

# **WESTTOWN TOWNSHIP**

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West Chester, PA 19382  
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## **AGENDA Westtown Township Board of Supervisors Workshop**

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

**Monday, June 3, 2019**

**Executive Session at 6:00 pm**

**Public Session at 6:30 pm**

- 1. Executive Session**
- 2. Ordinance 2019-05, Amendments to Township Code Chapter 170, Zoning**
- 3. Heather Glen Apartments, U&O Permit fee dispute**
- 4. Ducklings Daycare Land Development agreements**
- 5. Aqua Pennsylvania, water main relocation - reimbursement agreement**

**ORDINANCE NO. 2019-\_\_**

**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. The Brandywine Battlefield Swath also shall be considered an historical landscape and a scenic landscape or scenic view.

**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 Update of 2019.

## **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 a public road in Thornbury Township;
  - 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 designed, in whole or in part, through the subject property. The design 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 and rights-of-way of public or private streets shall not be used for computation of net residential density for any residential use, nor shall any area used to comply with net density requirements for any other type of residential use or any other 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.
  - (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 be discouraged.
    - [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) Screening: As required by §170-1508 of this chapter.
  - (e) Storage: As required by §170-1509 of this chapter.
  - (f) Landscaping: As required by §170-1507 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.

- (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. Article IX, Flexible Development Procedure, §170-904.

- (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.

**SECTION 14.** 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) and (b), shall be amended to read as follows:

- (a) A/C District.
  - [1] Standard single-family detached dwelling subdivision: tract area x 0.5.
  - [2] Flexible development: tract area x 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 x 1.0.
  - [2] Flexible development: tract area x 1.1.

**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, 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 sites 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 habitable floor area on all floor levels in the historic sections of such structures, 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] For the purposes of this section, measurement of habitable floor area may include previously not considered habitable which will be converted to habitable floor area as a result of rehabilitation (e.g., barn space converted into habitable floor area);

[3] 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 Secretary of the Interior's Standards for Rehabilitation of Historic Structures;

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

[5] 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 16.** 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 17.** 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 18.** All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

**SECTION 19.** 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

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between WESTTOWN TOWNSHIP, a Township of the Second Class in the Commonwealth of Pennsylvania, with a physical address of 1039 Wilmington Pike, West Chester, Pennsylvania 19382 (“Township”) and WC APT I, LLC (“WC”), a Pennsylvania limited liability company having a business address of 6 Stillmeadow Lane, Malvern, Pennsylvania 19355.

### **BACKGROUND**

A. WC is the owner of an apartment complex commonly known as the “Heather Glen Apartments” (“Apartment Complex”) located at 1650 West Chester Pike in the Township (UPI No. 67-3-132.01) (“Property”).

B. WC acquired the Property on July 25, 2015, from Willistown View Associates, LP, via deed recorded in the Office of the Chester County Recorder of Deeds on August 6, 2015, in Deed Book 9158, Page 1157.

C. The Township conducts building code inspections of all properties in the Township either through an in-house inspector or third-party inspector.

D. The Township previously used a third-party construction code vendor, Bureau Veritas, Inc. (“BV”), to conduct common area inspections associated with the required commercial resale use and occupancy certificate issued by the Township for the Apartment Complex.

E. BV calculated the fee for such inspections to be \$18,200, which sum the Township sought from WC, and which sum WC has challenged.

F. The Township previously filed two complaints against WC in this matter, which were docketed at MJ-15203-CV-0000144-2018 and MJ-15203-CV-0000145-2018, respectively, and which were dismissed without prejudice on January 8, 2019.

G. The Township and WC now seek to resolve all claims and disputes relating to the outstanding code inspections and fees.

### **AGREEMENT**

NOW, THEREFORE, the parties hereto, in consideration of the consideration and mutual covenants herein, hereby agree as follows:

1. The background recitals stated above shall be incorporated herein by reference.
2. As a full and complete settlement of all outstanding fees related to all permits and inspections due through the date of this Agreement, WC shall pay to the Township the sum of \$10,000 in full accord and satisfaction of the claims noted herein, except that any re-inspection required in the event that the WC must undertake any corrective work shall be reimbursed by WC to the Township at the rates established herein.
3. WC will pay the amount due, in full, within ten days of the full execution of this Agreement.
4. The Township will have its Code Inspector, Andy Kirk ("Kirk"), perform a re-inspection for the Property's commercial resale use and occupancy certificate based upon the BV Resale Inspection Report Building "B", dated October 30, 2015, within sixty (60) days of the date of this Agreement. WC will provide all necessary access required by Kirk to perform resale re-inspection. A WC representative will accompany Kirk during his resale re-inspection. Kirk shall charge his standard per hour inspection rate of \$65/hour to perform the resale re-inspection and shall be reimbursed by WC to the Township for such costs. The re-sale re-inspection will be completed in one day, if possible.

5. As part of the resale re-inspections, Kirk will inspect the individual apartment units and the common hallway areas. A re-inspection of the basements areas, which will be limited only to life-safety code violations, will not be a part of the resale re-inspections, but will occur at a mutually agreed to later date and time.

6. Re-inspection of the individual apartment units will be limited to those items cited in the BV resale inspection report, the overwhelming majority of which were limited to smoke detectors and GFCI receptacles, and any apparent life-safety code violations.

7. Re-inspection of the common hallways and other common areas will be limited to those items cited in the BV resale inspection report and any apparent life-safety code violations.

8. WC is permitted to install battery back-up emergency lighting in the common areas. WC shall apply for and receive permits for, and install the code-compliant emergency lighting within sixty (60) days of the date of this Agreement.

9. The WC work Kirk is re-inspecting, specifically those items cited in the BV resale inspection report, may not pass Kirk's inspection and, as a consequence, WC may be required to undertake corrective work. In such event, Kirk shall charge his standard per hour inspection rate of \$65/hour to perform the re-inspections of this work and shall be reimbursed by WC to the Township for such costs.

10. Kirk will not supplement, revise, or expand the scope of or items listed in the BV resale inspection report, except as to any apparent life-safety code violations.

11. The Township will have Marco, its Electrical Inspector, perform electrical inspections and apply the necessary inspection stickers to the electrical panels throughout the Property. WC will provide all necessary access required by Marco (and other representatives from the Township) to perform the electrical re-inspection. A WC representative will accompany Marco



during his electrical inspection. The Township will not charge or bill WC for Marco's re-inspection. The electrical re-inspection will be completed in one day, if possible.

12. A WC representative will remove all electrical panel covers in advance of Marco's electrical re-inspection in order to avoid unnecessary delays in Marco completing the electrical re-inspection. It is anticipated that Marco's re-inspection will be limited to a visual inspection of the electrical panels, except as to any apparent life-safety code violations.

13. Marco will inspect the 70 electrical panels that are part of Permit No. B-2016169, dated April 25, 2016, that do not presently have an approved electrical inspection sticker.

14. WC will pay the required building permit fee associated with the renovations to the Apartment Complex's Leasing Office. WC will calculate the square footage of the area renovated, as confirmed by the Township, and submit the applicable building permit fee to the Township within thirty (30) days of the date of this Agreement.

15. In exchange for WC's completion of the above terms and conditions, the Township shall forever forebear from asserting such claims or any related actions against WC arising from permits and inspections due through the date of this Agreement.

16. Except for breaches of this Agreement, the parties hereto, on behalf of themselves, their agents, representatives, assigns, heirs, executors, administrators, successors, affiliates, and subsidiaries, do hereby irrevocably waive, generally release and discharge each other, their agents, representatives, assigns, heirs, executors, administrators, successors, affiliates, and subsidiaries from any and all claims, demands, damages, causes of action, or suits that any party hereto has, may now have, have had, or that might subsequently accrue to any of the parties, whatsoever in law or equity to the date of these presents, arising from, growing out of, or in any way connected with the claims which have been, or could have been, asserted by or against any of the parties in this case.

17. This Agreement represents the settlement of disputed claims which have been, or could have been, asserted by or against any of the parties in this case. It is not an admission of liability or of indebtedness by any party hereto, nor is it an admission that any of the assertions of any of the parties mentioned in this case state a valid claim or cause of action under the law of Pennsylvania or any other jurisdiction.

18. All remedies at law or in equity shall be available for the enforcement of this Agreement. This Agreement may be pleaded as a full bar to the enforcement of any claim arising from the transactions involved herein. In any subsequent court action in which the validity or effect of this Agreement is at issue, the party prevailing in such action shall be entitled to its costs, expenses, and counsel fees in prosecuting or defending such action.

