Street, P.O. Box 215
Perkasie, PA 18944

Return To: Patrick M. Armstrong, Esquire
Grim, Biehn & Thatcher
104 S. Sixth Street, P.O. Box 215
Perkasie, PA 18944

Portion of Lehigh County PIN No. 547491163822-1

**CONSERVATION EASEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Easement”) made this _____ day of _____ A.D., 2023, by ***BROOKSIDE COUNTRY CLUB OF ALLENTOWN, PA***, having a mailing address at 901 Willow Lane, Macungie, Pennsylvania 18062 (“Owner” and/or “Grantor”), in favor of ***MACUNGIE BOROUGH***, having an address at 21 Locust Street, Macungie, Lehigh County, Pennsylvania 18062 (“Grantee”) and ***LOWER MACUNGIE TOWNSHIP***, having an address at 3400 Brookside Road, Macungie, Pennsylvania 18062 (“Third Party Beneficiary”).

WITNESSETH:

WHEREAS, Owner is the sole owner in fee simple of certain real property in Lehigh County, Pennsylvania, containing approximately One Hundred and Twenty-Five (125) acres, more or less, hereinafter called the “Property” located at 3324 Brookside Road, Macungie, Pennsylvania, which consists of Lehigh County Tax Map Parcel No. 547491163822-1 and said Property includes the Conservation Easement Area, containing approximately Ninety (90) acres, more or less, hereinafter called “Easement Area” as depicted on the Easement Plan defined herein; and

WHEREAS, the Conservation Easement is more particularly described in the legal description and shown on the Conservation Exhibit Plan (“Easement Plan”) prepared by Colliers Engineering and Design dated _____, both of which are attached hereto and marked as ***Exhibit “A”*** and incorporated herein by reference; and

WHEREAS, the Grantee is authorized to acquire interests in real property to protect and conserve open space, recreation land and agricultural, natural or scenic resources, to protect scenic areas, to preserve sites of historic, geologic or botanic interest, to promote sound, cohesive and efficient land development by preserving open space between communities, and for purposes consistent with the terms of the Open Space Lands Act (the “Open Space Lands Act”), Pa. Stat. Ann. Title 32, Section 5001 *et seq*; and

WHEREAS, the Third Party Beneficiary is a beneficiary of this Easement, having the rights and duties as more fully set forth herein; and

WHEREAS, the Property possesses significant natural, scenic, open space and/or recreational values with appropriate structures and dining facilities accessory to a golf course (collectively, "Conservation Values") of great importance to Owner, Grantee, the people of Macungie Borough, and the people of the Commonwealth of Pennsylvania, the preservation and conservation of which will yield significant public benefit for the following reasons: (a) to protect land, habitats and sensitive ecosystems at risk of development except as may be consistent with Grantee's zoning ordinance pertaining to golf course open space development, the operation of a golf course, those uses accessory to the operation of a golf course and the existing accessory uses of the golf course as of the date of this Easement, or other outdoor recreational uses deemed acceptable by Grantee; (b) to create protected green space and/or outdoor recreational areas within the area of Macungie Borough and/or Lehigh County which will reduce the overall intensive use of the land and its associated negative impacts; and (c) to provide open and/or outdoor recreational space consistent with those accessory to the operations of a golf course, or other outdoor recreational uses acceptable to Grantee in accordance with the Macungie Borough Zoning Ordinance; and

WHEREAS, Owner presented a proposed subdivision and land development plan for the Property, said plan being prepared by Colliers Engineering and Design, entitled "Major Subdivision Plans for Kay Builders, The Fields at Brookside" dated August 11, 2021, last revised January 3, 2022, and consisting of 53 sheets (hereinafter referred to as the "**Plan**"); and

WHEREAS, The Borough issued a conditional final Plan approval letter on March 10, 2022 providing for certain requirements and conditions Owner needed to comply with in order to proceed with the Plan, with one such requirement being the execution and recording of the requisite Conservation Easement Agreement, which is satisfied by execution and recording of this Easement; and

WHEREAS, Owner intends, as owner of the Property, to convey to Grantee and Third Party Beneficiary the right to preserve and protect the Conservation Values of the Property, as provided for in this Easement, in perpetuity; and

WHEREAS, Owner agrees to preserve and protect, in perpetuity the Conservation Values of the Property as provided for in this Easement for the benefit of this generation and the generations to come; and

WHEREAS, Owner hereby grants the Conservation Easement to Macungie Borough and Third Party Beneficiary as set forth herein.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for the further consideration of one dollar (\$1.00), the receipt of which is hereby acknowledged, and pursuant to the laws of Pennsylvania, Owner, its heirs, successors and assigns hereby voluntarily grants, agrees, declares and conveys to Grantee and Third Party Beneficiary a Conservation Easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth ("Easement").

1. STATEMENT OF GRANT

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Grantee, its successors and assigns and the Third Party Beneficiary, its successors and assigns,

forever and in perpetuity, a Conservation Easement and a Declaration of Restrictive Covenants over the Easement Area depicted on the Easement Plan, as more particularly hereinafter set forth exclusively for the purposes of preserving and protecting the present recreational, natural, scenic, and open space values of the Easement Area. Grantee and Third Party Beneficiary hereby accept the Easement and agree to hold it exclusively for such purposes.

