

**ORDINANCE NO. 2013-22**

**AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, APPROVING AN AGREEMENT OF SALE AND PURCHASE BETWEEN THE TOWNSHIP OF RADNOR AND ES III, L.P., A PENNSYLVANIA LIMITED LIABILITY COMPANY, BY ITS GENERAL PARTNER, ES III—ARDROSSAN LLC, FOR THE PURCHASE OF 71 ACRES OF OPEN SPACE**

*WHEREAS*, Radnor Township and ES III, L.P. A Pennsylvania limited liability company by its general partner, ES III---Ardrossan LLC have negotiated an agreement for the purchase of 71 acres of open space in Radnor Township; and

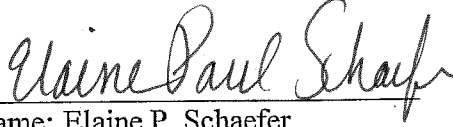
*WHEREAS*, in 2006 the voters of Radnor Township approved a referendum authorizing the Township to sell bonds for the purchase of open space and the maintenance of recreational facilities; and

*WHEREAS*, § 3.01 G. of the Radnor Township Home Rule Charter permits the purchase of real property by the Township by ordinance.


*NOW, THEREFORE*, be it hereby *ENACTED* and *ORDAINED* that the Radnor Township Board of Commissioners hereby approves the Agreement of Sale and Purchase with ES III, L.P. by its general partner, ES III—Ardrossan, LLC, a Pennsylvania limited liability company, a copy of which is attached hereto and incorporated herein.

*ENACTED AND ORDAINED* this 16<sup>th</sup> day of December, 2013.

RADNOR TOWNSHIP

By:   
Name: Elaine P. Schaefer  
Title: President

ATTEST:

  
Robert A. Zienkowski, Secretary



## AGREEMENT OF SALE AND PURCHASE

~~THIS AGREEMENT OF SALE AND PURCHASE (this "Agreement") is made and~~  
entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between **ES III, LP A PENNSYLVANIA LIMITED LIABILITY COMPANY BY ITS GENERAL PARTNER, ES III - ARDROSSAN, LLC, A PENNSYLVANIA LIMITED LIABILITY COMPANY** (hereinafter referred to as "Seller"), as equitable title holder under an Agreement of Sale dated July 31, 2013 with the **SYDNEY F. TYLER TRUST #6** (hereinafter the "Tyler Trust") and the **ROBERT L. MONTGOMERY ARDROSSAN TRUST** (hereinafter the "Montgomery Trust", with the Montgomery Trust and Tyler Trust hereinafter collectively referred to as the "Trusts") and **RADNOR TOWNSHIP**, a political subdivision of the Commonwealth of Pennsylvania, organized and existing as a home rule municipality under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. §2901, *et seq.*, and having its principal place of business located at 301 Iven Avenue, Wayne, PA 19087 or assigns (hereinafter referred to as "Buyer" or "Township").

### RECITALS

A. The Tyler Trust is the fee simple legal title holder of real property consisting of approximately 236.683 acres, plus or minus, located in Radnor Township, Delaware County and bearing Delaware County tax parcel identification number 36-04-02463-00 (hereinafter "Tyler Trust Property").

B. The Montgomery Trust is the fee simple legal title holder of real property consisting of approximately 118.848 acres, plus or minus, located in Radnor Township, Delaware County and bearing Delaware County tax parcel identification number 36-04-02464-00 (hereinafter "Montgomery Trust Property").

C. Seller has entered into a binding Agreement of Sale effective July 31, 2013 for the purchase of fee simple title of the Tyler Trust Property and the Montgomery Trust Property (collectively the "Trust Properties") except for the Ardrossan Mansion and approximately 10.022 acres from the Tyler Trust and Montgomery Trust (hereinafter collectively the "Trusts"). A true and correct copy of the Trusts Agreement of Sale, acceptable to the Buyer, has been provided to Buyer prior to the execution of this Agreement.

D. Seller enters into this Agreement as equitable title holder under the Trusts Agreement of Sale. Seller has represented to Buyer that certain contingencies must be met under the Trusts Agreement of Sale in order for the parties thereto to complete settlement thereunder, thereby enabling Seller to fulfill the Seller's obligations under this Agreement.

E. Township has previously identified parts of the Trust Properties as property that the Township considers suitable and appropriate for future public park or other public use, and the Township has determined that it is in the best interests of the Township and its constituents and residents, in furtherance of the established public policies of the Township, and those of other governmental authorities including Delaware County, to advance the efforts heretofore made by the Township to create a network of public parks, trails and open space areas for the use, enjoyment and benefit of the residents of the Township (hereinafter "Open Space Purpose"), for the Township to acquire certain portions of the Trust Properties from Seller on the terms and conditions hereof.

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F. Seller and Buyer have entered into this Agreement to memorialize the terms and conditions on which Seller will convey and the Buyer will acquire portions, as hereinafter identified, of the Trust Properties for said Open Space Purpose.

G. The Buyer and Seller agree that the use of the designations, Montgomery Trust Property and Tyler Trust Property are for convenience of identification only and do not indicate that either of the Trusts is a party to this Agreement.

NOW, THEREFORE, in consideration of the Lands and the respective undertakings of the parties hereinafter set forth, the receipt and sufficiency of which consideration are hereby acknowledged, and with the parties intending to be legally bound it is hereby agreed as follows:

## I. SALE OF PROPERTY

1.1 In consideration of the payment of the Purchase Price (as hereinafter defined) and upon the terms and conditions hereinafter set forth, Seller shall sell to Buyer and Buyer shall purchase from Seller the following:

1.1.1 A portion of the Montgomery Trust Property which shall be 27.654 acres with all rights and appurtenances pertaining to such real estate including, without limitation, any and all rights of Seller in and to all roads, alleys, easements, streets and ways adjacent to the such real estate, and any improvements located thereon, if any, and other rights pertaining thereto, (hereinafter "Parcel A") subject to the conditions and the other agreements hereinafter set forth. Parcel "A" is described on *Exhibit "A"* attached hereto and incorporated herein.

1.1.2 A portion of the Montgomery Trust Property which shall be 16.336 acres with all rights and appurtenances pertaining to such real estate including, without limitation, any and all rights of Seller in and to all roads, alleys, easements, streets and ways adjacent to the such real estate, and any improvements located thereon, if any, and other rights pertaining thereto, (hereinafter "Parcel B") subject to the conditions and the other agreements hereinafter set forth. Parcel "B" is described on *Exhibit "B"* attached hereto and incorporated herein.

1.1.3 A portion of the Tyler Trust Property which shall be 27.04 acres with all rights and appurtenances pertaining to such real estate including, without limitation, any and all rights of Seller in and to all roads, alleys, easements, streets and ways adjacent to the such real estate, and any improvements located thereon, if any, and other rights pertaining thereto, (hereinafter "Parcel C") subject to the conditions and the other agreements hereinafter set forth. Parcel "C" is described on *Exhibit "C"* attached hereto and incorporated herein.

1.2 Parcels "A", "B", and "C" shall be referred to collectively herein as the "Property."

1.3 To induce Buyer to enter into this Agreement, Seller represents and warrants (subsections 1.3.1 to 1.3.10 representations and warranties are to the best of Seller's knowledge without an independent investigation on the part of Seller) to Buyer as follows:

