



MEMORANDUM

From the Office of the
Township Manager

TO: BOARD OF SUPERVISORS
FROM: CHRISTOPHER BASHORE
RE: APPROVAL OF AN EASEMENT AGREEMENT BETWEEN WEST GOSHEN TOWNSHIP
AND PREMIER A-2 WEST CHESTER, PA LLC FOR THE HISTORIC WEEPING BEECH
TREE ON OLD FERN HILL ROAD
DATE: FEBRUARY 7, 2023

Before the Board of Supervisors this evening is consideration to approve an easement between the Township and Premier A-2 West Chester, Pa LLC in order to permit the Township to maintain the historic weeping beech tree on property owned by Premier A-2 on Old Fern Hill Road. Securing this easement has been a project of the Sustainability Advisory Committee and the property owner has worked well with the Township to allow us complete maintenance when needed. The purpose of this easement would be to provide access to the Township in the event that the property is ever sold. Please be advised that the property owner has approved the easement before the Board this evening, but we are still awaiting a signed copy. Additionally, the Sustainability Advisory Committee recommended approval of the easement at their meeting on January 24, 2023.

Please let me know if you have questions. Thank you.

Prepared by and return to:

KRISTIN S. CAMP, ESQUIRE
Buckley, Brion, McGuire & Morris LLP
118 West Market Street, Suite 300
West Chester, Pennsylvania 19382
(610) 436.4400

UPI No. 52-3-172

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20__ by and between **PREMIER A-2 WEST CHESTER, PA LLC**, a Delaware limited liability company with an address of 530 Oak Court Drive, Suite 185, Memphis, Tennessee 38117 ("Grantor") and **WEST GOSHEN TOWNSHIP**, a political subdivision of the Commonwealth of Pennsylvania with an address of 1025 Paoli Pike, West Chester, PA 19380 (the "Township").

BACKGROUND

WHEREAS, pursuant to a deed dated January 13, 2020, with an effective date of January 15, 2020, recorded in the Office of the Recorder of Deeds for Chester County (the "Recorder's Office") on January 22, 2020, in Book 10087, Page 2181 (the "Deed"), Grantor is the fee simple owner of that certain property identified as UPI No. 52-3-172 and described further as Parcel "A" in the Deed attached hereto as Exhibit "A" (the "Property"); and

WHEREAS, the Property is subject to certain conditions stated in a Release of Conditions dated December 11, 1991 which was recorded in the Recorder's Office in Book 2794, page 276 relating to the Township's rights to maintain a historic weeping beech tree (the "Tree") located on the Property; and

WHEREAS, in furtherance of the Township's rights in the Release of Conditions, the Township would like to preserve and maintain and allow limited access for the general public for the purpose of viewing the Tree; and

WHEREAS, in order to inspect and maintain the Tree and permit the general public to view the Tree on limited occasions, the Township requires, and the Grantor is willing to grant, an easement across a portion of the Property that is currently enclosed by a six-foot high chain link fence and is generally depicted in blue on the attached aerial map;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth in the Background section are incorporated herein as if here set forth in their entirety.

2. **Grant of Permanent Easement.** For and in consideration of the sum of One Dollar (\$1.00), Grantor hereby grants and conveys to the Township and its agents, employees, contractors, volunteers and invitees a permanent easement over and across approximately 21,000 square feet of the Property which is currently enclosed by a six foot high chain link fence and generally outlined in blue on the attached aerial tax map (the "Easement") for the purposes of: (i) accessing the Tree and land surrounding the Tree; (ii) inspecting the Tree and surrounding vegetation to ensure that it is properly maintained; (iii) cutting, pruning, caring for and otherwise maintaining the Tree and surrounding vegetation in the Easement; (iv) planting and maintaining native vegetation near the Tree in an effort to avoid invasive species growing near the Tree; (v) maintaining, and if necessary, replacing fencing to surround the Tree in an effort to protect the same; (vi) erecting an interpretative sign near the Tree to document its historical value; (vii) placing temporary and movable structures such as a tent or benches to be used for events permitted under (viii) below; and (viii) allowing public access to the Easement on limited occasions for the purpose of holding special events such as an Arbor Day ceremony where the focus of the event is centered on viewing the Tree. The Easement shall be used by the Township and its agents, employees, contractors, volunteers, invitees to perform all activities described in subparagraphs (i) through (viii) above; provided that the Township shall take reasonable efforts to limit the public's access to the Property except for events that are permitted pursuant to subparagraph (viii) above. The general public may use the Easement only for the limited events described in subparagraph (vi) above and with prior written notice to Grantor which describes the proposed special event, the date and time of such event and the expected number of people who will attend the event.

3. **Indemnification and Insurance Provisions.** The Township shall indemnify and save harmless Grantor from any claims, demands, suits, judgments, losses, costs, damages, liens, liabilities or expenses (including but not limited to reasonable attorneys' fees, court costs and disbursements) whatsoever arising as a result of the Township's and/or public's access to or use and occupancy of the Easement, except for claims that arise from Grantor's negligence, willful misconduct or breach of this Agreement. At all times while performing work on the Property, the Township and its agents, servants and employees, and all contractors and subcontractors performing the work contemplated by this Agreement, shall carry or be required by the Township to carry and maintain in full force and effect, commercial general liability insurance in amounts not less than One Million Dollars (\$1,000,000.00) per occurrence and worker's compensation insurance in the minimum statutory amount(s) mandated by the Commonwealth of Pennsylvania. The Township shall name the Grantor as an additional insured on its insurance policies.

4. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflicts of laws principles.

5. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the rights granted and the obligations assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

6. **Binding Effect.** This Agreement is made expressly for the benefit of, and shall be binding on, the heirs, executors, administrators, successors and assigns of the respective parties and shall run with the Property. Any and all conveyances, leases or encumbrances of any part of the Property shall be subject to the provisions hereof.

7. **Modifications.** This Agreement shall not be changed, modified, amended, withdrawn or canceled except by written document executed by Grantor and the Township.

8. **Recording.** This Agreement shall be recorded in the Office of the Recorder of Deeds for Chester County, Pennsylvania.]

9. **Notice.** All notices or demands relating to this Agreement shall be in writing and shall be personally delivered or sent by registered mail to the address first written above and addressed to the Manager for the Township and to the Managing Member for the Grantor.

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

Attest:

GRANTOR

PREMIER A-2 WEST CHESTER, PA LLC,
a Delaware limited liability company

By: _____

Name:

Title:

GRANTEE

WEST GOSHEN TOWNSHIP

Attest:

Christopher Bashore, Secretary

By: _____

Shaun Walsh

Chairman, Board of Supervisors

COMMONWEALTH OF PENNSYLVANIA:

: ss

COUNTY OF CHESTER

:

On the ____ day of _____, 2022, before me the undersigned, a notary public for the Commonwealth of Pennsylvania residing in the County of Chester, personally appeared Shaun Walsh, who acknowledged himself to be the Chairman of the Board of Supervisors of **WEST GOSHEN TOWNSHIP**, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the Township as such officer.

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

Notary Public

My Commission Expires: