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November 17, 2022

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parking in certain areas of the Township designated as a sight hazard or for other safety reasons; providing a severability clause; repealing all inconsistent Ordinances; and providing an effective date.

Motion to TABLE Ordinance No. 3117

4

Solicitor

4

Old Business

4-5

New Business

5

Motion to adjourn at 8:30 p.m.

5

MINUTES
Council Meeting
November 17, 2022

The video of this meeting can be viewed in its entirety on youtube.com/upperdarby.org

Pledge of Allegiance to the flag of the United States of America
Moment of Silence

Opening of Meeting

Roll Call

Andrew Hayman (AH), Danyelle Blackwell (DB), Brian Andruszko (BA), Sheikh M. Siddique, (SS), Lisa Faraglia (LF), Matt Silva (MS) via Zoom, Brian K. Burke (BB), Michelle Billups (MB), via Zoom Meaghan Wagner (MW), Hafiz Tunis Jr. (HT), Laura Wentz (LW)

Present at the Meeting

Barbarann Keffer, Mayor
Chief Municipal Clerk, Alexis Cicchitti
Solicitor Sean Kilkenny
Solicitor Colleen Marsini
Mike Galante, Township Engineer
Sergeant of Arms, Officer O’Gara
Sergeant of Arms, Officer Cristinzio

Rules for Meeting Decorum

“Upper Darby residents have the opportunity to speak for three (3) minutes. Residents are prohibited from making threats, using profanity, or acting in a manner that would impede or prevent the conduct of the business of the meeting.” Public Forum should not exceed thirty (30) minutes.”

Approval of the Minutes

Approval of the Minutes from the Committee Meeting of October 12, 2022
Approval of the Minutes from the Council Meeting of October 19, 2022

Motion to approve: LF/MW All in favor. The October Minutes are approved.

Public Forum

Kyle McIntyre, 1040 Drexel Avenue, spoke of Yeadon PD being in “shambles” . He also spoke of the UDTJ Holiday Assistance Program. He thanked UDPD for stepping up to help out Yeadon
Olivia Taylor, 204 Kent Road, unhappy that 69th Street was shut down because of another Sikh Parade and upset about the homeless situation
John Vizzari, 353 Kirks Lane, asked Mayor Keffer why \$6.4 million was moved from the PLGIT account awaiting Council’s approval and then another \$1 million was moved. He stated that it is not an opinion, but a fact.
Ed Brown, 7111 Pennsylvania Avenue, addressed previous comments made about him and his non-profit organization

Joanne Nommavong, 133 N. Pennock, said to google the name Arthur Anderson
Becky Duggan, 129 N. Pennock Avenue, thanked Laura Wentz for inviting them to the Archer Epler Post. She also asked about the Police contract.

The Honorable Mayor Barbarann Keffer

Good evening,

Tonight, we are continuing our discussion of Upper Darby's 2022 budget, and I would like to thank our department heads for their time and input as well as the public's comments. We have put a great deal of time and careful planning into this budget, and it underscores my administration's commitment to reinvestment, revitalization, and reform in Upper Darby.

We will be hosting a tree lighting ceremony again this year on Wednesday, December 7th at 6pm at the five points intersection near 100 Garrett Road. I hope to see all our residents come out and join us as we light our tree, enjoy local entertainment and welcome in the holiday spirit. Light refreshments will be served.

I would like to wish all who celebrate an early Happy Thanksgiving. I am thankful for the hard work of our Upper Darby employees, particularly our Public Works staff who ensured that five days of trash pickups were completed in three days this past week and worked diligently to inform the community of the changes caused by the short week. I encourage residents to sign up for Delco Alerts at www.delcopa.gov/delcalert or follow us on Facebook to stay informed about holiday trash and recycling schedules. We have a holiday coming up next week as well. On Thanksgiving, November 24th, there is no trash or recycling will be collected. You can view the holiday trash schedule by visiting www.upperdarby.org/trash. The municipal building will be closed on Thursday, November 24th and Friday, November 25th.

In addition, I would like to announce that there will be free parking next Saturday, November 26th, for Small Business Saturday. We hope everyone takes advantage and shops at the many small businesses in Upper Darby.

I have some exciting news to share. Upper Darby has been awarded \$2 million in RACP funds towards the Community Center. We are so grateful to both our state representatives, Gina Curry and Mike Zabel, and Senator Tim Kearney for their help in securing this grant for our community.

Now I would like to allow Steve Nitz, the chair of Upper Darby's Historic Commission, to give a presentation to Council concerning the Preservation Ordinance and Survey.

That concludes my message. Thank you.

Presentation by Steve Nitz and Bart Everts, Members of the Historic Commission for the Historic Preservation Ordinance

President of Council, Brian K. Burke

Council President Burke stated that he also received phone calls from concerned residents about last week's trash and recycling pick-up.

HT asked for the summary of the Public Safety Meeting.

Council President Burke stated that he had questions for Solicitor Kilkenny pertaining to tickets that were not going to the courts for a number of months. He added that the Committee had previously met with Parking Enforcement Director Sekela Coles, who clarified her position on the tickets and where they were going. President Burke questioned why district courts were not seeing tickets for approximately 15 months. He added that the Public Safety Committee agreed on some of the comments made by Director Coles and stated that there are a lot of moving parts.

Solicitor Kilkenny stated that he and Solicitor Marsini met with President Burke and Councilwoman Faraglia earlier this week, and before that Solicitor Marsini met with Director Coles just to be familiar with the parking program and what was understood was that there was a possibility of the Administration working on a pilot program to start to decriminalize parking tickets. Solicitor Marsini had a PDF provided by the Administration, which was shared with President Burke and Councilwoman Faraglia. President Burke asked what should be done in the interim and Solicitor Kilkenny stated that until Council changes the law for parking, then the current law should be followed.

President Burke stated that he read through the "future pilot program" and that it is a 3 or 5-year plan to decriminalize parking tickets and to keep the money "in-house." He said that it appears that this has started already and he does not understand how, as the original Ordinance has not been changed and a new Ordinance has not been adopted.

Treasurer's Report: Treasurer, David Haman

*See attached

Motion to approve Treasurer's Report: LW/MW

All in favor. The Treasurer's Report was approved.

COMMITTEE REPORTS

Finance and Appropriations Committee

Chair: Laura A. Wentz

Members: Matt Silva, Meaghan R. Wagner, Brian Andruszko

It was decided to have one Public Hearing for both of the below Ordinances

Public Hearing for Ordinance No. 3127, an Ordinance of Upper Darby Township, Delaware County, Pennsylvania, authorizing and approving the acquisition of a fee simple interest in Delaware County Tax Map Parcel No. 16-13-00642-07 for use as Open Space; repealing all inconsistent Ordinances or parts thereof; providing a severability clause and providing an effective date

Solicitor Kilkenny gave a brief on Ordinance No. 3127

Public Hearing for Ordinance No. 3128, an Ordinance of Upper Darby Township, Delaware County, Pennsylvania, authorizing and approving the acquisition of a fee simple interest in Delaware County Tax Map Parcel No. 16-07-00504-00 for use as Open Space; repealing all inconsistent Ordinances or parts thereof; providing a severability clause; and providing an effective date

Solicitor Kilkenny gave a brief on Ordinance No. 3128

Council President Burke convened a Public Hearing.

Speakers

Joanne Nommavong, asked if the Agreement of Sale would be available on the website
Colleen Kennedy, asked how often the Committee meets and if all four members generally are invited. She requested that all members be invited, especially when personnel matters are involved.

Council President Burke closed the Public Hearing.

Motion to adopt Ordinance No. 3127: LW/DB

Moved and seconded. A roll call vote was taken. All in favor. Ordinance No. 3127 was adopted.

Motion to adopt Ordinance No. 3128: LW/MW

Moved and seconded. A roll call vote was taken. All in favor. Ordinance No. 3128 was adopted.

Public Safety Committee

Chair: Lisa Faraglia

Members: Andrew Hayman, Danyelle Blackwell, Meaghan R. Wagner

Public Hearing for Ordinance No. 3117, an Ordinance of the Township of the Township of Upper Darby, Delaware County, Pennsylvania, amending Ordinance No. 1589 to provide a definition for trucks and sight hazards; to provide for streets permitted for truck parking; to permit the Director of Parking Enforcement to limit parking in certain areas of the Township designated as a sight hazard or for other safety reasons; providing a severability clause; repealing all inconsistent Ordinances; and providing an effective date.

Chair Faraglia asked to table this Ordinance to allow for more discussion. DB seconded.
Moved and seconded.

Council President Burke stated that he agreed with tabling this Ordinance as Council members have received phone calls regarding the restrictions of the sizes of the trucks. Therefore, to have a better understanding, the Ordinance will need to be tabled.

HT asked for an explanation of why the Ordinance was being tabled.

LF stated that she has received numerous emails that have been shared with the Public Safety Committee, that people have concerns with a number of things. She added that she sent an email to the Public Safety Committee to meet on the 29th to discuss it further and then they will bring the Ordinance back.

LW stated that there was some concern with some of the writing in the Ordinance that caused confusion. MB had some questions about the maps and thought that the residents had valid concerns. HT suggested that Council look at the maps together at an Executive Session and to make sure that all of Council is on board with it before bringing it to the public. Several members spoke of the need for everyone to be able to see the map in a larger form.

Motion to TABLE Ordinance No. 3117: LW/DB

Moved and seconded. A roll call vote was taken. All in favor. Ordinance No. 3117 was TABLED.

Solicitor

Solicitor Kilkenny was asked if a line item budget needed to be released. Legally, it is a judgment call by the Administration and it is not required.

Old Business

AH stated that he co-hosted a winter coat giveaway for Operation Warm with the Bible Community Association and Pastor Nate Goodson. They raised over \$3000 for winter coats. Brinker Simpson and Company LLC

sponsored this event with their monthly dress down and raised over \$600. Thanks to their contribution, another 30 winter coats will go to Bywood Elementary School for students in need. He also thanked sponsors, Kilkenny Law, Special Needs Advocacy Services LLC, Councilwoman Blackwell and Councilwoman Andruszko.

AH stated that there are still some coats available, sizes 4-14.

LF stated that she is aware that \$3500 from ARPA funds was allocated to all essential workers. She asked why someone who worked all during COVID, but retired in 2022, did not receive the full \$3500. Mayor Keffer stated that the union signed that agreement but they could discuss this at an Executive Session. LW thanked everyone who came out to the Archer Epler event. They are always looking for new veterans to join as well as the American Legion Post on Chestnut near 69th Street.

DB participated in an event at 69th Street where hats, scarves and gloves were distributed to those who needed them.

New Business

HT stated that this upcoming Saturday, he, Councilwomen Blackwell and Billups, Councilman Siddique and Mayor Keffer would be giving out turkeys at the 69th Street field at 11a.m. Councilman Hayman will also be distributing jackets. Volunteers are welcome.

HT added that School Board President, Ed Brown, would be giving out turkey dinners at Murphy's Giving Market this Tuesday.

BA requested a petition for a stop sign installation and submitted a signed petition for "No Parking of Trucks or Commercial Vehicles."

Motion to adjourn: SS/LF. All in favor. The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Alexis Cicchitti

Alexis Cicchitti

Chief Municipal Clerk

The video of this meeting can be viewed in its entirety on youtube.com/upperdarby.org

Exhibit A

Upper Darby Historical Commission

Ordinance and Survey Overview

July 18, 2022

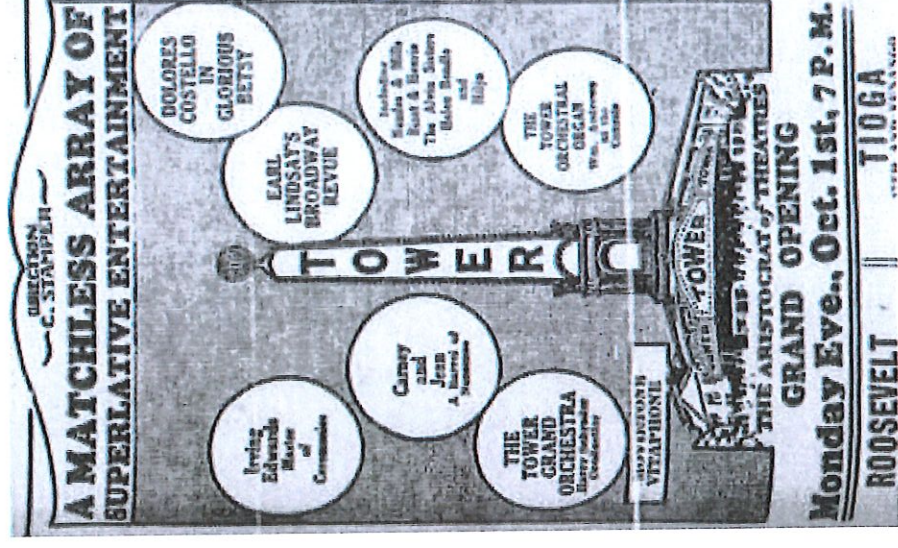


* Exhibit A

Introduction

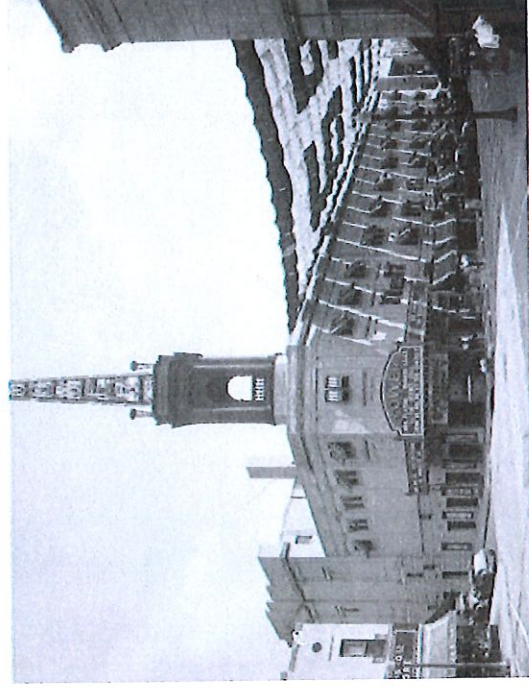
“The Upper Darby Historical Commission is a group of volunteer citizens working with local government and property owners to preserve and celebrate our historic places.”

The tools we are asking the township council to consider adopting are a Preservation Ordinance which is linked to a Survey (list of historic properties).



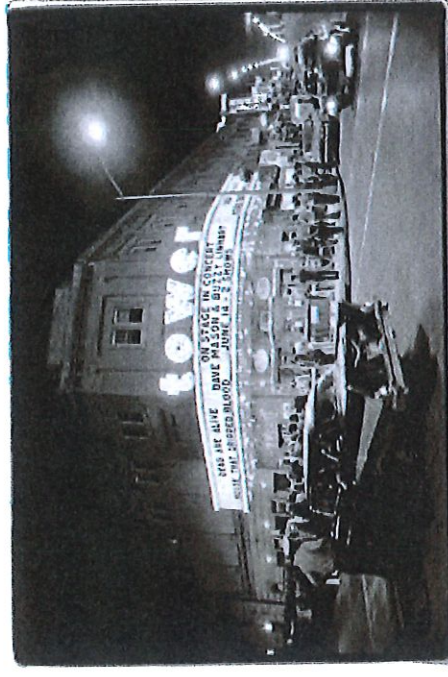
Ordinance

- Historic preservation ordinances offer the greatest protection for historic resources. These laws protect individual sites and historic districts through a permitting process that requires advance review of proposed projects by a preservation commission, or other administrative body.
- The historic preservation ordinance is the primary method by which communities protect their historic resources, and ultimately their character.



Ordinance Benefits

In addition to instilling pride within a community, historic preservation laws have been helpful in spurring tourism, generating new investment in otherwise forgotten areas, and increasing local tax revenue and property values. While the degree of protection may vary from place to place, most ordinances establish a historic preservation commission and a process for consideration of proposals to alter or demolish historic properties. Local governments with preservation ordinances may also become eligible for federal funds. Under the National Historic Preservation Act, up to 10% of a state's allocation under the Historic Preservation Fund may be transferred to "certified local governments."