1.3.1 The Property, being Parcels "A", "B" and "C", have been owned, leased and operated in compliance with all federal, state or local laws, statutes, ordinances, regulations, rules, judgments, orders, notice requirements, court decisions, permits, licenses, agency guidelines or principles of law, which (i) regulate or relate to the protection or clean-up of the environment, the use, treatment, storage, transportation, handling, or disposal of Hazardous Materials (as defined below), the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, or the health and safety of persons or property, including without limitation protection of the health and safety of employees, or (ii) impose liability with respect to any of the foregoing, including without limitation the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), Resource Conservation & Recovery Act (42 U.S.C. § 6901 *et seq.*) ("RCRA"), Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201, 300f), Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), Clean Air Act (42 U.S.C. § 7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) ("CERCLA"), Clean Water Act ("CWA") (33 U.S.C.A. §§1251 *et seq.*) and the regulations promulgated under these statutes and any similar Federal, Pennsylvania, or local statutes, regulations, ordinances, or law of similar effect, each as amended ("Environmental Laws"). Seller has not received any notice nor is Seller aware of any pending or threatened any lawsuit, governmental action or other legal action claiming that the Property is in violation of the provisions of any Environmental Law or in non-compliance or violation with the conditions of any permit required under any Environmental Laws. As used herein, "Hazardous Materials" means any quantity of hazardous, toxic or otherwise dangerous substances, materials or wastes, whether solid, liquid or gas, including, but not limited to, asbestos in any form, urea formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products, any radioactive substance, asbestos or asbestos containing materials, any infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound, Class I or Class II chlorofluorocarbons as listed at 42 U.S.C. §7671a ("CFCs") and no substances, materials, equipment or containers containing CFCs, or any other substance or material regulated by Environmental Laws;

1.3.2 Any activity that has occurred on the Property to date has been in compliance with any and all local, state, and federal laws, including Environmental Laws and performed in a manner that will not result in liability of Seller or Buyer under any Federal, State or Local laws, including, but not limited to, said Environmental Laws;

1.3.3 That there are no present or past Environmental Conditions (as defined below) in any way relating to the Property. The phrase "Environmental Conditions" means the introduction into the soil, surface water, groundwater, air/vapor, sewer, septic system or waste treatment or environment of the Property (through leak, spill, release, discharge, escape, migration, emission, dumping, disposal or otherwise) of any Hazardous Materials (whether or not such introduction constituted at the time thereof a violation of any Environmental Laws), as a result of which Seller or Buyer has or may become liable to any person or entity. Parcel "B" contains a former quarry site which was the subject of clean up by the Montgomery Trust. Seller shall provide to Buyer all documents it receives from the Montgomery Trust pertaining to the former quarry site;

1.3.4 That there are no registered or unregistered Underground Storage Tanks (hereinafter "USTs") located on or associated with the Property;

1.3.5 That the Property is not leased, except for agricultural purposes and a portion of Parcel "A" to the Boy Scouts and the Seller shall not enter into any lease agreement with respect to the Property without prior written consent of Buyer;

1.3.6 That no Benefited Party is a Prohibited Person or is in violation of Executive Order 13224, the Patriot Act, the Anti-Money Laundering Act, or in connection with Executive Order 13224, the Patriot Act or Anti-Money Laundering Act. "Benefited Party" means and includes any and all of the following: Seller; any officer, director, shareholder, partner, member of Seller; any direct or indirect holder of any equity interest in Seller; and any affiliate of Seller. "Prohibited Person" means and includes any person or entity with whom US persons or entities are prohibited or restricted from doing business pursuant to any of the following: the Executive Order and the Annex thereto; the regulations of the Office of Foreign Asset Control of the Department of the Treasury (including the Specially Designated Nationals and Blocked Persons List, as updated from time to time; and, any other statute, law, executive order, rule, regulation or other governmental action. "Executive Order 13224" means Executive Order 13224 signed on September 24, 2001 and titled "Blocking Property and Prohibited Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism." "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. "Anti-Money Laundering Act" means the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001;

1.3.7 The Tyler Trust currently is the sole owner of Parcel "C" and except for the equitable interest of the Seller there are no other individuals and/or entities that currently have any interest whatsoever in Parcel "C";

1.3.8 The Montgomery Trust is currently the sole owner of Parcel "A" and Parcel "B" and except for the equitable interest of the Seller there are no other individuals and/or entities that currently have any interest whatsoever in Parcel "A" or Parcel "B";

1.3.9 There have been no improvements or assessments ordered or issued by any governmental authority with respect to the Property, or the streets abutting the same. Seller shall be obligated to perform and pay the entire cost of any of the foregoing as to which notices are issued, assessments made, or improvements or work ordered at any time prior to Closing;

