

BOARD OF SUPERVISORS
WORKSHOP
AGENDA

March 10, 2020
4:00 p.m.

Location: Temporary Township Office
415 Eagleview Boulevard, Suite 116
Exton PA 19341

Packet Page #

- I. Call to Order
 - A. Salute to the Flag
 - B. Moment of Silence
 - C. Inquire if any Attendee plans to audio or video record the Workshop
- II. Resolution to Appoint Thomas A. Scheivert as Township Manager 2
- III. Resolution to Appoint Jill Bukata as Alternate Representative to the Chester County Tax Collection Committee 3
- IV. Traffic Signal Revisions 4
 - Discuss applications to PennDOT for traffic signal revisions at Pottstown Pike/Park Road/Station Boulevard and at Graphite Mine Road/Byers Road.
- V. Profound Technology – Escrow Agreement 16
 - Review proposed financial security, land development and Construction escrow agreements for potential approval At the March 16, 2020 Supervisors meeting
- VI. Acting Township Manager's Report 62
- VII. Open Session
- VIII. Adjournment
- IX. Executive Session: legal matter(s)



UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

2

RESOLUTION NO. _____

A RESOLUTION APPOINTING THOMAS A. SCHEIVERT AS TOWNSHIP MANAGER, PENSION PLAN ADMINISTRATOR FOR THE UPPER UWCHLAN TOWNSHIP UNIFORMED EMPLOYEES AND NON-UNIFORMED EMPLOYEES PENSION PLANS, TRUSTEE FOR THE DELAWARE VALLEY WORKERS COMPENSATION TRUST, DELAWARE VALLEY INSURANCE TRUST, AND DELAWARE VALLEY HEALTH TRUST AND REPRESENTATIVE FOR THE CHESTER COUNTY TAX COLLECTION COMMITTEE.

BE IT RESOLVED by the Board of Supervisors of Upper Uwchlan Township as follows:

1. Pursuant to Chapter 22 of the Upper Uwchlan Township Code, Thomas A. Scheivert shall be appointed as the Township Manager and shall perform all of the duties outlined in Chapter 22 of the Code. Mr. Scheivert shall not be required to reside within the Township. Mr. Scheivert shall be paid an annual salary of \$150,000.
2. Pursuant to Second Class Township Code Section 1301(b), the Township Manager shall give bond to the Township in the amount directed by the Board of Supervisors, \$100,000.
3. Effective as of March 10, 2020, Mr. Scheivert shall be appointed as Chief Administrative Officer for the Upper Uwchlan Township Uniformed Employees Defined Benefit Plan, the Upper Uwchlan Township Non-Uniformed Employees Defined Benefit Plan and the Upper Uwchlan Township Non-Uniformed Employees Defined Contribution Plan and shall be responsible for performing all duties as administrator as set forth in the respective pension plans.
4. Effective as of March 10, 2020, Mr. Scheivert shall be appointed as Trustee Representative for the Delaware Valley Worker's Compensation Trust, Delaware Valley Insurance Trust and Delaware Valley Health Trust.
5. Effective as of March 10, 2020, Mr. Scheivert shall be appointed as the Township's representative for the Chester County Tax Collection Committee.

RESOLVED this 10th day of March, 2020.

ATTEST:

UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS

Gwen A. Jonik, Township Secretary

Sandra M. D'Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jennifer F. Baxter, Member



UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

RESOLUTION NO. _____

A RESOLUTION APPOINTING JILL BUKATA AS THE UPPER UWCHLAN TOWNSHIP
ALTERNATE REPRESENTATIVE FOR THE CHESTER COUNTY TAX COLLECTION
COMMITTEE.

BE IT RESOLVED by the Board of Supervisors of Upper Uwchlan Township that
effective March 10, 2020, Jill Bukata shall be appointed as the Township's Alternate
Representative for the Chester County Tax Collection Committee.

RESOLVED this 10th day of March, 2020.

ATTEST:

**UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS**

Gwen A. Jonik, Township Secretary

Sandra M. D'Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jennifer F. Baxter, Member



TRAFFIC PLANNING AND DESIGN, INC.

WWW.TRAFFICPD.COM

August 7, 2019

Cary B. Vargo, Township Manager
Upper Uwchlan Township
415 Eagleview Boulevard, Suite 116
Exton, PA 19341

RE: Application for Traffic Signal Approval- Pottstown Pike (SR 0100) and Park Road/Station Boulevard

Byers Station
Upper Uwchlan Township, Chester County, PA
TPD No. BPGI.00018

Dear Mr. Vargo:

On behalf of LandTrust Properties Inc., Traffic Planning and Design, Inc. (TPD) requests that Upper Uwchlan Township complete and execute the attached Application for Traffic Signal Approval (PennDOT Form TE-160) and associated Resolution as required by PennDOT for the above-referenced project. For your convenience, we have completed Sections A, B and D of the Applications. Please verify/complete the information in Sections A and C, and complete/sign Section E along with the Resolution.

Changes to the traffic signal at Pottstown Pike (SR 0100) and Park Road/Station Boulevard include adding a right turn lane to the northbound departure of Pottstown Pike (SR 0100) and connecting the proposed paved trail from the site to the existing curb ramps on the northeast corner.

Once completed, please return the signed TE-160 form and resolution to us. If you have any questions, please don't hesitate to contact us.

Sincerely,
TRAFFIC PLANNING AND DESIGN, INC.

Wayne Droesser, P.E.
Senior Project Manager
wdroesser@TrafficPD.com

cc: Christopher Williams, P.E. – McMahon Associates, Inc.
TPD File

Application for Traffic Signal Approval

Please Type or Print all information in Blue or Black Ink

Sheet 1 of 5
DEPARTMENT USE ONLY

County : _____
 Engineering District : _____
 Department Tracking # : _____
 Initial Submission Date : _____

5

A - Applicant's (Municipal) Contact Information

Municipal Contact's Name : Tony Scheivert Title : Township Manager
 Municipal Name : Upper Uwchlan Township
 Municipal Address : 415 Eagleview Boulevard,
 Municipal Phone Number : 610-458-9400 Alternative Phone Number : 610-646-7008
 E-mail Address : tscheivert@upperuwchlan-pa.gov
 Municipal Hours of Operation : Monday-Friday 8:00-5:00

B - Application Description

Location (*intersection*) : Pottstown Pike (SR 0100) and Park Road/Station Boulevard

Traffic Control Device is : ☐ NEW Traffic Signal ☒ EXISTING Traffic Signal (Permit Number) : 62-2680

Type of Device (*select one*) ☒ Traffic Control Signal (MUTCD Section 4D, 4E, 4G) ☐ Flashing Beacon (MUTCD Section 4L) ☐ School Warning System (MUTCD Section 7B)
☐ Other : _____

Is Traffic Signal part of a system? : ☒ YES ☐ NO System Number (*if applicable*) : I-0014

If YES, provide locations of all signalized intersections in system.

Pottstown Pike (SR 0100) from Eagleview Boulevard to Fellowship Road; Graphite Mine Road from Station Boulevard to Pottstown Pike (SR 0100); Little Conestoga Road (SR 4016) and Park Road.

Explain the proposed improvements :

Add right turn lane to northbound departure of Pottstown Pike (SR 0100) and connect proposed paved trail from site to existing curb ramps on northeast corner.



Associated with Highway Occupancy Permit (HOP)? : ☒ YES ☐ NO If YES, HOP Application # : _____

C - Maintenance and Operation Information

Maintenance and Operations are typically performed by? :

- ☐ Municipal Personnel ☐ Municipal Contractor ☐ Municipal Personnel & Contractor
☐ Other : _____

Maintenance and Operations Contact Name : _____ Company/Organization : _____

Phone # : _____ Alternative Phone # : _____ E-mail : _____

D - Attachments Listing

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Municipal Resolution (<i>required</i>) | <input type="checkbox"/> Location Map | <input type="checkbox"/> Traffic Volumes / Pedestrian Volumes |
| <input type="checkbox"/> Letter of Financial Commitment | <input type="checkbox"/> Photographs | <input type="checkbox"/> Turn Lane Analysis |
| <input type="checkbox"/> Traffic Signal Permit | <input type="checkbox"/> Straight Line Diagram | <input type="checkbox"/> Turn Restriction Studies |
| <input type="checkbox"/> Warrant Analysis | <input type="checkbox"/> Capacity Analysis | <input type="checkbox"/> Other : _____ |
| <input type="checkbox"/> Crash Analysis | <input type="checkbox"/> Traffic Impact Study (TIS) | |
| <input type="checkbox"/> Traffic Signal Study | <input type="checkbox"/> Condition Diagram | |

Application for Traffic Signal Approval

Please Type or Print all information in Blue or Black Ink



County : _____

Engineering District : _____

Department Tracking # : _____

Initial Submission Date : _____

E - Applicant (Municipal) Certification

The applicant desires to own, operate, and maintain the traffic control device in the location indicated above; and the Vehicle Code requires the approval of the Department of Transportation ("Department") before any traffic signals may be legally erected or modified. A signed Application for Traffic Signal Approval (TE-160) must be submitted in conformance with the instructions provided by the Department, and a Traffic Signal Permit must be issued, before any work can begin.

If the Department approves a traffic signal after a traffic engineering study and engineering judgment indicates the need, the traffic signal shall be installed, owned, operated, and maintained within the parameters indicated in the Vehicle Code and the Department's regulations relating to traffic signs, signals, and markings. The Department may direct appropriate alterations to the design or operation (including, but not limited to, hours of operation) of the traffic signal, or require removal of the traffic signal, if traffic conditions or other considerations necessitate alteration or removal.

All items associated with the traffic control device (geometric features, signs, signals, pavement markings, pedestrian accommodations, and other traffic control device associated items) are the applicant's responsibility. The Traffic Signal Permit will then document all of the items associated with operation of each traffic control device. The applicant, at its sole expense, shall provide the necessary inspection, maintenance, and operation activities in conformance with the Department's Publication 191 or as otherwise agreed to by the Department. The applicant shall perform the preventative and responsive maintenance requirements and recordkeeping in accordance with the exhibits specified below. If the applicant fails to provide the required inspection, maintenance, or operation services within thirty (30) days of receipt of written notice from the Department, the Department shall have the right to perform the required inspection, maintenance, or operation services in the applicant's stead and the applicant shall reimburse the Department for all costs incurred. Federal- and/or state-aid participation may be withheld on all future projects if the applicant fails to demonstrate to the Department the ability to provide all required maintenance and operation services. The applicant certifies that it has funds available and committed for the operation and maintenance of the traffic control device and that it will make available sufficient funds for all required future inspection, maintenance, and operation activities.

The applicant shall indemnify, save harmless and, defend (if requested) the Commonwealth of Pennsylvania, its agents, representatives, and employees from and against any damages recoverable under the Sovereign Immunity Act, 42 Pa. C.S. §§ 8521-8528, up to the limitations on damages under said law, arising out of any personal injury or damage to property which is finally determined by a court to be caused by or result from acts or omissions of the applicant and for which a court has held applicant, its officials, or employees to be liable. This provision shall not be construed to limit the applicant in asserting any rights or defenses. Additionally, the applicant shall include in any contracts into which it enters for maintenance, operation, or inspection of the traffic control device this same obligation to indemnify the Commonwealth and its officers, agents, and employees; and it shall require its contractor(s) to provide public liability insurance coverage, naming the Commonwealth and the applicant as additional insureds for bodily injury, including death and property damage, in the minimum amounts of \$500,000 per person, \$1,000,000 per occurrence, it being the intention of parties to have the contractor fully insure and indemnify the Commonwealth and the applicant.