2. PURPOSE

It is the purpose of this Easement to assure that the Easement Area will be retained in its current form as a golf course with related outdoor recreational uses and accessory structures and/or natural, scenic, forested, recreational and/or open space condition with similarly related accessory structures, and to prevent any use of the Property that will impair or interfere with the Conservation Values or development inconsistent with Grantee's golf course open space development ordinance provisions and/or the Macungie Borough Zoning Ordinance. This purpose is hereinafter referred to as the "Conservation Purposes". Owner intends that this Easement will confine the use of the Easement Area to such activities including, without limitation, those involving golfing, accessory to golf course operations (including but not limited to the modification of existing golf course operations and existing golf course accessory uses), outdoor recreation, resource conservation, or environmental education, as are consistent with the Conservation Purposes of this Easement, the terms and conditions of this Easement, and in compliance with the requirements of the Conservation and Preservation Easements Act, ("Conservation Easements Act"), Act of June 22, 2001, (P.L. 390, No. 29) 32 P.S. Section 5051, *et seq.*, and other local and State protection standards.

3. RIGHTS OF GRANTEE AND THIRD PARTY BENEFICIARY

A. To accomplish the Conservation Purposes of this Easement, the following rights, subject to the limitations stated herein are conveyed to Grantee and Third Party Beneficiary and their respective successors and assigns:

- i. To preserve and protect the Conservation Values of the Easement Area.
- ii. To enter upon the Property at reasonable times in order to monitor Owner's compliance with and, if applicable, to enforce the terms of this Easement.
- iii. To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use.

4. RESTRICTIONS ON USES

Any activity on or use of the Property and/or Easement Area inconsistent with the Conservation Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, Owner hereby declares and covenants that the following activities and uses are expressly prohibited within the Easement Area:

A. No industrial or commercial activities shall be conducted or permitted in the Easement Area, except for existing commercial activities accessory to the golf course use at the time of the recording of this Easement.

B. No further subdivision and/or land development shall be permitted within the Easement Area.

C. No signs, billboards, or outdoor advertising structures shall be placed, erected, or maintained within the Easement Area other than a reasonable number of signs, each not exceeding six square feet (6 s.f.), used in connection with the operation of a golf course and/or existing golf course accessory uses, or for the following additional purposes:

- i. To state the name of the Property, or any portion thereof, and the names and addresses of any occupants.
- ii. To advertise the sale of the Property, or any portion thereof.
- iii. To advertise an activity permitted under the provisions of this Easement.
- iv. To post the Easement Area against activities either prohibited or not specifically permitted under the provisions of this Easement.

Provided, however, this Sub-Paragraph 4C shall not limit the right of the Grantee to display on the Property, at its discretion, a reasonable number of signs as it may customarily use to identify lands permanently preserved.

D. No quarrying, excavation, or removal of rocks, minerals, gas, oil, gravel, sand, topsoil, or other similar materials from the Easement Area shall occur except as may be related to the operation of a golf course, the existing golf course accessory uses or other related outdoor recreational uses acceptable to Grantee. Grant of lease, assignment or other conveyance or issue of permits, licenses, or other authorization for the exploration, development, storage or removal of coal, rock or other materials by any mining method is not permitted. The following notice is given to and accepted by Owner for the purpose and with the intention of compliance with the requirements of the Conservation Easements Act. Nothing herein shall imply the presence or absence of workable coal seams or the severance of coal interests from the Property.

NOTICE: This Easement may impair the development of coal interests, including workable coal seams or coal interests which have been severed from the Property.

E. No mining or removal of groundwater from the Easement Area shall occur.

F. No depositing, dumping, or abandoning of any solid waste, hazardous waste, liquid wastes, or chemical substances, except for those chemical substances necessary for the golf course operations, on or in the Easement Area. The disposal or piping of sanitary facility effluent generated off the Easement Area is not permitted on or across the Easement Area. Hazardous waste shall be considered any substance now or hereafter defined, listed or otherwise classified pursuant to any Federal, State or local law, regulation or requirement as hazardous, toxic, polluting, or contaminating to the air, water or soils.

G. To ensure the protection of the natural areas, including meadows, grasslands, successional areas, forests, woodlands and hedgerows on the Easement Area, and to limit development to that consistent with the Conservation Purposes defined above and/or Grantee's golf course open space development ordinance, the following guidelines shall apply in order to effectuate said purpose: i. Planting of invasive plants is not permitted. Invasive Plants are defined as plant species that are (a) non-native (or alien) to the ecosystem under consideration; or (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

- iii. In the absence of forest/woodland management plans, trees may only be cut or removed from the Easement Area for the following purposes:
 - a. To remove trees that pose a hazard in areas along access roads, trails, or other areas of concentrated human use.
 - b. To remove trees using Best Management Practices that are non-native, exotic species.
 - c. To remove trees required for utilities such as electric, gas, and telephone that are needed to serve a permitted use in the Easement Area.
 - d. To remove trees that are needed to be removed in order to continue to operate the Property as a golf course and/or in furtherance of the golf course design improvements.

H. No cutting or removal is permitted in the Easement Area of any plants that are identified in the *Plants of Special Concern in Pennsylvania* as maintained by the Pennsylvania Natural Diversity Inventory (PNDI) and the Pennsylvania Natural Heritage Program, the *Natural Areas Inventory of Bucks County*, or plants that are identified by the Commonwealth of Pennsylvania as "Historic Trees" except as may be required pursuant to the guidelines stated herein.

