

# WESTTOWN TOWNSHIP

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## AGENDA

### Westtown Township Board of Supervisors Regular Meeting

Monday, August 19, 2019 - 7:30 PM

Westtown Township Municipal Building  
1039 Wilmington Pike, Westtown

- I. Call to Order
- II. Approval of Board of Supervisors Meeting Minutes – July 15, 2019
- III. Summary of Board of Supervisors Workshop – August 19, 2019
- IV. Staffer Kurtis Miller, Office of U.S. Congresswoman Chrissy Houlahan (PA-06)
- V. Departmental Reports
  - A. Westtown East Goshen Police – Chief Brenda Bernot
  - B. Planning Commission – Jim Lees / Elaine Adler
  - C. Manager’s Report – Rob Pingar
- VI. Public Comment (Non-Agenda Items)
- VII. Old Business
  - A. Ordinance 2019-05, Amendments to Township Code Chapter 170, Zoning – Adoption
    1. Article II Definitions
    2. Article V A/C Agricultural/Cluster Residential District
    3. Article IX Flexible Development Procedure
    4. Article XV General Regulations
    5. Article XX Administration
  - B. The Malvern School, Land Development Application Agreements – Approval
    1. Land Development Agreement
    2. Financial Security Agreement
    3. Stormwater Operations and Maintenance Agreement
- VIII. New Business
  - A. Oakbourne Road Utility Relocations, Doli Construction Corp. – Payment Estimate No. 1
  - B. Ordinance 2019-06, Outdoor Lighting Ordinance Amendment – Authorize Advertisement
  - C. Resolution 2019-08, Application To PennDOT For Traffic Signal Approval, Route 202, Skiles Boulevard, and Stetson Middle School Driveway Intersection
  - D. Ordinance 2019-07, Orvis Way Speed Limit – Authorize Advertisement
- IX. Announcements
  - A. Westtown School Conditional Use Hearing – Tuesday August 20, 2019 at 7:00 pm
  - B. Citizens Police Academy - Tuesdays starting September 3, 2019 at 7:00 pm
  - C. Neighborhood University - Thursdays starting September 12, 2019 at 6:30 pm
  - D. Westtown Day – Sunday, September 29 at Oakbourne Park, 11 am – 3 pm

- E. Sewage Management Program (SMP) Routine Inspection Reports - due October 31, 2019
- F. Sign Up for Ready Chesco - Visit [www.readychesco.org](http://www.readychesco.org) to sign up for emergency alerts.
- G. WEGO PD Crimewatch Website – Visit [www.wegopd.org](http://www.wegopd.org) to subscribe to notifications.

X. **Public Comment (All Topics)**

XI. **Payment of Bills**

XII. **Adjournment**

How to Engage in the Public Comment Sections of a Township Meeting

Public Comment is heard at three (3) different points during the meeting:

1. BEFORE OLD BUSINESS - The public is permitted to make public comment on any matter not on the agenda. This comment period is subject to the time constraint in (d) below
2. PRIOR TO any action on a motion on an Agenda item. Public Comment at this stage is limited to the item under discussion (e.g. it is not appropriate to initiate a discussion on police services if the body is acting upon a sewer issue).
3. AFTER NEW BUSINESS. - Public Comment is open to any legitimate item of business which can be considered by that Township Board/Commission (e.g. Planning Commission can discuss issues having to do with plan reviews, but cannot discuss why the Township does not plow your street sooner. Supervisors can discuss nearly every issue).

How to make a comment to any Township Board/Commission:

- a. The Chair will announce that the Board/Commission will now hear public comment, either on a specific issue or generally.
- b. You must then obtain recognition from the Chair prior to speaking.
- c. Once you have the floor, state your name and address for the record.
- d. You may then make your comment or ask your question. You will have three (3) minutes to make your statement, unless the Chair has announced otherwise, so please come prepared!

# WESTTOWN TOWNSHIP BOARD OF SUPERVISORS REGULAR MEETING

Westtown Township Municipal Building, 1039 Wilmington Pike, Westtown

Monday, July 15, 2019 at 7:30 PM

Present were: Chair Scott Yaw, Vice Chair Michael Di Domenico, Police Commissioner Carol De Wolf, Township Manager Robert Pingar, Police Chief Brenda Bernot, and Planning Commissioner Jack Embick. There were 6 guests.

## **I. Pledge of Allegiance & Call to Order**

Mr. Yaw called the meeting to order at 7:38 PM, and led the Pledge of Allegiance. He asked if anyone was recording the meeting. No one was recording.

## **II. Approval of Minutes (July 1, 2019)**

Mr. Di Domenico made a motion to approve the July 1, 2019 Board of Supervisors meeting minutes. Ms. De Wolf seconded the motion. There were no questions or comments, and the minutes were unanimously approved.

## **III. Workshop Meeting Summary (July 15, 2019)**

Mr. Yaw stated that the Board workshop was entirely Executive Session to discuss personnel and police matters. There were no questions or comments.

## **IV. Departmental Reports**

### **A. Westtown - East Goshen Police (WEGO) – Chief Bernot**

Chief Bernot stated that July has been relatively quiet, but cautioned residents that scams are on the rise, including computer scams and social security scams.

Chief Bernot reported that the department is accepting applications for the 2019 Citizen's Police Academy. The academy provides residents with a hands-on understanding of police operations. The 13-week program begins on Tuesday, September 13. There is a nominal fee for background check and first aid certification. For more information and to register, visit the WEGO website: <https://chester.crimewatchpa.com/wegopd/53548/content/community-programs>.

Lastly, the Chief described the department's voluntary Camera Registry Program, and encouraged residents and businesses with video security cameras to register them. The program helps police quickly locate cameras that may be able to assist them with active investigations.

Mr. Pingar asked about the theft of rental checks from an apartment building. The Chief could only state that one of the suspects has been identified from video surveillance.

### **B. Planning Commission (PC) – Jack Embick**

Mr. Embick reported that at their June 19 meeting, the PC discussed the proposed amendments to the Zoning Ordinance, Chapter 170.

On Wednesday, the PC will continue discussing amendments to Zoning and other ordinance updates. There are also two applications before the Zoning Hearing Board, one from the West Chester Area School District and one from Gaudenzia House. In August, the PC plans to revisit the Sign Ordinance.

Mr. Di Domenico asked about the status of Sign Ordinance. Mr. Yaw replied that the ordinance has gone through Act 247 review, but has not been adopted. The Chester County Planning Commission suggested changes as a result of the Reed v. Town of Gilbert decision regarding

content based regulations. Mr. Embick stated that the PC will be discussing the Sign Ordinance at their August 7 meeting.

There were no other comments or questions.

**C. Manager's Report – Rob Pingar**

Mr. Pingar reported that the construction of Orvis Way off the Stetson jug handle is on schedule for completion in late August. He stated that there have not been any issues with the detour. The Ducklings Daycare project associated with the connector road will be starting soon.

Mr. Pingar mentioned that a developer is interested in the old Sharon Bank site at Green Lane and West Chester Pike, but did not yet have any details on what is proposed for the site.

Mr. Pingar stated that the sewer force main work has been completed on the Oakbourne Road Bridge, but Verizon needs to complete their work before Doli can demolish the old bridge and begin work on the new bridge.

Mr. Di Domenico asked for an update on the Westtown Ice Rink at 1646 West Chester Pike. Mr. Pingar replied that the township has received a few noise complaints from residents of Green Lane Village. He stated that the Quakers Ice Hockey club is applying for permits for interior work.

Ms. De Wolf asked Mr. Pingar to provide information regarding solicitation in the township. Mr. Pingar stated that transient merchants may apply for a 30-day permit. A criminal background check is performed before a permit is issued. Residents are encouraged to ask solicitors to show their permit and call the police if they cannot produce a township permit.

There were no other comments or questions.

**V. Public Comment (Non Agenda Items)**

Nancy Harkins, 1521 Woodland Road, wanted to make the township aware of the Public Utilities Commission (PUC) request for public comment from the PUC regarding proposed pipeline regulation. Ms. Harkins stated that she would forward the link to Mr. Pingar. Mr. Yaw requested that the link be added to the website.

Kathy McLaughlin, 200 S. Deerwood Drive, complained about stormwater runoff resulting from the Westtown Woods development. Mrs. McLaughlin added that her neighbor, Dan Martin on Jacqueline Drive, has also been affected. Mr. Pingar stated that he was aware of the problem and it was his understanding that Tim Townes of Southdown Homes committed to address the problem. Mr. Pingar stated that he would contact Mr. Townes tomorrow to discuss the issue.

Christopher McDermott, 1025 Dunvegan Road, stated he was present to work on a Boy Scouts Communications merit badge.

There was no other public comment.

**VI. Old Business**

**A. Ordinance 2019-05, Amendments to Township Code Chapter 170, Zoning – Authorize Advertisement**

Mr. Di Domenico made a motion to authorize advertisement of Ordinance 2019-05 amending certain provisions of Chapter 170 of the Westtown Zoning Ordinance, relative to Definitions, Agricultural/Cluster Residential Zoning District, Flexible Development Procedure, General Regulations, and Administration. Ms. De Wolf seconded the motion. There was no public comment and the motion was unanimously approved.

**VII. New Business**

**A. Tyson Park Phase II Improvements – Contract award**

Carter van Dyke Associates reviewed the three bids received for the Tyson Park Phase II Improvements and determined that Lechmanik Inc. was the lowest responsible bidder, at base bid of \$162,108.00 or bid alternate of \$160,108.00. The base bid includes a 6 ft. wide paved trail, whereas the bid alternate includes a 5 ft. wide paved trail. Township staff recommends the board award Lechmanik Inc. the base bid of \$162,108, as a 6 feet wide paved trail will be more practical and functional.

Mr. Di Domenico made a motion to award the Tyson Park Phase II Improvements Contract to Lechmanik Inc. in the amount of \$162,108. Mr. Yaw seconded the motion. Ms. De Wolf stated that she did not think a 6 ft. trail was necessary. Mr. Di Domenico stated that he spoke with Mark Gross, Director of Public Works, who stated that a 6-foot trail would allow for two strollers to pass and be easier to maintain.

There was no additional comment and the motion was unanimously approved.

**VIII. Announcements**

Mr. Yaw made the following announcements:

**A. Movie Night – 8 pm July 19 at Oakbourne Park.** Featuring “The Princess Bride.” Bring a blanket or lawn chair and enjoy a free movie and popcorn under the stars.

**B. Westtown School Conditional Use Hearing - 7:00 pm July 23rd** at the township building

**C. Citizens Police Academy - Tuesdays** starting September 3, 2019

The next Citizens Police Academy will begin on Tuesday, September 3, 2019, at 6:30 P.M. at the Westtown-East Goshen Regional Police Department located at 1041 Wilmington Pike, West Chester, PA 19382. Applications are due by August 27th, 2019. For information and to register, visit the WEGO website at [www.chester.crimewatch.pa.com/wegopd](http://www.chester.crimewatch.pa.com/wegopd)

**D. Neighborhood University - Thursdays starting September 12, 2019 at 7:00 pm**

The West Chester Area Council of Governments is proud to announce that another year of Neighborhood University is set to begin on September 12, 2019. This free program offers the opportunity to learn about local government, tour public facilities, and better understand available municipal services and resources. The goal is to provide area residents with the tools necessary to be better advocates for their community.

Neighborhood University of Greater West Chester is open to any resident or business owner, age 16 or older, of the participating communities: East Bradford Township, East Goshen Township, Thornbury Township (Chester County), West Chester Borough, West Goshen Township, West Whiteland Township, and Westtown Township. More information can be found at [www.nugwc.org](http://www.nugwc.org).

**E. SMP Routine Inspection Reports**

Property owners with on-lot sewage disposal systems that have provided Initial Inspection Reports, have made repairs that required a Chester County Health Department permit, and/or received a waiver from the SMP in 2016, are due to complete and submit the Routine Inspection Report to the Township by no later than October 31, 2019. Also, property owners that completed pumping in 2016 are due to submit their pumping receipts.

**IX. Public Comment on All Topics**

There was none.

**X. Payment of Bills**

Mr. Di Domenico made a motion to approve General Fund bills in the amount of \$197,000.56, Wastewater Fund bills in the amount of \$31,707.41 for a grand total of \$228,707.97. Ms. De Wolf

seconded the motion. Ms. De Wolf questioned the mapping services from Carroll Engineering. Mr. Pingar stated that they did some GIS mapping to update the zoning map and for the West Goshen Sewer Agreement. Ms. De Wolf also asked about general engineering services from McCormick Taylor. Mr. Pingar stated that he has been working with McCormick Taylor on issues with the driveways in Rustin Walk. Finally, Ms. De Wolf questioned the check to Cedarville Engineering. Mr. Pingar stated that was for their work on the annual MS4 permit. There were no additional comments or questions, and the check registers were unanimously approved.

**XI. Adjournment**

Ms. De Wolf made a motion to adjourn the meeting, seconded by Mr. Yaw. The meeting adjourned at 8:20 PM.

Respectfully submitted,

Robert Pingar  
Township Manager

DRAFT

# WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

Stokes Assembly Hall  
1039 Wilmington Pike, Westtown Township  
Wednesday July 17, 2019 – 7:30PM

## **Present**

Commissioners – Planning Commission (PC) members Richard Pomerantz, Steve Rodia and Kevin Flynn were absent, all others were present (4-3). Also present were Township Manager Rob Pingar and Planning Director Will Ethridge.

## **Call to Order and Pledge of Allegiance**

Mr. Hatton called the meeting to order at 7:30 PM, John Snook led those present in the Pledge of Allegiance.

## **Adoption of Agenda (JL/EA) 4-0**

No changes were made.

## **Approval of Minutes (JL/EA) 4-0**

No changes were made.

## **Announcements**

None

## **Public Comment – Non Agenda Items**

None

## **New Business**

- 1. 2019-06 - WCASD, Bayard Rustin HS ZHB application & Petition to Amend ZO -**  
Ross Unruh, counsel for the applicant, West Chester Area School District (WCASD), attended in place of Kevin Campbell, who got into a car accident and could not be here to answer questions. Mr. Unruh presented the proposal for the zoning ordinance change and the proposed application to the ZHB for an amendment. He recapped to the PC that back in 2003, by special exception, the WCASD received an approval for Rustin High School (HS) where it specified that if there were any nighttime-lighted events, the district would have to come back before the ZHB for approval. In 2011, the WCASD was permitted by the ZHB to have 20 nighttime-lighted events, four of which were major sports events. Subsequently the Township made Outdoor Lighting a Conditional Use and permitted only 20 events, requiring approval by the Board of Supervisors. Today the WCASD is requesting to increase the number of events from 20 to 30 to accommodate the demand for sports, such as lacrosse and soccer in the evening time to provide more opportunities for parents to attend and participate. Mr. Unruh noted that the WCASD met with the Board of Supervisors who authorized the Act 247 review of their Zoning Ordinance Amendment by the Chester County Planning Commission (CCPC) of the proposed ordinance changes. The application was submitted to the ZHB, and the hearing is scheduled for August 29.

PC members raised several questions regarding the existing lights design (appropriate shielding), alignment, conditions and any plans for addressing those.

Mr. Unruh recapped that those lights were designed in 2011 and had appropriate amount of shielding to accommodate nearby neighbors. He noted that he would make a recommendation to the WCASD for the next budget year to consider lights' evaluation and potential upgrades. Mr. Hatton made recommendation to the WCASD to evaluate the conditions of existing lights as a part of the ZHB's approval for proposed amendment.

PC members raised a question regarding attendance and traffic impact. Mr. Unruh explained that those in attendance were mostly parents and friends of sports participants, approximately 20-30 people per event, which would not cause much traffic. Mr. Ethridge noted that the written estimate provided by Chris Lunardi, Rustin HS Assistant Principal, included 50 to 100 spectators per event.

PC members went through the original ZHB application to confirm the number of proposed additional nighttime-lighted events.

Mr. Hatton raised a question to the ZHB regarding whether or not the district was permitted to hold other schools' events at Rustin HS. After a short discussion and a brief review of the existing ordinance and special exception granted in 2011, the discrepancy was discovered that could be solved with adding clarification to the proposed ordinance amendment.

**Motion to recommend approval of the proposed ordinance change to the ZHB with the conditions to check the alignment and conditions of the existing lights and to provide the information on the schedule to convert the existing lights to LED. (EA/JL) 3-1 (EA, JL, JE in favor, RH against)**

2. **2019-07 – Gaudenzia, Inc. ZHB application** – Kristen Camp, Esq. and David Slinger, Director of Recreation, and Ted Gacomis, were in attendance regarding the application. Mrs. Camp provided some background information related to Gaudenzia's history and its current operations. Gaudenzia Inc. has been operating since 1970 at its 10.8-acre parcel at 1030 S Concord Rd. This is a rehabilitation facility for drug and alcohol abuse for approximately 100 patients, and consists of five buildings. The parcel was originally zoned to permit a rehabilitation facility in that district. Since the parcel was always R-1 (Residential), it became a legal non-conforming use in that district, which limited Gaudenzia's ability to potentially expand. Mrs. Camp emphasized that the intent of the ZHB application was not to expand, but to replace an existing underground facility/bunker that currently includes freezer/cooler and construct one above ground on the pad behind the main building. It was too cumbersome and cost prohibitive to repair the underground one.

The proposal included a 540 sq. ft. concrete pad and 325 sq. ft. freezer/cooler that would be added to the rear, concrete steps and a concrete walkway to be able to get to the freezer/cooler from the main building. Mr. Slinger brought to the PC's attention that the existing bunker was in bad condition and the Chester County Health Department (CCHD) recommended repairing the leaking roof. He noted that it was not feasible, especially considering the inconvenience of walking down the steps to get to the freezer/cooler. Therefore, the plan was to collapse the existing bunker and to relocate freezer/cooler behind "West Chester House", a two-story 13,000 sq. ft. building. It would be a prebuilt all-weather structure.

PC members raised a question regarding the noted zoning by the applicant. Rob Pingar confirmed that the parcel was zoned as R-1 (Residential) and not as T



(Township). However, the applicant would still need a special exception.

PC members asked about the dimensions of the structure, materials, its operation, any noise impact, screening and any lighting. The applicants notes that the noise would be minimum, considering its placement on the property and the distance from adjacent residential properties. The applicants noted that the structure would not be visible from the park, because there were trees all around the property that provided a natural screening. The concrete walkway would be lit to be usable in the evening hours.

Mr. Pingar requested the applicant to include an existing sanitary sewer main, any easements and any other underground utilities that exist on the property on the building permit plan. Mr. Ethridge confirmed that information was included in the application package to the ZHB, but not noted on the building permit plan.

**Motion to recommend approval of the Gaudenzia Inc. application to the ZHB for a special exception to expand the non-conforming treatment center at 1030 S Concord Rd. (JE/JL) 4-0**

### **Old Business**

**1. Ordinance 2019-05, Amendments to Township Code Chapter 170, Zoning –**

John Snook recapped to the PC that he compiled a summary of all proposed changes discussed at the PC's previous meeting, revised the ordinance and sent a final version to the CCPC. He provided a final revised version to the PC members for review and approval, and went through all changes to confirm that they had been addressed. After a brief discussion, the PC recommended approval with the following conditions:

1. To include the minor non-substantive edits which Mr. Snook summarized at the meeting,
2. To include the changes suggested in the CCPC 7/3/2019 review letter, and
3. To acquire from CCPC, a graphic depicting the Brandywine Battlefield Swath.

**Motion to recommend approval to the Board of Supervisors Amendments to Township Code Chapter 170, Zoning, as indicated in the Ordinance 2019-05, as resubmitted to the Chester County Planning Commission, with revisions discussed at PC's meeting on July 17, 2019, including recommendations of the Chester County Planning Commission to the extent feasible without causing the text to be resubmitted to the County again. (JE/JL) 4-0**

### **Public Comment**

None

### **Reports**

Mrs. Adler summarized her observations of the BOS meeting for 07/01/2019

Mr. Embick summarized his observations of the BOS meeting for 07/15/2019

### **Adjournment (EA/JL) 4-0**

Meeting was adjourned at 9:46 pm.

Next PC Meeting – August 7, 2019, 7:30 pm – Township Building

PC Representative at next Board of Supervisors Meeting: August 5, 2019 – Kevin Flynn / Steve Rodia

Respectfully submitted,  
William Ethridge, Planning Commission Secretary

# WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

Stokes Assembly Hall  
1039 Wilmington Pike, Westtown Township  
Wednesday, August 7, 2019 – 7:30PM

## **Present**

Commissioners – Planning Commission (PC) members James Lees and Russ Hatton were absent, all others were present (5 attendees). Also present were the Zoning Hearing Board for Westtown Township – David Scaggs (Chairman), Jeff House (member) and Laura Scanlon (Vice Chair), Esq., and Planning Director Will Ethridge.

## **Call to Order and Pledge of Allegiance**

Mr. Pomerantz called the meeting to order at 7:40 PM, Laura Scanlon led those present in the Pledge of Allegiance.

## **Adoption of Agenda (EA/JE) 5-0**

No changes were made.

## **Approval of Minutes (EA/JE) 2-0**

One correction was made to the PC meeting minutes for 07/17/2019.

## **Announcements**

- Mr. Ethridge notified the PC that Mila Robinson, Planning Technician, would attend the next meeting in his place.
- Westtown School Public Comment meeting is scheduled for August 20 at 7pm.

## **Public Comment – Non Agenda Items**

None

## **New Business**

1. The Zoning Hearing Board (ZHB) for Westtown Township and PC had an open discussion related to the following items: regulations of home occupations, stream setbacks, review time, and general communication.

