AUTUMN MOUNTAIN WOODLANDS PROPERTY OWNER'S ASSOCIATION, and CHRISTOPHER WOLMAN, Individually as a Dwelling Unit Owner in AMWPOA, and KURT VERNAREC, individually as an Unimproved lot owner in AMWPOA Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY NO. 2020-09576
v.	:	Civil Action – Equity/Law
HICKORY HILLS PROPERTY OWNER'S ASSOCIATION, Defendant.	:	

PETITION AND RULE TO SHOW CAUSE ON PLAINTIFFS' REQUEST FOR PRELIMINARY INJUNCTION

AND NOW this 26th day of October, 2020 upon consideration of the Petition for Preliminary Injunction, it is hereby Ordered that a Rule is issued upon all parties and interests to show cause it any, why the relief requested should not be granted.

A hearing on said Rule is scheduled for November 24, 2020 at 9:30 a.m. in Courtroom 3rd floor / assigned courtroom Luzerne County Courthouse, 200 North River Street, Wilkes Barre, Pennsylvania. Petitioner is directed to serve all parties of interest.

BY THE COURT:

Thomas F. Burke Jr.
J.

AUTUMN MOUNTAIN WOODLANDS PROPERTY OWNER'S ASSOCIATION, and CHRISTOPHER WOLMAN, Individually as a Dwelling Unit Owner in AMWPOA, and Kurt Vernarec, individually as an Unimproved lot owner in AMWPOA Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY NO. 2020-09576
v.	:	Civil Action – Equity/Law
HICKORY HILLS PROPERTY OWNER'S ASSOCIATION, Defendant.	:	

PETITION FOR PRELIMINARY INJUNCTIVE RELIEF

AND NOW comes, the Plaintiff, Autumn Mountain Woodlands Homeowner's Association through its counsel, Attorney Peter O'Donnell, and hereby files this Petition for Preliminary Injunction against the Defendant and, in support thereof avers as follows:

1. The Plaintiff, Autumn Mountain Woodlands Homeowner's Association, is a duly organized Homeowner's Association with a contact address of P.O. Box 66, White Haven, Foster Township, Pennsylvania 18661, hereinafter referred to as "Autumn Mountain".

2. Plaintiff, Christopher Wolman, is an adult individual who resides at 89 Autumn Drive, White Haven, Foster Township, Pennsylvania 18661. Christopher Wolman is a dwelling unit owner and a member of the Autumn Mountain Woodlands Homeowner's Association, hereinafter referred to as "Wolman".

3. Plaintiff, Kurt Vernarec, is an adult individual who owns an unimproved lot at 102 Autumn Drive, White Haven, Foster Township, Pennsylvania 18661. Kurt Vernarec is an unimproved lot owner and a member of the Autumn Mountain Woodlands Homeowner's Association, hereinafter referred to as "Vernarec".

4. The Defendant is Hickory Hills Homeowner's Association, a Pennsylvania Homeowner's Association with a principal contact address of 20 Hickory Hills Drive, Foster Township, White Haven, Pennsylvania 18661, hereinafter referred to as "Hickory Hills".

5. Plaintiffs, "Autumn Mountain" are geographically landlocked behind Defendant, Hickory Hills, however, Plaintiffs access rights to their properties from a Deed June 6, 1977 from Sundance Valley, Incorporated to Troy E. Vernonsky recorded in Deed Book 1924 Page 35. All Plaintiff's properties whether improved or unimproved come out of this Deed (A copy of said Deed is attached hereto and made a part hereof and marked as Exhibit "A".)

6. Plaintiffs Exhibit "A" specifically provides for the following permanent access and specific financial responsibility for use of the Defendant's property in the Deed as follows:

> (a) Together with a permanent easement and right for and of ingress, egress, and regress and also for all utilities on, in, under and over all that certain piece, parcel, or lot of land measuring fifty (50') feet in width and extending a distance of one hundred fifty (150') feet southwardly from the southernly line of Wood Haven Drive to the northerly line of the above described piece, parcel or tract of land and which fifty (50) foot wide lot of land is bounded on the west by Lot No. HH-1 and on the east by Lot No. W-29 on said plot or plan of Hickory Hills.
>
> (b) Also, together with a permanent easement right for and of ingress, egress, and regress and also for all utilities on, in, under and over all streets, roads and lanes on said plot or plan of Hickory Hills and also to and from Traffic Route 940.
>
> (c) Also together with a with a permanent easement right for and of ingress, egress, and regress and also for all utilities on, in, under and over all that piece, parcel or lot of land measuring fifty (50') feet in width by fifty-eight and seventy-six hundredths (58.67') feet in length on what would be an easterly extension of Wood Haven Drive beyond Lot No. W-1 on said plot or plan of Hickory Hills and also to and from Traffic Route 940 and said fifty (50') foot wide lot of land is further mapped and located by crosshatched lines on said map attached to the Deed.
>
> (d) Each and every dwelling unit on the above-described premises shall pay to any entity charged with legal responsibility for maintaining

> the roads, streets and lanes of Hickory Hills the same per dwelling unit road maintenance charge as assessed against dwelling unit owners, if any, in said Hickory Hills subdivisions. (Emphasis added)

7. From approximately 1982 through today "Autumn Mountain" property owners accessed their improved or unimproved properties under the deeded language as stated in Plaintiff's Exhibit "A".

8. Plaintiff, "Autumn Mountain" filed Covenants in 1983 that state among other things the following:

> (15) the purchase of any lot in the development constitutes a compulsory membership in the lot owner's association. (See Plaintiff's Exhibit "B" attached and made a part hereof.)

9. On August 28, 2020 without any justification or authority the Defendant, "Hickory Hills" sent a letter to "Autumn Mountain" changing the manner in which "Autumn Mountain" was to pay its road maintenance charge, threatened legal action including but not limited to liening Autumn Mountain properties, and sending the non-payment of their demanded fees to collections, while posting a guard at the Hickory Hills gate to ask "Autumn Mountain" owners and guests questions regarding their payment of fees to Defendant, "Hickory Hills."

10. The Defendant, "Hickory Hills" has also threatened that it would begin to charge a toll to "Autumn Mountain" property owners and guests in violation of the deeded language.

11. Defendant, "Hickory Hills", has provided a bill to Plaintiff, "Autumn Mountain", billing property owners of the Plaintiff a lump sum of $10,000.00 for a road usage fee. Defendant, "Hickory Hills", by the clear, plain language of the Deed can only charge a road maintenance fee and not a road usage fee. Plaintiff, "Wolman", has in the past paid fees as requested by Defendant, "Hickory Hills", based on good faith reliance that Hickory Hills was billing for a road maintenance fee consistent with the Deed language.

12. Plaintiff, "Autumn Mountain", believes and therefore avers that the road maintenance fee charged to and sent "Autumn Mountain" demanding a lump sum of $10,000.00 was based on the yearly lot dues charged to Defendant, "Hickory Hills", property owners and not based on a road maintenance fee for "Hickory Hills" dwelling unit owners as required by the Deed.

13. It is believed and therefore averred that the Defendant, "Hickory Hills", yearly lot dues cover costs beyond road maintenance for "Hickory Hills" dwelling unit owners and therefore is an overcharge to the Plaintiff, "Wolman" and all other members of Plaintiff's homeowner's association who paid the Defendant, "Hickory Hills", fees.

14. By letter dated August 28, 2020 the Defendant, "Hickory Hills", through its president, Lee Maitland, sent correspondence to Plaintiff's counsel indicating that the road usage fees and lot fees nothing to do with one another. Road usage fees and/or lot fees are not a road maintenance fee as contemplated by the Deed that provides the Plaintiffs with access. (See letter dated August 28, 2020 marked as Plaintiff's Exhibit "C").

15. Defendant has admitted through its letter dated August 28, 2020 that they were charging a road usage fee which is not contemplated by the Deed attached hereto as Plaintiffs Exhibit "A". Defendant has also threatened to station the guard shack and assess a toll for all "Autumn Mountain" visitors until such time as dues are paid. Said action would be in violation of the deeded permanent easement and deeded permanent road maintenance fee responsibilities.

16. Defendant, "Hickory Hills" without legal basis has stated it will begin to bill all property owners with late fees, interests and if unpaid refer them to collection agencies in violation of the deeded requirements that the only charge that can be made is for a road

maintenance fee to Plaintiffs dwelling unit owners based upon the same fee charged to Defendants dwelling unit owners.

17. All actions taken by Defendant, "Hickory Hills" are in violation of the deeded permanent easement and road maintenance fee responsibilities.

18. All actions taken by Defendant, "Hickory Hills" has unreasonably interfered with the permanent easement and road maintenance fee responsibilities of the Plaintiff.

19. All actions of the Defendant, "Hickory Hills" are unilateral without basis in law or fact and have caused Plaintiffs' dwelling unit owners and property owners fear that the access to their properties will be challenged by and possibly denied by the Defendants unilateral actions.

20. It is believed and therefore averred that the Defendant, "Hickory Hills" has never established a separate dwelling unit owners road maintenance fee as required by the deeded language which provides the Plaintiff, "Autumn Mountain" with its access and financial responsibilities.

21. It is believed and therefore averred that the Defendant, "Hickory Hills" has profited by charging "Autumn Mountain" fees for road maintenance that were not based on any type of reasonable calculation determined by Defendant, "Hickory Hills" for road maintenance to be charged to its dwelling unit owners.