1.3.10 The Property is not in violation of any restriction, covenant, easement, license or any other agreement, authorization, approval or contract relating to the said tracts. No condemnation or eminent domain proceedings are pending (nor to Seller's knowledge, threatened) which would affect Parcel "A", Parcel "B", or Parcel "C";

1.3.11 This Agreement constitutes the legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms and conditions;

1.3.12 There are no existing unrecorded contracts or agreements entered into by Seller, written or oral, affecting Parcel "A", Parcel "B" or Parcel "C", or any portion thereof or the use thereof that will not be terminated by Closing;

1.3.13 The Property is zoned "AC" (Agricultural Conservation) under the Radnor Township Zoning Ordinance on the date hereof;

1.3.14 There is no litigation or proceeding pending, or to Seller's actual knowledge, threatened before any court or administrative agency which will adversely affect the validity or enforceability of this Agreement, or which relates to the Property or any activities of Seller or its agents, employees or contractors at, on or about the Property, or which will result in a lien, charge, encumbrance or judgment against any part of or any interest in the Property; and

1.3.15 Seller will cooperate fully with the Title Company and exercise reasonable efforts to remove any and all objections to the Title Commitment, other than the Permitted Exceptions.

1.4 THE RIGHT TO ENFORCE THE PROVISIONS CONTAINED WITHIN SECTION 1.3 AND ALL SUBSECTIONS THERETO SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM SELLER TO BUYER OF THE DEEDS FOR PARCEL "A", PARCEL "B" AND PARCEL "C" FOR A PERIOD OF THREE YEARS FROM THE CLOSING DATE. ALL REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER IN THIS AGREEMENT SHALL BE CONSIDERED TO HAVE BEEN MADE BOTH ON THE DATE HEREOF AND ON THE CLOSING DATE.

## II. PURCHASE PRICE AND EARNEST MONEY

2.1 The purchase price (the "Purchase Price") for the Property shall be Eleven Million Six Hundred Fifty-Three Thousand Eight Hundred Twenty Dollars (\$11,653,820.00) and shall be payable in the manner set forth in Article III below.

2.2 Earnest money in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Earnest Money Deposit") shall be reserved by Buyer within ten (10) business days after enactment of the ordinance approving this Agreement of Sale in Buyer's Open Space Fund and restricted from use by formal action of the Board of Commissioners to the closing of the transactions contemplated hereunder. If Buyer elects to terminate pursuant to the terms of this Agreement, all earnest money shall be released from restriction with no further obligations between the parties.

2.3 The Purchase Price shall be allocated among Parcel "A", Parcel "B" and Parcel "C" in accordance with the appraisal performed by J. Brian O'Donnell, MAI, dated March 27, 2013 which established a per-acre value for each of the parcels. The purchase price subject to survey confirmation is anticipated to be as follows:

2.3.1 Two Million Four Hundred Thousand Dollars (\$2,400,000.00) of the Purchase Price shall be allocated for the purchase of Parcel "A";

2.3.2 Three Million Six Hundred Thousand Dollars (\$3,600,000.00) of the Purchase Price shall be allocated for the purchase of the Parcel "B"; and

2.3.3 Five Million Six Hundred Fifty-Three Thousand Eight Hundred Twenty Dollars (\$5,653,820.00) of the Purchase Price shall be allocated for the purchase of the Parcel "C".

**III.**  
**PAYMENT OF PURCHASE PRICE**

3.1 The Earnest Money Deposit (on account of the Purchase Price) and the balance of the Purchase Price shall be paid at the Closing (hereinafter defined) by Buyer delivering via wire transfer, collected federal funds to the title insurance company designated by Buyer (hereinafter "Title Company") for disbursement by it to Seller or for Seller's account.

