

# WESTTOWN TOWNSHIP

1039 Wilmington Pike  
West Chester, PA 19382  
610-692-1930

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Westtown, PA 19395  
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[www.westtownpa.org](http://www.westtownpa.org)

## **AGENDA** **Westtown Township Board of Supervisors** **Workshop Agenda**

**Westtown Township Municipal Building**  
**1039 Wilmington Pike, Westtown**

**Monday, October 7, 2024**

**Start time: 6:00 PM Workshop**

- 1. Crebilly Land Acquisition Fundraising Campaign Update – 10 minutes**
- 2. Preliminary Budget 2025 – 45 minutes**
- 3. Stokes Estate Conditional Use Settlement Proposal – 25 minutes**
- 4. Public Comment on Workshop Items\* - 10 minutes**

*Tonight's Workshop will be viewable on Zoom via the following link:*

<https://us02web.zoom.us/j/89939917814><https://us02web.zoom.us/j/89939917814>

*Or by phone at: 646-558-8656*

*\*The public comment period at the end of the Workshop will last approximately 10 minutes. The public will be asked to limit their remarks to two minutes each to allow others an opportunity to speak. To the extent that further public comment is required, speakers will be asked to save their remarks until the Public Comment - Non-Agenda Items portion of the Regular Board of Supervisors Meeting.*

**2025  
CAPITAL PROJECTS  
FUND PLAN  
10/7/2024 DRAFT**



**CAPITAL PROJECTS FUND BUDGET CONSIDERATIONS**

**2025**

**Priority**

**Sewer Projects \$1,220,000 to \$2,220,000**

Pleasant Grove Pump Station Construction & Project Management	\$2,200,000	1
Possible Grant for PGPS (Grant awards proposed for September)	(\$1,000,000)	
Main Plant - Meter cabinets & electrical components (3)	\$20,000	1

**West Goshen Capital Projects \$45,000**

WGSA Capital Costs	\$45,000	
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**Storm Water Management \$60,000**

Pleasant Grove Stream study & apply for grants	\$60,000	
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**Administrative Building Upgrades \$100,000**

Software - To replace Freedom software - Land Management, Finance, Utility Billing, Taxes, etc.		1
Concept Plan for Admin building expansion (carry over from 2024 furniture budget)	\$50,000	1
Air conditioner replacement	\$20,000	2
Roof Replacement (budget for replacement in the next 5 years)	\$30,000	3

**Public Works \$140,000**

Replace 2013 F-350 Crew Cab (67-10)	\$80,000	
Replace 2016 F-150 Supercab (67-14)	\$60,000	

**Oakbourne Mansion/Park \$100,000**

Mansion - front window removal & replacement	\$20,000	1
Mansion - electrical service upgrade	\$25,000	2
Mansion - stained-glass repair (stairway windows)	\$25,000	2
Tow behind leaf vacuum	\$30,000	3

**Mansion Core Parking \$670,000 1**

Mansion Core Parking design & construction	\$670,000	1
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Note: If the cost estimate comes in higher, the balance will need to be funded by reserves

**Open Space - Crebilly Maint/Improvements \$387,800**

Tree Removal	\$20,500	
Fence Maintenance/Repairs	\$3,450	
Grass Seed	\$11,500	
Trail Markers	\$6,900	
Signage	\$4,600	
Abandon Wells	unknown	
Remove Oil Tanks	unknown	
Demolition of Structures	\$90,850	
Temporary Parking Area	\$125,000	
Open Space Master Plan (Engineering)	\$125,000	

**To be funded by SEWER RESERVES and/or BOND \$1,265,000 to \$2,265,000**

**To be funded by GENERAL RESERVES \$400,000**

**To be funded by ARPA Fund \$670,000**

**To be funded by Open Space \$387,800**

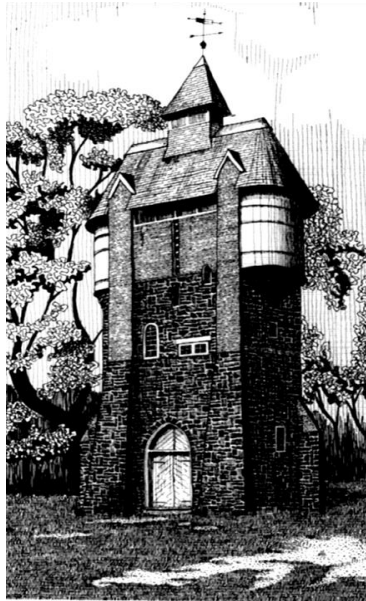
**TOTAL \$2,722,800 to \$3,722,800**

## CAPITAL PROJECTS - FUNDING SOURCES

The below figures are net expenses, based on receiving grants. Note that it may be necessary to transfer additional funds from the Capital Reserve Funds, until grant reimbursements are received.