22. Plaintiff, "Wolman" was recently stopped at the Hickory Hills guard shack while attempting to access his property. A guard asked where he was going, where he his stickers were, if he had paid his fees, that a toll was going to be charged in the future and that he should carry a cancelled check to prove his fees payment. These actions were never done before by Defendant, "Hickory Hills", while Plaintiff used his deeded access.

23. Defendant, "Hickory Hills", has at all times prior to this year sent individual billing notices to all property owners of Autumn Mountain Woodlands in violation of the deeded language which indicates that each and every dwelling unit owner of Autumn Mountain Woodlands should have received individual billing from Defendant, "Hickory Hills".

24. Plaintiffs, "Autumn Mountain" filed Covenants in 1983 that run with the land pertaining to the Plaintiff's property which is land locked behind Defendant's property. In Deed Book 2096 at Page 464 the recorded Plaintiff's Covenants running with the land state among other things in No. (10):

> Upon the construction of a dwelling unit on the above-described premises, the record owner thereof said premises shall pay to Hickory Hills Association, the entity charged with legal responsibility for maintaining the roads, streets and lanes of Hickory Hills, the same per dwelling unit road maintenance charged as assesses against dwelling unit owners, if any, in said Hickory Hills subdivisions, which Hickory Hills subdivisions adjoin this subdivision, and in full accordance with such said requirement as contained in a Deed dated June 6, 1977 recorded on June 7, 1977 in Deed Book Volume 1924 at Page 35 (said requirement actually being on Page 38) in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania and if owner has any conflict between said requirement language as used therein said June 6, 1977 Deed and relative to said which road maintenance charges and the language therein, then the language of the said June 6, 1977 Deed shall prevail and control. (See Plaintiff's Exhibit "B" attached hereto and made a part hereof.)

25. Plaintiff, "Wolman", is a dwelling unit owner in Autumn Mountain Woodlands and is subject to the unilateral actions taken by the Defendant, "Hickory Hills", outside of the scope of the deeded access and deeded road maintenance charge.

26. Plaintiff, "Vernarec", is an unimproved lot owner in Autumn Mountain Woodlands and is subject to the unilateral action taken by the Defendant, "Hickory Hills", outside of the scope of the deeded access and deeded road maintenance charge.

27. The unilateral determinations by the Defendant, "Hickory Hills," in this matter were made without any basis in law and were made without any concern as to the breach of as said conditions contained in the Deed.

28. The Defendant, "Hickory Hills", has no legal basis in which to unilaterally change the terms of the deeded permanent easement access and deeded language pertaining to the road maintenance fees Defendant, "Hickory Hills", can charge.

29. . All action taken by the Defendant, "Hickory Hills", is outside the scope of the Deed marked as Plaintiff's Exhibit "A" without justification and without authority to proceed in the manner the Defendant, "Hickory Hills", has chosen.

30. Plaintiffs herein also seek a preliminary injunction to prohibit Defendant, "Hickory Hills" from refusing access to Plaintiffs properties and specific performance of the deeded language allowing access while only charging a road maintenance fee equal to Defendant, "Hickory Hills", dwelling unit owners consistent with the Deed herein.

31. There is a valid and enforceable Deed which has been recorded containing a permanent easement for access and a permanent limitation on fees that can be issued by the Defendant, "Hickory Hills". Said fees to be limited in an amount to no more than the road maintenance fee charged to dwelling unit owners in Defendant, "Hickory Hills" subdivisions. The Plaintiffs herein are without a valid and adequate remedy at law. The Plaintiffs herein cannot access their properties by any other public or private road other than the permanent ingress, egress and regress deeded to the Plaintiffs by the Defendant, "Hickory Hills".

32. Money damages are not adequate to satisfy the wrongs that have occurred regarding the Plaintiffs access to its property. Plaintiffs herein will be irreparably harmed if they

are not permitted to proceed to their homes and properties located in the landlocked Autumn Mountain Woodlands subdivision.

33. Pa. R.C.P. 1531(a) permits the granting of a preliminary injunction pending a final hearing; a court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits of the parties or third persons or of any other proof which the court may require.

34. A preliminary injunction may be granted if (1) the injunction is necessary to prevent immediate and irreparable harm not adequately compensated by damages; (2) greater injury would result from refusing the injunction than from granting it; also the issuance of the injunction will not substantially harm other interested parties in the proceedings; (3) the injunction will properly restore the parties to their status, to the status quo that existed immediately prior to the alleged wrongful conduct;(4) the activity sought to be restrained is actionable, its right to relief clear and the wrong is manifest; (5) the injunction is reasonably suited to abate the offending activity;(6) the injunction will not adverse the public interest. Wareheim v. Wareheim 860 A.2d 41 (Pa. 2004).

35. A court of equity will grant an injunction where the rights and equity of the Plaintiff are clear and free from doubt, and where the harm sought to be remedied is great and

irreparable. Shaffer v. Frye 403 Pa. Super 560, 589 A.2d 752 (1991). Woodward Township v. Zerbe , 6 A.3d 651 (Pa. Commwlth 2010), Williams v.Britty, 391 Pa. 1, 136 A.2d 832(1957)

36. By not granting this request for preliminary injunction the Plaintiffs' properties have the risk of being damaged, wasted and/or catastrophically lost since the Defendants, "Hickory Hills", is threatening refusal to allow access without payment of a toll or payment of baseless road usage fees.

37. By granting this Preliminary Injunction the Defendant will not be harmed yet not granting the Injunction has the potential to substantially harm the Plaintiffs dwelling homes, investments and property now and into the future.

38. Granting this Preliminary Injunction will properly restore the parties to their status as they existed prior to the alleged wrongful conduct of the Defendant.

39. Plaintiff has and retains a clear right to relief and are likely to prevail on the merits of the case herein.

40. Granting this Injunction will not adversely affect public policy or the public interest.

41. The Plaintiff herein should not be required to post a bond in this matter due to the financial conditions created illegally by the Defendant, "Hickory Hills", conduct of charging a baseless fee as well as, due to the Plaintiffs clear right of relief.

42. The Plaintiff is entitled to a preliminary injunction providing them with relief from the Defendant's unilateral illegal conduct which has caused unreasonable interference with the exercise of Plaintiff's deeded easement access but also interfered with the use, enjoyment, and protection of their own properties in Autumn Mountain Woodlands.

43. Prior to the filing of the Petition for Preliminary Injunction, Plaintiff filed its Complaint against the Defendant. (A copy of said Complaint is attached hereto and made a part hereof and marked as Exhibit "D").

WHEREFORE, the Plaintiff requests this Honorable Court find in favor of the Plaintiff and against the Defendant and enter an Order granting a Preliminary Injunction and requiring the Defendant not to interfere with Plaintiffs access easement.

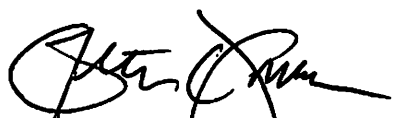
Respectfully submitted,

Date: 10/22/2020

PETER O'DONNELL, ESQUIRE
Attorney for Plaintiffs, Autumn Mountain Woodlands, and Christopher Wolman, individual dwelling unit owner in Autumn Mountain Woodlands, and Kurt Vernarec, individual unimproved lot owner in Autumn Mountain Woodlands
305 South Church Street, Suite 175
Hazleton, PA 18201
(570) 501-3790
(570) 501-3791
petero@epix.net
Attorney I.D. 52924

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: case Records of the Appellate and Trial Courts that require the filing of confidential information and documents differently than non-confidential information and documents.



PETER O'DONNELL, ESQUIRE
Attorney for Plaintiffs
305 South Church Street, Suite 175
Hazleton, PA 18201
(570) 501-3790
(570) 501-3791
petero@epix.net
Attorney I.D. 52924

VERIFICATION

I, KURT VERNAREC, Vice President of Autumn Mountain Woodlands Property Owner's Association, Plaintiff in this action, verify that the statements made in the foregoing Petition for Preliminary Injunctive Relief are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Kurt Vernarec, Vice President
Autumn Mountain Woodlands
Property Owner's Association

Date: 10-21-2020

VERIFICATION

I, CHRISTOPHER WOLMAN, individually, dwelling unit owner in Autumn Mountain Woodlands, Plaintiff in this action, verify that the statements made in the foregoing Petition for Preliminary Injunctive Relief are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Christopher Wolman

Christopher Wolman, Dwelling unit owner
in Autumn Mountain Woodlands

Date: 10/21/2020

VERIFICATION

I, KURT VERNAREC, individually, unimproved lot owner in Autumn Mountain Woodlands, Plaintiff in this action, verify that the statements made in the foregoing Petition for Preliminary Injunctive Relief are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Kurt Vernarec, unimproved lot owner in
Autumn Mountain Woodlands

Date: 10-21-2020

EXHIBIT "A"

[redacted] [redacted] [redacted]

No. 302—Cont. to Ind. or Corp. Complete Sales Co., 1211 Arch St., Phila. 7, Pa.