**IV.**  
**CLOSING**

4.1 The closing of the purchase of the Property shall be in the first quarter of 2015 but Seller shall have the right to extend the closing to the first quarter of 2016, or such earlier date as may be mutually agreed by Buyer and Seller (the "Closing"). The Closing shall be held at the offices of the Buyer or at such other location as may be acceptable to both parties. The procedure to be followed by the parties in connection with the Closing shall be as follows:

4.1.1 At the Closing Seller shall cause to be delivered to the Title Company or to Buyer, as applicable, the items specified herein and the following documents and instruments duly executed and acknowledged, in recordable form:

4.1.1.1 Separate special warranty deeds and such other instruments as shall be required to convey to Buyer good, marketable and insurable fee simple title to Parcel "A" and Parcel "B", or Parcel "C" free and clear of any and all liens, claims, encumbrances, easements, encroachments, servitudes, conditions, security interests, tenancies, leases, occupancy rights, crop rights, licenses, limitations and/or defects of title other than the Permitted Exceptions (hereinafter defined) to enable the acquisition of Parcel "A" and Parcel "B" and Parcel "C" (the "Deeds") each dated as of the Closing Date in favor of Buyer;

4.1.1.2 Copies of all documents in the possession of Seller pertaining to the Property (s) being purchased;

4.1.1.3 Copies of any and all maps, plans, surveys and blueprints pertaining to the Property(ies) being purchased, including any and all survey maps and engineering plans in the possession of Seller;

4.1.1.4 Affidavits containing the unconditional representation that the Property is not subject to any liens or encumbrances that are not Permitted Exceptions (hereinafter defined);

4.1.1.5 Executed owners' or sellers' affidavits in such form that is satisfactory in all respects and required by the Title Company and Buyer; and

4.1.1.6 Such other documents as may be reasonably required by the terms of this Agreement, Buyer, the Title Company or that may otherwise be reasonably necessary or incidental to consummating the transaction contemplated hereby; subject in the case of all documents described in the preceding subsections to Seller's right to retain copies thereof for Seller's records.

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4.1.2 At the Closing, the Buyer, or its assignee, shall cause to be delivered to the Title Company the following documents and instruments:

4.1.2.1 Funds payable to the Title Company representing the amount of the Purchase Price relating to the Property; and

4.1.2.2 Evidence reasonably acceptable to Seller and the Title Company, authorizing the consummation by Buyer of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of Buyer.

4.1.3 At the Closing, Seller and Buyer shall cause to be delivered to the Title Company such other instruments and documents as may be necessary and appropriate and required hereunder in order to complete the Closing of the transaction contemplated hereunder.

4.1.4 At the Closing, Seller shall deliver to the Buyer and the Title Company a certificate in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying as to the non-foreign status of a transferor, or such variation thereof as may be required by the Internal Revenue Service.

4.2 Upon the completion of the deliveries specified in Section 4.1 above, the Title Company shall be authorized to cause the appropriate closing documents to be immediately recorded in the Office of the Recorder of Deeds of Delaware County, Pennsylvania, and shall deliver the balance of the proceeds from the sale to Seller.

## V. REQUIREMENTS AND CONDITIONS

5.1 Upon execution of this Agreement, Buyer and/or Seller, as the case may be, shall perform the following within the time stated, all of which shall be a condition precedent to the obligation of the party benefiting from such condition to proceed to that Closing:

5.1.1 Title to the Property shall be conveyed to Buyer at the respective Closing in fee simple by separate Special Warranty Deeds, free and clear of any and all liens, claims, encumbrances, easements, encroachments, servitudes, conditions, security interests, tenancies, leases, occupancy rights, crop rights, licenses, limitations and defects of title other than the Permitted Exceptions (hereinafter defined). In addition, title to the Property shall be good and marketable and such as will be insurable by the Title Company at regular standard premium rates;

5.1.2 Buyer shall obtain a Commitment for Title Insurance (the "Title Commitment") from the Title Company, committing to insure upon the payment of a requisite premium at regular standard rates that Buyer shall own good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions (hereinafter defined) and also committing to provide any ALTA title endorsements requested by Buyer in its sole discretion. Buyer, upon receipt of the Title Commitment, shall promptly forward a complete copy of the Title Commitment to Seller. Buyer shall have until the expiration of the Due