		With PGPS Grant	Without PGPS Grant
<b>Capital Reserves (WW) or Bond</b>		<b><u>\$1,265,000</u></b>	<b><u>to \$2,265,000</u></b>
Pleasant Grove Pump Station Construction & Project Manage	2,200,000		
PGPS - Grant reimbursement	-1,000,000		
Main Plant - Meter cabinets & electrical components (3)	20,000		
WGSA Capital Costs	45,000		
<b>Capital Reserves (GF)</b>		<b><u>\$400,000</u></b>	
Pleasant Grove Stream study & apply for grants	60,000		
Mansion - front window removal & replacement	20,000		
Mansion - electrical service upgrade	25,000		
Mansion - stained-glass repair (stairway windows)	25,000		
Tow behind leaf vacuum	30,000		
Concept Plan for building addition	50,000		
Air conditioner replacement	20,000		
Roof Replacement (replacement in the next 5 years)	30,000		
Replace 2013 F-350 Crew Cab (67-10)	80,000		
Replace 2016 F-150 Supercab (67-14)	60,000		
<b>ARPA Fund</b>		<b><u>\$670,000</u></b>	
Mansion - core parking lot design paving	670,000		
<b>Open Space (OS)</b>		<b><u>\$387,800</u></b>	
Removing Trees	20,500		
Fence Maintenance/Repairs	3,450		
Grass Seed	11,500		
Trail Markers	6,900		
Signage	4,600		
Open Space Master Plan (Engineering)	125,000		
Abandon Wells	?		
Remove Oil Tanks	?		
Demolition of Structures	90,850		
Temporary Parking Area	125,000		
		With PGPS Grant	Without PGPS Grant
<b>TOTAL - All Sources</b>		<b><u>\$2,722,800</u></b>	<b><u>to \$3,722,800</u></b>

**WESTTOWN TOWNSHIP**  
**2025 Open Space Fund Draft Budget**



**10/7/2024**

**Open Space Revenues and Expenditures**

	<b>2023 Adopted</b>	<b>2023 Actual</b>	<b>2024 Adopted</b>	<b>2024 YTD 9/30/2024</b>	<b>2024 Year End Projection</b>	<b>2025 Proposed Budget</b>
<b>Open Space Revenues</b>						
<i>Beginning Balance</i>					<b>25,767</b>	<b>593,098</b>
<b><u>(301) Real Property Tax</u></b>						
04-301-110 RE Taxes - Electoral (0.42 mils)	169,290	169,548	336,000	335,529	339,096	339,000
04-301-400 RE Taxes - Delinquent			500	821	1,000	1,000
04-301-600 Interim Tax - Open Space		1,036	1,000	656	600	600
<b>Subtotal (301) Real Property Tax</b>	<b>169,290</b>	<b>170,584</b>	<b>337,500</b>	<b>337,005</b>	<b>340,696</b>	<b>340,600</b>
<b><u>(310) Act 511 Taxes</u></b>						
04-310-100 RE Transfer Tax (For Crebilly Sale Only)			103,049	0	0	103,049
04-310-210 EIT Taxes - Electoral (0.08%)	173,400	155,087	404,600	283,731	377,450	412,000
<b>Subtotal (310) RE Tax</b>	<b>173,400</b>	<b>155,087</b>	<b>507,649</b>	<b>283,731</b>	<b>377,450</b>	<b>515,049</b>
<b><u>(341) Interest Earnings</u></b>						
04-341-000 Interest Earnings	4,000	3,432	40,000	9,939	12,000	25,000
<b>Subtotal (301) RE Tax</b>	<b>4,000</b>	<b>3,432</b>	<b>40,000</b>	<b>9,939</b>	<b>12,000</b>	<b>25,000</b>
<b>Total Open Space Fund Revenues</b>	<b>346,690</b>	<b>329,103</b>	<b>24,136,249</b>	<b>630,675</b>	<b>1,090,146</b>	<b>880,649</b>
<b>OTHER FUNDING SOURCES</b>						
General Fund Advance (loan)				4,000,000		
General Fund Reserves Advance (loan)				4,206,750		
Bond Proceeds						
Wire From Natural Lands Trust						

## Open Space Revenues and Expenditures

	2023 Adopted	2023 Actual	2024 Adopted	2024 YTD 9/30/2024	2024 Year End Projection	2025 Proposed Budget
<b>Open Space Fund Expenditures</b>						
<b><u>(403) Tax Collection</u></b>						
04-403-310 Open Space EIT Tax Commission	1,734	1,922	4,046	3,331	4,046	4,200
<b>Subtotal (403) Tax Collection</b>	<b>1,734</b>	<b>1,922</b>	<b>4,046</b>	<b>3,331</b>	<b>4,046</b>	<b>4,200</b>
<b><u>(411) Volunteer Fire/EMT Credit</u></b>						
04-411-510 Volunteer Fire/EMT Credit	0	0	0	369	369	400
<b>Subtotal (403) Tax Collection</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>369</b>	<b>369</b>	<b>400</b>
<b><u>(450) Open Space Repairs/Maint./Improvements</u></b>						
04-450-313 Engineering Planning	0		0	0	0	125,000
04-450-314 Legal Fees				1,100	5,000	2,500
04-450-370 Repairs, Maint. Improvements	0	0	50,000	0		262,800
<b>Subtotal (461) Conservation of Natural Resources</b>	<b>0</b>	<b>0</b>	<b>50,000</b>	<b>1,100</b>	<b>5,000</b>	<b>390,300</b>
<b><u>(461) Conservation of Natural Resources</u></b>						
04-461-310 Conservation Prof Services	0	121,000	0	0	0	
04-461-700 Land Acquisition	0	0	20,815,797	0	90,000	0
<b>Subtotal (461) Conservation of Natural Resources</b>	<b>0</b>	<b>121,000</b>	<b>20,815,797</b>	<b>0</b>	<b>90,000</b>	<b>0</b>
<b><u>(471) Debt Principal</u></b>						
04-471-000 Debt Principal (For Bridge Loan & Interest below)						0
04-471-100 Crebilly Farm Family Assoc Loan Principal		180,000	1,771,812	0	180,000	0
<b>Subtotal (471) Debt Principal</b>	<b>0</b>	<b>180,000</b>	<b>1,771,812</b>	<b>0</b>	<b>180,000</b>	<b>0</b>
<b><u>(475) Debt Service</u></b>						
04-475-000 Fiscal Agent Fees			75,000	0		750
<b>Subtotal (472) Debt Interest</b>	<b>0</b>	<b>0</b>	<b>75,000</b>	<b>0</b>	<b>0</b>	<b>750</b>
<b><u>(491) Refunds of Prior Year Revenues</u></b>						
04-491-010 Open Space RE Tax Refund		415	0	0	0	
<b>Subtotal (472) Debt Interest</b>	<b>0</b>	<b>415</b>	<b>0</b>	<b>0</b>		<b>0</b>

