



UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS MEETING
AGENDA
JANUARY 6, 2025
7:00 p.m.

LOCATION: Township Building
140 Pottstown Pike, Chester Springs PA 19425

The Board May Discuss and Decide All Matters Brought Before Them

I. CALL TO ORDER

- A. Salute to the Flag
- B. Moment of Silence
- C. Inquire If Any Attendee Plans to Audio or Video Record the Meeting

II. ORGANIZATION:

- A. Elect Board of Supervisors' Chair and Vice-Chair
- B. Appoint Staff, Consultants, Solicitors
- C. Appoint Boards and Commissions Members
- D. Recognize Elected Auditors
- E. Establish Bond Amounts
- F. Establish Depositories of Township Funds
- G. Establish Supervisors' Meeting Schedule
- H. Establish Voting Delegate for County & State Association Conventions

III. CALENDAR

January 8, 2025 9:00 a.m. Elected Auditors Annual Organization Meeting
January 14, 2025 4:00 p.m. Board of Supervisors Workshop
January 20, 2025 Township Office Closed ~ Martin Luther King, Jr. Day
January 21, 2025 (Tuesday) 7:00 p.m. Board of Supervisors Meeting

Yard Waste, Christmas Tree Collections: January 8 and 22 (last Christmas Tree collection)

Do not use plastic bags as these materials are composted. Place materials curbside the night before to guarantee collection. If you cannot wait for a curbside Christmas tree collection, you can take your bare, unadorned Christmas tree to the dumpster for compostable materials at the Public Works facility, 132 Oscar Way, Chester Springs.

IV. Celebree / Byers Station Parcel 5C Lot 2B ~ Amended Financial Security and
Land Development Agreements

V. OPEN SESSION

VI. ADJOURNMENT



UPPER UWCHLAN TOWNSHIP

MEMORANDUM

ADMINISTRATION

TO: Board of Supervisors: Sandy D'Amico, Jenn Baxter, Andy Durkin
Township Manager: Tony Scheivert

FROM: Gwen Jonik
Township Secretary

RE: January 6, 2025 7:00 p.m. Annual Organization Meeting

DATE: January 3, 2025

The Board is requested to consider taking the following actions at the January 6, 2025 Organization meeting, which begins at 7:00 p.m. and will be held in the Schoolhouse.

1. The 2024 Chairperson, Jenn Baxter, calls the meeting to order.
 - a. Salute to the Flag
 - b. Moment of Silence
 - c. Inquire If Any Attendee Plans to Audio or Video Record the Meeting
2. 2024 Chairperson designates Tony Scheivert, Township Manager, to conduct the organization of the Board of Supervisors by requesting Nominations / Motion for 2025 Chairperson.

Newly-elected Chairperson conducts election of 2025 Vice-Chairperson.

3. Chairperson may conduct reappointments via a single Motion**:

A. Township Manager	Tony Scheivert
B. Assistant Township Manager	Lindsay Yeager
C. Township Secretary	Gwen Jonik
D. Right-To-Know (Open Records) Officer	Gwen Jonik
E. Right-To-Know Officer (Police)	Chief Tom Jones
F. Township Treasurer	Jill Bukata, C.P.A.
G. Zoning Officer	Anthony Campbell
H. Director of Code Enforcement	Rhys Lloyd
I. Township Engineer	Gilmore & Associates

J. Township Planner	Brandywine Conservancy
K. Township Traffic Engineer	Bowman
L. Township Wastewater Engineer	ARRO Consulting, Inc.
M. Township Municipal Authority Solicitor	Christopher Frantz, Esquire
N. Township Wastewater Facility Operator	Clean Water, Inc. – Brian Norris
O. Road Master	Mike Esterlis, Director of Public Works
P. Township Fire Marshal	Richard Ruth
Q. Township Auditor	Barbacane, Thornton and Company
R. Township Solicitor	Buckley, Brion, McGuire & Morris, LLP
S. Township Solicitor-Alternate	Unruh, Turner, Burke, & Frees, P.C.
T. Township Solicitor-Labor	Eckert Seamans Cherin & Mellott, LLC
U. Zoning Hearing Board Solicitor	Craig Kalemjian, Esquire
V. Vacancy Board	Vince McVeigh
W. Deputy Township Tax Collector	Keystone Collections Group
X. Police Department Liaison	Sandy D'Amico
Y. Emergency Management Coordinator	Byron Nickerson

** All Consultants and Solicitors expressed interest in continuing to provide services to Upper Uwchlan Township in 2025 and requested consideration for reappointment.

The following Consultants/Solicitors *increased* their rates for 2025:

Gilmore & Associates	\$2-\$6/hour - most positions
Bowman	\$5/hour - all positions
ARRO	\$5-\$20/hour - most positions
Brandywine Conservancy	\$5-\$20/hour – a few positions
Richard Grubb Associates	\$5/hour - all positions
Unruh Turner (alternate Solicitor)	\$15/hour

4.A. Commissions / Boards Re-Appointments:

The following members expressed interest in continuing to serve their respective Board/Commission.