The applicant shall comply with the study and ordinance requirements of 75 Pa. C.S. § 6109. The applicant submits this application with the intention of being legally bound.

Neither this application nor any Traffic Signal Permit creates any rights or obligations with respect to parties other than the applicant and the Department. Third parties may not rely upon any representations made by either the applicant or the Department in connection with the submission or approval of this application or any work permitted or approved that is related to this application, as regards either payment of funds or performance of any particular item of maintenance precisely as specified.

The applicant agrees to comply with the attached Exhibits:

- Exhibit "A": Preventative and Response Maintenance Requirements (Sheet 3 of 5)
- Exhibit "B": Recordkeeping (Sheet 4 of 5)
- Exhibit "C": Signal Maintenance Organization (Sheet 5 of 5)

Printed Municipal Contact Name : Tony Scheivert

Date : _____

Signed By : _____

Witness or Attest : _____

Title of Signatory : Township Manager

Title of Witness or Attester: _____

Exhibit "A":**Preventative and Response Maintenance Requirements**
 Sheet 3 of 5
DEPARTMENT USE ONLY

 County : _____
 Engineering District : _____
 Department Tracking # : _____
 Initial Submission Date : _____
Preventive Maintenance

The APPLICANT or its contractor will provide preventive maintenance for each individual component of the traffic signal installation covered by this application at intervals not less than those indicated in the Preventive Maintenance Summary, PA DOT Publication 191, current version. This is the recommended level of maintenance to keep the intersection control equipment and signals in mechanically, structurally and aesthetically good condition.

Response Maintenance

The APPLICANT or its contractor will provide response maintenance in accordance with the provisions of the Response Maintenance Schedule. It encompasses the work necessary to restore a traffic signal system to proper and safe operation. Includes Emergency Repair and Final Repair.

FINAL REPAIR:

Repair or replace failed equipment to restore system to proper and safe operation in accordance with permit within a 24-hour period.

EMERGENCY REPAIR:

Use alternative means or mode to temporarily restore system to safe operation within a 24-hour period. Final repair must then be completed within 30 days unless prohibited by weather conditions or availability of equipment.

Response Maintenance Schedule**KNOCKDOWNS**

Support - Mast arm
 Support - Strain pole
 Span wire/tether wire
 Pedestal
 Cabinet
 Signal heads

TYPE OF REPAIR PERMITTED

Emergency or Final
 Emergency or Final
 Final Only
 Emergency or Final
 Emergency or Final
 Final Only

EQUIPMENT FAILURE

Lamp burnout (veh. & ped.)
 Local controller
 Master controller
 Detector sensor
 - Loop
 - Magnetometer
 - Sonic
 - Magnetic
 - Pushbutton
 Detector amplifier
 Conflict monitor
 Flasher
 Time clock
 Load switch/relay
 Coordination unit
 Communication interface, mode
 Signal cable
 Traffic Signal Communications
 Traffic Signal Systems

Final Only
 Emergency or Final
 Emergency or Final
 Emergency or Final
 Emergency or Final
 Emergency or Final
 Emergency or Final
 Final Only
 Final Only
 Emergency or Final
 Final Only
 Emergency or Final
 Emergency or Final
 Final Only
 Final Only
 Final Only

Exhibit "B":
Recordkeeping

County : _____

Engineering District : _____

Department Tracking # : _____

Initial Submission Date : _____

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Recordkeeping

Accurate and up-to-date recordkeeping is an essential component of a good traffic signal maintenance program. In recognition of this fact, the APPLICANT must prepare, retain, and make available to the COMMONWEALTH, on request, a record of all preventive and response maintenance activities performed on the traffic signal equipment covered by this application.

The APPLICANT shall establish a separate file for each installation and keep its records in the municipal building, signal maintenance shop, or other weather-protected enclosure.

At a minimum, the following records will be kept by the APPLICANT or its contractor for each traffic signal. These forms can be found in Section 10.0, Maintenance Record Forms, PA DOT Publication 191, current version.

FORM 1 - Master Intersection Record

This form, which lists all maintenance functions performed at the intersection, should be updated within one day of the activity but no more than one week later.

FORM 2 - Response Maintenance Record

Each time response maintenance is required at the intersection, this form is to be completed. Once the pertinent information is transferred to the master intersection record, this form is to be placed in the intersection file.

FORM 3 - Preventive Maintenance Record

This form will be used to provide a record of the preventive maintenance activities performed at each intersection. The date, the activities performed, and the signature of the person in charge of the work must be recorded in the form.

This form may be kept at the intersection, if it is adequately protected from the weather. Form 1 must be updated at the central file, however, to reflect the date and activity.

**Exhibit "C":
Signal Maintenance Organization**

County : _____

Engineering District : _____

Department Tracking # : _____

Initial Submission Date : _____

Personnel Classifications

In order to properly maintain the traffic signal equipment covered by this applicant, the APPLICANT agrees to provide, as minimum, the following staff throughout the useful life of equipment. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191.

Traffic Engineer - The administrative position which has prime responsibility for the proper operation of traffic signal equipment. The principal function of this position is the supervision and control of subordinate personnel and the planning of their activities to ensure adequate preventive and response maintenance programs.

Minimum Position Requirements

1. A thorough understanding of traffic signal design, installation and maintenance.
2. A working knowledge of the interaction between the following traffic characteristics: Intersection geometry, traffic flow theory, control type (fixed time, actuated, etc.), signal phasing and timing, and interconnection.
3. An ability to supervise subordinate personnel effectively in the assignment of their work.
4. Possession of a college degree in engineering, which includes course work in traffic engineering.
5. Either four years experience in the field of traffic engineering or its equivalent in graduate college work.

Signal Specialist - The individual responsible for the diagnostics and repair of all traffic signal equipment including solid state equipment.

Minimum Position Requirements

1. Extensive training and troubleshooting skills in electronics and software.
2. Ability to repair modules in the shop and to design test equipment needed to diagnose and repair a problem.
3. Ability to make design and modifications to implement or omit special functions.
4. Ability to implement a recordkeeping system to include maintenance activities, inventory control and identification of recurring problems.
5. Ability to perform all tasks required of a signal technician.

Signal Technician - Individual responsible for the operation and maintenance of traffic signals and electromechanical equipment.

Minimum Position Requirements

1. Ability to perform response maintenance on solid state equipment up to the device exchange level.
2. Capability to diagnose a vehicle loop failure and initiate corrective action.
3. Ability to tune detector amplifiers.
4. Ability to follow wiring schematics, check and set timings from plan sheet and check all field connections.
5. Ability to perform preventive maintenance on all equipment and to maintain accurate records of all work perform.

Training

The APPLICANT agrees to secure training in order to upgrade the ability of its present staff to properly perform the required maintenance functions. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191.

Budget Requirements

The APPLICANT agrees to provide, in its annual operating budget, dedicated funds which are sufficient to cover the cost of the personnel, training, contractors (if utilized) and specialized maintenance equipment which are required, by virtue of this application. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191..



TRAFFIC PLANNING AND DESIGN, INC.

WWW.TRAFFICPD.COM

March 3, 2020

Shanna Lodge, Township Manager
Upper Uwchlan Township
415 Eagleview Boulevard - Suite 116
Exton, PA 19341

RE: Application for Traffic Signal Approval- Graphite Mine Road (SR 1055) and Byers Road (SR 1022)

Byers Senior Living Facility
Upper Uwchlan Township, Chester County, PA
TPD No. VPRL.00001

Dear Ms. Lodge:

PennDOT has indicated its approval of the above-referenced traffic signal permit plan, and thus requests that the enclosed mylar for this plan be signed by an authorized representative of the Township.

Changes to the traffic signal plan are listed below:

Graphite Mine Road (SR 1055) and Byers Road (SR 1022)

1. Replace all vehicular signal heads.
2. Replace pedestrian push buttons with APS push buttons.
3. Replace pedestrian signal heads with countdown signal heads.
4. Add new driveway and sign M to westbound approach.
5. Add leading pedestrian interval.

When the mylar has been signed, please contact us and we will arrange to pick it up and forward to PennDOT for approval. If you have any questions, please don't hesitate to contact us.

Sincerely,

TRAFFIC PLANNING AND DESIGN, INC.

Wayne Droesser, P.E.
Senior Project Manager
wdroesser@TrafficPD.com

cc: Christopher Williams, P.E. - McMahon Associates, Inc.
TPD File

RECEIVED
MAR - 4 2020
UPPER UWCHLAN TWP.

**Application for
Traffic Signal Approval**

Please Type or Print all information in Blue or Black Ink



County : _____
 Engineering District : _____
 Department Tracking # : _____
 Initial Submission Date : _____

11

A - Applicant's (Municipal) Contact Information

Municipal Contact's Name : Tony Scheivert Title : Township Manager
 Municipal Name : Upper Uwchlan Township
 Municipal Address : 415 Eagleview Boulevard,
 Municipal Phone Number : 610-458-9400 Alternative Phone Number : 610-646-7008
 E-mail Address : tscheivert@upperuwchlan-pa.gov
 Municipal Hours of Operation : Monday-Friday 8:00-5:00

B - Application DescriptionLocation (*intersection*) : Graphite Mine Road (SR 1055) & Byers Road (SR 1022)Traffic Control Device is : ☐ NEW Traffic Signal ☒ EXISTING Traffic Signal (Permit Number) : 62-3608

Type of Device (*select one*) ☒ Traffic Control Signal (MUTCD Section 4D, 4E, 4G) ☐ Flashing Beacon (MUTCD Section 4L) ☐ School Warning System (MUTCD Section 7B)
☐ Other : _____

Is Traffic Signal part of a system? : ☒ YES ☐ NO System Number (*if applicable*) : I-0014

If YES, provide locations of all signalized intersections in system.

Pottstown Pike (SR 0100) from Eagleview Boulevard to Fellowship Road, Graphite Mine Road (SR 1055) from Pottstown Pike (SR 0100) to Station Boulevard, and Park Road from Pottstown Pike (SR 0100) to Little Conestoga Road (SR 4016).

Explain the proposed improvements :

Replace pedestrian push buttons with APS push buttons, replace pedestrian signal heads with countdown signal heads and add new driveway to westbound approach.

Associated with Highway Occupancy Permit (HOP)? : ☒ YES ☐ NO If YES, HOP Application # : 158480**C - Maintenance and Operation Information****Maintenance and Operations are typically performed by? :**

☐ Municipal Personnel ☒ Municipal Contractor ☐ Municipal Personnel & Contractor
☐ Other : _____

Maintenance and Operations Contact Name : Stephanie Higgins McGough Company/Organization : Charles A. Higgins & Sons

Phone # : 610-566-3700 Alternative Phone # : _____ E-mail : higginselec25@verizon.net

D - Attachments Listing

☒ Municipal Resolution (*required*) ☐ Location Map ☐ Traffic Volumes / Pedestrian Volumes
☐ Letter of Financial Commitment ☐ Photographs ☐ Turn Lane Analysis
☐ Traffic Signal Permit ☐ Straight Line Diagram ☐ Turn Restriction Studies
☐ Warrant Analysis ☐ Capacity Analysis ☐ Other : _____
☐ Crash Analysis ☐ Traffic Impact Study (TIS)
☐ Traffic Signal Study ☐ Condition Diagram

Application for Traffic Signal Approval

Please Type or Print all information in Blue or Black Ink


 Sheet 2 of 5
DEPARTMENT USE ONLY

 County : _____
 Engineering District : _____
 Department Tracking # : _____
 Initial Submission Date : _____

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E - Applicant (Municipal) Certification

The applicant desires to own, operate, and maintain the traffic control device in the location indicated above; and the Vehicle Code requires the approval of the Department of Transportation ("Department") before any traffic signals may be legally erected or modified. A signed Application for Traffic Signal Approval (TE-160) must be submitted in conformance with the instructions provided by the Department, and a Traffic Signal Permit must be issued, before any work can begin.

If the Department approves a traffic signal after a traffic engineering study and engineering judgment indicates the need, the traffic signal shall be installed, owned, operated, and maintained within the parameters indicated in the Vehicle Code and the Department's regulations relating to traffic signs, signals, and markings. The Department may direct appropriate alterations to the design or operation (including, but not limited to, hours of operation) of the traffic signal, or require removal of the traffic signal, if traffic conditions or other considerations necessitate alteration or removal.

All items associated with the traffic control device (geometric features, signs, signals, pavement markings, pedestrian accommodations, and other traffic control device associated items) are the applicant's responsibility. The Traffic Signal Permit will then document all of the items associated with operation of each traffic control device. The applicant, at its sole expense, shall provide the necessary inspection, maintenance, and operation activities in conformance with the Department's Publication 191 or as otherwise agreed to by the Department. The applicant shall perform the preventative and responsive maintenance requirements and recordkeeping in accordance with the exhibits specified below. If the applicant fails to provide the required inspection, maintenance, or operation services within thirty (30) days of receipt of written notice from the Department, the Department shall have the right to perform the required inspection, maintenance, or operation services in the applicant's stead and the applicant shall reimburse the Department for all costs incurred. Federal- and/or state-aid participation may be withheld on all future projects if the applicant fails to demonstrate to the Department the ability to provide all required maintenance and operation services. The applicant certifies that it has funds available and committed for the operation and maintenance of the traffic control device and that it will make available sufficient funds for all required future inspection, maintenance, and operation activities.

The applicant shall indemnify, save harmless and, defend (if requested) the Commonwealth of Pennsylvania, its agents, representatives, and employees from and against any damages recoverable under the Sovereign Immunity Act, 42 Pa. C.S. §§ 8521-8528, up to the limitations on damages under said law, arising out of any personal injury or damage to property which is finally determined by a court to be caused by or result from acts or omissions of the applicant and for which a court has held applicant, its officials, or employees to be liable. This provision shall not be construed to limit the applicant in asserting any rights or defenses. Additionally, the applicant shall include in any contracts into which it enters for maintenance, operation, or inspection of the traffic control device this same obligation to indemnify the Commonwealth and its officers, agents, and employees; and it shall require its contractor(s) to provide public liability insurance coverage, naming the Commonwealth and the applicant as additional insureds for bodily injury, including death and property damage, in the minimum amounts of \$500,000 per person, \$1,000,000 per occurrence, it being the intention of parties to have the contractor fully insure and indemnify the Commonwealth and the applicant.

The applicant shall comply with the study and ordinance requirements of 75 Pa. C.S. § 6109. The applicant submits this application with the intention of being legally bound.

Neither this application nor any Traffic Signal Permit creates any rights or obligations with respect to parties other than the applicant and the Department. Third parties may not rely upon any representations made by either the applicant or the Department in connection with the submission or approval of this application or any work permitted or approved that is related to this application, as regards either payment of funds or performance of any particular item of maintenance precisely as specified.

The applicant agrees to comply with the attached Exhibits:

- Exhibit "A": Preventative and Response Maintenance Requirements (Sheet 3 of 5)
- Exhibit "B": Recordkeeping (Sheet 4 of 5)
- Exhibit "C": Signal Maintenance Organization (Sheet 5 of 5)

Printed Municipal Contact Name : Tony Scheivert

Date : _____

Signed By : _____

Witness or Attest : _____

Title of Signatory : Township Manager

Title of Witness or Attester: _____

Exhibit "A":

Preventative and Response Maintenance Requirements



pennsylvania
DEPARTMENT OF TRANSPORTATION

DEPARTMENT USE ONLY

County : _____

Engineering District : _____

Department Tracking # : _____

Initial Submission Date : _____

3

Preventive Maintenance

The APPLICANT or its contractor will provide preventive maintenance for each individual component of the traffic signal installation covered by this application at intervals not less than those indicated in the Preventive Maintenance Summary, PA DOT Publication 191, current version. This is the recommended level of maintenance to keep the intersection control equipment and signals in mechanically, structurally and aesthetically good condition.

Response Maintenance

The APPLICANT or its contractor will provide response maintenance in accordance with the provisions of the Response Maintenance Schedule. It encompasses the work necessary to restore a traffic signal system to proper and safe operation. Includes Emergency Repair and Final Repair.

FINAL REPAIR:

Repair or replace failed equipment to restore system to proper and safe operation in accordance with permit within a 24-hour period.

EMERGENCY REPAIR:

Use alternative means or mode to temporarily restore system to safe operation within a 24-hour period. Final repair must then be completed within 30 days unless prohibited by weather conditions or availability of equipment.

Response Maintenance Schedule

KNOCKDOWNS

Support - Mast arm
Support - Strain pole
Span wire/tether wire
Pedestal
Cabinet
Signal heads

TYPE OF REPAIR PERMITTED

Emergency or Final
Emergency or Final
Final Only
Emergency or Final
Emergency or Final
Final Only

EQUIPMENT FAILURE

Lamp burnout (veh. & ped.)
Local controller
Master controller
Detector sensor
 - Loop
 - Magnetometer
 - Sonic
 - Magnetic
 - Pushbutton
Detector amplifier
Conflict monitor
Flasher
Time clock
Load switch/relay
Coordination unit
Communication interface, mode
Signal cable
Traffic Signal Communications
Traffic Signal Systems

Final Only
Emergency or Final
Emergency or Final
Emergency or Final
Emergency or Final
Emergency or Final
Emergency or Final
Emergency or Final
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Final Only
Final Only
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Final Only
Final Only
Final Only

Exhibit "B":
Recordkeeping



DEPARTMENT USE ONLY

County : _____
Engineering District : _____
Department Tracking # : _____
Initial Submission Date : _____

14

Recordkeeping

Accurate and up-to-date recordkeeping is an essential component of a good traffic signal maintenance program. In recognition of this fact, the APPLICANT must prepare, retain, and make available to the COMMONWEALTH, on request, a record of all preventive and response maintenance activities performed on the traffic signal equipment covered by this application.

The APPLICANT shall establish a separate file for each installation and keep its records in the municipal building, signal maintenance shop, or other weather-protected enclosure.

At a minimum, the following records will be kept by the APPLICANT or its contractor for each traffic signal. These forms can be found in Section 10.0, Maintenance Record Forms, PA DOT Publication 191, current version.

FORM 1 - Master Intersection Record

This form, which lists all maintenance functions performed at the intersection, should be updated within one day of the activity but no more than one week later.

FORM 2 - Response Maintenance Record

Each time response maintenance is required at the intersection, this form is to be completed. Once the pertinent information is transferred to the master intersection record, this form is to be placed in the intersection file.

FORM 3 - Preventive Maintenance Record

This form will be used to provide a record of the preventive maintenance activities performed at each intersection. The date, the activities performed, and the signature of the person in charge of the work must be recorded in the form.

This form may be kept at the intersection, if it is adequately protected from the weather. Form 1 must be updated at the central file, however, to reflect the date and activity.

Exhibit "C": Signal Maintenance Organization



County : _____
 Engineering District : _____
 Department Tracking # : _____
 Initial Submission Date : _____

15

Personnel Classifications

In order to properly maintain the traffic signal equipment covered by this applicant, the APPLICANT agrees to provide, as minimum, the following staff throughout the useful life of equipment. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191.

Traffic Engineer - The administrative position which has prime responsibility for the proper operation of traffic signal equipment. The principal function of this position is the supervision and control of subordinate personnel and the planning of their activities to ensure adequate preventive and response maintenance programs.

Minimum Position Requirements

1. A thorough understanding of traffic signal design, installation and maintenance.
2. A working knowledge of the interaction between the following traffic characteristics: Intersection geometry, traffic flow theory, control type (fixed time, actuated, etc.), signal phasing and timing, and interconnection.
3. An ability to supervise subordinate personnel effectively in the assignment of their work.
4. Possession of a college degree in engineering, which includes course work in traffic engineering.
5. Either four years experience in the field of traffic engineering or its equivalent in graduate college work.

Signal Specialist - The individual responsible for the diagnostics and repair of all traffic signal equipment including solid state equipment.

Minimum Position Requirements

1. Extensive training and troubleshooting skills in electronics and software.
2. Ability to repair modules in the shop and to design test equipment needed to diagnose and repair a problem.
3. Ability to make design and modifications to implement or omit special functions.
4. Ability to implement a recordkeeping system to include maintenance activities, inventory control and identification of recurring problems.
5. Ability to perform all tasks required of a signal technician.

Signal Technician - Individual responsible for the operation and maintenance of traffic signals and electromechanical equipment.

Minimum Position Requirements

1. Ability to perform response maintenance on solid state equipment up to the device exchange level.
2. Capability to diagnose a vehicle loop failure and initiate corrective action.
3. Ability to tune detector amplifiers.
4. Ability to follow wiring schematics, check and set timings from plan sheet and check all field connections.
5. Ability to perform preventive maintenance on all equipment and to maintain accurate records of all work perform.

Training

The APPLICANT agrees to secure training in order to upgrade the ability of its present staff to properly perform the required maintenance functions. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191.

Budget Requirements

The APPLICANT agrees to provide, in its annual operating budget, dedicated funds which are sufficient to cover the cost of the personnel, training, contractors (if utilized) and specialized maintenance equipment which are required, by virtue of this application. The APPLICANT agrees to abide by all guidance provided in PA DOT Publication 191..

LAND DEVELOPMENT AGREEMENT

PROFOUND TECHNOLOGIES - 125 LITTLE CONESTOGA ROAD

THIS LAND DEVELOPMENT AGREEMENT (together with all modifications and amendments, the "Agreement") made this _____ day of _____, 20____, by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the "Township") and **RIP HOLDINGS, LLC**, a Pennsylvania limited liability company with an address of 125 Little Conestoga Road, Chester Springs, Pennsylvania 19425 ("Developer").

BACKGROUND:

- A. Developer proposes to develop a 1.184 acre piece of property, known as Chester County Tax Parcel No. 32-4-38.3 situate at 125 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed subdivision and/or land development known as "125 Little Conestoga Road" ("Development").
- B. The Upper Uwchlan Township Board of Supervisors (the "Board") granted final land development approval of the Development on November 18, 2019. Developer received final approval of the land development plans for the Development, subject to, among other things entering into a Financial Security Agreement and this Agreement, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.
- C. The parties desire to set forth their agreement and understanding with respect to the foregoing and such other matters as hereinbelow set forth.