David Scaggs noted that in conjunction with the Township Code and Pennsylvania Municipalities Planning Code (MPC), the ZHB based its decisions on PC's recommendations. He noted that the ZHB was not bound by the PC's recommendation, but appreciated all input provided by the PC regarding applications under review.

Will Ethridge raised a question about a necessity of having a 30-day window between the PC meeting and the ZHB hearing. Mr. Scaggs responded that it was unnecessary to have that many days for review. For the benefit of PC and ZHB, Mr. Ethridge recapped the internal review process starting from receiving an application to the ZHB hearing. He pointed out that not having a 30-day window would be beneficial for an applicant and that the timeline was not necessary, as long as the PC meeting happened before the ZHB hearing to allow enough time for PC to review the application and provide its recommendations. Mr. Ethridge also noted that he typically provided the recommendations summary to the applicant a day after the PC

meeting. After a short discussion, Mr. Pomerantz requested Will Ethridge to pass this request to Ron Agulnick (Solicitor) and to Pat McKenna, Township solicitor, for feedback and comment.

Mr. Pomerantz raised a concern that the PC did not receive a formal notification of both decision and the reasoning behind it from the ZHB on previously submitted applications. Mr. Ethridge indicated he would forward all future ZHB decisions to C members.

Mr. Scaggs explained that the issues that arose during the application review process related to home occupation regulations were the percentage of the habitable space and any restrictions on volunteers working at those properties. The PC had a discussion on how to distinguish between minor and major home occupations and challenges to enforce those requirements. They agreed that the purpose of home occupation regulations was to prevent them from causing nuisances to the nearby residents; however, more research was needed to determine how to regulate the ones potentially causing the nuisance besides the way of limiting its use to a specific square footage of the house, number of vehicle trips, signage restrictions and number of employees. Both PC and ZHB members agreed that the ordinance already established that a home occupation was an accessory to the residential use where one could not run a business out of the house if the business was the primary use. They also agreed that the principle method of determining the appropriate business to allow was by determining what type of business it was. Mr. Ethridge summarized that the Township already had a list of what was considered minor and major home occupation and what was prohibited, and comparing the submitted application to that list was the first step in his review process.

Mr. Pomerantz raised a question about the definition of “a boarding home” in the Code. Mr. Ethridge determined that this definition was absent from the Code and noted that he would rely on the dictionary definition if that ever came up.

Mrs. Scanlon asked if there were any restrictions on what could be rented as an Airbnb. Mr. Ethridge recapped that one of the restrictions added to the Code specified that it could only be a family member within the definition of “a family member” as noted in the code.

Mr. Scaggs brought up the question of the purpose of perennial and intermittent stream setbacks if they were not in a floodplain, the circumstances for that specific regulation of 75 feet and standards for granting the variance. Mr. Ethridge confirmed that the Code specified a minimum setback of 75 feet from perennial creek, and the same 75-foot to either side of the top of the channel bank requirement for a riparian buffer. He explained that the purpose of those requirements were to protect the streams by not allowing any vegetation to be removed and by keeping those in their natural state. Mr. Scaggs suggested that the applicability of stream setbacks could be reconsidered based on circumstances. After a thorough discussion, PC questioned whether the 75-foot setback might have been required by the State as a part of stormwater ordinance amendment. Mr. Pomerantz suggested that the PC should review the subject matter in more detail not only on the size of stream setbacks but how correctly to apply those requirements.

### **Old Business**

None

**Public Comment**

None

**Reports**

Board of Supervisors Meeting on 08/05/2019 was cancelled. Kevin Flynn brought up to PC's attention the article in the paper related to Sunoco's continuing problems with pipeline easements, and asked PC whether there was another meeting with Nancy Harkins regarding the pipelines. Mr. Pomerantz responded he and Nancy Harkins already spoke, and they and possibly others are scheduled to meet in the next ten days

**Adjournment (JE/SR) 5-0**

Meeting was adjourned at 9:16 pm.

Next PC Meeting – August 21, 2019, 7:30 pm – Township Building

PC Representative at next Board of Supervisors Meeting: August 19, 2019 – Jim Lees / Elaine Adler

Respectfully submitted,  
William Ethridge, Planning Commission Secretary

## WESTTOWN TOWNSHIP

### NOTICE

**NOTICE IS HEREBY GIVEN** that the Board of Supervisors of Westtown Township will hold a hearing at a regular meeting to be held on August 19, 2019, commencing at 7:30 p.m., prevailing time, at the Township Building, 1039 Wilmington Pike, West Chester, Pennsylvania, 19382 to consider and enact an ordinance amending the Code of Westtown Township regarding the A/C Agricultural/Residential District and flexible development procedures, a caption and summary of which follows. These amendments could affect the value of properties in Westtown Township, although the nature and extent of this effect are not known. The complete text of the ordinance can be examined at the offices of the Chester County Law Library, 201 West Market Street, West Chester, Pennsylvania, and the Township Building at the above address during regular business hours. Copies of the complete text may be examined without charge or obtained at a charge not greater than the cost thereof at the Township Building.

**AN ORDINANCE AMENDING CHAPTER 170, ZONING, OF THE CODE OF WESTTOWN TOWNSHIP BY ADDING NEW DEFINITIONS TO ARTICLE II; AMENDING THE STATEMENT OF INTENT FOR ARTICLE V, A/C AGRICULTURAL/ RESIDENTIAL DISTRICT §170-500; AMENDING VARIOUS PROVISIONS AND SECTIONS OF ARTICLE IX, FLEXIBLE DEVELOPMENT PROCEDURE; AMENDING ARTICLE XV, GENERAL REGULATIONS, §170-1519, STANDARDS FOR MINIMUM TRACT AND LOT AREA; MAXIMUM DENSITY OF TRACT USAGE; AND AMENDING ARTICLE XX, ADMINISTRATION, §170-2009.D, STANDARDS FOR CONDITIONAL USE APPROVAL.**

**SECTION 1.** Amends Article II, Definitions, §170-201, Definitions, by adding definitions for the following terms: “Brandywine Battlefield Swath,” “Historic Resource(s),” “Historical Landscape,” “Scenic Landscape(s),” and “Scenic View(s).”

**SECTION 2.** Amends Article II, Definitions, §170-201, Definitions, by revising the term and definition for “Density, Net.”

**SECTION 3.** Amends Article V, A/C Agricultural/Cluster Residential District, §170-500, Statement of Intent regarding scenic views and historical landscapes of the Brandywine Battlefield Swath.

**SECTION 4.** Amends Article V, A/C Agricultural/Cluster Residential District, §170-503, Design Standards, Subsection C(3), regarding the development and design of continuous collector road(s) and pedestrian trail(s) as part of the subject use or development.

**SECTION 5.** Amends Article IX, Flexible Development Procedure, §170-900, Statement of Intent, Subsection B(4) regarding scenic views and historical landscapes of the Brandywine Battlefield Swath.

**SECTION 6.** Amends Article IX, Flexible Development Procedure, §170-902, Applicability to Base Zoning Districts, Subsection B, regarding unified tract(s) of land for flexible development.

**SECTION 7.** Amends Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection A, Permitted Base Density and Potential Bonus Density, regarding base density and bonus density for historic preservation.

**SECTION 8.** Amends Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection C, regarding the percentages of the gross area that shall be set aside as minimum required open space for the use and benefit of the residents of the development and/or Township.

**SECTION 9.** Amends Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection E, Standards applicable to housing sites within a flexible development, Subpart (1)(d), regarding the computation of net residential density.

**SECTION 10.** Amends Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection E, Standards applicable to housing sites within a flexible development, Subparts (2) and (3), regarding the design and construction standards for permitted multifamily dwellings and design standards for all flexible development.

**SECTION 11.** Amends Article IX, Flexible Development Procedure, §170-905, Design Standards, to add new Subsections J and K regarding historical landscapes, scenic views and stormwater management.

**SECTION 12.** Amends Article IX, Flexible Development Procedure, §170-907, Open Space Standards, Subsection A, Use and Design Standards, Subpart 5(e), regarding stormwater and wastewater facilities.

**SECTION 13.** Amends Article IX, Flexible Development Procedure, §170-907, Open Space Standards, Subsection A, Use and Design Standards, Subpart 6, regarding the calculation of minimum required open space.

**SECTION 14.** Amends Article IX, Flexible Development Procedure, §170-907, Open Space Standards, Subsection A, Use and Design Standards, Subpart 7(a), regarding dimensional standards for required open space.

**SECTION 15.** Amends Article XV, General Regulations, §170-1502, Projections into setback and setback exceptions, Subparagraph F, regarding arbors, garden sheds, private garages, private greenhouses, trellises, workshops, and similar accessory structures.

**SECTION 16.** Amends Article XV, General Regulations, §170-1519, Standards for Minimum Tract and Lot Area; Maximum Density of Tract Usage, Subsection B, Maximum Density of use on any Tract within a Particular Zoning District, Subparts (2)(a), (b), (c) and (e) regarding the calculation of the maximum number of dwelling units.

**SECTION 17.** Amends Article XV, General Regulations, §170-1519, Standards for Minimum Tract and Lot Area; Maximum Density of Tract Usage, Subsection B, Maximum Density of use on any Tract within a Particular Zoning District, Subparts (3)(a) and (c) regarding the calculation of the maximum number of dwelling units within the R-3 and C-1 zoning districts.

**SECTION 18.** Amends Article XV, General Regulations, §170-1519, Standards for Minimum Tract and Lot Area; Maximum Density of Tract Usage, Subsection B, Maximum Density of use on any Tract within a Particular Zoning District, to add new Subpart (5) regarding bonus density for Historic Preservation subject to conditional use approval.

**SECTION 19.** Amends Article XX, Administration, §170-2009, Conditional Uses, Subsection D, Standards for Conditional Use Approval, Subpart (1)(h), regarding traffic impacts.

**SECTION 20.** Provides for the severability of unconstitutional or invalid provisions of the ordinance.

**SECTION 21.** Repeals ordinances or parts of ordinances in conflict with any provision of this ordinance.

**SECTION 22.** Provides that the amendment shall be effective 5 days following adoption, as by law provided.

If you are a person with a disability wishing to attend the aforementioned meeting and require auxiliary aid, service or other accommodation to observe or participate in the proceedings, please contact the Township Manager at 610-692-1930 to discuss how your needs may best be accommodated.

WESTTOWN TOWNSHIP  
BOARD OF SUPERVISORS  
Scott E. Yaw, Chair

GAWTHROP GREENWOOD, PC  
Patrick M. McKenna, Solicitor



**ORDINANCE NO. 2019-05**

**WESTTOWN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE AMENDING CHAPTER 170, ZONING, OF THE CODE OF WESTTOWN TOWNSHIP BY ADDING NEW DEFINITIONS TO ARTICLE II; AMENDING THE STATEMENT OF INTENT FOR ARTICLE V, A/C AGRICULTURAL/ RESIDENTIAL DISTRICT, §170-500; AMENDING VARIOUS PROVISIONS AND SECTIONS OF ARTICLE IX, FLEXIBLE DEVELOPMENT PROCEDURE; AMENDING ARTICLE XV, GENERAL REGULATIONS, §170-1519, STANDARDS FOR MINIMUM TRACT AND LOT AREA; MAXIMUM DENSITY OF TRACT USAGE; AND AMENDING ARTICLE XX, ADMINISTRATION, §170-2009.D, STANDARDS FOR CONDITIONAL USE APPROVAL.**

**BE IT ENACTED AND ORDAINED** by the Board of Supervisors of Westtown Township, Chester County, Pennsylvania, that certain provisions of Chapter 170, Zoning, of the Code of Westtown Township, as amended, be amended as follows:

**SECTION 1.** Article II, Definitions, §170-201, Definitions, shall be amended to add the following terms and definitions:

**BRANDYWINE BATTLEFIELD SWATH**

That area of the September 11, 1777 Brandywine Battlefield troop movements and battlefield skirmishes so designated and mapped in correspondence to Westtown Township from the Chester County Planning Commission dated December 7, 2016 and included in Appendix A. The Brandywine Battlefield Swath also shall be considered an historical landscape and a scenic landscape or scenic view.

**DENSITY, NET RESIDENTIAL**

Within a flexible development, the number of residential dwelling units of a single particular type and no others, divided by the area of that portion or portions of the tract to be utilized for that specific dwelling unit type, expressed in units per acre. Calculation of the area of the tract so utilized shall comply with the standards set forth in §170-904.E.

**HISTORIC RESOURCE(S)**

Any site, structure, ruin, landscape feature or other object included in the Westtown Township Inventory of Historic Resources or listed in the National Register of Historic Places or determined eligible for such listing by the Pennsylvania Historic and Museum Commission.

**HISTORICAL LANDSCAPE**

The landscape area surrounding any historic resource(s) that contributes to or is visually consistent with the historical character of the designated resource(s) as may be determined by the Township.

**SCENIC LANDSCAPE(S)**

Those landscapes visible from public rights-of-way at any time of year which are characteristic of the natural heritage and historical settlement of Westtown Township as further described in the Westtown Township Comprehensive Plan.

**SCENIC VIEW(S)**

Views of Scenic Landscapes as defined herein.

**SECTION 2.** Article V, A/C Agricultural/Cluster Residential District, §170-500, Statement of Intent, shall be amended to read as follows:

**§170-500 Statement of Intent.**

In addition to the general goals in the preamble, the purpose, and the community development objectives, it is the purpose of this article to preserve the traditional agricultural and rural residential character of appropriate areas of the Township including scenic views and historical landscapes, notably the area involved in the Battle of Brandywine, September 11, 1777, especially that area denoted as the “Brandywine Battlefield Swath,” and to provide housing opportunities for residential development at low densities consistent with such character, and provide for clustering of housing as an option to preserve and enhance the natural, scenic, and historic character of the landscape.

**SECTION 3.** Article V, A/C Agricultural/Cluster Residential District, 170-503, Design Standards, Subsection C(3), shall be amended to read as follows:

- (3) Continuous collector road(s) and pedestrian trail(s) shall be developed as part of the subject use or development to provide direct internal through connection(s) between existing collector and/or arterial streets and trail(s), as applicable, and as required by the Board of Supervisors to provide reasonable access to the subject use, enhance community connectivity and improve local mobility. Examples include but are not limited to through collector streets connecting:
  - Skiles Boulevard and West Pleasant Grove Road;
  - West Pleasant Grove Road and PA Route 926 at the intersection of Bridlewood Boulevard in Thornbury Township, Chester County;
  - Walnut Hill/Shady Grove Roads to PA Route 926 opposite Cheyney Road in Thornbury Township.

At the discretion of the Board of Supervisors in the context of any conditional use application, as a condition of approval, the Board may require that collector road(s) be developed, in whole or in part, through the subject property. The design of such road(s) shall support the goal of providing through collector road(s) functioning independently of other streets or roads, existing or proposed. The Board may require that no dwellings have individual driveway access onto a collector road.

**SECTION 4.** Article IX, Flexible Development Procedure, §170-900, Statement of Intent, Subsection B(4), shall be amended to read as follows:

- (4) Encourage more flexible land development which will respect and conserve natural resources such as streams, lakes, floodplains, groundwater, wooded areas, steeply sloped areas, areas of unusual beauty or importance to the natural ecosystem; and conserve cultural resources including scenic views and historical landscapes, notably the area involved in the Battle of Brandywine, September 11, 1777, especially that area denoted as the “Brandywine Battlefield Swath.”

**SECTION 5.** Article IX, Flexible Development Procedure, §170-902, Applicability to Base Zoning Districts, Subsection B, shall be amended to read as follows:

- B. Unified tract(s) of land for flexible development shall be of ten (10) acres in size or greater.

**SECTION 6.** Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection A, Permitted Base Density and Potential Bonus Density, is deleted in its entirety, and shall be amended to read as follows:

- A. Permitted base density and potential bonus density.
  - (1) Base density. In a flexible development, subject to compliance with all applicable standards, criteria and requirements herein, and as a condition of conditional use approval, the Board of Supervisors may approve a plan that provides for a greater number of dwelling units per acre than would be permitted by the Township zoning regulations applicable to the subject tract(s), as provided in §170-1519.B of this chapter.
  - (2) Bonus density for historic preservation. The maximum density established in accordance with §170-904.A(1) above may be further increased, where approved by the Board of Supervisors subject to conditional use approval, and in accordance with the standards set forth in §170-1519.B(5).

**SECTION 7.** Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection C, shall be amended to read as follows:

- C. The following percentages of the gross area of the tract shall be set aside as minimum required open space for the use and benefit of the residents of the development and/or Township, subject to the standards for measurement of minimum required open space set forth in §170-907.A. Additional open space may be provided: (1) A/C Agricultural/Cluster Residential District: 60%. Where applicable, the minimum required open space shall include at least 85% of any area on the subject property that comprises the Brandywine Battlefield Swath or a portion thereof.
- (2) R-1 Rural-Suburban Residential District, where single-family detached dwellings are provided: 40%.
- (3) R-1 Rural-Suburban Residential District, where twin dwellings are provided: 50%.
- (4) R-1 Rural-Suburban Residential District, where permitted multifamily dwellings are provided: 60%. Where more than one dwelling unit type is provided in the R-1 District, the minimum open space shall be calculated proportionally to the relative proportion of each unit type, as provided in Subsection C(3), (4) and/or (5) above. Additional open space also may be required as a condition of approval of applicable bonus densities.

**SECTION 8.** Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection E, Standards applicable to housing sites within a flexible development, Subpart (1)(d), shall be amended to read as follows:

- (d) The acreage set aside for common open space, wastewater management facilities, and rights-of-way of public or private streets shall not be used for computation of net residential density for any residential use. No area used to comply with net density requirements for any particular residential dwelling unit type shall also be used to comply with net density requirements for any other residential dwelling unit type or toward area and bulk requirements for any other permitted use.

**SECTION 9.** Article IX, Flexible Development Procedure, §170-904, Density Standards, Subsection E, Standards applicable to housing sites within a flexible development, Subparts (2) and (3), are deleted in their entirety, and amended to read as follows:

- (2) Permitted multifamily dwellings shall be designed and constructed in accordance with the following standards:

- (a) Maximum dimensions. No row of townhouses or single structure containing single-family attached dwellings shall exceed 120 feet in any dimension, nor shall exceed five dwellings in a single structure or continuous row. No other structure containing permitted multifamily dwellings shall exceed 100 feet in any dimension.
  - (b) All buildings within an integrated townhouse development shall be set back from the right-of-way line of any street the development abuts a distance of not less than 100 feet.
- (3) Design standards for all flexible development:
- (a) Maximum impervious coverage. Not more than 25% of the gross area of the tract shall be covered by impervious surfaces. At the time of Conditional Use application, the applicant shall demonstrate that compliance with 25% maximum impervious coverage is feasible, including all residential buildings, common area buildings, roads, parking and access means and any other facilities or impervious surfaces, and in addition demonstrating that included within the 25% tract maximum, are allowances for future accessory structures or other impervious surfaces (patios, pools, etc.) which may be permitted on any individual residential building lot.
  - (b) Streets within the flexible development shall be designed in accordance with the terms of Chapter 149, Subdivision and Land Development; provisions for the maintenance of any private streets shall be an essential part of the plan for development. The Township may, but is not required to, accept dedication of the streets within the flexible development for public use. It may require the posting of security in an amount and form satisfactory to it for the construction of such streets, as set forth in Chapter 149, Subdivision and Land Development.
  - (c) Parking requirements.
    - [1] Except where part of a shared parking arrangement authorized under the terms of Article XVII, all required off-street parking shall be developed within the boundaries of the flexible development tract.
    - [2] Except where individual garages are provided, parking for each dwelling unit shall be provided either at the rear of the unit or shall be grouped into one or more parking areas serving a number of dwelling units. Individual curb cuts shall be permitted only for access to garages attached to individual dwelling units. Other front yard parking and individual curb cuts at the street line for access to parking shall not be permitted except where approved as a condition of Conditional Use approval at the discretion of the

Board of Supervisors.

[3] Provisions for pedestrian circulation paths from parking areas to the residential dwellings and other buildings they serve shall be provided. These paths shall be constructed of an all-weather surface.

[4] No parking space shall be more than 250 feet from an entrance to the residential dwelling or other building it serves.

- (d) Landscaping: As required by §170-1507 of this chapter.
- (e) Screening: As required by §170-1508 of this chapter.
- (f) Storage: As required by §170-1509 of this chapter.
- (g) Access and traffic control. Routes for vehicular and pedestrian access and parking shall be designed and situated so as to create no nuisances or detractions from privacy. Design of the site shall comply further with the standards in §§170-1510, 170-1511, 170-1512, and 170-1513 of this chapter. Townhouse structures shall be arranged so as to reduce the amount of roads required to serve the development and to provide for an adequate open space design.
- (h) The developer shall make adequate provision for the maintenance of buildings and land within yard areas set aside for condominium development by the organization of a condominium corporation with the responsibility for collection of sufficient levies or fees to pay the cost of such maintenance. Such maintenance may be conducted in conjunction with the requirements of §170-908, where a condominium corporation owns and maintains common open space. Any such terms and provisions shall be consistent with the requirements of the Uniform Condominium Act of 1980.
- (i) All housing shall be designed with regard to topography and natural features of the site in conjunction with the requirements of §170-905.A. The effects of prevailing winds, seasonal temperatures, and hours of sunlight on the physical layout and form of the proposed land use and buildings shall be taken into account.
- (j) To create architectural interest in the layout and character of housing fronting streets, variations in building line shall be encouraged.
- (k) All housing should be sited so as to provide privacy and to ensure natural light in all principal rooms.