I. No construction, demolition, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent structures or facilities of any kind may occur within the Easement Area unless otherwise permitted by this Easement and by the Grantee and Third Party Beneficiary. Construction of such facilities related to the reception, storage, or transmission of sewage generated by on-site improvements, existing or otherwise, and located on the Property, is not permitted on or within the Easement Area. Future facilities such as telecommunications cell towers, commercial satellite dish antennae, or fuel storage tanks are strictly prohibited.

I. No excavation of any kind may occur within the Easement Area unless otherwise permitted by this Easement and by the Grantee.

J. In addition to the restrictions noted herein, no construction, demolition, reconstruction, alteration affecting any streams or "Waters of the Commonwealth" is permitted without the prior approval of Grantee.

5. PERMITTED USES AND RESERVED RIGHTS

A. All permitted uses are subject to all local, State, and Federal regulations as they apply to land use, including municipal zoning laws.

B. Owner hereby reserves to itself, and its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property and Easement Area, including the right to engage in, or permit or invite others to engage in, all uses of the Property or Easement Area that are not prohibited herein, either generally or expressly, and are not inconsistent with the purpose of the Easement, which include, but are not necessarily limited by, the following:

- i. To use and enjoy the golf course and existing golf course accessory uses on the Property for any and all lawful purposes, including those associated with the golf course use, existing golf course accessory uses or other similar outdoor recreational uses.
- ii. To engage and permit others to engage in recreational use of the Property or Easement Area that requires no surface alteration or other development of the land inconsistent with the Conservation Purposes and/or Grantee's golf course open space development ordinance.

6. ACCESS

A. Grantee and Third Party Beneficiary shall be permitted access to the Easement Area at any time to inspect and confirm the Easement Area is being used and maintained in a manner and form consistent with this Easement.

B. Limitations on Use. Easement Area shall be safeguarded by reasonable rules imposed by the Owner and approved by Grantee to guarantee the exclusive purposes of preservation and protecting the present golf course use, uses consistent with Grantee's golf course open space development ordinance and outdoor recreational, scenic, natural, open space and water resource values of the Easement Area. Public access to the Easement Areas is further subject to the rules and limitations of Owner and Grantee.

- i. The following are not permitted in the Easement Area: fires, camping, picnicking, littering, hunting or depositing materials, disturbance of animal habitat, audio devices or excessive noise, and/or the damaging, picking, cutting, or otherwise destruction of plants or other natural features unless done in connection with Owner's golf course operations on the Property.
- ii. These rules and limitations do not prohibit the Owner at their sole discretion from allowing public access for other purposes consistent with this Easement.

C. Owners' Enforcement Rights. Owner reserves the right to take any action permitted under law to remove from the Property persons entering the Easement Area for purposes other than set forth herein.

7. DENSITY LIMITATIONS

The Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

8. NOTICE, APPROVAL AND DISCRETIONARY CONSENT

A. In order to monitor compliance with the Conservation Purposes, Owner shall notify (hereinafter "Owner's Notice") Grantee and Third Party Beneficiary, in writing, no less than sixty (60) days prior to undertaking any activities impacting the real property of the Easement Area inconsistent with the operation of a golf course and/or existing golf course accessory uses but otherwise consistent with this Easement.

B. Owner shall request permission from Grantee and Third Party Beneficiary, in writing, prior to undertaking any activities within the Easement Area that are prohibited under Paragraph 4 but deemed desirable due to unforeseen or changed circumstances. Owner's request shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable Grantee and Third Party Beneficiary to make informed judgments as to its consistency with the Conservation Purposes of this Easement. Grantee and Third Party Beneficiary may give their permission only if they determine that such activities: (1) do not violate the Conservation Purposes of this Easement; and (2) either enhance or do not impair any significant conservation interests associated with the Easement Area. Grantee's and Third Party Beneficiary's approval or disapproval must be in writing. Failure of Grantee and/or Third Party Beneficiary to provide written approval within sixty (60) days shall be a deemed denial of Owners request. In no event, however, shall Grantee and Third Party Beneficiary agree to any activities that would result in the termination of this Easement or the development of any residential, commercial or industrial structures within the Easement Area inconsistent with the Conservation Purpose defined herein.

9. SUBDIVISION OF PROPERTY

No further subdivision or land development of the Easement Area is permitted except in furtherance of the Conservation Purposes or as otherwise permissible under this Easement.

10. GRANTEE'S REMEDIES

A. Notice of Violation; Corrective Action. If Grantee or Third Party Beneficiary determine that Owner is in violation of the terms of this Easement or that a violation is threatened, Grantee or Third Party Beneficiary shall give written notice to Owner of such violation and demand that Owner undertakes corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the Conservation Purposes of this Easement, to restore the portion of the Easement Area so injured.

B. Injunctive Relief. If Owner fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee or Third Party Beneficiary or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation, Grantee or Third Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement including damages for the loss of Conservation Values and to require the restoration of the Easement Area to the condition that existed prior to any such injury.

C. Damages. Without limiting Owner's liability therefore, Grantee and/or Third Party Beneficiary, in its sole discretion, may apply damages recovered to the cost of undertaking any corrective action on the Easement Area.

D. Emergency Enforcement. If Grantee and/or Third Party Beneficiary in their reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the Conservation Values of the Easement Area, Grantee and/or Third Party Beneficiary may pursue its remedies under this Paragraph 10 without prior notice to Owner or without waiting for the period provided for cure to expire, provided Grantee and/or Third Party Beneficiary notify Owner by phone or electronic facsimile immediately prior to pursuing its remedies under this Paragraph.

E. Scope of Relief. Grantee's and Third Party Beneficiary's rights under this Paragraph 10 apply equally in the event of either actual or threatened violations of the terms of this Easement, and Owner agrees that Grantee's and Third Party Beneficiary's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee and Third Party Beneficiary shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee and/or Third Party Beneficiary may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's and Third Party Beneficiary's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Enforcement. Any reasonable costs incurred by Grantee and/or Third Party Beneficiary in enforcing the terms of this Easement against Owner, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Owner's violation of the terms of this Easement shall be borne by Owner.

G. Grantee's and Third Party Beneficiary's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee and/or Third Party Beneficiary and any forbearance by Grantee and/or Third Party Beneficiary to exercise their rights under this Easement in the event of any breach of any term of this Easement by Owner shall not be deemed or construed to be a waiver by the Grantee and/or Third Party Beneficiary of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's and/or Third Party Beneficiary's rights under this Easement. No delay or omission by Grantee or Third Party Beneficiary in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Owner hereby waives any defense of laches, estoppel, or prescription.

11. OWNER'S OBLIGATIONS

A. Costs and Liabilities. Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property and Easement Area, including the maintenance of adequate comprehensive general liability insurance coverage.

B. Taxes. The Owner agrees to pay any real estate taxes or other assessments levied on the Property.

C. Environmental Compliance. Owner represents and warrants that, after reasonable investigation and to the best of Owner's knowledge that there is no substance defined, listed, or otherwise classified pursuant to any Federal, State, local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, other than licensed agricultural chemicals, that exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, or from or across the Property.

D. Hold Harmless. Owner hereby releases and agrees to hold harmless, indemnify, and defend the Grantee and its respective members, commissioners, supervisors, managers, trustees, directors, officers, employees, agents, and contractors and the heirs, personal representative, successors, and assigns of each (collectively "Indemnified Parties") from and against all liability, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and/or Easement Area, regardless of cause; (2) the violation or alleged violation of, or other failure to comply with, any State, Federal, or local law, regulation, or requirement, including, without limitation, CERCLA, (or successor toxic waste or hazardous substance laws or regulations) by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the obligations specified in Paragraphs 11.A, 11.B above; and (4) the existence or administration of this Easement and/or the maintenance of the Easement Area.

12. EXTINGUISHMENT, CONDEMNATION, AND PROCEEDS

Extinguishment. If circumstances arise in the future such as to render the Conservation Purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by mutual agreement of Owner, Grantee and Third Party Beneficiary, or by judicial proceedings in a court of competent jurisdiction. Grantee, Owner, Third Party Beneficiary and any successors in interests, shall exhaust all legal remedies in order to preserve and protect the conservation purposes of this Easement. Owner shall cooperate with Grantee in Grantee's performance of its obligations under this Paragraph 12(A).

13. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Owner, Grantee and Third Party Beneficiary are free to amend this Easement; provided that the amendment is approved by Grantee and Third Party Beneficiary, in writing. Any amendment shall be consistent with the Conservation Purposes of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Lehigh County, Pennsylvania.

14. SUBSEQUENT TRANSFERS

Owner agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Owner further agrees to give written notice to Grantee and Third Party Beneficiary of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Owner to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

15. MAINTENANCE AND ASSESSMENT OBLIGATIONS OF GRANTEE

Grantee and Third Party Beneficiary shall be under no obligation to maintain the Easement Area and/or Property or any portion thereof, or pay taxes or assessments thereon. Any action by Grantee and/or Third Party Beneficiary such as maintenance of the Easement Area or any other act by Grantee and/or Third Party Beneficiary to protect the Easement Area and/or Property shall be deemed merely a gratuitous act which shall create no obligation on the part of Grantee or Third Party Beneficiary. Owner shall be solely responsible for the maintenance of the Property and Easement Area.

16. NOTICES

All notices, requests, consents, approvals, or other communication hereunder shall be in writing and shall be deemed properly given if sent by nationally recognized overnight carrier, U.S. certified mail, return receipt requested, postage prepaid, addressed to the appropriate party or successor in interest at the address most recently provided or to such other address as either party from time to time shall designate by written notice to the other.

To Owner: Brookside Country Club of Allentown, PA
 901 Willow Lane
 Macungie, PA 18062

To Grantee: Macungie Borough
 21 Locust Street
 Macungie, PA 18062

To Third Party Lower Macungie Township
Beneficiary 3400 Brookside Road
 Macungie, PA 18062

17. RECORDATION

The Owner shall record this instrument in timely fashion in the official records of Lehigh County, Pennsylvania.

18. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Pennsylvania.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements, relating to the Easement, all of which are merged herein. No alternation or variation of this instrument shall be valid or binding unless contained in an amendment agreed to by the parties as set forth herein.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Owner's title in any respect.