This Indenture,

Made the 6th *day of* June *, in the year*

Nineteen hundred and seventy-seven. (1977)

Between SUN DANCE VALLEY, INC., a corporation organized and existing under the laws of the State of New York and authorized to do business in the Commonwealth of Pennsylvania, with a principal office and place of business at Hickory Hills in the Township of Foster, County of Luzerne and Commonwealth of Pennsylvania,

(hereinafter called the Grantor), of the one part, and

TROY T. VERHONSKY, unmarried, of R. D. 1, Bloomsburg, Pennsylvania,

(hereinafter called the Grantee), of the other part:

Witnesseth, *That the said Grantor for and in consideration of the sum of*

One dollar ($1.00) *lawful*

money of the United States of America, unto it *well and truly paid by the*

said Grantee at and before the sealing and delivery of these presents, the receipt

whereof is hereby acknowledged, has *granted, bargained, sold, aliened,*

enfeoffed, released and confirmed, and by these presents does grant, bargain,

sell, alien, enfeoff, release and confirm unto the said Grantee , his Heirs

and Assigns,

ALL ~~THAT CERTAIN~~ piece, parcel or tract of land situate in the Township of Foster, County of Luzerne and Commonwealth of Pennsylvania, being a portion of the Peter Thompson Warrantee Tract, and being bounded and described as follows, to wit:

BEGINNING at a monument set as the southeasterly corner of Lot HH-26, Section 8, on the plot of Hickory Hills, recorded in the office of Recorder of Deeds in and for Luzerne County in Map Book 30, pages 6, 7 and 18;

THENCE along said plot of Hickory Hills, south eighty-seven degrees sixteen minutes east, four thousand two hundred twenty-nine and six tenths (4,229.6) feet to the southeasterly corner of Lot No. W-1 on the said plot;

THENCE along the easterly side of said Lot No. W-1, north four degrees four minutes twenty seconds east, one hundred fifty and five hundredths (150.05) feet to the southerly line of Woodhaven Drive;

THENCE along the northerly sideline of Woodhaven Drive, if extended, south eighty-seven degrees sixteen minutes east, fifty-eight and seventy-six hundredths (58.76) feet to a point;

THENCE south four degrees four minutes twenty seconds west, one hundred fifty and five hundredths (150.05) feet to a point;

THENCE south twenty-seven degrees twenty-two minutes east, six hundred sixty-one and thirty-two hundredths (661.32) feet to a point;

THENCE south sixty-seven degrees thirty-eight minutes twenty seconds west, one thousand six hundred and five tenths (1,600.05) feet to a point;

THENCE south eighty-two degrees fifty-nine minutes fifty-three seconds west, three thousand five hundred eighty-two and ninety-nine hundredths (3,582.99) feet to a point;

THENCE north nine degrees forty-four minutes twenty-five seconds east, one thousand nine hundred twenty-nine and seventy-three hundredths (1,929.73) feet to a point in the southerly line of Hickory Hills;

THENCE along the said southerly line of Hickory Hills, south sixty-two degrees fifteen minutes thirty-five seconds east, one hundred thirty-eight and forty-six hundredths (138.46) feet to the point of Beginning.

CONTAINING an area of one hundred forty-nine and sixty-two hundredths (149.62) acres of land, more or less.

BEING part of the same premises (part of "THE FIRST THEREOF") conveyed by George W. Woelfel and Marguerite D. Woelfel, his wife, to the grantor herein by deed dated May 29, 1970 and recorded on June 11, 1970 in Deed Book Vol. 1694 at page 1081 in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania; AND ALSO BEING part of whatever other, if any, warranties title and possession (except that those mentioned above that may actually be located adjacent to the unmentioned premises. TOGETHER with a permanent easement and right for and of ingress, egress and regress and also for all utilities on, in, under and over all that certain piece, parcel or lot of land measuring fifty (50) feet in width and extending a distance of one hundred fifty (150) feet southwardly from the southerly line of Woodhaven Drive to the northerly line of the above-described piece, parcel or tract of land and which fifty (50) foot wide lot of land is bounded on the west by Lot No. HH-1 and on the east by Lot No. W-29 on said plot or plan of Hickory Hills; and said fifty (50) foot wide lot of land is further mapped or located by crosshatch lines on a partial map of the abovedescribed piece, parcel or tract land and which partial map is attached hereto as "Exhibit A" and made a part hereof.

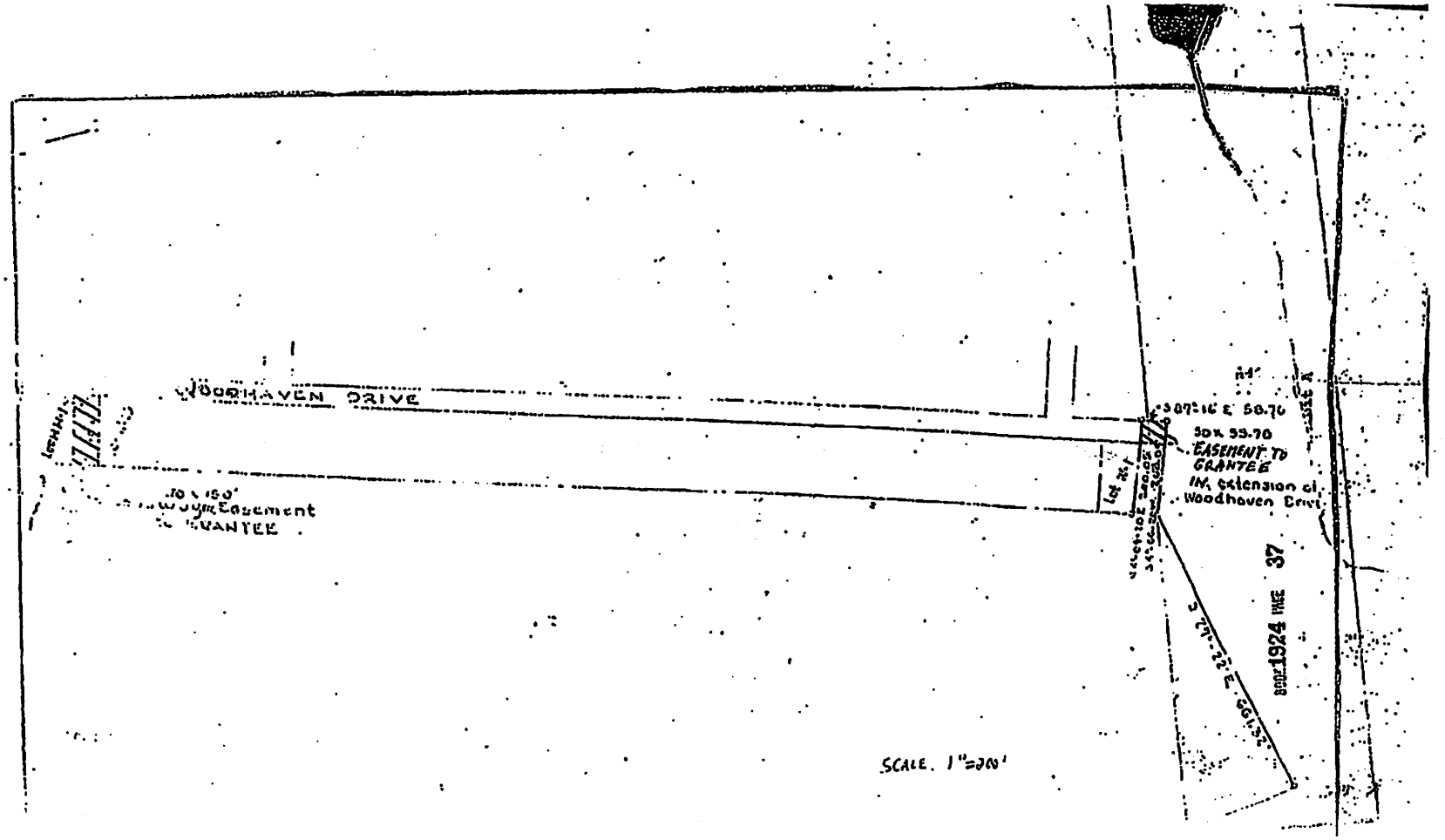
ALSO TOGETHER with a permanent easement and right for and of ingress, egress and regress and also for all utilities on, in, under and over all streets, roads and lanes on said plot or plan of Hickory Hills and also to and from Traffic Route 940.

AND ALSO TOGETHER with a permanent easement and right for ingress, egress and regress and also for all utilities on, in, under and over all that piece, parcel or lot of land measuring fifty (50) feet in width by fifty-eight and seventy-six hundredths (58.76) feet in length on what would be an eastwardly extension of Woodhaven Drive beyond Lot No. W-1 on said plot or plan of Hickory Hills and also to and from Traffic Route 940; and said fifty (50) foot wide lot of land is further mapped or located by crosshatch lines on said "Exhibit A."

Grantee and Grantor hereby agree that Grantor prior to settlement hereunder has represented and stated to and agreed with Grantee and Grantee has understood and agreed with Grantor that there is no community sewage system available to said parcel of land and that a permit for an individual sewage system will have to be obtained pursuant to Section 7 of the Pennsylvania Sewage Facilities Act (1966 Jan. 24 P. L. (1965) 1535, No. 537 Sect. 7, as amended; 35 P. S. Sect. 750.7, as amended) and that the Grantee should contact the local agency charged with administering said Act before settling hereunder and accepting delivery of this deed or becoming legally bound to purchase said parcel of land in order to determine the procedure and requirement for obtaining a permit for an individual sewage system.

* NOTE: Also see pertinent deeds recorded in said Luzerne County Deed Book Vol. 1811 at page 372, Deed Book Vol. 1811 at page 380 and Deed Book Vol. 1811 at page 376; and also see pertinent action to quiet title and final order and judgment thereof filed to No. 258 March Term, 1970 in the Office of the Prothonotary in and for Luzerne County, Pennsylvania.

Together with all and singular the improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.


WOODHAVEN DRIVE
EASEMENT TO GRANTEE IN extension of Woodhaven Drive
SCALE. 1"=200'
BOOK 1924 PAGE 37

To have and to hold the said

hereditaments

and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee and Assigns, to and for the only proper use and behoof of the said Grantee and Assigns forever.