**Open Space Revenues and Expenditures**

	<b>2023 Adopted</b>	<b>2023 Actual</b>	<b>2024 Adopted</b>	<b>2024 YTD 9/30/2024</b>	<b>2024 Year End Projection</b>	<b>2025 Proposed Budget</b>
<b><u>(492) Interfund Operating Transfers</u></b>						
01-492-010 Transfer to General Fund						
04-492-023 Transfer to Debt Svc/Series 2024			248,400		248,400	573,600
<b>Subtotal (492) Interfund Operating Transfers</b>	<b>0</b>	<b>0</b>	<b>248,400</b>	<b>0</b>	<b>248,400</b>	<b>573,600</b>
<b>Total Open Space Fund Expenditures:</b>	<b>1,734</b>	<b>303,336</b>	<b>22,915,055</b>	<b>3,331</b>	<b>522,815</b>	<b>969,250</b>
<b>Total Open Space Fund Revenue</b>	<b>346,690</b>	<b>329,103</b>	<b>24,136,249</b>	<b>630,675</b>	<b>1,090,146</b>	<b>880,649</b>
<b>Total Open Space Fund Expenditures</b>	<b>1,734</b>	<b>303,336</b>	<b>22,915,055</b>	<b>3,331</b>	<b>522,815</b>	<b>969,250</b>
<b>Total Open Space Fund Balance</b>	<b>344,956</b>	<b>25,767</b>	<b>1,221,194</b>	<b>627,345</b>	<b>567,331</b>	<b>(88,601)</b>
 <b>Projected General Fund Year End Cash Balance</b>					<b>593,098</b>	<b>504,497</b>



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FOX CLEARING, LLC,  
vs.  
BOARD OF SUPERVISORS OF  
WESTTOWN TOWNSHIP,

Appellant,  
  
  
Appellee.

IN THE COURT OF COMMON  
PLEAS OF CHESTER COUNTY

NO. 2024-01326-ZB

LAND USE APPEAL

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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between FOX CLEARING, LLC (“**Fox**” or “**Developer**”), and the BOARD OF SUPERVISORS (“**Board**”) OF WESTTOWN TOWNSHIP (“**Township**”) (each a “**Party**”, collectively the “**Parties**”).

**BACKGROUND**

1. Fox Clearing, LLC, is a Pennsylvania limited liability company having a business address of 227 Granite Run Drive, Suite 100, Lancaster, Pennsylvania 17601.
2. The Board of Supervisors of Westtown Township is the governing body of Westtown Township having a principal place of business located at 1039 Wilmington Pike, West Chester, Pennsylvania 19382.
3. Fox is the owner and/or equitable owner of four parcels of land totaling approximately 81 acres located along Shiloh Road in the Township, more specifically designated as Uniform Parcel Identifier (“**UPI**”) #67-2-23 (64.956 acres); #67-2-8 (9.133 acres); #67-2-9 (1.133 acres); and #67-2-7.1 (5.664 acres) (collectively, the “**Property**”).
4. The Property is located on the east side of Shiloh Road about one-half mile south of Little Shiloh Road, generally opposite the intersections of Shiloh and Oakbourne Roads and Shiloh Road and Hunt Drive.

5. The Property is in the Township's R-1 Residential Zoning District ("**R-1 District**") of the Township's Zoning Ordinance.

6. Section 170-601.C.(1) of the Zoning Ordinance permits residential development in accordance with the provisions of Article IX (Flexible Development Procedure) of the Zoning Ordinance by conditional use. Single-family detached dwellings are permitted in flexible developments pursuant to Section 170-903.A of the Zoning Ordinance.

7. On May 4, 2023, Fox submitted a Conditional Use Application ("**Application**") to develop the Property under the Flexible Development Procedure of the Zoning Ordinance.

8. Fox proposed to develop the Property with a single-family residential development consisting of eighty-five (85) single-family homes together with the construction of internal streets, utilities, stormwater management facilities, landscaping, lighting, community recreation facilities and other associated development improvements ("**Proposed Development**").