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

1. Definitions; Interpretation.

- A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:
 - (1) "Tract" shall mean all that certain 1.184 acre tract located at 125 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, Chester and which is more fully and further shown and described on the Plans.

- (2) "Plans" shall mean the land development plan entitled "Preliminary/Final Land Development Plan of 125 Little Conestoga Road" prepared by D.L. Howell & Associates, Inc., dated November 9, 2018, last revised _____, 2020, consisting of fourteen (14) sheets that are specifically numbered, entitled, dated, and last revised as set forth on Exhibit "A" attached hereto and made fully part hereof, including, without limitation, all notes, statements and other information appearing on the plans, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the plans.
- (3) "Subject Land Development" or "Project" shall mean the proposed land development of the Tract as an addition to the existing commercial building, together with such other Improvements, as hereinafter defined, proposed or required in, on and/or related to the Subject Land Development, as the same are more fully depicted on the Plans.
- (4) "Improvements" shall mean all those walkways, curbs, gutters, street lights, fire hydrants, shade trees, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings, and/or other improvements or common amenities, as the same are more fully shown, identified or otherwise described on and by the Plans.
- (5) "Secured Improvements" shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates, as set forth on Exhibit "B".
- (6) "Completion Date" shall mean the date specified in Section 2.D of this Agreement on or before which the Improvements shall be completed.
- (7) "Financial Security" shall mean the financial security provided under and in accordance with the provisions of Section 3 of this Agreement and the provisions of the Financial Security Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.
- (8) "Financial Institution" shall mean the bonding company or lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial

Security to the Township. The Financial Institution must be a bonding company or Federal or Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth of Pennsylvania.

- (9) "Financial Security Agreement" shall mean that certain Financial Security Agreement, of even date herewith, by and between the Township and Developer, which agreement is fully incorporated into and made part of this Agreement.
 - (10) "Subdivision and Land Development Ordinance" shall mean the Upper Uwchlan Township Subdivision and Land Development Ordinance, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Land Development shall be subject to the provisions of Section 508(4) of the MPC.
 - (11) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.
 - (12) "Township Engineer" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.
- B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance or the MPC, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance or the MPC.

2. **Construction and Completion of Improvements.**

- A. Developer, at its sole expense, shall layout, construct, install, and/or otherwise complete the Secured Improvements in a good and workmanlike manner, in full and strict accordance with and pursuant to the following: (i) the Subdivision and Land Development Ordinance; (ii) the Plans; (iii) the provisions of this Agreement; (iv) all applicable requirements of electric, telephone, and other utility companies having jurisdiction; and (v) all other applicable laws, statutes, ordinances, resolutions, rules, and regulations of the Township and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction. In the event of any inconsistency or conflict between or among the provisions of any of

the foregoing, those provisions contained in the Plans shall prevail and control.

- B. No Improvements referred to herein, in connection with this Project shall be commenced until:
 - (1) The Plans are recorded according to law;
 - (2) This Agreement is duly signed and delivered;
 - (3) Financial security as defined in Section 509 of the MPC and in this Agreement is delivered to the Township and Developer and the Financial Institution have executed the Financial Security Agreement; and
 - (4) All fees (i) required by any Ordinance, Resolution or regulation of the Township and (ii) legal and engineering expenses, incurred by the Township for the completion of its approval of the Plans, preparation of the Agreements, Resolutions and other papers relating to the acceptance of this Agreement by the Township are paid.
- C. Upon compliance with the requirements of subsection B, above, Developer may obtain permits for the building addition which constitutes the Project.
- D. The Secured Improvements shall be completed on or before the date occurring one (1) year from the date of this Agreement. Upon written request of Developer and approval of the Township the Completion Date may be extended from time to time, provided that (i) Developer's written request is received by the Board of Supervisors not less than twenty (20) days prior to the then-current completion date, and (ii) the Financial Security is also extended so that it continues valid and effective for all purposes thereof to a date occurring at least sixty (60) days after the extended completion date. Such times shall be of the essence.
- E. Developer shall be solely responsible, at its sole cost and expense, for the repair and maintenance of all Secured Improvements during and after construction thereof. For purposes of this subsection, "repair and maintenance of all Secured Improvements" shall mean, without limitation, keeping the Secured Improvements at all times in such condition that the structural integrity and functioning of the same shall be maintained in accordance with the design and specifications thereof as shown on the Plans.
- F. In the event that Developer is in default of any of its repair and maintenance obligations under Subsection E, the Township, shall have the

right, but not the obligation, and provided the Developer is first given written notice by the Township specifying the failure of repair or maintenance and opportunity to cure said default pursuant to Section 5.A(8) of the Financial Security Agreement, (which right shall be in addition to such other or further rights and remedies as may be available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity) to:

- (1) Enter upon the Tract and satisfy any of such defaulted repair and maintenance obligation of Developer (provided that any such entry and/or satisfaction shall not be deemed, in any manner or to any extent whatsoever, as an acceptance by the Township of the dedication, transfer or other assignment of the Improvements subject of the default, and/or as imposing any responsibility upon the Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and
- (2) In order to pay for the costs, expenses and/or fees incurred by the Township related to the satisfaction of such defaulted obligations, (i) obtain payment to the Township, or its order, of all or any part of the Financial Security for such costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such costs, expenses and/or fees, together with attorney fees and costs incurred by the Township for and otherwise related to any such legal and/or equitable action or proceeding.

- G. It shall be the obligation of Developer to arrange in advance with the Township for inspection of the work as the work progresses and the cost of such inspection shall be paid by Developer.
- H. Developer agrees that it will obtain use and occupancy permits as required under the Township's Zoning Ordinance prior to permitting occupancy of the building addition within the Project.
- I. Developer agrees to maintain such barricades, warning lights or fences as are necessary during the course of construction to give reasonable protection to the public.

3. **Guaranty of Completion of Secured Improvements.**

- A. Developer shall deposit with the Township or otherwise establish the Financial Security all in accordance with and pursuant to the terms and conditions of this Section 3 and the Financial Security Agreement. Unless and until the Financial Security is so deposited or otherwise established by Developer, no building or occupancy permit, relating to the erection, placement or occupancy of any of any building addition or other structures in, on and/or related to the Subject Land Development, shall be issued by the Township.
- B. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the Financial Security Agreement. The Financial Security shall be of such type as more fully and further provided in and by the Financial Security Agreement.
- C. The initial amount of the Financial Security shall be Two Hundred Ten Thousand Nine Hundred Four and 93/100 Dollars (\$210,904.93), which is 110% of the total cost estimate as set forth in Exhibit "B" attached hereto and made fully part hereof. The amount of the Financial Security shall be subject to such increase, adjustment and reduction as provided in and by the Financial Security Agreement.

4. **Failure to Complete; Other Default.**

- A. In the event that any of the Secured Improvements is or are not completed in accordance with the terms, conditions and requirements of Section 2 above, the Township shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies, as may be available to the Township under this Agreement, the Financial Security Agreement, and/or the MPC, and/or otherwise at law or in equity) to: (i) enter upon the Tract and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (ii) with respect to incomplete Secured Improvements, obtain payment to it, or its order, of all or any part of the Financial Security and/or to otherwise enforce the Financial Security in order to pay for the costs of such completion and related costs, expenses and fees. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or unavailable to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, the Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay related costs, expenses and fees.

- B. In the event that the Township exercises its right, but not obligation, to complete all or part of the incomplete Improvements upon the aforesaid default of Developer, there shall be no requirement for the advertisement of public works or for competitive bidding. Any monies paid to the Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against Developer shall be not deemed to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. The Township may use any commercially reasonable means to select contractors and/or negotiate prices or costs of material and labor, and Developer hereby ratifies all actions taken by the Township in that regard. The Township shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements.

5. **Advancement and/or Reimbursement of Expenses.**

- A. Developer shall advance and/or reimburse the Township the following:
- (1) All reasonable costs, expenses and fees incurred by the Township in and for the preparation, review, and enforcement of this Agreement and the Financial Security Agreement. Such costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the Township Solicitor; and reasonable expenses and fees of the Township Engineer, in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.
- B. Subject to the dispute provisions of Section 510(g) of the MPC to the extent applicable, the costs, expenses and fees, described in Subsection A above, shall be billed by the Township to Developer, and the amounts of the same shall be due and payable within thirty (30) days of the billing date to the extent that such amounts are not earlier paid to or otherwise recovered by the Township from monies deposited by Developer with and held in escrow by the Township for any such costs, expenses or fees.
- C. The Township, under and in accordance with the Financial Security Agreement, shall have the right to recover, from and under the Financial Security, the costs, expenses and fees, described in Subsection A above, notwithstanding that the amount of the Financial Security Agreement, but for this Subsection D, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees. Such right shall be in addition to such other or further rights or remedies as may be now or hereafter available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity.

- D. It is expressly acknowledged and agreed that the Township shall not be obligated hereunder or otherwise to finally release Developer from and under the Financial Security, the Financial Security Agreement, or any other financial security provided pursuant hereto, unless and until all the aforesaid costs, expenses and fees are paid in full.

6. **Indemnification.**

- A. It is understood and agreed that the Township has reviewed the Plans and specifications for the purpose solely of protecting the interests of the public and have not thereby expressly or impliedly warranted the technical suitability of Developer's Plans. Developer warrants that all Plans, designs, installations and specifications have been designed by registered engineers licensed in the Commonwealth of Pennsylvania and will be installed in a good and workmanlike manner and in accordance with the plans and specifications and sound construction practices. Developer does further warrant that the Improvements installed and each and every part thereof are fit for all purposes for which they are intended. The Township disclaims all liability for design, construction, installation or operational defects.
- B. Developer hereby agrees to indemnify, save harmless and defend the Township, its officials, officers, employees and agents, of, from, and against any liability, claim, suit or demand, of whatever nature or kind, whether founded or unfounded, arising from, out of, or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs, and expert witness fees and costs) as may be incurred by the Township in connection with any such liability, claim, suit or demand, except to the extent caused by the negligence or willful misconduct of the Township.

7. **Notices.**

- A. Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.
- B. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication

shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, three (3) business days after the date of deposit in the United States mails.