<https://forum.savingplaces.org/learn/fundamentals/preservation-law/local-laws/ordinances>

- Resource Survey-UD History-Numbers**

File Edit View Insert Format Data Tools Help

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Prior	Initia	Y or	D	E	F	G	H	I	J	K
			2020 Survey (2007/Is)	2012 Survey	Google Map Key	Current Name	Historic Name	Number	Street	Add
1		Y	001	003	National Register HP		Collen Brook Farm		Mansion Road & Marvline Road	Mansion
2	1	Y	002	012			Swayne/Garrett House		531 Bloomfield Avenue	531 Bloo
3	1	Y	003	022			Henry Taylor House	513/515	Bloomfield Avenue	513/515

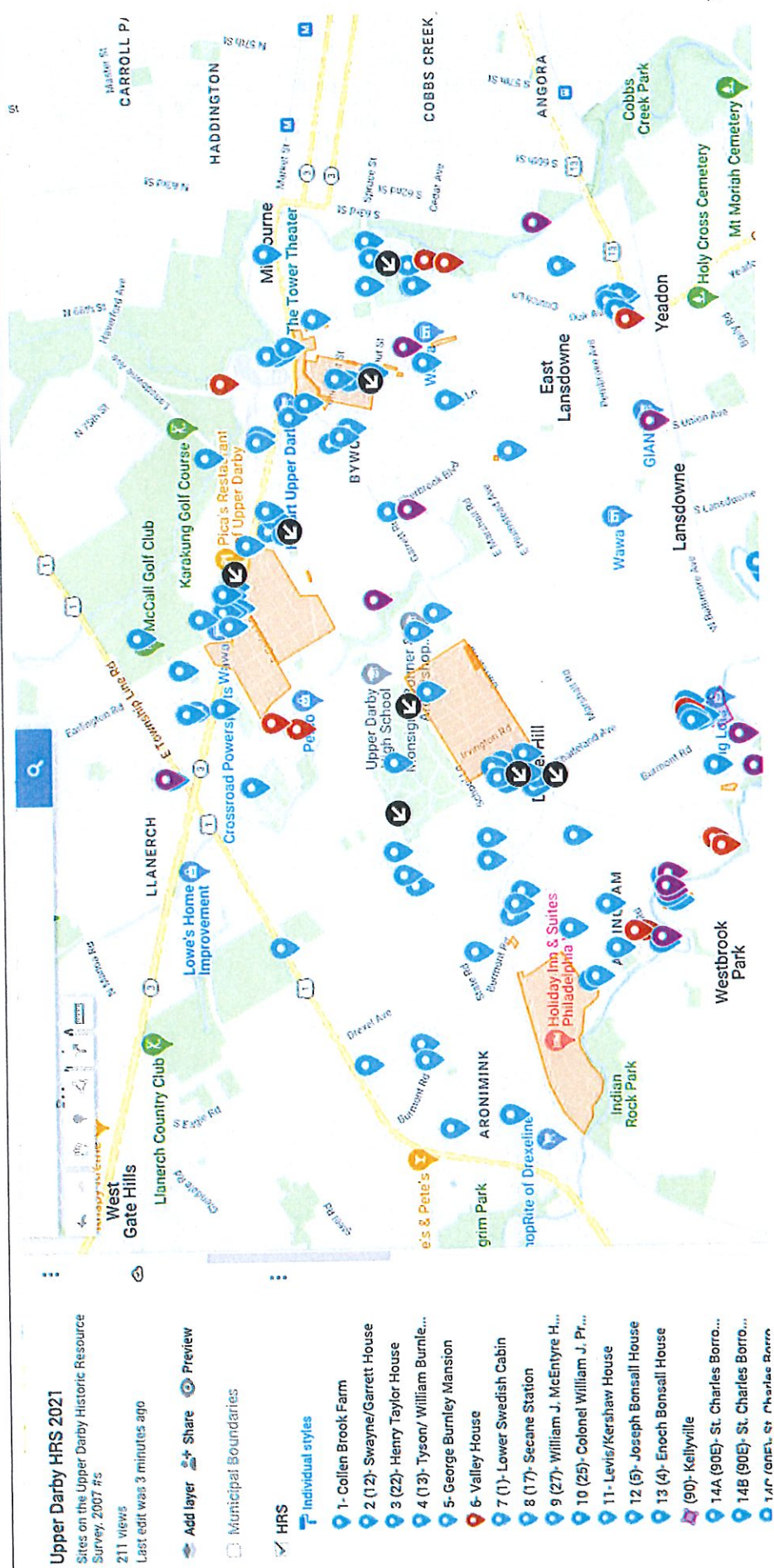
2007, 2012, 2022

Upper Darby Survey Criteria

<p>Criteria for Designation. A property containing a building, site, structure, object, or grouping thereof determined by the Historical Commission, as approved by Township Council, to be of historical, cultural, or architectural significance meeting two or more of the following criteria:</p> <p>(1) Is associated with an event that is significant to the history of Upper Darby Township, Delaware County, the Commonwealth, or the nation;</p> <p>(2) Is representative of broad patterns of development, heritage, or culture of Upper Darby Township, Delaware County, the Commonwealth, or the nation;</p> <p>(3) Is associated with persons or groups of people of significance to the history or culture of Upper Darby Township, the Commonwealth, or the nation;</p>	<p>(4) Embodies distinctive characteristics of architecture, style, type, period or method of construction of architecture;</p> <p>(5) Contains elements of design, detail, materials or craftsmanship, which represent a significant innovation;</p> <p>(6) Is or contains the work of a notable architect, landscape architect, artist, craftsman, builder, or developer;</p> <p>(7) Is part of the historic context of a square, park or other distinctive area which should be preserved according to a plan based on an historic, cultural or an architectural context;</p> <p>(8) Is the singular known example of a design or use of material or style of architecture within the Township;</p> <p>(9) Is a landmark that is an established and familiar visual feature which assists in defining the character of the</p>	<p>neighborhood, community or Township due to its unique location or physical characteristics;</p> <p>(10) Has yielded, or may be likely to yield, information important in prehistory or history of the Township, Commonwealth or the nation;</p> <p>(11) Is listed in or determined to be eligible for the National Register of Historic Places as provided in the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.;</p> <p>(12) Is listed in the Upper Darby Historic Resource Survey prepared by the Delaware County Planning Department, as updated from time to time.</p>
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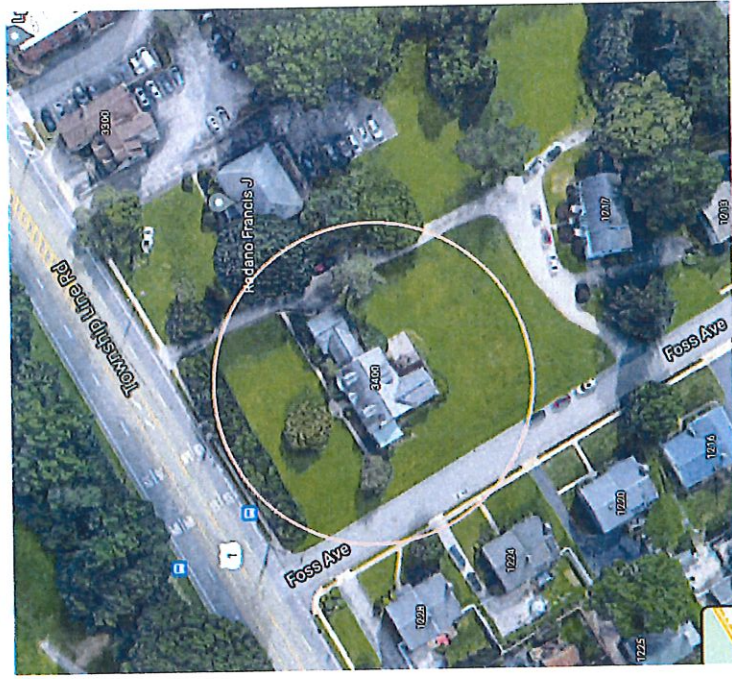
Survey Map

<https://www.google.com/maps/d/u/0/edit?mid=1AeokCaA6c3emZqirt1sHd6YTECq0sxZQ&usp=sharing>



Survey Examples

- 029-Lukens-Levis house



PENNSYLVANIA HISTORIC RESOURCE SURVEY FORM--NARRATIVE SHEET Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation

Survey Code: 045-47-016 Tax Parcel/Other No.: 16-10-01620-00
County: Delaware Municipality: Upper Darby
Key Number: 861509 Inventory ID: 861509.0001
Address: 3400 Township Line Road, Drexel Hill, PA 19026
Historic/Other Name: Lukens-Levis House & William Levis House

PHYSICAL DESCRIPTION:

The original residence is a 5-bay, 2-pile, and 2 1/4 -story stuccoed stone house constructed c.1845. In the early twentieth century, alterations and additions occurred, including the removal of a third floor around 1910 and the addition of a 1-bay, 2-pile, 2-story abutting portion with a gable roof and a sleeping porch on the rear façade. An interior gable peak chimney is on the northeast elevation of the core.

Although officially dated to 1845, the house may have been constructed earlier, based on window and door placements, the steeply pitched gable roof, the asymmetrical alignment and its location near an important early road. Window sashing varies throughout the house with those on the second-story of the front façade being 2/2. The landscaping buffers the house from busy Township Line Road.

HISTORICAL NARRATIVE:

This farm house and land were given to William Levis in 1862 as a wedding present from Nathan Lukens, after Levis married Lukens' daughter. The house remained in the Levis and Lukens family until the 1920s. Originally a farm of 140 acres, this lot and the house are all that remains intact. The parcel now overlooks the Nelson Tract playgrounds.

Survey Examples

- 029-Lukens-Levis house

Abbreviated Historic Resource Survey Form Pennsylvania Historical Museum Commission

IDENTIFICATION AND LOCATION

ER #: KEYNO: 861509 Invid: 861509.0001

Survey Code: 045-47-016 Tax Parcel: 16-10-01620-00
County: Delaware Municipality: Upper Darby Township

Historic Name: Levis, William, House
Address: 3400 Township Line Ave. Drexel Hill, PA 19026

Owner Name:
Owner Address:
Owner Category: Private
UTM Zone: 18 N: 473755 E 4422435

PHYSICAL DESCRIPTION
Resource Classification: Building
Historic Function: Agriculture/Subsistence
Particular use: Farm House

Current Fuction: Domestic
Year built c 1845
Architectural Style: Federal

Structural System: Stone
Materials: Foundation: Stone
Walls: Stucco
Roof: Asphalt

Width in Bays: 5 Stories: 2 1/2

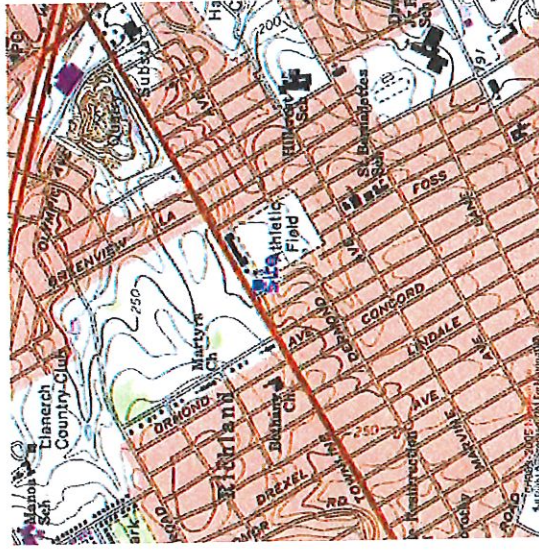
SURVEYOR RECOMMENDATION

Individual Property Undetermined
Justification:
Lacks Integrity? No Lacks Significance? No

Contribution to HD:

SURVEYOR INFORMATION

Name: Matthew Millison
Project Name: Upper Darby Township Historic Resource Survey
Organization: Delaware County Planning Department
Location: 201 W. Front St., Media, Pa
Previous Survey:



U.S.G.S. Source: MyTopo



• 085-Wenona Farm

LOCATION: 201 W.
DREXEL UNIVERSITY



Survey Examples

- 085-Wenona Farm
2018



Survey Examples

- 085-Wenona Farm-House was purchased and new owner removes windows house is left to the elements for over a year in 2019-2021.



Survey Examples

- 085-Wenona Farm-current state

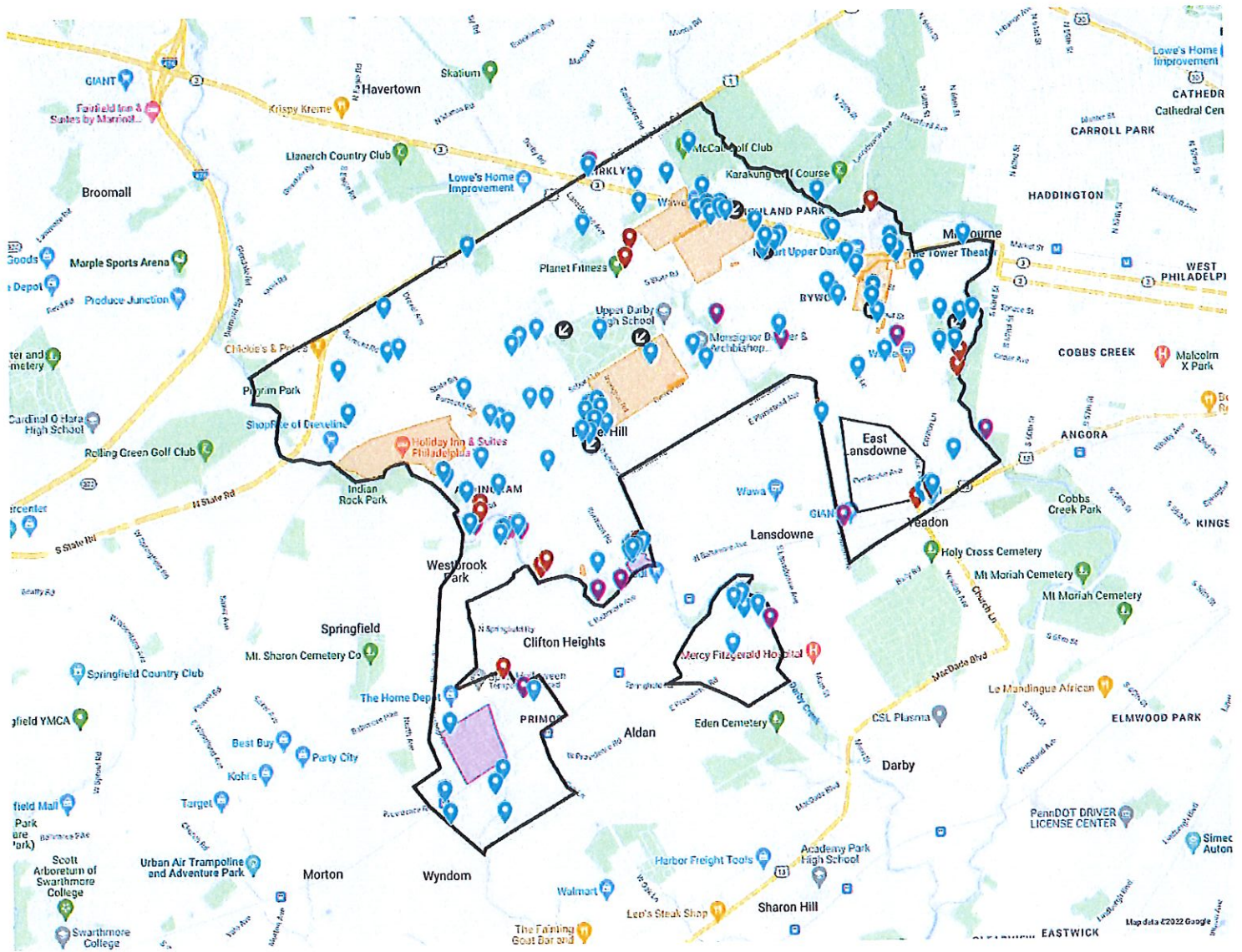


Putting it to work

- **When a property applies for a building or demolition permit the zoning commission checks the survey to see if the property is protected. The survey is a zoning overlay. There is then a stay on the permit until the historical commission, zoning board and township council can confer.**
- **A hearing may be scheduled between the developer, the historical commission and the township council to review the plans and make recommendations.**
- **The township council rules on any alteration or demolition permit taking into account the information from the historical commission and the owner/developer.**

Thank you for your consideration.





**TOWNSHIP OF UPPER DARBY
COUNTY OF DELAWARE, PENNSYLVANIA**

ORD. NO. _____

**AN ORDINANCE OF UPPER DARBY TOWNSHIP PROVIDING FOR THE
FUNCTIONS, DUTIES, MEMBERSHIP REQUIREMENTS AND TERMS, CONDUCT
OF BUSINESS OF THE UPPER DARBY HISTORICAL COMMISSION; AMENDING
CHAPTER 550 OF THE TOWNSHIP CODE, ZONING, TO CREATE A NEW
ARTICLE, "HISTORIC PRESERVATION"; AMENDING THE TOWNSHIP ZONING
MAP TO CREATE THE HISTORIC OVERLAY DISTRICT; PROVIDING FOR
PUBLIC POLICY AND PURPOSES, DEFINITIONS, DESIGNATIONS OF HISTORIC
RESOURCES AND THE KEEPING OF A HISTORIC RESOURCE LIST;
APPLICATION AND REVIEW PROCEDURES AND REQUIREMENTS FOR
DEMOLITION AND ALTERATIONS OF A HISTORIC RESOURCE; REVIEW
CRITERIA AND GUIDELINES FOR DEMOLITIONS AND ALTERATIONS OF A
HISTORIC RESOURCE; EXCEPTIONS; APPEALS; ENFORCEMENT; AND
PENALTIES**

WHEREAS, the Home Rule Charter of Upper Darby Township authorizes the Upper Darby Township Council to make and adopt ordinances consistent with the Constitution and laws of this Commonwealth and with the Charter and to prescribe fines and penalties for the violation thereof;

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution states: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.";

WHEREAS, the Pennsylvania Municipalities Planning Code, 53 P.S. §10101, *et. seq.*, provides that municipalities are permitted to plan for the protection of historical resources and sites, and that municipal zoning codes shall provide for the protection of natural and historic features and resources;

WHEREAS, pursuant to the powers provided under Chapter 21, Article 1, of the Upper Darby Township Code, the Mayor of Upper Darby Township has established the Upper Darby Township Historical Commission to assist with administration and make recommendations to Township Council related to the protection of historical resources throughout the Township;

WHEREAS, to meet and fulfill such responsibilities, Township Council desires to preserve and protect the historical, and architectural fabric of the Upper Darby Township, while balancing private property rights, through the designation and protections of historic resources throughout the Township and providing for additional reviews, considerations, and restrictions when historic resource is proposed to be demolished or is being demolished through neglect;

WHEREAS, Township Council further desires to protect the historic resources within the Township that have a distinctive character recalling the rich architectural and historical legacy of Upper Darby Township, and to make the historic resources a source of inspiration to all people by awakening interest in the Township's historic past, and to promote the general welfare, education, and culture of the Township.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, after a duly advertised public hearings, by the Township Council of the Township of Upper Darby, County of Delaware, Commonwealth of Pennsylvania, and it is enacted and ordained, that Chapter 550, Zoning, of the Code of Ordinances of Upper Darby Township be amended to provide for a new Article entitled, "Historic Preservation", as follows:

SECTION 1. CODE AMENDMENT.

1. Chapter 21, Article 1, of the Upper Darby Township Code is hereby amended to provide for the follows:

§21-1.1. Appointment of Upper Darby Historical Commission. The Mayor of Upper Darby Township shall appoint the members of the Historical Commission. The Historical Commission shall have the functions and duties as described in this Chapter.

§21-1.2. Functions and duties. The Historical Commission shall have the following functions and duties:

- A. Serve as a principal advisor to the Upper Darby Township Council and Mayor and other Township boards, commissions, and officials on matters related to historic preservation, architecture, history, culture, heritage, and related matters.
- B. Advise the Township Council, Mayor, Zoning Officer, or other applicable Township personnel on the issuance of permits for demolition and alterations, and actions relative to demolition by neglect, with regard to Historic Resources.
- C. Review and comment on subdivision or land development applications that affect Historic Resources;
- D. Maintain a system for the survey and inventory of Historic Resources in Upper Darby Township in accordance with this Article and the Historic Preservation Article of the Township's Zoning Code.
- E. If desired and directed by the Mayor, to develop and periodically review historic district design guidelines and recommend changes to the Council.
- F. Conduct research on Historic Resources and propose the nomination of such resources for inclusion on the National Register of Historic Places and other appropriate lists or programs.

