

ZONING

240 Attachment 3

Township of Penn Forest

Parcel No(s).:

Exhibit C

**DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS
WELL GUARANTEE AGREEMENT**

AND NOW, this _____ day of _____, 20____;

WHEREAS, _____, of _____, (hereinafter collectively referred to as the “Declarant”) is the owner in fee of certain real estate in Penn Forest Township, Carbon County, Pennsylvania, bounded and described as follows:

BEING all those certain parcels of land, situate in Penn Forest Township, Carbon County, Pennsylvania, being known as the _____, Tax Map Parcel No(s). _____, and more specifically described in a plan recorded in the Office of the Recorder of Deeds in and for Carbon County, Pennsylvania, in Record Book _____, Page _____, (hereinafter referred to as the “Plan”).

WHEREAS, it is the intention of the Declarant, for itself, its successors and assigns, to impress certain terms, covenants, conditions, easements, benefits, burdens and servitudes on the aforementioned lands for the benefit of Penn Forest Township and property owners in the vicinity of the _____ development or property.

NOW, THEREFORE, Declarant, intending to be legally bound hereby, applies to the whole of the above-mentioned lands, the following:

1. The provisions herein contained shall be construed to be binding upon the Declarant, and shall constitute covenants running with the land.
2. Any and all of the provisions herein contained shall be enforceable by Declarant, its successors, administrators or assigns, or by Penn Forest Township, or by any of the affected property owners.
3. Should any notes on the Plan, if any, conflict with the provisions herein, the provisions of this document shall supersede and control.
4. The Declarant shall furnish to Penn Forest Township, or its designee, financial security in a form satisfactory to Penn Forest Township in the amount of _____ Dollars (\$ _____) to provide a source of water for any property owner, whose well is located within 3,000 feet of the development or property depicted on the Plan, or where such distances are insufficient as determined by the submitted AOI, within the boundary of the AOI, that experiences loss of flow or efficiency or become contaminated to such an extent that the supply of water is no longer adequate for the property owner’s needs. The Declarant will be required to maintain the financial security set forth in this paragraph for the life of the operation of the use. Thereafter, the Declarant may discontinue the financial security and will no longer be bound by the provisions of this paragraph. Any funds remaining in escrow at that time shall be returned to Declarant.

PENN FOREST CODE

Declarant agrees that if, as a result of the pumping or operation of wells in the _____ development or property, the water supply of any property owner, whose well is located within 3,000 feet of the development or property depicted on the Plan, or where such distances are insufficient as determined by the submitted AOI, within the boundary of the AOI, experiences loss of flow or efficiency or become contaminated to such an extent that the supply of water is no longer adequate for the property owner's needs, then, and in that event, the Declarant agrees that it will either alleviate the existing problem or problems by deepening the impacted well, drilling a new well, connecting the affected property to a public water supply or by taking any other steps necessary to alleviate the problem, all at no expense to such property owners, so as to furnish reasonable quantity of water for domestic or agricultural use. Any expense associated with providing the affected property owner with a potable water supply shall be borne by the applicant, and approved by the Board of Supervisors based on the recommendation of a Pennsylvania licensed professional geologist experienced in the performance of ground water investigation for water supply wells (hereinafter referred to as "hydrogeologist").

At the sole discretion and direction of Penn Forest Township, the Declarant shall either deepen the depleted well, drill a new well or connect the affected property to a public water supply, so as to provide an adequate supply of potable water as defined by Pa DEP to the affected property owner, except where the adverse effect is determined to be the presence of hazardous materials that cannot be remedied by deepening the well, in which case the Declarant shall connect the affected property to a public water supply. The initial determination will be made by the Board of Supervisors based on the recommendation of a hydrogeologist.

In the event that any property owner makes claim against Declarant with respect to the property owner's water supply as referenced hereinabove, Declarant shall have 10 days from receipt of written notice from any such property owner within which to evaluate any such claim and advise the claimant or claimants and Penn Forest Township of Declarant's position in writing.