Emergency Management Planning Commission (3 Year Term):

Jamie Goncharoff, Steve Hirsh, Cathy Tomlinson

Environmental Advisory Council: Madhu Gurthy

Historic Commission (3 Year Term): Gerry Stein, Rina Vachhani

Municipal Authority (5 Year Term): no term expirations

Park and Recreation (5 Year Term): Sushila Subramanian

Planning Commission (5 Year Term): Chad Adams, Jeff Smith, Sally Winterton

Technology Advisory Board (3 Year Term): Ric Bassler

Zoning Hearing Board (3 Year Term): Peter Egan

- 4.B. Announce the following Vacancies:
 - i. Environmental Advisory Council - 1
 - ii. Municipal Authority - 1

5. Recognize Board of Elected Auditors: (6 Year Term)
Vincent McVeighterm expires December 31, 2025
Jaqueline Pan Wu.....term expires December 31, 2027
David Colajezziterm expires December 31, 2029

6. Establish the following Bond rates:

Treasurer's Bond.....	\$ 2,000,000
Township Manager's Bond.....	\$ 100,000
Tax Collector's Bond.....	\$ 225,000

7. Establish Depositories of Township's Funds:
 - a. Fulton Bank
 - b. Meridian Bank
 - c. S & T Bank
 - d. First Resource Bank
 - e. Pennsylvania School District Liquid Asset Fund (PSDLAF)
 - f. Presence Bank

8. Establish Board of Supervisors Meeting Schedule:
 - a. Dates: 2nd Tuesdays 4:00 p.m. Work Session
3rd Mondays 7:00 p.m. Meeting
 - b. Location: Township Building, 140 Pottstown Pike,
Chester Springs, PA 19425

9. Establish a Voting Delegate to:
 - a. Pennsylvania State Association of Township Supervisors' (PSATS) Annual Convention in Hershey April
 - b. Chester County Association of Township Officials' (CCATO) Conventions;
Spring – March; Fall – November

10. Concur with the IRS Standard Mileage Rate for 2025, 70 cents per mile effective January 1, 2025. [per IRS increases the standard mileage rate for business use in 2025; key rate increases 3 cents to 70 cents per mile | Internal Revenue Service]

ALYSON ZARRO
alyson@rrhc.com
extension 202



December 19, 2024

Via UPS overnight delivery and email

Gwen Jonik, Township Secretary
Upper Uwchlan Township
140 Pottstown Pike
Chester Springs, PA 19425
GJonik@upperuwchlan-pa.gov

Re: Celebree/Byers Station Parcel 5C Lot 2B

Dear Gwen:

Enclosed are one (1) original each of the Land Development Agreement and Financial Security Agreement for the above referenced property, which have been executed by the new property owner, Chester Springs REI LLC. The Amendment to Letter of Credit Number STB145.0 will be delivered under separate cover. Once the Amendment to the Letter of Credit is received, we request that the Board approve and execute the new Land Development and Financial Security Agreement, and that one copy of each be provided to us for our records.

Thank you for your assistance with this matter.

Very truly yours,

Alyson M. Zarro

ALYSON M. ZARRO

AMZ/kdj
Enclosures

cc: Tony Scheivert, Township Manager (*via email w/enclosures*)
Kristin Camp, Esquire, Township Solicitor (*via email w/enclosures*)
Allan Greenburg, Celebree (*via email w/enclosures*)

rrhc.com

717 Constitution Drive, Suite 201 Exton, PA 19341 P. 610-458-4400 F. 610-458-4441

#1703360v1

LAND DEVELOPMENT AGREEMENT

BYERS STATION PARCEL 5C LOT 2B

THIS LAND DEVELOPMENT AGREEMENT (together with all modifications and amendments, the “Agreement”) made this _____ day of _____, 20____, by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the “Township”) and **CHESTER SPRINGS REI LLC**, a Pennsylvania limited liability company with offices at 8029 Corporate Drive, Nottingham, Maryland 21236 (“Developer”).

BACKGROUND:

- A. Developer proposes to develop a 3.971 acre piece of property, known as Chester County Tax Parcel No. 32-4-1090.1 situate northeast of the intersection of Station Boulevard and Pottstown Pike, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed land development known as “Byers Station Parcel 5C Lot 2B” (“Development”).
- B. The Upper Uwchlan Township Board of Supervisors (the “Board”) granted final planned residential development plan approval to one of Developer’s predecessors in title on October 14, 2019 for development of the Tract. Developer’s immediate predecessor in title, Celebree Property Investments, LLC, formerly known as Prosperity Property Investments, LLC (“Celebree”) received amended final approval for development of the Tract on September 19, 2022. Celebree received revised amended final approval for the Development on the Tract on May 20, 2024. Celebree received final approval of the plans for the Development, subject to, among other things entering into a Financial Security Agreement and a Land Development Agreement, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.
- C. On September 10, 2024, Celebree entered into a Land Development Agreement with the Township for the Development (“Celebree Land Development Agreement”) and posted financial security for the Secured Improvements pursuant to a Financial Security Agreement for the Development also dated September 10, 2024 (“Celebree Financial Security Agreement”).
- D. On November 15, 2024, Celebree conveyed the Tract to Developer and Developer agreed to assume the rights and obligations with respect to the Development.
- E. Developer desires to obtain building permits for the construction of the buildings and appurtenant structures in the Development, together with such other permits as are necessary to undertake and complete all of the Secured Improvements, and Developer

desires to post the Financial Security, which will be accomplished through an amendment to the existing letter of credit posted as Financial Security for the Development.

- F. The parties desire to set forth their agreement and understanding with respect to the foregoing 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) "Tract" shall mean all that certain 3.971 acre tract located at the property northeast of the intersection of Station Boulevard and Pottstown Pike, Upper Uwchlan Township, Chester County, Pennsylvania, Chester and which is more fully and further shown and described on the Plans.
- (2) "Plans" shall mean the land development plan entitled "Byers Station Amended Final PRD Plans (Final Plan for Lot 2B of Parcel 5C)" prepared by Bohler Engineering, dated March 15, 2022, last revised May 31, 2024, consisting of thirty-five (35) sheets that are specifically numbered, entitled, dated, and last revised as set forth on Exhibit "A" attached hereto and made fully part hereof, including, without limitation, all notes, statements and other information appearing on the plans, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the plans.
- (3) "Subject Land Development" or "Project" shall mean the proposed land development of the Tract as a 10,500 square foot day care facility with a 5,500 square foot outdoor play area and a 10,500 square foot commercial building, together with new streets, roads, and parking areas designed to serve the same and such other Improvements, as hereinafter defined, proposed or required in, on and/or related to the Subject Land Development, as the same are more fully depicted on the Plans.
- (4) "Improvements" shall mean all those streets, roads, 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, and/or other improvements or common amenities, as the

same are more fully shown, identified or otherwise described on and by the Plans.