9. The Proposed Development proposed the demolition and removal of the existing Stokes house and the Miles house while the O'Brien house and the Briner house are proposed to remain on the Property.

10. The Proposed Development will be serviced by public water and public sewer.

11. On August 14, 2023, the Board commenced a hearing on the Application that concluded on December 27, 2023 after four (4) nights of testimony.

12. On December 27, 2023, the Board voted orally to deny the Application and on February 1, 2024, the Board issued the written decision denying the Application ("**Decision**").

13. On February 14, 2024, Fox appealed the Decision ("**Appeal**").

14. Subsequent to Fox filing the Appeal, the Parties negotiated and agreed upon a

settlement of the Appeal.

15. By entering into this Agreement, the Parties now desire to memorialize in writing their understanding of the terms of the settlement, including modifications to the Proposed Development.

**NOW, THEREFORE**, in consideration of the facts set forth in the Background of this Agreement, and in consideration of the mutual covenants and agreements contained herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. **Incorporation of Background.** The Background to this Agreement is incorporated into the body of this Agreement as if fully set forth herein at length.

2. **Approval of the Agreement.** Execution of this Agreement by the Board shall occur only after the Board has voted to approve this Agreement at a public meeting and after public comment.

3. **Settlement of Land Use Appeal and Court Approval.** This Agreement shall serve as the basis for a negotiated settlement of the Appeal. Immediately after the Parties execute this Agreement, counsel for the Parties shall execute and file a Joint Motion to Approve Settlement Agreement by attaching a copy of this Agreement and requesting the Court enter an Order approving this Agreement.

4. **Proposed Development and Future Use of the Property.** The Parties agree to permit Developer to design, engineer, construct, develop, and/or use the Property for seventy-eight (78) single family homes (“**Modified Proposed Development**”) substantially in accordance with the conceptual site plan entitled “Settlement Plan – Overall Site Plan” prepared by DL Howell dated February 28, 2024, last revised July 11, 2024, a copy of which is attached as **Exhibit “A”** (“**Settlement Plan**”).

The Modified Proposed Development proposes the preservation of the existing Stokes homes and the construction of an additional internal street to connect to proposed Road “C” in the Modified Proposed Development. The preservation of the Stokes home shall include the recording of a façade easement similar to the form of easement attached as **Exhibit “B” (“Façade Easement”)**. The Façade Easement shall be recorded only against the future Stokes home lot and not the entire Property.

The Modified Proposed Development also proposes the construction of a school bus stop together with a car pullover area. The school bus stop and car pullover area will be further designed during the land development process and is subject to input from the West Chester Area School District.

At the time of this Agreement, the Modified Proposed Development has been determined to deviate from the Township’s Zoning Ordinance, Subdivision and Land Development Ordinance (“**SALDO**”) and Stormwater Management Ordinance (“**SWMO**”) as detailed in attached **Exhibit “C”**. Additional SALDO and SWMO waivers may be requested during review of the Land Development Application set forth below.

5. **Land Development Application.** After the execution of this Agreement and the issuance of the Court’s Order approving this Agreement, the Developer, at its discretion, will cause its engineer to prepare and submit a land development application (“**Land Development Application**”) for the Modified Proposed Development substantially in accordance with: (i) the Settlement Plan and (ii) the terms of this Agreement (collectively, the “**Standards**”). If the Land Development Application complies with the Standards and the applicable Township Ordinances, as may be further modified or waived in accordance with the Pennsylvania Municipalities Planning Code and the SALDO, then the Board shall approve the Land

Development Application.

6. **Disputes with Regard to Land Development Application.** If any disputes arise between the Parties with respect to the engineering of the Land Development Application, then the Parties shall communicate and meet to resolve such disputes. If the Parties cannot resolve their dispute, then the Parties may avail themselves of the mediation option provided for in the Pennsylvania Municipalities Planning Code or either Party may petition the Court for appropriate relief and enforcement of this Agreement.

7. **Sanitary Sewer for the Modified Proposed Development.** The Modified Proposed Development shall be serviced by public sanitary sewer via the Township public sewer system with treatment and disposal at the Chester Creek wastewater treatment plant. An on-site sewer pump station and force main will be constructed to convey wastewater generated by the Modified Proposed Development into the Township's public sewer system connecting at an existing manhole at the intersection of Shiloh Road and Farm Lane.

8. **Sewage Facilities Planning.** On May 7, 2023, the Pennsylvania Department of Environmental Protection ("DEP") approved sewage facilities planning for a portion of the Property. The Developer shall prepare and submit to the Township a revised sewage facilities planning module for the Modified Proposed Development to be constructed on the entire Property. The Township shall review the planning module in accordance with DEP's sewage facilities planning regulations and any applicable Township ordinances. Upon approval of the planning module, the Township shall forward it to DEP for DEP's review and approval. The Township shall assist the Developer in responding to DEP review comments and requests for additional information.

9. **Sewer Tapping Fee for the Modified Proposed Development.** At the time of

building permit application for each single-family home in the Modified Proposed Development, the Developer shall pay the then current sewer tapping fee per equivalent dwelling unit (“EDU”) for conveyance and treatment capacity in the Township public sewer system.

10. **NPDES Permit.** The Developer shall obtain the required stormwater NPDES permit from DEP or Chester County Conservation District for the Modified Proposed Development.

