

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made this ____ day of _____, 2015, by and between Arcadia Tredyffrin LLC, its successors and assigns (“Arcadia”) and the Board of Supervisors of Tredyffrin Township (“Board”) (collectively, “Parties”).

BACKGROUND

A. Arcadia is the equitable owner of the property located at the southwest corner of the intersection of Walker Road and Old Eagle School Road in Tredyffrin Township (“Township”) known as the “Richter Tract” and identified as Tax Parcel Nos. 43-6E-95 and 43-6F-13 (collectively, the “Property”).

B. Tax Parcel No. 43-6E-95 (individually referred to as the “Residential Parcel”) is located in the R-1 Residence District pursuant to the Tredyffrin Township Zoning Ordinance (“Zoning Ordinance”) and the Tredyffrin Township Zoning Map (“Zoning Map”). Tax Parcel No. 43-6F-13 (individually referred to as the “Office Parcel”) is currently located in the O Office District pursuant to the Zoning Ordinance and the Zoning Map but was located in the P Professional District at the time of the filing of the conditional use application, as defined below. The Property is also located in the Trout Creek Stormwater Overlay District (“Trout Creek Overlay”).

C. Arcadia filed a conditional use application and supporting documentation on April 22, 2013 and subsequently amended the application on December 18, 2013 (“Application”). The Application proposed the development of the Property with 108 age-targeted residential dwellings consisting of 78 townhomes and 30 carriage homes on the Residential Parcel and two (2) office buildings consisting of a total of approximately 240,000 square feet on the Office Parcel pursuant to Sections 208-162 and 208-117 of the Zoning Ordinance, as depicted on the

Wayne Glen Conditional Use Submission Plan, prepared by Pennoni Associates Inc., dated April 4, 2013, last revised July 16, 2014 and consisting of 52 sheet (“Conditional Use Plan”).

D. By way of a Decision and Order dated June 22, 2015 (“Decision”), the Board granted the Application subject to a number of conditions of approval (“Conditions”).

E. On July 22, 2015, Arcadia appealed the imposition of certain conditions set forth in the Decision (“Appealed Conditions”) to the Chester County Court of Common Pleas (“Court”), which appeal was docketed as 2015-06599-ZB (“Appeal”).

F. The Board appeared in the Appeal as the Appellee.

G. The following individuals and entities filed Petitions to Intervene in the Appeal: Hilda Young, John McAllister, Jeffrey Kosterich, Clare Jameson, Trout Creek Watershed Residents Association, Brian McNeill, Barry P. and AnneMarie Brazunas, Christopher Grant, Jan A. Richard and Marc Brier on behalf of the Valley Friends Meeting (collectively, “Intervenors”).

H. As of the date of this Agreement, the Court has not ruled on the Intervenors’ Petitions to Intervene.

I. The Parties entered into settlement discussions and hereby desire to resolve the issues raised in the Appeal without further litigation.

J. Pursuant to settlement discussions with the Board and as reflected on the Settlement Plan, as herein defined, Arcadia has agreed to reduce the proposed density for the Residential Parcel and shall construct no more than a total of 91 dwelling units, including 26 two-story carriage homes and 65 two-story villas. Further, Arcadia has agreed that fifty-nine percent (59%) of the proposed units shall have first floor master bedrooms and none of the proposed units shall be three-story dwellings. Arcadia has agreed to increase the width of all

roads within the Residential Parcel, with the exception of Road E, as depicted on the Settlement Plan, to a dimension of not less than 24 feet. The Board has agreed to grant certain waivers from the Township Subdivision and Land Development Ordinance (“SALDO”), a variance from the Township Zoning Ordinance (“Zoning Ordinance”) (the SALDO, Zoning Ordinance and other Township ordinances which regulate development of land in the Township shall hereinafter be referred to collectively as the “Township Ordinances”) and modifications to certain of the Appealed Conditions in recognition of the public benefits that will result from the proposed development, primarily the stormwater management improvements.

NOW, THEREFORE, with the foregoing Background incorporated herein by reference and in consideration of the facts and mutual covenants and agreements set forth herein, the Parties hereto intending to be legally bound hereby, agree as follows:

1. CONDITIONAL USE PLAN MODIFIED. Subject to the terms and conditions contained in this Agreement, the Conditional Use Plan for the Residential Parcel is modified as set forth in the Settlement Plan, prepared by Pennoni Associates Inc., dated August 28, 2015 and last revised November 12, 2015, a copy of which is attached hereto and made a part hereof as Exhibit “A” (the “Settlement Plan”). The Conditional Use Plan is incorporated into the Settlement Plan and all references to the Settlement Plan shall be deemed to incorporate the Conditional Use Plan as modified by the Settlement Plan. It is understood that the development proposed for the Office Parcel, as depicted on the Conditional Use Plan, is conceptual in nature and may be redesigned during the land development process to include one or more office buildings, provided that such redesign is in compliance with the terms of the Decision, as modified by this Agreement. The Decision is hereby modified as per the terms and conditions in this Agreement.