- (5) "Secured Improvements" shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates, as set forth in Exhibit "B".
- (6) "Completion Date" shall mean the date specified in Section 2.D of this Agreement on or before which the Improvements shall be completed.
- (7) "Financial Security" shall mean the financial security provided under and in accordance with the provisions of Section 3 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.
- (8) "Financial Institution" shall mean the bonding company or lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company or Federal or Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth of Pennsylvania.
- (9) "Financial Security Agreement" shall mean that certain Financial Security Agreement, of even date herewith, by and between the Township and Developer, which agreement is fully incorporated into and made part of this Agreement.
- (10) "Subdivision and Land Development Ordinance" shall mean the Upper Uwchlan Township Subdivision and Land Development Ordinance, 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 Land Development shall be subject to the provisions of Section 508(4) of the MPC.
- (11) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.
- (12) "Township Engineer" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly

appointed and employed as the engineer for the Township 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 the MPC.

2. **Construction and Completion of Improvements.**

- A. Developer, at its sole expense, shall layout, construct, install, and/or otherwise complete the 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; (ii) the Plans; (iii) the provisions of this Agreement; (iv) all applicable requirements of electric, telephone, and other utility companies having jurisdiction; and (v) 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. In the event of any inconsistency or conflict between or among the provisions of any of the foregoing, those provisions contained in the Plans shall prevail and control.
- B. No Improvements referred to herein, in connection with this Project shall be commenced until:
 - (1) The Plans are recorded according to law;
 - (2) This Agreement is duly signed and delivered;
 - (3) Financial security as defined in Section 509 of the MPC and in this Agreement is delivered to the Township and Developer and the Financial Institution have executed the Financial Security Agreement; and
 - (4) All fees (i) required by any Ordinance, Resolution or regulation of the Township and (ii) legal and engineering expenses, incurred by the Township for the completion of its approval of the Plans, preparation of the Agreements, Resolutions and other papers relating to the acceptance of this Agreement by the Township are paid.
- C. Upon compliance with the requirements of subsection B, above, Developer may obtain permits for the buildings which together constitute the Project.

- D. The Secured Improvements shall be completed on or before the date occurring two (2) years from the date of this Agreement. Upon written request of Developer and approval of the Township the 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 twenty (20) 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 sixty (60) days after the extended completion date. Such times shall be of the essence.
- E. Developer shall be solely responsible, at its sole cost and expense, for the repair and maintenance of all Secured Improvements during and after construction thereof, provided however, that in the case of Improvements which are completed and dedication (or other transfer or assignment) of which is offered to and accepted by the Township, Developer shall have such repair and maintenance responsibility until such time as the acceptance of dedication (or other transfer or assignment) is final and effective, and the maintenance bond or other financial security is deposited with respect to such dedicated (or otherwise transferred or assigned) Improvements as provided under Section 5 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 in accordance with the design and specifications thereof as shown on the Plans, and with respect to Improvements consisting of streets or roads, shall further mean, without limitation, keeping the same at all times free of mud, snow, ice and other impediments or other obstructions to motor vehicular traffic thereon and thereover, and otherwise in a permanently passable condition by and for motor vehicles.
- F. In the event that Developer is in default of any of its repair and maintenance obligations under Subsection E, the Township, shall have the right, but not the obligation, and provided the Developer is first given written notice by the Township specifying the failure of repair or maintenance and opportunity to cure said default pursuant to Section 5.A(8) of the Financial Security Agreement (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:
- (1) Enter upon the Tract 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 the Township of the

dedication, transfer or other assignment of the Improvements subject of the default, and/or as imposing any responsibility upon the Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and

- (2) 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 the Township, or its order, of all or any part of the Financial Security for such costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such costs, expenses and/or fees, together with attorney fees and costs incurred by the Township for and otherwise related to any such legal and/or equitable action or proceeding.
- G. It shall be the obligation of Developer to arrange in advance with the Township for inspection of the work as the work progresses and the cost of such inspection shall be paid by Developer.
- H. Developer agrees that it will obtain use and occupancy permits as required under the Township's Zoning Ordinance prior to permitting occupancy of any dwelling or any building within the Project.
- I. Developer agrees to maintain such barricades, warning lights or fences as are necessary during the course of construction to give reasonable protection to the public.

3. **Guaranty of Completion of Secured Improvements.**

- A. Developer shall deposit with the Township or otherwise establish the Financial Security all in accordance with and pursuant to the terms and conditions of this Section 3 and the Financial Security Agreement. Unless and until the Financial Security is so deposited or otherwise established by Developer, no building or occupancy permit, relating to the erection, placement or occupancy of any of any buildings or other structures in, on and/or related to the Subject Land Development, shall be issued by the 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 Financial Security Agreement. The Financial Security shall be of such

type as more fully and further provided in and by the Financial Security Agreement.

- C. The initial amount of the Financial Security shall be Seven Hundred Thirty Seven Thousand Four Hundred Sixty Four and 81/100 Dollars (\$737,464.81), which is 110% of the total cost estimate as set forth in Exhibit "C" 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.

4. **Intentionally Omitted.**

5. **Intentionally Omitted.**

6. **Failure to Complete; Other Default.**

- A. In the event that any of the Improvements is or are not completed in accordance with the terms, conditions and requirements of Section 2 above, 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 the Township under this Agreement, the Financial Security Agreement, and/or the MPC, and/or otherwise at law or in equity) to: (i) enter upon the Tract and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (ii) with respect to incomplete Secured Improvements, 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. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or unavailable to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, the Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay related costs, expenses and fees.

- B. In the event that the Township exercises its right, but not obligation, to complete all or part of the incomplete 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 the Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against Developer shall be not deemed to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. The 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 the Township in that regard. The Township

shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements.

7. **Advancement and/or Reimbursement of Expenses.**

- A. Developer shall advance and/or reimburse the Township the following:
 - (1) All costs, expenses and fees incurred by the Township in and for the preparation, review, and 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, 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 the Township of and for necessary legal proceedings in connection with the dedication (or other transfer or assignment) under Section 5 hereof, including, without limitation, reasonable fees of the Township Solicitor and the Township Engineer.
- B. Subject to the dispute provisions of Section 510(g) of the MPC to the extent applicable, the costs, expenses and fees, described in Subsection A above, shall be billed by the Township to Developer, and the amounts of the same shall be due and payable within thirty (30) days of the billing date to the extent that such amounts are not earlier paid to or otherwise recovered by the Township from monies deposited by Developer with and held in escrow by the Township for any such costs, expenses or fees.
- C. The Township, under and in accordance with the Financial Security Agreement, shall have the right to recover, from and under the Financial Security, the costs, expenses and fees, described in Subsection A above, notwithstanding that the amount of the Financial Security Agreement, but for this Subsection C, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees. Such right shall be in addition to such other or further rights or remedies as may be now or hereafter 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.
- D. It is expressly acknowledged and agreed that the 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, and/or to accept dedication (or other transfer or assignment) of any of the items under

Section 5 hereof, unless and until all the aforesaid costs, expenses and fees are paid in full.

8. **Indemnification.**

- A. It is understood and agreed that the Township has reviewed the Plans and specifications for the purpose solely of protecting the interests of the public and have not thereby expressly or impliedly warranted the technical suitability of Developer's Plans. Developer warrants that all Plans, designs, installations and specifications have been designed by registered engineers licensed in the Commonwealth of Pennsylvania and will be installed in a good and workmanlike manner and in accordance with the plans and specifications and sound construction practices. Developer does further warrant that the Improvements installed and each and every part thereof are fit for all purposes for which they are intended. The Township disclaims all liability for design, construction, installation or operational defects.
- B. Developer hereby agrees to indemnify, save harmless and defend the Township, its officials, officers, employees and agents, of, from, and against any liability, claim, suit or demand, of whatever nature or kind, whether founded or unfounded, arising from, out of, or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs, and expert witness fees and costs) as may be incurred by the Township in connection with any such liability, claim, suit or demand, except to the extent caused by the negligence or willful misconduct of the Township.

9. **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 United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery

or by express delivery service, at the time of delivery; or (ii) if by mail, three (3) business days after the date of deposit in the United States mails.

10. **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 the 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 the Township, except in conjunction with Developer's transfer of ownership of the Tract as a whole, in which event, the successor in interest shall execute a new Development Agreement and a new Financial Security Agreement or an assignment of this Agreement. 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 the 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 the Township under 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 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. **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.
- G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made 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.
- H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.
- I. **Third Party Beneficiary.** The rights and benefits of this Agreement shall not inure to the benefit of any third party. This Agreement shall not be construed as creating any rights, claims or causes of action against the Township or Developer in favor of any other persons furnishing services or materials to or for the construction of the Development.
- J. **Termination of the Celebree Land Development Agreement.** Upon execution and approval of this Agreement by the parties and execution and approval of the corresponding Financial Security Agreement by the parties and the issuance of the Amendment to Irrevocable Standby Letter of Credit No. STB145.0, the Celebree Land Development Agreement shall terminate and be of no further force and effect.

SIGNATURE PAGE FOLLOWS

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

UPPER UWCHLAN TOWNSHIP

Secretary

By: _____
Jennifer Baxter, Chairperson


CHESTER SPRINGS REI LLC

By: Celebree Property Investments, LLC, its Sole Member

Attest:

Paige Gugliuzza

By:


Richard O. Huffman, III, Managing Member

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
 :
 : ss.
COUNTY OF CHESTER :

On this _____ day of _____, 20__ , before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Jennifer Baxter, who acknowledged herself to be the Chairperson of the Board of Supervisors of Upper Uwchlan Township, and that she, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF MARYLAND :
:SS.

COUNTY OF Baltimore :

On this 16th day of December, 2024, before me, a notary public in and for the State of Maryland, the undersigned officer, personally appeared Richard O. Huffman, III, who acknowledged himself to be the Managing Manager of Celebree Property Investments, LLC, a Maryland limited liability company, the Sole Member of CHESTER SPRINGS REI LLC, a Pennsylvania limited liability company and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Elizabeth Liberatoro

Notary Public

My Commission Expires: 05/10/2026

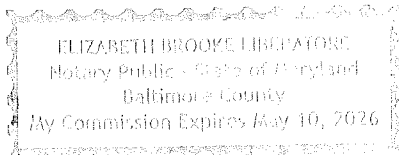


EXHIBIT “A”**PLAN SHEETS**

Sheet No.	Drawing No.	Title	Date	Last Revised Date
1	C-101	Cover Sheet	3/15/2022	5/31/24
2	C-102	Project Notes	3/15/2022	5/31/24
3	C-201	Existing Conditions/Demolition Plan	3/15/2022	5/31/24
4	C-301	Site Plan	3/15/2022	5/31/24
5	C-302	Fire Truck Circulation Plan	3/15/2022	5/31/24
6	C-303	Delivery Truck Circulation Plan	3/15/2022	5/31/24
7	C-304	Trash Truck Circulation Plan	3/15/2022	5/31/24
8	C-401	Grading Plan	3/15/2022	5/31/24
9	C-402	ADA Grading Details	3/15/2022	5/31/24
10	C-501	Utility Plan	3/15/2022	5/31/24
11	C-601	Overall Soil Erosion & Sediment Pollution Control Plan	3/15/2022	5/31/24
12	C-602	Soil Erosion & Sediment Pollution Control Plan	3/15/2022	5/31/24
13	C-603	Erosion & Sediment Pollution Control Notes	3/15/2022	5/31/24
14	C-604	Erosion & Sediment Pollution Control Notes	3/15/2022	5/31/24
15	C-605	Erosion & Sediment Pollution Control Details	3/15/2022	5/31/24
16	C-606	Erosion & Sediment Pollution Control Details	3/15/2022	5/31/24
17	C-607	Erosion & Sediment Pollution Control Details	3/15/2022	5/31/24
18	C-608	Overall Post Construction Stormwater Management Plan	3/15/2022	5/31/24
19	C-609	Post Construction Stormwater Management Plan	3/15/2022	5/31/24
20	C-610	Post Construction Stormwater Management Notes	3/15/2022	5/31/24
21	C-611	Post Construction Stormwater Management Details	3/15/2022	5/31/24
22	C-612	Post Construction Stormwater Management Details	3/15/2022	5/31/24
23	C-701	Lighting Plan	3/15/2022	5/31/24