19. This Agreement shall be construed pursuant to the laws of Pennsylvania and the terms contained herein are contractual and not a mere recital.

20. This Agreement shall be effective upon execution and shall be binding on the parties hereto and their respective heirs, successors, administrators and assigns.

21. This Agreement constitutes the entire agreement between the parties and no prior or contemporaneous communications or discussions shall be relevant or admissible for determining the meaning or extent of any of the provisions in this Agreement.

22. This Agreement may not be modified except with the written approval of all parties hereto.

23. The individuals executing this Agreement represent and warrant that they have full power and authority to execute this Agreement and thereby bind the party for whom they are signing.

24. This Agreement may be executed in any number of counterparts with the same effect as if all the signatures on such counterparts appeared on one document, each such counterpart shall be deemed an original, and an electronic copy is as valid as an original and shall be deemed an original.

IN WITNESS WHEREOF, the authorized officers of the parties have executed this agreement the day and year first above written.

**BOARD OF SUPERVISORS  
WESTTOWN TOWNSHIP**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Scott E. Yaw, Chairman

**WC APT I, LLC**

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Witness

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



October 30, 2015

**Heather Glenn Apartments**  
Resale CO Inspection Report  
1650 West Chester Pike, West Chester PA  
Westtown Township

The Westtown Township Resale Certificate of Occupancy inspections were performed on the subject property on October 27, 2015. The PA-UCC certified inspectors conducting same were Robert Fitch, Todd Meltsch, John Pfeiffer and Walter Harris of BVNA.

Common Space Inspections were not performed on the sales office, since it was constructed without permits and will be inspected once permits are applied for and issued.

Residential Unit Inspections were not performed on units under construction without permits and which permits have not been applied for and issued.

The owners of the building did not provide proper square footage of the building as requested. All basement / common areas approximately 18 spaces separated by fire walls and doors needed to be inspected. The only spaces claimed on the attached square footage common space and unit report were the office and the maintenance shop. The other 16 spaces including three (3) heater rooms and three (3) laundry rooms were inspected and found to have significant IPMC violations as stipulated in the report. These spaces comprise of approximately 16,000 + square feet of Commercial Common Space. Monetary restitution will be required by the owners to account for these areas.

Each building will have its own CO and each unit and common area will be tracked within each building until all areas have been brought into code conformance.

The overall condition of these building is not very good. Of the 81 residential units only 3 passed inspection. None of the common space areas passed inspection.

As a note to the inspections, for the residential areas where GFCI testing was conducted in each kitchen and bathroom the minimum standards as outlined in the Westtown Township CO application must be met. When we wrote GFCI problems it means that either the GFCI receptacles were not in place or did not function properly. Read the requirements of the ordinance to be clear what has to be corrected or discuss with the BCO for clarity.

Respectfully Submitted

Robert Fitch, BCO  
Bureau Veritas North America

Attachments.

## Building 'B'

General Comments for all common areas:

Inspection date 10/27/2015

1. All piping shall be supported in accordance in an approved manner, hangers and anchors shall be attached to the building. All wires and cables shall be independently supported and pipes shall not be supported by any wiring systems. All basement areas of the entire complex have issues with pipe support and wire support. All exposed NM type wiring shall be protected from physical damage.
2. Building is not sprinklered – There are ABC type fire extinguishers on site, please note that the fire extinguishers shall be subject to maintenance at intervals of not more than one (1) year, and shall be kept with a tag or label on the fire extinguisher. All fire extinguishers shall be current and have the required tags or labels.
3. All ceilings and walls separating dwelling units and sleeping units shall be constructed with approved materials for the required fire partitions / horizontal assemblies. Note that a type "X" fire rated sheetrock is an approved material to cover over the damaged or open areas where exposed in the basement ceilings.
4. All the holes and penetrations found in the block firewalls in the basements shall be sealed with an approved fire stop systems, (fire caulk ASTM E814, or UL 1479). The larger holes will require an approved material of similar kind (patch with concrete or blocks where needed).
5. All common areas in the basements and stairways shall have emergency lighting and exit signs installed in approved locations. Signed sealed plans and permits are required.
6. All doors to the basement areas shall have light switches at the doors. The basements doors do not have light switches at both doors. Signed sealed plans and permits are required.

HANGER SPACING		
PIPING MATERIAL	MAXIMUM HORIZONTAL SPACING (feet)	MAXIMUM VERTICAL SPACING (feet)
ABS pipe	4	10 <sup>b</sup>
Aluminum tubing	10	15
Brass pipe	10	10
Cast-iron pipe	5 <sup>b</sup>	15
Copper or copper-alloy pipe	12	10
Copper or copper-alloy tubing, 1 1/4-inch diameter and smaller	6	10
Copper or copper-alloy tubing, 1 1/2-inch diameter and larger	10	10
Cross-linked polyethylene (PEX) pipe	2.67 (32 inches)	10 <sup>b</sup>
Cross-linked polyethylene/ aluminum/cross-linked polyethylene (PEX-AL-PEX) pipe	2.67 (32 inches)	4
CPVC pipe or tubing, 1 inch and smaller	3	10 <sup>b</sup>
CPVC pipe or tubing, 1 1/4 inches and larger	4	10 <sup>b</sup>
Steel pipe	12	15
Lead pipe	Continuous	4
Polyethylene/aluminum/ polyethylene (PE-AL-PE) pipe	2.67 (32 inches)	4
Polypropylene (PP) pipe or tubing 1 inch and smaller	2.67 (32 inches)	10 <sup>b</sup>
Polypropylene (PP) pipe or tubing, 1 1/4 inches and larger	4	10 <sup>b</sup>
PVC pipe	4	10 <sup>b</sup>
Stainless steel drainage systems	10	10 <sup>b</sup>

**Unit BB:**

**Left basement;**

1. Repair ceiling.
2. Support loose hanging wires.
3. Electric receptacles shall be GFCI protected.

**Right basement;**

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.
3. Seal around the gas pipe thru the exterior rear wall. (can see daylight).

**Hallway;**

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Smoke detector on 1<sup>st</sup> floor hanging from base.
4. Smoke detector on basement level not working.
5. Missing light cover on 2<sup>nd</sup> floor light fixture.
6. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

**Laundry room;**

1. Dryer vents thru walls shall be solid pipe material discharged to outdoors, only flex can be used from dryer connection to the wall.
2. Repair ceiling in closet.
3. Install water hammer arrestors for all wash machines.
4. Wash machines shall discharge to an approved standpipe with a trap.
5. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

**Apartment BB#1;**

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working
4. Bad window in master bedroom

**Apartment BB#2;**

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working

**Apartment BB#3;**

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working

Apartment BB#4;

1. Could not inspect due to construction.

**Unit BA:**

Right basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. Electric receptacles shall be GFCI protected.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Note – No left basement in unit BA.

Apartment BA#1;

1. No SD in bedrooms
2. No SD in hallway
3. GFCI in kitchen not working

Apartment BA#2;

1. No SD in bedrooms

Apartment BA#3;

1. No SD in bedrooms
2. GFCI kitchen not working
3. Secure ceiling fixture in hallway

Apartment BA#4;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI kitchen not working

Apartment BA#5;

1. No SD in bedrooms
2. GFCI kitchen not working

**Unit BC:**

Left basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. Electric receptacles shall be GFCI protected.
4. Sump pit shall not discharge into sewer drains, shall discharge to outdoors or to storm drain.

Right basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. Replace missing door on block firewall.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.
4. Missing handrail at basement level stairs.
5. Smoke detector at basement floor not working.

Furnace Room;

1. Use proper pipe supports for all piping.
2. Pressure relief pipes shall not be threaded at ends, shall be to within 6" of the floor.
3. The water heater gas supply pipe shall be supported so that the drip leg is accessible and not resting on floor.
4. Support loose hanging wires.
5. Note – the furnace room doors were found in an open position, the doors are to be closed at all times. With the door closed there needs to be outdoor combustion air for the total number of BTU's. One permanent opening method is used, per the code the opening shall be 12" of the top of the enclosure and shall have a minimum free area of 1 square inch per 3,000 BTU. Provide calculations that the existing vent meets the required outdoor air. Total 1,053,000 BTU's.