And the said Grantor, for itself and its successors does by these presents covenant, grant and agree, to and with the said Grantee and Assigns, that the said Grantor, and its Successors, all and singular the hereditaments and premises herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee and Assigns, against the said Grantor and its Successors, and against all and every other Person and Persons whomsoever, lawfully claiming or to claim the same, or any part thereof,

Shall and Will specially

WARRANT and forever DEFEND.

Each and every dwelling unit on the abovedescribed premises shall pay to any entity charged with legal responsibility for maintaining the roads, streets and lanes of Hickory Hills the same per dwelling unit road maintenance charge as assessed against dwelling unit owners, if any, in said Hickory Hills subdivisions.

And the said Grantor does hereby constitute and appoint Donald A. Gorsen to be its Attorney, for it and in its name, and as and for its corporate act and deed to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In Witness Whereof,

the said Grantor, has caused this Indenture to be executed by its President, attested by its Secretary, and its corporate seal to be affixed the day and year first above written.

Signed, Sealed and Delivered In the Presence of

SUN RIDGE VALLEY, INC.

By Donald A. Gorsen President

attest

Secretary

COMMONWEALTH OF PENNSYLVANIA

STATE TRANSFER TAX 150.00

Commonwealth of Pennsylvania } ss.
County of LUZERNE

I hereby certify, that on this 6th *day of* June *in the year of our Lord one thousand nine hundred and* seventy-seven *before me, the subscriber, a Notary Public, residing in the* CITY OF HAZLETON, LUZERNE COUNTY, PA. *personally appeared* Donald R. Gerson *the attorney named in the foregoing Indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Indenture to be the act and deed of the said* Grantor, Sun Dance Valley, Inc.

Witness my hand and Notarial seal the day and year aforesaid.

My commission expires
GEORGE PARKS, Notary Public
Hazleton, Luzerne Co., Pa.
My Commission Expires Jan. 4, 1980

Notary Public.

I Hereby Certify that the precise address of the grantee herein is:
residence and complete post office
R. D. 1
Bloomsburg, Pennsylvania

MUNICIPALITY Foster Twp.
TRANSFER TAX PAID $ 150.00
GINL BANK KASHINGS

Pasco L. Schiavo, Attorney for Grantee

GRANTOR
SUN DANCE VALLEY, INC.

TO

GRANTEE
TROY E. VERNOSKIE,

Dated, June 6 1977

ENTERED FOR RECORD
at 3:30 P.M.
JUN - 7 1977
Tax and Fees $
Frank C. Cartellone
RECORDER

LAW OFFICES OF
PASCO L. SCHIAVO
NORTHEASTERN BUILDING
HAZLETON, PENNSYLVANIA

Commonwealth of Pennsylvania } ss.
County of Luzerne

Recorded in the Office for Recording of Deeds in and for said County in Deed Book 1424 *No.* 35 *page* 35 *Etc.*

Witness my hand and seal of Office this 7 *day of* June *Anno Domini 19*

Frank C. Cartellone
Recorder

BOOK 1924 PAGE 39

EXHIBIT "B"

AUTUMN MOUNTAIN WOODLANDS

RULES AND SUBJECT TO THE FOLLOWING COVENANTS:

1. The herein lot or lots, also referred to hereafter at times as the above-described or said premises, shall be used only for single or two family residential purposes, and no building shall exceed three stories in height. All improvements shall be constructed and located thereon in accordance with the Foster Township subdivision and zoning ordinances.

2. No mobile homes, mobile homes, campsites, hog farms, animal farms, cliniics, hospitals, sanitoriums, sanitary landfills, tourist homes or any trailer or shacks shall be constructed or located on any part of the herein premises; nor shall any part of the herein premises be used for the extraction of natural resources or for any industrial uses.

3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that horses, dogs, cats or other household pets may be kept provided that they are not bred or maintained for any commercial purpose.

4. All buildings or structures constructed thereon said premises shall not take any longer than twelve (12) months from the date of commencement of such construction to complete any such building or structure.

5. Front yard set-back lines for building on said premises shall be as required by all present Foster Township ordinances. The front yard shall be that portion of said premises abutting the street or road and between such street or road and the front of the main residential structure.

6. The side yard setback line for building shall be as required by all present Foster Township ordinances.

7. The rear yard setback line for building shall be as required by all present Foster Township ordinances.

8. A permanent easement of twenty (20) feet in width for any and all electric and utility lines is hereby excepted and reserved for such lines and for the appropriate utility company or authority using the same or for so many of them as they may use the same jointly and for their particular utility usage and where indicated and located on the subdivision plan or map relative to said premises and if the subdivision plan of Autumn Mountain Woodlands, Inc. hereunder shown the same to be applicable to the herein premises conveyed hereunder.

9. All of said building setback lines and as the same apply to the premises conveyed hereunder shall be in conformity with all said present Foster Township ordinances, and all said setback lines are located on said related subdivision plan or map.

10. Upon the construction of a dwelling unit on the above described premises, the record owner thereof said premises shall pay to Hickory Hills Association, the entity charged with legal responsibility for maintaining the roads, streets and lanes of Hickory Hills, the same per dwelling unit road maintenance charge as assessed against dwelling unit owners, if any, in said Hickory Hills subdivisions, which Hickory Hills subdivisions adjoin this subdivision, and in full accordance with such said requirement as contained in a deed dated June 6, 1977 recorded on June 7, 1977 in Deed Book Volume 1956 at page 35 (said requirement actually being on page 36) in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania; and if there is any conflict between said requirement language as used therein said June 6, 1977 deed and relative to such said road maintenance charges and the language herein, then the language of said June 6, 1977 deed shall prevail and control.

11. All roads or streets hereunder and through this subdivision are presently private; and Foster Township reserves the right to set higher standards for any said road or streets offered for dedication in the future than presently exists.

12. The foregoing covenants shall run with the land and shall be forever binding on the grantees or grantee hereunder, its, his, her or their heirs, successors and assigns. Should the grantees or grantee hereunder, its, his, her or their heirs, successors and/or assigns, violate any of the above provisions, then grantor, its heirs, successors and/or assigns, shall have the right to bring an action in equity to restrain, enjoin and/or remedy said violation and/or seek any other proper remedy and/or relief.

13. Autumn Mt. Woodlands, Inc., or any officer or agent of Autumn Mt. Woodlands, Inc., does not now or at any time in the future, offer or provide any type of home construction or any other type of physical construction in connection with the sale of lots.

14. Grantee (s) and grantor hereby agree that grantor prior to settlement hereunder has represented and stated to and agreed with grantee (s) and grantor has understood and agreed as part of the agreement for the sale of the above-described parcel of land that: there is no community sewage system available to said parcel of land and that a permit for an individual sewage system will have to be obtained pursuant to Section 7 of the Pennsylvania Sewage Facilities Act (1966) Sec. 26 P.L. (1965) 1535, No. 537 Sect. 7, as amended; 35 P.S. Sect. 750.7, as amended) and that the grantee (s) should contact the local agency charged with administering said Act before settling hereunder and accepting delivery of this deed or becoming legally bound to purchase said parcel of land in order to determine the procedure and requirement for obtaining a permit for an individual sewage system.

15. The purchase of any lot in this development constitutes a compulsory membership in the Lot Owners Association.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
STATE TRANSFER TAX

MUNICIPALITY
TRANSFER TAX PAID
$14.00
1983

BOOK 2096 PAGE 464

EXHIBIT "C"

HICKORY HILLS POA
20 Hickory Hills Drive
White Haven PA 18661
570-443-8108 fax 570-443-4400
hickoryhills@pa.metrocast.co

8/28/2020

Mr. Peter O'Donnell, Esq.
305 S. Church St. #175
Hazleton, PA 18201

Re: Autumn Mountain Road Usage Fee

Dear Mr. O'Donnell:

It has been stated to us by an Autumn Mountain property owner that you have taken it upon yourself to dictate the amount of money charged on the road usage fee due Hickory Hills.

Autumn Mountain's legal counsel has no right nor jurisdiction in the matters of Hickory Hills. We gave Autumn Mountain every opportunity to negotiate an appropriate fee after the initial invoice went out to them in the amount of $10,000.00 and they declined on all offers and refused to bill their clients even though the original agreement was between HHPOA and AMWPOA.

This is an outrageous action taken on by AMWPOA and their legal counsel. Despite your advice to the members of AMWPOA, we will move forward with the billing as it was issued and your members will be charged late fees, interest and will be sent to collection for failure to pay.

Lot owners at HHPOA pay $270.00 in DUES. It has nothing to do with road fees charged to AMWPOA. Your assertion that since lot dues at HHPOA are $270.00, then AMWPOA should only pay $270.00. A lot fee and road usage fee have nothing to do with one another.

We advised Autumn Mountain that they were not to impede on our right to collect the road usage fee and they did just that. We will not tolerate being denied the money owed us and are prepared to make this a legal issue if it is necessary to do so. We are also prepared to station the guard shack and assess a "toll" for all Autumn Mountain visitors until such time as our dues are paid.

The Board of Directors at Autumn Mountain were given the option to pay $8120.00 for the year with the stipulation that if the bridge or road required repair and HHPOA residents had to be assessed for the repair, so would AMWPOA residents and that was rejected. At that time, we advised that if we could not come to an agreement, the original bill of $10,000.00 would apply.

As stated above, we will bill all property owners with late fees, interest and if unpaid refer them to our collection agency. We are also going to be billing Autumn Mountain for the additional postage, stationery and time that this interference caused. We are not assuming the cost for this since you and the Board at AMWPOA have insisted on interfering with our right to bill.

