

**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA  
CIVIL ACTION**

**IN RE: APPEAL OF ARCADIA AT** : **No. 2018-07572**  
**NEWTOWN HOLDINGS, L.P.** :

**STIPULATION AND SETTLEMENT AGREEMENT**

It is hereby stipulated and agreed by and among Appellant Arcadia at Newtown Holdings, L.P. ("Arcadia"), by and through its attorneys, Eastburn and Gray, P.C. and Intervenor Board of Supervisors of the Township of Newtown ("Township"), by and through its attorneys, Kilkenny Law, LLC as follows:

**BACKGROUND**

1. Arcadia at Newtown Holdings, L.P. ("Arcadia") is a Pennsylvania limited partnership maintaining its office and principal place of business at Ten Penn Center, 1801 Market Street, Suite 630, Philadelphia, PA 19103.

2. The Board of Supervisors (the "Board") of Newtown Township ("Township") is the "governing body" of the Township, as that term is defined in Section 101 of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. §10101.

3. Arcadia is the owner of two parcels of real property in the Township identified as Bucks County tax map parcel #29-009-006 ("Lownes Parcel") and Bucks County tax map parcel #29-025-021 ("295 High Street"), the latter of which is located in the Newtown Crossing PRD. Arcadia is also the equitable owner of two parcels of real property in the Township identified as Bucks County

tax map parcels #29-009-003-001 and #29-009-007 (the “Wynmere Hunt Parcels”), and of a 2.3-acre portion of Bucks County tax map parcel #29-009-003-002 (“Church Parcel”).

4. The Joint Municipal Zoning Ordinance (“JMZO”) is the duly enacted Zoning Ordinance for Newtown Township.

5. The Lownes Parcel, the Wynmere Hunt Parcels and the Church Parcel are situate in the R-2 Residential/High Density zoning district under the provisions of the JMZO.

6. A planned residential development (“PRD”) was a permitted use under the provisions of Section 405(a)(1) of the JMZO in the R-2 zoning district at the time the three (3) applications for tentative approval of PRDs referenced hereinafter were filed with the Township.

7. On June 18, 2018, Arcadia made application for tentative approval of a PRD (the “Third Application”). The Third Application included a plan (“Tentative Plan”) for a seventy-six (76) dwelling unit Mixed Residential PRD comprised of fifty-three (53) townhouses, twenty-three (23) single-family detached village houses, open spaces and common facilities (the “Third Proposed PRD”).

8. The land that comprised the Third Proposed PRD included the Lownes Parcel, the Wynmere Hunt Parcels and the Church Parcel.

9. The Third Application is the third application for tentative approval of a PRD filed by Arcadia involving the Wynmere Hunt Parcels. It is also the

second application that included the Lownes Parcel, the Wynmere Hunt Parcels and the Church Parcel.

10. All three applications propose to utilize an existing Township road (the "Service Road") to access the PRD sites.

11. The sole means of access to the Service Road is from Buck Road, a state highway within the exclusive jurisdiction of the Pennsylvania Department of Transportation ("PennDOT").

12. The first application for tentative approval ("First Application") was filed in 2014 for a 19.2-acre site comprised of only the Wynmere Hunt Parcels. The First Application sought tentative approval of a 34-unit Single-Family Cluster PRD. During the course of the hearings on the First Application, the number of units for which approval was sought was reduced from 34 to 33.

13. At a public meeting of the Board on August 18, 2015, the Board voted to enact Ordinance No. 2015-0-6 ("Ordinance 2015-0-6") amending Section 209(1) of Chapter 15, Part 2 - Traffic Regulations of the Township Code. Ordinance 2015-0-6 prohibits left turns out of and onto the Service Road from Buck Road.

14. The First Application was denied by Decision and Order dated December 23, 2015 ("First Decision").

15. Arcadia appealed the First Decision denying the First Application to the Court of Common Pleas of Bucks County. The appeal is docketed as No. 2016-00375 ("Arcadia 1 Appeal") and is currently pending.

16. Arcadia disputed the Township's request for reimbursements for certain professional fees associated with the First Application, which dispute has not been resolved.

17. The second application for tentative approval ("Second Application") was filed in 2017 for a 27.564 acre site comprised of the Wynmere Hunt Parcels, the Lownes Parcel, the Church Parcel and the 295 High Street Parcel.

18. The Second Application initially sought tentative approval of an 85-unit Mixed Residential PRD. During the course of the hearings on the Second Application, the number of units for which approval was sought was reduced from 85 to 82.

19. The Second Application was denied by the Board of Supervisors by written Decision and Order dated December 27, 2017 ("Second Decision").

20. Arcadia appealed the Second Decision denying the Second Application to the Court of Common Pleas of Bucks County. The appeal was docketed as No. 2018-00679 ("Arcadia 2 Appeal") and is currently pending.

21. On the same day that it filed its appeal from the Second Decision, Arcadia filed a Complaint docketed at Docket No. 2018-00680 ("Declaratory Judgment Action") seeking a Declaratory Judgment that a municipality is not authorized by the MPC to charge applicants for tentative approval of a PRD for the cost of professional services incurred in reviewing those applications.

22. The Declaratory Judgment Action is currently before the Commonwealth Court as a result of an appeal filed by the Township from an

Opinion and Order issued by Judge Trauger. The Commonwealth Court appeal is docketed at No. 469 C.D. 2019.

23. In addition to the Declaratory Judgment Action relating to professional fees charged in connection with the Second Application, Arcadia disputed the Township's request for reimbursements for certain professional fees associated with the First Application and Third Applications, which disputes have not been resolved.

24. The Third Application was filed on June 18, 2018.

25. Public hearings were held on the Third Application on August 8, 2018; August 22, 2018; September 13, 2018 and September 26, 2018. The hearings concluded on September 26, 2018.

26. At a public meeting of the Board held September 12, 2018, during the course of the public hearings on the Third Application, the Board voted 5-0 to enact an ordinance amending the JMZO to eliminate PRDs as a permitted use in all zoning districts. The ordinance – JMZO No. 2017-04 – was also approved by Wrightstown Township and Upper Makefield Township and became effective on September 23, 2018.