8. **Miscellaneous.**

- A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.
- B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township, except in conjunction with Developer's transfer of ownership of the Tract as a whole, in which event, the successor in interest shall execute a new Development Agreement and a new Financial Security Agreement or an assignment of this Agreement. Any such assignment or delegation, without such consent, shall be void.
- C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement and/or the Financial Security Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to the Township under the MPC, and/or otherwise at law or in equity.
- D. **Headings.** The captions or headings preceding the text of the several sections and subsections of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.
- E. **Severability.** If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be

rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

- F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Financial Security Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.
- H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

SIGNATURE PAGE FOLLOWS

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

UPPER UWCHLAN TOWNSHIP

Secretary

By: _____

**DEVELOPER
RIP HOLDINGS LLC,
a Pennsylvania limited liability company**

Attest: _____

By: _____
Name:
Title:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
SS.
COUNTY OF CHESTER :

On this _____ day of _____, 20__ , before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of Upper Uwchlan Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
SS.
COUNTY OF CHESTER :

On this _____ day of _____, 20__ , before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of RIP HOLDINGS LLC, a Pennsylvania limited liability company, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT "A"**PLAN SHEETS**

Sheet No.	Drawing No.	Title	Date	Last Revised Date
01	C01.1	Cover Sheet	11/9/18	
02	C01.2	Land Development Plan	11/9/18	
03	C02.1	Existing Conditions Plan	11/9/18	
04	C02.2	Site Aerial Plan	11/9/18	
05	C03.1	Grading & Utilities Plan	11/9/18	
06	C03.2	PCSWM Plan	11/9/18	
07	C03.3	PCSWM Details	11/9/18	
08	C04.1	Conservation Plan	11/9/18	
09	C04.2	Conservation Details	11/9/18	
10	C05.1	Construction Details	11/9/18	
11	C05.2	Truck Turning Plan	11/9/18	
12	C06.1	Lighting Plan	11/9/18	
13	C06.2	Light Specifications	11/9/18	
14	C07.1	Landscape Plan	11/9/18	

EXHIBIT "B"**SECURED IMPROVEMENTS**



GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

30

March 5, 2020

File No. 18-07009T

Ms. Shanna Lodge
Acting Upper Uwchlan Township Manager
140 Pottstown Pike
Chester Springs, PA 19425

Reference: Profound Technologies (125 Little Conestoga Road)
Escrow Recommendation
Upper Uwchlan Township, Chester County, PA

Dear Shanna:

Attached please find a spreadsheet which outlines our recommendation for construction escrow. Based on our review, we recommend a suitable form of construction security be established for this project in the amount of **\$210,904.93**

Should you have any questions, please do not hesitate to contact me.

Sincerely,

David N. Leh, P.E.
Municipal Services Manager
Gilmore & Associates, Inc.

Attachment- Escrow Spreadsheet

cc: Kristin Camp, Esq.- BBMM, LLC (Via e-mail only)
Kevin A. Busza, RIP Holdings, LLC (via email only)
Alyson Zarro, Esq. -RRHC (Via e-mail only)
Christopher Daily, PE – DL Howell & Associates, Inc. (Via e-mail only)

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184 West Main Street | Suite 300 | Trappe, PA 19426
Phone: 610-489-4949 | Fax: 610-489-8447

www.gilmore-assoc.com

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
THRAPPE, PA 18426

PROJECT NAME: Profound Technologies (125 Little Conestoga Road)

SUMMARY OF ESCROW ACCOUNT

PROJECT NUMBER: 18-07009T

TOTAL CONSTRUCTION (100%) = \$ 191,731.75

PROJECT SPONSOR: RIP Holdings, LLC Attn: Kávin Busza

TOWNSHIP SECURITY = \$ 19,173.18

MUNICIPALITY: Upper Uwchlan Township

CONSTRUCTION INSPECTION \$ -

GRAND TOTAL ESCROWED = \$ 210,904.93

RELEASE NO.: 0
REQUEST DATE:

TOTAL ESCROW REMAINING: \$ 210,904.93
CONSTRUCTION COMPLETION:

ESCROW TABULATION					CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
CONSTRUCTION ITEMS	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
A. EROSION & SEDIMENTATION CONTROLS											
18" Compost Filter Sock	LF	488	\$6.00	\$ 2,928.00		\$ -		\$ -	488	\$ 2,928.00	
Orange Construction Fence	LF	376	\$2.00	\$ 752.00		\$ -		\$ -	376	\$ 752.00	
Inlet Protection	EA	7	\$80.00	\$ 560.00		\$ -		\$ -	7	\$ 560.00	
NAG S-75 Matting	SY	626	\$1.00	\$ 626.00		\$ -		\$ -	626	\$ 626.00	
Remove E&S Control	LS	1	\$1200.00	\$ 1,200.00		\$ -		\$ -	1	\$ 1,200.00	
SUBTOTAL ITEM A				\$ 6,066.00		\$ -		\$ -		\$ 6,066.00	
B. STORM SEWER											
6" HDPE	LF	194	\$27.00	\$ 5,238.00		\$ -		\$ -	194	\$ 5,238.00	
8" HDPE	LF	270	\$27.00	\$ 7,290.00		\$ -		\$ -	270	\$ 7,290.00	
15" HDPE	LF	327	\$57.00	\$ 18,639.00		\$ -		\$ -	327	\$ 18,639.00	
Manhole	EA	1	\$1500.00	\$ 1,500.00		\$ -		\$ -	1	\$ 1,500.00	
Type M Inlet	EA	2	\$2,300.00	\$ 4,600.00		\$ -		\$ -	2	\$ 4,600.00	
Type C Inlet	EA	2	\$4,400.00	\$ 8,800.00		\$ -		\$ -	2	\$ 8,800.00	
Outlet Structure	EA	2	\$2600.00	\$ 5,200.00		\$ -		\$ -	2	\$ 5,200.00	
Infiltration System	EA	2	\$25,000.00	\$ 50,000.00		\$ -		\$ -	2	\$ 50,000.00	
SUBTOTAL ITEM B				\$ 101,267.00		\$ -		\$ -		\$ 101,267.00	
C. SIDEWALK / CURBING											
Prepare Subbase for Sidewalk	SF	1815	\$1.25	\$ 1,643.75		\$ -		\$ -	1,315	\$ 1,643.75	
4" Thick Concrete Sidewalk	SF	1815	\$4.00	\$ 5,260.00		\$ -		\$ -	1,315	\$ 5,260.00	
Curb (Along Roadway)	LF	221	\$15.00	\$ 3,315.00		\$ -		\$ -	221	\$ 3,315.00	
SUBTOTAL ITEM C				\$ 10,218.75		\$ -		\$ -		\$ 10,218.75	
D. LANDSCAPING & LIGHTING											
Site Lights	EA	7	\$1,000.00	\$ 7,000.00		\$ -		\$ -	7	\$ 7,000.00	
Village Lights (Along Roadway)	EA	3	\$3,500.00	\$ 10,500.00		\$ -		\$ -	3	\$ 10,500.00	
Quercus phellos (Deciduous)	EA	10	\$450.00	\$ 4,500.00		\$ -		\$ -	10	\$ 4,500.00	
Panatanus x Acerfolia (Deciduous)	EA	6	\$300.00	\$ 1,800.00		\$ -		\$ -	6	\$ 1,800.00	
Nyssa sylvatica (Deciduous)	EA	5	\$350.00	\$ 1,750.00		\$ -		\$ -	5	\$ 1,750.00	
Picea omorika (Evergreen)	EA	6	\$400.00	\$ 2,400.00		\$ -		\$ -	6	\$ 2,400.00	
Picea abies (Evergreen)	EA	6	\$350.00	\$ 2,100.00		\$ -		\$ -	6	\$ 2,100.00	
Ilex glabra 'Compacta' (Evergreen Shrub)	EA	3	\$350.00	\$ 1,050.00		\$ -		\$ -	3	\$ 1,050.00	
Ilex glabra 'Compacta' (Evergreen Shrub)	EA	41	\$60.00	\$ 2,460.00		\$ -		\$ -	41	\$ 2,460.00	
Myrica pennsylvanica (Evergreen Shrub)	EA	6	\$60.00	\$ 360.00		\$ -		\$ -	6	\$ 360.00	
Ilex verticillata 'Red Sprite' (Deciduous Shrub)	EA	16	\$60.00	\$ 960.00		\$ -		\$ -	16	\$ 960.00	
Cornus sericea 'Flaviramea' (Deciduous Shrub)	EA	23	\$50.00	\$ 1,150.00		\$ -		\$ -	23	\$ 1,150.00	
Lindera benzoin (Deciduous Shrub)	EA	6	\$50.00	\$ 300.00		\$ -		\$ -	6	\$ 300.00	
SUBTOTAL ITEM D				\$ 36,330.00		\$ -		\$ -		\$ 36,330.00	
E. MISC											
Steps and Handrail	LS	1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
Retaining Wall	SF	750	\$25.00	\$ 18,750.00		\$ -		\$ -	750	\$ 18,750.00	
Trash Enclosure w/ Grate	LS	1	\$3,000.00	\$ 3,000.00		\$ -		\$ -	1	\$ 3,000.00	
Signs	EA	9	\$100.00	\$ 900.00		\$ -		\$ -	9	\$ 900.00	
Line Striping/Crosswalk Striping	LS	1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
Concrete Wheel Stops	EA	2	\$100.00	\$ 200.00		\$ -		\$ -	2	\$ 200.00	
Reroute gas line around Infiltration bed	LS	1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

PROJECT NAME: Profound Technologies (125 Little Conestoga Road)
PROJECT NUMBER: 18-07009T
PROJECT SPONSOR: RIP Holdings, LLC Attn: Kevin Busza
MUNICIPALITY: Upper Uwchlan Township

SUMMARY OF ESCROW ACCOUNT
TOTAL CONSTRUCTION (100%) = \$ 191,731.75
TOWNSHIP SECURITY = \$ 19,173.18
CONSTRUCTION INSPECTION \$ -
GRAND TOTAL ESCROWED = \$ 210,904.93
RELEASE NO.: 0
REQUEST DATE:

TOTAL ESCROW REMAINING: \$ 210,904.93
CONSTRUCTION COMPLETION:

ESCROW TABULATION					CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
CONSTRUCTION ITEMS	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
SUBTOTAL ITEM E				\$37,650.00		\$ -		\$ -		\$ 37,650.00	
TOTAL IMPROVEMENTS - ITEMS A-E				\$ 191,731.75		\$ -		\$ -		\$ 191,731.75	
F. CONTINGENCY (TOWNSHIP SECURITY) (10%)				\$ 19,173.18		\$ -		\$ -		\$ 19,173.18	
											#DIV/0!
NET CONSTRUCTION RELEASE						\$ -		\$ -		\$ 210,904.93	#DIV/0!
SURETY AMOUNT				\$ 210,904.93		\$ -		\$ -		\$ 210,904.93	

FINANCIAL SECURITY AGREEMENT

PROFOUND TECHNOLOGIES – 125 LITTLE CONESTOGA ROAD

THIS FINANCIAL SECURITY AGREEMENT (together with all modifications and amendments, the “Agreement”) made this _____ day of _____, 20__ by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the “Township”) and **RIP HOLDINGS LLC**, a Pennsylvania limited liability company with an address of 125 Little Conestoga Road, Chester Springs, Pennsylvania 19425 (“Developer”).

BACKGROUND:

A. Developer proposes to develop a 1.184 acre piece of property, known as Chester County Tax Parcel No. 32-4-38.3 situate at 125 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed land development known as “125 Little Conestoga Road” (“Development”).

B. The Upper Uwchlan Township Board of Supervisors (the “Board”) granted final land development approval of the Development on November 18,, 2019. Developer received final approval of the land development plans for the Development, subject to, among other things entering into this Agreement and the Development Agreement, as hereinafter defined, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.

C. In the Development Agreement, as hereinafter defined, Developer agreed to construct or install the Secured Improvements, as hereinafter defined, and to post Financial Security to guarantee to the Township that the Secured Improvements will be constructed or installed by the date provided for in this Agreement.

D. The parties desire to set forth their agreement and understanding with respect to the said Financial Security and such other matters as hereinbelow set forth.

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

1. Definitions; Interpretation.

A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) “Township Engineer” shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.

(2) "Tract" shall mean all that certain 1.184 acre tract of property which is situate at 125 Little Conestoga Road in the Township, Chester County, Pennsylvania, and which is more fully and further shown and described on the Plans.