Sincerely,

Lee Maitland
President
HHPOA

EXHIBIT "D"

AUTUMN MOUNTAIN WOODLANDS PROPERTY OWNER'S ASSOCIATION, and CHRISTOPHER WOLMAN, Individually as a Dwelling Unit Owner in AMWPOA, and KURT VERNAREC, individually as an Unimproved lot owner in AMWPOA Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY NO.
v.	:	Civil Action – Equity/Law
HICKORY HILLS PROPERTY OWNER'S ASSOCIATION, Defendant.	:	

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OUR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Wilkes-Barre Law Library Association
(570) 822-6712

North Penn Legal Services
15 Public Square, Suite 410, Wilkes-Barre, PA 18701
(570) 825-8567

AVISO

LE HAN DEMANDADO A USTED EN LA CORTE, SI DESEA DEFENDERSE CONTRA LAS QUEJAS PERSESENTADA, ES ABSOLUTAMENTE NECESSARIO QUE USTED RESPONDA DENTRO DE 20 DIAS DESPUES DE SER SERVIDO CON ESTA DEMANDA Y AVISO. PARA DEFENDERSE ES NECESSARIO QUE USTED, O SU ABOGADO, REGISTRE CON LA CORTE EN FORMA ESCRITA, EL PUNTO DE VISTA DE USTED Y CUALQUIER OBJECCION CONTRA LAS QUEJAS EN ESTA DEMANDA.

RECUERDE: SI USTED NO RESPONDE A ESTA DEMANDA, SE PUEDE PROSEGUIR CON EL PROCESO SIN SU PARTICPACION. ENTONCES, LA COUTE PUEDE, SIN NOTIFICARIO, DECIDIR A FAVOR DEL DEMANDANTE Y REQUERIRA QUE USTED CUMPLA CO TODAS LAS PROVISIONES DE ESTA DEMANDA. POR PRAZON DE ESA DECISION, ES POSSIBLE QUE USTED PUEDE PERDER DINERO, PROPIEDAD U OTROS DERECHOS IMPORTANTES.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATEMENTE.

SE NO CONOCE A UN ABOGADO, LLAME AL "LAWYER REFERENCE SERVICE" (SERVICIO DE REFERENCIA DE ABOGADOS), 215-238-6300.

Wilkes-Barre Law Library Association
(570) 822-6712

North Penn Legal Services
15 Public Square, Suite 410, Wilkes-Barre, PA 18701
(570) 825-8567

The counsel below certifies that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

Date: 10/22/2020

PETER O'DONNELL, ESQUIRE
Attorney for Plaintiffs, Autumn Mountain Woodlands Property Owners Association, and Christopher Wolman, individual dwelling unit owner in Autumn Mountain Woodlands, and Kurt Vernarec, individual unimproved lot owner in Autumn Mountain Woodlands
305 South Church Street, Suite 175
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(570) 501-3790
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petero@epix.net
Attorney I.D. 52924

AUTUMN MOUNTAIN WOODLANDS PROPERTY OWNER'S ASSOCIATION, and CHRISTOPHER WOLMAN, Individually as a Dwelling Unit Owner in AMWPOA, and KURT VERNAREC, individually as an Unimproved lot owner in AMWPOA	:	IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
Plaintiffs,	:	NO.
v.	:	Civil Action – Equity/Law
HICKORY HILLS PROPERTY OWNER'S ASSOCIATION,	:	
Defendant.	:	

COMPLAINT

AND NOW comes Autumn Mountain Woodlands, Christopher Wolman, and Kurt Vernarec by and through their counsel, Attorney Peter O'Donnell and complains of the Defendant as follows:

1. The Plaintiff, Autumn Mountain Woodlands Property Owners Association is a property owners association with a contact address of P.O. Box 66, White Haven, Luzerne County, PA 18661 (Hereinafter referred to as "Autumn Mountain.")

2. Plaintiff, Christopher Wolman, is an adult individual with a principal place of residence of 89 Autumn Drive, White Haven, Luzerne County, Pennsylvania 18661. (Hereinafter referred to as "Wolman".)

3. At all times pertaining hereto Plaintiff, "Wolman", is and was a dwelling unit owner and a member of the Autumn Mountain Property Owner's Association.

4. Plaintiff, Kurt Vernarec, is an adult individual with an unimproved lot located at 102 Autumn Drive, Foster Township, White Haven, Pennsylvania. (Hereinafter referred to as "Vernarec".)

5. At all times material hereto Plaintiff, Kurt Vernarec, is and was an unimproved lot owner and a member of the Autumn Mountain Woodland Property Owner's Association.

6. The Defendant, Hickory Hills, is a property owner's association with a contact address of 20 Hickory Hills Drive, White Haven, PA 18661.

7. The Plaintiff, "Autumn Mountain", and Defendant, "Hickory Hills", are contiguous communities and are further subject to the rights and responsibilities recorded in a Deed dated June 6, 1977 at Deed Book 1924 Page 35. (Said Deed is attached hereto as Exhibit "A")

8. Pursuant to said Deed the Plaintiffs have a permanent easement for ingress, egress and regress to and from Traffic Route 940 through the Defendant, "Hickory Hills", property to the properties located in Autumn Mountain Woodlands.

9. Plaintiffs believe and therefore aver that the Defendant, "Hickory Hills", has unilaterally changed the terms and unreasonably interfered with the permanent deeded easement for ingress, egress and regress and limited financial responsibilities for road maintenance contained therein, by taking unilateral actions consisting of failing to identify what constitutes a charge for the "Hickory Hills" dwelling unit road maintenance fee and instead charging all Plaintiffs for various fees in violation of the deed covenant.

10. The deeded financial requirement in Plaintiff's Exhibit "A" requires billing only a road maintenance charge to the dwelling unit owners of Plaintiff, "Autumn Mountain", in the amount which is equal to the amount charged to the dwelling unit owners in Hickory Hills. Plaintiff's Exhibit "A" states as follows:

> each and every dwelling unit on the above-described premises shall pay to any entity charged with the legal responsibility for maintaining the roads, streets and lanes of Hickory Hills the same per dwelling unit road maintenance charge as assessed against dwelling unit owners,

if any, in said Hickory Hills subdivision.

11. The Defendants, "Hickory Hills", pursuant to correspondence received by Plaintiffs' counsel dated August 28, 2020 has taken the position that it can charge a road usage fee to all Plaintiff's members instead of a road maintenance fee to only the Plaintiffs' dwelling unit owners and that the Defendant, "Hickory Hills", can charge one lump fee to the Plaintiffs' Homeowners Association instead of billing only Plaintiffs' dwelling unit owners. Defendant, "Hickory Hills", has further taken unilateral action to station a guard at the Defendant, "Hickory Hills", entry gate to question all Plaintiffs attempting to enter the property and has threatened to assess a toll for all Autumn Mountain visitors and property owners until such time as dues are paid. Defendant, "Hickory Hills" has further indicated they will bill all Plaintiffs' property owners with late fees, interest and if unpaid refer them to collections. Defendant, "Hickory Hills", has also threatened to lien all Plaintiffs properties for non-payment of their fees. (See Plaintiff's Exhibit "B" letter dated August 28, 2020 attached hereto and made apart hereof.)

12. Defendant at all times prior to this August 28, 2020 letter billed Plaintiff's "Autumn Mountain" dwelling unit owners individually to their individual addresses an amount which was believed by Plaintiffs to be a road maintenance fee as per the Deed.

13. It is believed and therefore averred Defendant, Hickory Hills", randomly determined the fee based on its needs and not pursuant to the Deeded language. It is believed and therefore averred that the Defendant herein has never calculated a road maintenance fee to be charged to the Hickory Hills dwelling unit owners which could then be charged to the Autumn Mountain Woodlands dwelling unit owners pursuant to the Deed language.

14. It is believed and therefore averred that Defendant, "Hickory Hills", has overcharged the Plaintiffs herein for a road maintenance fee that was to be no more than the

amount charged to Defendants, "Hickory Hills", dwelling unit owners and only collected from the individual Plaintiffs' dwelling unit owners.

15. Defendant's actions are all unilateral and in breach of the deeded language causing Plaintiff losses and an unreasonable interference with its deeded permanent access to its properties.

16. There is no lawful or legal basis for Defendant, "Hickory Hills", unilateral actions in failing to comply with deeded provisions for charging a road maintenance fee to only Plaintiffs' dwelling unit owners and billing them individually as required by the Deed.

COUNT I
Unreasonable Interference with Permanent Deeded Easement

17. Plaintiffs incorporate paragraphs 1 through 16 of this Complaint as if the same were fully set forth herein at length.

18. The Defendant has failed to comply with the clear and unambiguous Deed language stating that the Plaintiffs have a clear and permanent ingress, egress and regress to their property which is landlocked behind Defendant's property.

19. Defendant has failed to comply with the clear and unambiguous Deed language stating that the road maintenance fee charged to Hickory Hills dwelling unit owners is the only charge that can be made to Autumn Mountain Woodlands dwelling unit owners and the same is to be billed individually.

20. The specificity of the Deed language indicates that the amount charged to Defendant, "Hickory Hills" dwelling unit owners is the amount to be charged to Plaintiff, Autumn Mountain Woodlands dwelling unit owners and the same is to be sent to the Plaintiffs' dwelling unit owner individually since the deeded language states "each and every dwelling unit owner in Autumn Mountain".

21. The Defendant has initiated self-help action by placing a guard at the Defendant, "Hickory Hills", entry gate which has and will restrict, detain or refuse access to Plaintiff's properties. Defendant, "Hickory Hills", by failing to allow Plaintiff's entry or departure pursuant to ingress, egress and regress language clearly stated as a permanent easement in the Deed, unreasonably interferes Plaintiff's ability to reach its properties. Defendant, "Hickory Hills", unilateral attempts at charging fees without reasonable basis and identification as the same charge for Hickory Hills dwelling unit road maintenance fees causes unreasonable interferences with the permanent easement and is made without any legal basis. By refusing ingress, egress, regress, and by charging unilateral fees identified in any manner, and any amount, the Defendant has breached the clear and unambiguous language of the Deed and has caused an unreasonable interference with the use of the permanent deeded easement.

22. At all times material hereto, the Deed marked as Plaintiff's Exhibit "A" is the Deed which controls the obligations of the parties.

23. Plaintiff, "Autumn Mountain" filed Covenants in 1983 that state among other things the following:

> (15) the purchase of any lot in the development constitutes a compulsory membership in the lot owner's association. (See Plaintiff's Exhibit "C" attached and made a part hereof.)

24. In 1983 Plaintiff property owner's association filed Covenants pertaining to their properties in Deed Book 2096 at Page 464, said Covenants specifically number ten (10) states:

> upon construction of a dwelling unit on the above-described premises the record owner thereof said premises shall pay to Hickory Hills Association, the entity charged with the legal responsibility for maintaining the roads, streets and lanes of Hickory Hills, the same per dwelling unit road maintenance charge as assessed against dwelling unit owners, in said Hickory Hills subdivisions which Hickory Hills subdivisions adjoin this subdivision, and in full accordance with such said requirement as contained in the

Deed dated June 6, 1977 recorded on June 7, 1977 in Deed Book Volume 1924 at Page 35 (said requirement actually being on page 38) in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania and if owner has a conflict between said agreement language as used therein said June 6, 1977 Deed and relative to such road maintenance charges and the language therein, then the language of said June 6, 1977 Deed shall prevail and control. (See Covenants attached hereto and marked as Exhibit "C").

25. The Deed of record which controls the access to Plaintiffs' property is clearly a valid and enforceable agreement which was in effect at the time of this Complaint.

COUNT II
Unjust Enrichment

26. Plaintiffs incorporate paragraphs 1 through 25 of this Complaint as if the same were fully set forth herein at length.

27. Plaintiffs believe and therefore aver that the Defendant, "Hickory Hills", has charged fees for road maintenance that were without basis or calculation.

28. Defendant, "Hickory Hills", was limited in charging the dwelling unit owners of Plaintiff, "Autumn Mountain" the same road maintenance charge as was levied upon dwelling unit owners of Defendant, "Hickory Hills".

29. Plaintiff believes and therefore avers that Defendant was unjustly enriched for a number of years by charging a fee to the Plaintiffs herein that was not based upon the fee charged to Hickory Hills dwelling unit owners as a road maintenance fee.

30. It is believed and therefore averred that the annual fees charged to Defendant, "Hickory Hills" dwelling unit owners does not contain a breakout of what the fees are charged for and if said fees charged to Defendant, "Hickory Hills:, dwelling unit owners have a breakdown the same was never provided to the Plaintiffs herein in order to show the amount owed by Plaintiff's dwelling unit owners.

WHEREFORE, the Plaintiff demands that this Honorable Court find in favor of the Plaintiff and find that Defendant, "Hickory Hills" has been unjustly enriched by an amount to be determined in an equitable accounting ordered by this Court.

COUNT III
Equitable Accounting

31. Plaintiffs incorporate paragraphs 1 through 30 of this Complaint as though the same were fully set forth herein at length.

32. Plaintiffs believe and therefore aver that the unjust enrichment of the Defendants has been occurring for approximately 40 years and as such said unjust enrichment must be accounted for equitably.

33. Plaintiffs request that an equitable accounting be performed in order to determine the extent of unjust enrichment received by Defendant, "Hickory Hills".

WHEREFORE, the Plaintiffs request that an equitable accounting be ordered by the Court and that the Court appoint an independent accountant in order to review the Defendant, "Hickory Hills", financial records for a determination of the unjust enrichment that has occurred as a result of the Defendant's actions over the course of the last 40 years. Said amount being ordered returned to the Plaintiffs with interest.

COUNT IV
Preliminary/Permanent Injunction

34. Plaintiffs incorporate paragraphs 1 through 33 of this Complaint as though the same were fully set forth herein at length.

35. The Defendant has violated the clear and unambiguous terms of the Deed. The Plaintiffs are without a valid and adequate remedy at law. Money damages are not adequate to satisfy the losses of the Plaintiff and the Defendant cannot be allowed to unilaterally control

and/or refuse admission of the Plaintiffs landowners without recognizing the language contained in the Deed pertaining to the permanent access easement and the limitation on fees that can be charged by Defendant.

36. Plaintiffs seek a Preliminary/Permanent Injunction of the Deed language such that the Defendant cannot interfere with the deeded permanent access easement and if a road maintenance fee is to be charged to dwelling unit owners of Hickory Hills the same is to be charged only to dwelling unit owners of "Autumn Mountain". Should said dwelling unit owners of "Autumn Mountain" not pay that fee then the Defendant's, "Hickory Hills", remedies are to collect said fees through an action at law without interfering with Plaintiffs' deeded access.

37. There is a valid and enforceable Deed containing Deed Covenants that are in effect.

38. The Defendant, "Hickory Hills", has violated those Covenants,

39. Plaintiffs are without a valid and adequate remedy at law. An injunction is necessary to prevent Plaintiff's from suffering an irreparable harm. Greater injury will result by not granting the injunction than from granting it. An injunction will not substantially harm the other interested parties and it will restore the status quo. The activity of the Defendant is actionable and the right to relief is clear. An injunction is a reasonable remedy to abate the defendant's activity and the injunction will not be adverse to the public interest.

40. Monetary damages are not adequate to satisfy Plaintiffs losses, Plaintiff has sustained an unreasonable interference with its access to Plaintiff's property and said restrictions can lead to potential catastrophic loss of home and property because of Defendant, "Hickory Hills", unilateral conduct.

41. Plaintiffs are entitled to a Preliminary/Permanent Injunction enforcing the language in the Deed marked as Plaintiff's Exhibit "A".

42. Plaintiffs are entitled to a Preliminary/Permanent Injunction ordering the Defendant, "Hickory Hills", not to interfere with their deeded permanent property access.

WHEREFORE, the Plaintiffs requests this Honorable Court to find in favor of the Plaintiffs and against the Defendant, "Hickory Hills" and enter an Order as follows: (a) issue a permanent injunction ordering the Defendant, "Hickory Hills", to cease and desist from any and all actions restricting any of Plaintiffs' members access to the improved and unimproved properties in Autumn Mountain. (b) Order the Defendant, "Hickory Hills" to comply with the terms of the deeded dwelling unit owner's maintenance charge and charge only the Plaintiff's dwelling unit owners the same fee for road maintenance as the Defendant, "Hickory Hills" charges its own dwelling unit owners. (c) Defendant, "Hickory Hills", is restricted to billing the Plaintiff's individual dwelling unit owners the road maintenance fee as stated herein.

Respectfully submitted,

Date: 10-22-2020

PETER O'DONNELL, ESQUIRE
Attorney for Plaintiffs, Autumn Mountain Woodlands Property Owners Association, and Christopher Wolman, individual dwelling unit owner in Autumn Mountain Woodlands, and Kurt Vernarec, individual unimproved lot owner in Autumn Mountain Woodlands
305 South Church Street, Suite 175
Hazleton, PA 18201
(570) 501-3790
(570) 501-3791 (fax)
petero@epix.net
Attorney I.D. 52924

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: case Records of the Appellate and Trial Courts that require the filing of confidential information and documents differently than non-confidential information and documents.

PETER O'DONNELL, ESQUIRE
Attorney for Plaintiffs
305 South Church Street, Suite 175
Hazleton, PA 18201
(570) 501-3790
(570) 501-3791 (fax)
petero@epix.net
Attorney I.D. 52924

VERIFICATION

I, KURT VERNAREC, Vice President of Autumn Mountain Woodlands Property Owner's Association, Plaintiff in this action, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Kurt Vernarec, Vice President
Autumn Mountain Woodlands
Property Owner's Association

Date: 10-21-2020

VERIFICATION

I, CHRISTOPHER WOLMAN, individually as a dwelling unit owner in Autumn Mountain Woodlands, Plaintiff in this action, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Christopher Wolman, individually as a dwelling unit owner in Autumn Mountain Woodlands

Date: 10/21/2020

VERIFICATION

I, KURT VERNAREC, individually as an unimproved lot owner in Autumn Mountain Woodlands, Plaintiff in this action, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Kurt Vernarec, individually as an
unimproved lot owner in Autumn Mountain
Woodlands

Date: 10-21-2020

EXHIBIT "A"

[redacted] [redacted] [redacted]

105 —SOD—Gen. D. Ind. or Corp. Smith-Gray Sales Co., 1211 Arch St., Phila. 7, Pa.