11. **Dedicated and Non-dedicated Improvements.**

(A) **Open Space:** The open space in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by a future homeowners’ association created for the Modified Proposed Development.

(B) **Shiloh Road Additional Right of Way and Road Calming:** The Developer shall offer the additional right of way along Shiloh Road delineated on the Settlement Plan and the Board shall accept dedication of the additional right of way at the time as specified in a future development improvements agreement between the Parties. Concurrent with the recording of the final land development plans, the Developer shall contribute fifty thousand dollars (\$50,000) to the Township to be used for traffic calming measures along Shiloh Road.

(C) **Traffic Signal Retiming at Route 926 and Shiloh Road:** As part of the Modified Proposed Development, the Developer shall retime the existing traffic signal at Route 926 and Shiloh Road to optimize levels of service at the intersection post-Modified Proposed Development.

(D) **Roads and Sidewalks:** The roads and sidewalks in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by either the individual homeowners or a future homeowners’ association created for the Modified Proposed

Development.

(E) Retaining walls: The retaining walls in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by a future homeowners' association created for the Modified Proposed Development.

(F) Trails: The trails constructed in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by a future homeowners' association created for the Modified Proposed Development and shall be subject to an easement for public pedestrian use only (no bicycles or motorized equipment).

(G) Sewer: The Modified Proposed Development's sewer collection system and pump station will be dedicated to and accepted by the Township in accordance with a future development improvements agreement to be entered into between the Parties.

12. **Site Grading and Earth Disturbance**. The Developer may not commence site grading and clearing until the Developer has obtained the required Erosion and Sedimentation Control adequacy approval and NPDES permit for the Modified Proposed Development and has posted the required financial security for such grading and disturbance with the Township.

13. **Future Homeowners' Disclosure**. At the time of entering into agreements of sale for the new home lots in the Modified Proposed Development, the Developer shall disclose in writing the existence and locations of the two (2) pipelines on the Property and the general contents being conveyed through the pipelines to any individual new home purchaser.

14. **Miscellaneous**.

(A) **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(B) **Specific Performance and Enforcement of Settlement Agreement**. The

Parties agree that, in addition to all remedies at law, either may petition the Chester County Court of Common Pleas for specific performance and/or enforcement of this Agreement without having to exhaust administrative remedies. The Parties further agree the Court shall retain jurisdiction of the Appeal for purposes of enforcing the terms of this Agreement.

(C) **Entire Agreement.** This Agreement shall constitute the entire agreement among the Parties and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof.

(D) **Amendment.** This Agreement may be amended upon the written consent of the Parties to this Agreement, which shall not be unreasonably withheld. No waiver or discharge of any provision of this Agreement shall be effective against any party unless that party shall have consented thereto in writing.

(E) **Assignment.** This Agreement may be assigned by the Developer, subject to the Board's approval, which shall not be unreasonably withheld. No assignment shall be effective without the assignee's or successor's written assumption and acceptance of the obligations under this Agreement.

(F) **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

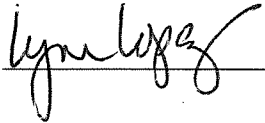
(G) **Notices.** All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail, postage prepaid or by private carrier guarantying next day delivery, to the address referenced in the Background above.

(H) **Counterparts.** This Agreement may be executed in multiple counterparts such that all counterparts together shall create a fully executed and complete Agreement.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

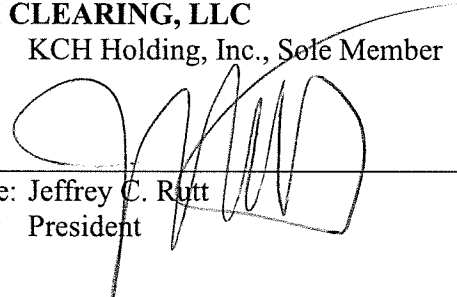
ATTEST:

  
\_\_\_\_\_

**FOX CLEARING, LLC**

By: KCH Holding, Inc., Sole Member

By: \_\_\_\_\_  
Name: Jeffrey C. Rutt  
Title: President



**BOARD OF SUPERVISORS OF  
WESTTOWN TOWNSHIP**

ATTEST:

\_\_\_\_\_

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

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

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

**EXHIBIT "A"**  
**SETTLEMENT PLAN**



**EXHIBIT "B"**  
**FAÇADE EASEMENT**

PREPARED BY: MORGAN, HALLGREN, CROSSWELL & KANE, P.C.  
700 NORTH DUKE STREET, P.O. BOX 4686  
LANCASTER, PA 17604-4686  
TELEPHONE: (717) 299-5251  
RETURN TO: MORGAN, HALLGREN, CROSSWELL & KANE, P.C.  
700 NORTH DUKE STREET, P.O. BOX 4686  
LANCASTER, PA 17604-4686  
TELEPHONE: (717) 299-5251

Parcel ID: Portion of (390) 52304-0-0000

**DEED OF EASEMENT**  
**(FACADE EASEMENT)**

This is a Deed of Easement made this 14<sup>TH</sup> day of DECEMBER 2020 with an effective date as provided in Paragraph 14 between Sonshine Holding, L.P., a Pennsylvania limited partnership (hereinafter referred to as "Owner"), and Somerford at Stoner Farm Community Association, a Pennsylvania non-profit corporation (hereinafter referred to as the "HOA").