(3) "Plans" shall mean that certain final subdivision and/or land development plan set entitled "Preliminary/Final Land Development Plan for 125 Little Conestoga Road prepared by D. L. Howell & Associates, Inc., dated November 9, 2018, last revised _____, 2020, consisting of fourteen (14) sheets, as more particularly described in the Development Agreement.

(4) "Subject Land Development" shall mean the proposed land development of the Tract as an addition to the existing building together with such other improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(5) "Improvements" shall mean the Improvements that are to be located on the Tract as depicted on the Plans.

(6) "Secured Improvements" shall mean all those certain Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates. A list of the Secured Improvements is attached here to as Exhibit "A".

(7) "Completion Date" shall mean the date specified in Section 2.D of the Development Agreement on or before which the Improvements shall be completed.

(8) "Financial Security" shall mean the Financial Security provided under and in accordance with the provisions of Section 2 and other provisions of this Agreement.

(9) "Financial Institution" shall mean the bonding company chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company which is authorized to conduct business in the Commonwealth.

(10) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.

(11) "Development Agreement" shall mean the Land Development Agreement entered into by Developer and the Township with respect to the development of the Subject Land Development which is dated on or about the date hereof.

B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement which also appear in the MPC shall have the meanings and shall be interpreted herein as under the MPC.

2. Financial Security.

A. Developer, in accordance with and pursuant to the terms of this Agreement and at its sole cost and expense, shall establish and maintain Financial Security in accordance with the one of the following which is checked:

☐ A restrictive loan account or cash escrow account (either such account being hereinafter described as an "Escrow Account") with Financial Institution as escrow holder under and in accordance with the terms and conditions of this Agreement;

☐ An irrevocable, Standby Commercial Letter of Credit, issued by Financial Institution in favor of the Township as beneficiary, in form and content satisfactory to the Township Solicitor and appended hereto as Exhibit "B" (the "Letter of Credit");

☒ An unconditional surety bond, issued by Financial Institution as surety to Developer, in form and content satisfactory to the Township Solicitor.

B. The Financial Security shall be established by Developer upon Developer's execution of this Agreement. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements.

C. The initial amount of the Financial Security shall be Two Hundred Ten Thousand Nine Hundred Four and 93/100 Dollars (\$210,904.93), which amount is 110% of the total of the estimated costs of completing the Secured Improvements.

D. In addition to the Financial Security being posted to guarantee completion of the Secured Improvements, before construction of the Improvements may begin, Developer shall deposit with the Township a sum of money equal to Nine Thousand Five Hundred Eighty Seven and 00/100 Dollars (\$9,587.00) which sum represents 5% of the estimated cost of construction of the Secured Improvements (the "Inspection Escrow"). The Inspection Escrow shall be held in a non-interest bearing escrow account and shall be used by the Township to pay the costs of its professional consultants and engineer's inspection of the Secured Improvements (the "Inspection Fees"). The Township shall pay the Inspection Fees from the Inspection Escrow. Developer shall be required to replenish the Inspection Escrow such that there is a minimum of 1% of the estimated cost of construction of the Secured Improvements on deposit. The Inspection Escrow shall be used by the Township solely to pay invoices for Inspection Fees. The Township shall provide a copy of all invoices for the Inspection Fees to the Developer.

E. A notation shall appear on the records of the Financial Institution providing that, except as provided in and by this Agreement or as may be otherwise consented to and approved and directed in and by a writing signed by the Township, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expire, and (iii) any balance of funds in the Financial Security shall be fully available to the Township for use under and for purposes of this Agreement.

3. Adjustments to Financial Security.

A. Developer agrees that the total amount of the Financial Security and the amount of each of the specific items thereof shall be subject to increase or other adjustment as permitted by and in accordance with the provisions of Section 509 of the MPC. Without limiting the generality of the foregoing:

Developer agrees that, if the Secured Improvements, or any part thereof, are not completed within one (1) year after the date of this Agreement and the Township has agreed to extend the time for completion beyond the Completion Date as may be necessary for the completion, Developer shall post additional Financial Security in accordance with the provisions of the MPC; and Developer shall continue to provide such additional Financial Security on each one (1)-year anniversary date of this Agreement thereafter if the Secured Improvements, or any part thereof, are not completed and Township has agreed to further extend the time for completion beyond the Completion Date, as the same may have been previously extended.

B. Notice of any such additional Financial Security or of any such increase or other adjustment in the amount of the Financial Security, or any part thereof, shall be given in writing by the Township to Developer, and Developer shall post the amount of the additional Financial Security, increase or other adjustment within thirty (30) days of the date of such notice.

C. Any funds posted or provided under this Section 3 as additional Financial Security or as increases or other adjustments to the Financial Security shall become part of the Financial Security and fully subject to the terms and conditions of this Agreement.

4. Interim Releases of Funds.

A. As the work of the construction of the Secured Improvements satisfactorily proceeds, the Township, from time to time upon written request of Developer prior to final release under Section 7 below, shall authorize the release of funds from the Financial Security in accordance with the provisions of the MPC, in such amounts as directed by the Township in writing, but only by and upon the issuance to and receipt by the Financial Institution of a duly executed Certificate of Completion signed by the Township Engineer, the Chairperson of the Board of Supervisors or the Township Manager. The Certificate of Completion shall be in the form substantially as set forth in Exhibit "B" attached to and made fully part of this Financial Security Agreement.

B. Unless the Township expressly and affirmatively directs otherwise in and by the said duly executed Certificate of Completion, the following shall apply to every release of funds from the Financial Security requested under this Section 4: (i) Ten Percent (10%) of the amount of the funds requested for release shall be retained and not released; and (ii) in no event shall the balance of the Financial Security be reduced below One Hundred Ten percent (110%) of the estimated costs of completing the remaining uncompleted Secured Improvements, as such estimated costs of completion shall be determined or approved by the Township Engineer.

5. Default.

A. If any of the Secured Improvements have not been completed as depicted on the Plans, the Township shall have the right to demand and collect payment from the Financial

Institution of the full undrawn amount, after reductions and interim releases, if any, pursuant to this Agreement, of the Financial Security, or any part or lesser amount thereof which the Township in its sole discretion deems necessary to cure any such default as well as to pay for any professional services related to such cure. The following shall apply to such demand and payment:

(1) Developer hereby authorizes the Financial Institution upon such default, without further inquiry being made, to make said payment directly and immediately to the Township or its order, and no further authorization, consent and/or approval of or by Developer to or of said payment shall be required.

(2) The Township may draw amounts from and under the Financial Security prior to the performance of any work by or for the Township in order to complete the Secured Improvements or otherwise cure the default, and/or to pay professional services related thereto, based upon (i) estimates received by the Township for the completion, and/or (ii) bills received by the Township for the professional services.

(3) Developer agrees that it shall have no right or standing to prevent or delay any such payment to and/or collection by the Township.

(4) Developer hereby remises, releases and forever discharges Financial Institution from any and all liability with respect to honoring any such draws by the Township.

(5) In the event of a dispute between Developer and the Township, Developer nevertheless agrees that the provisions of Subsection (1) above shall continue to apply, and that the provisions of Subsection (1) shall not be satisfied by the Financial Institution's payment into court of the amount demanded by the Township but shall be satisfied only by the Financial Institution's payment of the demanded amount directly and immediately to the Township.

(6) The right of the Township to demand payment and collect less than the full undrawn amount of the Financial Security shall not be exhausted by a single exercise thereof, but may be exercised by the Township from time to time and at any time without limitation on the number of exercises thereof until the amount of the Financial Security has been fully drawn.

(7) If the reasonable costs, expenses and fees, incurred by the Township on account of (i) the foregoing completion of Secured Improvements or otherwise curing the default of Developer and (ii) the professional services related thereto, exceed the amount, if any, received by the Township from and under the Financial Security, Developer, in addition to such other and further obligations and liabilities imposed upon it under this Agreement and otherwise by law, shall be liable to the Township for such excess of such costs, expenses and fees. Developer hereby agrees to pay the full amount of such excess to the Township immediately upon demand.

(8) Except in the event of an emergency or other threat to public health and safety, prior to exercising the remedies available to the Township in the event of default, the

Township shall give thirty (30) days advance notice of default to Developer and Financial Institution and Developer and Financial Institution shall have the right to cure such default within the said thirty (30) day period, provided, however, it is acknowledged by the Township and Developer that the Financial Institution has no obligation to cure any event of default under this Agreement.

6. Costs, Expenses and Fees.

A. If Developer fails to advance or reimburse the Township any costs, expenses or fees in accordance with and pursuant to Section 7 of the Development Agreement, Developer shall be in default of this Agreement, and the Township shall be authorized to collect the amount thereof from and under the Financial Security (notwithstanding that the amount of the Financial Security, but for this Subsection A, is not now or hereafter specifically established to guarantee, secure or otherwise cover the payment of such costs, expenses or fees) in same manner and to the same extent as a default made and provided for under Section 5 of this Agreement.

B. Developer shall provide additional Financial Security, in a form acceptable to the Township and in the amount by which the Financial Security was reduced by any payment made to the Township from the Financial Security under provisions of Subsection A above, within fifteen (15) days after written notice of such reduction in the amount of the Financial Security is sent by the Township to Developer. Developer shall also provide the Township, within such fifteen (15)-day period, written proof of such additional Financial Security. The failure of Developer to provide the Township such additional Financial Security and written proof thereof within such time shall constitute a default or breach under this Agreement, and Developer shall be subject to the provisions governing its default or breach, as set forth in both this Agreement and the Development Agreement and/or as otherwise provided by law, until the default or breach is properly and fully cured. The additional Financial Security shall be and constitute Financial Security fully subject to the terms and conditions of this Agreement.

7. Final Release of Financial Security; Termination of Agreement.

A. After all of the Secured Improvements have been completed in accordance with the Development Agreement, and after all of the provisions of the Development Agreement and this Agreement have been satisfied by Developer (including the payment of all reasonable costs, expenses and fees for which Developer is responsible under both said agreements) the Township shall authorize the Financial Institution in writing to release the balance of the Financial Security. Such release authorized by the Township shall be the final release of funds from the Financial Security, and shall further release Developer and the Financial Institution from and under the Financial Security and this Agreement.

B. At and upon the aforesaid Township-authorized release of the balance of the Financial Security, this Agreement shall terminate without further action of the parties being required and neither Developer nor the Financial Institution shall have any further liability under this Agreement.

8. Validity and Enforceability of Financial Security.

A. The Financial Security shall be valid, and shall be maintained by Developer valid and in full force and effect at all times following the establishment thereof in accordance with and during continuance of this Agreement.

B. During the continuance of this Agreement, Developer shall, as may be requested by written notice from the Township from time to time or at any time, provide verification and proof to the Township concerning the existence, validity and enforceability of the Financial Security. The verification and proof shall be satisfactory to the Township.

C. Developer agrees and hereby authorizes the Financial Institution, during the continuance of this Agreement, to release to the Township any information as may be requested from time to time or at any time by the Township concerning the financial affairs of Developer relative to this Agreement and the Financial Security.

D. If the Township determines that, upon the information provided or not provided pursuant to Subsections B and/or C above, the Financial Security requirements of this Agreement are not satisfied, or, if Developer otherwise fails to provide and maintain the Financial Security under and in accordance with this Agreement, the Township shall give Developer written notice to provide the required Financial Security within thirty (30) days of the date of the notice.