Apartment BC#1;

1. No SD bedrooms
2. SD hallway not working
3. GFCI kitchen not working

Apartment BC#2;

1. No SD in bedrooms
2. SD in hallway not working
3. Broken window in Master Bedroom



Apartment BC#3;

1. Under construction (no permits)

Apartment BC#4;

1. No SD in bedrooms
2. SD hallway not working
3. GFCI kitchen not working

**Unit BD:**

Left basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. Electric receptacles shall be GFCI protected.
4. Remove 1" pvc drain line discharging into basement.
5. Removal of flex dryer duct from apartment above, repair hole in floor to apartment above.  
Please note that concealed dryer duct shall be solid pipe material discharged to outdoors.

Right basement;

1. Repair ceiling.
2. Replace missing door on block firewall.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Apartment BD#1;

1. Under construction (no permits)

Apartment BD#2;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI kitchen problems

Apartment BD#3;

1. No SD bedrooms
2. SD in hallway not working
3. GFCI kitchen problems

Apartment BD#4;

1. Not accessible

**Unit BE:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.

Right basement;

1. Repair ceiling.
2. Correct the reverse pitch on the tub drain line from above.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.
4. Missing handrail at basement level stairs.

Apartment BE#1;

1. No SD bedrooms
2. GFCI kitchen problems

Apartment BE#2;

1. No SD bedrooms
2. GFCI kitchen problems
3. Bedroom window not working

Apartment BE#3;

1. No SD bedrooms
2. SD hallway not working
3. GFCI kitchen problems
4. Broken window small bedroom

Apartment BE#4;

1. No SD bedrooms
2. GFCI kitchen problems
3. GFCI bathroom problems

**Unit BF:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.
3. Correct the reverse pitch on the tub drain line from above.

Right basement;

1. Repair ceiling.
2. Support loose hanging wires.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.
4. Missing handrail at basement level stairs.
5. Smoke detector at basement floor not supported hanging from base.
6. Smoke detector at 2<sup>nd</sup> floor not supported hanging from base.

Maintenance shop;

1. Repair ceiling
2. Support loose hanging wires.

Apartment BF#1;

1. No SD bedrooms
2. SD hallway not working
3. GFCI bathroom problems

Apartment BF#2;

1. No SD bedrooms
2. SD hallway not working
3. GFCI kitchen problems

Apartment BF#3;

1. No SD bedrooms
  2. SD hallway not working
  3. No CO detector
- GFCI kitchen problems

Apartment BF#4;

1. No SD bedrooms
2. GFCI kitchen problems

**Exterior Areas Building B:**

1. Install handrails on all exterior stairs to main entrances. Handrails are required on both sides 34"-38" high and shall extend 12" beyond the top and bottom risers.
2. All service feeders shall be replaced with grounding and bonding.
3. Install service heads.

4. Repair the stucco at the rear along near the window wells, and at the rear near the laundry area.
5. Replace the rusted electric meter cans at unit BA (2 gang meter base).
6. Connect the downspouts to drains – water shall discharge away from foundations.

**End Comments**

## Building 'D'

General Comments for all common areas:

Inspection date 10/27/2015

1. All piping shall be supported in an approved manner, hangers and anchors shall be attached to the building. All wires and cables shall be independently supported and pipes shall not be supported by any wiring systems. All exposed NM wiring methods shall be protected from physical damage. All basement areas of the entire complex have issues with pipe support and wire support.
2. Building is not sprinklered – There are ABC type fire extinguishers on site, please note that the fire extinguishers shall be subject to maintenance at intervals of not more than one (1) year, and shall be kept with a tag or label on the fire extinguisher. All fire extinguishers shall be current and have the required tags or labels.
3. All ceilings and walls separating dwelling units and sleeping units shall be constructed with approved materials for the required fire partitions / horizontal assemblies. Note that a type "X" fire rated sheetrock is an approved material to cover over the damaged or open areas where exposed in the basement ceilings.
4. All the holes and penetrations found in the block firewalls in the basements shall be sealed with an approved fire stop systems, (fire caulk ASTM E814, or UL 1479). The larger holes will require an approved material of similar kind (patch with concrete or blocks where needed).
5. All common areas in the basements and stairways shall have emergency lighting and exit signs installed in approved locations. Signed sealed plans and permits are required.
6. All doors / entrances to the basement areas shall have light switches at the doors. The basements doors do not have light switches at both doors. Signed sealed plans and permits are required.

HANGER SPACING		
PIPING MATERIAL	MAXIMUM HORIZONTAL SPACING (feet)	MAXIMUM VERTICAL SPACING (feet)
ABS pipe	4	10 <sup>b</sup>
Aluminum tubing	10	15
Brass pipe	10	10
Cast-Iron pipe	5 <sup>b</sup>	15
Copper or copper-alloy pipe	12	10
Copper or copper-alloy tubing, 1 1/4-inch diameter and smaller	6	10
Copper or copper-alloy tubing, 1 1/2-inch diameter and larger	10	10
Cross-linked polyethylene (PEX) pipe	2.67 (32 inches)	10 <sup>b</sup>
Cross-linked polyethylene/ aluminum/cross-linked polyethylene (PEX-Al.-PEX) pipe	2.67 (32 inches)	4
CPVC pipe or tubing, 1 inch and smaller	3	10 <sup>b</sup>
CPVC pipe or tubing, 1 1/4 inches and larger	4	10 <sup>b</sup>
Steel pipe	12	15
Lead pipe	Continuous	4
Polyethylene/aluminum/ polyethylene (PE-Al.-PE) pipe	2.67 (32 inches)	4
Polypropylene (PP) pipe or tubing 1 inch and smaller	2.67 (32 inches)	10 <sup>b</sup>
Polypropylene (PP) pipe or tubing, 1 1/4 inches and larger	4	10 <sup>b</sup>
PVC pipe	4	10 <sup>b</sup>
Stainless steel drainage systems	10	10 <sup>b</sup>

**Unit DA:**

Left basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. Romex wire found to a plug in the ceiling receptacle, what does it supply power to? Replace or remove with approved wiring methods.
4. Electric receptacles shall be GFCI protected.
5. A steel pipe support was found and appeared to be supporting a floor near the bathtub. Provide structural report from a PA design professional for dead and live loads being supported.

Right basement;

1. Repair ceiling.
2. Flying electrical splices found, place in approved box.
3. Support loose hanging wires.
4. Install smoke detector.
5. Electric receptacles shall be GFCI protected.
6. Install a handrail on the exterior stairs. Handrails required on both sides 34"-38" high and shall extend 12" beyond the top and bottom risers.
7. Install a guardrail along the top of the stairwell wall, any walking surface >30" above the grade below shall have guards a minimum of 42" high.
8. There are low voltage wires tied to 120 volt wires??

Hallway;

1. Missing handrail at basement level stairs.
2. Install a fire extinguisher at the main entrance.
3. Install emergency lights and exit signs.
4. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Apartment DA#1;

1. No SD in bedrooms
2. GFCI kitchen problems
3. GFCI bathroom problems

Apartment DA#2;

1. No SD in Bedrooms
2. GFCI kitchen problems and missing cover plate

Apartment DA#3;

1. No SD in bedrooms
2. GFCI kitchen problems

Apartment DA#4;

1. Not accessible

**Unit DB:**

Left basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. There are low voltage wires tied to 120 volt wires??

Right basement;

1. Repair ceiling.
2. Support loose hanging wires
3. There are low voltage wires tied to 120 volt wires??

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Apartment DB#1;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI kitchen problems

Apartment DB#2;

1. No SD in bedrooms
2. GFCI kitchen problems

Apartment DB#3;

1. No SD in bedrooms
2. SD hallway bad
3. CO Det bad
4. GFCI kitchen problems

Apartment DB#4;

1. Could not inspect no power

**Unit DC:**

**Left basement;**

1. Repair ceiling.
2. Support loose hanging wires.
3. Electric receptacles shall be GFCI protected.

**Right basement;**

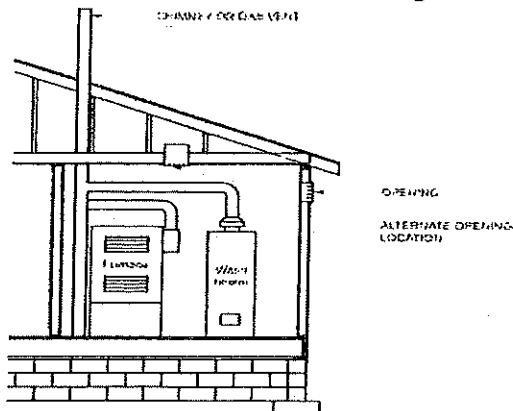
1. Repair ceiling.
2. Support loose hanging wires.

