

PREPARED BY AND RETURN TO
EAST WHITELAND TOWNSHIP SOLICITOR'S OFFICE:

Joseph J. McGrory, Jr., Esquire
East Whiteland Township Solicitor
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215-661-0400

UPI: 42-4-42
42-4-19
42-4-25.1
42-4-25.2
42-4-30

VOLUNTARY DECLARATION OF
RESTRICTIVE COVENANT

This Voluntary Declaration of Restrictive Covenant (“Declaration”) is made this ____ day of _____, 2021 by **KNICKERBOCKER LANDS LLC** (“Declarant”).

BACKGROUND OF THIS DECLARATION

A. Declarant is the record owner of parcels of ground within the East Whiteland Township O/BP Office Business Park and R-1 Low Density Residential Zoning Districts, identified by Chester County Uniform Parcel Identification Numbers **42-4-42, 42-4-19, 42-4-25.1, 42-4-25.2, 42-4-30** (collectively hereafter, the “Property”) (excluding any portion of the Property located south of Route 202);

B. The East Whiteland Township Board of Supervisors elected to rezone the Property such that it is now located within the Township’s RMH Medium High Density Residential Zoning District;

C. Although the Board of Supervisors elected to rezone the Property to RMH Medium High Density Residential at this time, the Board of Supervisors believes, and the Declarant accepts, that rezoning the Property would present unique issues and concerns to the

natural environmental resources on the Property, the Property's adjacent properties, and to the general public;

D. Accordingly, Declarant wishes to voluntarily restrict the Property in accordance with this Declaration in a manner that, in part and as set forth in more detail below, limits the density of the development on the Property; limits the vehicular access/egress locations to/from the Property; preserves certain portions of the Property as open space; establishes recreational trails and parking areas for the public's use; and restricts other aspects of the Property as set forth herein, regardless if such aspects of the Property would otherwise be permitted;

E. Declarant has been advised of its right to have independent legal advice regarding this Voluntary Declaration of Restrictive Covenant and has been afforded the opportunity to do so, and Declarant has carefully read and fully understands the terms of this Voluntary Declaration of Restrictive Covenant and believes it to be fair, just, and reasonable.

NOW, THEREFORE, Declarant, intending to be legally bound hereby, declares as follows:

1. RESTRICTIONS. The Declarant hereby declares that the Property is hereby restricted as follows:

- a. The number of residential units on the Property shall not exceed two hundred and eighty (280). In no event shall the units be mobile home or multifamily buildings as defined in the East Whiteland Township Zoning Code, with the exception of Stacked Townhomes which are units that may share a ceiling, floor and other party walls either below, above or side by side.
- b. The areas identified and/or depicted as passive open space, wetlands, FEMA floodplain, and otherwise not depicting development on the Knickerbocker Redevelopment Plan ("Plan") attached hereto as Exhibit "A", and incorporated herein, shall at no time be subject to any development and shall be considered passive open space in perpetuity, with the exception of access drives/roads, bridges, trails, parking areas and other recreational amenities and/or improvements required by the Township ordinances, and any other existing improvements and uses.
- c. The access road connecting the Property to Mill Lane (which includes Service Road No. 3) shall be an emergency access road only, and thereby restricted to emergency

vehicles only, if determined to be necessary by the East Whiteland Township Board of Supervisors. Procedures/improvements shall be established as part of any proposed land development plan in order to prevent non-emergency access from/to Mill Lane.

- d. Any proposed land development plan shall include a recreational/nature trail throughout the Property and public parking area(s) for the trail, installed at the Declarant's cost with details and location to be determined during land development and subject to obtaining approval by the applicable governmental entities having jurisdiction. Such trail and parking shall be open for the general public's use.
- e. Any land that is not developed as shown on the attached plan shall be owned and maintained by a homeowners association to be formed by the property owner or other qualified entity.

2. CONSTRUCTIVE NOTICE. This restriction shall be deemed to run with the land constituting the Property. Every person who owns, occupies or acquires any right, title, estate or interest in and to the Property, or any portion thereof shall be deemed to have consented and agreed to every restriction and covenant contained herein, whether or not reference to these restrictions and covenants is contained in the instrument by which such person acquired an interest in the Property or any portion thereof.

3. GENERAL PROVISIONS.

a. **Amendment / Modification.** This Declaration may not be modified, amended or terminated, except by written agreement executed and recorded by Declarant, or Declarant's successors, heirs or assigns, and the East Whiteland Township Board of Supervisors. Any executed amendment or termination of this Declaration shall also be entered of record in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania.

b. **Governing Law.** This Declaration shall be construed in accordance with the Laws of the Commonwealth of Pennsylvania.

c. **Recording.** This Declaration shall be recorded in the Office of the Recorder of Deeds in and for the County of Chester, Commonwealth of Pennsylvania by Declarant, Declarant's designee, or by the East Whiteland Township Solicitor's Office at the Declarant's cost after enactment of an Ordinance amending the East Whiteland Township Zoning Map and Zoning Ordinance to rezone the Property to RMH District by the East

Whiteland Township Board of Supervisors, and the expiration of the applicable appeal period with no appeal having been filed.

d. **Severability.** With the exception of Paragraph 3.f. below, if any term or provision of this Declaration, or any part of such term or provision, or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Declaration or the application of such term or provision or remainder shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law. If Paragraph 3.f. below is found to be invalid or unenforceable, this Declaration shall be null and void as a matter of law.

e. **Enforceability.** All of the restrictions in this Declaration are enforceable solely by the East Whiteland Township Board of Supervisors. This Agreement is not intended to and shall not be construed to give any third party any express or implied interest or rights with respect to or in connection with any agreement or provision contained herein or contemplated hereby. The Declarant expressly agrees that, in addition to other relief that may be pursued, injunctive/equitable relief is reasonable and permissible to enforce this Declaration.

f. **Effective Date.** This Declaration shall become effective and binding upon the Property when duly entered of record in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania pursuant to Paragraph 3.c. above. This Declaration shall be null and void as a matter of law if an appeal is filed from the Ordinance amending the Zoning Map and/or Zoning Ordinance and the amendment to either or both the Zoning Map and/or the Zoning Ordinance is determined to be either substantively and/or procedurally defective for any reason. Otherwise, this Declaration shall remain effective unless and until properly terminated in accordance with the terms of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first written above.

DECLARANT:

KNICKERBOCKER LANDS LLC

Print: _____

Title: _____

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF _____ :

On this, the _____ day of _____, 2021 before me, the undersigned officer, personally appeared _____, being duly sworn according to law, deposes and says that he/she is the _____ of **KNICKERBOCKER LANDS LLC**, and that he/she, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

Exhibit “A”

Knickerbocker Redevelopment Plan

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