This Indenture,

Made the 6th *day of* June *, in the year*

Nineteen hundred and seventy-seven (1977)

Between SUN DANCE VALLEY, INC., a corporation organized and existing under the laws of the State of New York and authorized to do business in the Commonwealth of Pennsylvania, with a principal office and place of business at Hickory Hills in the Township of Foster, County of Luzerne and Commonwealth of Pennsylvania,

(hereinafter called the Grantor), of the one part, and

TROY T. VERMONSKY, unmarried, of R. D. 1, Bloomsburg, Pennsylvania,

(hereinafter called the Grantee), of the other part:

Witnesseth, *That the said Grantor for and in consideration of the sum of*

One dollar ($1.00) *lawful*

money of the United States of America, unto it *well and truly paid by the said Grantee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,* has *granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents* does *grant, bargain, sell, alien, enfeoff, release and confirm unto the said Grantee,* his Heirs *and Assigns,*

ALL ~~THAT CERTAIN~~ piece, parcel or tract of land situate in the Township of Foster, County of Luzerne and Commonwealth of Pennsylvania, being a portion of the Peter Thompson Warrantee Tract, and being bounded and described as follows, to wit:

BEGINNING at a monument set as the southwesterly corner of Lot HH-26, Section 8, on the plot of Hickory Hills, recorded in the office of Recorder of Deeds in and for Luzerne County in Map Book 30, pages 6, 7 and 15;

THENCE along said plot of Hickory Hills, south eighty-seven degrees sixteen minutes east, four thousand two hundred twenty-nine and six tenths (4,229.6) feet to the southeasterly corner of Lot No. W-1 on the said plot;

THENCE along the easterly side of said Lot No. W-1, north four degrees four minutes twenty seconds east, one hundred fifty and five hundredths (150.05) feet to the southerly line of Woodhaven Drive;

THENCE along the northerly sideline of Woodhaven Drive, if extended, south eighty-seven degrees sixteen minutes east, fifty-eight and seventy-six hundredths (58.76) feet to a point;

THENCE south four degrees four minutes twenty seconds west, one hundred fifty and five hundredths (150.05) feet to a point;

THENCE south twenty-seven degrees twenty-two minutes east, six hundred sixty-one and thirty-two hundredths (661.32) feet to a point;

THENCE south sixty-seven degrees thirty-eight minutes twenty seconds west, one thousand six hundred and five tenths (1,600.05) feet to a point;

THENCE south eighty-two degrees fifty-nine minutes fifty-three seconds west, three thousand five hundred eighty-two and ninety-nine hundredths (3,582.99) feet to a point;

THENCE north nine degrees forty-four minutes twenty-five seconds east, one thousand nine hundred twenty-nine and seventy-three hundredths (1,929.73) feet to a point in the southerly line of Hickory Hills;

THENCE along the said southerly line of Hickory Hills, south sixty-two degrees fifteen minutes thirty-five seconds east, one hundred thirty-eight and forty-six hundredths (138.46) feet to the point of Beginning.

CONTAINING an area of one hundred forty-nine and sixty-two hundredths (149.62) acres of land, more or less.

BEING part of the same premises (part of "THE FIRST THEREOF") conveyed by George W. Woelfel and Marguerite D. Woelfel, his wife, to the grantor herein by deed dated May 29, 1970 and recorded on June 11, 1970 in Deed Book Vol. 1594 at page 1081 in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania; AND ALSO BEING part of whatever other, if any, warranties, rights and easements appertain to the above-described premises mentioned above that may actually be located adjacent to the above-described premises.

TOGETHER with a permanent easement and right for and of ingress, egress and regress and also for all utilities on, in, under and over all that certain piece, parcel or lot of land measuring fifty (50) feet in width and extending a distance of one hundred fifty (150) feet southwardly from the southerly line of Woodhaven Drive to the northerly line of the above-described piece, parcel or tract of land and which fifty (50) feet wide lot of land is bounded on the west by Lot No. HH-1 and on the east by Lot No. W-29 on said plot or plan of Hickory Hills; and said fifty (50) feet wide lot of land is further mapped or located by crosshatch lines on a partial map of the abovedescribed piece, parcel or tract land and which partial map is attached hereto as "Exhibit A" and made a part hereof.

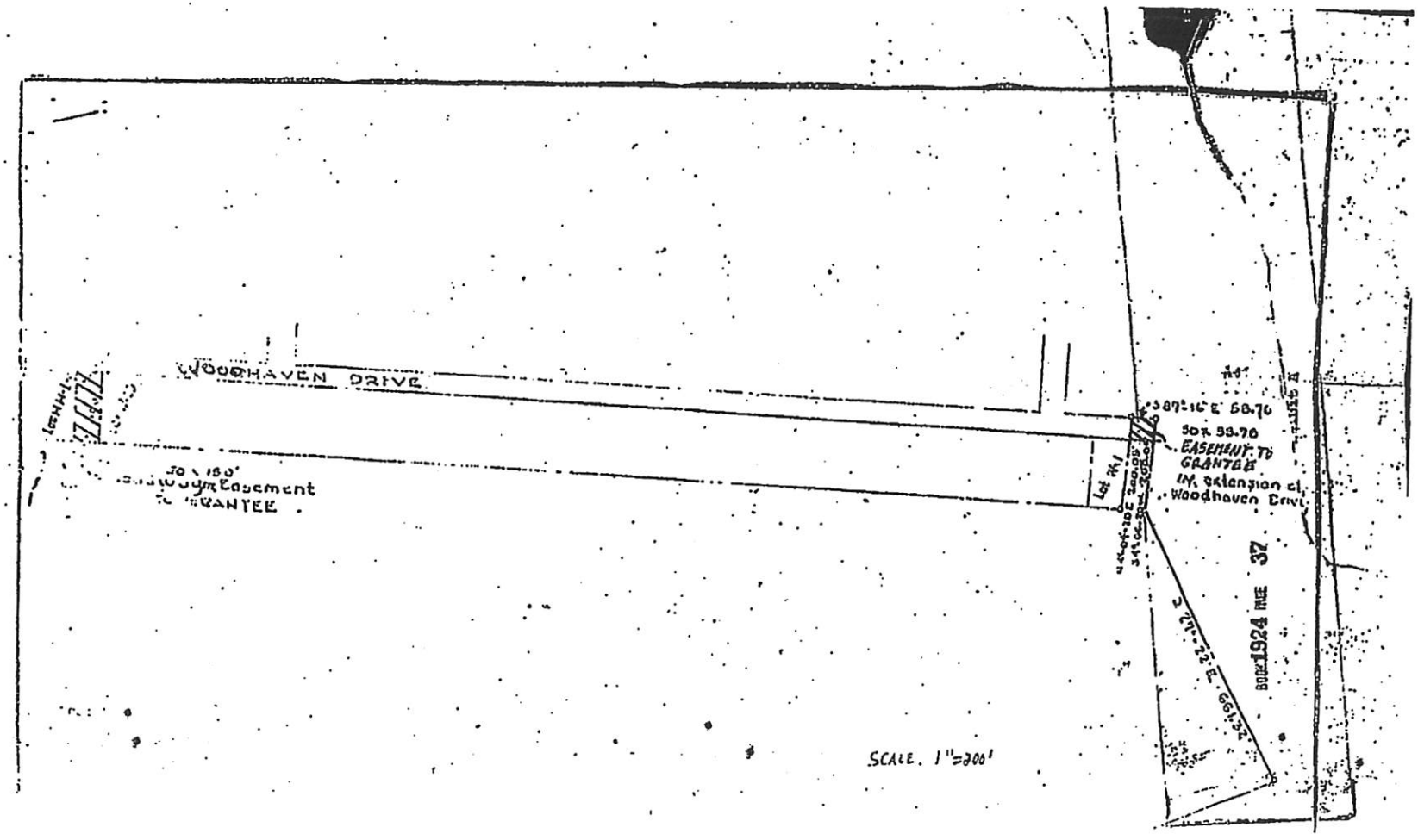
ALSO TOGETHER with a permanent easement and right for and of ingress, egress and regress and also for all utilities on, in, under and over all streets, roads and lanes on said plot or plan of Hickory Hills and also to and from Traffic Route 940.

AND ALSO TOGETHER with a permanent easement and right for ingress, egress and regress and also for all utilities on, in, under and over all that piece, parcel or lot of land measuring fifty (50) feet in width by fifty-eight and seventy-six hundredths (58.76) feet in length on what would be an eastwardly extension of Woodhaven Drive beyond Lot No. W-1 on said plot or plan of Hickory Hills and also to and from Traffic Route 940; and said fifty (50) feet wide lot or land is further mapped or located by crosshatch lines on said Exhibit A.

Grantee and Grantor hereby agree that Grantor prior to settlement hereunder has represented and stated to and agreed with Grantee and Grantee has understood and agreed with Grantor that there is no community sewage system available to said parcel of land and that a permit for an individual sewage system will have to be obtained pursuant to Section 7 of the Pennsylvania Sewage Facilities Act (1966 Jan. 24 P. L. (1963) 1535, No. 537 Sect. 7, as amended; 35 P. S. Sect. 750.7, as amended) and that the Grantee should contact the local agency charged with administering said Act before settling hereunder and accepting delivery of this deed or becoming legally bound to purchase said parcel of land in order to determine the procedure and requirement for obtaining a permit for an individual sewage system.

* NOTE: Also see pertinent deeds recorded in said Luzerne County Deed Book Vol. 1811 at page 372, Deed Book Vol. 1811 at page 380 and Deed Book Vol. 1811 at page 376; and also see pertinent action to quiet title and final order and judgment thereof filed to No. 958 March Term, 1970 in the Office of the Prothonotary in and for Luzerne County, Pennsylvania.

Together with all and singular the improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.


WOODHAVEN DRIVE
Easement
GRANTEE
EASEMENT TO
GRANTEE
in extension of
Woodhaven Drive
BOOK 1924 PAGE 37
SCALE. 1"=200'

To have and to hold the said

hereditaments

and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee and Assigns, to and for the only proper use and behoof of the said Grantee

and Assigns forever.