**Hallway;**

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Missing handrail at basement level stairs.
4. Smoke detector on 1<sup>st</sup> floor not working (near unit #2).
5. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

**Furnace Room;**

1. Use proper pipe supports for all piping.
2. Pressure relief pipes shall not be threaded at ends, shall be to within 6" of the floor.
3. The water heater gas supply pipe shall be supported so that the drip leg is accessible and not resting on floor.
4. Electric receptacles shall be GFCI protected.
5. Support loose hanging wires.
6. Missing cover plates over electrical boxes at timer board.
7. Note – the furnace room doors were found in an open position, the doors are to be closed at all times. With the door closed there needs to be outdoor combustion air for the total number of BTU's. One permanent opening method is used, per the code the opening shall be 12" of the top of the enclosure and shall have a minimum free area of 1 square inch per 3,000 BTU. Provide calculations that the existing vent meets the required outdoor air. Total 931,900 BTU's.





Apartment DC#1;

1. No SD in bedrooms
2. GFCI kitchen problems

Apartment DC#2;

1. Could not inspect no power

Apartment DC#3;

1. No SD in bedrooms
2. GFCI kitchen problems

Apartment DC#4;

1. No SD in bedrooms

**Unit DD:**

Left basement;

1. Repair ceiling.
2. Support loose hanging wires.
3. Electric receptacles shall be GFCI protected.
4. Remove 1" pvc drain line discharging into basement.
5. Removal of flex dryer duct from apartment above, repair hole in floor to chase above.  
Please note that concealed dryer duct shall be solid pipe material discharged to outdoors.
6. Install cover plates over open electrical junction boxes.

Laundry room;

1. Dryer vents thru walls shall be solid pipe material discharged to outdoors, only flex can be used from dryer connection to the wall.
2. Repair ceiling.
3. Install water hammer arrestors for all wash machines.
4. Wash machines shall discharge to an approved standpipe with a trap.
5. Install a handrail on the exterior stairs. Handrails required on both sides 34"-38" high and shall extend 12" beyond the top and bottom risers.
6. Install a guardrail along the top of the stairwell wall, any walking surface >30" above the grade below shall have guards a minimum of 42" high.
7. Sump pit shall not discharge into sewer drains, shall discharge to outdoors or to storm drain.
8. Install an approved cover over the sump pump pit.
9. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Halfway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Apartment DD#1;

1. No SD in bedrooms
2. GFCI kitchen problems

Apartment DD#2;

1. No SD in bedrooms
2. GFCI kitchen problems
3. GFCI bathroom problems

Apartment DD#3;

1. No SD in bedrooms
2. SD hallway not working
3. GFCI kitchen problems
4. GFCI bathroom problems

Apartment DD#4;

1. No SD in bedrooms
2. SD hallway not working
3. GFCI kitchen problems

**Unit DE:**

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Missing smoke detector on 2<sup>nd</sup> floor.
4. Smoke detector on 1<sup>st</sup> floor not working.
5. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Note – Unit DE does not have any basement areas.

Apartment DE#1;

1. No SD in bedrooms
2. GFCI kitchen problems

Apartment DE#2;

1. No SD in bedroom
2. Bedroom on right not accessible
3. GFCI kitchen problems
4. GFCI bathroom problems

Apartment DE#3;

1. No SD in bedrooms
2. SD hallway bad
3. GFCI kitchen problems

Apartment DE#4;

1. No SD bedrooms
2. SD hallway bad
3. GFCI kitchen problems
4. Fan cover missing

Apartment DE#5;

1. No access

Apartment DE#6;

1. No SD bedrooms
2. SD hallway bad
3. GFCI bathroom problems

**Exterior Areas Building D:**

1. Install handrails on all exterior stairs to main entrances. Handrails are required on both sides 34"-38" high and shall extend 12" beyond the top and bottom risers.
2. Repair the loosed mortar joints / bricks at the window sills for apartments #3 and #4.
3. All service feeders shall be replaced with grounding and bonding.
4. Install service heads.
5. Repair the stucco at the rear along the downspouts (exposed wire lath) and at the rear on the west side corner.
6. Replace the rusted electric meter cans at unit DE (2 gang meter base).

**END COMMENTS**

## Building 'M'

General Comments for all common areas:

Inspection date 10/27/2015

1. All piping shall be supported in accordance in an approved manner, hangers and anchors shall be attached to the building. All wires and cables shall be independently supported and pipes shall not be supported by any wiring systems. All basement areas of the entire complex have issues with pipe support and wire support.
2. Building is not sprinklered – There are ABC type fire extinguishers on site, please note that the fire extinguishers shall be subject to maintenance at intervals of not more than one (1) year, and shall be kept with a tag or label on the fire extinguisher. All fire extinguishers shall be current and have the required tags or labels.
3. All ceilings and walls separating dwelling units and sleeping units shall be constructed with approved materials for the required fire partitions / horizontal assemblies. Note that a type "X" fire rated sheetrock is an approved material to cover over the damaged or open areas where exposed in the basement ceilings.
4. All the holes and penetrations found in the block firewalls in the basements shall be sealed with an approved fire stop systems, (fire caulk ASTM E814, or UL 1479). The larger holes will require an approved material of similar kind (patch with concrete or blocks where needed).
5. All common areas in the basements and stairways shall have emergency lighting and exit signs installed in approved locations. Signed sealed plans and permits are required.
6. All doors to the basement areas shall have light switches at the doors. The basements doors do not have light switches at both doors. Signed sealed plans and permits are required.

HANGER SPACING					
PIPING MATERIAL	MAXIMUM HORIZONTAL SPACING (feet)	MAXIMUM VERTICAL SPACING (feet)			
ABS pipe	4	10 <sup>b</sup>	Cross-linked polyethylene/aluminum/cross-linked polyethylene (PEX-Al-PEX) pipe	2.67 (32 inches)	4
Aluminum tubing	10	15	CPVC pipe or tubing, 1 inch and smaller	3	10 <sup>b</sup>
Brass pipe	10	10	CPVC pipe or tubing, 1 1/4 inches and larger	4	10 <sup>b</sup>
Cast-iron pipe	5 <sup>a</sup>	15	Steel pipe	12	15
Copper or copper-alloy pipe	12	10	Lead pipe	Continuous	4
Copper or copper-alloy tubing, 1 1/2-inch diameter and smaller	6	10	Polyethylene/aluminum/polyethylene (PE-Al-PE) pipe	2.67 (32 inches)	4
Copper or copper-alloy tubing, 1 1/2-inch diameter and larger	10	10	Polypropylene (PP) pipe or tubing 1 inch and smaller	2.67 (32 inches)	10 <sup>b</sup>
Cross-linked polyethylene (PEX) pipe	2.67 (32 inches)	10 <sup>b</sup>	Polypropylene (PP) pipe or tubing, 1 1/4 inches and larger	4	10 <sup>b</sup>
			PVC pipe	4	10 <sup>b</sup>
			Stainless steel drainage systems	10	10 <sup>b</sup>

**Unit MA:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Smoke detector on basement level not working.
4. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Note – no right basement in unit MA

Apartment MA#1;

1. No SD bedrooms

Apartment MA#2;

1. No SD bedrooms
2. GFCI in kitchen not working

Apartment MA#3;

1. No SD bedrooms
2. GFCI in kitchen not working

Apartment MA#4;

1. No SD in bedrooms

Apartment MA#5;

1. Passed

**Unit MB:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.

Right basement;

1. Repair ceiling.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Smoke detector on 2<sup>nd</sup> floor not working / hanging from wires.
4. Light cover missing on main entrance level fixture.
5. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Laundry room;

1. Dryer vents thru walls shall be solid pipe material discharged to outdoors, only flex can be used from dryer connection to the wall.
2. Repair or replace exterior door handle, handle shall be one that does not require tight grasping, pinching or twisting of the wrist to operate.
3. Install water hammer arrestors for all wash machines.
4. Wash machines shall discharge to an approved standpipe with a trap.  
Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Apartment MB#1;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working

Apartment MB#2;

1. Passed

Apartment MB#3;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working

Apartment MB#4;

1. No SD in bedrooms

**Unit MC:**

Left basement;

1. Repair ceiling.
2. Replace the missing door on the block fire wall.
3. Electric receptacles shall be GFCI protected.

Right basement;

1. Repair ceiling.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.
4. Missing handrail at basement level stairs.

Furnace Room;

1. Use proper pipe supports for all piping.
2. Pressure relief pipes shall not be threaded at ends, shall be to within 6" of the floor.
3. Support loose hanging wires.
5. Note – the furnace room doors were found in an open position, the doors are to be closed at all times. With the door closed there needs to be outdoor combustion air for the total number of BTU's. One permanent opening method is used, per the code the opening shall be 12" of the top of the enclosure and shall have a minimum free area of 1 square inch per 3,000 BTU. Provide calculations that the existing vent meets the required outdoor air. Total 1,053,999 BTU's.