F. Joint Obligation. The obligations imposed by this Easement upon Owner shall be joint and several.

G. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

H. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

I. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee and Third Party Beneficiary, their respective successors, and assigns forever.

IN WITNESS WHEREOF Owner, Grantee, and Third Party Beneficiary, intending to be legally bound hereby, have set their hands and seals on the day and year first above written.

GRANTOR/OWNER:

BROOKSIDE COUNTRY CLUB OF
ALLENTOWN, PA

By:  _____

GRANTEE:

MACUNGIE BOROUGH

Attest: _____

Name:
Title:

By: _____

Name:
Title:

THIRD PARTY BENEFICIARY:

LOWER MACUNGIE TOWNSHIP

Attest: _____

Name:
Title:

By: _____

Name:
Title:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: *ss.*
COUNTY OF BUCKS :

On this _____ day of _____, A.D., 2023, before me, a Notary Public, personally appeared _____, who acknowledged himself to be the President of Macungie Borough Council, and that he as such being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said Macungie Borough by himself as such officer.

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

Notary Public (SEAL)

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: *ss.*
COUNTY OF :

On this _____ day of _____, A.D., 2023, before me, a Notary Public, personally appeared _____, who acknowledged himself to be the _____ of Lower Macungie Township, and that he as such being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said Lower Macungie Township by himself as such officer.

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

Notary Public (SEAL)

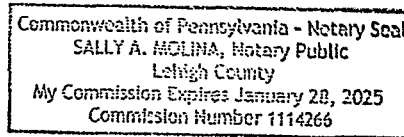
ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF Lehigh : ss.
:

On this 8 day of Nov, A.D., 2023, before me, a Notary Public, personally appeared Samuel Cohen, who acknowledged himself to be the Secretary of **BROOKSIDE COUNTRY CLUB OF ALLENTOWN, PA**, and that he as such Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said Samuel Cohen by himself as such officer.

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

Sally A. Molina (SEAL)
Notary Public





KAY BUILDERS
6 DECADES OF EXCELLENCE

5930 Hamilton Blvd, Suite 10, Allentown, PA 18106

September 27, 2022

**CONSERVATION EASEMENT
BROOKSIDE COUNTRY CLUB
TOWNSHIP OF LOWER MACUNGIE and BOROUGH OF MACUNGIE
LEHIGH COUNTY, COMMONWEALTH OF PENNSYLVANIA**

ALL THAT CERTAIN tract of land situated in the Township of Lower Macungie and Borough of Macungie, County of Lehigh, in the Commonwealth of Pennsylvania, being part of parcel Id 547491163822-1, and more precisely known as Conservation Easement, bounded, and described according to a plan entitled "Conservation Exhibit", dated August 11, 2021, as prepared by Collier Engineering & Design, Inc., Allentown, PA as follows, to wit:

Beginning at a point in the westerly sideline of Brookside Road and the southeasterly corner of parcel Id 548402082055; Thence

1. Along said sideline of Brookside Road in a southerly direction curving to the right, having a Radius of 547.56 feet, Arc Length of 433.14 feet, and chord bearing of South 18 degrees 27 minutes 19 seconds East, chord distance 421.94 feet to a point; Thence
2. Leaving said sideline and along westerly side of 100-year flood line of the Swabia Creek, South 52°07'31" West, 17.26 feet to a point; Thence
3. Continuing along said 100-year flood line, South 42°55'17" West, 22.63 feet to a point; Thence
4. Continuing along said 100-year flood line, South 47°09'57" West, 33.68 feet to a point; Thence

Continue: **CONSERVATION EASEMENT BROOKSIDE COUNTRY CLUB** Description

5. Continuing along said 100-year flood line, North 22°08'14" West, 37.84 feet to a point;
Thence
6. Continuing along said 100-year flood line, North 23°56'38" West, 36.11 feet to a point;
Thence
7. Continuing along said 100-year flood line, North 25°04'05" West, 40.77 feet to a point;
Thence
8. Continuing along said 100-year flood line, North 26°57'28" West, 32.02 feet to a point;
Thence
9. Continuing along said 100-year flood line, North 24°09'41" West, 29.14 feet to a point;
Thence
10. Continuing along said 100-year flood line, North 15°37'59" West, 17.00 feet to a point;
Thence
11. Continuing along said 100-year flood line, North 38°09'44" West, 22.91 feet to a point;
Thence
12. Continuing along said 100-year flood line, North 36°09'54" West, 15.11 feet to a point;
Thence
13. Continuing along said 100-year flood line, North 59°11'32" West, 16.63 feet to a point;
Thence
14. Continuing along said 100-year flood line, North 75°20'41" West, 10.44 feet to a point;
Thence
15. Continuing along said 100-year flood line, South 83°24'53" West, 12.55 feet to a point;
Thence
16. Continuing along said 100-year flood line, South 59°14' West, 12.53 feet to a point;
Thence
17. Continuing along said 100-year flood line, South 28°38'40" West, 15.68 feet to a point;
Thence
18. Continuing along said 100-year flood line, South 19°35'51" West, 25.83 feet to a point;
Thence
19. Continuing along said 100-year flood line, South 10°47'10" West, 29.25 feet to a point;
Thence
20. Continuing along said 100-year flood line, South 09°40'30" West, 27.09 feet to a point;
Thence
21. Continuing along said 100-year flood line, South 02°52'36" West, 35.13 feet to a point;
Thence
22. Continuing along said 100-year flood line, South 03°17'05" West, 32.68 feet to a point;
Thence
23. Continuing along said 100-year flood line, South 07°16'28" East, 27.10 feet to a point;
Thence
24. Continuing along said 100-year flood line, South 11°30'24" East, 27.40 feet to a point;
Thence