And the said Grantor, for itself and its successors does by these presents covenant, grant and agree, to and with the said Grantee

and Assigns, that the said Grantor, and its Successors, all and singular the hereditaments and premises herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee

and Assigns, against the said Grantor and its Successors, and against all and every other Person and Persons whomsoever, lawfully claiming or to claim the same, or any part thereof,

Shall and Will specially

WARRANT and forever DEFEND.

Each and every dwelling unit on the abovedescribed premises shall pay to any entity charged with legal responsibility for maintaining the roads, streets and lanes of Hickory Hills the same per dwelling unit road maintenance charge as assessed against dwelling unit owners, if any, in said Hickory Hills subdivisions.

And the said Grantor does

hereby constitute and appoint Donald R. Gorsen

to be its Attorney, for it and in its name, and as and for its corporate act and deed to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In Witness Whereof,

the said Grantor, has caused this Indenture to be executed by its President, attested by its Secretary, and its corporate seal to be affixed the day and year first above written.

Signed, Sealed and Delivered In the Presence of

SUN DAPPER VALLEY, INC.

By: Donald R. Gorsen President

attest:

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA

REALTY TRANSFER TAX

150.00

Commonwealth of Pennsylvania } ss.
County of LUZERNE

I hereby certify, that on this 6th day of June in the year of our Lord one thousand nine hundred and seventy-seven before me, the subscriber, a Notary Public, residing in the CITY OF HAZLETON, LUZERNE COUNTY, PA. personally appeared Donald A. Gerson the attorney named in the foregoing Indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Indenture to be the act and deed of the said Grantor, Sun Dance Valley, Inc.

Witness my hand and Notarial seal the day and year aforesaid.

My commission expires
CHARLES FERRIS, Notary Public
Hazleton, Luzerne Co., Pa.
My Commission Expires Jan. 4, 1980

Notary Public.

I Hereby Certify that the precise address of the grantee herein is:
residence and complete post office

R. D. 1
Bloomsburg, Pennsylvania

MUNICIPALITY Foster Twp.

TRANSFER TAX PAID $ 150.00

GENL BANK FASHINGS

Pascal L. Schiavo, Attorney for Grantee

GRANTOR
SUN DANCE VALLEY, INC.

TO

GRANTEE
TROY E. VERNONSKY,

Dated, June 6, 1977

ENTERED FOR RECORD
JUN-7 1977 9:52 A.M.
Tax and Fees $
Frank C. Castellano
RECORDER

LAW OFFICES OF
PASCAL L. SCHIAVO
NORTHEASTERN BUILDING
HAZLETON, PENNSYLVANIA

Commonwealth of Pennsylvania } ss.
County of Luzerne

Recorded in the Office for Recording of Deeds in and for Luzerne County in Deed Book No. 1924 page 35 &c.

Witness my hand and seal of Office this 7th day of June Domini 19

Frank C. Castellano
Recorder

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EXHIBIT "B"

HICKORY HILLS POA
20 Hickory Hills Drive
White Haven PA 18661
570-443-8108 fax 570-443-4400
hickoryhills@pa.metrocast.co

8/28/2020

Mr. Peter O'Donnell, Esq.
305 S. Church St. #175
Hazleton, PA 18201

Re: Autumn Mountain Road Usage Fee

Dear Mr. O'Donnell:

It has been stated to us by an Autumn Mountain property owner that you have taken it upon yourself to dictate the amount of money charged on the road usage fee due Hickory Hills.

Autumn Mountain's legal counsel has no right nor jurisdiction in the matters of Hickory Hills. We gave Autumn Mountain every opportunity to negotiate an appropriate fee after the initial invoice went out to them in the amount of $10,000.00 and they declined on all offers and refused to bill their clients even though the original agreement was between HHPOA and AMWPOA.

This is an outrageous action taken on by AMWPOA and their legal counsel. Despite your advice to the members of AMWPOA, we will move forward with the billing as it was issued and your members will be charged late fees, interest and will be sent to collection for failure to pay.

Lot owners at HHPOA pay $270.00 in DUES. It has nothing to do with road fees charged to AMWPOA. Your assertion that since lot dues at HHPOA are $270.00, then AMWPOA should only pay $270.00. A lot fee and road usage fee have nothing to do with one another.

We advised Autumn Mountain that they were not to impede on our right to collect the road usage fee and they did just that. We will not tolerate being denied the money owed us and are prepared to make this a legal issue if it is necessary to do so. We are also prepared to station the guard shack and assess a "toll" for all Autumn Mountain visitors until such time as our dues are paid.

The Board of Directors at Autumn Mountain were given the option to pay $8120.00 for the year with the stipulation that if the bridge or road required repair and HHPOA residents had to be assessed for the repair, so would AMWPOA residents and that was rejected. At that time, we advised that if we could not come to an agreement, the original bill of $10,000.00 would apply.

As stated above, we will bill all property owners with late fees, interest and if unpaid refer them to our collection agency. We are also going to be billing Autumn Mountain for the additional postage, stationery and time that this interference caused. We are not assuming the cost for this since you and the Board at AMWPOA have insisted on interfering with our right to bill.

Sincerely,

Lee Maitland
President
HHPOA

EXHIBIT "C"

UNDER AND SUBJECT TO THE FOLLOWING COVENANTS:

1. The herein lot or lots, also referred to hereafter at times as the above-described or said premises, shall be used only for single or two family residential purposes, and no building shall exceed three stories in height. All improvements shall be constructed and located thereon in accordance with the Foster Township subdivision and zoning ordinances.

2. No mobile homes, mobile homes, campsites, hog farms, animal farms, clinics, hospitals, sanitoriums, sanitary landfills, tourist homes or any trailer or shacks shall be constructed or located on any part of the herein premises; nor shall any part of the herein premises be used for the extraction of natural resources or for any industrial uses.

3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that horses, dogs, cats or other household pets may be kept provided that they are not bred or maintained for any commercial purpose.

4. All buildings or structures constructed thereon said premises shall not take any longer than twelve (12) months from the date of commencement of such construction to complete any such building or structure.

5. Front yard set-back lines for building on said premises shall be as required by all present Foster Township ordinances. The front yard shall be that portion of said premises abutting the street or road and between such street or road and the front of the main residential structure.

6. The side yard setback line for building shall be as required by all present Foster Township ordinances.

7. The rear yard setback line for building shall be as required by all present Foster Township ordinances.

8. A permanent easement of twenty (20) feet in width for any and all electric and utility lines is hereby excepted and reserved for such lines and for the appropriate utility company or authority using the same or for as many of them as they may use the same jointly and for their particular utility usage and where indicated and located on the subdivision plan or map relative to said premises and if the said vision plan of Autumn Mountain Woodlands, Inc. hereunder shall be to be applicable to the herein premises conveyed hereunder.

9. All of said building setback lines and as the same apply to the premises conveyed hereunder shall be in conformity with all said present Foster Township ordinances, and all said setback lines are located on said related subdivision plan or map.

10. Upon the construction of a dwelling unit on the above described premises, the record owner thereof said premises shall pay to Hickory Hills Association, the entity charged with legal responsibility for maintaining the roads, streets and lanes of Hickory Hills, the same per dwelling unit road maintenance charge as assessed against dwelling unit owners, if any, in said Hickory Hills subdivisions, which Hickory Hills subdivisions adjoin this subdivision, and in full accordance with such said requirements as contained in a deed dated June 6, 1977 recorded on June 7, 1977 in Deed Book Volume 1956 at page 35 (said requirement actually being on page 20) in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania; and if there is any conflict between said requirement language as used therein said June 6, 1977 deed and relative to such said road maintenance charges and the language herein, then the language of said June 6, 1977 deed shall prevail and control.

11. All roads or streets hereunder and through this subdivision are presently private; and Foster Township reserves the right to set higher standards for any said road or streets offered for dedication in the future than presently exists.

12. The foregoing covenants shall run with the land and shall be forever binding on the grantees or grantee hereunder, its, his, her or their heirs, successors and assigns. Should the grantees or grantee hereunder, its, his, her or their heirs, successors and/or assigns, violate any of the above provisions, then grantor, its heirs, successors and/or assigns, shall have the right to being an action in equity to restrain, remove and/or remedy said violation and/or seek any other proper remedy and/or relief.

13. Autumn Mt. Woodlands, Inc., or any officer or agent of Autumn Mt. Woodlands, Inc., does not now or at any time in the future, offer or promise any type of home construction or any other type of physical construction in connection with the sale of lots.

14. Grantee (s) and grantor hereby agree that grantor prior to settlement hereunder has represented and stated to and agreed with grantee (s) and grantor has understood and agreed as part of the agreement for the sale of the above-described parcel of land that there is no community sewage system available to said parcel of land and that a permit for an individual sewage system will have to be obtained pursuant to Section 7 of the Pennsylvania Sewage Facilities Act (1966) (Act 26 P.L. (1965) 1535, No. 537 Sect. 7, as amended; 35 P.S. Sect. 750.7, as amended) and that the grantee (s) should contact the local agency charged with administering said Act before settling hereunder and accepting delivery of this deed or becoming legally bound to purchase said parcel of land in order to determine the procedure and requirement for obtaining a permit for an individual sewage system.

15. The purchase of any lot in this development constitutes a compulsory membership in the Lot Owner Association.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY TRANSFER TAX
MAY 1987

MUNICIPALITY
TRANSFER TAX PAID
$ 14.00

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