Diligence Date (hereinafter defined), within which to object, by written notice to Seller, to any exceptions to title set forth in the Title Commitment. Such objections shall be within Buyer's sole discretion. If Buyer fails to object to any such item by written notice to Seller prior to the expiration of the Due Diligence Date (hereinafter defined), Buyer shall be deemed to have approved such item. ~~If Buyer objects to any such item by timely written~~ notice to Seller, Seller shall have the right (without any obligation to do so) to cure or attempt to cure Buyer's objections to such item within ten (10) days after receiving such notice. In the event Seller is unable to or elect not to cure any one or more of Buyer's objections, Seller shall notify Buyer in writing of such election and request that Buyer waive Buyer's right to terminate this Agreement due to such objection(s). If Buyer does not terminate this Agreement within fifteen (15) days of receiving such written notice from Seller, Buyer shall be deemed to have waived its right to terminate this Agreement due to such objections. If Seller fails to respond in writing to Buyer's objections within ten (10) days after receiving notice of such objections from Buyer, Seller shall be deemed to have elected to cure such objections and this Agreement shall continue in full force and effect, and Seller's cure of said objection shall be a condition of Buyer's obligation to Close;

5.1.3 The term "Permitted Exceptions", as used herein, shall mean (i) public laws and ordinances of general application, (i) the lien of real estate taxes not yet due and payable, (ii) all matters revealed in the Title Commitment obtained by Buyer and approved or deemed approved by Buyer as provided hereinabove, (iii) any existing general utility easements serving the Property, provided such existing utility easements would not materially interfere with the proposed Open Space Purpose, and (iv) any title exception created directly by any act or omission of Buyer or its representatives, agents, employees or invitees; and

5.2 For a period expiring one hundred eighty (180) days from July 31, 2013, the Effective Date of the Trusts Agreement of Sale, until January 27, 2014 (the "Due Diligence Date"), Buyer shall have the right, personally or through its engineers, environmental consultants, surveyors, or such other parties as Buyer shall designate, to have performed any and all inspections or studies of the Property which Buyer may desire, including, but not limited to, a physical inspection of the Property, and any and all environmental inspections of the Property at the sole expense of the Buyer. Since Buyer's right to perform such inspection and testing must be performed pursuant to Seller's right to inspect and test under the Trusts Agreement of Sale, the rights and obligations of Buyer to inspect and test hereunder shall hereby incorporate herein the requirements under Section 6 of the Trusts Agreement of Sale. Such inspections and/or studies of the Property shall more specifically include, but are not necessarily limited to the following:

5.2.1 Buyer may conduct a Phase I or Phase II Environmental Review of the Property. Seller shall provide to Buyer a copy of any Phase I and/or II Environmental Review of the Property which it has obtained at its own cost and expense. In the event that Buyer conducts a Phase II Environmental Site Assessment which requires soil boring samples to be collected, Buyer agrees to repair any damage to the Property caused from the collection of said soil boring samples;

5.2.2 Review of all local, state and Federal laws impacting the Property as well as the utilities to determine if said Property is suitable for the proposed Open Space Purpose; and

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5.2.3 Buyer shall conduct its evaluation in accordance with Radnor Township Resolution No. 2013-07, as follows:

5.2.3.1 The Open Space Committee of the Board of Commissioners shall complete a Radnor Township park and open space land evaluation worksheet;

5.2.3.2 After evaluating the Properties in light of the site selection criteria and completing the park and open space land evaluation worksheet, the Open Space Committee shall submit a written recommendation to the Board of Commissioners as to whether to pursue the acquisition opportunity;

5.2.3.3 In consideration of the recommendation of the Open Space Committee, the Board of Commissioners shall make a determination at a publicly advertised meeting whether to proceed with Phase II involving land acquisition and due diligence procedures pursuant to Resolution No. 2013-07; and

5.2.3.4 Upon an affirmative vote of a majority of the Board of Commissioners to proceed with acquisition, the township staff and Board of Commissioners shall proceed to Phase II during the Due Diligence period.