27. Arcadia disputed the Township's request for reimbursements for certain professional fees associated with the Third Application, which dispute has not been resolved.

28. Section 709(a) of the MPC, provides that "within 60 days following the conclusion of the public hearing" the governing body is required "by official written communication, to the landowner" to take action on the application.

Section 709(a) further provides that failure to act in compliance with that section “shall be deemed to be a grant of tentative approval of the development plan as submitted.”

29. The 60-day period with which the Board was required to its decision on the Third Application expired on November 25, 2018.

30. At a public meeting of the Board of Supervisors held on November 14, 2018, the Board voted to deny the Third Application.

31. On Saturday, November 24, 2018, Township Solicitor David J. Sander sent an email to counsel to Arcadia and to counsel to other parties to the proceedings and to unrepresented parties forwarding a document titled “Decision of the Board of Supervisors” (“Third Decision”).

32. Arcadia appealed the Third Decision denying the Third Application to the Court of Common Pleas of Bucks County. The appeal is docketed to the above term and number (No. 2018-07572) (“Arcadia 3 Appeal”) and is currently pending.

33. On January 18, 2019, Arcadia filed a Complaint in Mandamus docketed to No. 2019-00325 (“Mandamus Action”) alleging that the Third Application had been deemed approved because the Board failed to render a decision on the Third Application and communicate it to Arcadia pursuant to applicable law.

34. The Township filed a Notice of Appeal from Publication of Deemed Approval to the Court of Common Pleas of Bucks County. The Township Appeal is docketed to No. 2019-01182 (“Township Appeal”) and is currently pending.

35. Eagle Ridge Community Association (“Eagle Ridge”) filed a Notice of Appeal from the asserted deemed approval of the Third Application. The appeal is docketed to No. 2019-01150 (“Eagle Ridge Appeal”) and is currently pending.

36. Arcadia and the Township have engaged in discussions in an effort to reach agreement on the parameters for a residential development on the Wynmere Hunt Parcels and the Lownes Parcel (hereinafter referred to collectively as “the Property”) on terms and conditions satisfactory to all. As a result of those discussions, Arcadia and the Township have reached agreement.

### **TERMS OF AGREEMENT**

#### **I. The Settlement Plan**

1. The Property will be developed as and for a residential development consisting of not more than sixty (60) single-family detached dwelling units (the “Project”). The Project shall be deemed to be a permitted use for the Property, notwithstanding the fact that the use does not meet the criteria set forth in Section 405 of the JMZO for any one or more of the residential uses identified as permitted uses in the R2 Residential/High Density zoning district on the Property.

2. The Project shall be developed substantially in accordance with a plan for the Property prepared by Holmes Cunningham, LLC, dated July 16, 2020, a reduced size copy of which is attached hereto, marked Exhibit “A” and made a part hereof (“Settlement Plan”). Attached hereto as Exhibit “B” is a “Truck Turning Exhibit for Settlement Plan” dated July 16, 2020, which exhibit

illustrates that fire trucks and school buses will be able circulate safely within the proposed development.

3. Special zoning criteria applicable to the development of the Project, including area and dimensional criteria for Permitted Home Types shall be the zoning criteria set forth on the “Settlement Plan - Zoning Table” on the Settlement Plan and those zoning criteria set forth on the Settlement Plan under “Ordinance Modification and Waivers, A. Joint Municipal Zoning Ordinance (JMZO)” (collectively “Special Zoning Criteria”). Where the Special Zoning Criteria are inconsistent with any provision of the JMZO, the Special Zoning Criteria shall control. A copy of the “Settlement Plan – Zoning Table”, excerpted from the Settlement Plan is attached hereto as Exhibit “C” for ease of reference. A copy of the “Ordinance Modification and Waivers, A. Joint Municipal Zoning Ordinance (JMZO)”, excerpted from the Settlement Plan is attached hereto as Exhibit “D” for ease of reference.

4. Except as otherwise expressly provided herein, the Property shall be developed in conformity with all applicable federal, state, and municipal ordinances, including but not limited to the JMZO and Newtown Township Subdivision and Land Development Ordinance (“SALDO”).

5. A homeowners’ association (“HOA”) will be created to maintain the open space, streets, and stormwater management facilities. The HOA will be fully responsible for maintenance of all stormwater management facilities installed as part of the Project, whether those improvements are located on the Property or on the Church Parcel.



6. Arcadia covenants and agrees that it shall not at any time develop the property currently owned by the Newtown Reformed Church.

## **II. Procedures, Criteria and Agreements re: Land Development**

1. Arcadia shall submit final land development plans ("Final Plans") to the Township within eighteen (18) months of the date of entry of a Court Order by the Court of Common Pleas of Bucks County approving this Stipulation and Settlement Agreement; provided, however, that in the event an appeal is filed from that Court Order or in the event any challenge is filed to this Stipulation and Settlement Agreement or in the event that any of the Court cases identified in the Background section of this Agreement have not been fully resolved and/or discontinued, the 18-month period shall not commence until such date as final judgments have been entered in all such actions and/or all such actions have been discontinued with prejudice.

2. At the time Arcadia files its Final Plans for review, it shall pay to Township an application fee in the amount of \$8,750.00 and shall deposit the additional sum of \$19,375.00 in escrow for payment of the Township's professional review fees. Township agrees that no review fees in excess of \$19,375.00 shall be charged to or payable by Arcadia during the land development plan approval process for the Project.

3. Arcadia's engineers have identified certain waivers from the SALDO that are required in order to develop the Project in accordance with the Settlement Plan and the Agreement. Township agrees that during the course of its review of Arcadia's Final Plans, it will grant the waivers set forth on the

Settlement Plan under “Ordinance Modification and Waivers, B. Subdivision and Land Development Ordinance (SALDO)”. A copy of “Ordinance Modification and Waivers, B. Subdivision and Land Development Ordinance (SALDO)”, excerpted from the Settlement Plan is attached hereto as Exhibit “E” for ease of reference.

4. Arcadia’s Final Plans shall incorporate the following design elements which shall apply in lieu of any inconsistent requirements of the JMZO, the SALDO and/or the Newtown Township Stormwater Management Ordinance (“SW Ordinance”):

A. Setback & Buffer Areas

- i. There shall be a 130-foot minimum setback from the boundary line dividing the Property from the lands of the Eagle Ridge Community Association to any residential buildings in the Project (“Eagle Ridge Setback”).

B. Within the Eagle Ridge Setback, Arcadia will install a row of buffer trees and bushes in the area designated on the Settlement Plan as “Conceptual Buffer Plantings” (“Eagle Ridge Special Landscaping”). The Eagle Ridge Special Landscaping will be maintained by the HOA and, together with existing vegetation, shall be deemed to satisfy the buffer requirements of the JMZO as applied to the Eagle Ridge/Arcadia property boundary.

C. There shall be a 100-foot minimum buffer from the boundary line dividing the Property from Tax Map parcels 29-025-021, 022 and 023 (“Newtown Crossing Buffer Area”)

D. Within the Newtown Crossing Buffer Area, Arcadia will preserve existing vegetation, subject to the provisions of Section F below regarding the construction and maintenance of the exercise trail/path.

E. Nothing shall be placed or constructed within the Eagle Ridge or Newtown Crossing Setback areas including, but not limited to, sheds, pools, storage of materials, decks, patios, swing or play sets, fire pits, or basketball or other sports courts shall be placed or constructed within the open space portion of the Eagle Ridge Setback, as distinguished from that portion of the Eagle Ridge Buffer that is located on individual lots. This provision shall be included as a restriction in the HOA governing documents.

F. Arcadia shall use its best efforts to preserve trees within the open space areas and buffer yards shown on the Settlement Plan; provided, however, that Arcadia shall be permitted to remove those trees that must be cleared in order to enable construction of recreation areas and walking paths and all trees which are dead or diseased as determined by the Township Engineer; provided, that the extent of tree removal does not exceed that which is permitted by the Special Zoning Criteria. Arcadia shall not be required to replace any trees or pay any fee-in-lieu of replacement trees.

G. Arcadia shall design the stormwater management facilities for the Project so that the rate of stormwater runoff onto the property of Eagle Ridge shall be reduced below its pre-construction rate. Stormwater

management facilities shall be designed in compliance with applicable requirements of the SW Ordinance, Bucks County Conservation District and state and federal agencies having jurisdiction. From the time of commencement of construction of the Project, Arcadia agrees that it will be responsible for and shall maintain all new and existing stormwater facilities within the Project until the stormwater facilities are transferred to the HOA. From and after the date the HOA assumes maintenance responsibility, the stormwater facilities will be professionally managed and maintained by the HOA. Arcadia also agrees to clearing, testing and repairs (where required) of the existing connection pipe that extends from the Arcadia property to the stormwater management facilities on the Eagle Ridge property.

H. Township acknowledges and agrees that the primary stormwater management facility will be the existing basin on the Church Property.

5. Township acknowledges that unless and until fully engineered land development plans are prepared, it is not possible for Arcadia to identify all relief that will be required from the JMZO, SALDO and/or SW Ordinance in order to develop the Project in accordance with the Revised Settlement Plan (as defined below.) Township agrees that it will cooperate with Arcadia by granting such further relief from the requirements of the JMZO, SALDO and/or SW Ordinance as are reasonably required, in the reasonable opinion of the Township Engineer, in order to facilitate the development of the Property and the Project in

accordance with the Settlement Plan, Special Zoning Criteria, Eagle Ridge Special Landscaping and this Agreement.

6. Except as set forth in this Stipulation and Settlement Agreement, Township ordinances that were in effect as of June 18, 2018 (the date of the filing of the Third Application) shall be applicable to the development of the Property and the Project.

7. Township and Eagle Ridge have advised Arcadia that they would like to attempt to obtain approval from PennDOT and the Federal Highway Administration ("FHWA") for a "right-out only" egress to the Newtown Bypass ("Bypass") from the Property to provide a second means of egress supplementing the Service Road. Arcadia has agreed to cooperate with the effort to obtain an egress from the Property to the Bypass subject to the terms and conditions set forth in this Section II.7.

A. Access Evaluation Process. The parties agree to an access evaluation process ("AEP") that is intended to identify a feasible and safe access to the Property. The parties agree that the Service Road shall serve as a means of ingress and egress to and from the Property. The Township, Eagle Ridge and Arcadia (or their successors or assignees) agree that the AEP will NOT at this time, or ever, following the conclusion of the AEP, include consideration of access/egress to Arcadia through Newtown Crossing Community Association property (or any tax parcels included in the Newtown Crossing PRD), or Eagle Ridge Community Association property,

including through a condemnation process. The AEP is intended to seek governmental approvals for supplementing and/or improving access to the Property from among the four (4) available options. In order of preference, the four (4) options are:

- i. A direct, right-out egress to the Bypass from Property (the "Bypass Access").
- ii. Relocation of the current northbound Buck Road traffic signal to a location south of the Service Road, and the installation of an additional traffic signal at the Service Road to allow protected access to northbound Buck Road and to allow traffic exiting the Service Road to travel in whichever direction it wishes with no interaction with other traffic (together, the "Signal Relocation Access"). With the Signal Relocation Access option, the traffic signal could be programmed to always remain red unless it senses a vehicle waiting to exit the Service Road, and then it would operate left-only and right-only arrows. The Signal Relocation Access option shall be in substantial compliance with the plan attached hereto as Exhibit F-3, and incorporated herein by reference.
- iii. Improvements to Buck Road including an additional right-turn lane at Buck Road and the Bypass, improvements to facilitate a left-turn exit from the Service Road onto Buck

Road, and U-turn improvements at the intersection of Mill Pond with Buck Road (together, the "Left Out + U-turn Access") as shown on the concept plan attached hereto marked Exhibit "F-1".

- iv. Improvements to Buck Road including those in the Left Out + U-turn Access but excluding the left-turn exit from the Service Road onto Buck Road (together, the "Buck Road U-Turn Improvements") as shown on the concept plan attached hereto marked Exhibit "F-2".

B. The Bypass Access Alternative.

- i. The parties agree that the Bypass Access is the most desirable access option for the Property and agree to cooperate to seek its approval from all governmental authorities with jurisdiction.
- ii. The Township and Arcadia shall cooperate in the preparation of a Point of Access ("POA") study for submission to PennDOT and the FHWA for the Bypass Access. Such POA will be at Arcadia's sole expense.
- iii. Arcadia and the Township shall cooperate in generating community support letters and legislator support for this option.
- iv. The Township shall review and approve the POA study prior to submission to PennDOT or FHWA. If the parties determine

that the likelihood of approval of the POA application is improved by having Newtown Township as an applicant, Newtown Township agrees to be the applicant in the POA application.

- v. In the event that PennDOT or the FHWA approves the Bypass Access, Arcadia shall proceed with the preparation of a Highway Occupancy Permit ("HOP") for the Bypass Access, together with any other required permits and approvals.

C. The Signal Relocation Access Alternative.

- i. If either PennDOT or FHWA issues a denial of the POA application for the Bypass Access, then Arcadia will pursue the Signal Relocation Access Alternative.
- ii. The Township shall provide all ministerial authorizations that are required for Arcadia to pursue the Signal Relocation Access Alternative.
- iii. If PennDOT approves the feasibility of the Signal Relocation Access Alternative, then Arcadia will prepare a HOP application and signal permit ("SP") application for the Signal Relocation Access Alternative.
- iv. Arcadia agrees to include the Township and Eagle Ridge in all communications and meetings with PennDOT.



The parties agree that the design attached herein as Exhibit “F-3” is a preliminary design and agree to cooperate on refinements to that design in the course of PennDOT's review.

D. The Left Out + U-Turn Access Alternative.

- i. If either PennDOT or FHWA issues a denial of the POA application for the Bypass Access, and the Signal Relocation Access is denied, then Arcadia will initially prepare a gap study for submission to PennDOT for the Left Out + U-Turn Access improvements described on Exhibit “F-1”.
- ii. The Township shall provide all ministerial authorizations that are required for the gap study under the Left Out + U-Turn Access Alternative.
- iii. If PennDOT approves the feasibility of the left-turn exit from the Service Road to Buck Road through its review of the gap study, then Arcadia will prepare a HOP application and signal permit (“SP”) application for the Left Out + U-turn Access improvements depicted on Exhibit “F-1”.
- iv. Arcadia agrees to include the Township and Eagle Ridge in all communications and meetings with PennDOT.
- v. The parties agree that the design attached herein as Exhibit “F-1” is a preliminary design and agree to cooperate on refinements to that design in the course of PennDOT's review.

E. The Buck Road U-Turn Improvements Alternative

i. If either PennDOT or FHWA issues a denial of the POA application for the Bypass Access and PennDOT rejects both the Signal Relocation Access Alternative and the Left Out + U-Turn Access Alternative, then Arcadia will then prepare a HOP application and SP application for the Buck Road Access improvements described on Exhibit "F-2". Township shall provide all ministerial authorizations that are required for the HOP and SP.

ii. Arcadia agrees to include the Township and Eagle Ridge in all communications and meetings with PennDOT.

The parties agree that the design attached herein as Exhibit "F-2" is a preliminary design and agree to cooperate on refinements to that design in the course of PennDOT's review.

F. Arcadia will be responsible for and shall pay all costs and expenses associated with the POA, AEP and all aspects of the PennDOT highway occupancy permitting process.

8. Concurrent Processing.

A. After the execution of this Settlement Agreement but prior to the submission of the POA application, Arcadia shall modify the Settlement Plan to show a potential Bypass Access ("Revised Settlement Plan").

- B. Engineered plans based on the Revised Settlement Plan shall be submitted for preliminary/final land development and subdivision approval to Newtown Township as set forth in Section II. Paragraphs 1 and 2 above. It is understood and agreed that the Township's review and approval process shall happen concurrent with the POA and any related PennDOT applications.
- C. When the Settlement Plan has received its final land development approval and received all agency permits other than those issued by PennDOT or the FHWA, Arcadia shall be authorized to proceed with the recording of the final plan and the commencement of construction upon the following conditions:
- i. If the POA for the Bypass Access Alternative has been approved, Arcadia shall post financial security with the Township and/or PennDOT in an amount equal to the estimated cost of construction of the Bypass Access. Such estimated cost of construction shall be prepared by Arcadia's traffic professional and reviewed and approved by the Township and/or PennDOT.
  - ii. If the POA for the Bypass Access Alternative has been denied, then Arcadia shall post financial security with the Township and/or PennDOT in an amount equal to the estimated cost of construction of the Signal Relocation Access Alternative. Such estimated cost of construction shall be prepared by

Arcadia's traffic professional and reviewed and approved by the Township and/or PennDOT.

- iii. If the POA for the Bypass Access Alternative has been denied and PennDOT does not approve the Signal Relocation Access Alternative, then Arcadia shall post financial security with the Township and/or PennDOT in an amount equal to the estimated cost of construction of the Left Out + U-Turn Access. Such estimated cost of construction shall be prepared by Arcadia's traffic professional and reviewed and approved by the Township and/or PennDOT.
- iv. If the POA for the Bypass Access Alternative has been denied and PennDOT does approve either the Signal Relocation Access or the Left Out + U-Turn Access, then Arcadia shall post financial security with the Township and/or PennDOT in an amount equal to the estimated cost of construction of the Buck Road U-Turn Improvements. Such estimated cost of construction shall be prepared by Arcadia's traffic professional and reviewed and approved by the Township and/or PennDOT.

D. Provided Arcadia posts financial security as described above in 8.C., Arcadia shall be able to apply for and receive building permits and occupancy permits for homes in the Project only after receipt of all permits and approvals from agencies with jurisdiction over the

Project, except for the receipt of approval for and the construction of the approved access option. Arcadia acknowledges that it proceeds at its own risk that an approval of an access option may not be received, as such decision is within the sole jurisdiction of PennDOT and/or the FHWA.

9. Arcadia shall diligently prosecute the approval of the Bypass Access, the Signal Relocation Access, the Left Out + U-Turn Access, or Buck Road U-Turn Improvements Alternative, as approved, and shall commence construction of the approved access within one hundred fifty (150) days of securing all applicable approvals.

10. The off-site road improvements shown on Exhibits “F-1” and “F-2” are within the exclusive jurisdiction of PennDOT. Accordingly, Township acknowledges and agrees that if the Buck Road U-Turn Improvements Alternative is the approved alternative, it will not appeal the issuance of any highway occupancy permit by PennDOT provided that the improvements authorized by such permit or permits are substantially consistent with the improvements shown on Exhibit “F-1” and “F-2”.

11. The Township shall charge Arcadia traffic impact fees in accordance with the provisions of the Township Traffic Impact Fee Ordinance and park and recreation fees, calculated in accordance with the 2018 Fee Schedule (the “Combined Impact Fees”). Township agrees that Arcadia shall be entitled to credit against the Combined Impact Fees in an amount equal to the actual cost of the construction and inspection of the following: the public walking trails, the open

space and recreation improvements, the Eagle Ridge Special Landscaping, the Service Road Resurfacing (as hereinafter defined) and all off-site traffic improvements constructed by Arcadia for the Project (collectively, the "Public Improvements"). At the time of recording of its Final Plan, Arcadia will post financial security with PennDOT for the off-site traffic improvements and with the Township for the other Public Improvements. If the combined amount of financial security for the Public Improvements is less than the Combined Impact Fees, then Arcadia will pay the remaining amount as a cash payment to the Township as a condition of the Township releasing the Final Plan for recording.

12. The Service Road is a Township road. It is currently in a state of disrepair. Arcadia agrees, at Arcadia's sole cost and expense, to mill and overlay the Service Road and complete any necessary base repair required by the Township Engineer when it constructs the Project (the "Service Road Resurfacing"). The Township will approve naming the Service Road "Lownes Drive" or another name mutually acceptable to the parties and other authorities with jurisdiction.

13. Arcadia shall include in its construction agreements and shall enforce, at its sole cost and expense, a prohibition against any and all construction traffic traveling on Mill Pond Road. Arcadia shall erect signage notifying construction traffic that the use of Mill Pond Road is prohibited. The signage shall be approved by the Township, which approval shall not be unreasonably withheld.

14. If and only if an engineering and traffic investigation required to be performed pursuant to Section 6109(e) of the Pennsylvania Vehicle Code, 75 Pa.C.S.A. Section 6109(e), as amended, warrants, the Township shall erect permanent “No Truck Traffic - Local Deliveries Only” signage at the Millpond-Buck Rd entrance, and the Millpond & W. Hanover-Richboro Rd and the Cherry Lane entrances.

### **III. OTHER PERMITS AND APPROVALS**

1. After approval of the Final Plans by the Board and issuance by the Board of a writing confirming the terms of Final Plan approval, Arcadia shall take such actions as are necessary to obtain all permits, approvals, waivers, and agreements required to be obtained from all governmental agencies, public authorities and municipal authorities, other than the Township and those entities controlled by or appointed by the Township, which have jurisdiction over the Project (collectively “Outside Agencies”).

2. Township agrees that it will not object to any application for any permits, approvals, waivers, and agreements from any Outside Agencies for improvements, which are substantially consistent with the approved Final Plans.

3. Arcadia will notify the Newtown Township Manager and other Township engineers or consultants and Eagle Ridge of any pre-application or technical review meetings to be conducted by governmental agencies pertaining to any applications for agency permits.

4. If a requirement is imposed by any of the Outside Agencies which is inconsistent with the approved land development plans, such inconsistent

requirements shall be incorporated into the Final Plans and shall be identified by Arcadia's engineer as a change required by one of the Outside Agencies.

5. Within ninety (90) days after receipt by the Township of properly prepared Sewage Facilities Planning Modules, PennDOT highway occupancy permit applications, traffic signal permit applications (if applicable) and any similar or dissimilar applications which require approval or consent of the Township in order for PennDOT, DEP, Bucks County Conservation District or any other Outside Agency to act, the Board or such other appropriate Township official shall approve such application, provided that the applications are consistent with the terms of this Settlement Agreement.

#### **IV. MISCELLANEOUS**

1. With regard to the Township's counterclaim filed in the Declaratory Judgment action and Arcadia's challenges to the review fees paid in connection with the First Application, Second Application and Third Application, Arcadia and Township agree as follows:

A. Township shall be entitled to retain all sums that it is currently holding in escrow paid by Arcadia in connection with the First Application, Second Application and Third Application.

B. Township releases all claims, asserted and unasserted, that it may have seeking reimbursement from Arcadia for consulting and professional fees incurred by the Township in connection with the First Application, Second Application or Third Application.



C. The Township will cooperate with Arcadia in seeking applications for State funding for pedestrian and safety improvements.

D. Upon approval of this Stipulation and Settlement Agreement by Court Order in the Arcadia 3 Appeal, the parties shall take the following actions with respect to the pending litigation:

- i. Arcadia shall discontinue the Arcadia 1 appeal;
- ii. Arcadia shall discontinue the Arcadia 2 appeal;
- iii. Arcadia and the Township shall take such actions as may be required in order to effect the discontinuance and termination of the Declaratory Judgment Action;
- iv. Arcadia shall discontinue the Mandamus Action;
- v. Township shall discontinue the Township Appeal;
- vi. Township shall repeal only that portion of Ordinance No. 2015-O-6 that purports to prohibit left turns from north bound Buck Road onto the Service Road, while maintaining the prohibition against left turns out of the Service Road onto northbound Buck Road;
- vii. If PennDOT approves the Left Out + U-turn Access or the Buck Road U-turn Improvements, the Township shall take whatever action is required by PennDOT related to the ordinance that prohibits U-turns at the intersection of Buck Road with Mill Pond Road and Diamond Drive.

viii. Notwithstanding any action required to be taken by the Township regarding U-turns at the intersection of Buck Road with Mill Pond Road and Diamond Drive, the current prohibition against U-turns on Mill Pond Road shall remain in full force and effect.

2. Arcadia shall pay the Township Fifteen Thousand Dollars (\$15,000.00) toward the Township's legal fees when the Final Plan is recorded.

3. This Stipulation and Agreement shall be binding and inure to the benefit of the parties hereto, their successors and assigns.

4. This Stipulation and Agreement may be executed in counterparts. Scanned or facsimile signatures shall be deemed to be equivalent to original signatures.

5. Arcadia and the Township agree that this Stipulation and Settlement Agreement shall be submitted to the Court of Common Pleas of Bucks County for approval as an Agreed Order. All parties expressly consent to the jurisdiction of the Court of Common Pleas of Bucks County for purposes of entering such Order and subsequent enforcement of such Order. The parties further agree that the Order of the Court of Common Pleas shall provide that the Court will retain jurisdiction for the purpose of resolving any disputes that arise between the parties with regard to interpretation of this Stipulation and Settlement Agreement.

IN WITNESS WHEREOF, Arcadia and the Township, by and through their respective counsel, have executed this Stipulation and Settlement Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, with intent to be legally bound.

Eastburn and Gray, P.C.

By: \_\_\_\_\_

John A. VanLuvanee  
Attorneys for Appellants

Kilkenny Law, LLC

By: \_\_\_\_\_

David J. Sander  
Attorneys for Newtown Township

## **Exhibit “A”**



## **Exhibit “B”**



## **Exhibit “C”**



SETTLEMENT PLAN - ZONING TABLE		
ZONING DISTRICT: High-Density Residential District (R-2)		
ITEM		APPROVED STANDARDS
Housing Type:		Single Family Detached
Max. Density:		60 Units
Min. Open Space:		30% of Base Site Area
Min. Lot Size:		5,500 SF
Min. Lot Width at Street:		45 FT
Min. Lot Width at Setback:		50 FT
Min. Front Yard Setback:		20 FT
Min. Side Yard Setback:		5 FT
Min. Rear Yard Setback:		15 FT
Min. Perimeter Building Setback:		15 FT
Min. Perimeter Building Setback from Existing Residential Uses		130 FT
Max. Impervious Surface Ratio:		40% of Base Site Area
Max. Building Height:		35 FT
Min. Distance Between Buildings:		10 FT
Min. Number of On-lot parking spaces per lot		2 Spaces (Not Counting Garage Spaces)
Min. Number of Off-lot parking spaces per lot		1 Space

## **Exhibit “D”**

ORDINANCE MODIFICATIONS AND WAIVERS

A. JOINT MUNICIPAL ZONING ORDINANCE (JMZO).

THE STANDARDS AND CRITERIA SET FORTH ABOVE IN THE "SETTLEMENT PLAN - ZONING TABLE" SHALL SUPERSEDE ANY INCONSISTENT ZONING CRITERIA IN THE NEWTOWN AREA JOINT MUNICIPAL ZONING ORDINANCE (JMZO)

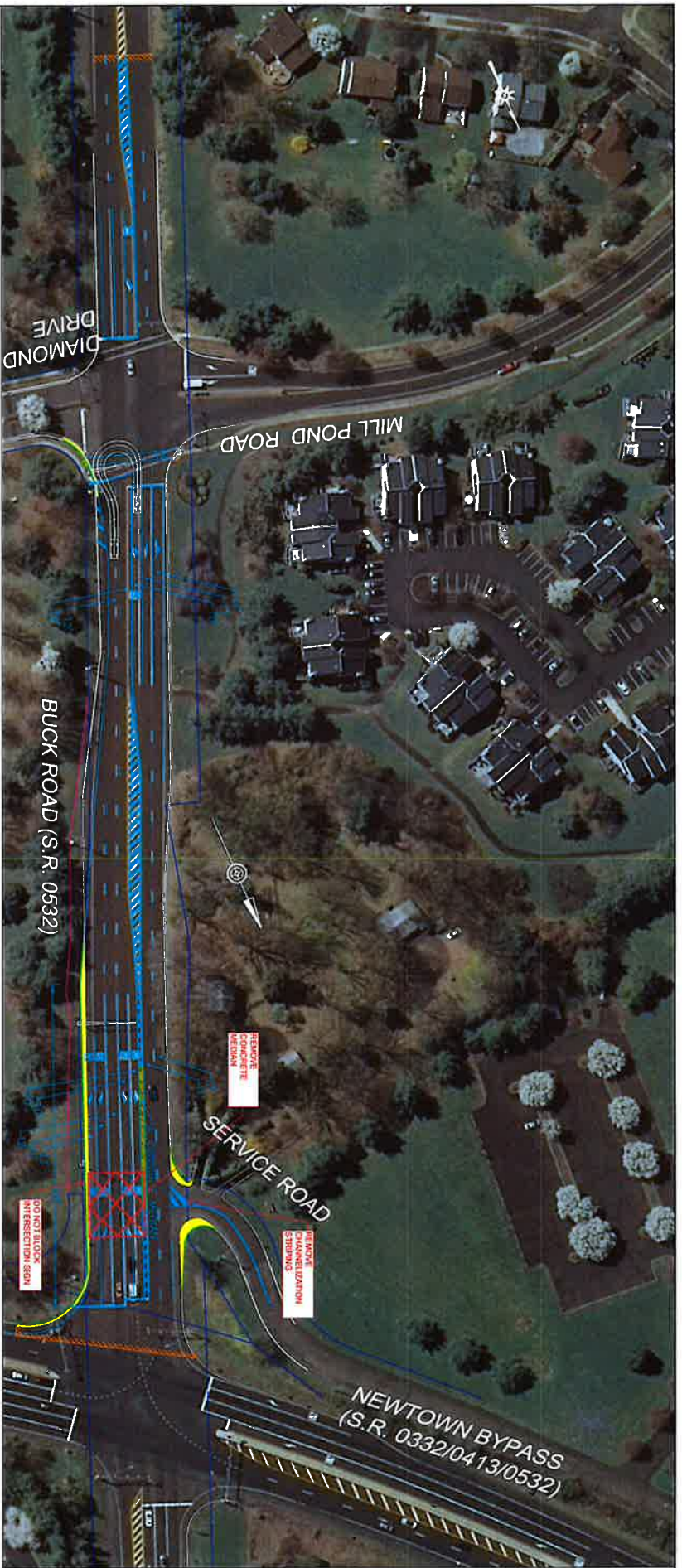
1. NOT GREATER THAN SEVENTY (70%) PERCENT OF WOODLAND ASSOCIATIONS MAY BE DEVELOPED, REGRADED OR BUILT UPON. THIS STANDARD SHALL APPLY IN LIEU OF THE 50% LIMITATION IMPOSED BY SECTION 903.B.5.B. OF THE JMZO..
2. NO ZONING PERMIT SHALL BE REQUIRED AS A CONDITION OF REMOVAL OF LIVE TREES WITH A GIRTH GREATER THAN TEN (10) INCHES MEASURED FOUR (4) FEET ABOVE THE GROUND. SECTION 903.B.6.C. OF THE JMZO SHALL NOT APPLY.
3. SECTION 1000.E.3.B. IS MODIFIED TO PERMIT DECKS AND PATIOS IN A REAR YARD TO ENCROACH TO WITHIN 5' OF A REAR PROPERTY LINE.
4. THE MINIMUM PARKING STALL SIZE OF 10' X 20' SHALL NOT APPLY TO PARKING SPACES IN DRIVEWAYS. THE MINIMUM SIZE OF ON-STREET, PARALLEL PARKING SPACES SHALL BE 8' X 20'. THESE CRITERIA SHALL APPLY IN LIEU OF ANY INCONSISTENT REQUIREMENTS IN SECTION 1001 OF THE JMZO.
5. OPEN SPACE AREAS SHALL NOT BE REQUIRED TO MEET THE CRITERIA OF SECTION 1005 OF THE JMZO.
6. OPEN SPACE AREAS MAY INCLUDE STORMWATER MANAGEMENT AREAS INCLUDING BASINS.
7. NOTWITHSTANDING ANY CONTRARY PROVISION OF THE JMZO, LOTS 14, 15, 18, 19, 35 AND 36, WHICH HAVE FRONTAGE ON A SERVICE STREET (ALLEY), SHALL BE CONSIDERED TO BE IN COMPLIANCE WITH ALL DIMENSIONAL CRITERIA APPLICABLE TO LOTS, INCLUDING FRONTAGE ON A STREET.

## **Exhibit “E”**

B. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE (SALDO) WAIVERS:

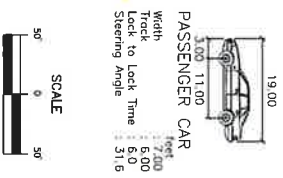
1. A WAIVER FROM SECTIONS 402.3.B,C&G & 403.3.B,C&G SO AS TO NOT REQUIRE THE LOCATION OF ALL EXISTING FEATURES, INCLUDING PROPERTY LINES WITHIN 400 FEET OF THE SITE AND THE PHYSICAL LOCATION OF ALL 15-INCH OR GREATER TREES ON THE SITE.
2. A WAIVER FROM SECTION 504.17.B TO ALLOW THE REDUCTION OF THE CARTWAY WIDTH FROM 34' TO 15' IN EACH DIRECTION OF A PRIMARY STREET AND FROM 30' TO 15' IN EACH DIRECTION FOR ONE-WAY TRAFFIC AND 28' FOR TWO-WAY TRAFFIC FOR A LOCAL STREET. PARALLEL ON-STREET PARKING IS PERMITTED WITHIN DESIGNATED SPACES ON ONE-WAY STREETS AND ON ONE-SIDE OF TWO WAY STREETS.
3. A WAIVER FROM SECTION 505.2A SO AS TO REDUCE THE MINIMUM CENTERLINE RADIUS FOR LOCAL STREETS FROM 150' TO 50';
4. A WAIVER FROM SECTION 505.5 TO NOT REQUIRE INTERSECTIONS TO FOLLOW A STRAIGHT COURSE FOR AT LEAST 100 FEET, AS MEASURED AWAY FROM THE INTERSECTING LINES OF RIGHTS-OF-WAY.
5. A WAIVER FROM SECTION 507.1 SO AS TO NOT REQUIRE THE INTERSECTIONS WITH THE ROUNDABOUT TO BE PERPENDICULAR.
6. A WAIVER FROM SECTIONS 507.7.A & 507.7.B TO PERMIT LESS THAN THE REQUIRED SIGHT DISTANCE.
7. A WAIVER FROM SECTION 508.2 TO PERMIT DRIVEWAYS WITHIN 40 FEET OF AN INTERSECTION.
8. A WAIVER FROM SECTION 509.1 SO AS TO PERMIT THE CONSTRUCTION OF A CUL-DE-SAC WITH AN OUTSIDE RADIUS OF LESS THAN A 50 FOOT RADIUS.
9. A WAIVER FROM SECTION 509.6 TO PERMIT A CENTRAL ISLAND AS SHOWN ON THESE PLANS.
10. A WAIVER FROM SECTION 510.1 TO PERMIT SERVICE STREETS (ALLEYS) HAVING THE DIMENSIONS SHOWN IN THE ALLEY CROSS SECTION.
11. A WAIVER FROM SECTION 510.3. TO PERMIT DEAD-END SERVICE STREETS WITHOUT TURNAROUND FACILITIES AT THE END, AS SHOWN ON THE PLAN.
12. A WAIVER FROM SECTION 517.4 TO ELIMINATE THE REQUIREMENT FOR A 7' GRASS STRIP ON LOCAL STREETS AND 15' ON THE PRIMARY STREETS.
13. A WAIVER FROM SECTION 529.2.B. TO PERMIT THE LAYOUT OF THE DEVELOPMENT TO DISTURB EXISTING TREES.
14. A WAIVER FROM SECTION 530.2.A TO PERMIT SPACING OF STREET TREES IN EXCESS OF 25 FEET.
15. A WAIVER FROM SECTION 530.3 TO PERMIT THE PLACEMENT OF STREET TREES WITHIN THE RIGHT-OF-WAY AND BETWEEN THE CURB AND SIDEWALK.
16. A WAIVER FROM SECTION 1203.2A TO ELIMINATE THE REQUIREMENT FOR A MINIMUM OF 3,000 SQUARE FEET PER DWELLING TO BE DEDICATED TO THE TOWNSHIP AS PARK AND RECREATION AREA.