**Background**

A. Owner is the legal owner of a certain tract of ground comprising approximately 49.58 net acres, more or less, located north of Eden Road and on the south side of Route 222, in Manheim Township, Lancaster County, Pennsylvania, as more specifically described in a deed recorded at Document No. 6544260 in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania (the "Tract").

B. Owner desires to develop the Tract in accordance with a certain final plan of subdivision for the development known as Stoner Farm, prepared by RGS Associates, Inc., being Project No. 2017332-087, dated March 4, 2020, last revised May 15, 2020, (hereinafter referred to as the "Plan").

C. A portion of the Tract, identified as Lot 126 on the Plan, contains approximately 13 acres and is improved with multiple structures including, but not limited to, a building known as the "Stoner House". Owner intends to demolish and remove all structures other than the Stoner House, the garage and smokehouse, which three structures shall remain. A plan depicting Lot 126 and the three structures to remain thereon (the "Subject Property") is attached hereto and made a part hereof as Exhibit "A".

D. Owner considers the Subject Property (which includes the three structures to remain thereon) to represent a valued example of historic architectural style, and Owner desires to preserve the historic values of the Subject Property. To further such purpose, Owner has agreed to record a perpetual easement on the Subject Property on the terms and conditions set forth herein.

**Terms and Conditions**

Intending to be legally bound:

Owner agrees to record this Easement on/over the Subject Property for the preservation of historic, architectural, scenic, and open space values, of the nature and character and to the

extent set forth in this Deed of Easement, to constitute a servitude upon the Subject Property running with the land and enforceable by the HOA.

## **1. SCOPE OF DEED OF EASEMENT**

(a) The Owner shall not cause, permit, or suffer construction, alteration, remodeling, decoration, dismantling, destruction, or other activity which would substantially affect or alter in any way the exterior appearance of the Subject Property, subject to the following stipulations:

The Owner agrees that no construction, alteration, remodeling or any other activity shall be undertaken or permitted to be undertaken on the Subject Property as described and attached hereto as Exhibit "A", which would substantially affect the historically significant exterior features identified in Exhibit "B," including the exterior construction materials, architectural details, fenestration, height of the Subject Property, or adversely affect its structural soundness without prior permission of the HOA, which approval shall not be unreasonably withheld or delayed, affirming that such repair, repainting, and/or rehabilitation will be consistent with the aesthetic, architectural and historic materials and condition of the exterior of the subject property prior to any alterations.

(b) Owner shall at all times maintain and keep the Subject Property in a state of good order, repair and condition; and Owner shall perform such maintenance and repair as is necessary to assure that the Subject Property, visually and structurally, shall not be permitted to deteriorate in any material way, and to this end, Owner agrees that the Owner shall generally maintain the current structure and condition of the Subject Property at a minimum in accordance with the Standards.

(c) Owner shall permit the HOA access to the Subject Property, at such times as the HOA may request, for all purposes in connection with this Easement, including without limitation, the HOA's verifying and enforcing owner's compliance with the provisions of this Easement. The Owner agrees that the HOA shall have the right to inspect the property on an annual basis, with advance notice (no less than three (3) business days), in order to ascertain compliance with this Easement.

(d) Owner shall abide by all federal, state, and local laws and ordinances respecting the use of the Subject Property.

(e) Owner shall be prohibited from any commercial or business use, or other change or alteration in the use of the Subject Property.

(f) Subdivision of the Subject Property is prohibited.

## **2. INITIAL LEVEL OF PRESERVATION**

- (a) Certain photographs attached hereto as Exhibit "B" and made a part hereof shall constitute the aesthetic, architectural and historic condition of the exterior of Subject Property in which the exterior of the Subject Property is to be maintained, and
- (b) Such photographs shall constitute conclusive evidence of the appearance of the exterior of the Subject Property which is not to be substantially affected or altered without prior approval by the HOA (which approval shall not be unreasonably withheld or delayed) pursuant to Section 1 (a) and which is to be maintained pursuant to Section 1 (b).

## **3. RIGHTS OF OWNER IF PROPERTY DESTROYED**

- (a) In the event that the Subject Property is destroyed by reason of fire, flood, windstorm, earthquake, or other casualty of any kind whatsoever, the Owner shall notify the HOA in writing, and if the Subject Property is:
  - (i) partially destroyed (less than 51% of the features, materials, appearance, workmanship, and environment of the Subject Property is damaged or destroyed), then Owner shall promptly restore the Subject Property so that the appearance is rehabilitated to that substantially shown in such photographs identified in Exhibit "B" or to such other appearance being consistent with the architectural character of the Subject Property; and upon satisfactory completion of such rehabilitation, Section 1 (a) and 1 (b) shall apply to the Subject Property as rehabilitated. If Owner shall fail promptly to rehabilitate the Subject Property as required by this Section 3, the HOA shall have all rights granted under Section 4; provided however, that Owner's liability under this Section 3 shall be limited by Section 3 (b); or
  - (ii) substantially destroyed (51% or more of the features, materials, appearance, workmanship, and environment of the Subject Property is damaged or destroyed), Owner shall be allowed to remove the balance of the Subject Property and this Deed of Easement, exclusive of the restriction on subdivision set forth in Section 1(f), shall be declared null and void. The restriction on subdivision shall survive any termination of the Deed of Easement and no subdivision of the Subject Property shall be permitted.
- (b) So long as Owner maintains the insurance required by Section 8 in the event of any casualty loss, Owner's obligation under this Section 3 shall not exceed the amount of casualty loss insurance proceeds payable to or for the benefit of the Owner.