Continue: CONSERVATION EASEMENT BROOKSIDE COUNTRY CLUB Description

25. Continuing along said 100-year flood line, South 15°08'28" East, 24.15 feet to a point;
Thence
26. Continuing along said 100-year flood line, South 20°03'43" East, 22.60 feet to a point;
Thence
27. Continuing along said 100-year flood line, South 05°29'10" West, 19.19 feet to a point;
Thence
28. Continuing along said 100-year flood line, South 31°19'56" West, 24.57 feet to a point;
Thence
29. Continuing along said 100-year flood line, South 41°43'35" West, 33.94 feet to a point;
Thence
30. Continuing along said 100-year flood line, South 48°10'37" West, 35.15 feet to a point;
Thence
31. Continuing along said 100-year flood line, South 42°54'44" West, 43.86 feet to a point;
Thence
32. Continuing along said 100-year flood line, South 52°58'28" West, 42.72 feet to a point;
Thence
33. Continuing along said 100-year flood line, South 46°49'15" West, 36.53 feet to a point;
Thence
34. Continuing along said 100-year flood line, South 50°03'48" West, 39.90 feet to a point;
Thence
35. Continuing along said 100-year flood line, South 55°23'23" West, 36.20 feet to a point;
Thence
36. Continuing along said 100-year flood line, South 50°41'26" West, 33.89 feet to a point;
Thence
37. Continuing along said 100-year flood line, South 41°21'15" West, 37.87 feet to a point;
Thence
38. Continuing along said 100-year flood line, South 43°54'58" West, 41.73 feet to a point;
Thence
39. Continuing along said 100-year flood line, South 48°00'24" West, 28.06 feet to a point;
Thence
40. Continuing along said 100-year flood line, South 47°40'29" West, 30.14 feet to a point;
Thence
41. Continuing along said 100-year flood line, South 40°40'29" West, 36.12 feet to a point;
Thence
42. Continuing along said 100-year flood line, South 36°44'29" West, 26.35 feet to a point;
Thence
43. Continuing along said 100-year flood line, South 32°43'06" West, 35.92 feet to a point;
Thence
44. Continuing along said 100-year flood line, South 28°40'05" West, 37.23 feet to a point;
Thence
45. Continuing along said 100-year flood line, South 33°26'27" West, 44.84 feet to a point;
Thence
46. Continuing along said 100-year flood line, South 29°51'37" West, 35.97 feet to a point;
Thence

Continue: CONSERVATION EASEMENT BROOKSIDE COUNTRY CLUB Description

47. Continuing along said 100-year flood line, South 33°18'17" West, 38.02 feet to a point;
Thence
48. Continuing along said 100-year flood line, South 37°12'58" West, 28.42 feet to a point;
Thence
49. Continuing along said 100-year flood line, South 39°40'35" West, 30.83 feet to a point;
Thence
50. Continuing along said 100-year flood line, South 39°22'49" West, 34.00 feet to a point;
Thence
51. Continuing along said 100-year flood line, South 45°31'10" West, 31.17 feet to a point;
Thence
52. Continuing along said 100-year flood line, South 48°32'33" West, 36.24 feet to a point;
Thence
53. Continuing along said 100-year flood line, South 43°37'22" West, 29.36 feet to a point;
Thence
54. Continuing along said 100-year flood line, South 45°30'53" West, 23.71 feet to a point;
Thence
55. Continuing along said 100-year flood line, South 42°12'44" West, 26.51 feet to a point;
Thence
56. Continuing along said 100-year flood line, South 37°00'38" West, 23.83 feet to a point;
Thence
57. Continuing along said 100-year flood line, South 25°01'26" West, 24.16 feet to a point;
Thence
58. Continuing along said 100-year flood line, South 09°01'20" West, 23.46 feet to a point;
Thence
59. Continuing along said 100-year flood line, South 29°15'20" East, 18.57 feet to a point;
Thence
60. Continuing along said 100-year flood line, South 42°19'27" East, 26.26 feet to a point;
Thence
61. Continuing along said 100-year flood line, South 55°58'37" East, 33.99 feet to a point;
Thence
62. Continuing along said 100-year flood line, South 60°09'26" East, 55.89 feet to a point;
Thence
63. Continuing along said 100-year flood line, South 73°20' East, 35.88 feet to a point;
Thence
64. Continuing along said 100-year flood line, South 60°21'57" East, 58.11 feet to a point;
Thence
65. Continuing along said 100-year flood line, South 71°19'13" East, 48.06 feet to a point;
Thence
66. Continuing along said 100-year flood line, South 67°44'55" East, 38.92 feet to a point;
Thence
67. Continuing along said 100-year flood line, South 60°20'42" East, 35.24 feet to a point;
Thence

