

ERECTED INTO A TOWNSHIP IN 1733  
**TOWNSHIP OF WORCESTER**  
AT THE CENTER POINT OF MONTGOMERY COUNTY  
PENNSYLVANIA

1721 Valley Forge Road  
P.O. Box 767  
Worcester, PA 19490

Phone (610) 584-1410  
Fax (610) 584-8901

**THIS SECTION COMPLETED ONLY BY TOWNSHIP:**

APPEAL NO. : **ZHB 22-04** DATE FILED: **3/28**, 20 **22**

APPLICATION:  BOARD OF SUPERVISORS  
 ZONING HEARING BOARD

1. Date of Application: March 14, 2022
  
2. Classification of Appeal (Check one or more, if applicable):
  - a. Appeal from the Zoning Officer's Determination
  - b. Request for Variance
  - c. Request for Special Exception
  - d. Challenges to the Validity of Zoning Ordinance or Map
  - e. Request for Conditional Use Hearing
  - f. Request for Amendment to Zoning Map
  - g. Request for Zoning Ordinance Amendment
  - h. Request for a Curative Amendment
  - i. Request for other relief within the Jurisdiction of the Zoning Hearing Board as established in Section 909.1(a) of the Pennsylvania Municipalities Code
  
3. Applicant:
  - a. Name: Mikelen, LLC and John Huganir
  - b. Mailing address: P.O. Box 243, Fairview Village, PA 19409  
1107 N. Trooper Road, Eagleville, PA 19403
  - c. Telephone number: (610) 539-8088
  - d. State whether owner of legal title, owner of equitable title, or tenant with the permission of owner legal title: (REQUIRED)

**Please attach Deed to prove ownership, an Agreement of Sale to prove equitable ownership, or an Affidavit allowing Tenant to apply for necessary relief. See attached executed Agreement of Sale.**
  
4. Applicant's attorney, if any:
  - a. Name: Michael J. Clement, Esq. and M. Joseph Clement, Esq.
  - b. Address: Wisler Pearlstine, LLP, 460 Norristown Road, Suite 110,  
Blue Bell, PA 19422
  - c. Telephone number: (610)825-8400

5. **Property Details:**

- a. **Present Zoning Classification:** (Parcel B): R-75
- b. **Present Land Use:** Single Family Residence
- c. **Location (Street Address):**  
Artmar Road, Fairview Village, PA 19409
- d. **Parcel #:** 67-00-00103-00-1
- e. **Lot Dimensions:**
  - (1) **Area:** 37,412 sq. ft. Before 25,547 sq. ft.- After Subdivision
  - (2) **Frontage:** 135.35 Irregular
  - (3) **Depth:** 185.35 Irregular
- f. **Circle all that apply in regards to the above specified property:**
  - Public Water**
  - Public Sewer**
  - Private Well**
  - Private Septic**
- g. **Size, construction, and use of existing improvements; use of land, if unimproved: (Please submit as an attachment)**  
Plan Attached

6. **Proposed Use(s):**

- a. **Proposed use(s) and construction: Please provide size, construction and proposed use(s). (Please submit as an attachment)**  
Plan Attached

7. **Legal grounds for appeal (Cite specific sections of Pennsylvania Municipalities Planning Code, Zoning Ordinance, Subdivision Regulations, and/ or other Acts or Ordinances). All sections that apply must be listed in which relief is required and an explanation provided. (Please submit as an attachment)**

8. **Has any previous appeal been filed concerning the subject matter of this appeal?**  
 Yes  No

If yes: specify: **(Please submit as an attachment)**

9. **Challenges please list requested issues of fact or interpretation: (Please submit as an attachment)**

10. **Worcester Township to provide the list of names and addresses of properties situated in the vicinity of the subject property as per Township Code Section 150-224**

**CERTIFICATION**


I (We) hereby certify that the above information is true and correct to the best of my (our) knowledge, information or belief.

  
Signature

MICHAEL J CLEMENT  
Printed Name

  
Signature

M. JOSEPH CLEMENT  
Printed Name

  
Signature

John Haganir  
Print Name

Website: [www.worcestertwp.com](http://www.worcestertwp.com)  
Last Revised: January 30<sup>th</sup>, 2014

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF MONTGOMERY : SS

The undersigned, being duly sworn according to law, deposes and says the he/she is the above names applicant, that he/she is authorized to and does take this affidavit on behalf of the owner, and foregoing facts are true and correct.

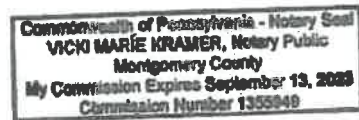
[Signature]  
Applicant

[Signature]  
Applicant

Sworn to and subscribed before me this 16 day of MARCH, 2022

[Signature: Vicki Marie Kramer]

Notary Public



Date Received: 3/28/22

[Signature]  
Zoning Officer

COMMONWEALTH OF PENNSYLVANIA:

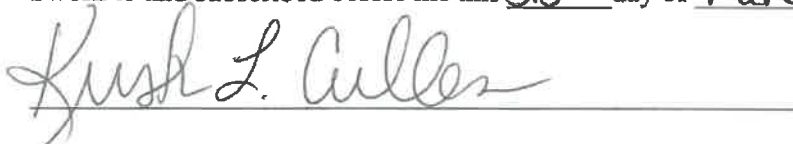
COUNTY OF Montgomery : SS

The undersigned, being duly sworn according to law, deposes and says the he/she is the above names applicant, that he/she is authorized to and does take this affidavit on behalf of the owner, and foregoing facts are true and correct.

  
Applicant

Applicant

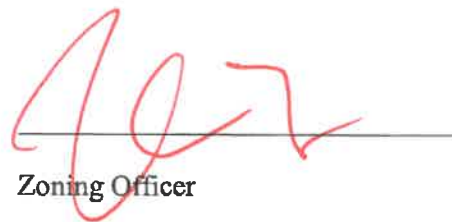
Sworn to and subscribed before me this 25<sup>th</sup> day of March, 2022

  
Notary Public

Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Kristin L. Cullen, Notary Public  
Montgomery County  
My commission expires February 8, 2025  
Commission number 1305318  
Member, Pennsylvania Association of Notaries

Date Received: 3/28/22

  
Zoning Officer

ATTACHMENT TO ZONING HEARING BOARD APPLICATION -- MIKELIN/HUGANIR

The subject Parcel B is part of a proposed subdivision of lands owned by John Hujanir as shown on the plans attached hereto ("Plans"). Parcel B is improved with a single family dwelling. Applicant proposes to construct Road A as shown on the Plans across Parcel B because the proposed location of Road A across Parcel B is the only feasible access to the proposed subdivision of 8 single family lots shown on the Plans. As a result of Road A the single family dwelling on Parcel B will become non-conforming under Section 100-77 of the Worcester Township Zoning Ordinance which requires a corner lot to have a 50 foot setback on one street and a 35 foot setback on the other street. As a result of the construction of Road A, Parcel B will have a 35 foot setback from Artmar Road and a 16.2 setback from the ultimate right of way (25 feet from the cartway) of proposed Road A. The variance is necessary because of the unique configuration and topography of Parcel B and the remainder of the land to be subdivided. There is no other feasible/reasonable access. The relief requested is the minimum relief necessary to make Road A compliant. The variance will not affect any neighbors because the variant setback is on a roadway. Applicant believes there are homes in the neighborhood having similar side or front yard setbacks.

It would result in economic waste to require the dwelling on Parcel B to be demolished to accommodate Road A. The variance will not adversely affect the neighborhood or the services provided by Worcester Township.

## **ADDENDUM TO ZONING HEARING BOARD APPLICATION -- MIKELIN/HUGANIR**

### **BACKGROUND**

The subject property is an approximately 37,412 square foot parcel, having an address of 2961 Artmar Road, Worcester Township, Pennsylvania, known by Montgomery County Parcel Number 67-00-00103-00-1 and located within Worcester Township's R-75 Zoning District. The subject parcel is identified as Parcel B on page 2 of the 2-pages of plans prepared by Bursich Associates ("Plans") attached hereto and incorporated herein. Parcel B and other lands – the parcel having Montgomery County Parcel Identification Number 67-00-04762-00-1 (the "001 Parcel") – identified on the Plans are owned by Applicant John Huganir and are the subject of a proposed subdivision and land development by Applicant MikeLen, LLC. The proposed roadway portion of Parcel B the 001 Parcel are the subject of an Agreement of Sale between Mr. Huganir and MikeLen, LLC. The remaining portion of Parcel B is improved with, among other things, a single-family dwelling. No zoning relief is needed in connection with the proposed development. However, the proposed subdivision of Parcel B creates a condition which requires approval by special exception or, in the alternative a dimensional variance.

### **PRE-EXISTING NONCONFORMING CONDITION**

Worcester Township Zoning Code ("Code") Section 150-76 requires a minimum 20,000 square foot lot area for lots served by public water and sewer or, in the alternative, a 40,000 square foot lot area for lots that are not served by public water and sewer. Code Section 150-77 requires a front yard of 50 feet for single street frontage lots. Currently, Parcel B is not served by public water; has a 37,412 square feet lot size; and has a 35 foot front yard setback from Artmar Road. Thus, the front yard and the lot size are pre-existing nonconforming conditions that do not conform with Code Section 150-76.B. and 150-77.A., respectively.

### **PROPOSED USE AND REQUEST FOR RELIEF**

Applicant proposes to subdivide Parcel B to construct a portion of Road A thereon, as shown on the Plans. As a result of the unique character and configuration of the overall tract, including its topography, the proposed location of Road A across Parcel B is the only feasible access to the proposed subdivision of 8 lots shown on the Plans. The proposed 8 single-family homes and the existing dwelling on Parcel B will be served by public water and sewer.

As a result of Road A, Parcel B will become a "corner lot" and Parcel B's lot area will be reduced to approximately 25,547 square feet. Under Section 150-76.A., corner lots have two front yards of 50 feet and 35 feet, respectively. Notably, section 150-76.A. does not differentiate between a "primary" and "secondary" front yard.

As a result of Parcel B gaining public water service in addition to the existing public sewer service, Parcel B's pre-existing nonconforming lot size will be eliminated because Code

Section 150-76.A. no longer applies and Parcel B's lot size will exceed the minimum required lot size of 20,000 square feet required under Code Section 150-76.A.

As a result of the construction of Road A, Parcel B will have a 35 foot setback from Artmar Road and an approximately 16 foot setback from the ultimate right of way (25 feet from the cartway) of proposed Road A. Applicant respectfully submits that even through the Artmar Road front yard is Parcel B's primary front yard because of the orientation of the existing dwelling, the pre-existing nonconforming aspect of that front yard is eliminated as a result of the creation of a corner lot and the Artmar Road front yard complying with the 35 foot front yard required under Section 150-76.A.

Applicant respectfully submits that the nonconforming location of the existing dwelling after construction of Road A is permitted by special exception. Code Section 150-163 provides as follows:

A nonconforming building or land use shall be considered as such until it complies with the regulations of the district in which it is located. By special exception a nonconforming use of a building or premises may be changed to a use of the same or of a more restricted zoning classification.

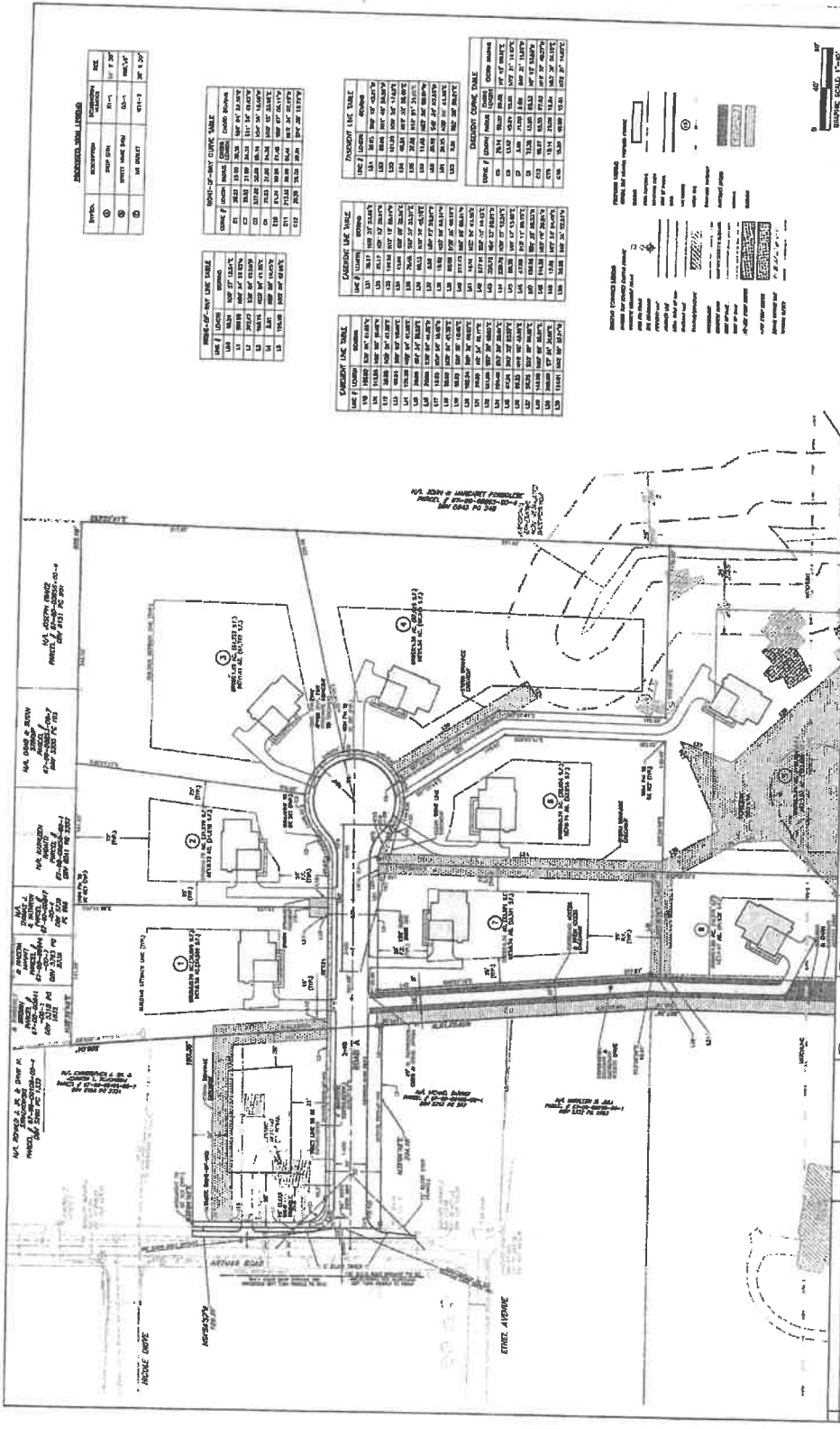
As a result of the construction of Road A, the corresponding change of Parcel B from a single road frontage lot to a corner lot, and the addition of water service to Parcel B, the two pre-existing nonconformities of lot size and nonconforming principal front yard are changed to a single nonconforming secondary front yard. The net result is one less dimensional nonconformity with the exact same by-right use (single family residential) of Parcel B. The change (and reduction) in dimension nonconforming land use is permitted by special exception under Code Section 150-163.

In the alternative, in the event the Zoning Hearing Board determines Applicant's proposed use of Parcel B is not a change of nonconforming use, Applicant seeks a variance from Code Section 100-76.A. to allow for a front yard of 35 feet and approximately 16 feet instead of 35 feet and 50 feet. Applicant respectfully submits that the variance is necessary because of the unique configuration and topography of the entire tract to be developed, which includes Parcel B because the only reasonably feasible and safe roadway access for the proposed development is from Artmar Road and over a portion of Parcel B. It would result in economic waste to require the existing dwelling on Parcel B to be demolished to accommodate Road A.

The requested variance will not adversely affect the neighborhood and will not unduly burden public utilities or the public services provided in Worcester Township. The requested variance is dimensional in nature, and the relief requested is the minimum relief necessary to construct Road A. The variance will not adversely impact any neighbors because the variant

setback is on a roadway. Applicant believes there are homes in the neighborhood having similar side or front yard setbacks.





**PROPOSED SYMBOL LEGEND**

SYMBOL	DESCRIPTION	CONSTRUCTION	SIZE
①	PROP. SIGN	8'-1"	10' x 20'
②	PROP. SIGN	6'-1"	8' x 12'
③	PROP. SIGN	4'-1"	6' x 10'

**RIGHT-OF-WAY CURVE TABLE**

LINE #	CHORD BEARS	CHORD BEARS	CHORD BEARS
101	100.00	100.00	100.00
102	100.00	100.00	100.00
103	100.00	100.00	100.00
104	100.00	100.00	100.00
105	100.00	100.00	100.00
106	100.00	100.00	100.00
107	100.00	100.00	100.00
108	100.00	100.00	100.00
109	100.00	100.00	100.00
110	100.00	100.00	100.00
111	100.00	100.00	100.00
112	100.00	100.00	100.00
113	100.00	100.00	100.00
114	100.00	100.00	100.00
115	100.00	100.00	100.00
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118	100.00	100.00	100.00
119	100.00	100.00	100.00
120	100.00	100.00	100.00

**EXISTING CURVE TABLE**

LINE #	CHORD BEARS	CHORD BEARS	CHORD BEARS
101	100.00	100.00	100.00
102	100.00	100.00	100.00
103	100.00	100.00	100.00
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106	100.00	100.00	100.00
107	100.00	100.00	100.00
108	100.00	100.00	100.00
109	100.00	100.00	100.00
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111	100.00	100.00	100.00
112	100.00	100.00	100.00
113	100.00	100.00	100.00
114	100.00	100.00	100.00
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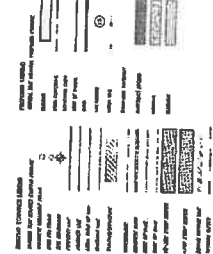
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115	100.00	100.00	100.00
116	100.00	100.00	100.00
117	100.00	100.00	100.00
118	100.00	100.00	100.00
119	100.00	100.00	100.00
120	100.00	100.00	100.00



DATE: 03/29/2011  
 TIME: 10:00 AM  
 PROJECT: HUGANIR PROPERTY  
 SHEET NO: 03 OF 29  
 JOB NO: 208151-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: AS SHOWN

**BURSICH ASSOCIATES**  
 ARCHITECTS & ENGINEERS  
 1000 W. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 TEL: 303.733.8888  
 FAX: 303.733.8889  
 WWW.BURSICH.COM

CLIENT: HUGANIR, LLC  
 1000 W. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 PROJECT: HUGANIR PROPERTY  
 SHEET: 03 OF 29

DATE: 03/29/2011  
 TIME: 10:00 AM  
 PROJECT: HUGANIR PROPERTY  
 SHEET NO: 03 OF 29  
 JOB NO: 208151-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: AS SHOWN

DATE: 03/29/2011  
 TIME: 10:00 AM  
 PROJECT: HUGANIR PROPERTY  
 SHEET NO: 03 OF 29  
 JOB NO: 208151-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: AS SHOWN

DATE: 03/29/2011  
 TIME: 10:00 AM  
 PROJECT: HUGANIR PROPERTY  
 SHEET NO: 03 OF 29  
 JOB NO: 208151-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: AS SHOWN

DATE: 03/29/2011  
 TIME: 10:00 AM  
 PROJECT: HUGANIR PROPERTY  
 SHEET NO: 03 OF 29  
 JOB NO: 208151-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: AS SHOWN

DATE: 03/29/2011  
 TIME: 10:00 AM  
 PROJECT: HUGANIR PROPERTY  
 SHEET NO: 03 OF 29  
 JOB NO: 208151-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: AS SHOWN



AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") made this 18<sup>th</sup> day of December, 2020, is entered into by and between JOHN HUGANIR, an adult individual with a mailing address at 1107 N. Trooper Road, Norristown, PA 19403 ("Seller") and MIKELEN, LLC, a Pennsylvania limited liability company, with an address at P.O. Box 243, Fairview Village, PA 19409 ("Buyer"). The "Execution Date" of this Agreement shall be one day after both parties have executed this Agreement.

Intending to be legally bound hereby, the parties hereto agree:

*MJC*  
*12/21/20*  
*J.L.B.*  
*12-21-20*

**1 SALE AND PURCHASE.** Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from Seller all that certain lot or piece of ground ~~supplementing Parcel No. 00-0016-00-1~~ ~~part of Parcel No. 00-0016-00-1~~ (being a 50 foot strip of land), Worcester Township, Montgomery County, Pennsylvania, all as more particularly set forth on the plan attached hereto as Exhibit "A" and made a part hereof ("Plan"), being the "Real Estate"; and all of Seller's right, title and interest in and to the following (collectively, the "Property"):

- 1.1 The Real Estate;
- 1.2 Any land in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Real Estate;
- 1.3 All right, title and interest, if any, of Seller in and to any rights-of-way or rights of ingress or egress on or to any land, street, road or avenue, open or proposed, in, on, across, in front of, abutting or adjoining any part of the Real Estate; any and all awards made, or to be made in lieu thereof, and in and to any unpaid awards for damage thereto by reason of a change of the grade of any such highway, street, road or avenue;
- 1.4 Easements, ways, waters, privileges and appurtenances and rights to the same belonging to and/or inuring to the benefit of the Real Estate;
- 1.5 Any reversionary rights attributable to Seller with respect to the Real Estate;
- 1.6 All of Seller's right, title and interest in and to any licenses and other agreements respecting the Real Estate (collectively, the "Licenses");
- 1.7 All of Seller's right, title and interest in and to all plans, drawings, specifications, surveys, engineering, inspection or similar reports and other technical descriptions relating to the Real Estate (collectively, the "Plans").

**2 PURCHASE PRICE.** The aggregate purchase price for the Property (the "Purchase Price") shall be [REDACTED]. The Purchase Price shall be paid to Seller by Buyer as follows:

2.1 [REDACTED] Dollars ([REDACTED]) (the "Deposit") by plain check on the date of this Agreement, which sum has been delivered to Escrow Agent (as defined below) in accordance with Paragraph 3 hereof;

2.2 The balance of the Purchase Price at Closing (as hereinafter defined), plus or minus any net closing adjustments, in cash or by bank certified or cashier's check or, at Seller's discretion, by wire transfer of immediately available federal funds (if a check or by wire transfer, then in any case payable to or transferred to the order or account of the closing agent).

2.3 The Purchase Price may be further adjusted as set forth as follows:

2.3.1 Closing is and shall be contingent upon: (i) Buyer obtaining the Permits and Approvals for not less than six (6) single-family residential lots (notwithstanding the fact that the Plan attached hereto lays out eight (8) single-family residential lots); and (ii) Buyer obtaining Permits and Approvals no later than eighteen (18) months after the end of the Contingency Period. In the event Buyer makes substantive changes to the Plan, the Buyer shall obtain written approval from Seller, which approval will not be unreasonably denied, delayed or conditioned. In the event a plan is submitted for approval to Worcester Township for six (6) single family residential lots then it shall not encompass land designated for Lots 5 or 8 as set forth on the attached Plan. No stormwater basins shall be located outside of lots for which Buyer has obtained Permits and Approvals.

2.3.2 In the event Buyer is able to obtain Permits and Approvals for less than eight (8) lots, as shown on the attached Plan, as set forth below, then the Purchase Price [REDACTED] but not less than [REDACTED]. In the event Buyer makes substantive changes to the Plan, the Buyer shall obtain written approval from Seller, which approval will not be unreasonably denied, delayed or conditioned. In the event a plan is submitted for approval to Worcester Township for six (6) single family residential lots then it shall not encompass land designated for Lots 5 or 8 as set forth on the attached Plan.

2.3.3 Seller shall have the right to retain Lots 5 and/or 8 as shown on the attached plan if such lots are granted permits and approvals. If the plan changes, Seller shall have the right to retain whatever lot abuts Seller's remaining land. For any lots that Seller retains, the Purchase Price shall [REDACTED]

[REDACTED] In the event Seller elects to retain Lot 5 and/or Lot 8 as shown on the attached Plan, then Seller shall pay Buyer for (i) a proportionate share of impact fees required by Worcester Township for the Project on a per lot basis, including, without limitation, impact fees for traffic, open space/recreation, tree replacement ("Impact Fees"); (ii) fees and costs to supply public water and/or sewer to Lots 5 and/or 8 ("Water and Sewer Fees"); and (iii) on site improvements for Lots 5 and/or 8, including, without limitation, public water laterals, public sewer laterals, swales and drainage facilities (but not including basins serving the Project in general), and lot clearing ("On-Lot Improvements"). In the event Worcester Township will not permit public sewer for Lots 5 and/or 8, then Seller shall be responsible for on-site sewer design and construction if Seller retains Lots 5 and/or 8. Seller shall have the right to review and make reasonable challenges to Buyer's costs, fees and On-Lot Improvement expenses.

2.3.4 Such payments shall be made by Seller to Buyer as follows: the proportionate share of Impact Fees and Water and Sewer Fees shall be paid at Closing when Buyer provides Worcester Township with payment or financial security for the same; payment for On-Lot Improvements shall be made upon substantial completion of the On Lot Improvements.

### **3 ESCROW OF DEPOSIT.**

3.1 Buyer represents and warrants that the Deposit has this day been delivered to Buyer's Title Company, FREELAND ABSTRACT Ltd., with an address of 376 E. Main Street, Collegeville, PA 19426 (the "Escrow Agent"). The Deposit shall be held in escrow by Escrow Agent in accordance with the provisions of this Agreement. The parties and Escrow Agent agree that the Deposit, together with all interest earned thereon, (the "Escrow Funds"), shall be applied as follows:

3.1.1 If Closing is held, the Escrow Funds shall be paid over to Seller and credited to the Purchase Price.

3.1.2 If Closing is not held by reason of Buyer's default, the Escrow Funds shall be paid over to Seller and shall be retained by Seller as provided for in Paragraph 16.1 below.

3.1.3 If Closing is not held by reason of Seller's default, the Escrow Funds shall at the option of Buyer, be paid over to Buyer for use and application by Buyer as provided for in Paragraph 16.2 below.

3.1.4 If Closing is not held by reason of a failure of condition and not by reason of a default by Seller or Buyer hereunder, the Escrow Funds shall be paid over to Buyer, neither party shall have any further liability or obligation hereunder, except for any obligations which expressly survive Closing or the earlier termination of this Agreement, and this Agreement shall terminate.

3.2 The Escrow Funds shall be held in an account with a federally insured national or state-chartered bank, savings bank, or savings and loan association.

3.3 Escrow Agent and its stockholders, members, partners and employees are acting as agents only, and, except for damages or claims resulting from Escrow Agent's own gross negligence or willful misconduct, will in no case be held liable either jointly or severally to either party for the performance of any term or covenant of this Agreement or for damages for the nonperformance hereof, nor shall Escrow Agent be required or obligated to determine any questions of fact or law. Escrow Agent's only responsibility hereunder shall be for the safekeeping of the Escrow Funds and the full and faithful performance by the Escrow Agent of the duties imposed by this Paragraph 3.

3.4 Escrow Agent shall be obligated to disburse the proceeds of the Escrow Funds at Closing or upon any cancellation or termination of this Agreement, only upon the written instructions of both parties, should Escrow Agent in its sole discretion request such instructions; and in the absence of such instructions or in the event of any dispute, Escrow Agent

shall be and is hereby authorized, but not obligated, to pay the entire amount of the Escrow Funds into court, and any expenses to Escrow Agent for so doing shall be payable out of the Escrow Funds.

**4 COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller, to induce Buyer to enter into this Agreement, covenants, warrants and represents to Buyer that the following matters are true as of the date hereof; however, none of the following covenants, representations and warranties shall survive closing:

4.1 Seller will convey, on the date of the Closing, good, marketable and indefeasible title to the Property, subject only to the conditions set forth in Section 9.2 hereinafter and the matters set forth in this Agreement.

4.2 Seller has full power and authority to enter into and fulfill Seller's obligations under this Agreement, and the execution, delivery and performance of this Agreement by the Seller constitutes a valid and binding obligation of the Seller enforceable in accordance with its terms. Except as set forth below, no consent, waiver, or approval by any other parties is required in connection with the execution and delivery by the Seller of this Agreement or with the performance by the Seller of its obligations hereunder or any instrument contemplated hereby. To Seller's knowledge, the execution, delivery and performance by Seller of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under, any of the provisions of any law, governmental rule, regulations, judgment, decree or order by which the Seller is bound, or by any of the provisions of any contract to which the Seller is a party or by which the Seller is bound; and by the Seller's governing documents.

4.3 Seller is not a non-resident alien for purposes of U.S. income taxation.

4.4 There is no suit, action, or proceeding pending for which Seller has been served with legal process or, to Seller's knowledge, threatened against or affecting Seller (relating to the Property) or the Property before or by any court, administrative agency or other governmental or quasi-governmental authority, or which brings into question the validity of this Agreement or this transaction or which could adversely affect title to, or the use and enjoyment of, or value of the Property.

**5 REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer represents and warrants to Seller as follows:

5.1 Buyer has full power and authority to enter into and fulfill Buyer's obligations under this Agreement.

5.2 The execution, delivery and performance of this Agreement by the Buyer constitutes a valid and binding obligation of the Buyer enforceable in accordance with its terms. No consent, waiver, or approval by any other parties is required in connection with the execution and delivery by the Buyer of this Agreement or with the performance by the Buyer of its obligations hereunder or any instrument contemplated hereby. To Buyer's knowledge, the execution, delivery and performance by Buyer of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under, any of the provisions of any

law, governmental rule, regulations, judgment, decree or order by which the Buyer is bound, or by any of the provisions of any contract to which the Buyer is a party or by which the Buyer is bound; and by the Buyer's governing documents.

5.3 All representations and warranties of Buyer contained in this Agreement shall have been true and correct when made and shall be true and correct on the date of Closing.

## 6 CLOSING; SUBDIVISION CONTINGENCY.

6.1 Buyer, at Buyer's sole expense, after the "Due Diligence Period" as hereinafter defined, and provided Buyer has not terminated this Agreement during the Due Diligence Period, shall promptly make application for, and diligently pursue, approval from all governmental and quasi-governmental authorities required for the development of the Property into eight (8) single-family residential lots, as set forth on the Plan attached hereto as Exhibit "A" (the "Project"), pursuant to terms and conditions reasonably acceptable to Buyer, in unappealable format ("Permits and Approvals"). Seller, at no expense to Seller, shall cooperate with Buyer to make application for the Permits and Approvals. Closing is and shall be contingent upon: (i) Buyer obtaining the Permits and Approvals for not less than six (6) single-family residential lots (notwithstanding the fact that the Plan attached hereto lays out eight (8) single-family residential lots); and (ii) Buyer obtaining Permits and Approvals no later than eighteen (18) months after the end of the Contingency Period.

6.2 In the event Buyer is unable to obtain the Permits and Approvals within eighteen (18) months after the end of the Contingency Period, then Buyer shall have the option to extend the time for obtaining the Permits and Approvals for an additional term of sixty (60) days, so long as Buyer has not received a denial of any such Permit or Approval. If Buyer is unable to obtain the Permits and Approvals as provided for herein, Buyer shall either:

6.2.1 proceed to Closing and waive the contingency for obtaining Permits and Approvals; or

6.2.2 terminate this Agreement, whereupon all plans, studies, permits and approvals shall be transferred to Seller, to the extent transferrable, and all deposit money shall be returned to Buyer and neither party shall have any claim against the other."

6.3 At Closing, Seller shall deliver to Buyer the following:

6.3.1 **Deed.** A special warranty deed to the Real Estate prepared by Buyer or Buyer's agent in a form customarily used in commercial real estate transactions in Montgomery County, Pennsylvania, duly executed and acknowledged by Seller and in proper recordable form.

6.3.2 **Title Company Affidavits.** Such affidavits, resolutions, certificates or other documents as Buyer's title company shall reasonably require to evidence the due authorization of the execution of this Agreement and the deed to be delivered by Seller pursuant hereto.