- G. Make recommendations to the Township Council and Mayor concerning revisions to the Historic Resource List and the associated zoning overlay.
- H. Document, photograph, and regularly update information about ongoing changes to the Township's physical landscape, in particular the regulated Historic Resources.
- I. Participate in continuing education and training activities related to historic preservation and administration of the Historic Preservation Article of the Township's Zoning Code.
- J. Educate the Township's residents and others as to the importance of protecting the Township's heritage.
- K. Educate the Township's residents and particularly owners of properties on the Historic Resource List about the Historic Preservation Article of the Township's Zoning Code.
- L. Perform any other lawful activities that shall be deemed necessary to further the purposes of this Article and the Historic Preservation Article of the Township's Zoning Code.

§21-1.3. Membership. The Historical Commission be composed of seven (7) members as has been appointed by the Mayor of Upper Darby Township. Not less than four members shall be residents of Upper Darby Township. Township staff, consultants, or contractors may serve as appointed members if necessary to meet such professional qualification requirements as desired by the Historical Commission. Such service will be considered part of their normal job functions for which they may receive normal compensation. Historical Commission members shall serve for a term of three (3) years that shall be so fixed that no more than two (2) terms shall expire each year. Members may be reappointed to consecutive terms. A majority of the Historical Commission shall constitute a quorum and action taken at any meeting shall require the affirmative vote of a majority of the Historical Commission. The Historical Commission shall notify the Township Mayor of any vacancies in the Commission, and the Mayor shall act within ninety (90) days to fill those vacancies. Appointments to fill vacancies for unexpired terms shall be only for the unexpired portion of the term. Any member may be removed from the Commission by the Mayor, subject to Council approval. Members shall serve without compensation but may be reimbursed for any personal expenditure in the conduct of Historical Commission business approved by the Township. Municipal staff, consultants, or contractors may be compensated for appointed service as part of their normal job functions.

§21-1.4. Organization and conduct of business.

- A. The Mayor shall appoint one member of the Historical Commission as Chair and other members as such other officers as may be required for the conduct of its business from time to time.
- B. The Historical Commission shall work with the Township Mayor and Township Staff to develop or amend regulations governing its organization, administration, and conduct and shall submit such document and subsequent changes to the Township Mayor for approval. Such regulations shall be consistent with the ordinances of the Township and laws and regulations of the Commonwealth of Pennsylvania.
- C. The Historical Commission may consult with Township staff to develop and require submission of forms to facilitate the fulfillment of its responsibilities under this Article.
- D. The Historical Commission shall conduct business at regular public meetings or special meetings as needed and called by the Chair. The dates, times, and locations of all regular and special Historical Commission meetings shall be posted and advertised to the public in advance in accordance with applicable commonwealth laws related to the conduct of official business.
- E. An agenda of each public meeting shall be available for inspection prior to the meeting.
- F. The Historical Commission shall keep full public records of its business, including adopted minutes.

2. Chapter 550 of the Township Code, Zoning, is hereby amended to provide for a new Article entitled, "Historic Preservation", to provide as follows:

HISTORIC PRESERVATION

Section 1. Public Policy and Purposes

- (a) It is hereby declared, as a matter of public policy, that the preservation and protection of historic buildings, structures, objects and properties of structural, architectural, cultural, educational and aesthetic merit are public necessities and are in the interest of the health, prosperity and welfare of all the residents of Upper Darby Township.
- (b) The purposes of this Article are:
 - (1) To identify historic buildings, structures, objects, properties and other historic resources which are important to the education, culture, traditions and economic values of all residents of Upper Darby Township.

- (2) To provide an opportunity to preserve such historic resources as established by the Upper Darby Township Historical Commission ("Commission") to preserve the culture and history of Upper Darby Township.
 - (3) To provide an opportunity to enhance such historic resources as established by the Commission to preserve the culture and history of Upper Darby Township.
 - (4) To enhance the attractiveness of Upper Darby Township, thereby supporting and promoting business, commerce, industry and tourism, as well as providing economic benefits.
 - (5) To promote the use of historic resources for the education, pleasure and welfare of all residents of Upper Darby Township.
 - (6) To implement the goals of the National Historic Preservation Act of 1966, as amended, as they relate to Historic Resources in the Township
 - (7) To implement the goals of Article I, Section 27, of the Pennsylvania Constitution which establishes the Commonwealth's policy of encouraging the preservation of historic and aesthetic resources; and
 - (8) To implement the goals of the Pennsylvania Municipalities Planning Code, as presented in Section 105 of the Act, and the purposes of Article VI, which authorizes the regulation, restriction, and prohibition of uses and structures at, along, or near places having unique historical, architectural, or patriotic interest or value, and which recognizes that zoning ordinances "shall provide for the protection of natural and historic features and resources."
- (c) It is the hope that the Township of Upper Darby's historic resources will continue to be a distinctive aspect of Upper Darby Township and will serve as visible reminders of the significant historical and cultural legacy of the Township.

Section 2. Historic Overlay District added to Township Zoning Map. An overlay district, being applied over the established mapped districts, entitled "Historic Overlay District" is hereby created in Upper Darby Township that shall consist of all the properties/parcels in the Township containing a Historic Resource, as set forth on the Historic Resource List. The Upper Darby Township Official Zoning Map shall be amended to provide for and identify the Historic Overlay District. The Historic Overlay District Map is attached to this Ordinance as Exhibit "A" and incorporated herein.

Section 3. Definitions

For the purposes of this Article, the following words and phrases shall have the meaning ascribed to them in this section:

(a) “Alteration” or “Alter.” The act or process of adding, removing, replacing, or modifying the exterior features of a Historic Resource, the moving of a building or structure from one location to another on a Historic Resource, or the new construction of a building or a structure on a property containing a Historic Resource, that can be seen from a Public Way.

(b) “Commission.” The Upper Darby Historical Commission.

(c) “Demolition or Demolish.” The act of dismantling, tearing down, moving, or removing any exterior load-bearing portion of a building, structure or other Historic Resource. Not included is the removal of exterior, non-structural architectural elements or ordinary maintenance or repair of any building or structure, where such work does not require a permit by law, and where the purpose and effect of such work is to correct any deterioration or decay of, or damage to, a building or structure and to restore the same to its condition prior to the occurrence of such deterioration, decay or damage.

(d) “Demolition by Neglect.” The willful or intentional failure to perform routine maintenance and/or failure to secure a Historic Resource from pests or vandals, and/or failure to take reasonable measures to prevent ingress of water or wind through the roof, walls, or apertures, leading to deterioration and/or structural failures in the manner set forth in this Article.

(e) “Economic Hardship.” The denial of all reasonable beneficial uses or reasonable financial return on a property as a result of the denial of a building permit for the Alteration or demolition of the Historic Resource-demolition permit.

(f) “Historic Resource.” Any building, structure, object, or property that the Upper Darby Historical Commission included on the Upper Darby Historic Resource Survey of the Delaware County Planning Commission, as amended, and any other building, structure, object or property designated historic by the Upper Darby Historical Commission.

(g) “Historic Resources List.” A list compiled by the Upper Darby Historic Commission of properties deemed a Historic Resource, including but not limited to those listed on the Upper Darby Historic Resource Survey of the Delaware County Planning Commission, as amended.

(h) “Person”, “Landowner”, or “Applicant.” An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal commercial entity, or an agent of the same, excepting the Township.

(i) “Public Way.” Any street, alley, sidewalk or similar place essentially unobstructed from the ground to the sky to which the general public is typically allowed access, including private streets and alleys.

(j) “Township.” Upper Darby Township, Delaware County, Commonwealth of Pennsylvania.

(j)(k) “Zoning Officer.” The Zoning Officer of Upper Darby Township or the Zoning Officer’s designee to administer the provisions of this Article.

Section 4. General Provisions

- (a) Compliance. The Commission shall prepare and maintain an Historic Resources List as set forth in this Article. Any change to the Historic Resources List shown on the Historical Overlay shall occur only in full compliance with the terms of this Article and other applicable regulations.
- (b) Historical Overlay. The Historic Resources List and all associated land parcels shall be deemed an overlay on any zoning district now or hereafter enacted to regulate the use of land in Upper Darby Township.
 - (1) For any property shown on the Historic Resources List, the requirements contained in this Article shall:
 - a. apply in addition to the applicable requirement of the underlying zoning district, and
 - b. supersede the otherwise applicable requirements of the underlying zoning district only where those requirements are inconsistent with the requirements contained in this Article.
 - (2) Should the Historic Resources List or any section of this Article be revised as a result of legislative or administrative action or judicial decision separate from and independent of the authority of the Township, the zoning requirements and other regulatory measures applicable to the property in question shall be those of the underlying zoning district and shall remain in full effect.
 - (3) All property, including land and improvements shown on the Historic Resources List is considered part of the Historical Overlay and is governed by the provisions of this Article.
- (c) Preservation of Other Restrictions. It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail.

(d) Timing requirements for issuance of permits and other approvals. The applicable time periods for issuance of a building permit, demolition permit, or sign permit, or for conducting a public hearing and reaching a decision on a conditional use, special exception, or variance application, may be altered from the otherwise stipulated time requirements of this Chapter in accordance with the following:

- (1) As authorized by 35 P.S. § 7210.502, the Pennsylvania Construction Code, the Zoning Officer shall not be required to issue a building permit or demolition permit for any property on the Historic Resources List until all other applicable approvals required by this article have been obtained and appropriate documentation presented.
- (2) An ~~a~~Applicant for conditional use approval from the Township Council or for a special exception or variance from the Zoning Hearing Board may, as part of the application submission or as part of the hearing record, waive or extend the time periods for a hearing and/or decision that are otherwise applicable under the terms of this chapter and the Pennsylvania Municipalities Planning Code.

Section 5. Historic Resource Designation

(a) Historic Resources List. The Upper Darby Township Historic Resources List contains properties of importance to the Township and designated as “Historic Resource(s)” on the list. The Historic Resources List adopted by Township Council shall be an Appendix to the Township’s Zoning Code and incorporated therein.

(1) The Historic Commission has identified, and Township Council has approved, the initial list of Historic Resources in the Township listed on the Historic Resources List. The initial Historic Resource List is attached to this Ordinance as Exhibit “B” and incorporated herein.

(2) Prior to enacting this Ordinance which includes the properties listed on the Historic Resources List at Exhibit “B”, the Historic Commission and Township Council held public meetings for the purposes of receiving written and oral testimony from the public regarding the properties considered for inclusion on the Historic Resource List. Upon conclusion of the public meetings, Township Council voted on the Historic Resources List. The proposed list also received Delaware County Planning Commission review as part of the enactment process.

(b) Criteria for Designation. A property containing a building, site, structure, object, or grouping thereof determined by the Historical Commission, as approved by Township

Council, to be of historical, cultural, or architectural significance meeting two or more of the following criteria:

- (1) Is associated with an event that is significant to the history of Upper Darby Township, Delaware County, the Commonwealth, or the nation;
- (2) Is representative of broad patterns of development, heritage, or culture of Upper Darby Township, Delaware County, the Commonwealth, or the nation;
- (3) Is associated with persons or groups of people of significance to the history or culture of Upper Darby Township, the Commonwealth, or the nation;
- (4) Embodies distinctive characteristics of architecture, style, type, period or method of construction of architecture;
- (5) Contains elements of design, detail, materials or craftsmanship, which represent a significant innovation;
- (6) Is or contains the work of a notable architect, landscape architect, artist, craftsperson, builder, or developer;
- (7) Is part of the historic context of a square, park or other distinctive area which should be preserved according to a plan based on an historic, cultural or an architectural context;
- (8) Is the singular known example of a design or use of material or style of architecture within the Township;
- (9) Is a landmark that is an established and familiar visual feature which assists in defining the character of the neighborhood, community or Township due to its unique location or physical characteristics;
- (10) Has yielded, or may be likely to yield, information important in prehistory or history of the Township, Commonwealth or the nation;
- (11) Is listed in or determined to be eligible for the National Register of Historic Places as provided in the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.;
- (12) Is listed in the Upper Darby Historic Resource Survey prepared by the Delaware County Planning Department, as updated from time to time.

(c) Adding or Removing a Property from the Historic Resources List. A property may be added to the Historic Resources List if found to meet two or more of the above criteria for designation or removed from the list if it no longer meets two or more of the above criteria, according to the following process and subject to legislative action by Township Council:

(1) Nomination and Evaluation by the Historical Commission. The Historical Commission, acting of its own volition or at the request of Township Council or the Mayor shall review and make a recommendation to Township Council whether a resource(s) meets two or more criteria for designation as a Historic Resource.

- a. The Historical Commission shall hold at least (1) one public meeting to receive public comments on the nomination.
- b. The Historical Commission shall, within forty-five (45) days of receiving a nomination, transmit its findings, including relevant historical and/or architectural information, applicable Criteria for Designation, photographs and public comments received at the meeting, to the Township Council for review and comment.

(2) Review and Adoption by Township Council. Township Council shall hold a public hearing to consider the recommendations of the Historical Commission using the same procedures as a zoning ordinance and map amendment to determine if the resource should be added to the Historic Resources List.

Section 6. Obtaining Building Permits for the Alteration or Demolition of Historic Resources. The following requirements shall apply to obtaining a building permit to demolish a Historic Resource or to perform an Alteration on a Historic Resource or the property on which it is located. If a building permit is not otherwise required for a demolition or an Alteration under the Uniform Construction Code, a building permit for such demolition or Alteration is still required under this Article prior to the demolition or Alteration of a Historic Resource.

(a) Applicability of requirements for obtaining a Building Permit. No Historic Resource may be demolished, in whole or in part, whether deliberately or by neglect, including the removal, stripping, concealing, or destruction of any significant exterior architectural features; no Alteration or no other new exterior additions or expansions shall be added to the Historic Resource; and no exterior construction or reconstruction can take place on a Historic Resource, unless a Building Permit is obtained from the Zoning Officer in accordance with the procedures and requirements of this Article.

(b) Non-Historic Outbuildings: The Zoning Officer may give consideration in the form of relief to otherwise applicable sections of this Article for resources that do not contribute to the historical or architectural significance of the property containing a Historic Resource,

such that the demolition or Alteration of such resources do not adversely impact the Historic Resource(s) on the property or Historic Resources on adjacent properties.

(c) In-kind Maintenance and Repair. These provisions shall not be construed to prevent the ordinary maintenance or repair of any Historic Resource where such work does not otherwise require a permit and where the purpose and effect of such work are to correct any deterioration or decay of, or damage to, a Historic Resource and to restore the same to its condition prior to the occurrence of such deterioration, decay, or damage. The Zoning Officer shall interpret "in-kind" as being substantially similar, if not identical, to the design and fabric at the time of the application.

(d) Emergency Repairs. In case of emergency, such as storm or fire damage, the Zoning Officer may approve a building permit for temporary measures to stabilize or secure a Historic Resource. To qualify for this exception, the applicant must demonstrate that the work will be "reversible" (i.e., can be removed without altering or damaging the Historic Resource and will not further damage the Historic Resource). As applied to this section, "temporary" means not more than one (1) year from the start of construction. The Zoning Officer may approve one extension of not more than of six months.

Section 7. Historic Resource Building Permit Application Procedure.

(a) For a building permit seeking to demolish or Alter a Historic Resource, the Zoning Officer shall receive the application, together with any required plans, enclosures, and attachments, to ensure the application is complete and any applicable fee(s) established by Township resolution have been paid. It is the responsibility of the applicant to determine if the property is a Historic Resource and to apply for the demolition or Alteration of the Historic Resource even if a building permit would not otherwise be required. Any application submitted to the Zoning Officer for a building permit shall be reviewed to determine if the property is or contains a Historic Resource.

(b) In addition to the application for the building permit to demolish or Alter the Historic Resource, the application shall also include the following, as applicable, to be deemed complete:

1. Recent interior and/or exterior photographs of the Historic Resource proposed for demolition or Alteration;
2. Floor Plans of the Historic Resource, if a building or structure, proposed for demolition or Alteration;
3. Site plan showing all Historic Resources and buildings on the property;

4. Reasons for demolition or Alteration;
 5. Proposed future use of the property;
 6. Method of demolition;
 7. Proposed disposition of materials;
 8. Timeline for implementation of the proposed use of the property;
 9. Economic feasibility of adaptively reusing the Historic Resource in its current state;
 10. Potential public safety issues posed by the current condition of the Historic Resource in its current state;
 11. Documentation and an affidavit for a claim of an Economic Hardship, if applicable.
 12. For buildings or structures proposed for demolition, a determination by a professional structural engineer specializing in historic structures that the building/structure is structurally unsound and cannot be stabilized.
- (c) Once an application is deemed complete, the Zoning Officer will forward the application, together with all enclosures, to the Historical Commission within ten (10) days. Within sixty (60) days of receiving the completed application, the Historical Commission will meet at its regularly scheduled or special meeting to consider the application. The aApplicant will be notified of the meeting time and date no less than ten (10) days before the meeting, unless otherwise agreed. In addition, at least (10) days before the Commission meeting to address the application, the Zoning Officer shall post a notice on the property that is the subject of the application indicating that the landowner has applied for a permit to demolish or Alter a Historic Resource on the property. The notice shall be posted on each street frontage of the property and be clearly visible to the public.
- (d) Informal Meeting. Prior to a formal permit application for the demolition or Alteration of a Historic Resource, an applicant shall be permitted to appear before the Historical Commission to discuss the application and receive feedback from the Commission.

Section 8. Review and Recommendation by the Historical Commission.

- (a) During a meeting to review a proposed demolition or Alteration of a Historic Resource, the Historical Commission shall determine the extent that the proposed demolition or Alteration may adversely impact the historical or architectural significance of the Historic Resource, the property, or adjacent Historic Resources.

(b) When considering whether a building permit should be issued for the demolition or Alteration of a Historic Resource, the Commission may consider comments from the public as well as persons and organizations with expertise and experience in matters relevant to the permit application. In addition, the Commission shall consider:

1. The purposes of this Article;
2. The historical, architectural, aesthetic, or other significance of the Historic Resource;
3. For proposed demolitions, wWhether the property and/or Historic Resource, as applicable, can be used for any purpose for which it is or may be reasonably adapted or incorporated. To that end, the applicant must demonstrate, if applicable, that the sale of the property constituting or including the Historic Resource is impracticable and/or that renting the property or a building/structure, if constituting the Historic Resource, cannot provide a reasonable rate of return;
4. Any claims of Economic Hardship made by the applicant and the documentation provided to support such claim.