Apartment MC#1;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working
4. GFCI in bathroom not working

Apartment MC#2;

1. No SD in bedrooms

Apartment MC#3;

1. No SD in bedrooms
2. GFCI in kitchen not working
3. GFCI in bathroom not working

Apartment MC#4;

1. No SD in bedrooms
2. GFCI in bathroom not working

**Unit MD:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.
3. Replace the missing electric panel cover on electric panel.
4. Repair the incorrect wiring methods used in electric panel. ( where is it feed from?)

Right basement;

1. Repair ceiling.
2. Repair the leak in the sewer pipe from the ceiling areas.
3. Electric receptacles shall be GFCI protected
4. Remove 1" pvc drain line discharging into basement.
5. Removal of flex dryer duct from apartment above, repair hole in floor to apartment above.  
Please note that concealed dryer duct shall be solid pipe material discharged to outdoors.
6. Cap the old toilet sewer pipe, there shall be no open sewer pipes.
7. Cap the old floor drain and the old 1 ½" elbow drain pipe of the main sewer stack near old toilet location.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Smoke detector on 1<sup>st</sup> and 2<sup>nd</sup> floor not working / hanging from wires.
4. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.

Apartment MD#1;

1. No SD in bedrooms
2. GFCI in bathroom not working

Apartment MD#2;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working

Apartment MD#3;

1. No SD in bedrooms
2. GFCI in kitchen not working
3. GFCI in bathroom not working

Apartment MD#4;

1. No SD in bedrooms
2. SD in hallway not working
3. GFCI in kitchen not working

**Unit ME:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.



Right basement;

1. Repair ceiling.
2. Correct the tub drain line from above, max vertical distance from tub outlet to trap is 24".

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.
4. Smoke detector on the 2<sup>nd</sup> floor not working.

Apartment ME#1;

1. No SD in bedrooms
2. SD in hallway not working

Apartment ME#2;

1. No SD in bedrooms
2. No SD in hallway
3. GFCI in kitchen not working

Apartment ME#3;

1. No SD in bedrooms

Apartment ME#4;

1. No SD in bedrooms
2. No SD in hallway
3. GFCI in kitchen not working
4. GFCI in bathroom not working

**Unit MF:**

Left basement;

1. Repair ceiling.
2. Electric receptacles shall be GFCI protected.
3. Repair the leak in the sewer pipe from the ceiling areas.
4. Structural issues found in steel beam support, steel beam not bearing on end of block wall.  
Provide structural engineer report including that the imposed loads are supported with methods found on site.
5. Hole found in block wall to a crawl space to unit MG, the hole is the only access found during the inspection to crawl space, the access hole shall be protected with a fire rated panel / door system and shall have proper lintel or header support above, and the access opening shall be a minimum of 18" x 24".

Right basement;

1. Repair ceiling.
2. Repair the leak in the sewer pipe from the ceiling areas.
3. Removal of flex dryer duct from apartment above, repair hole in floor to apartment above. Please note that concealed dryer duct shall be solid pipe material discharged to outdoors.
4. Replace / relocate the 2" drain line from above (>8' to a vent). The max distance from trap to a vent is 8' for a 2" drain pipe.

Hallway;

1. Install a fire extinguisher at the main entrance.
2. Install emergency lights and exit signs.
3. Install tactile exit sign on latch side of main exit door, braille shall be 48" to 60" a.f.f.
4. Smoke detector at 1<sup>st</sup> and 2<sup>nd</sup> floor not working.

Apartment MF#1;

1. No SD in bedrooms

Apartment MF#2;

1. No power may be under renovation

Apartment MF#3;

1. No SD in bedrooms

Apartment MF#4;

1. No SD in bedrooms
2. SD in hallway not working

**Unit MG:**

Storage closet;

1. Install a faceplate over the electric receptacle on the wall.
2. The NM (romex) wiring thru the floor shall be protected. Exposed NM (romex) in closet not permitted.

Hallway;

1. Smoke detector on the 1<sup>st</sup> and 2<sup>nd</sup> floor not working.

Note – Unit MG does not have a basement only a crawl space accessible from basement of unit MF.

Apartment MG#1;

1. No SD in bedrooms

Apartment MG#2;

1. No SD in bedrooms

Apartment MG#3;

1. Passed

Apartment MG#4;

1. No SD in bedrooms
2. No SD in hallway
3. GFCI in kitchen not working

**Unit MH:**

Basement;

1. The door to the basement from the common stairway / hall is nailed shut. The closing off of the doorway is now a dead end stairway at the basement level. Dead end stairway is prohibited. Provide access to the basement level for a complete inspection so as to verify the conditions of the basement area.

Hallway;

1. Smoke detector on the 1<sup>st</sup> floor not working.

Apartment MH#1;

1. No SD in bedrooms
2. GFCI in kitchen not working

Apartment MH#2;

1. No SD in bedrooms
2. No SD in hallway

Apartment MH#3;

1. No SD in bedrooms
2. No SD in hallway

Apartment MH#4;

1. No SD in bedrooms

Apartment MH#5;

1. Passed

**Exterior Areas Building M:**

1. Install handrails on all exterior stairs to main entrances. Handrails are required on both sides 34"-38" high and shall extend 12" beyond the top and bottom risers.
2. Repair the stucco at the rear wall where missing and along the gable end of unit MF.
3. Support the roof gutter and replace the missing roof gutters from unit MH and MG. – water shall discharge away from foundations.

**End Comments**

# Heather Glen Apartment Complex

Parcel:	67-3-132.1
Address:	1650 West Chester Pike West Chester, PA 19382
Payment:	\$6,450.40 ck#1109

<u>Certificate of Occupancy Permit #</u>	<u>Building Type</u>	<u># of Units</u>	<u>Total Square Footage</u>	<u>Unit Square Footage</u>	<u>Common Area Square Footage</u>	<u>Unit Cost</u>	<u>Common Area Cost</u>	<u>Total Building Cost</u>	<u>Total 10% Admin Fee</u>
	D	22	22,819	22,066	753	\$1,320.00	\$188.25	\$1,508.25	\$150.83
	B	25	25,852	25,075	777	\$1,500.00	\$194.25	\$1,694.25	\$169.43
	M	34	35,544	34,599	945	\$2,040.00	\$236.25	\$2,276.25	\$227.63
	Office	0	538	0	538	\$0.00	\$134.50	\$134.50	\$13.45
	Maintenance	0	1,003	0	1,003	\$0.00	\$250.75	\$250.75	\$25.08
<b>Total</b>								<b>\$5,864.00</b>	<b>\$586.40</b>

Total Building Cost: \$5,864.00  
 Total Admin Fee: \$586.40  
 Grand Total: \$6,450.40

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made this \_\_\_\_ day of June, 2019 by and between **WESTTOWN TOWNSHIP** (“Township”) and **FAIR SHARE PROPERTIES LP**, a Pennsylvania limited partnership, with its address at 655 Swedesford Avenue, Malvern, PA 19355, 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 1074 Wilmington Pike, Westtown Township, Chester County, Pennsylvania, consisting of 3.24 +/- acres, being U.P.I. No. 67-4-23 (“Subject Property”), as and for the Land Development of the Subject Property into a one (1) commercial lot together with walking trail, road improvements, 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. 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 Residence-Office.

B. The proposed land development of the Subject Property is known as “Arborview Commercial Lot” as is depicted on the Final Subdivision and Land Development Plan dated July 15, 2015, last revised May 18, 2018 (“Plans”).

C. A Conditional Use Approval for the Subject Property was submitted to, and approved by, the Board of Supervisors of the Township on March 2, 2015, subject to numerous conditions as noted on the Plans.