2. AGREEMENT GOVERNS DEVELOPMENT.

A. This Agreement grants the waivers from the SALDO as referenced in this Agreement and as shown on the Settlement Plan attached as Exhibit “A”.

B. This Agreement grants the variance from the Zoning Ordinance as referenced in this Agreement and as shown on the Settlement Plan attached as Exhibit “A.”

C. Additionally, the following Appealed Conditions are hereby amended as follows and, unless otherwise specifically modified as set forth below, shall be subject to the requirement that they be satisfied prior to the approval of a Preliminary Subdivision and Land Development Plan for the Office Parcel or the Residential Parcel, as the case may be and as identified in Paragraph 2.C.(1) hereof:

- (1) Condition 1 is modified to provide that the development of the Office Parcel shall comply only with those Conditions that are applicable to the development of the Office Parcel, and the development of the Residential Parcel shall likewise comply only with those Conditions that are applicable to development of the Residential Parcel, all as identified on Exhibit “B”, which is attached hereto and made a part hereof, provided that those Conditions identified on Exhibit “B” as applicable to the development of both the Office Parcel and Residential Parcel shall not be subject to this modification.

- (2) Conditions 2, 3 and 31 are modified to provide that future modifications to the Settlement Plan shall be governed by Paragraph 4 of this Agreement.
- (3) Condition 7 is modified to provide that at least twenty-six (26) of the residential units constructed on the Property shall be carriage homes.
- (4) Conditions 11 and 12 are modified to require that Arcadia provide indirect vehicular access from the Residential Parcel to Swedesford Road. The location of such access is to be determined during the land development process for the Office Parcel and shall be constructed with the development of the Office Parcel.
- (5) Condition 15 shall be modified to provide that the walkway depicted on the Settlement Plan along the northern border of the Residential Parcel will traverse the top of the proposed dam along Walker Road, as depicted on the Settlement Plan, subject to DEP approval.
- (6) Conditions 16 and 21 are clarified to apply only to those residential properties which are both adjacent to and downstream of the Property.
- (7) Condition 17 is modified to provide that the width of all streets within the Residential Parcel (except for emergency access roads, which shall be governed by Condition 13) shall be 24 feet in width with the exception of Road E, as depicted on the Settlement Plan,

which shall be 20 feet in width. The required SALDO waiver relating to street width is reflected on the Settlement Plan.

- (8) Condition 18 is modified to provide that all driveways for the Residential Parcel shall be varied in length but shall be between 20 feet and 24 feet in length for the villas and at least 24 feet in length for the carriage homes. The driveway lengths shall be measured from the paved cartway edge of the intersecting street and extending inside the lot, as set forth in Section 181-46.J.(6) of the SALDO. Notwithstanding the foregoing, for driveways that intersect sidewalks, there shall be at least twenty (20) feet of driveway length measured from the interior boundary of the sidewalk and the residential structure.
- (9) The requirement in Condition 28 that navigable means of vehicular access be provided to each stormwater basin for construction and maintenance equipment is clarified to provide that access for equipment necessary for operations and maintenance shall be provided without further grading required, which access shall be shown on the Subdivision and Land Development Plan for the Residential Parcel.
- (10) Condition 29 is clarified to provide that Arcadia shall repave Walker Road from its intersection with Old Eagle School Road and continuing 975 linear feet in a westward direction along the Property's boundary by the sooner to occur of: (1) the first annual

anniversary of the conclusion of construction activities of the Residential Parcel, or (2) the fifth annual anniversary following the commencement of construction of the Residential Parcel, and Condition 30 is clarified to provide that the developer of the Office Parcel shall repave Old Eagle School Road between its intersection with Swedesford Road to its intersection with Walker Road by the sooner to occur of: (1) the first annual anniversary of the conclusion of construction activities of the Office Parcel, or (2) the fifth annual anniversary following the commencement of construction of the Office Parcel.

- (11) Conditions 1.a. and 1.b. of the Stormwater, Traffic, Sanitary Sewer and Geotechnical Conditions (“Additional Conditions”) is modified to provide that all third-party permits and Township permits, including, but not limited to, DEP, PennDOT and Chester County Conservation District permits, shall be obtained prior to the recording of a Final Subdivision and Land Development Plan for which such permits are required.
- (12) Due to the reduction in density of the Residential Parcel as depicted on the Settlement Plan attached as Exhibit “A”, Condition 3 of the Additional Conditions shall be clarified to provide that Condition 3 of the Additional Conditions shall not apply to the land development and construction of the Residential Parcel, and those portions of Condition 3 of the Additional Conditions

applicable to the Office Parcel shall be addressed at the time of land development and construction of the Office Parcel.