(c) If the applicant is asserting an Economic Hardship exception, the applicant shall have submitted affidavit substantiating the Economic Hardship along with the application along with documentation which may include, but is not limited to, the following:

1. Date the property was acquired by its current property owner;
2. Price paid for the property (if acquired by purchase) and the relationship (if any) between the buyer and the seller of the property;
3. Mortgage history of the property, including current mortgage;
4. Current market value of the property;
5. Equity in the property;
6. Past and current income and expense statements for a two (2) year period for commercial properties;
7. Past capital expenditures during the ownership of current owner;
8. Records of any past citations for violations of the Property Management Code;

9. Appraisal of the property obtained within the previous two (2) years;

10. Income and property tax factors affecting the property;

11. An additional information relevant to its determination of Economic Hardship.

(d) Additional Documentation. In deliberating upon the proposed demolition or Alteration, the Historical Commission, at its initial review meeting, may request additional information. With the consent of the aApplicant, the Commission may extend the review up to ninety (90) days for the purposes of gathering additional relevant information related to a proposed demolition, including, but not limited to expert testimony in the form of a written report or presentation by a certified engineer or architect with demonstrated expertise in historic preservation as to the structural integrity of the Historic Resource and analyses of alternative uses for the resource.

(e) Historical Commission Recommendation. Upon completed deliberation, the Historical Commission shall recommend to Township Council one of the following:

1. Approval of the proposed dDemolition or Alteration, in whole or in part, and/or with conditions;
2. Delay of the proposed dDemolition or Alteration for up to ninety (90) days for the purposes of gathering additional information and /or exploring alternatives;
or
3. Denial of the proposed dDemolition or Alteration.

(f) Within thirty (30) calendar days of the Commission's recommendation, the Commission shall provide a written recommendation to Council setting forth findings of fact and the reasons for its recommendation. The Commission shall also provide any recommended conditions of approval, as applicable. The Commission shall provide the Upper Darby Mayor and the applicant with a copy of its written recommendation. The written recommendation shall include, but need not be limited to, the following information:

1. The address of the proposed project and the Historic Resource(s) impacted;
2. The name of the applicant;
3. A description of the proposed project;
4. The findings and conclusions of the Commission as to whether the proposed demolition or Alteration meets the applicable criteria and guidelines for issuance of building permit for the demolition or Alteration, as applicable;

5. The findings and conclusions related to any claims of Economic Hardship and the information presented and considered in reaching such findings and conclusions which shall include:
 - a. The overall financial impact of the denial of the permit on the property;
 - b. Whether the denial of the permit will result in the property owner being denied any reasonable or beneficial use of the property;
 - c. Whether the denial of the permit violates reasonable invested-backed expectations for the property, and
 - d. Whether the hardship has been self-imposed, including whether a Finding of Demolition by Neglect has been issued for the property. However, a finding of Demolition by Neglect for the property shall not be considered evidence of Economic Hardship.
6. If the Commission recommends denial of the permit, the recommendation may provide specific recommendations for changes to the proposed plans and specifications that the applicant could make to meet the applicable guidelines and be recommended for approval.

Section 9. Review and Recommendation by Township Council.

- (a) Within forty-five (45) days of receipt of the Historical Commission recommendation report, the Township Council shall, at a public meeting, consider the Historical Commission's recommendations. If the Historical Commission was unable to meet within the timeframes established herein without an extension or a continuation agreed on by the applicant, and therefore cannot provide a timely recommendation to Township Council, or otherwise cannot make a recommendation to Township Council for any reason, Township Council shall consider the application at its next regularly scheduled business meeting following the expiration of such timeframe without a recommendation from the Historical Commission. The applicant shall be given ten (10) business days' notice of the time and place of the meeting at which the application will be considered.
- (b) In addition to considering any recommendation or records presented by the Historical Commission, Township Council may consider any relevant evidence, reports or testimony of any interested parties or the applicant, any public comment, and any advice, assistance, or guidance provided by consultants or experts retained by Township.

- (c) The granting or denial of a permit for the demolition or Alteration of a Historic Resource shall be in the form of a written resolution that shall include findings of fact related to the specific proposal and shall set forth the reasons for the granting, with or without conditions, or for the denial, referring to such review criteria set forth below in this Article that were relevant to Township Council's decision.
- (d) If Township Council denies the permit, the resolution shall provide specific recommendations for changes to the proposed plans and specifications that the applicant could make to meet the applicable guidelines and be recommended for approval.
- (e) A copy of each resolution granting or denying the permit shall be provided to the applicant and Zoning Officer within ten (10) business days following the decision of Township Council. In the resolution, the Zoning Officer shall be directed to issue, delay or deny issuance of the building permit for the demolition of the Historic Resource.
- (f) Where demolition is determined by the Township Council to be unavoidable, the future development of the property shall be undertaken in a manner which preserves the character, street facing façade of building, front yard setback, and design of the building removed, notwithstanding the front yard setback that may apply within the applicable zoning district. New or reconstructed structures shall maintain the setback of the original building(s) and shall maintain the architectural style, scale, bulk, and design of the buildings appropriate for the zoning district.
- (g) In cases where Township Council approves the issuance of a permit, Council may require that the Historic Resource be recorded, at the applicant's expense, according to the documentation standards of the Historic American Buildings Survey (HABS), with such written, drafted and photographic documentation being deposited with the Commission, or otherwise require sufficient written and/or photographic documentation to document the history of the Historic Resource prior to the demolition or Alteration.
- (h) In cases where Council approves the issuance of the permit, the permit will be good for a six (6) month period unless, upon written request, Township Council agrees to a permit extension.

Section 10. Review Criteria for ~~Township Council~~ Consideration of a Demolition.

- (a) A building permit for the demolition of a Historic Resource, or after a finding of Demolition of Neglect, may only be approved by Township Council when one or more of the following conditions have first been met:

1. Denial of the permit would result in Economic Hardship, as defined and determined in this Article;
 2. The Historic Resource poses an imminent threat to the health, safety, or welfare of its occupants, adjacent properties, or the public; or
 3. Demolition of the Historic Resource is necessary to advance a significant public interest or benefit.
- (b) It is expressly intended under this Article that if a finding of Demolition by Neglect has been made for the applicable Historic Resource, the conditions that have led to such finding may not be used as a justification for Economic Hardship.

Section 11. Review Criteria for Consideration of an Alteration.

(a) In considering whether a building permit should be issued for an Alteration of a Historic Resource, or the property on which the Historic Resource is located, the Commission and Township Council shall consider:

1. Only the exterior architectural features or other results of an Alteration which can be seen from a Public Way;
2. The general design, arrangement, texture, material, and color of the proposed Alteration;
3. The effect of the proposed Alterations on the character-defining features of the subject Historic Resource;
4. The relationship of the proposed Alterations to similar features of buildings and structures in the surrounding area;
5. The effects of the proposed Alterations on the general historic and architectural nature of the surrounding area;
6. The effects of the proposed Alterations on the character-defining features of the surrounding area; and
6.
7. The extent to which the proposed Alterations consistent with any applicable adopted design guidelines for the Historic Resource or surrounding area.

(b) In considering whether a building permit should be issued for the new construction of a building or structure on the property on which the Historic Resource is located, the Commission and Township Council shall consider the effect of the proposed building on the Historical Resource based upon the above criteria, but only if such new construction can be seen from a Public Way.

(c) Design Guidelines for Alterations. The Historical Commission shall develop guidelines that use a combination of text, photographs, and illustrations to convey how Alterations to Historic Resources may be undertaken so that the activities are compatible with the historic and architectural nature of the surrounding area or the Historic Resource. The Historical Commission shall submit the guidelines, and any subsequent revisions, to the Township Council for approval. There may be separate and distinct guidelines for each Historic Resource or Alteration desired. Prior to the development and adoption of specific guidelines for a Historic Resource, the Historical Commission and Township Council may adopt and refer to the Secretary of the Interior's Standards for Rehabilitation when reviewing applications affecting Historic Resources. The adopted guidelines shall be utilized by the Historical Commission and Township Council for the evaluation, and approval or denial of building permit applications related to Historic Resources.

Section 121. Emergencies and Imminent Threats.

(a) In the event that a Historic Resource is determined by Township personnel to pose an imminent and immediate threat to its occupants, adjoining properties, or the public as a result of structural instability, a building permit for full or partial demolition of the Historic Resource may be issued by the Zoning Officer.

~~(a)~~(b) _____ A determination of structural instability shall be made by the Zoning Officer after consultation with the Township Engineer.

~~(b)~~(c) _____ Within twenty four (24) hours following demolition, the landowner shall take all necessary and appropriate actions to secure the Historic Resource from the elements, trespass, vandalism, and further deterioration and comply with all other applicable code requirements.

~~(e)~~(d) _____ The permitted demolition shall be limited to those actions necessary to adequately abate the imminent threat posed by the Historic Resource. In the event of a partial demolition, further demolition of the Historic Resource shall require review by the Historic Commission according to the procedures of this Article.

Section 132. Demolition by Neglect.

- (a) Historic Resources shall be maintained in good repair, structurally sound, and reasonably protected against decay, deterioration, and vandalism so as to prevent Demolition by Neglect. No landowner shall permit a Historic Resource to fall or continue to fall into a state of disrepair so as to result in the deterioration of any exterior architectural feature which would produce a detrimental effect upon the character of the Historic Resource as a whole, neighboring properties, or the life and character of the property itself.
- (b) Demolition by Neglect may be characterized by, but is not limited to, any or all of the following conditions, singularly or in combination with each other, over a period of time:
 - 1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
 - 2. Deterioration of flooring, floor support, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
 - 3. Deterioration of exterior chimneys that causes leaning, sagging, splitting, listing, or buckling.
 - 4. Deterioration or crumbling of exterior stucco, plaster, or mortar.
 - 5. Ineffective waterproofing of exterior walls, roofs, or foundations, including broken windows or doors.
 - 6. Defective protection or lack of weather protection for exterior wall and roof coverings, including holes and openings, or weathering due to lack of paint or other protective coating.
 - 7. Deterioration of any features resulting in a hazardous condition.
- (c) The Zoning Officer may issue a Finding of Demolition by Neglect in the following manner:
 - 1. Any person, entity, organization, or Township personnel may submit information regarding the potential Demolition by Neglect of a Contributing Resource. The Zoning Officer may also acquire such information through other means, including personal observation.
 - 2. Upon receiving information, the Zoning Officer may visit the property and document the observed exterior conditions from the public right of way or

access the property with the permission of the landowner or current occupant.

3. If the Zoning Officer believes that demolition by neglect is occurring or is likely to occur, they shall notify the landowner, in writing, of the observed conditions within ten (10) business days of the initial inspection. The landowner may provide the Zoning Officer with information related to the property's maintenance and or repair within thirty (30) calendar days of receiving notice from the Zoning Officer.
 4. The Zoning Officer may make subsequent inspections of the property, noting any changes to previously documented conditions, newly formed conditions, and any repairs or abatement actions taken.
 5. If the landowner does not address the documented conditions or take substantial steps to address the documented conditions within thirty (30) days of receiving notice from the Zoning Officer, the Zoning Officer shall issue a Finding of Demolition by Neglect if, in their estimation, the property has or will soon be damaged beyond repair or will pose a threat to the health and safety of the occupants, adjacent properties, or the public. In determining whether and when to issue such a finding, the Zoning Officer shall act in a timeframe that avoids the development of dangerous or irreparable conditions to the greatest extent possible.
- (d) The Zoning Officer shall send a copy of the Finding of Demolition by Neglect to the landowner within ten (10) business days, and provide copies to the Historical Commission, Mayor, and Township Council.
- (e) A Finding of Demolition of Neglect shall be considered by the Historical Commission and Township Council during any application for building permit for the demolition of a Historic Resource or a claim of Economic Hardship.
- (f) Any condition observed by the Zoning Officer may be subject to enforcement actions, procedures, and penalties as defined in the Township's Property Maintenance Code and other applicable laws and ordinances. If the provisions of the Property Maintenance Code conflict with the provisions of this Chapter, the provisions of the Property Maintenance Code shall control.
- (g) Unoccupied buildings and structures shall be properly sealed, fenced off, and utilities turned off for safety, at the landowner's expense.

- (h) Enforcement notices filed by a Township building code official for violations of the Township's Property Maintenance Code for properties that include a Historic Resource shall automatically constitute a Finding of Demolition by Neglect if the enforcement notice is not timely addressed to the satisfaction of the Zoning Officer or appealed by the landowner.

Section 143. Appeals.

Any applicant whose application for a building permit for the demolition or Alteration of a Historic Resource is denied by Township Council may appeal that denial to the Delaware County Court of Common Pleas within thirty (30) calendar days of receipt of the resolution of denial or take any other action authorized by applicable law.

Section 154. Enforcement and Penalties

- (a) The Zoning Officer shall be responsible for enforcing the requirements and decisions of the Township Council made pursuant to this Article and pursuing all penalties and remedies in equity and law as may be appropriate.
- (b) Failure to obtain a building permit for the demolition or Alteration of a Historic Resource as required under this Article shall constitute a violation. Any applicant or landowner who has violated or permitted the violation of the provisions of this Article shall, upon being found liable thereof in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the magisterial district judge determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation or other entity violating this Article to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the magisterial district judge and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation of this Article shall be paid over to the Township.
- (c) In case any violation of this Article, in addition to other remedies provided by law, any appropriate action or proceeding by authorized legal process may be instituted or taken to

prevent a violation or to restrain, correct or abate a violation, or to prevent any illegal act, conduct, business or use of property.

- (d) In addition to any other remedy available, any landowner in violation of this Article may be required to restore and/or relocate the Historic Resource involved to its appearance and/or location prior to the violation.
- (e) The Zoning Officer may issue, or arrange for the issuance of, stop work orders for activities proceeding without a building permit for the demolition or Alteration of a Historic Resource. Such order may remain in effect until such time as the landowner has properly obtained such a building permit. During the period of the stop work order is in effect, any and all other permits and approvals issued for the property shall also be suspended until such a building permit is obtained. If the building permit is subsequently denied, the landowner shall be responsible for restoring the property or the Historic Resource to its previous condition. Such restoration may be in addition to, and not in lieu of, any penalty or remedy available under this Article.
- (f) Landowners shall adhere to the requirements and specifications contained in the building permit. Deviations from the approved plans shall be considered a violation.
- (g) In addition to all other penalties, no zoning, grading, or building permits shall be issued for the subject property for five (5) years following the date of an unauthorized demolition.

SECTION 2. REPEALER. All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent said inconsistencies or conflicts cannot be reconciled, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

SECTION 3. REVISIONS. The Township of Upper Darby does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance, including this provision.

SECTION 4. SEVERABILITY. In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its legal enactment.

SECTION 6. FAILURE TO ENFORCE NOT A WAIVER. The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

ENACTED AND ORDAINED by the Township Council of the Township of Upper Darby this _____ day of _____, 20 21 .

**COUNCIL of the
THE TOWNSHIP OF UPPER DARBY**

BY: _____
Laura Wentz,
President of Council

ATTEST: _____
Michelle Billups,
Secretary of Council

APPROVED THIS _____ day of _____, 20_____

Barbarann Keffer,
Mayor of Upper Darby Township

ATTEST: _____
Vincent Rongione,
Chief Administrative Officer

EXHIBIT "A"
Historic Overlay District Map

EXHIBIT "B"
Historic Resource List

Treasurer's Report to Upper Darby Township Council

November 17, 2022

- I acknowledge and thank Donna Stilwell and Diane Scutti for their guidance and collaboration on this report.
- 2023 Budget: The Administration and Council are engaged in budget 2023 budget discussions. I met with Donna Stilwell and Diane Scutti to review the Administrations proposed budget on Oct 29th and again on Nov 15th with the Finance Committee. Although there is not yet a budget agreement, I am confident that both the Administration and Council will negotiate a budget to carry us through 2023.
- October 2022 General Fund Balance (see attached Cash Accounts Summary)
 - As of October 31, 2022, the General Fund balance was \$27,021,690.77.
 - Final payments were made to the municipal, fire, and police pension funds in early November.
- Year-to-Date Spending (see General Fund Cash Analysis and EOY Forecast)
 - Extrapolating the October General Fund balance through the end of 2022, I expect the EOY fund balance to approximate \$10,951,865.
 - The projected fund balance includes \$6,000,000 of ARPA revenue replacement authorized by Council in February.
 - I arrived at this figure by deducting the November pension contributions, and November and December forecasted expenditures from the October General Fund balance.
- It is my understanding that the Township retained a consulting firm, funded through a grant, and has started a 5-year projected forecast of the Township's anticipated revenues and expenses. Their report should be helpful in identifying future financial risks to Upper Darby Township.

<i>Summary of Cash by Type</i>		Oct-22
GF	Total General Fund	27,021,690.77
RF- Highway LF	Total Highway Fund	2,510,796.13
SF	Total Sewer Fund	1,389,843.77
SKF	Total Sinking Fund	0.00
CPF	Total Cap Projects Funds	4,566,347.17
RF-ARPA	Total ARPA Funds	36,043,268.34
RF-Football Bowl	Total Football Bowl	0.00
RF-Confis	Total Confiscated	432,775.89
RF-Drug	Total Drug Forfeiture	25,389.26
RF-Fire	Total Fire Escrow	232,930.77
RF-Land	Total Land Escrow	871,474.93
RF-Weed and Seed	Total Weed and Seed	40,144.96
Total		73,134,661.99

General Fund Cash Analysis and EOY Forecast

As of 10/31/2022

EOM Cash Balance \$ 27,021,690.00

Expenditures

Encumbered Funds 450,936.00

Nov Pension Contributions 5,454,632.00

Nov 2021 Spend 5,049,164.00

Dec 2021 Spend 8,623,010.00

Forecasted Expenditures 19,577,742.00

Revenues

Nov 2021 Revenue 1,585,385.00

Dec 2021 Revenue 1,922,532.00

Estimated Dec 31 Fund Balance* \$ 10,951,865.00

*Includes \$6 mil of authorized ARPA revenue replacement funds

8

**UPPER DARBY TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 3127

AN ORDINANCE OF UPPER DARBY TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, AUTHORIZING AND APPROVING THE ACQUISITION OF A FEE SIMPLE INTEREST IN DELAWARE COUNTY TAX MAP PARCEL NO. 16-13-00642-07 FOR USE AS OPEN SPACE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Upper Darby Township desires to acquire Delaware County Tax Map Parcel No. 16-13-00642-07, also identified as 0 Blanchard Road, Drexel Hill, PA 19026 (the "Property"), approximately 6,006 square feet of unimproved land owned by Lumiere L. and Sean Moore (the "Owners"), in order to expand the Township's open space inventory and protect historic property for the benefit of the residents of Upper Darby Township; and

WHEREAS, the Township Council desires to authorize the acquisition of a fee simple interest in the Property; and

WHEREAS, Section 701(C)(6) of the Township's Home Rule Charter requires the Township Council to enact an ordinance to purchase any real property; and

WHEREAS, the Township Council desires to enact this Ordinance to authorize and approve the acquisition of the Property for open space benefits;

NOW, THEREFORE, be it, and it is hereby **ORDAINED** by the Township Council of Upper Darby Township, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

I. AUTHORIZATION

- A. The Township Council of Upper Darby Township hereby authorizes and approves the acquisition of a fee simple interest in the Property, pursuant to an agreement of sale to be entered into between the Township and the Owners, and hereby approves the acquisition price for the Property of Forty Thousand Dollars (\$40,000.00).
- B. The Mayor is hereby authorized to execute all documents required to acquire the Property including but not limited to, the Agreement of Sale.