D. On or about July 16, 2018, the Board of Supervisors of the Township granted Preliminary/Final Land Development Approval of the application, 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 even date herewith, 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 Final Land Development Plans, prepared by Inland Designs, dated July 15, 2018, last revised May 18, 2018, 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 Secured 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 Secured Improvements in a good and workmanlike manner 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 (except to the extent of any granted waivers or variances thereof); (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, statutes, ordinances, resolutions, rules and regulations of the Township and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction (except to the extent of any granted waivers or variances thereof); 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 Secured 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") (except to the extent of any granted waivers or variances thereof), 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 Secured 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 Secured Improvement. The Township Engineer, exercising reasonable judgment, will determine if the Secured Improvement complies with the requirements hereof and with all applicable standards (except to the extent of any granted waivers or variances thereof).

h. Developer agrees that if any materials used or any work done in the construction of the Secured 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 (except to the extent of any granted waivers or variances thereof), 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 Secured Improvements during its ownership of the Subject Property; provided, however, that in the case of Secured 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) Secured Improvements as provided under Section 8 below. For purposes of this subsection, "repair and maintenance of all Secured Improvements" shall mean, without limitation, keeping the Secured 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 Secured 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 and such default is not cured within thirty (30) days after Developer's receipt of notice thereof from Township, 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) 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 Secured 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 Secured Improvements subject of the default); and

(b) In order to pay for the 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 costs, expenses and fees specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees, for such costs, expenses, and fees; and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer (including, but not limited to, confession of judgment) to recover such costs, expenses and/or fees, together with reasonable attorney fees and costs incurred by Township 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 Secured Improvements and the construction of Improvements (those not covered by funds which Developer has posted with Township) on the Subject Property, 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 Plans, the Township shall provide Developer with written notice of violation and a five (5)-business 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) business 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, engineering, reasonable 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

(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 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, if applicable, also executed by the “Escrow Agent” or “Bank” as defined in the Financial Security Agreement and has provided the Township with Financial Security for the Secured 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 (except to the extent of any granted waivers or variances thereof) 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.

b. Before commencing any work on the Secured 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 Secured 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 Secured Improvements are subject to inspection by the Township Engineer. At least five (5) days prior to the commencement of each Secured 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 Secured 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 Secured 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 Secured 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 of the Secured Improvements 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 Secured 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 Secured 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 Secured Improvements within thirty (30) days after the date of this Agreement. Developer further agrees to complete construction of the daycare building shown on the Plans within eighteen (18) months after the date of the issuance of the building permit for said building.

##### 5. Guaranty of Completion of Secured Improvements

a. Developer shall complete all site Secured 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 and present to the Township an as built plan ("as built lot plan") as a condition precedent to the issuance of a use and occupancy permit.

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

c. In the event that the Subject Property depicted in the as-built lot plan does not comply with the approved Plans, the registered professional engineer shall identify any specifications that are not conforming therewith. The failure to present a certified as-built lot plan that conforms in all respects with the approved Plans shall render the Developer in default

of the approved Plans and this Agreement. Said default may result in the Township's denial of a use and occupancy permit for the lot(s), in addition to any and all legal and equitable remedies available that may be available to the Township.

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 deposited or otherwise established by Developer, no work towards the completion of any of the Secured Improvements shall be laid out, installed or otherwise commenced, and no building, grading, occupancy or other permit, relating to the erection, placement or occupancy of any of the Secured 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 Six Hundred Twenty Thousand, Eight Hundred Fifty-Nine and 83/100 U.S. Dollars (\$620,859.83) 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 Secured 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 Secured 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 Secured 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 Secured 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 (except to the extent of any granted waivers or variances 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 Secured Improvements which are part of the offer of dedication or other transfer or assignment); and/or (ii) any repair and/or maintenance of such Secured Improvements (or failure thereof), which repair and/or maintenance of such Secured 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 Secured Improvements offered for dedication (or other transfer or assignment) under Section 7.a (or any other of the Secured 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;

(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, which approval shall not be unreasonably withheld;

(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) Secured Improvements, the structural integrity and functioning of each such Secured 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 Secured 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) Secured 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) Secured 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 and such deficiency is not cured within thirty (30) days after Developer's receipt of notice thereof from Township, 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) Secured 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

(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 Secured Improvements is or are not completed fully in accordance with the terms, conditions and requirements of Section 2 above and such failure is not cured within thirty (30) days after Developer's receipt of notice thereof from Township, or in the event that Developer becomes insolvent, declares bankruptcy or ceases work on the Secured 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 Secured 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 Secured Improvements, together with related costs, expenses and fees, Township, at its option, shall have the right to complete part of the Secured Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Secured Improvements and pay all related costs, expenses and fees, including, but not limited to, the following: (i) the amount that Township shall require to fully complete the Secured Improvements or otherwise fully cure the default; (ii) any other 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 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 amounts, costs, expenses or fees; (iv) 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 Secured Improvements upon the aforesaid default of Developer, 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 Secured 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 Secured Improvements, except to the extent caused by the negligence, willful misconduct, or intentional act or omission 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.

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 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 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 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 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 outstanding 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. 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. 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 forty-five (45) 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 forty-five (45) 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, the Township may withdraw such amounts from the Security Deposit and shall notify Developer of such withdrawal.

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. 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 forty-five (45) 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 forty-five (45) 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, the Township may withdraw such amounts from the Security Deposit and shall notify Developer of such withdrawal.

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, installation, construction, completion, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Secured Improvements, together with all cost, fees and expenses (including, but not limited to, reasonable 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.

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 Secured 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 prepaid, return receipt requested; or (iii) nationally recognized overnight express delivery service that guarantees next day delivery and provides a receipt, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective only upon receipt (or refusal by the intended recipient to accept delivery).

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. 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 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 Secured 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.

**[INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]**



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

ATTEST:

TOWNSHIP:  
WESTTOWN TOWNSHIP

\_\_\_\_\_

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

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

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

**[INTENTIONALLY BLANK – SIGNATURES CONTINUE ON FOLLOWING PAGE]**

ATTEST:

\_\_\_\_\_

DEVELOPER:

FAIR SHARE PROPERTIES LP

By: JJ&L Real Estate Associates, Inc.,  
its general partner

By:

\_\_\_\_\_  
Thomas A. Galbally, Jr., President

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





## FINANCIAL SECURITY AGREEMENT

THIS AGREEMENT (this "Agreement"), is made as of this \_\_\_ day of June, 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 **FAIR SHARE PROPERTIES LP**, a Pennsylvania limited partnership, with its address at 655 Swedesford Avenue, Malvern, PA 19355, and its assigns and successors in interest ("Developer"), and **MERIDIAN BANK**, with an address at 9 Old Lincoln Highway, Malvern, PA 19355 ("Financial Institution").

### 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 1074 Wilmington Pike, Westtown Township, Chester County, Pennsylvania, consisting of 3.24 +/- acres, being U.P.I. No. 67-4-23 ("Subject Property"), as and for the Land Development of the Subject Property into one (1) commercial lot together with walking trail, road improvements, 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. This Agreement pertains to those improvements designated on the Plans, and listed in summary form on the Plans and on the attached spread sheet.

B. The proposed land development of the Subject Property is known as "Arborview Commercial Lot" as is depicted on the Final Subdivision and Land Development Plan dated July 15, 2015, last revised May 18, 2018 ("Plans").

C. Conditional Use Approval for the Subject Property was submitted to, and approved by, the Board of Supervisors of the Township on March 2, 2015, subject to numerous conditions as noted on the Plans.

D. On or about July 16, 2018, the Board of Supervisors of the Township granted Preliminary/Final Land Development Approval of the application, 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, set forth in Exhibit "A," providing for, among other things, the said completion of improvements and amenities and the said posting of financial security.

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 Secured 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) “Multimodal Agreement” shall mean that certain Multimodal Transportation Fund Grant Agreement for Highway and Bridge Projects dated effective as of March 26, 2019, by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation, and Developer.

(8) “Multimodal Grant” shall mean the \$750,000.00 grant provided by the Commonwealth of Pennsylvania to Developer in accordance with the Multimodal Agreement.

(9) “Multimodal Improvements” shall mean all those certain Improvements, the costs of which will be funded by the Multimodal Grant.

(10) “Multimodal Project” shall mean the construction of the new connector road named “Orvis Way” and pedestrian/bicycle path connecting Stetson School Drive and West Pleasant Grove Road.

(11) “Plans” shall mean that certain Final Land Development Plans, prepared by Inland Designs, dated July 15, 2018, last revised May 18, 2018, 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..