- (13) Condition 6.a. of the Additional Conditions shall be clarified to provide that the required funds allocated for post-construction stormwater management operations and maintenance and possible sinkhole remediation shall be funded via an association reserve account contribution per dwelling unit in the Residential Parcel of \$1,000 per unit at the time of settlement of each unit with assessments in the amount of \$400 per year per unit, which shall commence for each unit in the initial year of conveyance of each unit. Such funds shall be set aside in a separate escrow account and accumulate until such time that the account balance is sufficient as determined by a reserve study to be conducted by a professional engineer with expertise in such studies and utilizing typical methodology for inflation indexing via the consumer price index, which study shall be presented to the Township for its review and approval. This shall not be construed as a limit on Arcadia or the HOA's ability to replace the reserve account with an insurance policy in an equal amount at some time in the future containing terms acceptable to the Township in its reasonable discretion.

D. Any Condition requiring the undertaking of any construction shall not be required to be satisfied prior to Preliminary Subdivision and Land Development approval

and shall be satisfied and completed during the construction of the applicable Phase, as herein defined. Further, Arcadia shall not be required to perform additional karst analysis in connection with the Preliminary or Final Subdivision and Land Development Plans for the Residential Parcel or Office Parcel.

E. The provisions of Paragraph 2 hereof shall supersede any conflicting Conditions. Further, to the extent that there is a conflict between this Agreement (which includes the Settlement Plan) and the Decision, this Agreement shall control the development of the Property. Notwithstanding the foregoing, to the extent not modified, either explicitly or impliedly, by the terms of this Agreement, the Decision shall remain in full force and effect.

3. DEVELOPMENT IN PHASES. The Residential Parcel and the Office Parcel may be constructed or installed in separate phases (each a “Phase”), over time, as determined by Arcadia.

4. CHANGES TO SETTLEMENT PLAN. The Parties acknowledge that the Settlement Plan is preliminary and not yet fully engineered. If, following execution of this Agreement, certain modifications to the Settlement Plan may be necessary to facilitate engineering, environmental, design modification as well as modifications required by county, state and federal regulatory agencies in conjunction with review of applicable permit applications (“Modifications”), said Modifications will not be construed as being inconsistent with the Settlement Plan or this Agreement and will be permitted absent amendment of the Decision or this Agreement, provided the Modifications do not (i) increase the density proposed for the Residential Parcel, (ii) decrease the road widths or the driveway lengths for the Residential Parcel, (iii) increase the impervious coverage for the Residential Parcel; (iv) increase the

impervious coverage for the Office Parcel (the overall layout of the Office Parcel may be redesigned from what is depicted on the Conditional Use Plan to include one or more buildings, provided that the total impervious coverage does not increase beyond what is depicted on the Conditional Use Plan); (v) violate any terms of the Decision, as modified herein; (vi) violate the Zoning Ordinance (except to the extent that relief therefrom is expressly provided herein); (vii) violate the SALDO (except to the extent that relief therefrom is expressly provided herein); (viii) modify the layout set forth on the Settlement Plan in a material manner, as determined by the Township in its reasonable discretion; or (ix) reduce the stormwater management benefits of the development project, all as shown on the Settlement Plan. If the proposed Modifications satisfy the foregoing requirements, such Modifications shall not result in the need to seek new conditional use approval, provided, however, that if Arcadia and the Township cannot agree as to whether proposed Modifications satisfy the foregoing requirements, such dispute shall be governed by Paragraph 6 hereof. The Modifications shall be reflected on Arcadia's Subdivision and Land Development Plan for the phase(s) of construction of the Property in which such change(s) will occur.

5. DISCONTINUANCE. In consideration of the terms set forth herein, within ten (10) days of this Agreement becoming unappealed and unappealable, Arcadia shall discontinue the Appeal by filing a Praecipe to Discontinue with the Office of the Prothonotary of the Chester County Court of Common Pleas, with a courtesy copy to be sent to the assigned judge's chambers. Arcadia shall take all other steps that may be required to cause the Appeal to be discontinued. The Parties shall request that the Court retain jurisdiction over the matter for purposes of dispute resolution.

6. DISPUTE RESOLUTION. The Parties acknowledge that disputes may arise regarding the interpretation of this Agreement and the relative rights and obligations of the Parties set forth herein. In those instances where one of the Parties believes another has breached its obligations as required by this Agreement, or a dispute arises as to the interpretation or obligations set forth in this Agreement, or as otherwise required by Township Ordinances, the Parties agree that such Party may submit the dispute to the Court for disposition. The decision of the Court shall be final and unappealable and binding on the Parties. Any decision of the Court shall be based on the terms of this Agreement, the Decision (except as modified by the terms of this Agreement), the Township Ordinances (except as modified by the terms of this Agreement) and other applicable laws.

7. VESTED RIGHTS. The rights provided under this Agreement shall run with the Property, shall continue in perpetuity and shall not be affected in any manner by any subsequent event or occurrence, including without limitation subdivision of the Residential Parcel from the Office Parcel or changes of ownership. For purposes of determining vesting under Section 508(4) of the MPC, it shall conclusively be determined that the date of vesting shall be April 22, 2013, i.e., the date of filing of the Application. No change or amendment to the Township Ordinances having the effect of adversely affecting the Decision, this Agreement or the Settlement Plan shall be applicable to the foregoing, including any Subdivision and Land Development Plan filed pursuant thereto, for the timeframes set forth in Section 508(4) of the MPC.

8. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, administrators and assigns, but there

otherwise shall be no third-party beneficiaries, intended, incidental or implied, to this Agreement.

9. ENTIRE AGREEMENT. This Agreement reflects the entire understanding and agreement of the Parties in connection with the matters set forth herein. The terms of this Agreement may be amended, modified or waived only by an instrument in writing signed by the Township and Arcadia. The Parties hereto acknowledge that the terms and provisions of this Agreement were jointly negotiated and finalized, and that no provision of this Agreement shall be construed against or interpreted to the disadvantage of any of the undersigned Parties by any court or other governmental or judicial authority by reason of any of the undersigned Parties being deemed to have drafted, structured or dictated such provision thereof.

10. GOVERNING LAW. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

11. COUNTERPARTS. This Agreement may be executed in any number of counterparts, and by each of the Parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission shall be equally as effective as delivery of an original.

12. AUTHORITY. The Parties hereto declare that they have read and fully understand the terms of this Agreement, have consulted with their respective legal counsel, or have had full opportunity to consult with counsel, regarding such terms and that they voluntarily accept the same for purposes of making a full and final compromise, adjustment and settlement of any and all issues raised in the Appeal. The Parties further declare that the respective persons

executing this Agreement on their behalf have complete and absolute authority to do so for the purposes contained herein.

IN WITNESS WHEREOF, the Parties hereto execute this Settlement Agreement as of the date set forth above.

ARCADIA TREDYFFRIN LLC

By: _____
Name: _____
Title: _____

BOARD OF SUPERVISORS
OF TREDYFFRIN TOWNSHIP

By: _____
Name: _____
Title: (Vice) Chairman

EXHIBIT "A"

EXHIBIT “B”

Condition	Applies to Residential independently	Applies to Office independently
1	x	x
2	x	x
3	x	x
4	x	
5	x	
6	x	
7	x	
8	x	
9	x	
10	x	x
11		x
12		x
13	x	
14		x
15	x	x
16	x	
17	x	
18	x	x
19	x	
20	x	
21		x
22	x	x
23	x	
24	x	
25	x	
26	x	x
27	x	
28	x	
29	x	
30		x
31	x	x
32	x	x
1.a.	x	x
1.b.	x	x
2.a.	x	
2.b.	x	

2.c.	x	
2.d.	x	
3.a.		x
3.b.		x
3.c.		x
4.a.	x	x
4.b.	x	x
4.c.	x	x
4.d.	x	x
4.d.i	x	x
4.e.	x	x
4.f.	x	
4.g.	x	
4.h.	x	x
4.i.	x	x
4.j.	x	
4.k.	x^1	x^1
4.l.	x^1	x^1
4.m.	x^1	x^1
4.n.	x	x
4.n.i.	x	x
4.n.ii.	x	x
4.n.iii.	x	x
4.n.iv.	x	x
4.n.v.	x	x
4.n.vi.		x
4.n.vii.	x	
4.o.	x	
4.p.	x	
5.a.	x	x
5.b.	x	
5.c.	x	
5.d.		x
5.e.	x	
5.f.	x	
5.g.	x	x
5.h.	x	
5.i.	x^2	x^2
5.j.	x	
5.k.	x	
6.a.	x	

6.b.	x	x
6.c.	x	x
6.d.	x ³	x ³
6.e.	x	
6.f.	x	x
6.g.	x	x
6.h.	x	x
6.i.	x	x

¹The Residential Parcel shall comply with those portions of the Condition applicable to the Residential Parcel, and the Office Parcel shall comply with those portions of the Condition applicable to the Office Parcel.

²The Residential Parcel shall comply with this Condition only as to the Stormwater Management Facilities on the Residential Parcel, and the Office Parcel shall comply with this Condition only as to the Stormwater Management Facilities on the Office Parcel.

³The Residential Parcel and the Office Parcel shall each have a separate Operations and Maintenance (O&M) manual related to improvements or property within the respective Parcel.