24	C-702	Lighting Details	3/15/2022	5/31/24
25	C-703	Lighting Details	3/15/2022	5/31/24
26	C-704	Landscape Plan	3/15/2022	5/31/24
27	C-705	Landscape Details	3/15/2022	5/31/24
28	C-801	Proposed Storm Sewer Profiles	3/15/2022	5/31/24
29	C-901	Details	3/15/2022	5/31/24
30	C-902	Details	3/15/2022	5/31/24
31	C-903	Details	3/15/2022	5/31/24
32	C-904	Details	3/15/2022	5/31/24
33	C-910	Pre-Development Drainage Area Plan	3/15/2022	5/31/24
34	C-911	Post Development Drainage Area Plan	3/15/2022	5/31/24
35	C-912	Inlet Drainage Area Plan	3/15/2022	5/31/24

EXHIBIT “B”

FINANCIAL SECURITY



GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

June 26, 2024

File No. 03-0434.07

E-MAIL ONLY

Mr. Tony Scheivert
Upper Uwchlan Township Manager
140 Pottstown Pike
Chester Springs, PA 19425

Reference: Parcel 5C (Byers Station) – Lot 2B
Amended Final PRD Plans – Fifth Review - FINAL
Upper Uwchlan Township, Chester County, PA

Dear Tony:

Gilmore & Associates, Inc. (G&A) is in receipt of the following documents from Bohler Engineering, unless otherwise noted:

- Plan set consisting of Thirty-Five (35) sheets titled "Byers Station Amended Final PRD Plans (Final Plan for Lot 2B of Parcel 5C)" dated March 15, 2022, last revised May 31, 2024.
- Response Letter from Bohler Engineering, dated May 31, 2024.

G&A, as well as the other Township Consultants have completed our fifth review of the above referenced Amended Final Plans for compliance with the Conditions of Tentative Approval Byers Station PRD, Township Zoning Ordinance, Subdivision and Land Development Ordinance, as well as the Stormwater Management Ordinance, and find all of our outstanding comments have been satisfactorily addressed. **Therefore, the plans are in a position for recording contingent upon execution of all development agreements as well as establishment of financial security in the amount of \$737,464.81 in a form deemed acceptable to the Township Solicitor.** A spreadsheet detailing the determination of this value is attached.

Please let me know If you have any questions.

184 West Main Street | Suite 300 | Trappe, PA 19426 | Phone: 610-489-4949 | Fax: 610-489-8447

Gilmore & Associates, Inc.
Building on a Foundation of Excellence
www.gilmore-assoc.com

Mr. Tony Scheivert
Upper Uwchlan Township Manager
Reference: Parcel 5C (Byers Station) – Lot 2B
Amended Final PRD Plans – Fifth Review - FINAL
Upper Uwchlan Township, Chester County, PA

Page – 2 –

File No.: 03-0434.07
June 26, 2024

Sincerely,

David N. Leh

David N. Leh, P.E.
Vice President
Gilmore & Associates, Inc.

Attachment: Escrow Speadsheet

cc: Upper Uwchlan Township Planning Commission Members
Upper Uwchlan Township Board of Supervisors
Kristin S. Camp, Esq., BBM&M
Christopher J. Williams, P.E., Bowman
David Schlott, P.E., ARRO Consulting, Inc.
Matt Brown, P.E., DEE – UUTMA Authority Administrator
Alyson Zarro, Esq. – RRHC
Chris Puzinas, P.E., Bohler Engineering
Guy DiMartino, P.E., TPD
Allan Greenberg Applicant
Gwen Jonik, Township Secretary

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

PROJECT NAME: BYERS STATION PARCEL 5C / LOT 2B

SUMMARY OF ESCROW ACCOUNT

PROJECT NUMBER:

TOTAL CONSTRUCTION (100%) = \$ 670,422.55

PROJECT SPONSOR: PROSPERITY PROPERTY INVESTMENT.
MUNICIPALITY: UPPER UWCHLAN TOWNSHIP

TOWNSHIP SECURITY (10%) = \$ 67,042.26

GRAND TOTAL ESCROWED = \$ 737,464.81

RELEASE NO.: 0
REQUEST DATE:

ESCROW TABULATION						CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
ITEM	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
A. CLEARING & GRUBBING												
1.	UTILITY POLE RELOCATION	EA	2	\$10,000.00	\$ 20,000.00		\$ -		\$ -	2	\$ 20,000.00	
2.	STORM STRUCTURE / PIPE REMOVAL	LS	1	\$7,000.00	\$ 7,000.00		\$ -		\$ -	1	\$ 7,000.00	
3.	CLEARING / GRUBBING	LS	1	\$ 3,000.00	\$ 3,000.00		\$ -		\$ -	1	\$ 3,000.00	0%
	SUBTOTAL ITEM A				\$ 30,000.00		\$ -		\$ -		\$ 30,000.00	0%
B. E&S CONTROL												
1.	CONSTRUCTION ENTRANCES	EA	2	\$ 3,500.00	\$ 7,000.00		\$ -		\$ -	2	\$ 7,000.00	0%
2.	CONCRETE WASHOUT	EA	2	\$ 500.00	\$ 1,000.00		\$ -		\$ -	2	\$ 1,000.00	0%
2.	18" SILT SOCK	LF	515	\$ 7.50	\$ 3,862.50		\$ -		\$ -	515	\$ 3,862.50	0%
3.	24" SILT SOCK	LF	100	\$ 9.75	\$ 975.00		\$ -		\$ -	100	\$ 975.00	0%
4.	EROSION CONTROL MATTING	SF	16,500	\$ 0.17	\$ 2,805.00		\$ -		\$ -	16,500	\$ 2,805.00	0%
5.	INLET PROTECTION	EA	12	\$ 225.00	\$ 2,700.00		\$ -		\$ -	12	\$ 2,700.00	0%
6.	TOPSOIL STOCKPILE	LS	1	\$ 1,000.00	\$ 1,000.00		\$ -		\$ -	1	\$ 1,000.00	0%
7.	TEMP SEED & MULCH	SF	91,163	\$ 0.03	\$ 2,734.89		\$ -		\$ -	91,163	\$ 2,734.89	0%
8.	PERMENANT SEED & MULCH	SF	91,163	\$ 0.07	\$ 6,381.41		\$ -		\$ -	91,163	\$ 6,381.41	0%
	SUBTOTAL ITEM B				\$ 28,458.80		\$ -		\$ -	0	\$ -	#DIV/0!
D. STORM SEWER												
1.	15" HDPE	LF	1212	\$60.00	\$ 72,720.00		\$ -		\$ -	1,212	\$ 72,720.00	0%
2.	STD TYPE C INLET	EA	3	\$2,000.00	\$ 6,000.00		\$ -		\$ -	3	\$ 6,000.00	0%
3.	LOWER HOOD OF EXISTING INLET	EA	1	\$1,000.00	\$ 1,000.00		\$ -		\$ -	1	\$ 1,000.00	0%
4.	STD TYPE M INLET	EA	9	\$2,000.00	\$ 18,000.00		\$ -		\$ -	9	\$ 18,000.00	0%
5.	STORM MANHOLE	EA	2	\$2,500.00	\$ 5,000.00		\$ -		\$ -	2	\$ 5,000.00	0%
6.	WATER QUALITY INLET	EA	12	\$1,500.00	\$ 18,000.00		\$ -		\$ -	12	\$ 18,000.00	0%
7.	TIE INTO EXISTING STORM SYSTEM	EA	2	\$2,500.00	\$ 5,000.00		\$ -		\$ -	2	\$ 5,000.00	0%
	SUBTOTAL ITEM D				\$ 125,720.00		\$ -		\$ -		\$ 125,720.00	0%

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

PROJECT NAME: BYERS STATION PARCEL 5C / LOT 2B

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TOWNSHIP SECURITY (10%) = \$ 67,042.26

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MUNICIPALITY: UPPER UWCHLAN TOWNSHIP

GRAND TOTAL ESCROWED = \$ 737,464.81

RELEASE NO.: 0
REQUEST DATE:

ESCROW TABULATION						CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
ITEM	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
	TOTAL IMPROVEMENTS - ITEMS A-H				\$ 670,422.55		\$ -		\$ -		\$ 670,422.55	0%
I.	RETAINAGE (10%)						\$ -		\$ -		\$ -	
J.	TOWNSHIP SECURITY (10%)				\$ 67,042.26		\$ -		\$ -		\$ 67,042.26	0%
	NET CONSTRUCTION RELEASE						\$ -		\$ -		\$ 737,464.81	
	SURETY AMOUNT				\$ 737,464.81		\$ -		\$ -			

FINANCIAL SECURITY AGREEMENT

BYERS STATION PARCEL 5C LOT 2B

THIS FINANCIAL SECURITY AGREEMENT (together with all modifications and amendments, the “Agreement”) made this _____ day of _____, 20__ by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the “Township”) and **CHESTER SPRINGS REI LLC**, a Pennsylvania limited liability company with offices at 8029 Corporate Drive, Nottingham, Maryland 21236 (“Developer”).

BACKGROUND:

A. Developer proposes to develop a 3.971 acre piece of property, known as Chester County Tax Parcel No. 32-4-1090.1 situate northeast of the intersection of Station Boulevard and Pottstown Pike, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed land development known as “Byers Station Parcel 5C Lot 2B” (“Development”).

B. The Upper Uwchlan Township Board of Supervisors (the “Board”) granted final planned residential development approval to one of Developer’s predecessors in title on October 14, 2019 for the development of the Tract. Developer’s immediate predecessor in title, Celebree Property Investments, LLC, formerly known as Prosperity Property Investments, LLC (“Celebree”) received amended final approval for development of the Tract on September 19, 2022. Developer received revised amended final approval for the Development on the Tract on May 20, 2024. Developer received final approval of the plans for the Development, subject to, among other things entering into this Agreement and the Development Agreement, as hereinafter defined, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.

C. On September 10, 2024, Celebree entered into a Land Development Agreement with the Township for the Development (“Celebree Land Development Agreement”) and posted financial security for the Secured Improvements pursuant to a Financial Security Agreement for the Development also dated September 10, 2024 (“Celebree Financial Security Agreement”)

D. On November 15, 2024, Celebree conveyed the Tract to Developer and Developer agreed to assume the rights and obligations with respect to the Development.

E. Developer desires to obtain building permits for the construction of the buildings and appurtenant structures in the Development, together with such other permits as are necessary to undertake and complete all of the Secured Improvements, and Developer desires to post the Financial Security, which will be accomplished through an amendment to the existing letter of credit posted as Financial Security for the Development.

F. In the Development Agreement, as hereinafter defined, Developer agreed to construct or install the Secured Improvements, as hereinafter defined, and to post Financial Security to

guarantee to the Township that the Secured Improvements will be constructed or installed by the date provided for in this Agreement.

G. The parties desire to set forth their 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) "Township Engineer" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.

(2) "Tract" shall mean all that certain 3.971 acre tract of property which is situate northeast of the intersection of Station Boulevard and Pottstown Pike in the Township, Chester County, Pennsylvania, and which is more fully and further shown and described on the Plans.

(3) "Plans" shall mean that certain final land development plan set entitled "Byers Station Amended Final PRD Plans (Final Plan for Lot 2B of Parcel 5C)" prepared by Bohler Engineering, dated March 15, 2022, last revised May 31, 2024, consisting of thirty-five (35) sheets, as more particularly described in the Development Agreement.

(4) "Subject Land Development" shall mean the proposed land development of the Tract as a 10,500 square foot day care facility with a 5,500 square foot outdoor play area and a 10,500 square foot commercial building, together with new streets, roads, and parking areas designed to serve the same 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.

(5) "Improvements" shall mean the Improvements that are to be located on the Tract as depicted on the Plans.

(6) "Secured Improvements" shall mean all those certain Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates. A list of the Secured Improvements is attached here to as Exhibit "A".

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

(8) "Financial Security" shall mean the Financial Security provided under and in accordance with the provisions of Section 2 and other provisions of this Agreement.

(9) "Financial Institution" shall mean the lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company or Federal of Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth.

(10) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.

(11) "Development Agreement" shall mean the Land Development Agreement entered into by Developer and the Township with respect to the development of the Subject Land Development which is dated on or about the date hereof.

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 MPC shall have the meanings and shall be interpreted herein as under the MPC.

2. **Financial Security.**

A. Developer, in accordance with and pursuant to the terms of this Agreement and at its sole cost and expense, shall establish and maintain Financial Security in accordance with the one of the following which is checked:

☐ A restrictive loan account or cash escrow account (either such account being hereinafter described as an "Escrow Account") with Financial Institution as escrow holder under and in accordance with the terms and conditions of this Agreement;

☒ An irrevocable, Standby Commercial Letter of Credit, issued by Financial Institution in favor of the Township as beneficiary, in form and content satisfactory to the Township Solicitor and appended hereto as Exhibit "B" (the "Letter of Credit");

☐ An unconditional surety bond, issued by Financial Institution as surety to Developer, in form and content satisfactory to the Township Solicitor.

B. The Financial Security shall be established by Developer upon Developer's execution of 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 the Secured Improvements.

C. The initial amount of the Financial Security shall be Seven Hundred Thirty Seven Thousand Four Hundred Sixty Four and 81/100 Dollars (\$737,464.81) which amount is 110% of the total of the estimated costs of completing the Secured Improvements.

D. In addition to the Financial Security being posted to guarantee completion of the Secured Improvements, Celebree had deposited with the Township a sum of money equal

to Thirteen Thousand Four Hundred Eight and 45/100 Dollars (\$13,408.45) which sum represents 2% of the estimated cost of construction of the Secured Improvements (the "Inspection Escrow"). The Inspection Escrow has been assigned by Celebree to Developer. The Inspection Escrow shall be held in a non-interest bearing escrow account and shall be used by the Township to pay the costs of its professional consultants and engineer's inspection of the Secured Improvements (the "Inspection Fees"). The Township shall pay the Inspection Fees from the Inspection Escrow. Developer shall be required to replenish the Inspection Escrow such that there is a minimum of 1% of the estimated cost of construction of the Secured Improvements on deposit. The Inspection Escrow shall be used by the Township solely to pay invoices for Inspection Fees. The Township shall provide a copy of all invoices for the Inspection Fees to the Developer.

E. If a letter of credit is posted as the Financial Security, the letter of credit shall be automatically renewed, without amendment, for additional one-year periods from the present or each future expiration date unless the Financial Institution notifies the Township in writing, not less than sixty (60) days before such expiration date of the letter of credit, that the Financial Institution has elected not to renew the letter of credit. The Financial Institution's notice of such election not to renew the letter of credit shall be sent to the Township in accordance with the terms of this Agreement.

F. 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 in and by a writing signed by the Township, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expire, and (iii) any balance of funds in the Financial Security shall be fully available to the Township for use under and for purposes of this Agreement.

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 Section 509 of the MPC. Without limiting the generality of the foregoing:

Developer agrees that, if the Secured Improvements, or any part thereof, are not completed within one (1) year after the date of this Agreement and the Township has agreed to extend the time for completion beyond the Completion Date as may be necessary for the completion, Developer shall post additional Financial Security 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 Agreement thereafter if the Secured Improvements, or any part thereof, are not completed and Township has agreed to further extend the time for completion beyond the Completion Date, as the same may have been previously extended.

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 the Township to Developer, and Developer shall post the amount of the additional Financial Security, increase or other adjustment within thirty (30) days of the date of such notice.

C. 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 Agreement.

4. Interim Releases of Funds.

A. As the work of the construction of the Secured Improvements satisfactorily proceeds, the 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, the Chairperson of the Board of Supervisors or the Township Manager. 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 the 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: in no event shall the balance of the Financial Security be reduced below One Hundred Ten percent (110%) of the estimated costs of completing the remaining uncompleted Secured Improvements, as such estimated costs of completion shall be determined or approved by the Township Engineer.

5. Default.

A. If any of the Secured Improvements have not been completed as depicted on the Plans, the Township 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 the 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. 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 the 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) The Township may draw amounts from and under the Financial Security prior to the performance of any work by or for the Township in order to complete the Secured Improvements or otherwise cure the default, and/or to pay professional services related thereto, based upon (i) estimates received by the Township for the completion, and/or (ii) bills received by the 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 the Township.