E. Developer agrees that any and all notices from the Township to the Financial Institution demanding payment of, from and under the Financial Security shall be valid and enforceable, and shall be honored by the Financial Institution if given to the Financial Institution during the continuance of this Agreement.

9. Financial Institution Non-Responsibility.

A. Developer agrees that Financial Institution shall have no duty to inquire as to the truthfulness, acceptability, due execution, due authorization or validity of any document, certificate, statement or notice which purports to have been executed by an official or other representative of the Township.

B. Developer and the Township further agree that Financial Institution shall not have any duty or responsibility with respect to the Financial Security other than to comply with the terms of this Agreement that apply to the actions which the Financial Institution is to take or not take with respect to the Financial Security.

C. Developer and Financial Institution further agree that the obligations of the Financial Institution under this Agreement, and under and with respect the Financial Security, are for the sole benefit of the Township, and shall not be affected, in any way, by any default, action or omission of Developer.

D. The Township and Developer further agree and acknowledge that the Financial Institution assumes no liability for the design, layout, construction, installation,

maintenance and/or upkeep of the Improvements or the obligations of the Developer under this Agreement or the Development Agreement.

10. Charges of Financial Institution.

Any and all charges made by the Financial Institution for the establishment, creation, administration or termination of the Financial Security and/or for all other actions of the Financial Institution under, pursuant and/or related to this Agreement are the sole responsibility of Developer and shall be billed to and paid directly by Developer, and no amount of, from or under the Financial Security may be used by or paid to the Financial Institution for such charges. Developer agrees that the Township shall not be liable or otherwise obligated for any of such charges, and Developer hereby agrees to indemnify, protect and defend the Township from and against any such charges.

11. Interest.

If any interest accrues on account of the Financial Security, such interest shall merge with and become part of the funds represented by the Financial Security and shall be treated as an integral part thereof and applied in accordance with the terms of this Agreement. All such interest shall be reported under and to the taxpayer identification number of Developer, and Developer shall be liable for the payment of any income taxes as may be imposed and due on such interest.

12. Insolvency of Developer.

Developer acknowledges, covenants and agrees that, in case of any bankruptcy, receivership, or voluntary or involuntary assignment for the benefit of creditors by or of Developer, the Financial Security and all interest of Developer in, to or under this Agreement are not and shall not be considered part of the estate of Developer.

13. Payments, Reductions or Releases of Financial Security.

It is expressly and specifically understood, covenanted and agreed by Developer and Financial Institution that no payment, reduction and/or release whatsoever shall be made at any time of, from or under the Financial Security without the express written consent and instructions of the Township in accordance with the terms of this Agreement, and that Developer shall maintain the Financial Security at all times during the continuance of this Agreement in the amounts required herein, less all sums drawn or released therefrom by the Township in accordance with the terms hereof. Any violation of Developer's obligations under this Section shall render Developer liable for all damages to the Township, including, without limitation, all reasonable costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by Developer under this Agreement because the Financial Security is not maintained and/or funds thereunder are not available or paid upon demand to the Township in order to cure such default or breach. Any violation of the Financial Institution's obligations under this Section shall render the Financial Institution liable for all damages to the Township, including, without limitation, all reasonable

costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by the Financial Institution for releasing or reducing the Financial Security except in accordance with the terms of this Agreement.

14. **Notices.**

Except as may be otherwise specifically provided in this Financial Security Agreement:

(1) Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

(2) Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, 3 business days after the date of deposit in the United States mails.

15. **Miscellaneous.**

A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.

B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township. Any such assignment or delegation, without such consent, shall be void.

C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to the Township at law or in equity.

D. **Headings.** The captions or headings preceding the text of the several sections, subsections, paragraphs and other parts of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

E. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Development Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

SIGNATURE PAGE FOLLOWS

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

UPPER UWCHLAN TOWNSHIP

Attest:

Gwen Jonik, Secretary

By: _____
Sandra D'Amico, Chairperson

**DEVELOPER
RIP HOLDINGS LLC,
a Pennsylvania limited liability company**

Attest:

By: _____
Name:
Title:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
:SS.
COUNTY OF CHESTER :

On this _____ day of _____, 2020, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Sandra D'Amico, who acknowledged herself to be the Chairman of the Board of Supervisors of Upper Uwchlan Township, and that she, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
:SS.
COUNTY OF CHESTER :

On this _____ day of _____, 2020, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the RIP HOLDINGS LLC, a Pennsylvania limited liability company, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT "A"

List of Secured Improvements



GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

47

March 5, 2020

File No. 18-07009T

Ms. Shanna Lodge
Acting Upper Uwchlan Township Manager
140 Pottstown Pike
Chester Springs, PA 19425

Reference: Profound Technologies (125 Little Conestoga Road)
Escrow Recommendation
Upper Uwchlan Township, Chester County, PA

Dear Shanna:

Attached please find a spreadsheet which outlines our recommendation for construction escrow. Based on our review, we recommend a suitable form of construction security be established for this project in the amount of **\$210,904.93**

Should you have any questions, please do not hesitate to contact me.

Sincerely,

David N. Leh, P.E.
Municipal Services Manager
Gilmore & Associates, Inc.

Attachment- Escrow Spreadsheet

cc: Kristin Camp, Esq.- BBMM, LLC (Via e-mail only)
Kevin A. Busza, RIP Holdings, LLC (via email only)
Alyson Zarro, Esq. -RRHC (Via e-mail only)
Christopher Daily, PE – DL Howell & Associates, Inc. (Via e-mail only)

BUILDING ON A FOUNDATION OF EXCELLENCE

184 West Main Street | Suite 300 | Trappe, PA 19426
Phone: 610-489-4949 | Fax: 610-489-8447

www.gilmore-assoc.com

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

PROJECT NAME: Profound Technologies (125 Little Conestoga Road)

PROJECT NUMBER: 18-07009T

PROJECT SPONSOR: RIP Holdings, LLC Attn: Kevin Busza
MUNICIPALITY: Upper Uwchlan Township

SUMMARY OF ESCROW ACCOUNT

TOTAL CONSTRUCTION (100%) = \$ 191,731.75
TOWNSHIP SECURITY = \$ 19,173.18
CONSTRUCTION INSPECTION \$ -

GRAND TOTAL ESCROWED = \$ 210,904.93

RELEASE NO.: 0
REQUEST DATE:

TOTAL ESCROW REMAINING: \$ 210,904.93
CONSTRUCTION COMPLETION:

ESCROW TABULATION					CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
CONSTRUCTION ITEMS	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
A. EROSION & SEDIMENTATION CONTROLS											
18" Compost Filter Sock	LF	488	\$6.00	\$ 2,928.00		\$ -		\$ -	488	\$ 2,928.00	
Orange Construction Fence	LF	376	\$2.00	\$ 752.00		\$ -		\$ -	376	\$ 752.00	
Inlet Protection	EA	7	\$80.00	\$ 560.00		\$ -		\$ -	7	\$ 560.00	
NAG S-75 Matting	SY	626	\$1.00	\$ 626.00		\$ -		\$ -	626	\$ 626.00	
Remove E&S Control	LS	1	\$1200.00	\$ 1,200.00		\$ -		\$ -	1	\$ 1,200.00	
SUBTOTAL ITEM A				\$ 6,066.00		\$ -		\$ -		\$ 6,066.00	
B. STORM SEWER											
6" HDPE	LF	194	\$27.00	\$ 5,238.00		\$ -		\$ -	194	\$ 5,238.00	
8" HDPE	LF	270	\$27.00	\$ 7,290.00		\$ -		\$ -	270	\$ 7,290.00	
15" HDPE	LF	327	\$57.00	\$ 18,639.00		\$ -		\$ -	327	\$ 18,639.00	
Manhole	EA	1	\$1500.00	\$ 1,500.00		\$ -		\$ -	1	\$ 1,500.00	
Type M Inlet	EA	2	\$2,300.00	\$ 4,600.00		\$ -		\$ -	2	\$ 4,600.00	
Type C Inlet	EA	2	\$4,000.00	\$ 8,800.00		\$ -		\$ -	2	\$ 8,800.00	
Outlet Structure	EA	2	\$2600.00	\$ 5,200.00		\$ -		\$ -	2	\$ 5,200.00	
Infiltration System	EA	2	\$25,000.00	\$ 50,000.00		\$ -		\$ -	2	\$ 50,000.00	
SUBTOTAL ITEM B				\$ 101,267.00		\$ -		\$ -		\$ 101,267.00	
C. SIDEWALK / CURBING											
Prepare Subbase for Sidewalk	SF	1315	\$1.25	\$ 1,643.75		\$ -		\$ -	1,315	\$ 1,643.75	
4" Thick Concrete Sidewalk	SF	1315	\$4.00	\$ 5,260.00		\$ -		\$ -	1,315	\$ 5,260.00	
Curb (Along Roadway)	LF	221	\$15.00	\$ 3,315.00		\$ -		\$ -	221	\$ 3,315.00	
SUBTOTAL ITEM C				\$ 10,218.75		\$ -		\$ -		\$ 10,218.75	
D. LANDSCAPING & LIGHTING											
Site Lights	EA	7	\$1,000.00	\$ 7,000.00		\$ -		\$ -	7	\$ 7,000.00	
Village Lights (Along Roadway)	EA	3	\$3,500.00	\$ 10,500.00		\$ -		\$ -	3	\$ 10,500.00	
Quercus phellos (Deciduous)	EA	10	\$450.00	\$ 4,500.00		\$ -		\$ -	10	\$ 4,500.00	
Pantanus x Acerfolia (Deciduous)	EA	6	\$300.00	\$ 1,800.00		\$ -		\$ -	6	\$ 1,800.00	
Nyssa sylvatica (Deciduous)	EA	5	\$350.00	\$ 1,750.00		\$ -		\$ -	5	\$ 1,750.00	
Picea omorika (Evergreen)	EA	6	\$400.00	\$ 2,400.00		\$ -		\$ -	6	\$ 2,400.00	
Picea abies (Evergreen)	EA	6	\$350.00	\$ 2,100.00		\$ -		\$ -	6	\$ 2,100.00	
Picea glauca (Evergreen)	EA	3	\$350.00	\$ 1,050.00		\$ -		\$ -	3	\$ 1,050.00	
Ilex glabra 'Compacta' (Evergreen Shrub)	EA	41	\$60.00	\$ 2,460.00		\$ -		\$ -	41	\$ 2,460.00	
Myrica pennsylvanica (Evergreen Shrub)	EA	6	\$60.00	\$ 360.00		\$ -		\$ -	6	\$ 360.00	
Ilex verticillata 'Red Sprite' (Deciduous Shrub)	EA	16	\$60.00	\$ 960.00		\$ -		\$ -	16	\$ 960.00	
Cornus sericea 'Flaviramea' (Deciduous Shrub)	EA	23	\$50.00	\$ 1,150.00		\$ -		\$ -	23	\$ 1,150.00	
Lindera benzoin (Deciduous Shrub)	EA	6	\$50.00	\$ 300.00		\$ -		\$ -	6	\$ 300.00	
SUBTOTAL ITEM D				\$ 36,330.00		\$ -		\$ -		\$ 36,330.00	
E. MISC											
Steps and Handrail	LS	1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
Retaining Wall	SF	750	\$25.00	\$ 18,750.00		\$ -		\$ -	750	\$ 18,750.00	
Trash Enclosure w/ Grate	LS	1	\$3,000.00	\$ 3,000.00		\$ -		\$ -	1	\$ 3,000.00	
Signs	EA	9	\$100.00	\$ 900.00		\$ -		\$ -	9	\$ 900.00	
Line Striping/Crosswalk Striping	LS	1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
Concrete Wheel Stops	EA	2	\$100.00	\$ 200.00		\$ -		\$ -	2	\$ 200.00	
Reroute gas line around infiltration bed	LS	1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