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

(13) “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.

(14) “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.

(15) “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 nature of a restricted loan account with Financial Institution under and in accordance with the terms and conditions of this Agreement. (The said financial security in the form of a restricted loan account 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 shall be subject to approval of Township, which approval shall not be unreasonably withheld, and Township has approved the Financial Institution which is a party to this Agreement. 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 a portion 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. Notwithstanding any provision in the Development Agreement or this Agreement to the contrary, it is agreed and understood that (1) the Financial Security provided for under this Agreement shall only secure the obligations of Developer with respect to the Secured Improvements and not the Multimodal Improvements and (2) in the event that, within five (5) business days after Developer receives an electronic payment of the Multimodal Grant for completion of a portion of the Multimodal Project (such work is hereinafter called the "Multimodal Project Completed Work"), Developer fails to pay Allan Myers (the contractor engaged by Developer to construct the Multimodal Project) for its work related to such Multimodal Project Completed Work from such electronic payment, the Township shall have the right to issue one (1) or more stop, cease and desist orders concerning further work upon construction of the Secured Improvements and/or other Improvements and 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 the making of such payment due Allan Myers, 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.

b. The initial amount of the Financial Security shall be Six Hundred Twenty Thousand, Eight Hundred Fifty-Nine and 83/100 U.S. Dollars (\$620,859.83), which amount is one hundred and ten percent (110%) of the total of (i) the estimated costs of completing the Secured Improvements (which does not include the Multimodal 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 in accordance with Section 15 of this Agreement with a copy 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 not released by Township pursuant to Section



4 or Section 7 of this Agreement 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, in accordance with this Agreement, has been duly established with it, (ii) the establishment, maintenance and use of the Financial Security under, for purposes of and in accordance with this Agreement and the Development Agreement do 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 Financial Institution, 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.

e. Nothing contained in this Section 3 shall obligate Financial Institution to increase the amount of the Financial Security provided by it pursuant to this 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. The foregoing shall not prohibit the release of such amount of the Financial Security as have been authorized for release pursuant to Section 4.a above.

#### 5. Default

a. If Township determines that any of the Secured Improvements has 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), and, in either case, such default is not cured within thirty (30) days after Developer's receipt of notice thereof from Township, Developer shall also 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 following 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 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 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 costs, expenses or fees in accordance with and pursuant to Section 10 of the Development Agreement, Developer shall be in default of this Financial Security Agreement, and Township shall be authorized to collect the amount thereof from and under that part of the Financial Security specifically established to guarantee or otherwise cover the payment of such costs, expenses and/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, 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 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 reasonably 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 reasonably 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 Subsection 8.b 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 after 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 five (5) 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 authorized to be given under this Agreement 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 and permitted hereunder.

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.

10. Financial Institution Non-Responsibility

a. Developer and Township agree 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 and Township further agree 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 and that Financial Institution's liability under this Agreement is limited to the amount of the Financial Security referred to in Section 2.b above, as the same may be reduced from time to time by Township pursuant to Section 4 or Section 7 of this Agreement.

e. It shall be noted that, to the extent that the Financial Institution undertakes any action that would affect the validity of the Financial Security hereunder, the Financial Institution shall provide sixty (60) days' prior notice to the Township and Developer of the same, in which instance the Developer shall be responsible for providing full and complete alternative

Financial Security, failing which the Township has the right, but not the obligation to draw down upon all remaining Financial Security.

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. Interest

a. If any interest accrues on account of the Financial Security, such interest shall merge with and become part of the funds represented by the Financial Security and shall be treated as an integral part thereof and applied in accordance with the terms of this Financial Security Agreement. All such interest shall be reported under and to the taxpayer identification number of Developer, and Developer shall be liable for the payment of any income taxes as may be imposed and due on such interest.

13. 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.

14. 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, reasonable 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.

15. Notices

a. 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.

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 United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized overnight express delivery service that guarantees next day delivery and provides a receipt, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective only upon receipt (or refusal by the intended recipient to accept delivery).

## 16. 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. 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 Subject 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:

TOWNSHIP:  
WESTTOWN TOWNSHIP

\_\_\_\_\_

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

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

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

**[INTENTIONALLY BLANK – SIGNATURES CONTINUE ON FOLLOWING PAGE]**

ATTEST:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

DEVELOPER:  
FAIR SHARE PROPERTIES LP  
By: JJ&L Real Estate Associates, Inc.,  
its general partner

By: \_\_\_\_\_  
Thomas A. Galbally, Jr., President

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

FINANCIAL INSTITUTION:  
MERIDIAN BANK

By: \_\_\_\_\_  
Joseph A. Trianosky, Vice President

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

**ACKNOWLEDGMENTS**

COMMONWEALTH OF PENNSYLVANIA:  
COUNTY OF CHESTER : SS.

ON THIS, the \_\_\_\_\_ day of June, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who acknowledged themselves to be members of the Board of Supervisors of \_\_\_\_\_ Township, and that they, 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 June, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared Thomas A. Galbally, Jr. who acknowledged himself to be the President of JJ&L Real Estate Associates, Inc., general partner of Fair Share Properties LP, and that he, 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 June, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared Joseph A. Trianosky who acknowledged himself to be a Vice President of Meridian Bank and that he, 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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**Exhibit “A”**

[see attached]

## EXHIBIT "B"

### ACKNOWLEDGMENT AND VERIFICATION

**THE UNDERSIGNED BANK**, by duly authorized officer or other representative and intending to be legally bound, hereby acknowledges, verifies and agrees:

1. **THAT** the Undersigned is the entity referred to as the "Financial Institution" in that certain Financial Security Agreement, dated June \_\_, 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 Fair Share Properties LP (the "Developer"), with respect to the "Arborview Commercial Lot" 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, financial security in the form of a restricted loan account, in the amount of Six Hundred Twenty Thousand, Eight Hundred Fifty-Nine and 83/100 U.S. Dollars (\$620,859.83), has been duly established with the Undersigned by the Developer, and is being held 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 has been established in a restricted loan account, and that the Financial Security is being restricted on behalf of the Township as the Financial Security for a portion of the Secured Improvements.

4. **THAT** the above restricted loan account 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.d 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 otherwise comply with the terms of the Financial Security Agreement and the Development Agreement to the extent that said terms apply to: (i) the Financial Security referred to in the Financial Security Agreement and the Development

Agreement; and (ii) the actions which the Undersigned, as the Financial Institution referred to in the Financial Security Agreement and the Development Agreement, is to take or not take with respect to such Financial Security.

9. **THAT** the establishment, maintenance and use of the Financial Security for purposes of and in accordance with the Financial Security Agreement and the Development Agreement do 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, except that such restriction shall not apply to an assignment of this Agreement pursuant a sale and transfer of all or substantially all of its assets, including the Financial Institution's loan to Developer being used to fund the Financial Security, or a transfer by operation of law of such assets by merger or similar business combination.

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:  
MERIDIAN BANK**

Attest:

\_\_\_\_\_

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 Fair Share Properties LP, (“Developer”), dated June \_\_, 2019, concerning the construction, installation and completion of improvements in the “Arborview Commercial Lot” Subdivision and Land Development, **HAVE BEEN COMPLETED TO THE EXTENT OF THE AMOUNT INDICATED IN ITEM I BELOW;** and

**B. AUTHORIZE** Meridian Bank, pursuant to the Development Agreement and related Financial Security Agreement of the same date, **TO REDUCE** the Financial Security, in the nature of a restricted loan account 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 FINANCIAL SECURITY AGREEMENT.**

**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: Unruh, Turner, Burke & Frees  
P.O. Box 515  
West Chester, PA 19381-0515  
(610) 692-1371

Return to: Gawthrop Greenwood, PC  
P.O. Box 562  
West Chester, PA 19381-0562  
(610) 696-8225

U.P.I. No.: 67-4-23

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of June, 2019, by and between **FAIR SHARE PROPERTIES LP**, a Pennsylvania limited partnership (hereinafter the “Landowner”), and **WESTTOWN TOWNSHIP**, Chester County, Pennsylvania, a Township of the Second Class (hereinafter the “Municipality”);

**WITNESSETH:**

**WHEREAS**, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, at Deed Book 6457 and Page 797 (hereinafter “Property”); and

**WHEREAS**, the Landowner is proceeding to build and develop the Property; and

**WHEREAS**, the stormwater Best Management Practices (herein after BMP(s)) And Conveyances Operations and Maintenance Plan approved by the Municipality (hereinafter referred to as the “O&M Plan”) for the Property, which is attached hereto as Appendix A and 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 which are identified as follows: final Land Development Plans, prepared by Inland Designs, dated July 15, 2018, last revised May 18, 2018.

