

January 6, 2017

Mr. Chris Wunnenberg, Development Director Morris Farm Limited Liability Company 6355 Centre Park Drive West Chester, Oh 45069

Dear Mr. Wunnenberg,

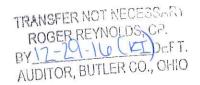
Enclosed is a copy of the fully executed and recorded Amendment to Stormwater Drainage Easement Agreement between West Chester Township and Morris Farm Limited Liability Company. Please retain this copy for your records.

Sincerely,

Judith C. Boyko

Township Administrator

Enclosure





AMENDMENT TO STORMWATER DRAINAGE EASEMENT AGREEMENT

THIS AMENDMENT TO STORMWATER DRAINAGE EASEMENT AGREEMENT ("Amendment") is entered into this <u>administration</u> day of <u>Necember</u>, 2016, by and between Morris Farm Limited Liability Company, an Ohio limited liability company, its successors and assigns (collectively hereinafter referred to as "Morris Farm"), and Board of Trustees of West Chester Township, a political subdivision of the State of Ohio, its successors and assigns (hereinafter referred to as "Township").

WHEREAS, on November 15, 2007, Morris Farm and the Township entered into a Stormwater Drainage Easement Agreement ("Original Easement Agreement") attached hereto as Exhibit A under the terms of which the Township granted Morris Farm, for the benefit of 81.954 acres of land owned by Morris Farm in West Chester Township, Butler County, Ohio (the "Morris Farm Property") a non-exclusive, perpetual easement to drain, discharge, transport and detain stormwater runoff from the Morris Farm Property onto the property owned by the Township which is described on Exhibit B attached hereto (the "Township Property"); and

WHEREAS, the Original Easement Agreement is recorded in Volume 7962 at Page 1598 of the Official Records of Butler County, Ohio; and

WHEREAS, the Township and Morris Farm desire to amend the Original Easement Agreement as hereinafter provided.

- 1. Any capitalized term not otherwise defined in this Amendment shall have the same meaning attributed to it in the Original Easement Agreement.
- 2. The definition of "Agreement" under the Original Easement Agreement is amended to mean the Original Easement Agreement, as amended by this Amendment.
 - 3. The following sentence is hereby added to the end of Section 6 of the Agreement:

"Upon approval by Township, which approval will not be unreasonably withheld, Morris Farm shall have the right to assign any of its rights under this Agreement to an adjoining property owner (the 'Owner') as illustrated and identified on Exhibit B-1 as attached hereto so long as the additional volume and flow of stormwater discharge from the Owner's property does not cause the detention capacity allocated to Morris Farm on the Township Property to be exceeded."

- 4. Except as specifically and expressly modified or amended herein, the terms and provisions of the Original Easement Agreement remain unchanged. The parties hereto ratify the Original Easement Agreement and acknowledge that the Original Easement Agreement continues in full force and effect, as modified by this Amendment.
- 5. The Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.
- 6. This Amendment shall be binding upon the parties hereto, as well as their successors and assigns, as the case may be.
- 7. The Original Easement Agreement and the Exhibits thereto, as amended by this Amendment, set forth all the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. In the event of a conflict between the terms and conditions of the Original Easement Agreement and this Amendment, the terms and conditions of this Amendment shall control.

this Amendment shall control.	
The parties have signed this Amendment the year and date aforesaid.	
•	By: Olen Werner Dev. Directo
Approved as to Form: Douald L. Crain, Law Director	Board of Trustees of West Chester Township By: Judith C. Boyko, Township Administrator
STATE OF OHIO, COUNTY OF BUTLER, SS	J:

The foregoing instrument was acknowledged before me this 21 day of <u>December</u>, 2016, by <u>Chris Wunnenbera</u>, the <u>Dev. Orrector</u> of and on behalf of Morris Farm Limited Liability Company, an Ohio limited liability company.

JENNIFER G WHITTAKER

NOTARY PUBLIC

STATE OF OHIO

MY COMMISSION EXPIRES:

APRIL 16, 2020

Notary Public

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STATE OF OHIO, COUNTY OF BUTLER, SS:

The foregoing instrument was acknowledged before me this al day of Occember, 2016, by Judith C. Boyko, Township Administrator of and on behalf of Board of Trustees of West Chester Township, LLC, a political subdivision of the State of Ohio.

JENNIFER G WHITTAKER **NOTARY PUBLIC** STATE OF OHIO MY COMMISSION EXPIRES: **APRIL 16, 2020**

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STORMWATER DRAINAGE EASEMENT AGREEMENT

WHEREAS, Morris Farm owns a parcel of real estate containing approximately 81.954 acres that is described in Exhibit "A" attached hereto (the "Morris Farm Property"); and

WHEREAS, the Township owns a parcel of real estate containing approximately 28.803 acres that is described in Exhibit "B" attached hereto (the "Township Property"); and

WHEREAS, the Township Property is adjacent to and east of the Morris Farm Property; and

WHEREAS, the Township Property and the Morris Farm Property are hereinafter collectively referred to as the "Property"; and

WHEREAS, Morris Farm sold the Township Property to the Township and in connection with that sale the Township agreed to grant Morris Farm a stormwater easement over the Township Property; and

WHEREAS, Morris Farm and the Township understand that the Township Property is to be developed and maintained as a restored wetland area, and that stormwater discharge onto the Township Property must be undertaken with sensitivity to the existing and future ecology and not to harm or significantly impact the property's condition as constructed per the Grading Plan attached hereto as Exhibit "C".

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter provided and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. <u>Grant and Declaration of Stormwater Easement from the Township</u>. Subject to the terms, covenants, conditions and restrictions contained in this Agreement, the Township hereby grants to Morris Farm, for the benefit of and appurtenant to the Morris Farm Property:
 - (A) a non-exclusive perpetual easement (the "Stormwater Drainage Easement") in, over, under and across the northernmost 40 feet of the Township Property as depicted on the survey attached hereto as Exhibit "D and made a part reof (the "Stormwater Drainage Easement Area").

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TRANSFER NOT NECESSARY

KAY ROGERS

BY 1 20 0 7 1 DEPT.

AUDITOR, BUTLER CO., OHIC

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The purpose of the Stormwater Drainage Easement shall be to permit the drainage, discharge, transportation and detention of stormwater drainage and runoff from the Morris Farm Property into the Stormwater Drainage Easement Area.

3. <u>Maintenance of the Stormwater Drainage Easement Area</u>. In order to insure preservation of the restored wetland, including that area of the restored wetland contained within the Stormwater Drainage Easement, the Township, at its sole cost and expense, shall maintain the Stormwater Drainage Easement Area. This means that the Township will keep the area graded and cleared, and the vegetation maintained therein, so that the Stormwater Drainage Easement Area shall continue to accept stormwater discharge from the Morris Farm Property as contemplated in the Grading Plan, attached and incorporated herein as Exhibit "C".

Morris Farm shall be responsible for otherwise maintaining its stormwater facilities. Morris Farm is not responsible for maintaining any stormwater pipes located exclusively on the Township Property. Any grading or clearing, including that undertaken by Morris Farm as described below, shall be undertaken in a manner consistent with the Grading Plan, and consistent with any permitting and/or other requirements for work undertaken within a restored wetland.

In the event that the Township fails to maintain the Stormwater Drainage Easement Area as described above, Morris Farm, its employees and contractor shall have the right, after sending written notice to the Township and the Ohio Public Works Commission (which notice shall include a reasonable length of time to cure, which time period shall be a minimum of 20 days, unless there exists an imminent danger of loss of life or property), to enter upon the Stormwater Drainage Easement Area and perform the grading, clearing or maintenance of vegetation that the Township failed to perform. If entry is made due to the imminent danger of loss of life or property, then Morris Farm shall notify the Township and the Ohio Public Works Commission within 24 hours of such entry and of the reasons supporting the emergency. Thereafter Morris Farm shall have the right to submit an expense statement to the Township for the costs of such services performed and the Township shall reimburse Morris Farm for the expenses incurred within thirty (30) days of the receipt of the expense statement.

Notwithstanding the provisions of the preceding two paragraphs of this Section, if the Stormwater Drainage Easement Area and/or the improvements located therein (including wetland vegetation) are damaged by Morris Farm the cost to maintain, repair or replace the same shall be paid by Morris Farm.

4. <u>Insurance</u>. Prior to entering upon the Stormwater Drainage Easement Area or any part of it to perform any maintenance thereon, Morris Farm shall obtain a policy of commercial general liability insurance with limits of at least One Million and 00/100 (\$1,000,000.00) Dollars combined each occurrence and in the aggregate insuring against any and all liabilities arising out of or related to their rights and duties under this Agreement. The policies shall be "occurrence" type policies, not "claims-made" type policies and each policy shall provide that it cannot be canceled without thirty (30) days prior written notice to the other party. Morris Farm and the Township shall each cause its contractors performing any work in the Stormwater Drainage Easement Area to maintain a policy of commercial general liability insurance in the amount and form described in this Section during the period of time that such contractors are performing such work.

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- Mechanic's Liens. If, because of any act or omission of Morris Farm or the Township or anyone claiming by, through or under either of them, any mechanic's lien or order or claim for the payment of money is filed against the Property (whether or not such lien or order is valid or enforceable as such), the party whose conduct caused the same, at its sole expense, shall cause the same to be canceled and discharged of record within sixty (60) days after receipt of notice of the filing thereof by payment, bonding, or otherwise, as provided by law. The responsible party shall be solely responsible for all costs, expenses, claims, losses, liability or damages, including reasonable attorneys' fees, resulting from such lien or order or the responsible party's failure to obtain release of the same.
- Entire Agreement and Successors. This Agreement contains the entire understanding of the parties hereto on the matters set forth herein, shall be binding upon and inure to the benefit of their successors and assigns, and shall be a covenant running with title to the Morris Farm Property and the Township Property, or any part of either.
- 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- Limitation on Obligations. Anything in this Agreement to the contrary notwithstanding, neither of the parties hereto, and none of their respective successors or assigns, shall be liable under this Agreement with respect to any event, act or omission which occurs at any time after that party is no longer a fee simple owner of a portion of the Property. Rather, the successor or assign of each such party, and each subsequent successor or assign, who is the owner of fee simple title to a portion of the Property at the time of any such event, act or omission, shall be liable with respect thereto. It is the intention that the covenants and obligations contained in this Agreement shall be binding on each party and its successors and assigns, only during and in respect to their respective successive periods of ownership as aforesaid.
- Notice. Any notice given pursuant to this Agreement shall be given in writing and 9. delivered: (a) in person; (b) by overnight courier; or (c) by certified mail, postpaid, return receipt requested, addressed as follows:

Morris Farm:

6355 Centre Park Drive

West Chester, Ohio 45069 Attn: Lawrence Schumacher

Township:

9113 Cincinnati-Dayton Road

West Chester, Ohio 45069

Attn: Administrator

Such notice, (a) if delivered personally, shall be deemed given at the time of delivery; (b) if sent by overnight courier service, shall be deemed given one (1) business day after deposit with the overnight courier service; or (c) if sent by certified mail, shall be deemed given two (2) business days after the time of mailing with appropriate postage attached thereto.

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- Survival. All agreements, covenants or indemnities herein which must, by implication or necessity, survive the termination of this Agreement, shall be deemed to so survive as the sense of this Agreement requires.
- Exhibits. The following exhibits are attached hereto and incorporated herein by 11. reference:

Legal description of the Morris Farm Property; Exhibit "A"

Legal description of the Township Property; and Exhibit "B"

Exhibit "C" Grading Plan

Exhibit "D" Survey Showing the Stormwater Drainage Easement Area.

This Agreement may be executed in any number of identical 12. Counterparts. counterparts, each of which shall be considered an original, but together shall constitute but one and the same agreement.

The said parties hereto have caused this Agreement to be duly executed and delivered the day and year first written above.

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MORRIS FARM LIMITED LIABILITY COMPANY

Authorized Member

STATE OF OHIO, COUNTY OF BUTLER, SS:

The foregoing instrument was acknowledged before me this 15 y day of November 2007 by Lawrence Shame one, the Authorized Member of Morris Farm Limited Liability Company, an Ohio limited liability company, on behalf of the company.

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Christina R. Johnson Notary Public

Christina R. Johnson Notary Public State of Ohio My Commission Expires Oct. 28, 2012

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BOARD OF TRUSTEES OF WEST CHESTER TOWNSHIP

Judi Boyko, Township Administrator

STATE OF OHIO, COUNTY OF BUTLER, SS:

The foregoing instrument was acknowledged before me this 15th day of hover 1207 by Judi Boyko, the Township Administrator of and on behalf of West Chester Township, a political subdivision of the State of Ohio.

APPROVED AS TO FORM:

SANDRA L. NUNN Notary Public, State of Ohlo My Commission Has No Expiration Date. Section 147.03 O.R.C.

This Instrument Prepared By: MILLIKIN & FITTON LAW FIRM A Legal Professional Association Hamilton, Ohio

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EVHIBIT A





September 20, 2007

LEGAL DESCRIPTION 81.954 ACRES

Situated in Sections 10 and 11, Town 2, Range 2, West Chester Township and Sections 16 and 17, Town 2, Range 2, Fairfield Township, Butler County, Ohio, part of the following described lands also being known as entire lot numbers 7307, 7308, 7330, and 7331 of the City of Fairfield, being part of a 111.135 acre parcel conveyed to Morris Farms Limited Liability Company in O.R. 6436, Pg. 1475 and being more particularly described as follows:

Beginning at the intersection of the southerly right-of-way line of the Norfolk & Western Railroad with the west line of Section 11, said point being N02°38°05°E a distance of 683.79 feet from the southwest corner of Section 11;

Thence along said southerly right-of-way line, being parallel with and 28.00 feet south as measured at right angles to the centerline of the tracks, \$55°50'51"E a distance of 506.45 feet:

Thence through said 111.135 acre parcel and in part along the proposed right-ofway line of Firebird Drive the following six (6) courses:

- 1.) S34°08'16"W a distance of 220.04 feet;
- 2.) S30°49'19"W a distance of 343.77 feet;
- 3.) S10°45`52"W a distance of 316.66 feet:
- 4.) Along a curve to the left an arc distance of 74.61 feet to a point of reverse curvature, said curve having a radius of 54.00 feet, a central angle of 79.10.01" and a chord bearing \$00.26.22. W for 68.82 feet;
- 5.) Along a curve to the right an arc distance of 11.75 feet to a point of tangency, said curve having a radius of 13.50 feet, a central angle of 49°52'33" and a chord bearing \$14°12'22"E for 11.38 feet;
- 6.) \$10°43'55"W a distance of 120.03 feet to the northerly right-of-way line of the former Miami & Erie Canal:

Thence along said northerly line, said lands being conveyed to the Butler County Commissioners in D.B. 888 Page 700, the following seventeen (17) courses:

- 1.) N77°00'48" W a distance of 958.85 feet:
- 2.) N73°38'13"W a distance of 91 87 feet:

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3.) N64°00`37"W a distance of 78.17 feet;

4.) N61°43'28"W a distance of 176.28 feet;

5.) N52°05'45"W a distance of 185.82 feet;

6.) N45"08'34"W a distance of 185.40 feet;

7.) N38°24'53"W a distance of 874.43 feet;

8.) N31°04'12"W a distance of 98.46 feet;

9.) N23°03'28"W a distance of 110.37 feet;

10.) N16°20'45" W a distance of 111.45 feet;

11.) N11"14"55"W a distance of 941.83 feet;

12.) N15°22`18"W a distance of 105.06 feet; 13.) N23°36'33"W a distance of 93.17 feet;

14.) N28°47'56"W a distance of 81.80 feet:

15.) N44°54'35"W a distance of 84.95 feet;

16.) N58°05`00``W a distance of 207.22;

17.) N62°58'40"W a distance of 119₁96 feet to the intersection of said northerly canal line with the southerly right-of-way line of the Norfolk & Western Railroad;

Thence along said southerly right-of-way line and along a curve to the right, an arc distance of 565.35 feet to a point of tangency, said curve having a radius of 1583.00 feet and a chord bearing S66 '04'43" E for 562.35 feet;

Thence continuing along said right-of-way line, being parallel with and 70.34 feet south as measured at right angles to the centerline of tracks, \$55°50'51"E a distance of 2622.05 feet;

Thence continuing along said right-of-way line, S26°36'23"E a distance of 209.42 feet to the west line of Section 11;

Thence along said section line. N02°38°05°E a distance of 169.67 feet to the Point of Beginning, containing 81.954 acres more or less (10.098 acres being in Lot 7307, 13.285 acres being in Lot 7308, 49.737 acres being in Lot 7330, and 2.675 acres being in Lot 7331 of the City of Fairfield and 4.154 acres being in Section 10, Town 2, Range 2 and 2.005 acres being in Section 11, Town 2, Range 2, Union Township) and being subject to easements, restrictions, and rights-of-way of record.

Bearing Reference: Bearings are based on SurveyVolume 35, Page 33 of the Butler County Engineers Record of Land Surveys and are intended to denote angles only.

The above description was prepared by Kleingers & Associates, Inc., Engineers and Surveyors, under the direction of David L. Cox, Ohio Professional Surveyor No. 7101 and is based on prior surveys and record data.



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File# 2016-00053276 BK 8985 PG 1151 **EXHIBIT B**

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September 5, 2007

LEGAL DESCRIPTION 28.803 ACRES

Situated in Sections 10 and 11, Town 2, Range 2, West Chester Township, Butler County, Ohio, and being part of a 6.229 acre and part of a 29.111 acre tract conveyed to Morris Farm Limited Liability Company in O.R. 6436, Pg. 1475, and being more particularly described as follows:

Beginning at a found 5/8" iron pin in the southerly right-of-way line of the Norfolk & Western Railroad, said point being N02°38'05"E a distance of 683.79 feet and S55°50'51"E a distance of 506.45 feet from the southwest corner of Section 11;

Thence along said southerly right-of-way line, being parallel with and 28.00 feet south as measured at right angles to the centerline of the tracks, S55°50′51″E a distance of 1448.24 feet;

Thence along the easterly line of the above referenced 29.111 acre tract, S39°52'48'W, passing an existing stone at 28.28 feet, a total distance of 931.70 feet to a set railroad spike in the northerly right-of-way line of the former Miami & Erie Canal;

Thence along said northerly line, (said canal lands being conveyed to the Butler County Commissioners in D.B. 888 Page 700), the following four (4) courses:

- 1. N54°34'07"W a distance of 633.17 feet to an existing 5/8" iron pin;
- 2. N61°16'58"W a distance of 154.06 feet to an existing 5/8" iron pin;
- 3. N67°21'44"W a distance of 144.45 feet to an existing 5/8" iron pin;
- 4. N77°00'48"W a distance of 140.69 feet to a existing 5/8" iron pin at the intersection of said northerly canal line and the proposed easterly right-of-way line of Firebird Drive (proposed 60' R/W);

Thence leaving said canal boundary and along lines through the above referenced 29.111 acre and along the proposed right-of-way line of Firebird Drive the following six (6) courses:

- 1. N10°44'55"E a distance of 122.39 feet to an existing 5/8" iron pin at a point of curvature;
- Along a curve to the right an arc distance of 11.75 to an existing 5/8" iron pin at a point of reverse curvature, said curve having a radius of 13.50 feet, a central angle of 49°52'33" and a chord bearing N35°40'12"E for 11.38 feet;
- Along a curve to the left an arc distance of 189.05 to a set 5/8" iron pin, said curve having a radius of 54.00 feet, a central angle of 200°35'06" and a chord bearing N39°41'04"W for 106.26 feet;
- 4. N10°45'52"E a distance of 316.66 feet;
- 5. N30°49'19"E a distance of 343.77 feet to an existing cross notch;
- 6. N34°08'16°E a distance of 220.04 feet to the Point of Beginning.

Containing 28.803 acres more or less (26.728 acres being in Section 10, Town 2, Range 2 and 2.075 acres being in Section 11, Town 2, Range 2) and being subject to easements, restrictions, and rights-of-way of record.

Bearing Reference: Bearings are based on Survey Volume 36, Page 30 of the Butler County Engineers Record of Land Surveys and are intended to denote angles only.

The above description is based on a field survey made by Kleingers & Associates, Inc., Engineers and Surveyors, under the direction of David L. Cox, Ohio Professional Surveyor No. 7101. Said survey is recorded in Volume ______, Page _____ of the Butler County Engineers Record of Land Surveys.

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EXHIBIT A Grading Plan

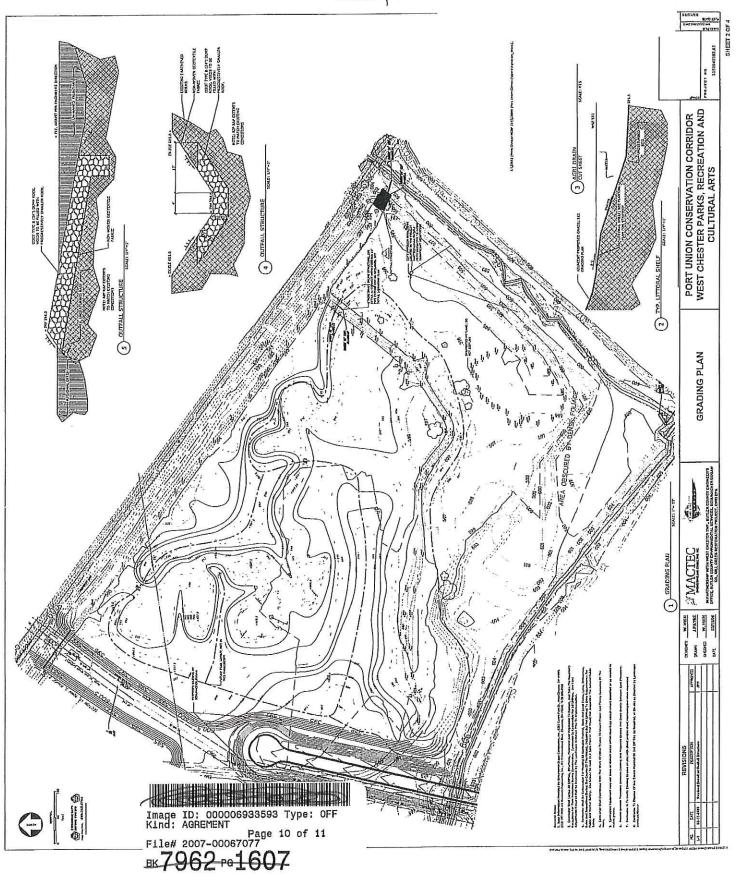


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EXHIBIT A EXHIBIT "D"

Stormwater Drainage Easement Area

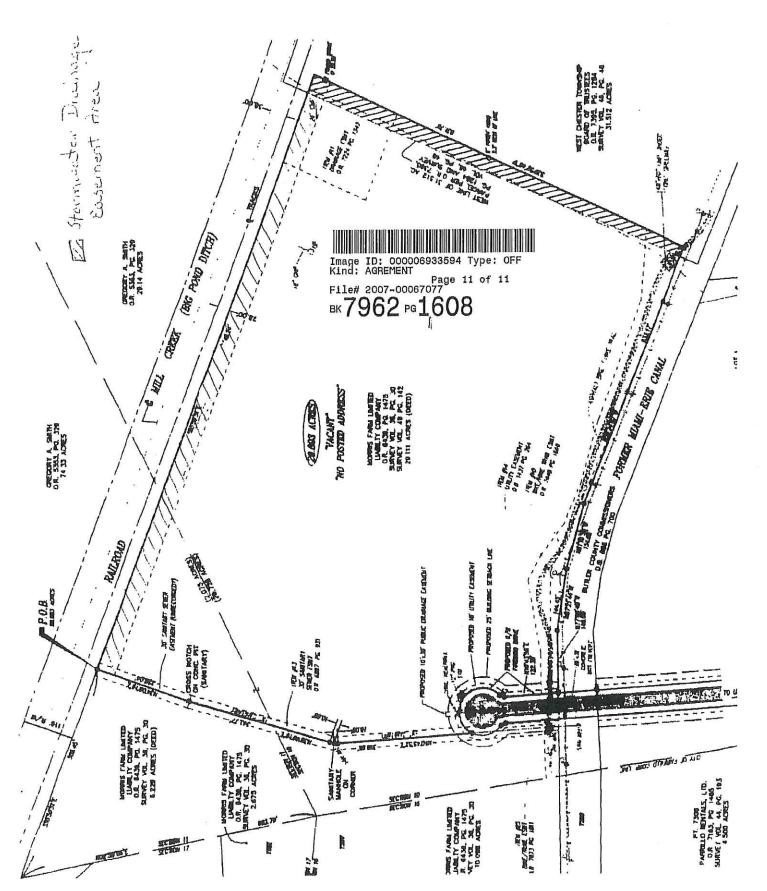




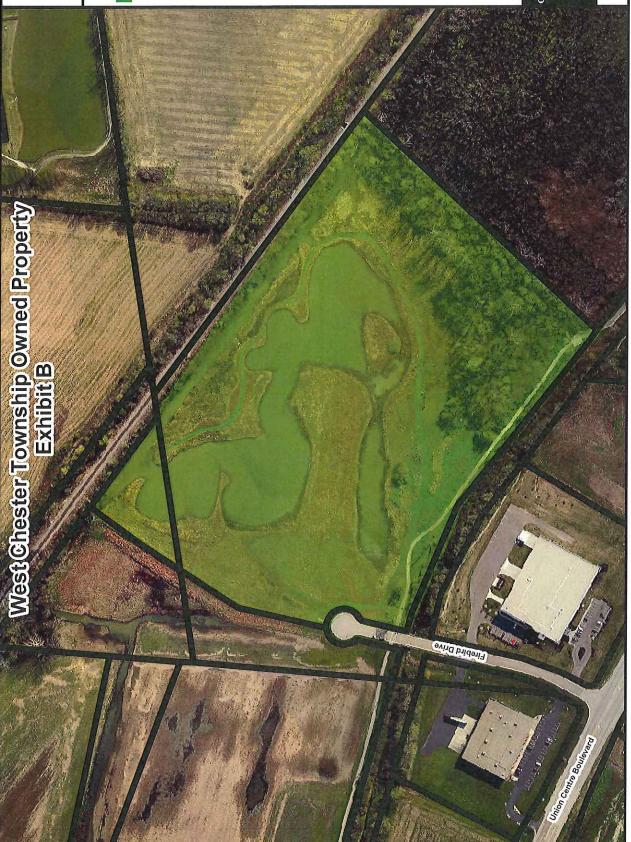
EXHIBIT B





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West Chester Township Owned Property Exhibit B



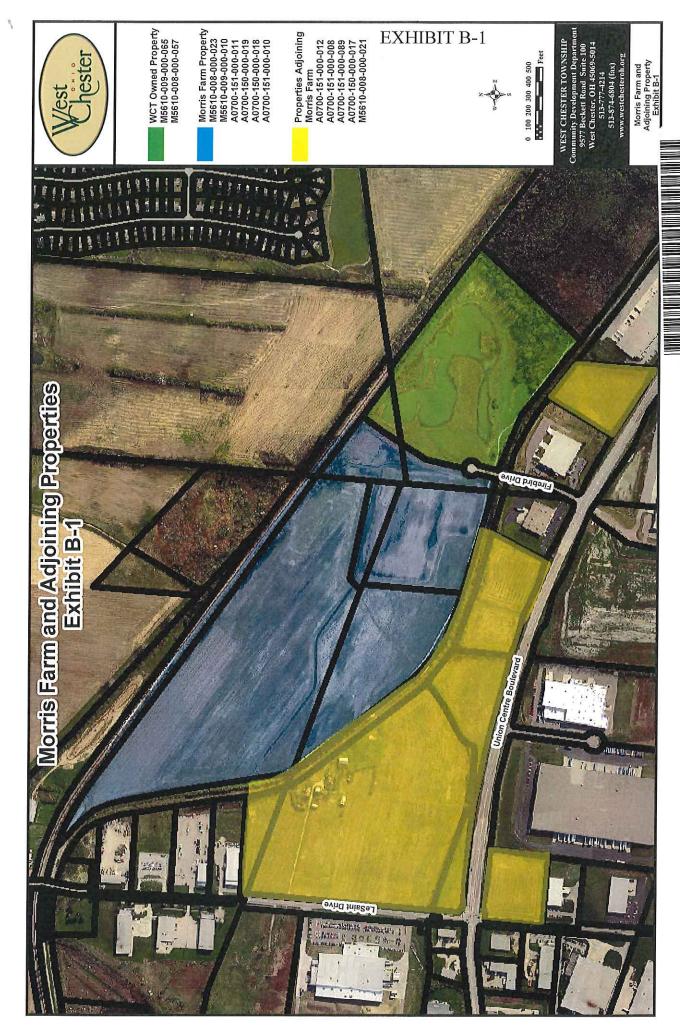


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