II. REPEALER

All ordinances or resolutions or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specially repealed.

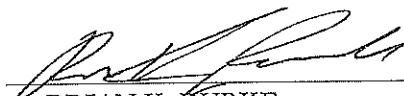
III. SEVERABILITY

In the event that any section, sentence, clause, or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose the validity of the remaining portions of this Ordinance.

IV. EFFECTIVE DATE


This Ordinance shall go into effect immediately.

ENACTED and ORDAINED this 17th day of November, 2022

BY: 
BRIAN K. BURKE
President of Council

ATTEST: 
MICHELLE BILLUPS
Secretary of Council

APPROVED this 17th day of November, 2022

BY: 
BARBARANN KEFFER
Mayor

ATTEST: 
ALEXIS CICCITTI
Chief Municipal Clerk

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement") is made as of the _____ day of _____, 2022 (the "Effective Date"), by and between **Lumiere L. and Sean Moore ("Seller")** having an address at 133 Blanchard Road, Drexel Hill, PA 19026 and **Upper Darby Township**, a Pennsylvania municipality with a business address of 100 Garrett Road, Upper Darby, PA 19082 (the "Township").

BACKGROUND

A. Seller is the owner of a parcel of land located in Upper Darby Township, Delaware County, Pennsylvania, containing approximately 6,006 square feet of unimproved land having a primary street address of 0 Blanchard Road, Drexel Hill, Pennsylvania 19026, and being further identified as Delaware County Tax Parcel No. 16-13-00642-07, as more particularly described in the legal description attached hereto as **Exhibit A** and incorporated herein by reference, together with all easements, rights, appurtenances and privileges (collectively the "Property");

B. Seller is prepared to sell, transfer, and convey the Property to Township, which is prepared to purchase and accept the same from Seller, all for the purchase price and on the other terms and conditions hereinafter set forth.

TERMS AND CONDITIONS

In consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Sale and Purchase.** Seller hereby agrees to sell, transfer, and convey the Property to the Township, and the Township hereby agrees to purchase and accept the Property from Seller, in each case for the purchase price and on and subject to the other terms and conditions set forth in this Agreement.

2. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be Forty Thousand Dollars (\$40,000.00), which, subject to adjustment as provided in this Agreement and subject to the terms and conditions hereinafter set forth, shall be paid to Seller by the Township as follows:

2.1 _____ Dollars (\$____.00) (the "Deposit") by plain check delivered to the Escrow Agent (as defined below), payable by the Township, within five (5) business days after the mutual execution of this Agreement by Seller and Township, the receipt whereof (subject to collection) is hereby acknowledged, which sums have been delivered into escrow in accordance with Section 3 hereof;

2.2 The balance of the Purchase Price, subject to adjustments and apportionments as set forth herein, at Closing by bank certified or cashier's check(s) or by plain check(s) of the title company selected by the Township (the "Title Insurer"), or, at Seller's direction given by written notice at least three (3) business days prior to Closing, by wire

transfer(s) of immediately available federal funds, in all cases payable to or transferred to the order or account of Seller or such other person as Seller may designate in writing.

3. Escrow of Deposit.

3.1 The Deposit shall be paid to and held by Kerry Shuman, Esquire (the "Escrow Agent"), all in accordance with the provisions of this Section 3.

3.2 Escrow Agent acknowledges its receipt of the Deposit, and Escrow Agent agrees to hold the same, together with such other sums constituting the Deposit if and when made, as escrowee, in strict compliance with the provisions of this Section 3.

3.3 The parties and Escrow Agent agree that the principal, together with all interest earned thereon, of the Deposit so held by Escrow Agent shall be applied as follows:

3.3.1 If Closing is held, the principal amount of the Deposit so held shall be paid over to Seller and the principal amount so paid shall be credited to the Purchase Price; and all interest earned thereon shall be paid over to the Township at Closing.

3.3.2 If Closing is not held solely by reason of the Township's default, the Deposit, together with all interest earned thereon, shall be paid over to Seller, and shall be retained by Seller as provided for in Section 14.1 below.

3.3.3 If the Township terminates this Agreement prior to the expiration of the Inspection Period (as defined below), then the Deposit, together with all interest earned thereon, shall be promptly paid over to the Township without further notice from either party.

3.3.4 If Closing is otherwise not held for any reason other than a default of the Township, the Deposit, together with all interest earned thereon, shall, at the option of the Township, be paid over to the Township for use and application by the Township as permitted by Section 14.2 below.

3.4 Except in the event of the Township's termination of the Agreement during the Inspection Period as described above in Section 3.3.3 for which no notice or written instructions shall be required, Escrow Agent shall be obligated to disburse the Deposit, together with all interest earned thereon, at Closing or upon any cancellation or termination of this Agreement, only upon the written instructions of both parties, should Escrow Agent in its discretion request such instructions; and in the absence of such instructions or in the event of any dispute, Escrow Agent shall be and is hereby authorized, but not obligated, to pay the entire amount of the Deposit into court.

3.5 Escrow Agent and its officers, directors, partners, and employees are acting as agents only, and will in no case be held liable either jointly or severally to either party for the performance of any term or covenant of this Agreement or for damages for the nonperformance hereof, nor shall Escrow Agent be required or obligated to determine any questions of fact or law. Escrow Agent's only responsibility hereunder shall be for the safekeeping of the Deposit and the full and faithful performance by Escrow Agent of the duties imposed by this Section 3.

4. Inspection; Cooperation.

4.1 **Inspection Period.** Without limiting any of the other rights and privileges granted to the Township under this Agreement, and subject to the limitations and conditions of Section 4.2, commencing on the Effective Date and continuing for a period of forty five (45) days thereafter (subject to any extension as provided in Section 4.3 below) (the "**Inspection Period**"), the Township shall have the right to conduct or cause to be conducted such surveys, engineering studies, environmental assessments (including without limitation sampling and testing), appraisals, market studies, feasibility studies, and any other inspections or studies relating to the Property which the Township may deem necessary to determine the condition of the Property and the suitability of the Property for the Township's intended use (collectively, the "**Inspections**"). If the results of any of the Inspections are not satisfactory to the Township, or if the Township otherwise determines that it does not want to purchase the Property for any reason whatsoever, or no reason at all, the Township shall have the right to terminate this Agreement by giving Seller written notice, with a copy to Escrow Agent, of its decision to terminate this Agreement by not later than the expiration of the Inspection Period. Upon any such termination, the Deposit shall be promptly returned to the Township as described above in Section 3.3.3, and neither party shall have any further liability to the other under this Agreement (except for the provisions hereof which by their terms survive termination of this Agreement). If the Township does not terminate this Agreement prior to the end of the Inspection Period, the Township shall have no further right to terminate this Agreement pursuant to this Section 4.1. Seller gives the Township the right, at the Township's own risk and expense, to enter upon the Property at any time prior to the date of Closing for purposes of making Inspections, except that the Township shall repair any damage directly caused by the performance of the Inspections and shall indemnify, defend, and save Seller harmless from and against all loss, cost liability and expense, resulting from or arising out of any negligent acts or omissions or other improper conduct of the Township's or the Township's employees, agents, contractors, representatives or consultants in, on, or about the Property incurred or suffered by Seller as a result of making such Inspections.

4.2 **Township Inspections.** The Township's inspection rights under the Agreement shall only permit certain representatives (collectively, the "**Township Representatives**") of the Township access to the Property at times mutually agreed upon with Seller, to perform the Inspections for the sole purpose of evaluating the existing condition of the Property. Township Representatives may include the Township Manager, Township Building Inspector, Township Engineer, Structural Engineer, Home Inspector, one or more Township Supervisors, and any contractor engaged by the Township to perform the Inspections but shall not include any members of the general public or any members of any other Township Boards, Commissions or Committees, except for the aforementioned Supervisors. The Township shall provide the names and affiliations of all Township Representatives to Seller prior to any Inspections. All Inspections shall be conducted at the sole risk and expense of the Township and Township Representatives, and the indemnification provisions contained in Section 4.1 of this Agreement shall apply to the Inspections. Inspections or any observations, findings, or conclusions reached therefrom shall not be used in any manner whatsoever, directly or indirectly, for the purpose of evaluating, discovering, or issuing any Township zoning, building or other code enforcement actions, violations, fines, or deficiencies in connection with the Property, the improvements or the Sellers.

4.3 **Seller Cooperation.** Seller hereby agrees and consents to any and all Inspections and Seller, without further consideration, will cooperate fully with the Township to facilitate the Inspections. Seller shall provide access to the buildings located on the Property and the Township shall provide at least 48 hours prior notice to Seller of its intention to inspect the interior of any currently occupied premises. Within five (5) days after the Effective Date, Seller shall deliver to the Township such of the following as are currently in Seller's possession or control: Seller Disclosure Statements as required under Pennsylvania law for all of the buildings or improvements located on the Property, any and all surveys, improvement blue prints, plans and specifications, title reports and commitments, appraisals, market studies, physical condition reports and assessments, fully executed copies of any lease and the files for all leases, copies of all construction, brokerage, management, leasing, equipment, service, supply or maintenance contracts or agreements (collectively, the "**Contracts**") affecting the Property or any part thereof, violation notices, township certifications, zoning and use permits, historic certification documents, environmental assessments and reports and other documents or information relating to the condition of or the title to the Property (collectively, "**Seller's Materials**"). If Seller does not deliver the Seller's Materials within such five-day period, then the Inspection Period shall be extended by one day for each day that Seller's Materials remain undelivered. In the event that Closing does not occur, the Township shall promptly return all Seller's Materials to Seller.

4.3 **Confidentiality.** The Township agrees that any and all confidential information provided by Seller to the Township with respect to the Property, whether by way of written disclosures, reports, or documents, shall remain confidential information between the Township and Seller until Closing unless the Township is obligated to make sure documents public pursuant to applicable laws, in which case the Township shall give Seller reasonable notice of such compelled disclosure. In the event the Township elects to terminate the Agreement, the Township retains no rights of any kind to disseminate or disclose any such confidential information to third parties that was disclosed by Seller to the Township unless otherwise required by applicable law. Notwithstanding the foregoing, the Township shall be free to share such confidential information with its affiliated entities, and their respective accountants, attorneys, engineers, and other consultants.

5. **Covenants, Representations and Warranties of Seller.** Seller covenants, represents and warrants to the Township as follows:

5.1 **Authority.** The Sellers have full legal capacity to enter into this Agreement.

5.2 **No Breach.** The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default or an acceleration under any agreement to which Seller is a party or by which Seller or the Property is bound, or any judgment, writ, trust, decree or order of any court or governmental body, or any applicable law, rule or regulation.

5.3 **Title.** Seller, alone has, and at Closing hereunder will convey and transfer to The Township, indefeasible, good and marketable legal and equitable title to the Property, to be insured as such by the Title Insurer on ALTA Owner's Policy Form B, as amended from time

to time, including, to the extent applicable, insurance of easements appurtenant, affirmative coverage against mechanics' liens and Endorsements 100 (regarding restrictions) and 301 (regarding survey), as a single contiguous parcel, at standard rates, free and clear of all mortgages, liens, claims, judgments, encumbrances, ground rents, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights of way, easements, encroachments and any other matters affecting title, except only the items set forth on **Exhibit B** attached hereto and made a part hereof, and such other items as will not adversely affect the Township's use of the Property in the Township's sole discretion (together, the "**Permitted Exceptions**"). No default or breach exists under any of the covenants, conditions, restrictions, rights-of-way, or easements, if any, affecting all or any portion of the Property.

5.4 **No Leases.** There are no current leases, licenses, or other rights of occupancy or use affecting the Property. Seller warrants that no tenant, occupant, or other person or entity has any option or other right to purchase the Property or any part of the Property, nor will any future leases provide such right.

5.5 **No Condemnation.** There is no pending condemnation, expropriation, eminent domain, or similar proceeding affecting all or any portion of the Property. Seller has not received any written or oral notice of any of the same and has no knowledge that any such proceeding is contemplated.

5.6 **No Rights in Others.** No person or other entity has (1) any right or option to acquire all or any portion of the Property, or (2) any tenancy or other interest or right of occupancy in or with respect to all or any portion of the Property.

5.7 **Contracts.** Except for the Contracts to be delivered to The Township as part of the Seller's Materials under **Section 4.2** above, there are no construction, management, leasing, service, equipment, supply, maintenance, or concession agreements (oral or written, formal or informal) with respect to or affecting all or any portion of the Property.

5.8 **Employees.** There are no persons employed or engaged by Seller in connection with the management, operation, or maintenance of all or any portion of the Property except as set forth in the Contracts that will remain employed at the Property following Closing.

5.9 **Permits.** Permanent certificates of occupancy and all other licenses, permits, authorizations, consents, approvals, and other grants of authority (the "**Permits**") required by all governmental or quasi-governmental authorities having jurisdiction, and the requisite certificates of the local board of fire underwriters (or other body exercising similar functions), if any, have been issued for the buildings, structures, and other improvements which are a part of the Property, and required for the full functioning and operation of the Property, have been paid for in full, and are in full force and effect.

5.10 **Compliance.**

5.10.1 To the best of Seller's knowledge, the zoning classification for the Property is Residential (R-3), and the Property fully complies with all relevant zoning laws and ordinances affecting the Property. To the best of Seller's knowledge, the continued maintenance, operation, and use of any buildings, structures or other improvements on the Property for their

respective present purposes does not and will not violate any federal, state, county, or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Property, including, without limitation, violations of the housing, building, safety, health, environmental, fire, or zoning ordinances, codes, and regulations of the respective jurisdictions within which the Property is located (together, "Applicable Laws") or the certificate(s) of occupancy issued for the Property. Notwithstanding the foregoing, The Township acknowledges the following disclosure made by Seller: NONE.

5.10.2 To the best of Seller's knowledge, there are no existing violations of, and Seller has received no notices of requests, violations, orders, claims, citations, penalty assessments, orders, investigations, or proceedings under, any Applicable Laws.

5.10.3 Seller shall cure or comply with, prior to Closing or as soon thereafter as reasonably practical, any violation or notice of which Seller or The Township receives written notice prior to the Closing from any of the foregoing governmental, quasi-governmental, or nongovernmental authorities.

5.10.4 The Township, as a party to this Agreement, hereby agrees that it will take no municipal actions to change the zoning classification for the Property while this agreement is in effect. To that end, the Township Board of Supervisors shall take no action to amend the zoning map or uses for the Property during the term of this Agreement, nor shall the Board of Supervisors direct its staff or advisory boards to investigate or make recommendations regarding zoning amendments for the Property during the term of the Agreement, excluding any planning or discussions that impact the entirety of the Township or the Township's codes and not isolated to the Property or its immediate surrounding areas. The parties will communicate in good faith regarding any concerns regarding the Township's municipal actions during the term of this Agreement.

5.11 Litigation. There is no action, suit or proceeding pending or, to the knowledge of Seller, threatened against or affecting all or any portion of the Property, or relating to or arising out of the ownership, management, or operation of all or any portion of the Property, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, or agency, or other governmental instrumentality, whether or not covered by insurance, including but not limited to proceedings for or involving collections, evictions, condemnation, eminent domain actions, alleged building code or zoning violations, personal injuries, or property damage.

5.12 Environmental Matters. No polluting, toxic or hazardous substances were used, generated, treated, stored, released, discharged, or disposed of by the activities conducted on the Property by the Seller or, to the best of Seller's knowledge, by others, at any time. No notification of release of a "hazardous substance" or "hazardous waste" as such terms are defined in and pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or the federal Clean Water Act (33 U.S.C. Section 1251 et seq.), or any state or local environmental law, regulation, or ordinance has been received by Seller and, to the best of Seller's knowledge, none has been filed as to the Property, and the Property is not listed or formally proposed for listing on the National Priority List promulgated pursuant to CERCLA or on any state list of hazardous substance sites requiring

investigation or clean-up. No PCB-contaminated, friable asbestos, or formaldehyde-based insulation items are present at the Property. To the best of Seller's knowledge, no activities or occurrences are taking place or have taken place at the Property which might give rise to any basis for any of the foregoing. In addition to the foregoing representations, Seller makes the following additional representations and clarifications to the best of Seller's actual knowledge: (i) no friable asbestos exists at the Property, and (ii) there are no Hazardous Substances on, under, at, emanating from, or affecting the Property.

5.13 **"FIRPTA"**. The Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.

5.14 **Exhibits**. Each Exhibit which is attached hereto is hereby made a part of this Agreement. Each such Exhibit is true, complete, and current.

5.15 **Background**. The information set forth in the section of this Agreement entitled "Background" is true, complete, and current.

5.16 **Accuracy**. To the best of Seller's knowledge, no representation or warranty by Seller contained herein, and no statement or other information contained in any Exhibit, certificate, or other instrument furnished or to be furnished to The Township pursuant hereto or in connection with the transactions contemplated hereunder contains, or at the Closing shall contain, any untrue statement of a material fact or omit, or omit to state a material fact necessary to make it not misleading.

Except with respect to the representations and warranties made in this Agreement, Seller has made no other representations or warranties, express or implied, about the condition of the Property or its suitability for any use or purpose whatsoever, and Seller conveys the Property to The Township in its "as is", "where is" condition.

6. **Covenants, Representations and Warranties of The Township**. The Township covenants, represents, and warrants to Seller as follows:

6.1 **Authority**. The Township has taken all action necessary to approve and effect the transactions contemplated hereby and authorize execution of this Agreement by the individuals who are executing it. The Township is a duly formed and validly existing Pennsylvania municipal entity.

6.2 **No Breach**. The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, the Township's organizing documents, any agreement of the Township, or any instrument to which the Township is a party or by which the Township is bound, or any judgment, decree or order of any court or governmental body, or any applicable law, rule, or regulation.