- (l) Building height shall be limited to three stories not to exceed 38 feet.
- (m) Routes for vehicular and pedestrian access and parking areas shall be convenient without creating nuisances or detracting from privacy.
- (n) The approximate location and arrangement of buildings and open spaces must be shown on tentative plans so that the Board may review the intensity of land use and serve the public interest by protecting neighboring land uses.
- (o) The following requirements shall apply, except where more stringent criteria apply:
  - [1] No structure shall be within 30 feet of the curb of access roads.
  - [2] No single-family detached dwelling or twin dwelling may be erected within 30 feet of any other structure.
  - [3] The distance between buildings containing multi-family dwellings shall be determined in accordance with the requirements of §170-802.B(7).
  - [4] At its sole discretion, and for purposes of promoting innovative and preferred design of dwellings and structures, the Board may vary the terms of this §170-904.E(3)(o) where deemed appropriate as a condition of Conditional Use approval.
- (p) Single-family detached dwellings, and uses accessory thereto, shall be a minimum of 50 feet, and all other structures shall be a minimum of 100 feet, from the property lines of the tract. Where proposed structures other than single-family detached dwellings will abut tracts containing similar uses, this distance may be reduced to 50 feet. Landscaping shall be required in these boundaries, regardless of the use being proposed. In cases where a one-hundred-foot setback from the tract boundary is required, including where twin dwellings are provided, at least 50 feet shall be a planted buffer conforming to the requirements of §170-1508 and containing no paving.
- (q) Where permitted, apartment dwellings shall comply with the minimum floor area provisions set forth in §170-802.B(3).

**SECTION 10.** Article IX, Flexible Development Procedure, §170-905, Design Standards, shall be amended to add new Subsections J and K to read as follows:

J. Historical landscapes and scenic views.

- (1) Historical landscapes and scenic views within or across any tract subject to flexible development shall be protected to the greatest extent practicable. As a condition of conditional use approval, the Board may reduce or waive landscape buffering requirements in order to minimize impacts to scenic views otherwise visually accessible to the public.
- (2) Introduced landscaping, utilizing predominantly native vegetation and replicating landscape features characteristic to Westtown and its environs, shall be used to mitigate scenic impacts of development from public roads and neighboring residential properties where such views shall be altered by proposed development, grading, or other improvements necessary to accommodate proposed development. For purposes of this subsection, mitigation shall not require a complete visual screen, where the Township agrees that a filtered or diffuse screen is augmented by other landscaping or site conditions to deflect prominent lines of sight from development impacts or otherwise minimize the visual impacts of development.

K. Stormwater management.

- (1) Stormwater management facilities shall be designed to optimize the capture of stormwater at the sources of generation, maximize recharge to the subsurface groundwater system and minimize discharge to surface water flow. Guidance for stormwater management shall use the most current Best Management Practices (BMPs) such as those promulgated by the Pennsylvania Department of Environmental Protection.
- (2) Collectively, in addition to compliance with the design criteria for stormwater management set forth in Chapter 144 and 149 of the Code of the Township of Westtown, the design of stormwater management facilities across the tract subject to flexible development shall result in groundwater infiltration of stormwater equal in volume to the incremental increase of the two-year storm, pre-development to post-development. For purposes of calculating the pre-development volume of the two-year storm, pre-development land cover conditions shall be assumed to be woodland-good for any area predominantly under cover of trees and meadow-good for any other area, regardless of actual cover conditions. The applicant shall be required to submit soil percolation test results and other credible evidence including a maintenance program satisfactory to demonstrate long-term feasibility of required groundwater infiltration. Where groundwater infiltration of the full incremental volume of the two-year storm is not practicable, the Township may require employment of



other means to mitigate potential groundwater impacts.

**SECTION 11.** Article IX, Flexible Development Procedure, §170-907, Open Space Standards, Subsection A, Use and Design Standards, Subpart 5(e), shall be amended to read as follows:

- (e) Areas used for subsurface infiltration or land application (irrigation) of stormwater and/or treated wastewater, including open storage or settling ponds accessory to infiltration facilities. All such stormwater and wastewater facilities may be physically located in open space areas but shall be excluded from measurement of the minimum required open space as provided in §170-907.A(6) below.

**SECTION 12.** Article IX, Flexible Development Procedure, §170-907, Open Space Standards, Subsection A, Use and Design Standards, Subpart 6, shall be amended to read as follows:

- (6) All open space used incrementally toward calculation of minimum required open space, as set forth in §170-904.C shall, in addition to full compliance with all other applicable standards herein, fully exclude any existing or proposed impervious surfaces, stormwater management facilities, wastewater treatment and disposal facilities, wetlands, water bodies, watercourses, 50% of any area of prohibitive slope (including created slopes exceeding 25%), and 50% of any lands subject to floodplain regulations.

**SECTION 13.** Article IX, Flexible Development Procedure, §170-907, Open Space Standards, Subsection A, Use and Design Standards, Subpart 7(a), shall be amended to read as follows:

- (a) Not less than 75 feet in width at any point and not less than 1/2 acre of contiguous area where used toward calculation of minimum required open space. These dimensional standards may be modified by the Board of Supervisors as a condition of Conditional Use approval where the Board is satisfied that the result of such modification is preferable open space design.

**SECTION 14.** Article XV, General Regulations, S 170-1502, Projections into setbacks and setback exceptions, Subparagraph F shall be amended to read as follows:

- F. Arbors, garden sheds, private garages, private greenhouses, trellises, workshops, and similar accessory structures shall be permitted within side and rear yard areas provided they do not exceed the height, nor 50% of the footprint, of the principal structure, and shall not exceed applicable impervious cover limitations. The side and rear yard setbacks for such structures shall be no less than the height of the accessory structure, irrespective of any otherwise applicable yard requirement of the district. Any wheels attached to a mobile structure must be removed prior to the issuance of any permits.

**SECTION 15.** Article XV, General Regulations, §170-1519, Standards for Minimum Tract and Lot Area; Maximum Density of Tract Usage, Subsection B, Maximum Density of use on any Tract within a Particular Zoning District, Subparts (2)(a), (b), (c) and (e) shall be amended to read as follows (Subpart (2)(d) remains unchanged):

- (a) A/C District.
  - [1] Standard single-family detached dwelling subdivision: tract area multiplied by 0.5.
  - [2] Flexible development: tract area multiplied by 0.7.
  - [3] Adult community development: tract area multiplied by 1.0.
- (b) R-1 District.
  - [1] Standard single-family detached dwelling subdivision: tract area multiplied by 1.0.
  - [2] Flexible development: tract area multiplied by 1.1.
- (c) R-2 District:
  - [1] Standard single-family detached dwelling subdivision, served by:
    - [a] On-site sewage and on-site water: tract area multiplied by 1.0.
    - [b] On-site sewage and off-site water, or public off-site sewage and on-site water: tract area multiplied by 1.45.
    - [c] Public off-site sewage and off-site water: tract area multiplied by 1.98.
  - [2] Single-family semidetached or two-family detached dwellings: tract area multiplied by 2.9.
- (e) M-U District.
  - [1] Residential uses authorized in the R-1, R-2, or R-3 Districts: as specified in Subsections B(2)(d)[1][b], [c], and [d] above.
  - [2] Mobile home park: tract area multiplied by four.

**SECTION 16.** Article XV, General Regulations, §170-1519, Standards for Minimum Tract and Lot Area; Maximum Density of Tract Usage, Subsection B, Maximum Density of use on any Tract within a Particular Zoning District, Subparts (3)(a) and (c) shall be amended to read as follows (Subpart (3)(b) remains unchanged):

- (a) R-3 District.
  - [1] Professional or business office: tract area multiplied by 0.40 (square feet of floor area)
- (c) C-1 District.
  - [1] Total number of permitted, special exception, or conditional uses: tract area multiplied by 0.5.
  - [2] Total amount of square feet of floor area per use: lot area (as determined by § 170-1519C, below) multiplied by 0.40.

**SECTION 17.** Article XV, General Regulations, §170-1519, Standards for Minimum Tract and Lot Area; Maximum Density of Tract Usage, Subsection B, Maximum Density of use on any Tract within a Particular Zoning District, shall be amended to add new Subpart (5) to read as follows:

- (5) Bonus Density for Historic Preservation, subject to conditional use approval:
  - (a) Bonus dwelling units for preservation of historic resources and landscapes. One additional dwelling unit may be provided for each two acres comprising a lot (or open space parcel) which contains any Township-, state- or federally designated Historic Resource and where such acreage otherwise meets all applicable criteria for open space. The use of this bonus shall be limited to no more than four bonus dwelling units for each distinct historic landscape preserved and shall be subject to the following criteria:
    - [1] The Township shall approve the configuration of the lot and/or restricted open space created to accommodate preservation of the historic landscape, which shall include, at a minimum, those portions of the property that contain outbuildings or ruins associated with the historical use of the principal historic building(s) and/or those areas of greatest public visibility.
    - [2] In order to be eligible for this bonus, the historical setting, including all acreage used to calculate bonus dwelling units, and the principal facades of any historical structures shall be preserved through establishment of a conservation easement acceptable to the Township. Such easement shall be recorded prior to or simultaneously with the recording of approved land development

plans and prior to issuance of building permits, as applicable, for any situation where this bonus shall be utilized.

[3] Land(s) utilized for calculation of this bonus also may be counted toward the calculation of required or bonus open space, where applicable open space, criteria are met.

(b) Additional bonus dwelling units for historic restoration/rehabilitation. Where preservation of historic sites, as provided in §170-1519.B(5)(a) above, includes restoration or rehabilitation of historic structures approved by the Township, one additional dwelling unit may be provided for each 2,000 square feet, or portion thereof exceeding 1,000 square feet, of floor area on all floor levels in the historic sections of such structures which are restored or rehabilitated, subject to the following requirements:

[1] Eligible structures shall have been used historically as principal residential or agricultural structures or structures accessory to a principal residential use and shall be included or be eligible for inclusion as part of a Township-, state- or federally designated Historic Resource or historic district;

[2] The applicant shall demonstrate to the satisfaction of the Township, submitting copies of appropriate plans and other documentation as necessary, that such structures have been or shall be restored and/or rehabilitated in accordance with plans prepared by a qualified restoration architect and in general compliance with the U.S Department of the Interior Standards for Rehabilitation of Historic Structures;

[3] All principal facades of eligible historic structures shall be preserved through establishment of conservation easement(s) acceptable to the Township;

[4] This bonus shall not apply if the integrity and scale of eligible historic structures have been or will be altered by additions that overwhelm their historic integrity due to the size of such addition(s) or to the use of modern or inappropriately scaled or proportioned materials, including exterior skins, windows, doors, chimneys, porches, and other features.

(c) Limitation to use of historic preservation bonus. An historic preservation bonus shall not be applicable if the owner, subdivision/land development applicant, or developer of the subject property shall or has, within three years of the development application period or during actual development, destroyed or demolished any Historic Resource as defined herein without the express approval of the Township.

**SECTION 18.** Article XX, Administration, §170-2009, Conditional Uses, Subsection D, Standards for Conditional Use Approval, Subpart (1)(h), shall be amended to read as follows:

- (h) The burden of proof shall be upon the applicant, to prove to the satisfaction of the Board of Supervisors by credible evidence, including a Traffic Impact Study addressing the requirements of §149-804.A(1) – (11) and the Pennsylvania Department of Transportation, prepared by a licensed Professional Engineer, that the use will not result in a traffic hazard or traffic congestion within or along existing roads and road intersections adjacent to the tract proposed to be developed, or magnify any existing traffic hazard or traffic congestion within or along existing roads and road intersections adjacent to the tract proposed to be developed. The traffic generated by the development shall be accommodated in a safe and efficient manner on all roads and road intersections internal to the development site, and on all adjacent roads, accesses and road intersections external to the development site. This may include pedestrian and other travel modes as determined appropriate by the Board. The Traffic Impact Study shall identify any and all traffic capacity and traffic safety improvements within or along existing roads and road intersections adjacent to the tract proposed to be developed, and on all roads and road intersections internal to the development site, that are necessary to accommodate the traffic generated by the development. This includes vehicular and non-vehicular connections, as well as facilities to encourage and support non-automotive traffic. As a condition of approval, the Board shall require the applicant to complete and/or fund these traffic improvements, or provide surety for required improvements which may be completed by others.

**SECTION 19.** If any sentence, clause or section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or validity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisor that this Ordinance would have been adopted had such unconstitutional, illegal, invalid sentence, clause, section or part thereof not been included herein.

**SECTION 20.** All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

**SECTION 21.** This Ordinance will be effective five (5) days after enactment.

ENACTED AND ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

WESTTOWN TOWNSHIP

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Scott E. Yaw, Chair

\_\_\_\_\_  
Mike T. Di Domenico, Vice Chair

\_\_\_\_\_  
Carol R. De Wolf, Police Commissioner

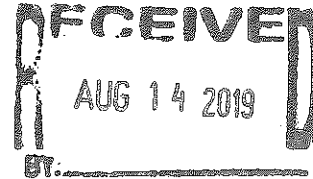
WS/Reg



RILEY RIPER HOLLIN & COLAGRECO  
ATTORNEYS AT LAW

LOUIS J. COLAGRECO, JR.  
Lou@rrhc.com  
Extension: 203

August 14, 2019



**VIA HAND DELIVERY**

Robert Pingar  
Township Manager  
Westtown Township  
1039 Wilmington Pike  
West Chester, PA 19382

RE: Malvern School Real Estate, LP – 1081 Wilmington Pike  
Land Development Plans and Agreements

Dear Rob:

As you are aware, this firm represents Malvern School Real Estate, LP (“Applicant”), the legal owner of property located at 1081 Wilmington Pike in Westtown Township, which is identified as UPI No. 67-4-38 (“Property”). Final land development approval was granted in April of 2019 for the development of a preschool and daycare facility on the Property, with 49 attendant parking spaces and outside playground area. I am enclosing the following documents and plans for execution by the Westtown Township Board of Supervisors at its meeting on Monday, August 19, 2019:

- Eight (8) copies of the Preliminary/Final Subdivision/Land Development Plan for The Malvern School, prepared by Edward B. Walsh & Associates, Inc., dated November 14, 2018, last revised March 24, 2019 (10 sheets)
- Six (6) copies of the Development Agreement signed and notarized by Malvern School Real Estate L.P.
- Six (6) copies of the Financial Security Agreement signed and notarized by Malvern School Real Estate L.P.
- Six (6) copies of the Stormwater Best Management Practices (BMPs) and Conveyances Operation and Maintenance Agreement signed and notarized by Malvern School Real Estate L.P.

I’ve identified the places on each agreement and plan that need to be signed and/or notarized by the Board of Supervisors. Kindly affix the Township’s seal to the first page of each land development plan. Should you have any questions regarding the signatures and notary required, please feel free to contact me or my associate, Gina Gerber, at your convenience.

Robert Pingar  
Westtown Township  
Page 2

I've also enclosed a check in the amount of \$15,000.00 made payable to Westtown Township for the Security Deposit (escrow) and the certificate of insurance, both of which are required by the Land Development Agreement.

Once all plans and agreements are signed, please contact me so that we can make arrangements to pick up them up. Our office will record the land development plans and Stormwater Agreement with the Chester County Recorder of Deeds Office and provide time-stamped copies of the same to the Township.

As always, please feel free to contact us with questions. Thank you for your attention to this matter.

Very truly yours,

  
LOUIS J. COLAGRECO, JR.

LJC, Jr./GMG  
Enclosures

cc: Patrick McKenna, Esq. (via email, w/o enclosures)  
Joseph A. Scandone (via email, w/o enclosures)  
Andy Eberwein (via email, w/o enclosures)  
Gina M. Gerber, Esquire (via email, w/o enclosures)



## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between: Westtown Township (“Township”); and Malvern School Real Estate L.P., a Pennsylvania limited partnership, with its address at 20 Creek Road, Glen Mills, Pennsylvania 19342, and its assigns and successors in interest (“Developer”).

### **Background**

A. Developer represents that it is the owner of, and has proposed to develop, a tract of land situated in Westtown Township, located at 1081 Wilmington Pike, Westtown Township, Chester County, Pennsylvania, consisting of 2.755 +/- acres, being Tax ID No. 67-4-38 (“Subject Property”), as and for the development of the Subject Property into a two-story daycare and educational facility together with attendant parking, storm water management facilities and other related improvements proposed or required in, on and/or related to the proposed land development. A legal description of the Subject Property is attached hereto and made a part hereof as Exhibit “A.” The Subject Property is located in the R-3 Residential Office Zoning District of the Township.

B. The proposed land development of the Subject Property is known as “The Malvern School” as is depicted on the Preliminary/Final Subdivision and Land Development Plan dated November 14, 2018, last revised March 24, 2019 (“Plans”).

C. A Conditional Use Approval for the Subject Property was submitted to, and approved by, the Board of Supervisors of the Township on October 15, 2018, subject to numerous conditions as noted on the Plans.

D. On or about April 3, 2019, the Board of Supervisors of the Township granted Preliminary/Final Subdivision Plan Approval of the application to subdivide and develop the Subject Property into a daycare and educational facility, subject to certain conditions, including the timely completion of the proposed or required improvements and/or amenities, and the posting of financial security to guarantee said completion, all conditions of which were agreed to by the Developer who hereby confirms said agreement (the “Approvals”).

E. Township and Developer, contemporaneously herewith, have entered into a Financial Security Agreement further providing for the said financial security. The Improvements for which security must be provided, together with the estimated cost of completing such Improvements, are listed on Exhibit “B,” which is attached hereto and made a part hereof.

**NOW, THEREFORE**, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation

a. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) “Completion Date” shall mean the date specified in Section 2.c of this Agreement on or before which the Improvements shall be completed.

(2) “Financial Institution” shall mean the bonding company or lending institution, approved by Township, with which the Financial Security has been posted or established and/or which issues the Financial Security.

(3) “Financial Security” shall mean the financial security provided for under and in accordance with the provisions of Section 6 of this Agreement and the provisions of the Financial Security Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

(4) “Financial Security Agreement” shall mean that certain Financial Security Agreement dated \_\_\_\_\_, by and between Township and Developer, which agreement is attached hereto and made a part hereof as Exhibit “B.”

(5) “Improvements” shall mean all site improvements shown on or contemplated by the Plans, including, but not limited to, public or private roads or streets, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings or other plantings and landscaping, and/or other improvements or common amenities required by this Agreement and any applicable ordinances or regulations.

(6) “Plans” shall mean that certain Preliminary/Final Subdivision and Land Development Plans, prepared by Edward B. Walsh & Associates, Inc., dated November 14, 2018, last revised March 24, 2019, consisting of various plan sheets including, without limitation, all notes, statements and other information appearing on the plan, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the Plans.

(7) “MPC” shall mean the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq., as restated and amended, as the same now exists and hereafter may be further amended.

(8) “Secured Improvements” shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates.

(9) “Subdivision and Land Development Ordinance” shall mean the Subdivision and Land Development Ordinance of the Township as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Subdivision/Land Development shall be subject to the provisions of §508(4) of the MPC.

(10) “Subject Land Development” shall mean the proposed subdivision and land development of the Subject Property, together with recreation facilities and other related improvements and/or common amenities proposed or required in, on and /or related to the proposed subdivision and land development, including together with driveways, streets, storm water management facilities (servicing the entire development), sanitary sewer improvements and such other Improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(11) “Township Engineer” shall mean the professional engineer(s), licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township and/or engaged by the Township as a consultant thereto.

b. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance or the MPC, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance or MPC.

## 2. Completion of Improvements

a. The Background section set forth above is incorporated herein by reference thereto.

b. Developer, at its sole expense, shall lay out, construct, install, and/or otherwise complete the Improvements in a good and workmanlike manner, whether noted on the Plans or not, in full and strict accordance with and pursuant to the following: (i) the Subdivision and Land Development Ordinance, the Zoning Ordinance, Soil Erosion, Sedimentation and Grading Control Ordinance and Storm Water Management Ordinance; (ii) the Plans; (iii) the provisions of this Agreement; (iv) PennDOT regulations; (v) all applicable requirements of electric, telephone and other utility companies having jurisdiction; (vi) all other applicable laws,

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statutes, ordinances, resolutions, rules and regulations of the Township and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction; and (vii) specifications established by the Township Engineer. In the event of any inconsistency or conflict between or among the provisions of any of the foregoing, those provisions which impose the greater or greatest, as the case may be, restrictions upon the Developer shall prevail and control.

c. The Improvements shall be completed on or before the date occurring one (1) year from the date of this Agreement. Upon written request of Developer and approval of the Township Board of Supervisors, which approval shall not be unreasonably withheld, said completion date may be extended from time to time, provided that (i) Developer's written request is received by the Board of Supervisors not less than sixty (60) days prior to the then-current completion date, and (ii) the Financial Security is also extended so that it continues valid and effective for all purposes thereof to a date occurring at least ninety (90) days after the extended completion date. Such times shall be of the essence.

d. Developer's present address is as set forth on page one of this Agreement. Developer promises to notify the Township, in writing by certified mail, of any change in this address. Developer agrees that notice of any kind or nature, relating to this Agreement or Township ordinances applicable to the Subject Property or its development, mailed to Developer at the above address, or any new address that Developer has given the Township notice of pursuant to this paragraph, shall be valid and effective for all purposes.

e. Before connecting any new sanitary or storm sewers to existing sewer or drainage systems, Developer shall obtain all necessary approvals and permits from the Township and the Commonwealth of Pennsylvania, and Developer shall provide proof of such State approvals and permits to the Township Engineer.

f. There shall be no revision or change to the Plans, as approved, or to any construction detail, requirement, specification or standard therein or required by any Township ordinance (collectively the "Specifications"), unless the Board of Supervisors first approves such change, except as otherwise provided herein.