Continue: **CONSERVATION EASEMENT BROOKSIDE COUNTRY CLUB** Description

68. Continuing along said 100-year flood line, South 47°53'37" East, 21.59 feet to a point;
Thence
69. Continuing along said 100-year flood line, South 21°07'47" East, 3.27 feet to a point;
Thence
70. Continuing along said 100-year flood line, South 21°04'16" East, 25.83 feet to a point;
Thence
71. Continuing along said 100-year flood line, South 00°48'03" West, 30.55 feet to a point;
Thence
72. Continuing along said 100-year flood line, South 01°06'05" East, 33.02 feet to a point;
Thence
73. Continuing along said 100-year flood line, South 01°16'36" East, 37.02 feet to a point;
Thence
74. Continuing along said 100-year flood line, South 00°12' East, 32.04 feet to a point;
Thence
75. Continuing along said 100-year flood line, South 03°06'04" West, 28.13 feet to a point;
Thence
76. Continuing along said 100-year flood line, South 06°05'54" West, 49.53 feet to a point;
Thence
77. Continuing along said 100-year flood line, South 18°37'26" West, 28.33 feet to a point;
Thence
78. Continuing along said 100-year flood line, South 16°41'18" West, 31.18 feet to a point;
Thence
79. Continuing along said 100-year flood line, South 34°46'04" West, 4.74 feet to a point;
Thence
80. Continuing along said 100-year flood line, South 34°50'12" West, 30.26 feet to a point;
Thence
81. Continuing along said 100-year flood line, South 48°26'48" West, 25.96 feet to a point;
Thence
82. Continuing along said 100-year flood line, South 51°53'54" West, 27.21 feet to a point;
Thence
83. Continuing along said 100-year flood line, South 47°15'17" West, 32.94 feet to a point;
Thence
84. Continuing along said 100-year flood line, South 43°51'04" West, 23.00 feet to a point;
Thence
85. Continuing along said 100-year flood line, South 30°13'56" West, 17.77 feet to a point;
Thence
86. Continuing along said 100-year flood line, South 18°21'33" West, 22.97 feet to a point;
Thence
87. Continuing along said 100-year flood line, South 13°06'32" West, 19.15 feet to a point;
Thence
88. Continuing along said 100-year flood line, South 01°43'24" West, 15.55 feet to a point;
Thence
89. Continuing along said 100-year flood line, South 07°13'29" East, 5.54 feet to a point;
Thence

Continue: CONSERVATION EASEMENT BROOKSIDE COUNTRY CLUB Description

90. Continuing along said 100-year flood line, South 08°04'50" East, 14.07 feet to a point;
Thence
91. Continuing along said 100-year flood line, South 37°19'07" West, 29.14 feet to a point;
Thence
92. Continuing along said 100-year flood line, South 39°52' West, 26.22 feet to a point;
Thence
93. Continuing along said 100-year flood line, South 29°57'31" West, 23.58 feet to a point;
Thence
94. Continuing along said 100-year flood line, South 21°56'43" West, 24.63 feet to a point;
Thence
95. Continuing along said 100-year flood line, South 17°06'31" West, 25.95 feet to a point;
Thence
96. Continuing along said 100-year flood line, South 14°57'19" West, 30.88 feet to a point;
Thence
97. Continuing along said 100-year flood line, South 06°40'45" West, 26.31 feet to a point;
Thence
98. Continuing along said 100-year flood line, South 06°54'42" West, 25.83 feet to a point;
Thence
99. Continuing along said 100-year flood line, South 06°31'25" East, 38.14 feet to a point;
Thence
100. Continuing along said 100-year flood line, South 08°09'31" East, 18.63 feet to a point;
Thence
101. Continuing along said 100-year flood line, South 03°11'35" East, 24.03 feet to a point;
Thence
102. Continuing along said 100-year flood line, South 05°41'24" West, 18.67 feet to a point;
Thence
103. Continuing along said 100-year flood line, South 21°18'58" West, 20.16 feet to a point;
Thence
104. Continuing along said 100-year flood line, South 34°51'35" West, 22.19 feet to a point;
Thence
105. Continuing along said 100-year flood line, South 68°41' West, 25.09 feet to a point;
Thence
106. Continuing along said 100-year flood line, South 51°04'19" West, 27.50 feet to a point;
Thence
107. Continuing along said 100-year flood line, South 47°40'29" West, 30.14 feet to a point;
Thence
108. Continuing along said 100-year flood line, South 42°28'11" West, 42.80 feet to a point;
Thence
109. Continuing along said 100-year flood line, South 39°53'15" West, 40.38 feet to a point;
Thence
110. Continuing along said 100-year flood line, South 44°40'03" West, 10.82 feet to a point;
Thence

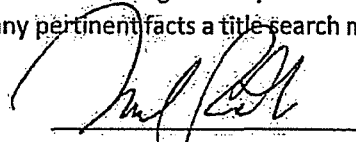
Continue: CONSERVATION EASEMENT BROOKSIDE COUNTRY CLUB Description