6.3 **Accuracy**. No representation or warranty by the Township contained herein, and no statement or other information contained in any certificate or other instrument furnished or to be furnished to Seller pursuant hereto or in connection with the transactions contemplated hereunder contains, or at the Closing shall contain, any untrue statement of a material fact or omit or omit to state a material fact necessary to make it not misleading.

7. **Conditions Precedent to the Township's Obligations.** All of the Township's obligations hereunder (including, without limitation, its obligation to purchase and accept the Property from Seller) are expressly conditioned on the satisfaction at or before the time of Closing hereunder or at or before such earlier time as may be expressly stated below, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by the Township, at the Township's option):

7.1 **Accuracy of Representations.** All of the covenants, representations, and warranties of Seller contained in this Agreement shall have been true and correct when made and shall be true and correct on the date of Closing with the same effect as if made on and as of such date. To evidence the foregoing, there shall be delivered to the Township at Closing a certificate to that effect, dated the date of Closing, which certificate shall have the effect of a representation and warranty of Seller made on and as of the date of Closing.

7.2 **Performance.** Seller shall have performed, observed, and complied with all covenants, agreements, and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of Closing hereunder.

7.3 **Documents and Deliveries.** All instruments and documents required on Seller's part to effect this Agreement and the transactions contemplated hereby, all as set forth herein generally and particularly in Section 10 hereof, shall be delivered to the Township and shall be in form and substance consistent with the requirements herein and otherwise reasonably satisfactory to the Township and its counsel.

7.4 **Material Adverse Change.** Between the date hereof and the date of Closing, there shall have been no material adverse change in the condition of the Property.

8. **Failure of Conditions.** In the event Seller shall not be able to convey title to the Property on the date of Closing in accordance with the provisions of this Agreement or if all of the conditions precedent set forth in Section 7 hereof have not been satisfied in full at or prior to Closing, then the Township shall have the option, exercisable by written notice to Seller at or prior to the Closing, of: (1) accepting at Closing such title as Seller is able to convey and/or waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price except for an adjustment equal to the amount of any lien, judgment, or other encumbrance of an ascertainable and liquidated amount together with interest and penalties thereon, if any, and together with any additional title insurance costs or premiums imposed by Title Insurer by reason thereof, (2) extending the date of Closing and allowing Seller more time to satisfy the conditions precedent in Section 7 above, or (3) declining to proceed to Closing; and in the latter event, all obligations, liabilities and rights of the parties under this Agreement shall terminate, and the Deposit made by the Township hereunder shall be returned to the Township, together with all interest earned thereon; provided, nevertheless, that if the inability to convey title or the failure of condition is due to the breach by Seller in default of its obligations hereunder, then the Township's remedies in respect thereof shall not be limited by the foregoing provisions of this Section 8, and the Township shall be permitted to exercise forthwith any right, power, or remedy available to the Township by law, in equity or by contract.

9. **Operations Pending Closing.** Between the date of execution of this Agreement and the date of Closing:

9.1 Seller shall operate and manage the Property in a normal, businesslike manner, and consistent with prior practices, making all necessary repairs and replacements required to keep the Property in good repair and working order and in substantially the same condition as the date hereof.

9.2 Seller shall not execute any agreements affecting the Property without the Township's written consent, which may be granted or withheld in the Township's sole discretion.

10. Closing; Deliveries.

10.2 Closing shall occur within thirty (30) days after the Effective Date of this Agreement. When Closing is scheduled, it shall be held at a time and date then determined by the Parties at a location agreeable to the Parties.

10.3 At Closing, Seller shall deliver to the Township the following (all in form and substance satisfactory to the Township and the Township's counsel):

10.3.1 A special warranty deed of dedication to the Property incorporating a full legal description of the Land (the parties acknowledge that the legal description contained in Exhibit A attached hereto is a temporary legal description to be updated prior to Closing), duly executed and acknowledged by Seller and in proper form for recording, conveying fee simple title to the Property to the Township.

10.3.2 A warranty bill of sale for all other property including all assignable guarantees, permits and warranties, duly executed and acknowledged by Seller.

10.3.3 Originals, if available, or copies of all certificates of occupancy, licenses, permits, authorizations, consents, historical certifications, and approvals required by law and issued by any governmental or quasi-governmental authority having jurisdiction over the Property and copies of all certificates, if any, issued by the local board of fire underwriters (or other body exercising similar functions), as well as certificates required under this Agreement.

10.3.4 Such customary affidavits or letters of indemnity as the Title Insurer shall require in order to issue, without extra charge, policies of title insurance free of any exceptions for unfilled mechanic's or materialmen's liens for work performed prior to Closing.

10.3.5 The original or certified copy of each bill for current Property and *ad valorem* taxes, sewer charges and assessments, water charges, and other utilities, together with proof of payment thereof (to the extent the same have been paid).

10.3.6 Copies of keys to all locks on the Property.

10.3.7 The certificate required by Section 7.1 hereof.

10.3.8 The Foreign Investors Real Property Tax Act Certification and Affidavits.

10.3.9 All other reasonable instruments and documents required on the part of Seller to effectuate this Agreement and the transactions contemplated thereby.

10.4 At Closing, the Township shall deliver to Seller bank certified or cashier's checks or plain checks of Title Insurer, or, at Seller's direction given by written notice at least three (3) business days prior to Closing, wire transfers, in any case in the amount required under Section 2.2 hereof and payable to or transferred to the order or account of Seller or to such other person as Seller shall designate in writing.

11. **Liabilities.** The Township shall not assume or take subject to any liabilities or obligations of the Property or Seller existing or accrued as of the date of Closing, and Seller shall pay the same as they mature and shall hold the Township harmless with respect to all thereof. Liabilities and obligations of the Property accruing after the date of Closing shall be the responsibility of the Township or the Property, as the case may be.

12. **Apportionments; Taxes; Expenses.**

12.2 **Apportionments.** The expenses and obligations relating to the operation of the Property shall be allocated between the Township and Seller as set forth below. Whether amounts are allocable for the above purposes for the period before or after Closing shall be determined in accordance with generally accepted accounting principles using the accrual method. In furtherance of the foregoing:

12.2.1 **Taxes.** Subject to the provisions of Section 12.1.2 below, all property taxes, charges, and assessments affecting the Property shall be prorated on a *per diem* basis as of midnight of the day preceding the date of Closing, on the basis of the fiscal year of the authority levying the same. If any of the same have not been finally assessed, as of the date of Closing, for the current fiscal year of the taxing authority, then the same shall be adjusted at Closing based upon the most recently issued bills therefor, and shall be re-adjusted immediately when and if final bills are issued; but if on the date of Closing the Property shall be affected by any special assessment, then all unpaid installments of such assessment (including those which are to become due and payable after Closing) shall be paid and discharged by Seller prior to or at Closing.

12.2.2 **Rollback Taxes.** Seller agrees to pay all back taxes, penalties, interest, or other costs, if any, involved as a result of the Property being or having received a preferential Property tax assessment under Pennsylvania Act 515, Act 319, or any similar act, it being the intent of the parties that The Township's obligation shall be for taxes from and after the date of Closing only at a normal rate.

12.2.3 **Utilities.** Charges for water, electricity, sewer rental, gas, heating oil, and all other utilities shall be prorated on a *per diem* basis as of midnight of the day preceding the date of Closing, on the basis of the fiscal year or billing period of the authority, utility, or other person levying or charging for the same. If the consumption of any of the foregoing is measured by meters, then in lieu of apportionment as aforesaid, Seller shall, not earlier than the day preceding the date of Closing, obtain a reading of each such meter and Seller shall pay all charges thereunder through the date of the meter readings. If there is no such meter or if the bills for any of the foregoing have not been issued prior to the date of the Closing, the

charges therefor shall be adjusted at the Closing on the basis of charges for the prior period for which bills were issued and shall be further adjusted when the bills for the current period are issued. As and to the extent consumption of water, electricity, gas, heating oil, or other utilities is or will be separately metered to a tenant of the Property and such tenant pays the charges therefor directly, there shall be no apportionment of such items at Closing. Seller and the Township shall cooperate to cause the transfer of the Property's utility accounts as necessary from Seller to the Township.

12.2.4 **Charges Under Contracts.** Seller shall pay any unpaid monetary obligations of Seller with respect to any of the Contracts.

12.3 **Expenses; Transfer Taxes.** Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (1) all costs and expenses stated herein to be borne by a party, and (2) all of their respective accounting, legal, and appraisal fees. The Township, in addition to its other expenses, shall pay for (a) all recording charges incident to the recording of the deed for the Property, and (b) all title insurance premiums (except as set forth below in this Section 12.2). The Township and Seller shall each pay 50% of all realty transfer taxes due in connection with purchase and sale of the Property under this Agreement, if any. If Seller shall be unwilling or unable to certify to Title Insurer at Closing that no building construction, alterations, additions, or repairs have been made on or to the Property within the six-month period preceding the date of Closing, and otherwise satisfy Title Insurer with respect thereto, then Seller shall pay for any premium for mechanics' lien coverage which Title Insurer may charge.

13. **Damage or Destruction; Condemnation; Insurance.**

13.2 If at any time prior to the date of Closing all or any portion of the Property is destroyed or damaged as a result of fire or any other casualty whatsoever and the cost of restoring such damage exceeds Fifty Thousand Dollars (\$50,000), or if all or any portion of the Property is condemned or taken by eminent domain proceedings by any public authority, or if a notice of any such prospective condemnation or taking is given by any public authority, then, at the option of the Township, this Agreement shall terminate and shall be canceled with no further liability of either party to the other, and the Deposit then made shall be returned to the Township, together with all interest earned thereon. Seller shall give the Township prompt written notice of any casualty or any actual or threatened taking. The Township shall not be entitled to condemn or take the Property by eminent domain during the time this Agreement is in effect.

13.3 If there is any partial or total damage or destruction or condemnation or taking, as above set forth, and if the Township elects not to terminate (or is not permitted to terminate) this Agreement as therein provided, then (1) in the case of a taking, all condemnation proceeds paid or payable to Seller shall belong to the Township and shall be paid over and assigned to the Township at Closing, and Seller shall further execute all assignments and any other documents or other instruments as the Township may reasonably request or as may be necessary to transfer all interest in all such proceeds to the Township or to whomever the Township shall direct; and (2) in the case of a casualty, Seller shall retain all rights to any

insurance proceeds paid or payable under all insurance policies maintained by Seller and the Purchase Price shall be reduced at Closing by the cost of restoration.

13.4 All existing casualty insurance policies respecting the Property shall be maintained and kept in full force and effect by Seller pending Closing.

13.5 In the event of a dispute between Seller and the Township with respect to the cost of restoration under Section 13.1 or 13.2 above, an architect designated by Seller and an architect designated by the Township shall select an independent architect licensed to practice in the jurisdiction where the Property is located who shall resolve the dispute. All fees, costs, and expenses of the architect so selected shall be shared equally by the Township and Seller.

14. **Defaults Prior to Closing.**

14.2 **Default by The Township.** In the event The Township is in default under this Agreement at Closing and if as a result thereof a Closing hereunder shall not occur, then Seller shall, as its sole and exclusive remedy therefor, be entitled to retain the Deposit, together with all interest earned thereon, as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of Seller against the Township by reason of such default; and thereupon this Agreement shall terminate and the parties shall be relieved of all further obligation and liability hereunder.

14.3 **Default by Seller.** In the event Seller is in default under this Agreement at Closing and if as a result thereof a Closing hereunder shall not occur, then the Township shall be entitled to pursue any rights, powers, or remedies available to The Township at law, in equity or by contract, including specifically, but without limitation, the right: (1) to specifically enforce this Agreement against Seller, in which event, pending consummation of the specific enforcement proceeding, the Deposit, together with all interest earned thereon, and all other monies paid by the Township on account of the Purchase Price shall forthwith be returned to the Township (the principal of such Deposit to be repaid to Seller if, as, and when a Closing shall take place); or (2) to extend the date of Closing and allow Seller time to cure the default(s) hereunder, or (3) to terminate and cancel this Agreement, in which event the Deposit, together with all interest earned thereon, and all other monies paid by the Township on account of the Purchase Price shall forthwith be returned to the Township and Seller shall reimburse the Township for all out-of-pocket costs incurred by the Township in connection with the transactions contemplated by the Agreement, and thereupon this Agreement shall terminate and the parties shall be relieved of all further obligation and liability hereunder.

15. **Undertakings by Seller and The Township.** In addition to the obligations required to be performed hereunder by Seller and the Township at Closing, Seller and the Township each agrees to perform such other acts, and to execute, acknowledge and deliver, prior to, at, or subsequent to Closing, such other instruments, documents, and other materials as the other may reasonably request and as shall be necessary in order to effect the consummation of the transactions contemplated hereby and to vest title to the Property in the Township or the Township's nominee.

16. **Tender.** Formal tender of an executed deed of dedication and purchase money is hereby waived; but nothing herein shall be deemed a waiver of the obligation of Seller to

execute, acknowledge, and deliver the deed of dedication or other instruments referred to in Section 10 or the concurrent obligation of the Township to pay the Purchase Price at Closing as provided in Section 2.

17. **Notices.** All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and shall be deemed to have been given (i) if hand delivered, sent by facsimile, or sent by an express mail service or by courier, then if and when delivered with confirmation of delivery or receipt by the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby) or upon refusal, if delivery is refused by the party, (ii) if e-mailed, then upon successful transmission; or (iii) if mailed by first-class certified mail, return receipt requested, postage prepaid, and addressed to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby), then upon delivery or upon refusal, if delivery is refused by the party:

17.2 If to Seller:

Lumiere L. and Sean Moore
133 Blanchard Road
Drexel Hill, PA 19026

With a copy to:

17.3 If to The Township:

Upper Darby Township
Attn: Vincent A. Rongione, Esquire
Chief Administrative Officer
100 Garrett Road
Upper Darby, PA 19082
vrongione@upperdarby.org

With a copy to:

Sean P. Kilkenny, Esquire
Kilkenny Law, LLC
519 Swede St.
Norristown, PA 19401
sean@skillkennylaw.com

18. **No Brokers.** Each party represents to the other that neither has made any agreement or taken any action which may cause any broker, agent or person to become entitled to a brokerage or other fee or commission as a result of the transactions contemplated by this Agreement; and Seller and the Township each hereby indemnifies and shall defend the other from any and all claims, actual or threatened, for compensation by any third person by reason of

such party's breach of its representation or warranty contained in this Section 18. The provisions of this Section 18 shall survive Closing or earlier termination of this Agreement.

19. **Miscellaneous.**

19.2 **Assignability.** The Township may freely assign or transfer any portion or all its rights or obligations under this Agreement without the consent thereto by Seller; but the Seller shall not be permitted to assign or transfer any rights or obligations under this Agreement without the written consent of the Township. After any such authorized assignment, the assignee (the "**Assignee**") shall be deemed to be the Township hereunder for all purposes hereof and have all the rights of The Township hereunder. Upon such assignment, the same shall result in a "repudiation" of the Township's duties hereunder and a "novation" on the part of the Assignee to the Township's duties hereunder. In lieu of an assignment to the Assignee, the Township may request Seller to terminate this Agreement and simultaneously enter into an identical agreement of sale with the Assignee, all of which shall be at no cost to Seller, shall not grant the Assignee the benefit of any rights expired under the terms of the terminated agreement and the indemnities given and representations and warranties made by the originally named the Township shall survive the termination and be honored by the originally named Township.

19.3 **Governing Law; Parties in Interest.** This Agreement shall be governed by the law of the Commonwealth of Pennsylvania, and shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and personal representatives.

19.4 **Computation of Time.** In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday in Pennsylvania, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such legal holiday.

19.5 **No Recording.** This Agreement shall not be recorded in the Office of the Recording of Deeds in and for the county in which the Property is located or in any other place of public record, and if The Township shall record this Agreement or cause or permit the same to be recorded without Seller's express written consent thereto, Seller may, at Seller's option, elect to treat such act as a breach of this Agreement and cause the same to be removed from record at the Township's expense.

19.6 **Time of the Essence.** All times, wherever specified herein for the performance by Seller or the Township of their respective obligations hereunder, are of the essence of this Agreement.

19.7 **Headings.** The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

19.8 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.9 **Exhibits.** All Exhibits which are referred to herein and which are attached hereto or bound separately and initialed by the parties are expressly made and constitute a part of this Agreement.

19.10 **Survival.** All covenants, representations, warranties, and other provisions herein shall survive Closing and delivery of the deed of dedication to the Property.

19.11 **Entire Agreement; Amendments.** This Agreement and the Exhibits hereto set forth all the promises, covenants, agreements, conditions, and undertaking between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent, or discharge is sought.

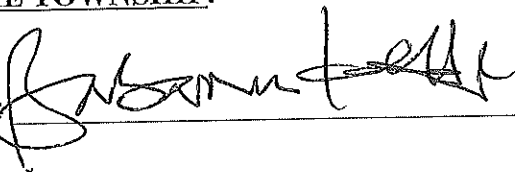
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page to follow*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER:

By: _____

THE TOWNSHIP:

By:  _____

JOINDER BY ESCROW AGENT

Kerry Shuman, Esquire the Escrow Agent named and identified as such in the foregoing Agreement, intending to be legally bound hereby, has joined in the execution thereof solely for the purposes of (1) acknowledging receipt from the Township of the _____ Dollar Deposit referred to therein; and (2) agreeing to perform its obligations as Escrow Agent as provided for in Section 3 thereof.

Elkins Park Abstract Co., Inc.

By: _____
Name: Kerry Shuman, Esquire
Title:

Dated: _____

LIST OF EXHIBITS

- Exhibit A - Legal Description of the Land (Background A(1))
- Exhibit B - List of Permitted Exceptions (Section 5.3)

EXHIBIT A

Legal Description of the Land

[See Attached]

EXHIBIT B

List of Permitted Exceptions

[None]

**UPPER DARBY TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 3128

AN ORDINANCE OF UPPER DARBY TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, AUTHORIZING AND APPROVING THE ACQUISITION OF A FEE SIMPLE INTEREST IN DELAWARE COUNTY TAX MAP PARCEL NO. 16-07-00504-00 FOR USE AS OPEN SPACE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Upper Darby Township desires to acquire Delaware County Tax Map Parcel No. 16-07-00504-00, also identified as, 8001 Lansdowne Avenue, Upper Darby, PA 19082 (the "Property"), approximately 32,171 square feet of unimproved land owned by 8001 Lansdowne LLC (the "Owners"), in order to expand the Township's open space inventory and protect historic property for the benefit of the residents of Upper Darby Township; and

WHEREAS, the Township Council desires to authorize the acquisition of a fee simple interest in the Property; and

WHEREAS, Section 701(C)(6) of the Township's Home Rule Charter requires the Township Council to enact an ordinance to purchase any real property; and

WHEREAS, the Township Council desires to enact this Ordinance to authorize and approve the acquisition of the Property for open space benefits;

NOW, THEREFORE, be it, and it is hereby **ORDAINED** by the Township Council of Upper Darby Township, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

I. AUTHORIZATION

- A. The Township Council of Upper Darby Township hereby authorizes and approves the acquisition of a fee simple interest in the Property, pursuant to an agreement of sale to be entered into between the Township and the Owners, and hereby approves the acquisition price for the Property of Three Hundred Thousand Dollars (\$300,000).
- B. The Mayor is hereby authorized to execute all documents required to acquire the Property including but not limited to, the Agreement of Sale.