(1) Developer shall submit any proposed changes in the approved Plans or any Specifications to the Township Engineer with such drawings, plans and written explanations as shall be required by the Township Engineer for adequate review of the proposed change. All such changes shall be reviewed by and bear the stamp of Developer's engineer.

(2) The Township Engineer may, without approval of the Board of Supervisors, authorize Developer to change construction details, which do not alter either a standard required by any applicable regulations or a condition of final plan approval and which do not make any substantial changes in the final Plans as approved.

(3) All changes directly affecting lots or property not owned by Developer must be approved by the owner(s) of those lots or property.

(4) The Township Engineer shall review any change proposed by Developer and shall provide the Township with an analysis of the change and make a recommendation for action, except that any change of a construction detail which the Township Engineer is permitted to authorize hereunder need not be submitted to the Board of Supervisors for approval. Developer shall not cause any work to be done pursuant to a change in the Plans or Specifications, except a change in a construction detail which the Township Engineer authorizes hereunder, until the Board of Supervisors has first approved the change.

(5) If the Township approves a change in the Plans or Specifications, then Developer agrees to enter into any additional formal agreements with the Township necessary to bring such changes within the scope of this Agreement. No construction or other work shall be done, pursuant to any change in Plans or Specifications, until such changes are incorporated into this Agreement and Developer provides satisfactory Financial Security, which complies with §509 of the MPC and is acceptable to the Township, to guarantee any additional construction costs for additional improvements.

g. Within five (5) days after each Improvement is completed, Developer, by written notice in accordance with the provisions hereof, shall ask the Township Engineer to conduct a final inspection of the Improvement. The Township Engineer, exercising reasonable judgment, will determine if the Improvement complies with the requirements hereof and with all applicable standards.

h. Developer agrees that if any materials used or any work done in the construction of the Improvements or in otherwise implementing the Plans shall be reasonably rejected or disapproved by the Township Engineer as defective or as not in compliance with the provision hereof or with any applicable standards, or if the work is done without prior inspection when prior inspection is required hereunder or is necessary to determine compliance with the Plans, Specifications, applicable regulations, or this Agreement, then, if such action is requested by the Township or Township Engineer, said materials and/or work shall be removed and replaced with other approved materials and/or the work shall be done anew, at the sole cost and expense of Developer and subject to inspection by the Township Engineer to determine compliance. Any work covered without an inspection when an inspection is required hereunder shall be uncovered at Developer's expense to permit the Township Engineer to make the inspection if the Township Engineer requests that such action be taken. Developer agrees that the Township Engineer is authorized to require the removal and replacement of any work and/or materials which are not completed in accordance with this Agreement and all applicable standards.

i. In the event the Township Engineer shall find that the provisions for drainage of the site, as designed by Developer, are inadequate and require revisions, or if the drainage facilities and storm water management facilities otherwise prove to be inadequate to protect existing highways, streets and roads or adjoining private or public areas from excess drainage, flooding or silting either because the Plans are inadequate or because of an improper method of development, Developer shall install such additional drainage work or make such corrections as are reasonably necessary.

j. Developer shall be responsible, at its sole cost and expense, for the repair and maintenance of all Improvements during and after construction thereof; provided, however, that in the case of Improvements which are completed and dedication (or other transfer or assignment) of which is offered to and accepted by Township, Developer shall have such repair and maintenance responsibility until such time as the acceptance of dedication (or other transfer or assignment) is final and effective, and the maintenance bond or other Financial Security is deposited with respect to such dedicated (or otherwise transferred or assigned) Improvements as provided under Section 8 below. For purposes of this subsection, "repair and maintenance of all Improvements" shall mean, without limitation, keeping the Improvements at all times in such condition that the structural integrity and functioning of the same shall be maintained at least in accordance with and/or as contemplated by the design and specifications thereof as shown on the Plans and with respect to Improvements consisting of streets or roads, shall further mean, without limitation, keeping the same at all times free of mud, snow, ice and other impediments or other obstructions to motor vehicle traffic thereon and thereover, and otherwise in a permanently passable condition by and for motor vehicles.

(1) In the event that Developer is in default of any of its repair and maintenance obligations under this Subsection, Township shall have the right, but not the obligation (which right shall be in addition to such other or further rights and remedies as may be available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity), after first giving Developer Notice and Opportunity to Cure as set forth in Section 9 herein, to:

(a) Enter upon the Subject Property and satisfy any of such defaulted repair and maintenance obligation of Developer (provided that any such entry and/or satisfaction shall not be deemed in any manner or to any extent whatsoever as an acceptance by Township of the dedication, transfer or other assignment of the Improvements subject of the default and/or as imposing any responsibility upon Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and

(b) In order to pay for the reasonable costs, expenses and/or fees incurred by the Township related to the satisfaction of such defaulted obligations, (i) obtain payment to Township, or its order, of all or any part of the Financial Security for such reasonable

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costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph (b), is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such reasonable costs, expenses and/or fees, together with reasonable attorney fees and costs incurred by Township for and otherwise related to any such legal and/or equitable action or proceeding.

k. During the course of construction of the Improvements and the construction of improvements (those not covered by funds which Developer has posted with Township) on the individual residential building lots, Developer is required to establish and maintain temporary erosion and sedimentation controls ("E&S Controls") which are shown on the Plans. Part of the funds which Developer has posted with the Township includes an estimated cost to establish and maintain such E&S Controls. In the event Developer fails to establish or maintain the E&S Controls in accordance with the Plan, the Township shall provide Developer with written notice of violation and a five (5)-day period to cure, except in the event of an emergency where a lesser time may be imposed. If Developer fails to cure the default within five (5) days, or such lesser applicable time in the event of an emergency, the Township is hereby authorized to establish the necessary E&S Controls and use the funds as necessary to pay for the Township costs, including, but not limited to, reasonable engineering, legal and actual administrative costs. The Developer shall be required to restore any expended portion of the funds set aside for E&S Controls to the agreed upon amount, as set forth on the attached schedule. In the event the Developer fails to cure a violation within the prescribed time frame or violates any other aspect of this Agreement, the Developer acknowledges that the Township shall not be required to issue any building or occupancy permits for the entire development and a cease and desist order for all or a portion of the entire development may be issued by the Township in the discretion of the Township until the violation is cured or the security restored. In instances where the Developer "willfully neglects" to cure the E&S Control default following the expiration of period for cure contained in the notice from the Township, the Township shall have the right to impose a fine of Five Hundred Dollars (\$500) per day. For purposes of this paragraph, "willful neglect" shall mean that Developer fails to respond to two (2) or more notices of violation from the Township, not necessarily from the same lot. If Developer disputes that it willfully neglected to install the necessary E&S Controls, Developer has the right to contest the imposition of the fine by appealing the same to the Chester County Court of Common Pleas. The parties at any time may submit a dispute which arises hereunder to mediation.

### 3. Conditions to be Met Prior to Commencing Construction of Improvements

a. No building permits shall be issued and no Improvements shall be commenced until:

(1) The Plans, as finally approved, or such portion thereof which is agreed upon by the parties hereto, are recorded according to law; and

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(2) This Agreement is duly signed by all parties and delivered to the Township; and

(3) Developer pays to the Township to be held in escrow by the Township as a security deposit (“Security Deposit”) and to be drawn on by the Township to pay for the Township’s reasonable costs, including costs of preparing agreements, reviewing and approving plans and Specifications, inspecting construction of the Secured Improvements and removing snow and/or waste material and including any engineering, inspection, legal or other expense incurred by the Township in connection with the preparation, implementation or enforcement of the Plans and/or this Agreement and/or the Financial Security Agreement. The amount of the Security Deposit shall be Fifteen Thousand Dollars (\$15,000.00). If, over the course of the land development the Security Deposit is depleted to an amount below Five Thousand Dollars (\$5,000.00), Developer shall replenish it with an amount to bring the amount of the Security Deposit back to Fifteen Thousand Dollars (\$15,000.00); and

(4) All fees required by any ordinance, resolution or regulation of the Township or this Agreement are paid, including the payment of costs, legal and engineering expenses incurred by the Township for the review of plans, preparation of this Agreement, the Financial Security Agreement, resolutions and other papers reviewed or prepared pursuant to this Agreement; and

(5) Developer has entered into a Financial Security Agreement approved by the Township and has provided the Township with Financial Security for the Improvements required hereunder, which security shall meet the requirements of the MPC, Westtown Township ordinances and this Agreement and be satisfactory to the Township; and

(6) All required third party certificates, licenses, permits or approvals, including but not limited to a highway occupancy permit from PennDOT, have been obtained and are still in effect and satisfactory proof thereof has been provided to the Township; and

(7) All variances or other zoning approvals needed in order to develop the Subject Property as shown on the Plans have been obtained and are still in effect and have not expired and all applicable requirements of the Township's ordinances, resolutions and regulations have been met; and

(8) Developer has complied, to the reasonable satisfaction of the Township Engineer, with the requirements set forth in any Township Engineer's report or review letters relating to the development; and

(9) Developer has furnished the required insurance certificates to the Township.

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b. Before commencing any work on the Improvements, Developer shall submit the specifications for all materials to be used and all design specifications to the Township Engineer. Developer shall not proceed with any work on the Improvements without first giving notice to the Township Engineer and, when the Township Engineer's inspection is required under this Agreement, arranging with the Township Engineer for such inspection.

4. Obligations of Developer During Construction

a. All culverts, storm sewers and underdrains, manholes, paving, curbing, setting of monuments and other Improvements are subject to inspection by the Township Engineer. At least five (5) days prior to the commencement of each Improvement, Developer shall notify the Township Engineer. Developer shall also notify the Township Engineer at least two (2) days prior to the date when Developer or its contractor or any subcontractor performs any work subject to the inspection by the Township. Developer shall also notify the Township Engineer at least two (2) days prior to commencing each separate paving operation or Improvement and the Township Engineer shall inspect the materials and workmanship used on each such operation.

b. It shall be the obligation of Developer to arrange, in advance, with the Township Engineer for inspection of work as the work progresses. Developer agrees that the Township's personnel shall have reasonable access to the Subject Property at all times.

c. Developer shall bear the cost of and shall reimburse the Township for the cost of all inspections by the Township Engineer and the Township Code Enforcement Officer.

d. Developer shall bear the cost and expense of any relocation, removal or reconstruction of Improvements.

e. Developer agrees to erect, at its expense, all required street lights, street trees, fire hydrants, if any, shown on the Plans, as amended.

f. During the course of construction of the Improvements, Developer will be responsible for proper removal and disposal of all construction debris, waste materials, and trees, shrubs and other organic material from the Subject Property and surrounding areas, whether discarded by it or others employed by it or by persons engaged in the delivery of materials to and/or construction within the Subject Property and/or any other activity pursuant to the Plans. Developer agrees to prevent such waste materials from being buried or burned on the site or deposited, thrown or blown, upon any property adjacent to or within the vicinity of the Subject Property.

g. Developer agrees to provide dumpsters on the site in the size and number as reasonably required by the Township Engineer and/or the Township Code Enforcement Officer.

h. If Developer fails to remove any construction debris or waste materials, including rubbish, cartons and discarded materials, generated by or because of Developer's activities, from the Subject Property or from surrounding areas within seventy-two (72) hours after Developer received written notice from the Township to do so, or immediately if such debris or materials are causing a traffic hazard or other danger to the public health, safety and welfare, then the Township shall have the right but not the obligation to remove said waste materials and to draw, from the Security Deposit created under Section 3.a(3) hereof, the sums necessary to pay to parties who complete such work or to reimburse the Township for the costs of cleaning up the Subject Property and surrounding areas. The Township's exercise of its rights to remove waste materials pursuant to this paragraph shall not obligate the Township to do so in the future.

i. Developer agrees to maintain all streets, roads and parking lots constructed or improved pursuant to the Plans in a clean and safe condition as reasonably determined by the Township Engineer and/or Code Enforcement Officer and free of mud, snow, ices and construction debris. Developer agrees that in the event there is snowfall or ice storm prior to dedication of the roads required by the Plans, upon advance notice to the Developer the Township is authorized, but not required, to plow and/or remove the snow and/or ice on said undedicated roads and the cost of said plowing and/or removal shall be paid promptly by Developer. Any funds held in the Security Deposit may be used by the Township for said purposes. The Township's exercise of its right to remove snow and/or ice pursuant to this paragraph shall not obligate the Township to do so in the future.

j. Developer agrees that it will obtain use and occupancy permits or certificates for each building prior to any occupancy.

k. Developer shall, at all times, release and indemnify and hold the Township, its agents, employees and officials, harmless from any and all expenses and liability arising out of or from or relating to Developer's activities in implementing the Plans and for any and all failures to comply with applicable regulations. Developer agrees to furnish the Township prior to commencement of any work whatsoever a certificate showing that Developer and Developer's general contractor have adequate liability insurance coverage in an amount not less than two million dollars each and each such policy shall name the Township as an additional insured and shall provide that the policies cannot be terminated or not renewed without thirty (30) days prior written notice to the Township. Developer shall keep said coverage in effect until all work is completed and approved by the Township and shall continue to furnish to the Township certificates showing continued coverage.

l. Developer agrees to complete all Improvements by the Completion Date, unless the time for completion is extended by the Township in writing. This permission shall not relieve Developer from its obligation to properly complete the Improvements.

m. Developer agrees to be responsible for work at the site and to: (1) reasonably restrict the noise from workmen; (2) cease all work on the site by 7:00 PM on Monday to Friday and by 5:00 PM on weekends, except in cases of emergency or exceptional cases; and (3) not to begin work prior to 7:00 AM on Monday through Friday and 8:00 AM on weekends, except in cases of emergency or exceptional cases.

n. Developer agrees to commence construction of the Improvements within 180 days of the date of this Agreement. Developer further agrees to complete construction of any building within one (1) year of the date of the issuance of the building permit for said building.

#### 5. Guaranty of Completion of Improvements

a. Developer shall complete all site Improvements in accordance with final approval of the Plans. Developer shall comply with the requirements of the Township Grading Permit to ensure buildings and associated grading and management of stormwater runoff is reasonably in accordance with the approved Plans as a condition precedent to the issuance of a use and occupancy permit.

b. An as-built lot plan shall be prepared by a registered professional land surveyor and certified by a registered professional engineer that the individual lot is in full conformance with the approved Plans and shall be subject to the review and approval by the Township Engineer.

d. Developer shall bind its heirs, successors and assigns to the requirements of this Section.

e. This requirement shall be in addition to all other as-built plan submissions that may be set forth in the Subdivision and Land Development Ordinance.

#### 6. Guaranty of Completion of Secured Improvements

a. Developer shall deposit with Township or otherwise establish the Financial Security in accordance with and pursuant to the terms and conditions of this Section 6 and the Financial Security Agreement. Pursuant to §509 of the MPC, the Financial Security shall be deposited or otherwise established in and by the time provided in the Financial Security Agreement. Unless and until the Financial Security is so established by Developer, no work towards the completion of any of the Improvements shall be laid out, installed or otherwise

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commenced, and no building, grading, occupancy or other permit, relating to the erection, placement or occupancy of any of the Improvements or of any buildings or other structures in, on and/or related to the subject subdivisions/land developments, shall be issued by Township.

b. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the terms and conditions of this Agreement, and shall further guarantee the performance of the other obligations of Developer under this Agreement and the Financial Security Agreement.

c. The Financial Security shall be of such type as more fully and further provided in and by the Financial Security Agreement.

d. The initial amount of the Financial Security shall be Four Hundred Ninety-Three Thousand, Six Hundred Seventy-Eight U.S. Dollars and Thirty Three Cents (\$493,678.33) which is one hundred and ten percent (110%) of the total cost estimate as set forth in Exhibit "B" attached hereto and made fully part hereof. The amount of the Financial Security shall be subject to such increase, adjustment and reduction as provided in and by the Financial Security Agreement.

7. Dedication (or Other Transfer of Assignment)

a. Developer, at its expense, hereby offers to dedicate (or otherwise transfer or assign as may be appropriate) the following to Township, and with respect to the same hereby agrees to tender to Township deeds of dedication (or other appropriate instruments) containing such provisions and in such form as shall be approved by the Township solicitor:

(1) All portions of the Subject Property, to the extent not heretofore dedicated to the Township, which portions are within the ultimate right-of-way lines of Township Roads, sewer easements, and drainage easements, together with all road and other Improvements (including, without limitation, stormwater management and sewerage facilities) as shall be constructed, installed or otherwise completed in, under, or upon said portions in accordance with and pursuant to the Plans and this Agreement.

b. Township shall not be obligated to accept dedication (or other transfer or assignment) of any or part of the items described in Subsection 7.a above, whether expressly by deed of dedication (or other instrument) or otherwise, unless and until all of the following have been satisfied, at the sole expense of Developer (all of the following also to apply to other of the Improvements, the dedication or other transfer or assignment of which may be offered to Township prior to, on or after the date of this Agreement):

(1) Certification by the Township Engineer that all Improvements (not only those which are or may be dedicated or otherwise transferred or assigned) have been satisfactorily completed fully in accordance with and pursuant to all terms, conditions and requirements of Section 2 above;

(2) Deposit of a maintenance bond or other security, as provided under Section 8 below, with respect to each of the Improvements offered for dedication (or other transfer or assignment);

(3) Compliance with all other or further requirements of the Subdivision and Land Development Ordinance concerning dedication (or other transfer or assignment) and acceptance thereof;

(4) Advancement and/or reimbursement to Township of and for all costs, expenses and fees as provided under and in accordance with Section 10 below;

(5) Satisfaction of or other compliance with all terms, conditions and requirements under and by which the Board of Supervisors of Township granted final plan approval of the Land Development; and

(6) Submission to Township of a recordable written agreement of Developer in such form and containing such provisions as shall be approved by the Township solicitor, indemnifying, holding harmless and defending Township, its officials, officers, employees and agents, of, from and against any liability, claim, suit or demand of whatever nature or kind, whether founded or unfounded, arising from, out of or related to: (i) the design, laying out, installation, construction and/or completion of the Improvements); and/or (ii) any repair and/or maintenance of such Improvements (or failure thereof), which repair and/or maintenance of such Improvements (or failure thereof) occurs or is alleged to occur, either in whole or in part, prior to the time when Township's acceptance of the offer of dedication (or other transfer or assignment) becomes final and effective.

8. Maintenance Bond or Other Financial Security

a. The maintenance bond or other financial security to be deposited by Developer under Section 7.b(2) above as a condition to Township's acceptance of dedication (or other transfer or assignment) of any of the Improvements offered for dedication (or other transfer or assignment) under Section 7.a (or any other of the Improvements the dedication, or other transfer or assignment, of which may be offered to Township prior to, on or after the date of this Agreement) shall be in accordance with the following:

(1) The form and provisions of the bond or other Financial Security shall be approved by the Township solicitor;

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(2) The type of the bond or other Financial Security shall be a type permitted by §509 of the MPC and shall be subject to approval of Township;

(3) The bond or other Financial Security shall be posted with a bonding company or lending institution chartered by the federal government or the Commonwealth of Pennsylvania, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth of Pennsylvania;

(4) The bond or other Financial Security shall provide for and secure to the public, as represented by Township, with respect to each of the dedicated (or otherwise transferred or assigned) Improvements, the structural integrity and functioning of each such Improvement, in accordance with the design and specifications thereof as shown on and/or contemplated by the Plans, for a term of eighteen (18) months from the date when the Township's acceptance of dedication (or other transfer or assignment) of each such Improvement becomes final and effective;

(5) The amount of the bond or other Financial Security shall be equal to fifteen percent (15%) of the actual costs of installing, constructing or otherwise completing the dedicated (or otherwise transferred or assigned) Improvements covered by the bond or other financial security, as such amount shall be certified by the Township Engineer in accordance with the Financial Security Agreement;

(6) The bond or other Financial Security shall provide that in the event the structural integrity or functioning of any of the dedicated (or otherwise transferred or assigned) Improvements covered by the bond or other financial security, is not in accordance with the design and specifications of the Plans for the aforesaid eighteen (18)-month term, the bonding company or lending institution, which issues or holds the bond or other financial security, shall pay to Township, or its order, from time to time, as Township shall determine and demand, all or part of the amount of the bond or other financial security; and that such payment shall be made by the bonding company or lending institution to Township, or its order, at and upon receipt from Township of a written demand for such payment (in, to or of which demand the consent, joinder, agreement and/or approval of Developer shall not be required). The bond or the financial security shall further provide that the aforesaid right of Township to payment under the bond or other financial security shall not constitute the exclusive right and/or remedy of Township, but shall be in addition to such other or further rights and/or remedies as may be available to Township under this Agreement, at law, in equity, or otherwise, in the event that the structural integrity or functioning of any of the dedicated (or otherwise transferred or assigned) Improvements is not in accordance with the design and specifications as aforesaid; and that the aggregate payments made to Township, or its order, by the bonding company or lending institution shall not exceed the amount of the bond or other financial security (plus any interest which may be earned on the principal thereof); and

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(7) Final release of Developer under and from the bond or other financial security shall be subject to the advancement and/or reimbursement to Township of and for all costs, expenses and fees under and in accordance with Section 10 below.

9. Failure to Complete; Other Default

a. In the event that any of the Improvements is or are not completed fully in accordance with the terms, conditions and requirements of Section 2 above and after the Township has first given Developer written notice of such incompleteness and provided Developer with thirty (30) days from the date the notice is received to cure said incompleteness (or such additional time as may be agreed to by Developer and Township if said incompleteness cannot be reasonably cured within thirty (30) days) except in the event of an emergency where the Township may take action without providing an opportunity to cure (herein referred to as "Notice and Opportunity to Cure"), or in the event that Developer becomes insolvent, declares bankruptcy or ceases work on the Improvements for a period of greater than ninety (90) days, the Township shall have the right, but not the obligation (which right shall be in addition to such other or further rights and remedies, as may be available to Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, the MPC and/or otherwise at law or in equity), to: (1) enter upon the Subject Property and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (2) obtain payment to it, or its order, of all or any part of the Financial Security and/or to otherwise enforce the Financial Security in order to pay for the costs of such completion and related costs, expenses and fees.

b. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or available to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay all reasonable related costs, expenses and fees, including, but not limited to, the following: (i) the amount that Township shall require to fully complete the Improvements or otherwise fully cure the default; (ii) any other reasonable costs, expenses and fees referred to in this Agreement for which Developer is obligated and has not paid and which are past due and/or which have been incurred by Township; (iii) interest, at the then-legal rate on all of the reasonable foregoing amounts, costs, expenses and fees accruing either as of the respective payment due dates herein provided or, if no payment due dates are so provided, as of the respective dates on which Township incurs such reasonable amounts, costs, expenses or fees; (iv) reasonable costs of suit; and (v) reasonable attorneys' fees.

c. In the event that Township exercises its right, but not obligation, to complete all or part of the incomplete Improvements upon the aforesaid default of Developer,

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there shall be no requirement for the advertisement of public works or for competitive bidding. Any monies paid to Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against Developer shall be deemed not to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. Township may use any commercially reasonable means to select contractors and/or negotiate prices or costs of material and labor, and Developer hereby ratifies all actions taken by Township in that regard. Township shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements. Developer shall exonerate, indemnify and hold harmless Township, its officials, officers, employees and agents, of and from any liability, claim, suit or demand of whatever nature or kind arising from, out of or related to any act of Township, or of any official, officer, employee or agent thereof, done or authorized to be done in completing all or part of the Improvements, with the exception of any liability, claim, suit or demand arising from the willful misconduct or gross negligence of Township, or of any official, officer, employee or agent thereof; and Developer hereby authorizes, ratifies and affirms any act done by Township, or by any official, officer, employee or agent thereof, in furtherance of such competition with the exception of willful misconduct or gross negligence.

10. Advancement and/or Reimbursement of Expenses

a. Developer shall advance and/or reimburse Township the following as provided in this Section 10:

(1) All reasonable costs, expenses and fees incurred by Township in and for the preparation, review, orderly performance and/or enforcement of this Agreement and the Financial Security Agreement. Such reasonable costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the Township Solicitor; and reasonable expenses and fees of the Township Engineer, and/or any other professional consultant(s) engaged by Township in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.

(2) All reasonable costs, expenses and fees incurred by Township of and for necessary legal proceedings in connection with the dedication (or other transfer or assignment) under this Agreement, including, without limitation, reasonable fees of the Township Solicitor, the Township Engineer and/or other professional consultants engaged by Township.

(3) All reasonable professional consultant and administrative costs and expenses of or incurred by Township in connection with the subject subdivision/land development at then-prevailing rates.

b. In accordance with §503(1)(i) of the MPC and the Subdivision and Land Development Ordinance, Developer shall reimburse the Township for all reasonable outstanding

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engineering, administrative, legal and other review fees associated with the review of the Plans related to Developer's subdivision and land development for the Subject Property, or related to inspections or other work to satisfy the conditions of the approval. Township shall utilize the Security Deposit to satisfy all reasonable costs and fees associated with the review of the Plans, inspections or other work to satisfy the conditions of the approval. Developer shall, within forty-five (45) days of receipt of any such invoices from the Township or its professional consultants, remit payment to the Township for all reasonable engineering, administrative, legal and other review fees associated with the review of the plans related to Developer's subdivision and land development for the subject property to the extent the Security Deposit has been depleted. Should Developer wish to dispute any of the above-referenced fees, it must notify the Township and the Township's professional consultant no later than one hundred 100 days after the transmittal of any bill for services and shall identify, with specificity, the basis for the objection to any charge for fees, costs, expenses, etc. The failure of Developer to contest such fees within one hundred (100) days constitutes a waiver of the right to challenge any such fees charged. Should Developer contest any fee, it shall nonetheless remit payment of the disputed fees, without prejudice to its position in disputing the same. The procedure set forth in the MPC, 53 P.S. §10510(g)(2) through (5), shall then be utilized to resolve all timely disputed fees. Any balance not paid within such forty-five (45)-day period shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

To the extent that Developer fails to remit payment within forty-five (45) days after depletion of the Security Deposit, the Township may withdraw such amounts from the Letter of Credit allocated for "Township Construction Inspection" as shown on Exhibit "B" created pursuant to the Financial Security posted in accordance with the Financial Security Agreement, and shall notify Developer of such withdrawal. Developer shall then be required to replenish the escrow fund created to the Financial Security within thirty (30) days thereafter.

c. In accordance with §510(g) of the MPC and the Subdivision and Land Development Ordinance, Developer shall, within forty-five (45) days of an itemized invoice showing the work performed, reimburse the Township for all outstanding engineering, administrative, legal and other review fees associated with the inspection of improvements related to Developer's subdivision and land development for the subject property and shall, within forty-five (45) days of receipt of any subsequent invoices from the Township or its professional consultants, remit payment to the Township for all reasonable engineering, administrative, legal and other review fees associated with the inspection of improvements related to Developer's subdivision and land development for the subject property. Township shall utilize the Security Deposit paid by Developer to satisfy all reasonable costs and fees associated with the review of the Plans and inspections. Should Developer wish to dispute any of the above-referenced fees, it must notify the Township and the Township's professional consultant no later than one hundred (100) days after the transmittal of any bill for services and shall identify, with specificity, the basis for the objection to any charge for fees, costs, expenses, etc. The failure of Developer to contest such fees within one hundred (100) days constitutes a

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waiver of the right to challenge any such fees charged. Should Developer contest any fee, it shall nonetheless remit payment of the disputed fees, without prejudice to its position in disputing the same. The procedure set forth in the MPC, 53 P.S. §10510(g)(2) through (5), shall then be utilized to resolve all timely disputed fees. Any balance not paid within such forty-five (45)-day period shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

To the extent that Developer fails to remit payment within forty-five (45) days after depletion of the Security Deposit, the Township may withdraw such amounts from the Letter of Credit allocated for "Township Construction Inspection" as shown on Exhibit "B" created pursuant to the Financial Security posted in accordance with the Financial Security Agreement and shall notify Developer of such withdrawal. Developer shall then be required to replenish the escrow fund created pursuant to the Financial Security within thirty (30) days thereafter.

d. It is expressly acknowledged and agreed that Township shall not be obligated hereunder or otherwise to finally release Developer from and under the Financial Security, the Financial Security Agreement, or any other financial security provided pursuant hereto, to accept dedication (or other transfer or assignment) of any of the items under Section 7 hereof, and/or to issue any use and occupancy permit, or any other permit, unless and until all the aforesaid costs, expenses and fees are paid in full.

#### 11. Indemnification

a. Developer hereby agrees to indemnify and save harmless Township, its officials, officers, employees and agents, of, from and against any liability, claim, suit or demand of whatever nature or kind, whether founded or unfounded, arising from, out of or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs and expert witness fees and costs) as may be incurred by Township in connection with any such liability, claim, suit or demand except to the extent caused by the willful misconduct or gross negligence of Township, its officials, officers, employees and agents.

b. The indemnification, save harmless and defense provisions of Subsection 11.a shall not apply to any claims, suits or demands arising from, out of or related to the repair and/or maintenance of (or the failure to repair and/or maintain) any Improvements, the dedication (or other transfer or assignment) of which has been offered to and accepted by Township, which repair and/or maintenance (or the failure thereof) occurs in whole after the time when Township's acceptance of the offer of dedication becomes final and effective.

#### 12. Notices

a. Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

b. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified U.S. mail, postage prepared, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, at the time of deposit in the U.S. mails.

### 13. Miscellaneous

a. Waiver. Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective against Township, unless it is in writing signed by a duly authorized representative of the Township.

b. Assignment; Delegation. Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations or liabilities hereunder without the express written consent of Township, which shall not be unreasonably withheld or delayed. Any such assignment or delegation without such consent shall be void.

c. Cumulative Rights and Remedies. Any and all rights, powers, privileges and/or remedies granted or accruing to Township under or pursuant to this Agreement and/or the Financial Security Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges and/or remedies as may be now or hereafter available to Township under the Subdivision and Land Development Ordinance and/or the MPC and/or otherwise at law or in equity.

d. Headings. The captions or headings preceding the text of the several sections and subsections of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

e. Severability. If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but

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shall continue in full force and effect; (ii) this Agreement shall be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

f. No Third Party Beneficiaries. This Agreement does not confer any enforceable rights or remedies upon any person other than the signatories hereto. Neither contractors of the Developer, nor owners of lots within or adjoining the Subject Property, shall be considered beneficiaries of this Agreement and, accordingly, shall have no rights hereunder, *inter alia* and without limitation, for the completion or maintenance of any Improvements, or for the use, increase, decrease or modification of any Financial Security for any purposes whatsoever.

g. Binding Effect. Subject to Subsection b. above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

h. Entire Agreement; Amendment. This Agreement, together with the exhibits attached hereto and made a part hereof and the Financial Security Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

i. Governing Law & Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, regardless of conflicts of laws and principles. All claims arising from this Agreement shall be the exclusive jurisdiction of the Chester County Court of Common Pleas or the U.S. District Court for the Eastern District of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

WESTTOWN TOWNSHIP

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

MALVERN SCHOOL REAL ESTATE  
L.P., Developer

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

**COMMONWEALTH OF PENNSYLVANIA** :

**SS.**

**COUNTY OF CHESTER** :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the Chairman of the Board of Supervisors of Westtown Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

**WITNESS** my hand and official seal the day and year aforesaid.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**ACKNOWLEDGMENT**

**COMMONWEALTH OF PENNSYLVANIA** :

**SS.**

**COUNTY OF CHESTER** :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Malvern School Real Estate, L.P., and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

**WITNESS** my hand and official seal the day and year aforesaid.

\_\_\_\_\_

Notary Public

My Commission Expires:

**EXHIBIT A**  
**(Legal Description)**



**EXHIBIT B**  
**(Public Improvements Cost Estimate)**

## FINANCIAL SECURITY AGREEMENT

THIS Agreement, is made as of this \_\_\_ day of \_\_\_\_\_, 2019, by and between Westtown Township (by and through its Board of Supervisors), Chester County, Pennsylvania, a Township of the Second Class, with offices at 1039 Wilmington Pike, West Chester, Pennsylvania ("Township"), and Malvern School Real Estate L.P., a Pennsylvania limited partnership, with its address at 20 Creek Road, Glen Mills, Pennsylvania 19342, and its successors and assigns ("Developer").

### BACKGROUND

A. Developer represents that it is the owner of, and has proposed to develop, a tract of land situated in Westtown Township, located at 1081 Wilmington Pike, Westtown Township, Chester County, Pennsylvania, consisting of 2.755 +/- acres, being Tax ID No. 67-4-38 ("Subject Property"), as and for the development of the Subject Property into a two-story daycare and educational facility together with attendant parking, storm water management facilities and other related improvements and/or common amenities proposed or required in, on and/or related to the proposed land development. The instant Agreement pertains to those improvements designated on the Plan, and listed in summary form on the Plan and on the attached spread sheet.

B. The proposed land development of the Subject Property is known as "The Malvern School" as is depicted on the Preliminary/Final Subdivision and Land Development Plan dated November 14, 2018, last revised March 24, 2019, and recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania, at plan \_\_\_\_\_ ("Plans").

C. A Conditional Use Approval for the Subject Property was submitted to, and approved by, the Board of Supervisors of the Township on October 15, 2018, subject to numerous conditions as noted on the Plans.

D. On or about April 3, 2019, the Board of Supervisors of the Township granted Preliminary/Final Subdivision Plan Approval of the application for the proposed land development to subdivide and develop the Subject Property into a daycare and educational facility, subject to certain conditions, including the timely completion of the proposed or required improvements and/or amenities, and the posting of financial security to guarantee said completion, all conditions of which were agreed to by the Developer who hereby confirms said agreement (the "Approvals").

E. Township and Developer, contemporaneously herewith, have entered into a certain Development Agreement, providing for, among other things, the said completion of improvements and amenities and the said posting of financial security. The Public Improvements Cost Estimate outlining the proposed Improvements is attached hereto as Exhibit "A."

F. The parties, by these presents, desire to set forth their further agreement and understanding with respect to the said financial security and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation

a. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) "Completion Date" shall mean the date specified in Section 2.c. of the Development Agreement on or before which the Improvements shall be completed.

(2) "Development Agreement" shall mean that certain Development Agreement of even date herewith by and between Township and Developer, which agreement is fully incorporated into and made part of this Agreement.

(3) "Financial Institution" shall mean the bonding company or lending institution, approved by Township, with which the Financial Security has been posted or established and/or which issues the Financial Security.

(4) "Financial Security" shall mean the financial security provided under and in accordance with the provisions of Section 2 and other provisions of this Agreement and with the provisions of Section 6 of the Development Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

(5) "Improvements" shall mean all site improvements shown on or contemplated by the Plans, including, but not limited to, public or private roads or streets, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings or other plantings and landscaping and/or other Improvements or common amenities required by this Agreement and any applicable ordinances or regulations.

(6) "MPC" shall mean the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 *et seq.*, as restated and amended, as the same now exists and hereafter may be further amended.

(7) "Plans" shall mean that certain Preliminary/Final Subdivision and Land Development Plan prepared by Edward B. Walsh & Associates, Inc. dated November 14, 2018, last revised March 24, 2019, consisting of various plan sheets, including, without limitation, all notes, statements and other information appearing on the plan, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the Plans.

(8) "Secured Improvements" shall mean all those certain Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates.

(9) “Subdivision and Land Development Ordinance” shall mean the Subdivision and Land Development Ordinance of the Township, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Subdivision/Land Development shall be subject to the provisions of §508(4) of the MPC.

(10) “Subject Land Development” shall mean the proposed subdivision and land development of the portion of the Subject Property, together with recreation facilities and other related improvements and/or common amenities proposed or required in, on and/or related to the proposed subdivision and land development, including together with driveways, streets, storm water management facilities (servicing the entire development), sanitary sewer improvements and such other Improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(11) “Township Engineer” shall mean the professional engineer(s), licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for Township or engaged by Township as a consultant thereto.

b. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance, the MPC or the Development Agreement, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance, the MPC or the Development Agreement.

## 2. Financial Security

a. Developer, in accordance with and pursuant to the terms of this Financial Security Agreement and at its sole cost and expense, shall establish and maintain Financial Security in the form of an irrevocable letter of credit with Financial Institution under and in accordance with the terms and conditions of this Agreement. (The said letter of credit is defined herein as the “Financial Security.”) The Financial Security shall be established by Developer upon Developer’s execution of this Agreement. The Financial Institution, as issuer of the Letter of Credit, shall be subject to approval of Township, which approval shall not be unreasonably withheld. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the terms and conditions of the Development Agreement, and shall further guarantee the performance of the other obligations of Developer under this Agreement and the Development Agreement.

b. The initial amount of the Financial Security shall be Four Hundred Ninety-Three Thousand, Six Hundred Seventy-Eight U.S. Dollars and Thirty Three Cents (USD \$493,678.33), which amount is one hundred and ten percent (110%) of the total of (i) the estimated costs of completing the Secured Improvements and (ii) the estimated amounts of other costs, expenses and fees, as such estimated costs and amounts are more fully and further set forth in Exhibit “B” to the Development Agreement and Exhibit “A” attached hereto.

c. The Financial Security shall be automatically extended from year to year for additional periods of twelve (12) months from the original or each future expiration date, without amendment, unless the Financial Institution shall have notified the Township in writing, not less than sixty (60) days before such expiration date, that the Financial Institution elects not to renew the Financial Security. The Financial Institution's notice of such election must be sent to the Township by certified mail addressed to the above Township address, return receipt requested. A copy of the same shall be forwarded to the Township Solicitor and Township Engineer. In the event that the Financial Institution provides the above-notice of its intent not to renew the Financial Security, the Township may draw upon the Financial Security to secure the completion of the remaining Secured Improvements, unless the Developer provides substitute Financial Security acceptable to the Township at least forty-five (45) days prior to the date of expiration of the then effective Financial Security. It shall be the continuing responsibility of the Developer to ensure that the Financial Security (or the acceptable substitute thereof) shall not be terminated or closed or expired, but shall be and remain open until the final release of funds therefrom in accordance with and pursuant to Section 7 of this Agreement.

d. A notation shall appear on the records of the Financial Institution providing that, except as provided in and by this Agreement or as may be otherwise consented to and approved and directed by the Board of Supervisors of the Township in and by a writing signed by the Chair of the Board of Supervisors, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expired, and (iii) any balance of funds in the Financial Security shall be fully available to Township for use under and for purposes of this Agreement and the Development Agreement.

e. The Financial Institution shall acknowledge and verify in writing to Township that, among other things: (i) the Financial Security has been duly issued, and (ii) the issuance of the Letter of Credit does not violate any federal, state or other laws or regulations applicable to the Financial Institution, and (iii) that the notation required by Subsection 2.e. above appears on its records. The written acknowledgment and verification shall be substantially in the form attached hereto and made fully part hereof as Exhibit "B."

### 3. Adjustments to Financial Security

a. Developer agrees that the total amount of the Financial Security and the amount of each of the specific items thereof shall be subject to increase or other adjustment as permitted by and in accordance with the provisions of §509 of the MPC. Without limiting the generality of the foregoing:

(1) Developer agrees that, if the Secured Improvements, or any part thereof, are not completed to the satisfaction of Township within one (1) year after the date of this Financial Security Agreement and Township has agreed to extend the time for completion beyond the Completion Date as may be necessary for the completion, Developer shall post such additional financial security as directed by Township and in accordance with the provisions of the MPC; and Developer shall continue to provide such additional financial security on each one (1) year anniversary date of this Financial Security Agreement thereafter as so directed by Township, if the Secured Improvements, or any part thereof, are not completed to the satisfaction

of Township and Township has agreed to further extend the time for completion beyond the Completion Date, as the same may be previously extended, as such further extension may be necessary for the completion.

(2) Township reserves the right to refuse or limit a request for release of the Financial Security, or to increase or otherwise adjust the amount of the Financial Security on an annual basis, if, in the sole opinion of Township, the balance of the Financial Security is insufficient to complete the Secured Improvements, or to pay any of the other costs, expenses or fees for which the Financial Security has been established, as a result of any foreseeable or unforeseeable events which may arise at any time prior to the completion of the Secured Improvements, including, without limitation, interruptions in construction and inflationary increases in the cost of materials.

b. Notice of any such additional financial security or of any such increase or other adjustment in the amount of the Financial Security, or any part thereof, shall be given in writing by Township to Developer, and Developer shall post the amount of the additional financial security, increase or other adjustment within thirty (30) days of the date of such notice.

c. In the event that Developer fails to fully post the additional Financial Security, increase or other adjustment within the said thirty (30) day period, Township, in addition to such other or further rights and remedies as may be available, shall have the right to (i) withdraw or revoke all building and all other permits previously issued in connection with the Subject Property and/or the Subject Subdivision/Land Development, (ii) refrain from issuing new permits of any kind for the Subject Property and/or the Subject Subdivision/Land Development, and (iii) issue one (1) or more stop, cease and desist orders concerning further work upon construction of the Secured Improvements and/or other Improvements. Upon the issuance and delivery of any such stop, cease and desist order, Developer shall cease all further work on the construction of the Secured Improvements and/or other Improvements described in the order; provided, however, that upon posting of such additional financial security, increase or other adjustment in the Financial Security as required herein, the Township shall withdraw the stop, cease and desist order(s), and Developer may resume work on the construction of the Secured Improvements and/or other Improvements, and any building and other permits previously revoked or withdrawn shall be reinstated.

d. Any funds posted or provided under this Section 3 as additional financial security or as increases or other adjustments to the Financial Security shall become part of the Financial Security and fully subject to the terms and conditions of this Financial Security Agreement.

#### 4. Interim Releases of Funds

a. As the work of the construction of the Secured Improvements satisfactorily proceeds, Township, from time to time upon written request of Developer prior to final release under Section 7 below, shall authorize the release of funds from the Financial Security in accordance with the provisions of the MPC, in such amounts as directed by the Township in writing, but only by and upon the issuance to and receipt by the Financial Institution of a duly executed Certificate of Completion signed by the Township Engineer and the Chairperson of the Board of Supervisors of the Township. The Certificate of Completion

shall be in the form substantially as set forth in Exhibit "C" attached to and made fully part of this Financial Security Agreement.

b. Unless Township expressly and affirmatively directs otherwise in and by the said duly executed Certificate of Completion, the following shall apply to every release of funds from the Financial Security requested under this Section 4: (i) ten percent (10%) of the amount of the funds requested for release shall be retained and not released; and (ii) in no event shall the balance of the Financial Security be reduced below one hundred ten percent (110%) of the estimated costs of completing the remaining uncompleted Secured Improvements, as such estimated costs of completion shall be determined or approved by the Township Engineer.

## 5. Default

a. If Township determines that any of the Secured Improvements have not been completed fully in accordance with the terms, conditions, and requirements of the Development Agreement or that Developer is otherwise in default of the Development Agreement (including in the event that Developer becomes insolvent, declares bankruptcy, or ceases work on the Improvements for a period of greater than ninety (90) days without Township approval), after providing Developer with Notice and Opportunity to Cure as set forth in Paragraph 9.a. of the Development Agreement, Township may declare Developer be in default under this Financial Security Agreement, and Township, in addition to such other or further rights and remedies as may be available, shall have the right to demand and collect payment from the Financial Institution of the full undrawn amount, after reductions and interim releases, if any, pursuant to this Agreement, of the Financial Security, or any part or lesser amount thereof which Township in its sole discretion deems necessary to cure any such default as well as to pay for any professional services related to such cure.

b. The following shall apply to such demand and payment:

(1) Developer hereby authorizes the Financial Institution upon such default, without further inquiry being made, to make said payment directly and immediately to Township or its order, and no further authorization, consent and/or approval of or by Developer to or of said payment shall be required.

(2) Township may draw amounts from and under the Financial Security prior to the performance of any work by or for Township in order to complete the Secured Improvements in accordance with the Development Agreement or otherwise cure the default, and/or to pay professional services related thereto, based upon (i) estimates received by Township for the completion and/or (ii) bills received by Township for the professional services.

(3) Developer agrees that it shall have no right or standing to prevent or delay any such payment to and/or collection by Township.

(4) Developer hereby remises, releases and forever discharges Financial Institution from any and all liability with respect to honoring any such draws by Township.

(5) In the event of a dispute between Developer and Township, Developer nevertheless agrees that the provisions of Paragraph 5.b(1) above shall continue to apply, and that the provisions of Paragraph 5.b(1) shall not be satisfied by the Financial Institution's payment into court of the amount demanded by Township but shall be satisfied only by the Financial Institution's payment of the demanded amount directly and immediately to Township.

(6) The right of Township to demand payment and collect less than the full undrawn amount of the Financial Security shall not be exhausted by a single exercise thereof, but may be exercised by Township from time to time and at any time without limitation on the number of exercises thereof until the amount of the Financial Security has been fully drawn.

(7) If the reasonable costs, expenses and fees incurred by Township on account of (i) the foregoing completion of Secured Improvements or otherwise curing the default of Developer and (ii) the professional services related thereto, exceed the amount, if any, received by Township from and under the Financial Security, Developer, in addition to such other and further obligations and liabilities imposed upon it under the Development Agreement and otherwise by law, shall be liable to Township for such excess of such reasonable costs, expenses and fees. Developer hereby agrees to pay the full amount of such excess to Township immediately upon demand.

## 6. Costs, Expenses and Fees

a. If Developer fails to reimburse Township any reasonable costs, expenses or fees, after depletion of the Security Deposit established by Paragraph 3.a.(3) of the Development Agreement, in accordance with and pursuant to Section 10 of the Development Agreement, after providing Developer with Notice and Opportunity to Cure as set forth in Paragraph 9.a. of the Development Agreement, Township may declare Developer to be in default of this Financial Security Agreement, and Township shall be authorized to collect the amount thereof from and under the Financial Security (notwithstanding that the amount of the Financial Security, but for this Subsection a., is not now or hereafter specifically established to guarantee, secure or otherwise cover the payment of such costs, expenses or fees) in same manner and to the same extent as a default made and provided for under Section 5 of this Financial Security Agreement.

b. Developer shall provide additional Financial Security, in a form acceptable to Township and in the amount by which the Financial Security was reduced by any payment made to Township from the Financial Security under provisions of Subsection 6.a above, within fifteen (15) days after written notice of such reduction in the amount of the Financial Security is sent by Township to Developer. Developer shall also provide Township, to Township's satisfaction and within such fifteen (15) day period, written proof of such additional financial security. The failure of Developer to provide Township, to Township's satisfaction, such additional financial security and written proof thereof within such time shall constitute a default or breach under this Agreement and the Development Agreement, and Developer shall be subject to the provisions governing its default or breach, after provision of Notice and Opportunity to Cure, as set forth in both agreements and/or as otherwise provided by law, including, without limitation, the revocation by Township of all building and other permits



issued in connection with the Subject Property and/or the Subject Subdivision/Land Development, the refusal of Township to reinstate any of the same or issue other permits in the future, and/or the issuance by Township of stop, cease and desist orders upon the construction of the Secured Improvements and/or other Improvements or any part thereof, until the default or breach is properly and fully cured. The additional financial security shall be and constitute financial security fully subject to the terms and conditions of this Financial Security Agreement.

7. Final Release of Financial Security; Termination of Agreement.

a. After all the Secured Improvements have been completed fully in accordance with the Development Agreement to the satisfaction of the Township, and after all the provisions of the Development Agreement and this Financial Security Agreement have been satisfied fully by Developer (including the payment of all reasonable costs, expenses and fees for which Developer is responsible under both said agreements), Township shall authorize the Financial Institution in writing to release the balance of the Financial Security. Such release authorized by Township shall be the final release of funds from the Financial Security, and shall further release Developer from and under the Financial Security and this Financial Security Agreement.

b. At and upon the aforesaid Township authorized release of the balance of the Financial Security, this Financial Security Agreement shall terminate without further action of the parties being required.

8. Validity and Enforceability of Financial Security

a. The Financial Security shall be valid, and shall be maintained by Developer in full force and effect at all times following the establishment thereof in accordance with and during continuance of this Financial Security Agreement.

b. During the continuance of this Financial Security Agreement, Developer shall, as may be requested by written notice from Township from time to time or at any time, provide verification and proof to Township concerning the existence, validity and enforceability of the Financial Security. The verification and proof shall be satisfactory to Township.

c. Developer agrees and hereby authorizes the Financial Institution, during the continuance of this Financial Security Agreement, to release to Township any information as may be requested from time to time or at any time by Township concerning the financial affairs of Developer relative to this Financial Security Agreement and the Financial Security.

d. If Township determines that, upon the information provided or not provided pursuant to Subsections 8.b and/or 8.c above, the financial security requirements of this Agreement and the Development Agreement are not satisfied, or, if Developer otherwise fails to provide and maintain the Financial Security under and in accordance with this Agreement and the Development Agreement, Township shall give Developer written notice to provide the required Financial Security within thirty (30) days of the date of the notice. If Developer fails to so provide the Financial Security to Township's reasonable satisfaction within that time, Township, in addition to other and further rights and remedies as may be available, may revoke all permits previously issued in connection with the Subject Property and/or the Subject

Subdivision/Land Development, may refuse to issue any new permits, and/or may issue stop, cease and desist orders upon the construction of the Secured Improvements and/or other Improvements or any part thereof, until the Financial Security is provided to Township's reasonable satisfaction.

e. Developer further agrees that if it determines or obtains knowledge during the continuance of this Financial Security Agreement that the Financial Institution is, may be or will be unable to honor, provide or maintain the Financial Security for any reason whatsoever in accordance with this Agreement and the Development Agreement (including, but not limited to, the reason that control of the Financial Institution is or is about to be assumed by an agency of the United States government or the Commonwealth of Pennsylvania), Developer shall, immediately, but in no event later than two (2) business days after making such determination or obtaining such knowledge, give written notice of the same to Township. Within thirty (30) days after either the aforesaid notice is given by Developer or such other time as Township notifies Developer that the Financial Security does not exist to the satisfaction of Township, Developer shall obtain additional or substituted financial security with another financial institution as shall be satisfactory to Township. The failure of Developer to provide such additional or substituted financial security shall allow Township, in addition to other or further rights and remedies as may be available, to revoke all permits previously issued in connection with the Subject Property and/or the Subject Subdivision/Land Development, to refuse to issue any new permits, and/or to issue stop, cease and desist orders upon the construction of the Secured Improvements and/or other Improvements or any part thereof, until such additional or substituted financial security is provided to Township's satisfaction.

f. Developer agrees that any and all notices from Township to the Financial Institution demanding payment of, from and under the Financial Security shall be valid and enforceable, and shall be honored by the Financial Institution if given to the Financial Institution during the continuance of this Financial Security Agreement.

#### 9. Township Non-Responsibility

a. Neither this Financial Security Agreement nor the Development Agreement (including any actions taken by Township in or related to the review, consideration and/or approval of the Plans and Subject Subdivision/Land Development) shall impose, or be construed to impose, any liability, responsibility or obligation on Township for the design, layout, construction, installation, maintenance or upkeep of the Secured Improvements and/or other Improvements, or render Township liable for the costs of any work to be performed under or in connection with the Development Agreement or for any other costs to be incurred under or in connection with this Agreement or the Development Agreement, it being expressly understood and agreed that the full responsibility and financial liability for all the foregoing are imposed upon Developer, until such time as Improvements may be dedicated to (or otherwise transferred or assigned) to the Township or to a third party.

#### 10. Financial Institution Non-Responsibility

a. Developer agrees that Financial Institution shall have no duty to inquire as to the truthfulness, acceptability, due execution, due authorization or validity of any document,

certificate, statement or notice which purports to have been executed by an official or other representative of the Township.

b. Developer further agrees that Financial Institution shall not have any duty or responsibility with respect to the Financial Security other than to comply with the terms of this Agreement and the Development Agreement that apply to the Financial Security and the actions which the Financial Institution is to take or not take with respect to the Financial Security.

c. Developer further agrees that the obligations of the Financial Institution under this Agreement and the Development Agreement, and under and with respect the Financial Security, are for the sole benefit of Township, and shall not be affected, in any way, by any default, action or omission of Developer.

d. Township and Developer further agree and acknowledge that the Financial Institution assumes no liability for the design, layout, construction, installation, maintenance and/or upkeep of the Improvements.

#### 11. Charges of Financial Institution

a. Any and all charges made by the Financial Institution for the establishment, creation, administration or termination of the Financial Security and/or for all other actions of the Financial Institution under, pursuant and/or related to this Financial Security Agreement are the sole responsibility of Developer and shall be billed to and paid directly by Developer, and no amount of, from or under the Financial Security may be used by or paid to the Financial Institution for such charges. Developer agrees that Township shall not be liable or otherwise obligated for any of such charges, and Developer hereby agrees to indemnify, protect and defend Township from and against any such charges.

#### 12. Insolvency of Developer

a. Developer acknowledges, covenants and agrees that, in case of any bankruptcy, receivership, or voluntary or involuntary assignment for the benefit of creditors by or of Developer, the Financial Security and all interest of Developer in, to or under this Financial Security Agreement are not and shall not be considered part of the estate of Developer, to the extent permitted by law.

#### 13. Payments, Reductions or Releases of Financial Security

a. It is expressly and specifically understood, covenanted and agreed by Developer that no payment, reduction and/or release whatsoever shall be made at any time of, from or under the Financial Security without the express written consent and instructions of Township, and that the Financial Security shall be maintained by the Financial Institution at all times during the continuance of this Financial Security Agreement in the amounts required herein, less all sums drawn or released therefrom by Township in accordance with the terms hereof. Any violation of this covenant shall render Developer liable for all damages to Township, including, without limitation, all costs, fees and expenses (including, but not limited to, attorney's fees and costs), which Township is required to pay in order to cure any default or

breach by the Developer under the Development Agreement or this Financial Security Agreement because the Financial Security is not maintained and/or funds thereunder are not available or paid upon demand to the Township in order to cure such default or breach.

14. Notices

a. Except as may be otherwise specifically provided in this Agreement:

(1) Any notice, demand or other communication required, authorized or permitted to be given under this Financial Security Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

(2) Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, at the time of deposit in the United States mails.

15. Miscellaneous

a. Waiver. Neither the failure nor any delay on the part of Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against Township unless it is in writing signed by a duly authorized representative of Township.

b. Assignment; Delegation. Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of Township, which shall be not be unreasonably withheld or delayed. Any such assignment or delegation, without such consent, shall be void.

c. Cumulative Rights and Remedies. Any and all rights, powers, privileges and/or remedies granted or accruing to Township under or pursuant to this Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to Township at law or in equity.

d. Headings. The captions or headings preceding the text of the several sections, subsections, paragraphs and other parts of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

e. Severability. If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

f. No Third Party Beneficiaries. This Agreement does not confer any enforceable rights or remedies upon any person other than the signatories hereto. Neither contractors of the Developer, nor Owners of Lots within, or adjoining, the Property shall be considered beneficiaries of this Agreement, and, accordingly, shall have no rights hereunder, including, and without limitation, for the completion or maintenance of any Improvements, or for the use, increase, decrease or modification of any Financial Security for any purposes whatsoever.

g. Binding Effect. Subject to Subsection 16.b above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

h. Entire Agreement; Amendment. This Agreement, together with the exhibits attached hereto and made part hereof and the Development Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

i. Governing Law & Jurisdiction. This Financial Security Agreement shall be governed by, and construed and enforced in accordance, with the laws of the Commonwealth of Pennsylvania, regardless of conflicts of laws principles. All claims arising from this Financial Security Agreement shall be the exclusive jurisdiction of the Chester County Court of Common Pleas or the United States District Court for the Eastern District of Pennsylvania.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereunto have executed this Agreement as of the day and year first above written.

ATTEST:

WESTTOWN TOWNSHIP

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

MALVERN SCHOOL REAL ESTATE  
L.P., Developer

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGMENTS**

COMMONWEALTH OF PENNSYLVANIA:  
COUNTY OF CHESTER : SS.

ON THIS, the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared \_\_\_\_\_ who acknowledged himself/herself to be the \_\_\_\_\_ of Westtown Township and that he/she, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and notarial seal.

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COMMONWEALTH OF PENNSYLVANIA:  
COUNTY OF CHESTER : SS.

ON THIS, the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared \_\_\_\_\_ who acknowledged himself/herself to be the \_\_\_\_\_ of Malvern School Real Estate L.P. and that he/she, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and notarial seal.

---



**Exhibit "A"**

Spread sheet showing details of escrow per paragraph 2(b).

## EXHIBIT "B"

### ACKNOWLEDGMENT AND VERIFICATION

**THE UNDERSIGNED TD Bank, N.A.**, by duly authorized officer or other representative and intending to be legally bound, hereby acknowledges, verifies and agrees:

1. **THAT** the Undersigned is, for so long as the Letter of Credit is outstanding, the entity referred to as the "Financial Institution" in that certain Financial Security Agreement, dated \_\_\_\_\_, 2019 (the "Financial Security Agreement") and that certain Development Agreement, of the same date (the "Development Agreement") both between Westtown Township, Chester County (the "Township") and Malvern School Real Estate L.P., (the "Developer"), with respect to The Malvern School Subdivision and Land Development, as shown on the plan recorded in the Office of the Recorder of Deeds in and for Chester County PA at Plan #\_\_\_\_\_.

2. **THAT**, as of the date hereof, a Letter of Credit, in the amount of Ninety-Three Thousand, Six Hundred Seventy-Eight U.S. Dollars and Thirty Three Cents (USD \$493,678.33), has been duly issued by the Undersigned for use under, for purposes of and in accordance with the Financial Security Agreement and the Development Agreement.

3. **THAT** the Financial Security is a Letter of Credit, bearing No. \_\_\_\_\_, and that the Letter of Credit has been established with the Township as Beneficiary as the Financial Security for the Secured Improvements.

4. **THAT** the above Letter of Credit is the Financial Security referred to as the "Financial Security" in the Financial Security Agreement and the Development Agreement.

5. **THAT**, except as provided in and by the Financial Security Agreement or as may be otherwise consented to and approved and directed by the Board of Supervisors of the Township in and by a writing signed by the Chairperson of the Board of Supervisors, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expired, unless in conformity with paragraph 2.c. of the Financial Security Agreement, and (iii) the balance of funds in the Financial Security shall be fully available to the Township for use under, for purposes of and in accordance with the Financial Security Agreement and the Development Agreement.

6. **THAT** a notation appears on the records of the Undersigned setting forth the substance of Paragraph 5 above.

7. **THAT** the Financial Security has been duly established and will be maintained by the Undersigned to comply with the Financial Security Agreement and the Development Agreement, copies of which Agreements have been reviewed, received and if required, executed, by the Undersigned.

8. **THAT** the Undersigned will comply with the terms of the Letter of Credit.

9. **THAT** the issuance of the Letter of Credit does not violate any of federal, state or other laws or regulations applicable to the Undersigned.

10. **THAT** the Undersigned shall not assign or delegate any of its duties or obligations under this Acknowledgment and Verification or otherwise, as the Financial Institution under the Financial Security Agreement and the Development Agreement, without the express written consent of Township, which shall not be unreasonably withheld, conditioned or delayed, except in the case of a sale or merger of the Undersigned where the successor remains liable under the letter of credit no consent shall be required.

11. **THAT**, subject to Paragraph 10 above, the duties and obligations of the Undersigned, under this Acknowledgment and Verification or otherwise as the Financial Institution under the Financial Security Agreement and the Development Agreement, shall be binding upon the successors and assigns of the Undersigned.

**Financial Institution:**

**TD BANK, N.A.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Title

\_\_\_\_\_  
Printed Title

Date: \_\_\_\_\_

**EXHIBIT "C"**

**CERTIFICATE OF COMPLETION AND  
AUTHORIZATION OF REDUCTION AND RELEASE  
NO. \_\_\_\_\_**

**WE, THE UNDERSIGNED, HEREBY:**

**A. CERTIFY** that the work and improvements, described hereinbelow, completion of which is provided under and by that certain Development Agreement between Westtown Township, Chester County ("Township") and \_\_\_\_\_, ("Developer"), dated \_\_\_\_\_, 201\_\_, concerning the construction, installation and completion of improvements in the \_\_\_\_\_ Subdivision and Land Development, **HAVE BEEN COMPLETED TO THE EXTENT OF THE AMOUNT INDICATED IN ITEM I BELOW**; and

**B. AUTHORIZE** \_\_\_\_\_, pursuant to the Development Agreement and related Financial Security Agreement of the same date, **TO REDUCE** the Financial Security, in the nature of a \_\_\_\_\_ provided and held with said Bank to guaranty, among other things, the completion of said work and improvements, **TO THE EXTENT OF THE AMOUNT INDICATED IN ITEM III BELOW**, and **TO RELEASE SAID AMOUNT OF REDUCTION FROM AND UNDER THE TERMS AND CONDITIONS OF THE ESCROW ACCOUNT.**

**THE REDUCTION AND RELEASE** of the amount of the Financial Security hereby authorized shall not be construed, in any manner or extent, as an acceptance by Township of the work and improvements described hereinbelow (or of any other work performed or any improvements installed or constructed), nor shall this Certificate and Authorization constitute any waiver by Township of its rights to inspect and approve the work and improvements described hereinbelow (or any other work performed and improvements installed and constructed). Township hereby reserves the right to re-inspect the work and improvements (as well as any other work and improvements) and to require Developer to correct, repair or demolish and to properly reconstruct any and all defective and deficient work and improvements not accepted and approved by Township.

**THE FOLLOWING WORK AND** Improvements are the subject of this Certificate and Authorization: (*See attached letter and invoice.*)

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**

**THE REDUCTION AND RELEASE** of the financial security authorized by this Certificate and Authorization have been determined as follows:

<b>I. COST OF COMPLETED WORK AND Improvements</b>	\$ _____
<b>II. <i>less</i> AMOUNT OF RETAINAGE (10%)</b>	\$ _____
<b>III. AMOUNT OF REDUCTION AND RELEASE</b>	\$ _____

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Township Engineer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Chairperson,  
Westtown Township  
Board of Supervisors**

PREPARED BY & RETURN TO:  
Riley Riper Hollin & Colagreco  
Attn.: Gina M. Gerber, Esquire  
717 Constitution Drive, Suite 201  
P.O. Box 1265  
Exton, PA 19341  
(610) 458-4400

UPI No.67-4-38  
1081 Wilmington Pike, West Chester, PA

**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND  
CONVEYANCES  
OPERATION AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Malvern School Real Estate L.P., (hereinafter the “Landowner”), and Westtown Township, Chester County, Pennsylvania, (hereinafter “Municipality”);

**WITNESSETH**

**WHEREAS**, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, at Deed Book 9837 and Page 2178, (hereinafter “Property”); and

**WHEREAS**, the Landowner is proceeding to build and develop the Property with a two-story daycare and educational facility together with attendant parking, storm water management facilities and other related improvements in accordance with a Preliminary/Final Subdivision and Land Development Plan prepared by prepared by Edward B. Walsh & Associates, Inc., dated November 14, 2018, last revised March 24, 2019 (“Land Development Plan”); and

**WHEREAS**, the Post Construction Stormwater Management Plan approved by the Municipality for the Property, which is Sheets 6 and 10 of the Land Development Plan (hereinafter referred to as the “O&M Plan”) for The Malvern School, which is expressly made part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

**WHEREAS**, the Municipality and the Landowner, for itself and its administrators, executors, successors, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

**WHEREAS**, for the purposes of this agreement, the following definitions shall apply:  
**BMP – “Best Management Practice”** –Those activities, facilities, designs, measures, or

procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality's Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devices, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs identified in the O&M Plan are permanent appurtenances to the Property; and

**Conveyance** – As specifically identified in the O&M Plan, a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The conveyances identified in the O&M Plan are permanent appurtenances to the Property; and

**WHEREAS**, the Municipality requires, through the implementation of the O&M Plan, that stormwater management BMPs and conveyances, as required by said O&M Plan and the Municipality's Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors in interest, heirs, and assigns.

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

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the final design plans and specifications as approved by the Municipality and as shown on the O&M Plan.
3. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan.
4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the O&M Plan and the Municipality's Stormwater Management Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property. When requested by the Landowner, , the Municipality shall give the Landowner, its successors and assigns, copies of any inspection report with findings and evaluations of the inspection.
5. The Municipality intends to inspect the BMP(s) and conveyance(s) at a minimum of once

Every three (3) years to determine if they continue to function as required.

6. The Landowner acknowledges that, per the Municipality's Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:

- a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is constructed as part of the approved O&M Plan;
- b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;
- c. Allow the BMP or conveyance to exist in a condition which does not conform to the approved O&M Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or conveyance.

7. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality, the Municipality shall provide to Developer written notice of the need for remedial action and grant Developer thirty (30) days from the date the notice is received to remediate the issue (or such additional time as may be agreed to by Developer and Township if said remediation cannot be reasonably taken within thirty (30) days) (herein referred to as "Notice and Opportunity to Cure"). If Landowner fails to remediate the issue in accordance with the Notice and Opportunity to Cure, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and conveyance(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.

8. In the event that the Municipality, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within forty-five (45) days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner, or may proceed to recover its costs through proceedings in equity or law as authorized under the provisions of the Westtown Township Code.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

10. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Municipality's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims



which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and conveyance(s) either by the Landowner or Municipality, except those caused by the willful misconduct or gross negligence of Municipality, its employees, agents and designated representatives. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Municipality, or, at the request of the Municipality, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the Municipality, except those claims arising from the willful misconduct or gross negligence of Municipality, its employees, agents and designated representatives. If any judgment or claims against the Municipality's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorneys, regarding said damages, judgments or claims, except such damages, judgments or claims arising out of the willful misconduct or gross negligence of Municipality, its employees, agents and designated representatives.

11. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorney's fees and costs incurred in seeking relief under this Agreement.

12. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.

13. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.
14. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.
15. Additional items or conditions, as required by the Municipality (per Subsection 703.B of this Ordinance), as attached herein:

This Agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, and shall constitute a covenant running with the Property, in perpetuity.

ATTEST:

WESTTOWN TOWNSHIP

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

MALVERN SCHOOL REAL ESTATE  
L.P., Developer

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

**COMMONWEALTH OF PENNSYLVANIA** :

**SS.**

**COUNTY OF CHESTER** :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the Chairman of the Board of Supervisors of Westtown Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

**WITNESS** my hand and official seal the day and year aforesaid.

\_\_\_\_\_

Notary Public

My Commission Expires:

**ACKNOWLEDGMENT**

**COMMONWEALTH OF PENNSYLVANIA** :

**SS.**

**COUNTY OF CHESTER** :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Malvern School Real Estate, L.P., and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

**WITNESS** my hand and official seal the day and year aforesaid.

\_\_\_\_\_

Notary Public

My Commission Expires:

August 8, 2019

IRREVOCABLE STANDBY LETTER OF CREDIT NO. DRAFT  
EXPIRATION DATE: August 8, 2020

Westtown Township  
1039 Wilmington Pike  
West Chester, PA 19382

Re: Malvern School Real Estate LP  
1081 Wilmington Pike, UPI No. 67-4-38

We hereby establish our Irrevocable Standby Letter of Credit No. DRAFT in favor of Westtown Township, hereinafter referred to as "Beneficiary", at the request of Malvern School Real Estate LP, hereinafter referred to as "Applicant", in an amount not to exceed in the aggregate Four Hundred Ninety-Three Thousand Six Hundred Seventy-Eight and 33/100 (\$493,678.33) U.S. Dollars.

Funds are available by your draft on us at sight, bearing the clause: "Drawn under TD Bank, N.A. Letter of Credit No. DRAFT dated August 8, 2019" and accompanied by the following documents:

1. This original Letter of Credit and any amendments thereto.
2. A certificate of the Engineer of Westtown Township, stating that:

"Malvern School Real Estate LP has not performed in accordance with the terms and conditions of that certain Development Agreement and Financial Security Agreement between Malvern School Real Estate LP and Westtown Township."

It is a condition of this Letter of Credit that it will be extended automatically, without amendment, for additional periods of one (1) year from the present or each future expiration date, unless at least sixty (60) days prior to the then current expiration date, we notify you in writing by certified mail, return receipt or overnight courier, at the above address, with a copy to the Township Solicitor and Township Engineer, that we elect not to renew this Letter of Credit for said additional period. Receipt by Westtown Township of our non-renewal notice fulfills our obligation to provide times notice of non-renewal.

We hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon receipt of documents as specified above, which may be presented in person or sent via overnight courier at our office located at 6000 Atrium Way, Mt. Laurel, NJ 08054 on or before the expiration date noted above or any extended date.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600."

TD BANK, N.A.

**TO THE BENEFICIARY:**

**Please sign and date below to indicate your approval of this DRAFT.**

**Signing this draft simply indicates your acceptance of the above wording.**

**The authenticated letter of credit will be forwarded to you under separate cover.**

**Beneficiary's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_



*Carroll Engineering Corporation*

August 6, 2019



Robert R. Pingar, P.E., Manager  
Westtown Township  
P.O. Box 79  
Westtown, PA 19395

Dear Rob:

Subject: Contract 19-S1 Relocation of Existing Force Main and Water Main  
Oakbourne Road Bridge Replacement

Enclosed please find one (1) copy of the Contractor's "Application for Payment No. 1" for the above subject Contract. As indicated on the enclosed application, Carroll Engineering Corporation is recommending payment in the amount of \$293,517.70. All work was completed in accordance with contract requirements and observed by representatives of this office.

Should you have any questions or require additional information, please feel free to contact this office.

Very truly yours,

CARROLL ENGINEERING CORPORATION

William N. Malin, P.E.

WNM:vs

Enclosure

cc: James Horwath, CEC

Doli Construction Corporation (w/Enclosure)

*Today's Commitment to Tomorrow's Challenges*

Corporate Office:  
949 Easton Road  
Warrington, PA 18976  
215.343.5700  
5729\_01\_406 Application No. 1.doc

630 Freedom Business Center  
Third Floor  
King of Prussia, PA 19406  
610.489.5100

101 Lindenwood Drive  
Suite 225  
Malvern, PA 19355  
484.875.3075

105 Raider Boulevard  
Suite 206  
Hillsborough, NJ 08844  
908.874.7500

www.carrollengineering.com

APPLICATION FOR PAYMENT NO. 1

To: Westtown Township (OWNER)

From: DOLI Construction Corporation (CONTRACTOR)

Contract: Relocation of Existing Force Main and Water Main, Oakbourne Road Bridge Replacement

OWNER's Contract No. 19-S1

ENGINEER's Project No. 17-5729.00

For Work accomplished through the date of: July 30, 2019

1. Original Contract Price:	\$ 356,135.00
2. Net change by Change Orders and Written Amendments (+ or -):	\$
3. Current Contract Price (1 plus 2):	\$ 356,135.00
4. Total completed and stored to date:	\$ 308,966.00
5. Retainage (per Agreement):	
<u>5</u> % of Completed Work:	\$ 15,448.30
<u>    </u> % of Stored Material:	\$
Total Retainage:	\$ 15,448.30
6. Total Completed and stored to date less retainage (4 minus 5)	\$ 293,517.70
7. Less previous Application for Payments:	\$
8. <b>DUE THIS APPLICATION (6 MINUS 7):</b>	<b>\$ 293,517.70</b>

Accompanying Documentation:

CONTRACTOR's Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through \_\_\_ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated 8/5/19

DOLI CONSTRUCTION CORPORATION  
CONTRACTOR  
By: [Signature]

State of PENNSYLVANIA  
County of BUCKS  
Subscribed and sworn to before me this 5TH  
Day of AUGUST, 2019.

[Signature]  
Notary Public  
My Commission expires: DECEMBER 18, 2019

Commonwealth of Pennsylvania - Notary Seal  
Jacob L. Reading, Notary Public  
Bucks County  
My commission expires December 18, 2019  
Commission number 1201986  
Member, Pennsylvania Association of Notaries

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated 8/6/19

CARROLL ENGINEERING CORPORATION  
By: [Signature]



Application No. 1 Date: 7/30/19

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
1. Force Main Directional Drill Pipe	\$110,000.00	1	\$110,000.00	1	\$110,000.00			\$110,000.00
2. Water Main Directional Drill Pipe	\$95,000.00	1	\$95,000.00	1	\$95,000.00			\$95,000.00
3. 10" C900 DR-18 Force Main	\$25.00	655	\$81,875.00	655	\$83,250.00			\$83,250.00
4. 8" DIP	\$150.00	5	\$750.00	52	\$7,800.00			\$7,800.00
5. 10x8 C900 Reducer	\$150.00	3	\$450.00	0	\$0.00			\$0.00
6. 8" DIP Class 350 SSB 45	\$100.00	2	\$200.00	2	\$200.00			\$200.00
7. 8" Solid Sleeve	\$150.00	2	\$300.00	2	\$300.00			\$300.00
8. 8" DIP Class 350 SSB 22.5	\$100.00	1	\$100.00	1	\$100.00			\$100.00
9. 8" C900 DR-11	\$150.00	40	\$6,000.00	0	\$0.00			\$0.00
10. 12" HDPE DR-11X10"C900 DR-18Couplings	\$150.00	2	\$300.00	0	\$0.00			\$0.00
11. 12" HDPE DR-11	\$150.00	15	\$2,250.00	0	\$0.00			\$0.00
12. 12" HDPE 45 Bend	\$50.00	3	\$150.00	0	\$0.00			\$0.00
13. 8" DIP Class 350 SSB 45	\$100.00	2	\$200.00	0	\$0.00			\$0.00
14. Temporary Pave Restoration	\$4.00	715	\$2,860.00	0	\$0.00			\$0.00
15. Permanent Base Course Restoration	\$35.00	715	\$25,025.00	0	\$0.00			\$0.00
16. Permanent Binder Course Restoration	\$10.00	715	\$7,150.00	0	\$0.00			\$0.00
17. Permanent Single Lane Mill and Overlay	\$25.00	715	\$17,875.00	0	\$0.00			\$0.00
18. Permanent Full Road Mill and Overlay	\$35.00	20	\$350.00	0	\$0.00			\$0.00
19. Demolition Pipe Removal Existing Bridge	\$4,000.00	1	\$4,000.00	1	\$4,000.00			\$4,000.00
20. Soil Erosion and Control	\$500.00	1	\$500.00	1	\$500.00			\$500.00
21. 10x8 DIP Reducer	\$351.00/EA	1	\$351.00	1	\$351.00			\$351.00
22. 12" C900 Force Main	\$150.00/LF	28	\$4,200.00	28	\$4,200.00			\$4,200.00
23. 12" DIP 45 Bend	\$715.00/EA	1	\$715.00	1	\$715.00			\$715.00
24. 12x8 DIP Reducer	\$500.00/EA	1	\$500.00	1	\$500.00			\$500.00
25. 12" Romac Couplings	\$750.00/EA	2	\$1,500.00	2	\$1,500.00			\$1,500.00
26. 12x10 DIP Reducer	\$550.00/EA	1	\$550.00	1	\$550.00			\$550.00
<b>TOTAL</b>			<b>\$ 356,135.00</b>		<b>\$ 308,966.00</b>		<b>\$</b>	<b>\$ 308,966.00</b>

Note: Total Schedule of Values Amount should equal the current Contract Price.

**ORDINANCE NO. 2019-06**

**WESTTOWN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF WESTTOWN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF WESTTOWN TOWNSHIP REGARDING THE NUMBER OF EVENTS FOR WHICH OUTDOOR LIGHTING MAY BE USED PER ACADEMIC YEAR.**

**BE IT ENACTED AND ORDAINED** by the Board of Supervisors of Westtown Township, Chester County, Pennsylvania, that certain provisions of Chapter 170, Zoning, of the Code of Westtown Township, as amended, be amended as follows:

**SECTION 1.** Section 170-1514.D(5)(e)[6][a] of the Zoning Chapter of the Westtown Township Code (“Code”) shall be amended to read as follows:

- [a] A maximum of 30 lighted events per calendar year will be permitted on any one campus where permanent lighting is provided. Up to three additional lighted events shall be permitted each year for playoffs or championship games not part of the regular schedule of events.

**SECTION 2.** If any sentence, clause or section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or validity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisor that this Ordinance would have been adopted had such unconstitutional, illegal, invalid sentence, clause, section or part thereof not been included herein.

**SECTION 3.** All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

**SECTION 4.** This Ordinance will be effective five (5) days after enactment.

ENACTED AND ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

WESTTOWN TOWNSHIP

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Scott E. Yaw, Chair

\_\_\_\_\_  
Mike T. Di Domenico, Vice Chair

\_\_\_\_\_  
Carol R. De Wolf, Police Commissioner

**RESOLUTION 2019-08**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
WESTTOWN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA  
AUTHORIZING AN APPLICATION TO  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION  
FOR TRAFFIC SIGNAL APPROVAL AT THE INTERSECTION OF  
US ROUTE 202 (SR 0202), SKILES BOULEVARD, AND STETSON MIDDLE SCHOOL  
DRIVEWAY**

**BE IT RESOLVED**, by the authority of the Board of Supervisors of Westtown Township, Chester County, and it is hereby resolved by authority of same that the Westtown Township Manager is authorized and directed to submit the attached Application for Traffic Signal Approval at the Intersection of US Route 202 (SR 0202), Skiles Boulevard, and Stetson Middle School Driveway to the Pennsylvania Department of Transportation and to sign this Application on behalf of Westtown Township.

**ADOPTED** as a Resolution this 19<sup>th</sup> day of August 2019.

Westtown Township  
Board of Supervisors

---

Scott E. Yaw, Chair

---

Michael T. Di Domenico, Vice Chair

---

Carol R. De Wolf, Police Commissioner

ATTEST:

---

Township Secretary  
Robert R. Pingar, P.E.

*Key*

# Application for Traffic Signal Approval



County : \_\_\_\_\_  
Engineering District : \_\_\_\_\_  
Department Tracking # : \_\_\_\_\_  
Initial Submission Date : \_\_\_\_\_

Please Type or Print all Information in Blue or Black Ink

## A - Applicant's (Municipal) Contact Information

Municipal Contact's Name : Robert Pingar Title : Township Manager  
Municipal Name : Westtown Township  
Municipal Address : 1039 Wilmington Pk West Chester PA 19382  
Municipal Phone Number : 610-692-1930 Alternative Phone Number : \_\_\_\_\_  
E-mail Address : rpingar@westtown.org  
Municipal Hours of Operation : Monday thru Friday 9am to 5pm

## B - Application Description

Location (*intersection*) : Route 202 (Wilmington Pk) and Skiles Blvd  
Traffic Control Device is :  NEW Traffic Signal  EXISTING Traffic Signal (*Permit Number*) : 1728  
Type of Device (*select one*)  Traffic Control Signal (*MUTCD Section 4D, 4E, 4G*)  Flashing Beacon (*MUTCD Section 4L*)  School Warning System (*MUTCD Section 7B*)  
 Other : \_\_\_\_\_  
Is Traffic Signal part of a system? :  YES  NO System Number (*if applicable*) : \_\_\_\_\_  
If YES, provide locations of all signalized intersections in system.

\_\_\_\_\_

Explain the proposed improvements :

Adding Lane

Associated with Highway Occupancy Permit (HOP)? :  YES  NO If YES, HOP Application # : \_\_\_\_\_

## C - Maintenance and Operation Information

Maintenance and Operations are typically performed by? :  
 Municipal Personnel  Municipal Contractor  Municipal Personnel & Contractor  
 Other : \_\_\_\_\_  
Maintenance and Operations Contact Name : Mark Gross Company/Organization : Westtown Township  
Phone # : 610-692-1930 Alternative Phone # : \_\_\_\_\_ E-mail : mgross@westtown.org

## D - Attachments Listing

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> Municipal Resolution ( <i>required</i> ) | <input type="checkbox"/> Location Map               | <input type="checkbox"/> Traffic Volumes / Pedestrian Volumes |
| <input type="checkbox"/> Letter of Financial Commitment                      | <input type="checkbox"/> Photographs                | <input type="checkbox"/> Turn Lane Analysis                   |
| <input checked="" type="checkbox"/> Traffic Signal Permit                    | <input type="checkbox"/> Straight Line Diagram      | <input type="checkbox"/> Turn Restriction Studies             |
| <input type="checkbox"/> Warrant Analysis                                    | <input type="checkbox"/> Capacity Analysis          | <input type="checkbox"/> Other : _____                        |
| <input type="checkbox"/> Crash Analysis                                      | <input type="checkbox"/> Traffic Impact Study (TIS) |   |
| <input type="checkbox"/> Traffic Signal Study                                | <input type="checkbox"/> Condition Diagram          |   |

# Application for Traffic Signal Approval



Please Type or Print all Information in Blue or Black Ink

County : \_\_\_\_\_

Engineering District : \_\_\_\_\_

Department Tracking # : \_\_\_\_\_

Initial Submission Date : \_\_\_\_\_

## E - Applicant (Municipal) Certification

The applicant desires to own, operate, and maintain the traffic control device in the location indicated above; and the Vehicle Code requires the approval of the Department of Transportation ("Department") before any traffic signals may be legally erected or modified. A signed Application for Traffic Signal Approval (TE-160) must be submitted in conformance with the instructions provided by the Department, and a Traffic Signal Permit must be issued, before any work can begin.

If the Department approves a traffic signal after a traffic engineering study and engineering judgment indicates the need, the traffic signal shall be installed, owned, operated, and maintained within the parameters indicated in the Vehicle Code and the Department's regulations relating to traffic signs, signals, and markings. The Department may direct appropriate alterations to the design or operation (including, but not limited to, hours of operation) of the traffic signal, or require removal of the traffic signal, if traffic conditions or other considerations necessitate alteration or removal.

All items associated with the traffic control device (geometric features, signs, signals, pavement markings, pedestrian accommodations, and other traffic control device associated items) are the applicant's responsibility. The Traffic Signal Permit will then document all of the items associated with operation of each traffic control device. The applicant, at its sole expense, shall provide the necessary inspection, maintenance, and operation activities in conformance with the Department's Publication 191 or as otherwise agreed to by the Department. The applicant shall perform the preventative and responsive maintenance requirements and recordkeeping in accordance with the exhibits specified below. If the applicant fails to provide the required inspection, maintenance, or operation services within thirty (30) days of receipt of written notice from the Department, the Department shall have the right to perform the required inspection, maintenance, or operation services in the applicant's stead and the applicant shall reimburse the Department for all costs incurred. Federal- and/or state-aid participation may be withheld on all future projects if the applicant fails to demonstrate to the Department the ability to provide all required maintenance and operation services. The applicant certifies that it has funds available and committed for the operation and maintenance of the traffic control device and that it will make available sufficient funds for all required future inspection, maintenance, and operation activities.

The applicant shall indemnify, save harmless and, defend (if requested) the Commonwealth of Pennsylvania, its agents, representatives, and employees from and against any damages recoverable under the Sovereign Immunity Act, 42 Pa. C.S. §§ 8521-8528, up to the limitations on damages under said law, arising out of any personal injury or damage to property which is finally determined by a court to be caused by or result from acts or omissions of the applicant and for which a court has held applicant, its officials, or employees to be liable. This provision shall not be construed to limit the applicant in asserting any rights or defenses. Additionally, the applicant shall include in any contracts into which it enters for maintenance, operation, or inspection of the traffic control device this same obligation to indemnify the Commonwealth and its officers, agents, and employees; and it shall require its contractor(s) to provide public liability insurance coverage, naming the Commonwealth and the applicant as additional insureds for bodily injury, including death and property damage, in the minimum amounts of \$500,000 per person, \$1,000,000 per occurrence, it being the intention of parties to have the contractor fully insure and indemnify the Commonwealth and the applicant.

The applicant shall comply with the study and ordinance requirements of 75 Pa. C.S. § 6109. The applicant submits this application with the intention of being legally bound.

Neither this application nor any Traffic Signal Permit creates any rights or obligations with respect to parties other than the applicant and the Department. Third parties may not rely upon any representations made by either the applicant or the Department in connection with the submission or approval of this application or any work permitted or approved that is related to this application, as regards either payment of funds or performance of any particular item of maintenance precisely as specified.

The applicant agrees to comply with the attached Exhibits:

- Exhibit "A": Preventative and Response Maintenance Requirements (Sheet 3 of 5 )
- Exhibit "B": Recordkeeping (Sheet 4 of 5 )
- Exhibit "C": Signal Maintenance Organization (Sheet 5 of 5 )

Printed Municipal Contact Name : Robert Pingar \_\_\_\_\_ Date : \_\_\_\_\_

Signed By : \_\_\_\_\_ Witness or Attest : \_\_\_\_\_

Title of Signatory : Township Manager \_\_\_\_\_ Title of Witness or Attester: \_\_\_\_\_

**Exhibit "A":**  
**Preventative and Response Maintenance**  
**Requirements**



County : \_\_\_\_\_  
 Engineering District : \_\_\_\_\_  
 Department Tracking # : \_\_\_\_\_  
 Initial Submission Date : \_\_\_\_\_

**Preventive Maintenance**

The APPLICANT or its contractor will provide preventive maintenance for each individual component of the traffic signal installation covered by this application at intervals not less than those indicated in the Preventive Maintenance Summary, PA DOT Publication 191, current version. This is the recommended level of maintenance to keep the intersection control equipment and signals in mechanically, structurally and aesthetically good condition.

**Response Maintenance**

The APPLICANT or its contractor will provide response maintenance in accordance with the provisions of the Response Maintenance Schedule. It encompasses the work necessary to restore a traffic signal system to proper and safe operation. Includes Emergency Repair and Final Repair.

**FINAL REPAIR:**

Repair or replace failed equipment to restore system to proper and safe operation in accordance with permit within a 24-hour period.

**EMERGENCY REPAIR:**

Use alternative means or mode to temporarily restore system to safe operation within a 24-hour period. Final repair must then be completed within 30 days unless prohibited by weather conditions or availability of equipment.