**6.3.3 Possession.** Actual, sole and exclusive physical possession of the Property, unoccupied and free and clear of any leases, liens, claims to or rights of possession, except for the Lease Agreement.

**6.3.4 Additional Instruments.** Such further documents or instruments in form suitable for recording, if appropriate, as may be deemed reasonably necessary to effectuate the conveyance of the Property.

**6.4** At Closing, Buyer shall deliver to Seller the following:

**6.4.1 Balance of Purchase Price.** A title company or bank certified cashier's check or a wire transfer of immediately available federal funds in either case payable to or transferred to the closing agent for the balance of the Purchase Price, plus or minus any net closing adjustments, required under Paragraph 2 hereof.

**6.4.2 Title Company Affidavit.** Such affidavits, resolutions, certificates or other documents as Buyer's title company shall require to evidence the due authorization of the execution and performance of this Agreement and the documents to be delivered by Buyer pursuant hereto, including the customary form of said title company's Buyer's Affidavit.

**6.4.3 Resolutions.** Reasonable and appropriate documents of authority of Buyer authorizing the transactions contemplated by this Agreement.

**6.4.4 Additional Instruments.** Such further documents or instruments in form suitable for recording, if appropriate, as may be deemed reasonably necessary to effectuate the provisions of this Agreement.

**6.5** Seller, in accordance with its normal practices and procedures, shall continue to maintain the Property so as to keep it in substantially its present condition, normal wear and tear, damage by casualty, and taking by eminent domain excepted.

## **7 APPORTIONMENTS; EXPENSES.**

**7.1 APPORTIONMENTS.** The following items shall be, or shall not be, apportioned between Seller and Buyer in accordance with the terms of the Lease Agreement.

**7.1.1 TAXES.** All real estate taxes, charges and assessments affecting the Property, EXCEPT Roll-Back Taxes, which shall be paid for by Seller at Closing.

**7.2 EXPENSES.** Each party shall pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limiting the generality of the foregoing, (i) all costs and expenses stated herein to be borne by a party, and (ii) all of their respective accounting, legal and appraisal fees. Buyer, in addition to Buyer's other expenses, shall pay for (a) all recording charges incident to the recording of the deed for the Real Estate, and (b) all title insurance premiums. Applicable realty transfer taxes shall be paid one-half by Buyer and one-half by Seller.



**8      DAMAGE OR DESTRUCTION; CONDEMNATION.**

**8.1      CONDEMNATION.** Seller represents that it has not received any notice of any condemnation proceedings or other proceedings in the nature of eminent domain in connection with the Property. In the event of the taking by eminent domain proceedings of any part of the Property on or prior to the Closing Date, which would, in the opinion of Buyer, preclude, hinder, or render more costly the full completion by Buyer of its planned use of the Property, Buyer shall have the right, at Buyer's sole option, to terminate this Agreement. If the Agreement is so terminated, Escrow Agent shall return the Deposit (plus interest, if any) to Buyer, this Agreement shall thereupon become null and void, and thereafter neither party shall have any further liability or obligation hereunder (except for any obligations which expressly survive Closing or the earlier termination of this Agreement). If Buyer does not so terminate this Agreement, the Purchase Price for the Property shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking. At Closing, Seller shall assign to Buyer all rights of Seller in and to any other awards or proceeds payable to the condemnee by reason of any taking. Seller agrees to notify Buyer of any eminent domain proceeding within five (5) days after Seller learns of any such proceeding, and, in order to exercise its right of termination, Buyer must so notify Seller within thirty (30) days after Buyer receives such notice.

**9      QUALITY OF TITLE.**

**9.1      PERMITTED EXCEPTIONS.** On or before the date thirty (30) days after the date of this Agreement, Buyer shall notify Seller in writing of any objections to title as reported in a title commitment obtained by Buyer and shall deliver to Seller a copy of the title commitment which contains such objectionable item. Seller may undertake to eliminate any such objection. If Seller does not eliminate such objection or make arrangement to eliminate such objection at Closing, then Seller shall notify Buyer within ten (10) days after receipt of Buyer's notice and Buyer shall thereafter have the option, to be exercised within ten (10) days after receipt of Seller's notice, to terminate this Agreement, in which event, this Agreement shall be null and void and the Escrow Funds shall be returned to Buyer and the parties shall have no further obligations to or recourse against each other, except for any obligations which expressly survive Closing or the earlier termination of this Agreement. If Buyer does not terminate this Agreement as aforesaid, Buyer shall be deemed to have waived any objections to title reported in Buyer's title commitment and such objections, and all other matters which a title search, ALTA survey, or inspection of the real property would disclose, shall become permitted exceptions to Seller's obligation with respect to title ("Permitted Exceptions").

**9.2      TITLE.** Title to the Property shall be good and marketable and such as will be insured by a reputable title insurance company at regular rates. Title to the Property shall be conveyed free and clear of all liens, easements and other encumbrances, except only the Permitted Exceptions. In the event Seller shall not be able to convey title to the Property on the date of Closing by special warranty deed in accordance with the foregoing provisions of this Agreement, subject only to Permitted Exceptions, then Buyer shall have the option, exercisable by written notice to Seller at or prior to the Closing, of (i) accepting at Closing such title as Seller is able to convey, with no deduction from or adjustment of the Purchase Price except for adjustment equal to the amount of any lien, judgement or other encumbrance of an ascertainable

and liquidated amount together with interest and penalties thereon, if any; or (ii) declining to proceed to Closing; and in the latter event all obligations, liabilities and rights of the parties under this Agreement shall terminate except for any obligations which expressly survive Closing or the earlier termination of this Agreement, and the Escrow Funds shall be returned to Buyer.

**10 NOTICES.**

**10.1** All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and shall be deemed to have been given if sent by an express mail service or by courier, then if and when delivered to and received by the respective parties or one (1) day after delivery was refused at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby):

**10.2 IF TO SELLER:**

John Hugarir  
1107 N. Trooper Road  
Norristown, PA 19403  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

**With a copy to:** J. Edmund Mullin, Esq.  
Hamburg Rubin  
375 Morris Road  
P.O. Box 1479  
Lansdale, PA 19446  
Email: emullin@hrmml.com  
Phone: 215/ 661-0400

**IF TO BUYER:** Mikelen, LLC  
P.O. Box 243  
Fairview Village, PA 19409

**With a copy to:** Michael J. Clement, Esq.  
Wisler Pearlstine, LLP  
460 Norristown Road, Ste. 110  
Blue Bell, PA 19422  
Email: mclement @ wispearl.com  
Phone: 610/ 825-8400

**11 CONDITION OF THE PROPERTY.**

**11.1** Buyer agrees to accept the Property at Closing in the "where is", "as is" condition as of the time of execution of this Agreement, except as expressly set forth in this Agreement.