## **4. REMEDIES OF THE HOA**

It is intended and agreed that Owner is legally bound by this Deed of Easement and that Owner's obligations shall be specifically enforceable by the HOA. If the HOA, upon inspection of the Subject Property, finds what appears to be a violation, it may exercise its discretion to seek injunctive relief in the Lancaster Court of Common Pleas. Except when an ongoing or imminent violation will irreversibly diminish or impair the architectural importance of the Subject Property, the HOA shall give the Owner written notice of the

violation and allow thirty (30) days to correct the violation (or such additional time, if such violation takes longer than thirty (30) days to correct and provided Owner is diligently pursuing such correction before taking any formal action, including but not limited to legal action. If the Lancaster Court of Common Pleas determines that a violation exists or has occurred, the HOA may obtain an injunction to stop the violation, temporarily or permanently. The Court may also issue a mandatory injunction requiring the Owner to repair the Subject Property to a condition that would be consistent with certain photographs attached hereto as Exhibit "B". It is further understood and agreed that in the event that Owner is found to have violated any of the Owner's obligations, Owner shall reimburse the HOA for any costs or expenses incurred in connection with this Deed of Easement, including without limitation, reasonable architect and attorney fees. The exercise by the HOA of one remedy or the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

## **5. ASSIGNMENT, SUCCESSORS, AND ASSIGNS**

This Deed of Easement is an easement affecting the Subject Property and shall bind Owner's successors and assigns, each of whom shall be deemed to be an Owner under this Deed of Easement. The obligations of each Owner shall be joint and several, provided that an Owner shall have obligations under the Deed of Easement only with respect to the period of time that such Owner had an interest in the Subject Property.

## **6. RESERVATION**

(a) Owner reserves the free right and privilege to the use of the Subject Property for all purposes not inconsistent with the rights granted pursuant to this Deed of Easement. Nothing in this Deed of Easement shall be construed to grant unto the general public or any other persons, other than Manheim Township and its agents, the right to enter the Subject Property. Notwithstanding any provision of this Deed of Easement to the contrary, Manheim Township shall have the right, but not the duty or obligation, to take such measures as Manheim Township may deem necessary or appropriate to enforce the terms of this Deed of Easement and Owner's obligations hereunder and Manheim Township may charge the cost thereof and any related expenses to Owner, its successors and assigns. This Deed of Easement shall not be amended or terminated without the consent and approval of Manheim Township.

(b) Nothing contained in this Deed of Easement shall be interpreted to authorize, require, or permit Owner to violate any ordinance relating to building materials, construction methods, or use.

## **7. ACCEPTANCE**

The HOA accepts the right and interest granted to it in this Deed of Easement.

## **8. OWNER'S INSURANCE**

Owner shall at all times maintain, at Owner's cost, insurance in the amount not less than the replacement cost of the Subject Property, such insurance to insure against loss from the perils



commonly insurance under standard fire insurance policies with extended coverage, vandalism, and malicious mischief endorsements.

## **9. INDEMNIFICATION**

Owner shall be responsible for, and shall defend, indemnify, and hold harmless the HOA from and of, all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable counsel fees, which may be imposed upon or incurred by the HOA by reason of (a) failure or refusal of any Owner to perform such Owner's obligation under this Deed of Easement, (b) loss of life, personal injury and/or damages to property occurring in or around the Subject Property subject to this Deed of Easement occasioned in whole or in part by the acts of omissions of Owner, or Owner's agent or employees, or (c) the presence, generation, transportation, use, storage, treatment, emission, discharge, release, threatened release, disposal, removal or remediation at or from the Subject Property of any hazardous substances as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act.

## **10. ESTOPPEL CERTIFICATIONS**

The HOA agrees at any time and from time to time, within twenty (20) days after Owner's written request, to execute, acknowledge and deliver to Owner a written instrument stating that the Owner is in compliance with the terms and conditions of this Deed of Easement, or if Owner is not in compliance with the Deed of Easement, stating what violations of this Deed of Easement exist. Owner agrees to make such request only for reasonable cause. Owner shall reimburse the HOA for all reasonable costs incurred by the HOA in determining compliance or non-compliance and advising Owner as to compliance or non-compliance.

## **11. REVIEW, APPROVAL, AND ADDITIONAL COSTS**

Whenever the consent of the HOA is requested or required under this Deed of Easement, Owner shall bear the reasonable costs of the HOA's review including reasonable architectural fees, legal fees, and administrative expenses in processing Owner's request.

## **12. NO THIRD-PARTY BENEFICIARY**

Anything to the contrary notwithstanding in this Deed of Easement, all rights, privileges, and benefits of the Deed of Easement are for the exclusive use of Owner and the HOA and (subject to Section 5) their respective successors and assigns, and there shall be no third-party beneficiary thereof.