PROJECT NAME: Profound Technologies (125 Little Conestoga Road)

SUMMARY OF ESCROW ACCOUNT

PROJECT NUMBER: 18-07009T

TOTAL CONSTRUCTION (100%) = \$ 191,731.75

PROJECT SPONSOR: RIP Holdings, LLC Attn: Kevin Busza

TOWNSHIP SECURITY = \$ 19,173.18

MUNICIPALITY: Upper Uwchlan Township

CONSTRUCTION INSPECTION \$ -

GRAND TOTAL ESCROWED = \$ 210,904.93

RELEASE NO.: 0

REQUEST DATE:

TOTAL ESCROW REMAINING: \$ 210,904.93
CONSTRUCTION COMPLETION:

ESCROW TABULATION					CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
CONSTRUCTION ITEMS					QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
SUBTOTAL ITEM E						\$37,850.00		\$ -		\$ -	
TOTAL IMPROVEMENTS - ITEMS A-E						\$ 191,731.75		\$ -		\$ -	
F. CONTINGENCY (TOWNSHIP SECURITY) (10%)						\$ 19,173.18		\$ -		\$ -	
											#DIV/0!
NET CONSTRUCTION RELEASE								\$ -		\$ -	#DIV/0!
SURETY AMOUNT						\$ 210,904.93		\$ -		\$ -	

EXHIBIT "B"

**CERTIFICATE OF COMPLETION AND
AUTHORIZATION OF REDUCTION AND RELEASE
NO. _____**

WE, THE UNDERSIGNED, HEREBY:

A. CERTIFY that the work and Improvements, described hereinbelow, completion of which is provided under and by that certain Financial Security Agreement between Upper Uwchlan Township ("Township") and RIP HOLDINGS LLC, ("Developer"), dated _____, 2020, concerning the construction, installation and completion of Improvements in the 125 Little Conestoga Road Land Development have been completed to the extent of the amount indicated in item I below; and

B. AUTHORIZE [Insert Name of Financial Institution], pursuant to the Financial Security Agreement, **TO REDUCE** the Financial Security, in the nature of a letter of credit by the Bank to guaranty, among other things, the completion of said work and Improvements, to the extent of the amount indicated in item III below, and to release said amount of reduction from and under the terms and conditions of the escrow account.

The reduction and release of the amount of the Financial Security hereby authorized shall not be construed, in any manner or extent, as an acceptance by the Township of the work and Improvements described hereinbelow (or of any other work performed or any Improvements installed or constructed), nor shall this Certificate and Authorization constitute any waiver by the Township of its rights to inspect and approve the work and Improvements described hereinbelow (or any other work performed and Improvements installed and constructed). Township hereby reserves the right to re-inspect the work and Improvements (as well as any other work and Improvements) and to require Developer to correct, repair or demolish and to properly reconstruct any and all defective and deficient work and Improvements not accepted and approved by Township.

THE FOLLOWING WORK AND Improvements are the subject of this Certificate and Authorization: *(See attached letter and invoice.)*

THE REDUCTION AND RELEASE of the Financial Security authorized by this Certificate and Authorization have been determined as follows:

- I. COST OF COMPLETED WORK AND Improvements** \$ _____
- II. *less* AMOUNT OF RETAINAGE (10%)** \$ _____
- III. AMOUNT OF REDUCTION AND RELEASE** \$ _____

Date

Township Engineer

Date

Chairperson, Board of Supervisors

Date

Manager

PREPARED BY AND RETURN TO:
 RILEY RIPER HOLLIN & COLAGRECO
 Attn: Alyson M. Zarro, Esquire
 717 Constitution Drive, Suite 201
 P.O. Box 1265
 Exton, PA 19341
 (610) 458-4400

UPI No. 32-4-38.3

**STORMWATER BEST MANAGEMENT PRACTICES (BMPs)
 AND CONVEYANCES OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 201__, by and between RIP HOLDINGS LLC, a Pennsylvania limited liability company, (hereinafter the "Landowner"), and UPPER UWCHLAN TOWNSHIP, Chester County, Pennsylvania, (hereinafter the "Township").

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, in Deed Book 9598, Page 1324, and identified as UPI No. 32-4-38.3 (hereinafter "Property"); and

WHEREAS, the Landowner is proceeding to build an addition to the existing building and further develop the Property in accordance with a Preliminary/Final Land Development Plan for 125 Little Conestoga Road prepared by D. L. Howell & Associates, Inc. dated November 9, 2018 and last revised _____, 2020 ("Final Plan"); and

WHEREAS, the Stormwater Best Management Practices (hereinafter "BMP(s)") Operations and Maintenance Plan approved by the Township (hereinafter referred to as the "O&M plan") for the Property, which is part of the Final Plan and which is attached hereto as

Appendix A and made a part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

WHEREAS, the Township, and the Landowner, for itself and its administrators, executors, successor, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Township and the protection and maintenance of water quality require that stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this Agreement, the following definitions shall apply:

- **BMP – "Best Management Practice"** - Those activities, facilities, designs, measures or procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Township Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devised, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs identified in the O&M Plan are permanent appurtenances to the Property; and
- **Conveyance** – As specifically identified in the O&M Plan, a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The conveyances identified in the O&M Plan are permanent appurtenances to the Property; and

WHEREAS, the Township requires, through the implementation of the O&M Plan, that stormwater management BMPs and conveyances, as required by said O&M Plan and the Township's Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors in interest, heirs, and assigns.

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

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the Final Plan.
3. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Township and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan.

The Landowner shall, further, provide annual written Inspection and Maintenance Reports for the BMP(s) and conveyance(s) shown on the O&M Plan to the Township.

4. The Landowner hereby grants permission to the Township, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the O&M Plan and the Township's Stormwater Management Ordinance. Whenever possible, the Township shall notify the Landowner prior to entering the Property.
5. The Township intends to inspect the BMP(s) and conveyance(s) at a minimum of once every three (3) years to determine if they continue to function as required.
6. The Landowner acknowledges that, per the Township's Stormwater Ordinance, it is unlawful, without written approval of the Township, to:
 - a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is contrasted as part of the approved O&M Plan;
 - b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;

- c. Allow the BMP or conveyance to exist in a condition which does not conform to the approved O&M Plan or this Agreement; and
 - d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or conveyance.
- 7. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Township, the Township shall send written notice to the Landowner specifying the areas of non-compliance and the steps that shall be taken to cure the non-compliance. In the event that the Landowner does not cure the non-compliance within thirty (30) days of the date thereof, or diligently pursue compliance in circumstances where compliance is not possible within thirty (30) days due to weather conditions, or where otherwise determined by the Township in an emergency situation that notice is not practical or expedient, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Township or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and conveyance(s). It is expressly understood and agreed that the Township is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Township.
- 8. In the event that the Township, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within thirty (30) days of delivery of an invoice from the Township. Failure of the Landowner to make prompt payment to the Township may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.
10. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Township's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and conveyance(s) either by the Landowner or Township. In the event that a claim is asserted or threatened against the Township, its employees, agents or designated representatives, the Township shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Township, or, at the request of the Township, pay the cost, including attorney's fees, of defense of the same undertaken on behalf of the Township. If any judgment or claims against the Township's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Township, including attorney's fees, regarding said damages, judgments or claims. The foregoing shall not apply where said claim or judgment results from the negligence or willful misconduct of the Township, its employees, agents or designated representatives.
11. The Township may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Township shall include its reasonable attorney's fees and costs incurred in seeking relief under this Agreement.
12. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Township of its rights of enforcement hereunder.

13. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.
14. This Agreement shall insure to the benefit of and be binding upon, the Township and the Landowner, as well as its assigns and successors in interest.

This Agreement shall be recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania, and shall constitute a covenant running with the Property, until such time that the Township may approve a different development scheme for the Property or different BMPs than those depicted on the O&M Plan. In the event of such approval, an amendment to this Agreement or an extinguishment and termination of this Agreement, as applicable, shall be recorded in the Office of the Chester County Recorder of Deeds.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers and representatives on the date first indicated hereinabove.

ATTEST/WITNESS:

LANDOWNER
RIP HOLDINGS LLC,
a Pennsylvania limited liability company

BY: _____

ATTEST:

BOARD OF SUPERVISORS OF
UPPER UWCHLAN TOWNSHIP

BY: _____
Sandra D'Amico, Chairperson

COMMONWEALTH OF PENNSYLVANIA :
 : ss
 COUNTY OF _____ :

On this, the _____ day of _____, 2020, before me, a Notary Public, the undersigned officer, personally appeared, _____, who acknowledged himself to be the _____ of **RIP HOLDINGS LLC**, a Pennsylvania limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

 Notary Public

(Notarial Seal)

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CHESTER : ss
:

On this, the _____ day of _____, 2020, before me, a Notary Public, the undersigned officer, personally appeared, Sandra D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of **UPPER UWCHLAN TOWNSHIP**, and that she as such Chairperson, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Township by herself as Chairperson.

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

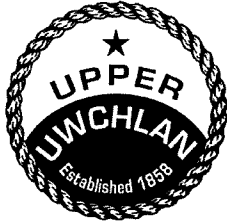
Notary Public

(Notarial Seal)

My Commission Expires:

APPENDIX “A”

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UPPER UWCHLAN TOWNSHIP MEMORANDUM

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ADMINISTRATION

TO: UPPER UWCHLAN TOWNSHIP BOARD OF SUPERVISORS
FROM: Shanna Lodge, Acting Township Manager
SUBJECT: Township Manager's Report
DATE: March 6, 2020

Township Building Expansion

The contractors continue work on the Township Building renovation project. Crews are working on final punch list items. Furniture will be installed beginning March 11. Final site work, including paving, are expected to be completed prior to the staff's return. The administrative staff expects to move back into the building on March 27. When the return dates are confirmed, they will be announced widely on the Township website and social media.

Tax Collector Resignation

Ban LaGarde, who has served the Township as Tax Collector since 2010, has informed the Township of his resignation. Ben will be moving out of the Township, and he cannot hold the position as a non-resident. His resignation will be effective March 21. The Board may name an individual to the position at their regular meeting on April 20.

The real estate tax bills have been adjusted to list the Township P.O. Box for mailed bank payments. Residents may also pay their bill at any branch of S&T Bank (formerly Downingtown National Bank.)

Precinct Polling Places

The Township has been made aware that precinct polling places are likely to change. Polling places and precinct maps are determined by the Chester County Department of Voter Services. When the Township is informed by that office, the polling places will be publicized on the Township website.

TC Energy Pipeline Work at Hickory Park

TC Energy has begun the pipeline relocation work at Hickory Park. The park will be closed for the duration of the work, which is expected to extend into April. Information about the closure has been posted on the Township website.