II. REPEALER

All ordinances or resolutions or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specially repealed.

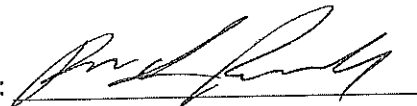
III. SEVERABILITY

In the event that any section, sentence, clause, or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose the validity of the remaining portions of this Ordinance.

IV. EFFECTIVE DATE

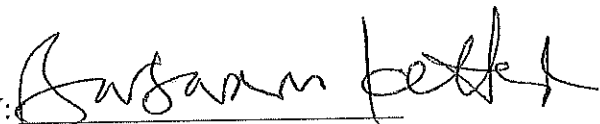
This Ordinance shall go into effect immediately.

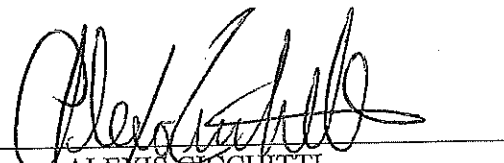
ENACTED and ORDAINED this 17th day of November, 2022

BY: 
BRIAN K. BURKE
President of Council

ATTEST: 
MICHELLE BILLUPS
Secretary of Council

APPROVED this 17th day of November, 2022

BY: 
BARBARANN KEFFER
Mayor

ATTEST: 
ALEXIS CICHITTI
Chief Municipal Clerk

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement") is made as of the _____ day of _____, 2022 (the "Effective Date"), by and between 8001 Lansdowne LLC ("Seller") having an address at _____ and **Upper Darby Township**, a Pennsylvania municipality with a business address of 100 Garrett Road, Upper Darby, PA 19082 (the "Township").

BACKGROUND

A. Seller is the owner of a parcel of land located in Upper Darby Township, Delaware County, Pennsylvania, containing approximately 32, 171 square feet of unimproved land having a primary street address of 8001 Lansdowne Avenue, Upper Darby, Pennsylvania 19082, and being further identified as Delaware County Tax Parcel No. 16-07-00504-00, as more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by reference, together with all easements, rights, appurtenances and privileges (collectively the "Property");

B. Seller is prepared to sell, transfer, and convey the Property to Township, which is prepared to purchase and accept the same from Seller, all for the purchase price and on the other terms and conditions hereinafter set forth.

TERMS AND CONDITIONS

In consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Sale and Purchase.** Seller hereby agrees to sell, transfer, and convey the Property to the Township, and the Township hereby agrees to purchase and accept the Property from Seller, in each case for the purchase price and on and subject to the other terms and conditions set forth in this Agreement.

2. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be Three Hundred Thousand Dollars (\$300,000), which, subject to adjustment as provided in this Agreement and subject to the terms and conditions hereinafter set forth, shall be paid to Seller by the Township as follows:

2.1 _____ Dollars (\$____.00) (the "Deposit") by plain check delivered to the Escrow Agent (as defined below), payable by the Township, within five (5) business days after the mutual execution of this Agreement by Seller and Township, the receipt whereof (subject to collection) is hereby acknowledged, which sums have been delivered into escrow in accordance with Section 3 hereof;

2.2 The balance of the Purchase Price, subject to adjustments and apportionments as set forth herein, at Closing by bank certified or cashier's check(s) or by plain check(s) of the title company selected by the Township (the "Title Insurer"), or, at Seller's direction given by written notice at least three (3) business days prior to Closing, by wire transfer(s)

of immediately available federal funds, in all cases payable to or transferred to the order or account of Seller or such other person as Seller may designate in writing.

3. **Escrow of Deposit.**

3.1 The Deposit shall be paid to and held by Kerry Shuman, Esquire (the "**Escrow Agent**"), all in accordance with the provisions of this Section 3.

3.2 Escrow Agent acknowledges its receipt of the Deposit, and Escrow Agent agrees to hold the same, together with such other sums constituting the Deposit if and when made, as escrowee, in strict compliance with the provisions of this Section 3.

3.3 The parties and Escrow Agent agree that the principal, together with all interest earned thereon, of the Deposit so held by Escrow Agent shall be applied as follows:

3.3.1 If Closing is held, the principal amount of the Deposit so held shall be paid over to Seller and the principal amount so paid shall be credited to the Purchase Price; and all interest earned thereon shall be paid over to the Township at Closing.

3.3.2 If Closing is not held solely by reason of the Township's default, the Deposit, together with all interest earned thereon, shall be paid over to Seller, and shall be retained by Seller as provided for in Section 14.1 below.

3.3.3 If the Township terminates this Agreement prior to the expiration of the Inspection Period (as defined below), then the Deposit, together with all interest earned thereon, shall be promptly paid over to the Township without further notice from either party.

3.3.4 If Closing is otherwise not held for any reason other than a default of the Township, the Deposit, together with all interest earned thereon, shall, at the option of the Township, be paid over to the Township for use and application by the Township as permitted by Section 14.2 below.

3.4 Except in the event of the Township's termination of the Agreement during the Inspection Period as described above in Section 3.3.3 for which no notice or written instructions shall be required, Escrow Agent shall be obligated to disburse the Deposit, together with all interest earned thereon, at Closing or upon any cancellation or termination of this Agreement, only upon the written instructions of both parties, should Escrow Agent in its discretion request such instructions; and in the absence of such instructions or in the event of any dispute, Escrow Agent shall be and is hereby authorized, but not obligated, to pay the entire amount of the Deposit into court.

3.5 Escrow Agent and its officers, directors, partners, and employees are acting as agents only, and will in no case be held liable either jointly or severally to either party for the performance of any term or covenant of this Agreement or for damages for the nonperformance hereof, nor shall Escrow Agent be required or obligated to determine any questions of fact or law. Escrow Agent's only responsibility hereunder shall be for the safekeeping of the Deposit and the full and faithful performance by Escrow Agent of the duties imposed by this Section 3.

4. **Inspection; Cooperation.**

4.1 **Inspection Period.** Without limiting any of the other rights and privileges granted to the Township under this Agreement, and subject to the limitations and conditions of Section 4.2, commencing on the Effective Date and continuing for a period of forty five (45) days thereafter (subject to any extension as provided in Section 4.3 below) (the "**Inspection Period**"), the Township shall have the right to conduct or cause to be conducted such surveys, engineering studies, environmental assessments (including without limitation sampling and testing), appraisals, market studies, feasibility studies, and any other inspections or studies relating to the Property which the Township may deem necessary to determine the condition of the Property and the suitability of the Property for the Township's intended use (collectively, the "**Inspections**"). If the results of any of the Inspections are not satisfactory to the Township, or if the Township otherwise determines that it does not want to purchase the Property for any reason whatsoever, or no reason at all, the Township shall have the right to terminate this Agreement by giving Seller written notice, with a copy to Escrow Agent, of its decision to terminate this Agreement by not later than the expiration of the Inspection Period. Upon any such termination, the Deposit shall be promptly returned to the Township as described above in Section 3.3.3, and neither party shall have any further liability to the other under this Agreement (except for the provisions hereof which by their terms survive termination of this Agreement). If the Township does not terminate this Agreement prior to the end of the Inspection Period, the Township shall have no further right to terminate this Agreement pursuant to this Section 4.1. Seller gives the Township the right, at the Township's own risk and expense, to enter upon the Property at any time prior to the date of Closing for purposes of making Inspections, except that the Township shall repair any damage directly caused by the performance of the Inspections and shall indemnify, defend, and save Seller harmless from and against all loss, cost liability and expense, resulting from or arising out of any negligent acts or omissions or other improper conduct of the Township's or the Township's employees, agents, contractors, representatives or consultants in, on, or about the Property incurred or suffered by Seller as a result of making such Inspections.

4.2 **Township Inspections.** The Township's inspection rights under the Agreement shall only permit certain representatives (collectively, the "**Township Representatives**") of the Township access to the Property at times mutually agreed upon with Seller, to perform the Inspections for the sole purpose of evaluating the existing condition of the Property. Township Representatives may include the Township Manager, Township Building Inspector, Township Engineer, Structural Engineer, Home Inspector, one or more Township Supervisors, and any contractor engaged by the Township to perform the Inspections but shall not include any members of the general public or any members of any other Township Boards, Commissions or Committees, except for the aforementioned Supervisors. The Township shall provide the names and affiliations of all Township Representatives to Seller prior to any Inspections. All Inspections shall be conducted at the sole risk and expense of the Township and Township Representatives, and the indemnification provisions contained in Section 4.1 of this Agreement shall apply to the Inspections. Inspections or any observations, findings, or conclusions reached therefrom shall not be used in any manner whatsoever, directly or indirectly, for the purpose of evaluating, discovering, or issuing any Township zoning, building or other code enforcement actions, violations, fines, or deficiencies in connection with the Property, the improvements or the Sellers.

4.3 **Seller Cooperation.** Seller hereby agrees and consents to any and all Inspections and Seller, without further consideration, will cooperate fully with the Township to facilitate the Inspections. Seller shall provide access to the buildings located on the Property and

the Township shall provide at least 48 hours prior notice to Seller of its intention to inspect the interior of any currently occupied premises. Within five (5) days after the Effective Date, Seller shall deliver to the Township such of the following as are currently in Seller's possession or control: Seller Disclosure Statements as required under Pennsylvania law for all of the buildings or improvements located on the Property, any and all surveys, improvement blue prints, plans and specifications, title reports and commitments, appraisals, market studies, physical condition reports and assessments, fully executed copies of any lease and the files for all leases, copies of all construction, brokerage, management, leasing, equipment, service, supply or maintenance contracts or agreements (collectively, the "**Contracts**") affecting the Property or any part thereof, violation notices, township certifications, zoning and use permits, historic certification documents, environmental assessments and reports and other documents or information relating to the condition of or the title to the Property (collectively, "**Seller's Materials**"). If Seller does not deliver the Seller's Materials within such five-day period, then the Inspection Period shall be extended by one day for each day that Seller's Materials remain undelivered. In the event that Closing does not occur, the Township shall promptly return all Seller's Materials to Seller.

4.3 **Confidentiality.** The Township agrees that any and all confidential information provided by Seller to the Township with respect to the Property, whether by way of written disclosures, reports, or documents, shall remain confidential information between the Township and Seller until Closing unless the Township is obligated to make sure documents public pursuant to applicable laws, in which case the Township shall give Seller reasonable notice of such compelled disclosure. In the event the Township elects to terminate the Agreement, the Township retains no rights of any kind to disseminate or disclose any such confidential information to third parties that was disclosed by Seller to the Township unless otherwise required by applicable law. Notwithstanding the foregoing, the Township shall be free to share such confidential information with its affiliated entities, and their respective accountants, attorneys, engineers, and other consultants.

5. **Covenants, Representations and Warranties of Seller.** Seller covenants, represents and warrants to the Township as follows:

5.1 **Authority.** The Sellers have full legal capacity to enter into this Agreement.

5.2 **No Breach.** The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default or an acceleration under any agreement to which Seller is a party or by which Seller or the Property is bound, or any judgment, writ, trust, decree or order of any court or governmental body, or any applicable law, rule or regulation.

5.3 **Title.** Seller, alone has, and at Closing hereunder will convey and transfer to The Township, indefeasible, good and marketable legal and equitable title to the Property, to be insured as such by the Title Insurer on ALTA Owner's Policy Form B, as amended from time to time, including, to the extent applicable, insurance of easements appurtenant, affirmative coverage against mechanics' liens and Endorsements 100 (regarding restrictions) and 301 (regarding survey), as a single contiguous parcel, at standard rates, free and clear of all mortgages, liens, claims, judgments, encumbrances, ground rents, leases, tenancies, licenses, security interests,

covenants, conditions, restrictions, rights of way, easements, encroachments and any other matters affecting title, except only the items set forth on **Exhibit B** attached hereto and made a part hereof, and such other items as will not adversely affect the Township's use of the Property in the Township's sole discretion (together, the "**Permitted Exceptions**"). No default or breach exists under any of the covenants, conditions, restrictions, rights-of-way, or easements, if any, affecting all or any portion of the Property.

5.4 **No Leases.** There are no current leases, licenses, or other rights of occupancy or use affecting the Property. Seller warrants that no tenant, occupant, or other person or entity has any option or other right to purchase the Property or any part of the Property, nor will any future leases provide such right.

5.5 **No Condemnation.** There is no pending condemnation, expropriation, eminent domain, or similar proceeding affecting all or any portion of the Property. Seller has not received any written or oral notice of any of the same and has no knowledge that any such proceeding is contemplated.

5.6 **No Rights in Others.** No person or other entity has (1) any right or option to acquire all or any portion of the Property, or (2) any tenancy or other interest or right of occupancy in or with respect to all or any portion of the Property.

5.7 **Contracts.** Except for the Contracts to be delivered to The Township as part of the Seller's Materials under Section 4.2 above, there are no construction, management, leasing, service, equipment, supply, maintenance, or concession agreements (oral or written, formal or informal) with respect to or affecting all or any portion of the Property.

5.8 **Employees.** There are no persons employed or engaged by Seller in connection with the management, operation, or maintenance of all or any portion of the Property except as set forth in the Contracts that will remain employed at the Property following Closing.

5.9 **Permits.** Permanent certificates of occupancy and all other licenses, permits, authorizations, consents, approvals, and other grants of authority (the "**Permits**") required by all governmental or quasi-governmental authorities having jurisdiction, and the requisite certificates of the local board of fire underwriters (or other body exercising similar functions), if any, have been issued for the buildings, structures, and other improvements which are a part of the Property, and required for the full functioning and operation of the Property, have been paid for in full, and are in full force and effect.

5.10 **Compliance.**

5.10.1 To the best of Seller's knowledge, the zoning classification for the Property is Residential (R-3), and the Property fully complies with all relevant zoning laws and ordinances affecting the Property. To the best of Seller's knowledge, the continued maintenance, operation, and use of any buildings, structures or other improvements on the Property for their respective present purposes does not and will not violate any federal, state, county, or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Property, including, without limitation, violations of the housing, building, safety, health, environmental, fire, or zoning ordinances, codes, and regulations of the respective jurisdictions within which the Property is located (together, "**Applicable Laws**") or the certificate(s) of

occupancy issued for the Property. Notwithstanding the foregoing, The Township acknowledges the following disclosure made by Seller: NONE.

5.10.2 To the best of Seller's knowledge, there are no existing violations of, and Seller has received no notices of requests, violations, orders, claims, citations, penalty assessments, orders, investigations, or proceedings under, any Applicable Laws.

5.10.3 Seller shall cure or comply with, prior to Closing or as soon thereafter as reasonably practical, any violation or notice of which Seller or The Township receives written notice prior to the Closing from any of the foregoing governmental, quasi-governmental, or nongovernmental authorities.

5.10.4 The Township, as a party to this Agreement, hereby agrees that it will take no municipal actions to change the zoning classification for the Property while this agreement is in effect. To that end, the Township Board of Supervisors shall take no action to amend the zoning map or uses for the Property during the term of this Agreement, nor shall the Board of Supervisors direct its staff or advisory boards to investigate or make recommendations regarding zoning amendments for the Property during the term of the Agreement, excluding any planning or discussions that impact the entirety of the Township or the Township's codes and not isolated to the Property or its immediate surrounding areas. The parties will communicate in good faith regarding any concerns regarding the Township's municipal actions during the term of this Agreement.

5.11 **Litigation.** There is no action, suit or proceeding pending or, to the knowledge of Seller, threatened against or affecting all or any portion of the Property, or relating to or arising out of the ownership, management, or operation of all or any portion of the Property, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, or agency, or other governmental instrumentality, whether or not covered by insurance, including but not limited to proceedings for or involving collections, evictions, condemnation, eminent domain actions, alleged building code or zoning violations, personal injuries, or property damage.

5.12 **Environmental Matters.** No polluting, toxic or hazardous substances were used, generated, treated, stored, released, discharged, or disposed of by the activities conducted on the Property by the Seller or, to the best of Seller's knowledge, by others, at any time. No notification of release of a "hazardous substance" or "hazardous waste" as such terms are defined in and pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or the federal Clean Water Act (33 U.S.C. Section 1251 et seq.), or any state or local environmental law, regulation, or ordinance has been received by Seller and, to the best of Seller's knowledge, none has been filed as to the Property, and the Property is not listed or formally proposed for listing on the National Priority List promulgated pursuant to CERCLA or on any state list of hazardous substance sites requiring investigation or clean-up. No PCB-contaminated, friable asbestos, or formaldehyde-based insulation items are present at the Property. To the best of Seller's knowledge, no activities or occurrences are taking place or have taken place at the Property which might give rise to any basis for any of the foregoing. In addition to the foregoing representations, Seller makes the following additional representations and clarifications

to the best of Seller's actual knowledge: (i) no friable asbestos exists at the Property, and (ii) there are no Hazardous Substances on, under, at, emanating from, or affecting the Property.

5.13 **"FIRPTA"**. The Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.

5.14 **Exhibits**. Each Exhibit which is attached hereto is hereby made a part of this Agreement. Each such Exhibit is true, complete, and current.

5.15 **Background**. The information set forth in the section of this Agreement entitled "Background" is true, complete, and current.

5.16 **Accuracy**. To the best of Seller's knowledge, no representation or warranty by Seller contained herein, and no statement or other information contained in any Exhibit, certificate, or other instrument furnished or to be furnished to The Township pursuant hereto or in connection with the transactions contemplated hereunder contains, or at the Closing shall contain, any untrue statement of a material fact or omit, or omit to state a material fact necessary to make it not misleading.

Except with respect to the representations and warranties made in this Agreement, Seller has made no other representations or warranties, express or implied, about the condition of the Property or its suitability for any use or purpose whatsoever, and Seller conveys the Property to The Township in its "as is", "where is" condition.