5.3 If Buyer shall find any inspections, reviews or studies, that are conducted in connection with the Property pursuant to Sections 5.2.1, 5.2.2 or Section 5.2.3, to be unsatisfactory as determined in the sole discretion and opinion of the Buyer, it shall have the right, at its option, to terminate this Agreement on or before ten (10) days after the Due Diligence Date, and, upon such termination, all Earnest Money Deposits previously reserved by Buyer shall be immediately released from any restriction thereon and the parties hereto shall have no further liabilities one to the other. If Buyer shall not have terminated this Agreement within ten (10) business days after the Due Diligence Date, then Buyer shall be deemed to have waived its rights to terminate pursuant to this Section 5.3.

5.4 In addition to the Buyer's finding that the results of any and all inspections or studies are satisfactory, as determined in the sole discretion and opinion of Buyer, Buyer's obligations under this Agreement are further conditioned upon the following being completed, to the reasonable satisfaction of both the Seller and the Buyer:

5.4.1 The Seller obtaining any and all necessary final and unappealable conditional use and subdivision approvals to the satisfaction of both Seller and Buyer (the "Approvals") for the subdivision of the Trust Properties into lots, including, without limitation, Parcels "A", "B" and "C", substantially in accordance with the Plans attached hereto as *Exhibit "D"* and receipt of any other permits or approvals that may be necessary in connection therewith, including without limitation, the grant of Pennsylvania Sewage Facilities Act planning approval by the Pennsylvania Department of Environmental Protection or other applicable agency, including a "non-building waiver" from the requirements of the Pennsylvania Sewage Facilities Act for the Property and a NPDES Permit. Seller agrees to proceed in a prompt and commercially reasonable manner to obtain the Approvals within the time periods provided in the Trusts Agreement of Sale;

5.4.2 Township's issuance of general obligation bonds in an aggregate principal amount of no less than Eleven Million Six Hundred Fifty-Three Thousand Eight Hundred Twenty Dollars (\$11,653,820.00), less the receipt of funding from the Pennsylvania

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Department of Conservation and Natural Resources, or other governmental or open space grants or fundraising for the purpose of providing funds for the acquisition of the Property for the Open Space Purpose on terms and conditions satisfactory to the issuer thereof in furtherance of the open space electoral debt referendum approved by the voters of Radnor Township at the November 7, 2006 election;

5.4.3 An independent M.A.I. appraisal complying in all respects with the standards for real estate appraisals established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, showing the "as-is" value of the Property as not less than the Purchase Price (this contingency has been satisfied by the March, 2013 appraisal obtained by Buyer);

5.4.4 Buyer's approval of the current condition of the Property as depicted on a current land title survey conforming to the 2005 ALTA/ACSM land survey standards, showing all improvements on or adjacent to the Property ("Survey") obtained by Buyer. A portion of the Property depicted on *Exhibit "D"* contains two alternative subdivision plans, of which *Exhibit "D-1"* contains a 27.04 acre area labeled as the Rye Field with an adjacent 100 foot wide area of required common open space (the "Rye Field Buffer Area"). This 100 foot wide buffer area is in addition to the 27.04 Rye Field parcel which is also Parcel "C" as described in this Agreement. The parties agree that upon purchase of Parcel "C" by Seller from the Trusts, Seller will also acquire the Rye Field Buffer Area from the Trusts at the same time. The Rye Field Buffer Area will be restricted as required common open space under Seller's Density Modification Conditional Use plan from further development. Additionally, the Rye Field Buffer Area will be restricted from further development by easement enforceable by the Township at the same time that Seller conveys Parcel "C" to the Township.