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

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

(6) The right of the 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 the Township from time to time and at any time without limitation on the number of exercises thereof until the amount of the Financial Security has been fully drawn.

(7) If the reasonable costs, expenses and fees, incurred by the 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 the Township from and under the Financial Security, Developer, in addition to such other and further obligations and liabilities imposed upon it under this Agreement and otherwise by law, shall be liable to the Township for such excess of such costs, expenses and fees. Developer hereby agrees to pay the full amount of such excess to the Township immediately upon demand.

(8) Except in the event of an emergency or other threat to public health and safety, prior to exercising the remedies available to the Township in the event of default, the Township shall give thirty (30) days advance notice of default to Developer and Financial Institution and Developer and Financial Institution shall have the right to cure such default within the said thirty (30) day period, provided, however, it is acknowledged by the Township and Developer that the Financial Institution has no obligation to cure any event of default under this Agreement.

6. Costs, Expenses and Fees.

A. If Developer fails to advance or reimburse the Township any costs, expenses or fees in accordance with and pursuant to Section 7 of the Development Agreement, Developer shall be in default of this Agreement, and the Township shall be authorized to collect the amount thereof from and under the Financial Security (notwithstanding that the amount of the Financial Security, but for this Subsection A, is not now or hereafter specifically established to guarantee, secure or otherwise cover the payment of such costs, expenses or fees) in same manner and to the same extent as a default made and provided for under Section 5 of this Agreement.

B. Developer shall provide additional Financial Security, in a form acceptable to the Township and in the amount by which the Financial Security was reduced by any payment made to the Township from the Financial Security under provisions of Subsection

A above, within fifteen (15) days after written notice of such reduction in the amount of the Financial Security is sent by the Township to Developer. Developer shall also provide the Township, within such fifteen (15)-day period, written proof of such additional Financial Security. The failure of Developer to provide the Township such additional Financial Security and written proof thereof within such time shall constitute a default or breach under this Agreement, and Developer shall be subject to the provisions governing its default or breach, as set forth in both this Agreement and the Development Agreement and/or as otherwise provided by law, 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 Agreement.

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

A. After all of the Secured Improvements have been completed in accordance with the Development Agreement, and after all of the provisions of the Development Agreement and this Agreement have been satisfied by Developer (including the payment of all costs, expenses and fees for which Developer is responsible under both said agreements) and Developer has tendered to the Township all improvements which are proposed to be dedicated to the Township and posted the necessary maintenance security as provided under Section 509(k) of the MPC, the Township shall authorize the Financial Institution in writing to release the balance of the Financial Security. Such release authorized by the Township shall be the final release of funds from the Financial Security, and shall further release Developer and the Financial Institution from and under the Financial Security and this Agreement.

B. At and upon the aforesaid Township-authorized release of the balance of the Financial Security, this Agreement shall terminate without further action of the parties being required and neither Developer nor the Financial Institution shall have any further liability under this Agreement.

8. Validity and Enforceability of Financial Security.

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

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

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

D. If the Township determines that, upon the information provided or not provided pursuant to Subsections B and/or C above, the Financial Security requirements of this Agreement are not satisfied, or, if Developer otherwise fails to provide and maintain the

Financial Security under and in accordance with this Agreement, the Township shall give Developer written notice to provide the required Financial Security within thirty (30) days of the date of the notice.

E. Developer agrees that any and all notices from the 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 Agreement.

9. Financial Institution Non-Responsibility.

A. Developer agrees that Financial Institution shall have no duty to inquire as to the truthfulness, acceptability, due execution, due authorization or validity of any document, certificate, statement or notice which purports to have been executed by an official or other representative of the Township.

B. Developer and the 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 that apply to the actions which the Financial Institution is to take or not take with respect to the Financial Security.

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

D. The 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 or the obligations of the Developer under this Agreement or the Development Agreement.

10. Charges of Financial Institution.

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 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 the Township shall not be liable or otherwise obligated for any of such charges, and Developer hereby agrees to indemnify, protect and defend the Township from and against any such charges.

11. Interest.

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 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.

12. Insolvency of Developer.

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 Agreement are not and shall not be considered part of the estate of Developer.

13. Payments, Reductions or Releases of Financial Security.

It is expressly and specifically understood, covenanted and agreed by Developer and Financial Institution 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 the Township in accordance with the terms of this Agreement, and that Developer shall maintain the Financial Security at all times during the continuance of this Agreement in the amounts required herein, less all sums drawn or released therefrom by the Township in accordance with the terms hereof. Any violation of Developer's obligations under this Section shall render Developer liable for all damages to the Township, including, without limitation, all reasonable costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by Developer under this 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. Any violation of the Financial Institution's obligations under this Section shall render the Financial Institution liable for all damages to the Township, including, without limitation, all reasonable costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by the Financial Institution for releasing or reducing the Financial Security except in accordance with the terms of this Agreement.

14. Notices.

Except as may be otherwise specifically provided in this Financial Security Agreement:

(1) 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.

(2) Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized

express delivery service, delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, 3 business days after the date of deposit in the United States mails.

15. **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 the 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 the 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 the 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 the 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 of 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. **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.

G. **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.

H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

I. **Termination of the Celebree Financial Security Agreement.** Upon execution and approval of this Agreement by the parties and execution and approval of the corresponding Land Development Agreement by the parties and the issuance of an amendment to Irrevocable Standby Letter of Credit No. STB145.0, the Celebree Financial Security Agreement shall terminate and be of no further force and effect.

SIGNATURE PAGE FOLLOWS

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

UPPER UWCHLAN TOWNSHIP

Attest:

Gwen Jonik, Secretary

By: _____
Jennifer Baxter, Chairperson

CHESTER SPRINGS REI LLC

By: Celebree Property Investments, LLC,
its Sole Member

Attest:

Raige Gugliuzza

By: *Richard O. Huffman, III*

Richard O. Huffman, III, Managing Member