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.

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 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 thirty (30) 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.

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. 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. 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.

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. 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.

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

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

**MUNICIPALITY:**  
**WESTTOWN TOWNSHIP**  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**LANDOWNER:**  
**FAIR SHARE PROPERTIES LP**  
By: JJ&L Real Estate Associates, Inc.,  
its general partner  
  
By: \_\_\_\_\_  
Thomas A. Galbally, Jr., President

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF CHESTER :

ON THIS, the \_\_\_\_\_ day of June, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who acknowledged themselves to be members of the Board of Supervisors of Westtown Municipality, and that they, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and notarial seal.

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

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF CHESTER :

ON THIS, the \_\_\_\_\_ day of June, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared Thomas A. Galbally, Jr. who acknowledged himself to be the President of JJ&L Real Estate Associates, Inc., general partner of Fair Share Properties LP, and that he, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and notarial seal.

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

**APPENDIX A**  
**O&M PLAN**

[attached hereto]



## REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between WESTTOWN TOWNSHIP, a body corporate and politic organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with a business address of 1039 Wilmington Pike, West Chester, Pennsylvania 19382 ("Township") and AQUA PENNSYLVANIA, INC. with its principal place of business located at 762 W. Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 ("Aqua").

### Background

- A. Oakbourne Road is a municipal road in the Township, connecting U.S. Route 322/U.S. Route 202 and Shiloh Road.
- B. The Township has undertaken certain construction work along Oakbourne Road in the Township, including realignment, regrading, relocation of utility lines, and installation of a new box culvert ("Township Work").
- C. During the course of such Township Work, the Township and/or its contractors will relocate the existing force main and water main in Oakbourne Road at the location of the construction as set forth in this Agreement.
- D. The Township agrees to construct the Aqua Improvements and Aqua agrees to reimburse the Township for certain costs related to the Aqua Improvements and paving of Oakbourne Road as contained in this Agreement.

### Agreement

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

- 1. Paragraphs A-D of the Background above are incorporated in this Agreement.
- 2. The Township or its contractors will perform the physical adjustment to Aqua's utilities as specified in the Project Manual for the Relocation of Existing Force Main and Water Main for the Oakbourne Road Bridge Replacement (Contract 19-S1) dated March 2019 prepared by Carroll Engineering Corporation ("Contract 19-S1") and as depicted on the Force Main and Water Main Directional Drilling Plan prepared by Carroll Engineering Corporation, dated March 18, 2019, and the Oakbourne Road Station 6+00 to 9+50 plan prepared by Carroll Engineering Corporation, dated March 8, 2019, which are attached hereto and incorporated herein, as Exhibits A and B, respectively ("Aqua Improvements").
- 3. Aqua will reimburse the Township a portion of its costs for the Aqua Improvements, including a set payment of \$95,000.00 for the water main. Aqua also agrees to reimburse the Township an estimated value of \$700.00 for approximately 20 feet of base course, an estimated value of \$200.00 for approximately 20 feet of binder course, and an estimated value of \$350.00 for half of the Township's cost of the permanent full road mill and overlay restoration (collectively, "Estimated Costs").

4. Upon completion of the installation of the water main, the Township will notify Aqua in writing and provide an invoice for \$95,000.00 for the costs of the water main. Upon receipt of such notice, Aqua will assume immediate ownership of the Aqua Improvements. Aqua will remit payment of \$95,000.00 to the Township within thirty days of receipt of the invoice.

5. Upon the completion of the paving of Oakbourne Road and the receipt of the final costs of such work from its contractor, the Township will adjust the Estimated Costs to reflect Aqua's share of the paving and other outstanding expenses and will provide Aqua with a certified and final copy of all costs to be reimbursed ("Final Costs") under the terms and conditions of this Agreement. Within 30 days of the receipt of the notice of Final Costs, Aqua shall remit payment to the Township in the full and complete amount due.

6. **INDEMNIFICATION BY AND LIABILITIES OF TOWNSHIP.** Except as to acts of gross negligence (willful misconduct) on the part of the Township in the performance of its obligations hereunder, the Township shall have no obligation to indemnify or hold Aqua harmless from and against, and shall not be responsible or liable for, any claims, liabilities, damages, losses, costs, attorneys' fees, etc., including, but not limited to, any indirect, special, incidental, consequential or punitive losses or damages of any kind, including lost profits (whether or not the Township has been advised of the possibility of such loss or damage) with respect to any action, inaction or activities by Aqua, Township and/or one or more third parties concerning, either directly or indirectly, the subject matter of this Agreement except to the extent provided by the insurance required to be maintained by the contractor(s) engaged to perform the Township Work. The Township's liability with respect to this Agreement is limited to the amounts paid by Aqua in connection with this Agreement due to any error by Township; no special or consequential damages may be recovered by Aqua.

7. **INDEMNIFICATION BY AND LIABILITIES OF AQUA.** Aqua hereby indemnifies and holds the Township harmless from any and all claims for loss or damage to property or for personal injuries or death, or for loss from delay arising out of the acts, omissions or negligence of Aqua or any of its agents or independent contractors. Aqua agrees to indemnify and hold Township harmless from any and all claims, losses, actions, demands, damages, costs, penalties, fines and expenses, including attorneys' fees, resulting from, relating to or arising out of any services rendered by Aqua and/or Aqua's employees or agents, or acts or omissions related to services performed by Aqua and/or Aqua's employees or agents. Aqua shall have sole ownership and exclusive responsibility of maintenance and repair of the Aqua Improvements upon their completion and transfer of ownership, and the Township shall have no maintenance or repair obligations thereto. This Section 7 specifically excludes any rights to claims for loss, injury or damage that Aqua might otherwise have against the Township's contractor or other third parties.

8. Aqua's Right of Inspection. In consultation with the Township's engineer, Aqua has the right to inspect the Aqua Improvements during the period in which the Performance Bond as referenced in Contract 19-S1 remains in effect.

9. Entire Agreement; Modification. This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the

parties with respect to the subject matter hereof. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by all parties hereto.

10. Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if sent by certified or registered mail, return receipt requested, with first class postage prepaid, or by overnight delivery service (such as Federal Express, with proof of delivery) addressed to the party as specified below, with such notice to be effective upon receipt:

If to Aqua: Aqua Pennsylvania, Inc.  
Attn: General Counsel  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
Phone: 610-645-1068  
Email: [cpluning@aquaamerica.com](mailto:cpluning@aquaamerica.com)

Aqua Pennsylvania, Inc.  
Attn: Marc A. Lucca, President  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
Phone: 610-645-1059  
Email: [MALucca@aquaamerica.com](mailto:MALucca@aquaamerica.com)

If to the Township: Robert Pingar  
Township Manager  
P.O. Box 79  
Westtown, PA 19395  
Phone: 610-692-1930  
Email: [rpingar@westtown.org](mailto:rpingar@westtown.org)

With a required copy to: Patrick M. McKenna  
Gawthrop Greenwood, P.C.  
17 E. Gay Street, Ste. 100  
West Chester, PA 19380  
Phone: 610-696-8225  
Email: [pmckenna@gawthrop.com](mailto:pmckenna@gawthrop.com)

11. Entire Agreement; Amendment. This Agreement is the entire and only understanding and agreement with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written. This Agreement may be modified or amended only upon the mutual written consent of the Township and Aqua, or their respective legal representatives, successors or assigns.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all the signatures on such counterparts appeared on one document, each such counterpart shall be deemed an original, and an electronic copy is as valid as an original and shall be deemed an original.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year aforesaid.

Attest:

AQUA PENNSYLVANIA, INC.

\_\_\_\_\_

\_\_\_\_\_

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

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

ATTEST:

BOARD OF SUPERVISORS  
WESTTOWN TOWNSHIP

\_\_\_\_\_

\_\_\_\_\_

Scott E. Yaw, Chair

**Exhibit A**

Force Main and Water Main Directional Drilling Plan  
prepared by Carroll Engineering Corporation and dated March 18, 2019

**Exhibit B**

Oakbourne Road Station 6+00 to 9+50 plan  
prepared by Carroll Engineering Corporation and dated March 8, 2019