In the event that the Board of Supervisors determines that Declarant is responsible to undertake corrective measures with regard to any affected well or wells, Declarant shall undertake and complete such corrective work immediately. In the event Declarant does not do so within five days of the Board of Supervisors determination, or notify Penn Forest Township of its intention to commence work on corrective measures immediately, Penn Forest Township may draw down the financial security and take whatever action which it, in its sole discretion, deems necessary to cure the problem, including instituting and prosecuting appropriate legal action. In the event that the financial security is not sufficient to cure the problem, Declarant shall be responsible for any additional expenses or costs, including legal, engineering and administrative, which are incurred in curing the problem. Declarant shall supply potable water to the property owners until the corrective work is completed. Declarant shall, in the event the financial security is reduced below _____ Dollars (\$_____), immediately restore such financial security to _____ Dollars (\$_____), and Penn Forest Township may withhold building and occupancy permits for lots in the _____ development until such financial security is restored to _____ Dollars (\$_____). Nothing in this Agreement shall be construed as a waiver of Declarant's right to challenge Penn Forest Township's determination of responsibility.

5. The amount of the financial security required shall be based upon an estimate of the cost to restore the flow or efficiency, or remove and eliminate the contamination, from the well of any property owner, submitted by the Declarant, and prepared by a hydrogeologist and certified by

ZONING

such hydrogeologist to be a fair and reasonable estimate of such costs. In preparing such cost estimate, the hydrogeologist shall take into account such factors as he or she deems relevant including the number of wells which may be negatively affected, the risk, and the cost of remediation. Penn Forest Township, upon recommendation of a hydrogeologist, may refuse to accept such estimate for good cause shown. If the Declarant and Penn Forest Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another hydrogeologist and chosen mutually by Penn Forest Township and the Declarant. The estimate certified by the 3rd hydrogeologist shall be presumed fair and reasonable and shall be the final estimate. In the event that a 3rd hydrogeologist is so chosen, fees for the services of said hydrogeologist shall be paid equally by Penn Forest Township and the Declarant. The amount of financial security shall be 110% of such cost as finally determined in accordance with the foregoing.

6. It is understood and agreed by the Declarant that nothing contained herein shall be construed to impose any responsibility on Penn Forest Township, or its successors or assigns, for the construction, repair or maintenance of any well provided for by the terms of this Agreement or of any liability hereunder to the Declarant or any other party benefited by this Agreement in excess of the balance, from time to time, of the escrow fund established hereinabove, it being the express understanding of the parties hereto that the limit of the interest of Penn Forest Township is that of a stakeholder and that nothing contained in this Declaration shall obligate or otherwise make Penn Forest Township responsible for any performance or lack of performance by the Declarant of its obligations hereunder. The Declarant expressly agrees to protect, indemnify, defend and hold Penn Forest Township harmless from and against all and any liability, expense or damage of any kind or nature (including reasonable attorneys' fees) and from any and all suits, claims or demands arising out of this Declaration or in connection therewith.

7. The provisions of this instrument shall be severable. If any provision of this instrument is found to be invalid, unenforceable, unconstitutional or void, the remaining provisions of this instrument shall, nevertheless, remain valid and binding.

8. Any dispute concerning the responsibility or cause of well depletion shall be determined by an arbitration panel consisting of a hydrogeologist selected by the Declarant, a hydrogeologist selected by Penn Forest Township and a hydrogeologist selected by the unanimous agreement with the first two arbitrators. The arbitrators shall render a decision within 60 days from the selection of a 3rd arbitrator and the arbitrator shall assess the cost of the arbitration proceeding.

9. A copy of this Agreement is intended to be recorded in the Office of the Recorder of Deeds in and for Carbon County.

10. Penn Forest Township's, and the affected property owner's, rights and remedies under this Agreement are in addition to, not exclusive of, any rights or remedies otherwise available in law or equity, including filing a municipal claim.

11. This Agreement shall be binding upon the Declarant, its successors and assigns.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

PENN FOREST CODE

IN WITNESS WHEREOF, the Declarant hereto, intending to be legally bound, has hereunto set its hand and seal the day and year first above written.

DECLARANT: _____

By: _____

Attest: _____

STATE OF _____ :

: ss

COUNTY OF _____ :

On this _____ day of _____, 20____, before me a Notary Public, appeared _____, who acknowledged him/herself to be the _____ of _____, and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by him/herself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Notary Public