**12 BUYER'S INSPECTION; DUE DILIGENCE PERIOD.**

12.1 Buyer shall have a period ending ninety (90) days from the Execution Date (the "Due Diligence Period"), within which, at its own cost and expense, to conduct any inspections or examinations which Buyer reasonably deems necessary, including, without limitation, due diligence relating to the physical condition of the Realty and environmental conditions, including, without limitation, a Phase I environmental inspection. Seller agrees to provide reasonable access to the Property for Buyer to complete its inspections, upon twenty-four (24) hours' notice, provided (a) Buyer promptly repairs any damage to the Property caused by such access, and (b) Buyer restores the Property to the condition that existed prior to such access. Prior to entering the Property, Buyer shall furnish to Seller evidence that Buyer has procured, or has caused to be procured, comprehensive general liability insurance from an insurer authorized to do business in the Commonwealth of Pennsylvania, insuring Buyer against claims for bodily injury, death or damage to property in single limit amount of not less than \$1,000,000.00, and including Seller as an additional insured. In the event Buyer is not satisfied with the results of its inspections in Buyer's sole and absolute discretion, Buyer may elect to cancel this Agreement by giving Seller written notice thereof on or before the expiration of the Due Diligence Period. If Buyer elects to cancel this Agreement within the Due Diligence Period (and in the manner specified above), this Agreement shall be null and void and of no further force and effect; Buyer shall deliver to Seller test results and studies conducted by Buyer; the Deposit shall be returned to Buyer; and neither Buyer nor Seller will have any further liability under this Agreement except for any liabilities which expressly survive Closing or the earlier termination of this Agreement. Should Buyer fail to cancel this Agreement as provided above, time being of the essence, this contingency shall be deemed to have been waived by Buyer on the last day of the Due Diligence Period, and Buyer shall proceed to Closing.

**13 MORTGAGE CONTINGENCY.**

13.1 This Agreement is NOT subject to financing.

14 **BROKERS.** Seller and Buyer represent and warrant to each other that neither of them have dealt with any broker in connection with this Agreement. Seller and Buyer shall indemnify and hold each other harmless from and against any and all claims of all brokers arising out of, or in any way related to, the transactions contemplated by this Agreement and occasioned by the actions of such indemnifying party including without limitation, attorneys' fees incurred in connection with such claims. This indemnification is applicable whether or not a default of either Buyer or Seller occurs and shall survive the Closing or any termination of this Agreement. The provisions of this Paragraph 14 shall survive Closing.

**15 DEFAULTS PRIOR TO CLOSING.**

15.1 Should Buyer violate or fail (in breach of its obligations hereunder) to fulfill or perform any of the terms, conditions or undertakings set forth in this Agreement applicable to it at or prior to Closing, then Seller shall, as its sole remedy retain the Escrow Funds as liquidated damages (and not as a penalty), Buyer and Seller shall each be released from all further liability or obligation hereunder and this Agreement shall terminate. The foregoing is Seller's sole and exclusive remedy for a Buyer default, except remedies related Buyer's

obligations under Section 12.1 and Section 14 of this Agreement.

15.2 Should Seller violate or fail (in breach of its obligations hereunder) to fulfill or perform any of the terms, conditions or undertakings set forth in this Agreement applicable to it, at or prior to Closing, and if as a result thereof a Closing hereunder shall not occur, then in such case, Buyer shall have the remedies available to it at law and in equity, including, without limitation: (a) an action for damages resulting from breach of contract; or (b) the right to pursue the remedy of specific performance of Seller's obligations under this Agreement; provided, however, have the remedies available to it in law or equity, including the right to specific performance, (provided that any action for specific performance of this Agreement must be commenced within four (4) months of the event giving rise to the default hereunder.

**16 MISCELLANEOUS.**

16.1 **ZONING.** The parties acknowledge that the Subject Property is zoned R-100.

16.2 **TENDER.** Formal tender of an executed deed and purchase money is hereby waived; but nothing herein shall be deemed a waiver of the obligation of Seller to execute, acknowledge and deliver the deed to the Property or the concurrent obligation of Buyer to pay the Purchase Price.

16.3 **TIME OF THE ESSENCE.** All times, wherever specified herein, are of the essence of this Agreement. If any deadline or date is a Saturday, Sunday or legal holiday, the subject date shall be extended to the next following business day.

16.4 **GOVERNING LAWS; PARTIES AT INTEREST.** This Agreement shall be governed by Pennsylvania law and shall bind and inure to the benefit of the parties hereto and, their respective heirs, executors, administrators, personal representatives, successors and assigns.

16.5 **HEADINGS.** The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

16.6 **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement and the Exhibit hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally, but only by an agreement in writing, duly executed by or on behalf of the party against whom enforcement of any waiver, change, modification, consent or discharge is sought.

17 **RECORDING.** This Agreement shall not be recorded in the Department of Records of the County of Montgomery or in any other office or place of public record. If Buyer shall record this Agreement or cause or permit the same to be recorded, Seller may, at Seller's option and in addition to Seller's other rights and remedies, elect to treat such act as a breach of

this Agreement, and Seller shall have the right forthwith to institute appropriate legal proceedings to have the same removed of record at Buyer's expense.

**18** ASSIGNABILITY. At and concurrently with a Closing hereunder, Buyer may assign any portion or all of its rights or obligations under this Agreement without the consent of Seller, provided that, and on the condition that: (i) such an assignment is to an entity consisting of the principals of Buyer, and (ii) Seller's obligation, if any, to pay transfer tax shall be calculated based solely on the consideration specified in Paragraph 2 hereof as if Seller, in exchange for such consideration, conveyed the Property to Buyer and not to Buyer's assignee. Notwithstanding any such permitted assignment by Buyer, Buyer shall nevertheless remain liable for all of Buyer's obligations hereunder. Additionally, if following the Closing it shall be determined that Realty Transfer Tax is due in connection with any assignment by Buyer of this Agreement, then Buyer and its assignee shall pay one hundred percent (100%) of such Realty Transfer Tax and any associated interest and penalties, and shall indemnify, defend and hold harmless Seller therefrom. The provisions of this Section 18 shall survive the Closing.