111. Leaving said 100-year flood line and along northerly line of parcel Id 547490908285, South 85°24'13" West, 588.45 feet to a point; Thence
112. Continuing along said northerly line, South 86°41'15" West, 222.05 feet to a point; Thence
113. Leaving said line, In a northerly direction, North 07°44'08" West, 2,211.93 feet to a point; Thence
114. In a westerly direction, South 85°11'36" West, 311.06 feet to a point; Thence
115. North 06°20'35" West, 723.84 feet to a point; Thence
116. In an easterly direction along the southerly line of "Fairways at Brookside" subdivision, South 79°31'15" East, 1,537.65 feet to a point; Thence
117. Continuing along the said line, North 10°21'46" East, 47.75 feet to a point; Thence
118. Continuing along the said line, North 77°03'46" East, 147.90 feet to a point; Thence
119. Continuing along the said line, North 83°25'46" East, 165.90 feet to a point; Thence
120. Continuing along the said line, South 25°55'14" East, 192.78 feet to a point; Thence
121. Leaving said line and along southerly line of parcel Id 548402082055, South 79°31'14" East, 368.23 feet to a point and **PLACE of BEGINNING**

Containing ± 3,906,194 square feet or ± 89.7 acres of land, more or less.

Being part of land described in Deed Book 1192 Page 349 and recorded in the Lehigh County Office of Recorder of Deeds and subject to any easements, restrictions, and any pertinent facts a title search might disclose.

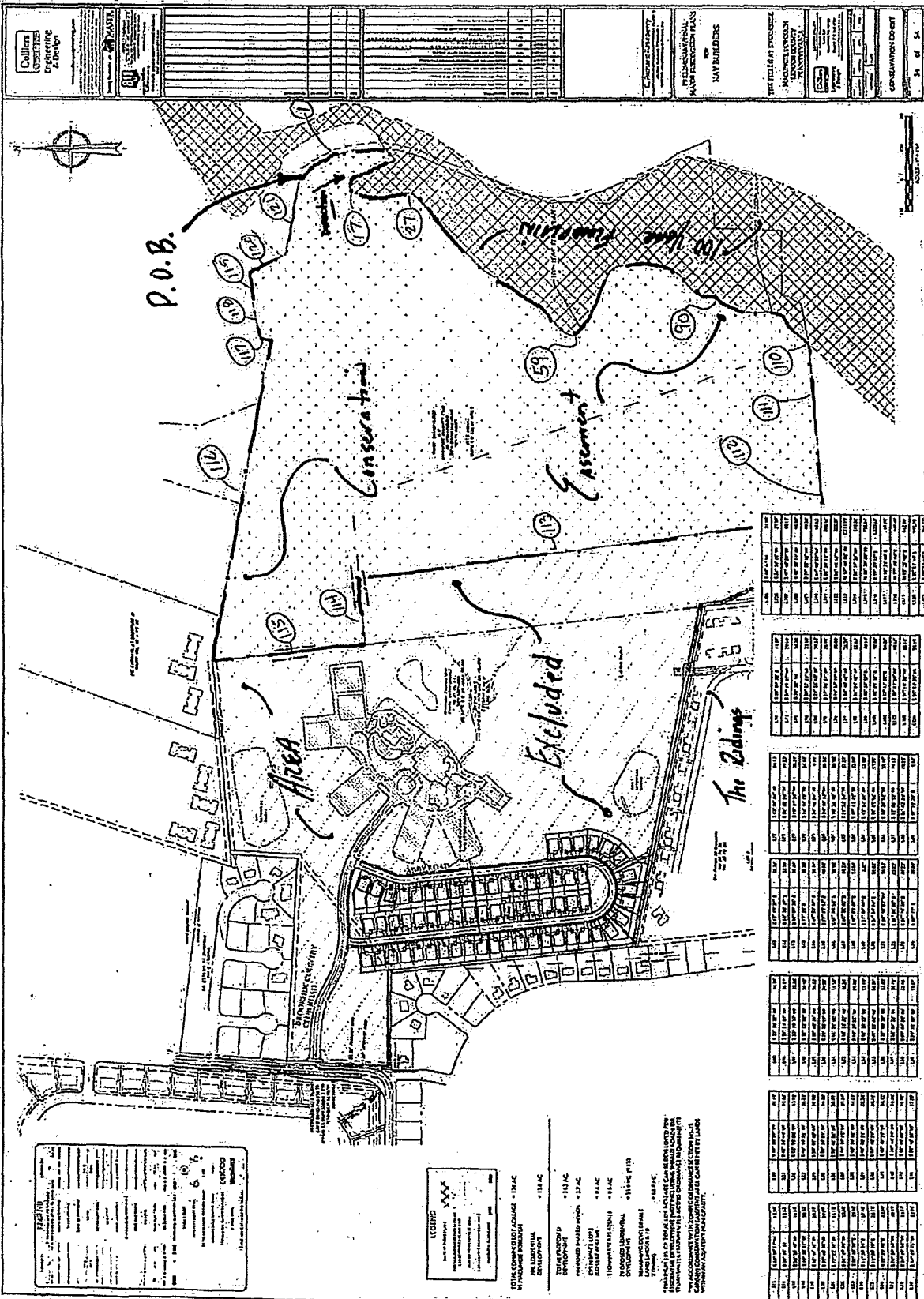
Date 5/1/23



Michael Ruth R.S. SU-75543
1928 N. Cedar Crest Blvd
Allentown, PA 18106

SEE EXHIBIT "A"

Exhibit A



NO.	DESCRIPTION	AREA	PERCENTAGE	DATE
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