## **13. AMENDMENTS**

The parties may by mutual written agreement jointly amend this Deed of Easement, providing the amendment shall be consistent with the purpose of this Deed of Easement and shall not reduce its term of duration. Any such amendment shall not be effective unless it is executed in the same manner of this Deed of Easement, refers expressly to this easement, and is filed with the Office of the Recorder of Deeds of Lancaster County.

**14. EFFECTIVE DATE; SEVERABILITY**

This Deed of Easement shall become effective when the Owner records it in the Office of the Recorder of Deeds of Lancaster County with a copy of the recorded instrument provided to the HOA. If any part of this Deed of Easement is held to be illegal by a court, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Deed of Easement does not contain the particular part held to be invalid.

IN WITNESS WHEREOF, Owner and the HOA, intending this to be a sealed instrument which is legally binding in accordance with its terms have executed this Deed of Easement the day and year above set forth.

OWNER: SONSHINE HOLDING, L.P., a  
Pennsylvania limited partnership

By: Josiah, LLC, its general partner

*William C. Briegel*

By: William C. Briegel, Asst. Vice President

SOMERFORD AT STONER FARM  
COMMUNITY ASSOCIATION

*William C. Briegel*

By: WILLIAM C. BRIEGEL

Name: VICE-PRESIDENT

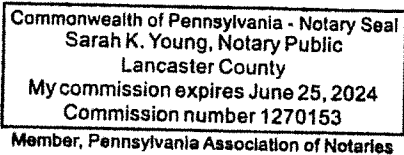
Title:

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF LANCASTER :

On this 19<sup>TH</sup> day of DECEMBER, 2020, before me, the undersigned, a Notary Public in and for the County of Lancaster, duly commissioned and sworn, personally appeared William C. Briegel, to me known as, or providing satisfactory evidence that he is, the Assistant Vice President of Josiah, LLC, general partner of Sonshine Holding, L.P., a Pennsylvania limited partnership, that he executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Sarah K. Young  
NOTARY PUBLIC in and for the  
County of Lancaster  
My commission expires 6/25/2024  
Print Name: SARAH K. YOUNG

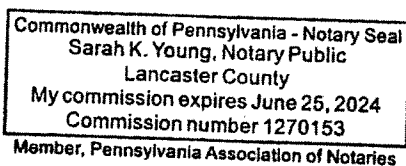


COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF LANCASTER :

On this 19<sup>TH</sup> day of DECEMBER, 2020, before me, the undersigned, a Notary Public in and for the County of Lancaster, duly commissioned and sworn, personally appeared WILLIAM C. BRIEGEL to me known as, or providing satisfactory evidence that he/she is the VICE PRESIDENT of Somerford at Stoner Farm Community Association, that he/she executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned and on oath stated that he/she is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Sarah K. Young  
NOTARY PUBLIC in and for the  
County of Lancaster  
My commission expires 6/25/2024  
Print Name: SARAH K. YOUNG



**EXHIBIT "C"**

**LIST OF ZONING DEVIATIONS/ SALDO AND SWMO WAIVERS**

## **EXHIBIT “C” - ZONING DEVIATIONS AND SALDO/SWMO MODIFICATIONS**

### **Subdivision and Land Development Ordinance §149-904.A**

This section of the ordinance states that, *“On all streets there shall be minimum center-line grade of 1% and a maximum of 7%.”*

#### ***Modification:***

To allow a few sections of Roads A, C and D to exceed 7% but still be less than 8%. Please note that the subsequent section, §149-904.B states *“The center-line grade may be increased up to 10% upon the recommendation of the Township Engineer and the approval of the Board of Supervisors.”*

### **Subdivision and Land Development Ordinance §149-904.C**

This section of the ordinance states that, *“The center-line grade on a cul-de-sac public street shall not exceed 7%, and the grade of the diameter of the turnaround shall not exceed 4%.”*

#### ***Modification:***

To allow a stretch of Road C (a cul-de-sac street) to exceed 7% but be less than 8%.

### **Subdivision and Land Development Ordinance §149-907.E**

This section of the ordinance states that, *“Where the grade of any street at the approach of an intersection exceeds 4%, a leveling area of at least 75 feet measured from the curblines of the street being intersected shall be provided. The grade of this area shall not exceed 2%.”*

#### ***Modification:***

To allow leveling areas to be 4%, which exceeds the required 2%.

### **Subdivision and Land Development Ordinance §149-913.B**

This section of the ordinance states that, *“Blocks shall have a minimum length of 500 feet.”*

#### ***Modification:***

To allow blocks to be smaller than 500 feet.

### **Stormwater Management Ordinance § 144-311.B(2)**

This section of the ordinance states that, *“Storm sewers shall be reinforced concrete when constructed within rights-of-way of streets.”*

#### ***Modification:***

To allow the use of High Density Polyethylene Pipe (HDPE) subject to Township inspection and approval of installation.

### **Stormwater Management Ordinance § 144-311.C(3)**

This section of the ordinance states that, *“The bottom of the basin shall have a minimum slope of 2% and any channel shall have a minimum slope of 0.5%.”*

#### ***Modification:***

To allow infiltration basins to have a flat bottom with 0% slope as required by the PA BMP Manual for infiltration BMPs.

**Zoning Ordinance §170-1514 – Outdoor Lighting**

To reduce the required amount of lighting in consultation and agreement with Township consultants, Planning Commission and Supervisors to maintain more rural lighting levels.