## **Exhibit “F-1”**



## CONCEPTUAL LAYOUT PLAN

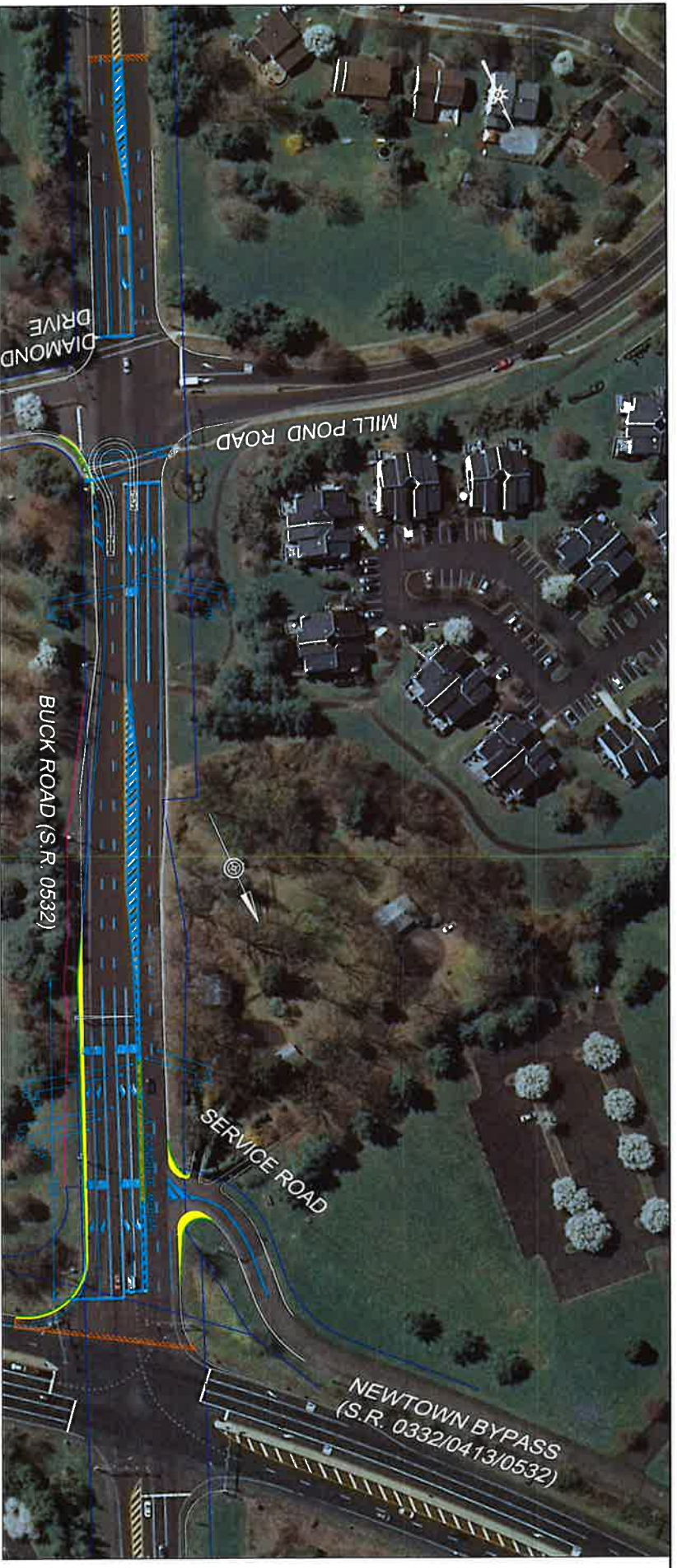
### DRAFT Left Out + U-turn Access



	<b>McMAHON</b> 525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447	525 E. GORRISON DR. FT. WASHINGTON, PA. 19034 TEL: (215) 263-9444 FAX: (215) 263-9447
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## **Exhibit “F-2”**





# LEGEND

- PROPOSED FULL-DEPTH PAVEMENT
- PROPOSED RAISED CONCRETE TRAFFIC ISLAND
- PROPOSED LIMITS OF MILL/OPENLAY
- LEGAL RIGHT-OF-WAY LINE (BASED ON PERMITS/LAND DEVELOPMENT PLANS)
- LEGAL RIGHT-OF-WAY LINE (BASED ON PROPOSED CURB)
- PROPOSED PAVEMENT MARKINGS

## NOTES

- THIS DRAWING IS FOR CONCEPTUAL PURPOSES ONLY. BASED ON AN AERIAL MAP AND PRELIMINARY FIELD MEASUREMENTS.
- THE CONCEPTUAL LAYOUT, INCLUDING HORIZONTAL CURVES, TAPERS AND LANE SHIFT TRANSITIONS, WERE DESIGNED BASED ON A DESIGN SPEED OF 45 MPH FOR BUCK ROAD (S.R. 0532).



1000 ROUTE 200  
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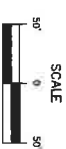
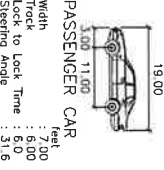
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## CONCEPTUAL LAYOUT PLAN

### DRAFT

## Buck Road U-turn Improvements



## **Exhibit “F-3”**