**19** LIKE KIND EXCHANGE. It is understood and agreed that Seller and/or Buyer may desire to effect a like kind exchange of the Property with an alternative property for the purpose of minimizing federal income taxes on this sale pursuant to Section 1031 of the United States Internal Revenue Code. Each shall cooperate with the other in any reasonable manner to facilitate such an exchange; provided, however, in no event shall Buyer be required to take title to any other property to facilitate the Seller's tax free exchange.

**20** APPROVAL. The sale is made subject to the written approval of Seller within five (5) days of Buyer's execution hereof. If Seller's approval is not obtained as provided above, all Escrow Funds shall be returned to Buyer. Pending Seller's approval, Escrow Agent may place such Deposit in its Escrow Account; provided, however, that the depositing of any funds received from Buyer in Escrow Agent's account as aforesaid shall not be construed as an approval of this Agreement by Seller.

**21** COUNTERPARTS. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

[ SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date and year first above written.

**SELLER:**

Witness: \_\_\_\_\_

*John L. Haganir* 12-21-20  
John Haganir

**BUYER:**  
**MIKELEN, LLP**

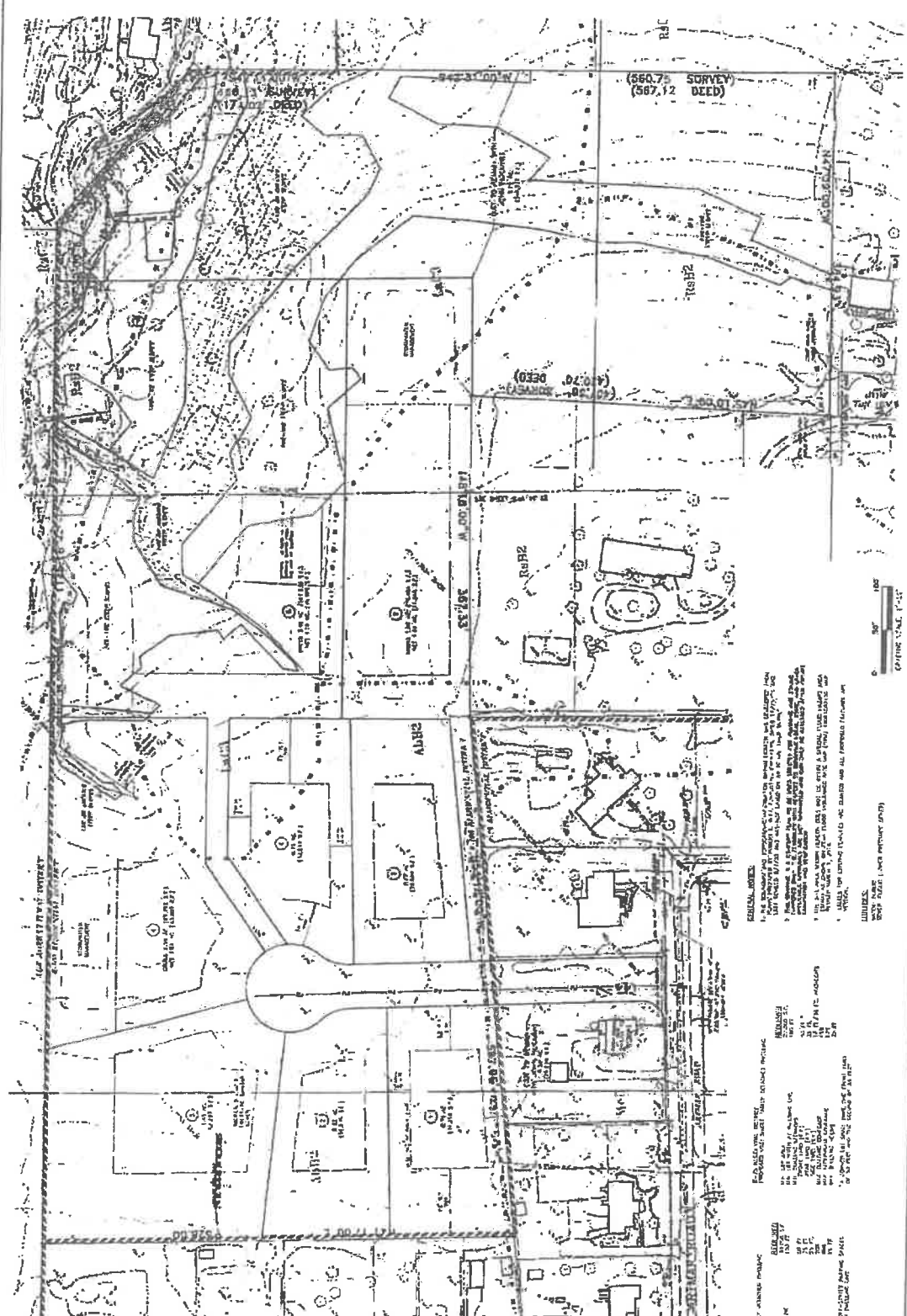
Attest: \_\_\_\_\_

By:

*Michael J. Clement*  
Michael J. Clement, Member

EXHIBIT "A"

PLAN



**GENERAL NOTES:**

1. ALL DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
2. THE SHOWN EASEMENTS ARE SHOWN FOR INFORMATION ONLY AND DO NOT CONSTITUTE A WARRANTY OF ANY KIND.
3. THE SHOWN EASEMENTS ARE SHOWN FOR INFORMATION ONLY AND DO NOT CONSTITUTE A WARRANTY OF ANY KIND.
4. THE SHOWN EASEMENTS ARE SHOWN FOR INFORMATION ONLY AND DO NOT CONSTITUTE A WARRANTY OF ANY KIND.
5. THE SHOWN EASEMENTS ARE SHOWN FOR INFORMATION ONLY AND DO NOT CONSTITUTE A WARRANTY OF ANY KIND.

**LEGEND:**

--- EASEMENT

--- PROPERTY LINE

--- ROAD

--- UTILITY LINE



		<b>BURSICH ASSOCIATES</b> ENGINEERS, ARCHITECTS, SURVEYORS 1000 W. 10th Street, Suite 100 Oklahoma City, Oklahoma 73106 Phone: (405) 521-1111 Fax: (405) 521-1112		CLIENT <b>HUGANIR PROPERTY</b> 5815 WEST EDGEMOND PKW OKLAHOMA CITY, OK 73120	PROJECT NO. <b>208161-00</b>
SHEET NO. <b>1 OF 1</b>		DATE <b>08/11/11</b>		DRAWN BY <b>CP1208161</b>	
CHECKED BY <b>[Signature]</b>		APPROVED BY <b>[Signature]</b>		SCALE <b>AS SHOWN</b>	

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