6. **Covenants, Representations and Warranties of The Township**. The Township covenants, represents, and warrants to Seller as follows:

6.1 **Authority**. The Township has taken all action necessary to approve and effect the transactions contemplated hereby and authorize execution of this Agreement by the individuals who are executing it. The Township is a duly formed and validly existing Pennsylvania municipal entity.

6.2 **No Breach**. The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, the Township's organizing documents, any agreement of the Township, or any instrument to which the Township is a party or by which the Township is bound, or any judgment, decree or order of any court or governmental body, or any applicable law, rule, or regulation.

6.3 **Accuracy**. No representation or warranty by the Township contained herein, and no statement or other information contained in any certificate or other instrument furnished or to be furnished to Seller pursuant hereto or in connection with the transactions contemplated hereunder contains, or at the Closing shall contain, any untrue statement of a material fact or omit or omit to state a material fact necessary to make it not misleading.

7. **Conditions Precedent to the Township's Obligations**. All of the Township's obligations hereunder (including, without limitation, its obligation to purchase and accept the Property from Seller) are expressly conditioned on the satisfaction at or before the time of Closing hereunder or at or before such earlier time as may be expressly stated below, of each of the

following conditions (any one or more of which may be waived in writing in whole or in part by the Township, at the Township's option):

7.1 **Accuracy of Representations.** All of the covenants, representations, and warranties of Seller contained in this Agreement shall have been true and correct when made and shall be true and correct on the date of Closing with the same effect as if made on and as of such date. To evidence the foregoing, there shall be delivered to the Township at Closing a certificate to that effect, dated the date of Closing, which certificate shall have the effect of a representation and warranty of Seller made on and as of the date of Closing.

7.2 **Performance.** Seller shall have performed, observed, and complied with all covenants, agreements, and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of Closing hereunder.

7.3 **Documents and Deliveries.** All instruments and documents required on Seller's part to effect this Agreement and the transactions contemplated hereby, all as set forth herein generally and particularly in Section 10 hereof, shall be delivered to the Township and shall be in form and substance consistent with the requirements herein and otherwise reasonably satisfactory to the Township and its counsel.

7.4 **Material Adverse Change.** Between the date hereof and the date of Closing, there shall have been no material adverse change in the condition of the Property.

8. **Failure of Conditions.** In the event Seller shall not be able to convey title to the Property on the date of Closing in accordance with the provisions of this Agreement or if all of the conditions precedent set forth in Section 7 hereof have not been satisfied in full at or prior to Closing, then the Township shall have the option, exercisable by written notice to Seller at or prior to the Closing, of: (1) accepting at Closing such title as Seller is able to convey and/or waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price except for an adjustment equal to the amount of any lien, judgment, or other encumbrance of an ascertainable and liquidated amount together with interest and penalties thereon, if any, and together with any additional title insurance costs or premiums imposed by Title Insurer by reason thereof, (2) extending the date of Closing and allowing Seller more time to satisfy the conditions precedent in Section 7 above, or (3) declining to proceed to Closing; and in the latter event, all obligations, liabilities and rights of the parties under this Agreement shall terminate, and the Deposit made by the Township hereunder shall be returned to the Township, together with all interest earned thereon; provided, nevertheless, that if the inability to convey title or the failure of condition is due to the breach by Seller in default of its obligations hereunder, then the Township's remedies in respect thereof shall not be limited by the foregoing provisions of this Section 8, and the Township shall be permitted to exercise forthwith any right, power, or remedy available to the Township by law, in equity or by contract.

9. **Operations Pending Closing.** Between the date of execution of this Agreement and the date of Closing:

9.1 Seller shall operate and manage the Property in a normal, businesslike manner, and consistent with prior practices, making all necessary repairs and replacements required to keep the Property in good repair and working order and in substantially the same condition as the date hereof.

9.2 Seller shall not execute any agreements affecting the Property without the Township's written consent, which may be granted or withheld in the Township's sole discretion.

10. **Closing; Deliveries.**

10.1 Closing shall occur within thirty (30) days after the Effective Date of this Agreement. When Closing is scheduled, it shall be held at a time and date then determined by the Parties at a location agreeable to the Parties.

10.2 At Closing, Seller shall deliver to the Township the following (all in form and substance satisfactory to the Township and the Township's counsel):

10.2.1 A special warranty deed of dedication to the Property incorporating a full legal description of the Land (the parties acknowledge that the legal description contained in Exhibit A attached hereto is a temporary legal description to be updated prior to Closing), duly executed and acknowledged by Seller and in proper form for recording, conveying fee simple title to the Property to the Township.

10.2.2 A warranty bill of sale for all other property including all assignable guarantees, permits and warranties, duly executed and acknowledged by Seller.

10.2.3 Originals, if available, or copies of all certificates of occupancy, licenses, permits, authorizations, consents, historical certifications, and approvals required by law and issued by any governmental or quasi-governmental authority having jurisdiction over the Property and copies of all certificates, if any, issued by the local board of fire underwriters (or other body exercising similar functions), as well as certificates required under this Agreement.

10.2.4 Such customary affidavits or letters of indemnity as the Title Insurer shall require in order to issue, without extra charge, policies of title insurance free of any exceptions for unfilled mechanic's or materialmen's liens for work performed prior to Closing.

10.2.5 The original or certified copy of each bill for current Property and *ad valorem* taxes, sewer charges and assessments, water charges, and other utilities, together with proof of payment thereof (to the extent the same have been paid).

10.2.6 Copies of keys to all locks on the Property.

10.2.7 The certificate required by Section 7.1 hereof.

10.2.8 The Foreign Investors Real Property Tax Act Certification and Affidavits.

10.2.9 All other reasonable instruments and documents required on the part of Seller to effectuate this Agreement and the transactions contemplated thereby.

10.3 At Closing, the Township shall deliver to Seller bank certified or cashier's checks or plain checks of Title Insurer, or, at Seller's direction given by written notice at least three (3) business days prior to Closing, wire transfers, in any case in the amount required under

Section 2.2 hereof and payable to or transferred to the order or account of Seller or to such other person as Seller shall designate in writing.

11. **Liabilities.** The Township shall not assume or take subject to any liabilities or obligations of the Property or Seller existing or accrued as of the date of Closing, and Seller shall pay the same as they mature and shall hold the Township harmless with respect to all thereof. Liabilities and obligations of the Property accruing after the date of Closing shall be the responsibility of the Township or the Property, as the case may be.

12. **Apportionments; Taxes; Expenses.**

12.1 **Apportionments.** The expenses and obligations relating to the operation of the Property shall be allocated between the Township and Seller as set forth below. Whether amounts are allocable for the above purposes for the period before or after Closing shall be determined in accordance with generally accepted accounting principles using the accrual method. In furtherance of the foregoing:

12.1.1 **Taxes.** Subject to the provisions of Section 12.1.2 below, all property taxes, charges, and assessments affecting the Property shall be prorated on a *per diem* basis as of midnight of the day preceding the date of Closing, on the basis of the fiscal year of the authority levying the same. If any of the same have not been finally assessed, as of the date of Closing, for the current fiscal year of the taxing authority, then the same shall be adjusted at Closing based upon the most recently issued bills therefor, and shall be re-adjusted immediately when and if final bills are issued; but if on the date of Closing the Property shall be affected by any special assessment, then all unpaid installments of such assessment (including those which are to become due and payable after Closing) shall be paid and discharged by Seller prior to or at Closing.

12.1.2 **Rollback Taxes.** Seller agrees to pay all back taxes, penalties, interest, or other costs, if any, involved as a result of the Property being or having received a preferential Property tax assessment under Pennsylvania Act 515, Act 319, or any similar act, it being the intent of the parties that The Township's obligation shall be for taxes from and after the date of Closing only at a normal rate.

12.1.3 **Utilities.** Charges for water, electricity, sewer rental, gas, heating oil, and all other utilities shall be prorated on a *per diem* basis as of midnight of the day preceding the date of Closing, on the basis of the fiscal year or billing period of the authority, utility, or other person levying or charging for the same. If the consumption of any of the foregoing is measured by meters, then in lieu of apportionment as aforesaid, Seller shall, not earlier than the day preceding the date of Closing, obtain a reading of each such meter and Seller shall pay all charges thereunder through the date of the meter readings. If there is no such meter or if the bills for any of the foregoing have not been issued prior to the date of the Closing, the charges therefor shall be adjusted at the Closing on the basis of charges for the prior period for which bills were issued and shall be further adjusted when the bills for the current period are issued. As and to the extent consumption of water, electricity, gas, heating oil, or other utilities is or will be separately metered to a tenant of the Property and such tenant pays the charges therefor directly, there shall be no apportionment of such items at Closing. Seller and the Township shall cooperate to cause the transfer of the Property's utility accounts as necessary from Seller to the Township.

12.1.4 **Charges Under Contracts.** Seller shall pay any unpaid monetary obligations of Seller with respect to any of the Contracts.

12.2 **Expenses; Transfer Taxes.** Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (1) all costs and expenses stated herein to be borne by a party, and (2) all of their respective accounting, legal, and appraisal fees. The Township, in addition to its other expenses, shall pay for (a) all recording charges incident to the recording of the deed for the Property, and (b) all title insurance premiums (except as set forth below in this Section 12.2). The Township and Seller shall each pay 50% of all realty transfer taxes due in connection with purchase and sale of the Property under this Agreement, if any. If Seller shall be unwilling or unable to certify to Title Insurer at Closing that no building construction, alterations, additions, or repairs have been made on or to the Property within the six-month period preceding the date of Closing, and otherwise satisfy Title Insurer with respect thereto, then Seller shall pay for any premium for mechanics' lien coverage which Title Insurer may charge.

13. **Damage or Destruction; Condemnation; Insurance.**

13.1 If at any time prior to the date of Closing all or any portion of the Property is destroyed or damaged as a result of fire or any other casualty whatsoever and the cost of restoring such damage exceeds Fifty Thousand Dollars (\$50,000), or if all or any portion of the Property is condemned or taken by eminent domain proceedings by any public authority, or if a notice of any such prospective condemnation or taking is given by any public authority, then, at the option of the Township, this Agreement shall terminate and shall be canceled with no further liability of either party to the other, and the Deposit then made shall be returned to the Township, together with all interest earned thereon. Seller shall give the Township prompt written notice of any casualty or any actual or threatened taking. The Township shall not be entitled to condemn or take the Property by eminent domain during the time this Agreement is in effect.

13.2 If there is any partial or total damage or destruction or condemnation or taking, as above set forth, and if the Township elects not to terminate (or is not permitted to terminate) this Agreement as therein provided, then (1) in the case of a taking, all condemnation proceeds paid or payable to Seller shall belong to the Township and shall be paid over and assigned to the Township at Closing, and Seller shall further execute all assignments and any other documents or other instruments as the Township may reasonably request or as may be necessary to transfer all interest in all such proceeds to the Township or to whomever the Township shall direct; and (2) in the case of a casualty, Seller shall retain all rights to any insurance proceeds paid or payable under all insurance policies maintained by Seller and the Purchase Price shall be reduced at Closing by the cost of restoration.

13.3 All existing casualty insurance policies respecting the Property shall be maintained and kept in full force and effect by Seller pending Closing.

13.4 In the event of a dispute between Seller and the Township with respect to the cost of restoration under Section 13.1 or 13.2 above, an architect designated by Seller and an architect designated by the Township shall select an independent architect licensed to practice in the jurisdiction where the Property is located who shall resolve the dispute. All fees, costs, and expenses of the architect so selected shall be shared equally by the Township and Seller.

14. **Defaults Prior to Closing.**

14.1 **Default by The Township.** In the event The Township is in default under this Agreement at Closing and if as a result thereof a Closing hereunder shall not occur, then Seller shall, as its sole and exclusive remedy therefor, be entitled to retain the Deposit, together with all interest earned thereon, as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of Seller against the Township by reason of such default; and thereupon this Agreement shall terminate and the parties shall be relieved of all further obligation and liability hereunder.

14.2 **Default by Seller.** In the event Seller is in default under this Agreement at Closing and if as a result thereof a Closing hereunder shall not occur, then the Township shall be entitled to pursue any rights, powers, or remedies available to The Township at law, in equity or by contract, including specifically, but without limitation, the right: (1) to specifically enforce this Agreement against Seller, in which event, pending consummation of the specific enforcement proceeding, the Deposit, together with all interest earned thereon, and all other monies paid by the Township on account of the Purchase Price shall forthwith be returned to the Township (the principal of such Deposit to be repaid to Seller if, as, and when a Closing shall take place); or (2) to extend the date of Closing and allow Seller time to cure the default(s) hereunder, or (3) to terminate and cancel this Agreement, in which event the Deposit, together with all interest earned thereon, and all other monies paid by the Township on account of the Purchase Price shall forthwith be returned to the Township and Seller shall reimburse the Township for all out-of-pocket costs incurred by the Township in connection with the transactions contemplated by the Agreement, and thereupon this Agreement shall terminate and the parties shall be relieved of all further obligation and liability hereunder.

15. **Undertakings by Seller and The Township.** In addition to the obligations required to be performed hereunder by Seller and the Township at Closing, Seller and the Township each agrees to perform such other acts, and to execute, acknowledge and deliver, prior to, at, or subsequent to Closing, such other instruments, documents, and other materials as the other may reasonably request and as shall be necessary in order to effect the consummation of the transactions contemplated hereby and to vest title to the Property in the Township or the Township's nominee.

16. **Tender.** Formal tender of an executed deed of dedication and purchase money is hereby waived; but nothing herein shall be deemed a waiver of the obligation of Seller to execute, acknowledge, and deliver the deed of dedication or other instruments referred to in Section 10 or the concurrent obligation of the Township to pay the Purchase Price at Closing as provided in Section 2.

17. **Notices.** All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and shall be deemed to have been given (i) if hand delivered, sent by facsimile, or sent by an express mail service or by courier, then if and when delivered with confirmation of delivery or receipt by the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby) or upon refusal, if delivery is refused by the party, (ii) if e-mailed, then upon successful transmission; or (iii) if mailed by first-class certified mail, return receipt requested, postage prepaid, and addressed to the respective parties at the below addresses (or at

such other address as a party may hereafter designate for itself by notice to the other party as required hereby), then upon delivery or upon refusal, if delivery is refused by the party:

17.1 If to Seller:

8001 Lansdowne LLC

With a copy to:

17.2 If to The Township:

Upper Darby Township
Attn: Barbarann Keffer
Chief Administrative Officer
100 Garrett Road
Upper Darby, PA 19082
bkeffer@upperdarby.org

With a copy to:

Sean P. Kilkenny, Esquire
Kilkenny Law, LLC
519 Swede St.
Norristown, PA 19401
sean@skilkennylaw.com

18. **No Brokers.** Each party represents to the other that neither has made any agreement or taken any action which may cause any broker, agent or person to become entitled to a brokerage or other fee or commission as a result of the transactions contemplated by this Agreement; and Seller and the Township each hereby indemnifies and shall defend the other from any and all claims, actual or threatened, for compensation by any third person by reason of such party's breach of its representation or warranty contained in this Section 18. The provisions of this Section 18 shall survive Closing or earlier termination of this Agreement.

19. **Miscellaneous.**

19.1 **Assignability.** The Township may freely assign or transfer any portion or all its rights or obligations under this Agreement without the consent thereto by Seller; but the Seller shall not be permitted to assign or transfer any rights or obligations under this Agreement without the written consent of the Township. After any such authorized assignment, the assignee (the "**Assignee**") shall be deemed to be the Township hereunder for all purposes hereof and have all the rights of The Township hereunder. Upon such assignment, the same shall result in a "repudiation" of the Township's duties hereunder and a "novation" on the part of the Assignee to the Township's duties hereunder. In lieu of an assignment to the Assignee, the Township may request Seller to terminate this Agreement and simultaneously enter into an identical agreement of sale with the Assignee, all of which shall be at no cost to Seller, shall not grant the Assignee the

benefit of any rights expired under the terms of the terminated agreement and the indemnities given and representations and warranties made by the originally named the Township shall survive the termination and be honored by the originally named Township.

19.2 **Governing Law; Parties in Interest.** This Agreement shall be governed by the law of the Commonwealth of Pennsylvania, and shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and personal representatives.

19.3 **Computation of Time.** In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday in Pennsylvania, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such legal holiday.

19.4 **No Recording.** This Agreement shall not be recorded in the Office of the Recording of Deeds in and for the county in which the Property is located or in any other place of public record, and if The Township shall record this Agreement or cause or permit the same to be recorded without Seller's express written consent thereto, Seller may, at Seller's option, elect to treat such act as a breach of this Agreement and cause the same to be removed from record at the Township's expense.

19.5 **Time of the Essence.** All times, wherever specified herein for the performance by Seller or the Township of their respective obligations hereunder, are of the essence of this Agreement.

19.6 **Headings.** The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

19.7 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.8 **Exhibits.** All Exhibits which are referred to herein and which are attached hereto or bound separately and initialed by the parties are expressly made and constitute a part of this Agreement.

19.9 **Survival.** All covenants, representations, warranties, and other provisions herein shall survive Closing and delivery of the deed of dedication to the Property.

19.10 **Entire Agreement; Amendments.** This Agreement and the Exhibits hereto set forth all the promises, covenants, agreements, conditions, and undertaking between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent, or discharge is sought.

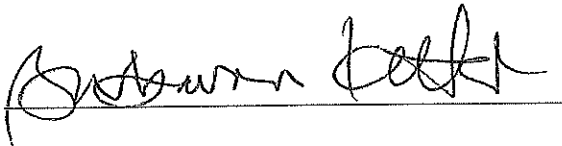
The remainder of this page is left intentionally blank – signature page to follow

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER:

By: _____

THE TOWNSHIP:

By: 

JOINDER BY ESCROW AGENT

Kerry Shuman, Esquire the Escrow Agent named and identified as such in the foregoing Agreement, intending to be legally bound hereby, has joined in the execution thereof solely for the purposes of (1) acknowledging receipt from the Township of the _____ Dollar Deposit referred to therein; and (2) agreeing to perform its obligations as Escrow Agent as provided for in Section 3 thereof.

Elkins Park Abstract Co., Inc.

By: _____
Name: Kerry Shuman, Esquire
Title:

Dated: _____

LIST OF EXHIBITS

- Exhibit A - Legal Description of the Land (Background A(1))
- Exhibit B - List of Permitted Exceptions (Section 5.3)

EXHIBIT A

Legal Description of the Land

[See Attached]

EXHIBIT B

List of Permitted Exceptions

[None]