**Response Maintenance Schedule**

<u>KNOCKDOWNS</u>	<u>TYPE OF REPAIR PERMITTED</u>
Support - Mast arm	Emergency or Final
Support - Strain pole	Emergency or Final
Span wire/tether wire	Final Only
Pedestal	Emergency or Final
Cabinet	Emergency or Final
Signal heads	Final Only
 <u>EQUIPMENT FAILURE</u>	
Lamp burnout (veh. & ped.)	Final Only
Local controller	Emergency or Final
Master controller	Emergency or Final
Detector sensor	
- Loop	Emergency or Final
- Magnetometer	Emergency or Final
- Sonic	Emergency or Final
- Magnetic	Emergency or Final
- Pushbutton	Emergency or Final
Detector amplifier	Emergency or Final
Conflict monitor	Final Only
Flasher	Final Only
Time clock	Emergency or Final
Load switch/relay	Final Only
Coordination unit	Emergency or Final
Communication interface, mode	Emergency or Final
Signal cable	Final Only
Traffic Signal Communications	Final Only
Traffic Signal Systems	Final Only

**Exhibit "B":**  
Recordkeeping

County : \_\_\_\_\_  
 Engineering District : \_\_\_\_\_  
 Department Tracking # : \_\_\_\_\_  
 Initial Submission Date : \_\_\_\_\_

**Recordkeeping**

Accurate and up-to-date recordkeeping is an essential component of a good traffic signal maintenance program. In recognition of this fact, the APPLICANT must prepare, retain, and make available to the COMMONWEALTH, on request, a record of all preventive and response maintenance activities performed on the traffic signal equipment covered by this application.

The APPLICANT shall establish a separate file for each installation and keep its records in the municipal building, signal maintenance shop, or other weather-protected enclosure.

At a minimum, the following records will be kept by the APPLICANT or its contractor for each traffic signal. These forms can be found in Section 10.0, Maintenance Record Forms, PA DOT Publication 191, current version.

**FORM 1 - Master Intersection Record**

This form, which lists all maintenance functions performed at the intersection, should be updated within one day of the activity but no more than one week later.

**FORM 2 - Response Maintenance Record**

Each time response maintenance is required at the intersection, this form is to be completed. Once the pertinent information is transferred to the master intersection record, this form is to be placed in the intersection file.

**FORM 3 - Preventive Maintenance Record**

This form will be used to provide a record of the preventive maintenance activities performed at each intersection. The date, the activities performed, and the signature of the person in charge of the work must be recorded in the form.

This form may be kept at the intersection, if it is adequately protected from the weather. Form 1 must be updated at the central file, however, to reflect the date and activity.



**Exhibit "C":**  
**Signal Maintenance Organization**



County : \_\_\_\_\_  
 Engineering District : \_\_\_\_\_  
 Department Tracking # : \_\_\_\_\_  
 Initial Submission Date : \_\_\_\_\_

### Personnel Classifications

In order to properly maintain the traffic signal equipment covered by this applicant, the APPLICANT agrees to provide, as minimum, the following staff throughout the useful life of equipment. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191.

**Traffic Engineer** - The administrative position which has prime responsibility for the proper operation of traffic signal equipment. The principal function of this position is the supervision and control of subordinate personnel and the planning of their activities to ensure adequate preventive and response maintenance programs.

**Minimum Position Requirements**

1. A thorough understanding of traffic signal design, installation and maintenance.
2. A working knowledge of the interaction between the following traffic characteristics: intersection geometry, traffic flow theory, control type (fixed time, actuated, etc.), signal phasing and timing, and interconnection.
3. An ability to supervise subordinate personnel effectively in the assignment of their work.
4. Possession of a college degree in engineering, which includes course work in traffic engineering.
5. Either four years experience in the field of traffic engineering or its equivalent in graduate college work.

**Signal Specialist** - The individual responsible for the diagnostics and repair of all traffic signal equipment including solid state equipment.

**Minimum Position Requirements**

1. Extensive training and troubleshooting skills in electronics and software.
2. Ability to repair modules in the shop and to design test equipment needed to diagnose and repair a problem.
3. Ability to make design and modifications to implement or omit special functions.
4. Ability to implement a recordkeeping system to include maintenance activities, inventory control and identification of recurring problems.
5. Ability to perform all tasks required of a signal technician.

**Signal Technician** - Individual responsible for the operation and maintenance of traffic signals and electromechanical equipment.

**Minimum Position Requirements**

1. Ability to perform response maintenance on solid state equipment up to the device exchange level.
2. Capability to diagnose a vehicle loop failure and initiate corrective action.
3. Ability to tune detector amplifiers.
4. Ability to follow wiring schematics, check and set timings from plan sheet and check all field connections.
5. Ability to perform preventive maintenance on all equipment and to maintain accurate records of all work performed.

### Training

The APPLICANT agrees to secure training in order to upgrade the ability of its present staff to properly perform the required maintenance functions. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191.

### Budget Requirements

The APPLICANT agrees to provide, in its annual operating budget, dedicated funds which are sufficient to cover the cost of the personnel, training, contractors (if utilized) and specialized maintenance equipment which are required, by virtue of this application. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191..

## Application Instructions



### A - Applicant's (Municipal) Contact Information

**Municipal Contact's Name:** Provide the municipal contact name that is (or will be responsible) for the traffic signal. Typically this is either the Municipal Manager or Roadmaster.

**Title:** Provide the title of the municipal contact name.

**Municipal Name:** Provide the official municipal name.

**Municipal Address:** Provide the full address of the municipal building.

**Municipal Phone Number:** Provide the municipal phone number of the municipal contact.

**Alternative Phone Number:** Provide an alternative phone number of the municipal contact.

**E-mail Address:** Provide the e-mail address of the municipal contact.

**Municipal Hours of Operation:** Please provide the municipalities normal operating hours (i.e. Monday-Thursday 9 AM - 2 PM)

### B - Application Description

**Location (intersection):** Please provide a detailed location of the device or devices being considered for approval.

Please include any State Route and/or local road names in your description.

**Traffic Control Device is:** (Please select one of the two following categories)

**NEW Traffic Signal:** This item should be selected when requesting approval of a traffic signal that is currently not in operation at the device location indicated above.

**EXISTING Traffic Signal:** This item should be selected when requesting approval to make a modification or update to an existing traffic signal.

**(Permit Number):** Please provide the traffic signal permit number.

**Type of Device (select one):** (Please select one of the four following categories)

**Traffic Control Signal:** As defined in federal Manual on Uniform Traffic Control Devices (MUTCD) Sections 4D, 4E, and 4G. When selecting this category this is the typical red/yellow/green and pedestrian signal indications

**Flashing Beacon:** As defined in federal Manual on Uniform Traffic Control Devices (MUTCD) Section 4L. When selecting this category, this is typically either the flashing yellow/red signal at an intersection and/or the flashing yellow warning sign.

**School Warning System:** As defined in federal Manual on Uniform Traffic Control Devices (MUTCD) Section 7B. When selecting this category, this is typically the flashing school warning sign with a 15 mph indication.

**Other:** When selecting this category, this pertains to all other permitted electrically powered traffic control devices approved by the Department.

**Is Traffic Signal part of a system?:** Check off the appropriate box, either YES or NO. If YES, please fill in the System Number (if applicable): line.

**Explain the proposed improvements:** Provide a description of the proposed improvements to the intersection. This may be as complex as installing and/or upgrading a traffic signal or as non-complex as placement of a new traffic sign to supplement an existing traffic signal.

**Associated with Highway Occupancy Permit (HOP)?:** Check off the appropriate box, either YES or NO. If YES, please fill in the Application #: line.

### C - Maintenance and Operation Information

**Maintenance and Operations are typically performed by?:** Please indicate if maintenance and operation will be performed by Municipal Personnel or through Contract Services.

**Maintenance and Operations Contact Name:** Provide the primary maintenance contact name for the individual that is (or will be responsible) for the maintenance and operation of the traffic signal.

**Company/Organization:** Provide the name of the company/organization with which the primary maintenance contact is affiliated.

**Phone #:** Provide the phone number for the primary maintenance contact.

**Alternative Phone #:** Provide an alternative phone number for the primary maintenance contact or affiliated company/organization.

**E-mail:** Provide the e-mail address for the primary maintenance contact.

### D - Attachments Listing

Check off all documents which will be submitted along with this application. Note that a Municipal Resolution, authorizing the municipal contact to submit and sign the application, is a required document.

A sample Municipal Resolution has been provided on the next page.

### E - Applicant (Municipal) Certification

**Printed Municipal Contact Name:** Please print the name of the municipal contact person signing the application.

**Date:** Please provide the date on which the application was signed.

**Signed By:** Please provide the signature of the named municipal contact.

**Title of Signatory:** Please provide the title of municipal contact.

**Witness or Attest:** Please provide the signature of the person witnessing or attesting the signature.

**Witness or Attester:** Please provide the title of the person witnessing or attesting the signature.

**ORDINANCE 2019-07**

**WESTTOWN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE TOWNSHIP OF WESTTOWN, CHESTER COUNTY, PENNSYLVANIA, AMENDING ARTICLE II, TRAFFIC REGULATIONS, CHAPTER 162, VEHICLES AND TRAFFIC, §162-7 SPEED LIMITS, OF THE CODE OF WESTTOWN BY PROVIDING FOR A 35 M.P.H. SPEED LIMIT FOR THE ENTIRE LENGTH OF ORVIS WAY, UPON DEDICATION TO WESTTOWN TOWNSHIP.**

**BE IT ENACTED AND ORDAINED** by the Board of Supervisors of Westtown Township, Chester County, Pennsylvania, that §162-7 of the Code of Westtown Township, as amended, be amended as follows:

**SECTION 1.** Amend Article II, Traffic Regulations, Chapter 162, Vehicles and Traffic, §162-7, Speed limits, of the Code of the Township of Westtown by adding the following language:

<u><b>Name of Street</b></u>	<u><b>Speed Limit</b></u>	<u><b>Location</b></u>
<b>Orvis Way</b>	<b>35 MPH</b>	<b>Entire Length</b>

**SECTION 2.** If any sentence, clause, section or part of this ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**SECTION 3.** All ordinances or parts of ordinances conflicting with any provisions of this ordinance are hereby repealed insofar as the same affects this ordinance.

**SECTION 4.** This amendment shall take effect and be in full force and effect five (5) days from and after the date of its final passage and adoption.

**ENACTED AND ORDAINED** by the Board of Supervisors of Westtown Township,  
Chester County, Pennsylvania this \_\_\_\_\_ day of \_\_\_\_\_, 2019

**ATTEST:**

**WESTTOWN TOWNSHIP  
BOARD OF SUPERVISORS**

\_\_\_\_\_  
Robert R. Pingar, Secretary

\_\_\_\_\_  
Scott E. Yaw, Chair

\_\_\_\_\_  
Michael T. Di Domenico, Vice Chair

\_\_\_\_\_  
Carol R. De Wolf, Police Commissioner



# CITIZENS POLICE ACADEMY

## APPLICATIONS NOW BEING ACCEPTED FOR THE 2019 WESTTOWN-EAST GOSHEN REGIONAL POLICE DEPARTMENT'S CITIZENS POLICE ACADEMY

The Citizens Police Academy is a revolutionary concept in law enforcement and community policing. As part of its continuing mission to provide the optimum in service, performance and dedication to the community, the Westtown-East Goshen Regional Police Department has designed a Citizens Police Academy that will enable citizens to have a better understanding of the operations of the Police Department and its Officers. In addition, citizens will develop a greater awareness and appreciation of the challenges and decisions faced by Westtown-East Goshen Police Officers on a daily basis. Class size is limited to 16 participants and will close once the first 16 applications are processed and approved. At the conclusion of the CPA, graduates of the academy will qualify to submit a request for our ride-along program.

Academy participants will attend one night a week (**Tuesday**) for approximately **three** hours per night for a period of 13 weeks. **The next Citizens Police Academy classes will begin on Tuesday, September 03, 2019, at 6:30 P.M. at the Westtown-East Goshen Regional Police Department located at 1041 Wilmington Pike, West Chester, PA 19382.**

Topics will include:

- Police Patrol Operations
- Criminal Investigations and Crime Scene Processing
- CPR and First Aid Certification
- The Court System and Mock Preliminary Hearing
- Traffic Enforcement/Accident Investigation and Reconstruction/Commercial Vehicles
- Community Policing, Safe Schools and Active Shooter overview
- 911 Operations Center
- Drug Law Enforcement and the Opioid Crisis

Requirements for participation and completion of the Citizens Police Academy:

- Applicants must be 18 years of age
- Applicants must submit an application
- Applicants will be subject to a complete background check (criminal history/driving history) and each application will be confidentially reviewed/approved by the Chief

**A \$27.00 dollar non-refundable processing fee is due at the time the application is submitted to cover costs associated with the CPR/First Aid certification.**

For more information or to receive an application contact the Westtown-East Goshen Regional Police Department at 610-692-9600 or by e-mail: [cpa@wegopd.org](mailto:cpa@wegopd.org)

For more information or to download an application, visit our website at:

<https://chester.crimewatchpa.com/wegopd/53548/content/community-programs>



## **Neighborhood University 2019 to Start September 12**

The West Chester Area Council of Governments is proud to announce that another year of Neighborhood University is set to begin on September 12, 2019. This free program offers the opportunity to learn about local government, tour public facilities, and better understand available municipal services and resources. The goal is to provide area residents with the tools necessary to be better advocates for their community.

Neighborhood University of Greater West Chester is open to any resident or business owner, age 16 or older, from one of the participating communities: East Bradford Township, East Goshen Township, Thornbury Township (Chester County), West Chester Borough, West Goshen Township, West Whiteland Township, and Westtown Township.

Local officials will cover topics including the structure of local government in Pennsylvania, public safety, zoning and land development, multi-modal transportation, stormwater management, transportation, Public Works infrastructure, public finance, and fire and police services.

Registration has begun and class size is limited. Sessions will be held on Thursdays from 7:00 to 9:00 pm in various locations throughout the greater West Chester area. Once enrollment is confirmed the course schedule and session locations will be distributed to participants. More information can be found at [www.nugwc.org](http://www.nugwc.org).

**CONTACT PERSON:** Mimi Gleason, West Whiteland Township Manager ([admin@westwhiteland.org](mailto:admin@westwhiteland.org)) or call (610) 363-9525.



# WESTTOWN DAY

*Sunday, September 29*



## OAKBOURNE MANSION

11 AM - 3 PM

1014 S. CONCORD ROAD

WEST CHESTER, PA

[WWW.WESTTOWNDAY.COM](http://WWW.WESTTOWNDAY.COM)

LIVE MUSIC

CARNIVAL GAMES & FOOD TRUCKS

PETTING ZOO & PONY RIDES

CIVIL AND REVOLUTIONARY WAR REENACTORS

KIDS ARCHAEOLOGICAL DIG

PUMPKIN DECORATING

LOCAL BUSINESSES, SCHOOLS & ORGANIZATIONS



Hosted by the Westtown Township Historical and  
Parks & Recreation Commissions. No Pets Please.

**Check Register****Westtown Township**

16-Aug-19

From: 16-Jul-19 To: 19-Aug-19

<b>Check No</b>	<b>Check Date</b>	<b>VendorNo</b>	<b>Vendor</b>	<b>Check Amount</b>	<b>Status</b>
<b>Bank Account: 1 GENERAL FUND</b>					
15065	7/17/2019	6958	Capital One Bank	\$93,572.61	R
15066	7/18/2019	5431	Big Air Cinema	\$525.00	R
15067	7/18/2019	222	Brandywine Valley SPCA	\$163.90	R
15068	7/18/2019	5367	Carol De Wolf	\$50.00	O
15069	7/18/2019	7196	GreatAmerica Financial Svcs	\$171.00	R
15070	7/18/2019	847	Marco Protection Systems, LL	\$268.00	R
15071	7/18/2019	5992	Michael DiDomenico	\$50.00	R
15072	7/18/2019	7327	Scott E Yaw	\$50.00	R
15073	7/18/2019	5738	StrategicLink Consulting, LLC	\$1,593.75	R
15074	7/18/2019	5379	TPS Graphics	\$2,650.00	R
15075	7/18/2019	860	TrueNet, Inc	\$120.00	R
15076	7/18/2019	5640	WC Area School District	\$5,001.75	R
15077	7/18/2019	5640	WC Area School District	\$4,312.03	R
15079	7/31/2019	5438	20/10 Solutions	\$870.00	O
15080	7/31/2019	6038	Cedarville Engineering Group	\$14,712.54	O
15081	7/31/2019	405939	Charles E. Jackson	\$117.85	O
15082	7/31/2019	58	East Goshen Township	\$308.80	O
15083	7/31/2019	405940	Ed Kappenstein	\$327.00	O
15084	7/31/2019	1082	ELEANOR J. SCHWANDT, R	\$1,322.50	O
15085	7/31/2019	405941	Friends of Hopewell Furnace	\$400.00	O
15086	7/31/2019	7196	GreatAmerica Financial Svcs	\$46.00	O
15087	7/31/2019	492	H. A. Thomson Co.	\$400.00	O
15088	7/31/2019	405420	H.A.R.I.E	\$37,852.00	O
15089	7/31/2019	7215	Looney Balloons	\$250.00	O
15090	7/31/2019	5960	PSAR	\$85.00	O
15091	7/31/2019	5562	Robert E. Little, Inc.	\$1,557.92	O
15092	7/31/2019	405942	Warwick Township	\$150.00	O
15093	7/31/2019	7	Westtown-East Goshen PD	\$214,864.49	O
15095	8/7/2019	605	ALPHA SPACE CONTROL C	\$13,700.70	O
15096	8/7/2019	1009	Ann Marie Cassidy	\$850.00	O
15097	8/7/2019	405753	Bridget Stockmal	\$109.92	O
15098	8/7/2019	6171	C.V.D.A	\$525.44	O
15099	8/7/2019	6171	C.V.D.A	\$6,422.12	O
15100	8/7/2019	6038	Cedarville Engineering Group	\$35,500.49	O
15101	8/7/2019	1201	Charles A. Higgins & Sons, Inc	\$4,213.41	O



**Check Register****Westtown Township**

16-Aug-19

From: 16-Jul-19 To: 19-Aug-19

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
15102	8/7/2019	1230	Haines Landscaping & Tree S	\$5,000.00	O
15103	8/7/2019	127	In-Fleet Truck Service	\$3,070.50	O
15104	8/7/2019	405884	JHL Landscaping	\$106.00	O
15105	8/7/2019	885	Ronald M. Agulnick, Attorney	\$4,200.00	O
15106	8/7/2019	6451	Yale Electric Supply CO	\$935.07	O
15107	8/15/2019	6171	C.V.D.A	\$2,908.53	O
15108	8/15/2019	6171	C.V.D.A	\$1,606.00	O
15109	8/15/2019	6171	C.V.D.A	\$473.00	O
15110	8/15/2019	6958	Capital One Bank	\$86,648.77	O
15111	8/15/2019	960	CONTRACTORS CHOICE	\$36.98	O
15112	8/15/2019	6995	Ferguson Enterprises Inc #50	\$25.32	O
15113	8/15/2019	1206	Freedom Systems Corporation	\$3,754.00	O
15114	8/15/2019	7196	GreatAmerica Financial Svcs	\$171.00	O
15115	8/15/2019	5424	Historic Yellow Springs, Inc.	\$135.56	O
15116	8/15/2019	878	Intercon Truck Equipment	\$81.12	O
15117	8/15/2019	1061	McCormick Taylor	\$5,785.00	O
15118	8/15/2019	153	Rothwell Document Solutions	\$287.00	O
15119	8/15/2019	860	TrueNet, Inc	\$120.00	O
<b>Bank Total:</b>				<b>\$558,458.07</b>	
<b>Bank Account: 8 WASTEWATER FUND</b>					
3361	7/23/2019	6468	Carroll Engineering Corp	\$10,711.40	R
3362	7/23/2019	405677	Aqua PA General Accounting	\$75.00	O
3363	7/23/2019	6468	Carroll Engineering Corp	\$8,391.76	R
3364	7/23/2019	996	THE PROTECTION BUREAU	\$360.00	R
3365	8/1/2019	6468	Carroll Engineering Corp	\$4,680.50	O
3366	8/1/2019	7140	HAJOCA CORPORATION	\$748.12	O
3367	8/1/2019	1196	McGovern, Inc.	\$1,664.00	O
3368	8/1/2019	357	W. G. Malden	\$405.80	O
3369	8/8/2019	6468	Carroll Engineering Corp	\$1,439.60	O
3370	8/8/2019	5630	Commonwealth of Pennsylvania	\$65.00	O
3371	8/8/2019	5630	Commonwealth of Pennsylvania	\$100.00	O
3372	8/8/2019	58	East Goshen Township	\$965.32	O
3373	8/8/2019	5666	M&B Environmental, Inc.	\$3,317.91	O
3374	8/8/2019	1164	Univar USA, Inc.	\$2,952.08	O
3375	8/8/2019	61	West Goshen Township (WW	\$57,679.27	O
<b>Bank Total:</b>				<b>\$93,555.76</b>	

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**Check Register****Westtown Township**

16-Aug-19

From: 16-Jul-19 To: 19-Aug-19

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Check No	Check Date	VendorNo	Vendor	Check Amount	Status
<b>Bank Account: 18 CAPITAL PROJECTS FUND</b>					
1175	7/23/2019	6468	Carroll Engineering Corp	\$14,299.80	R
1176	7/23/2019	405926	Established Traffic Control	\$6,800.00	V
1177	7/31/2019	6468	Carroll Engineering Corp	\$17,568.08	O
1178	7/31/2019	405926	Established Traffic Control	\$2,380.00	O
1179	8/15/2019	6468	Carroll Engineering Corp	\$3,924.00	O
1180	8/19/2019	405976	DOLI Construction Corporatio	\$293,517.70	O
			<b>Bank Total:</b>	<b>\$338,489.58</b>	
			<b>Total Of Checks:</b>	<b>\$990,503.41</b>	

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