5.4.5 The Township Board of Commissioners enacting an ordinance approving the purchase and conveyance of the Property pursuant to the Radnor Township Home Rule Charter. A map of the overall property to be acquired by the Township is depicted on *Exhibit "E"*, attached hereto and incorporated herein; and

5.4.6 Seller's termination of the lease to the Boy Scouts on a portion of Parcel "A" to the satisfaction of Buyer.

5.5 In the event that the contingencies as set forth in section 5.4 above cannot be achieved or obtained prior to January 31, 2016, this Agreement shall terminate automatically, without notice, whereupon the total amount of all Earnest Money Deposits previously designated shall be immediately released to Buyer and the parties hereto shall have no further liabilities one to the other. Buyer agrees to conduct all other due diligence matters contained in Paragraph 5.2 above within the period from the date of full execution of this Agreement to the Due Diligence Date of January 27, 2014.

5.6 Buyer's obligations hereunder shall further be conditioned upon Seller complying with his obligations hereunder; the failure of Seller to satisfy all conditions to Closing set forth herein shall relieve Buyer of all of its obligations to Seller hereunder, and provide Buyer with the option of terminating this Agreement in Buyer's sole discretion, with the total amount of all Earnest Money Deposits immediately released from any restriction thereon.

5.7 In connection with Buyer's inspections and studies, Seller, shall within fifteen (15) days of full execution of this agreement, furnish any and all documentation associated with the Property to Buyer that Seller has in its possession, including, but not limited to, the following information and documents:

5.7.1 Any and all title reports Seller has available at this time, and after this agreement is executed, a title commitment showing the status of the title to any and all interests in the Property and encumbrances and restrictions affecting the Property;

5.7.2 Any and all surveys of the Property showing the boundaries and location of all existing improvements of the Property as well as all easements, flood plains and wetlands, if any;

5.7.3 Copies of any building and use restrictions or declaration of easements covenants and restrictions applicable to any portion of the Property;

5.7.4 Copies of any and all public or private utility easements, access agreements, special assessment arrangements, tap-in or connection fee agreements or procedures relating to the Property;

5.7.5 Any and all soil or boring reports, environmental studies (including, but not limited to any and all Phase I or Phase II environmental studies), hydrological studies, engineering studies, percolation tests or data, septic permits, buildings permits, highway occupancy permits, or other permits, notices, reports issued by the any Federal, State or Local governmental authority in connection with the Property;

5.7.6 Copies of current tax bills along with copies of the real estate tax bills for the past three (3) years, if in Seller's possession;

5.7.7 Copies of any existing warranties for any portion of the improvements such as roof and permanently attached mechanical equipment, if any;

5.7.8 A copy of the current certificate of occupancy issued to Seller or any successor thereto issued by the local and/or state government, if any;

5.7.9 Copies of all oil, gas and mineral leases associated with the Property;

5.7.10 Copies of all documents associated with litigation, of which the Property is subject or parties in such lawsuits or in which title to the Property is in dispute or any litigation of a nature that could adversely affect Seller's obligations under this Agreement; and

5.7.11 Copies of any and all permits associated with the Property.

5.8. At least ten (10) days prior to Seller acquiring the Property from the Trusts, Seller shall provide written notice to Buyer of the date and place of said closing (the "Seller Purchase Closing"). Buyer shall have ten (10) days from Seller's written notice to assess whether or not there are unfulfilled conditions in its Agreement of Sale to buy the Property and if so, Buyer can elect whether or not to terminate the agreement with Seller before Seller buys the Property from the

Trusts. As of the date of the Seller Purchase Closing, Buyer's obligation to purchase the Property from Seller shall become non-conditional. In addition, as of or prior to the Seller Purchase Closing, Buyer shall irrevocably restrict the use of Eleven Million Six Hundred Fifty-Three Thousand Eight Hundred Twenty Dollars (\$11,653,820.00) of proceeds of the General Obligation Bonds and/or the funding from the Pennsylvania Department of Conservation and Natural Resources, or other open space grants (as set forth in Section 5.4.2) for the payment of the purchase price to Buyer.

## VI. POSSESSION

6.1 Buyer shall be entitled to full undisturbed, uncontested actual possession of the portion of the Property being purchased at the Closing.

## VII. PRORATIONS, ADJUSTMENTS AND SPECIAL ASSESSMENTS

7.1 Seller shall be responsible for all real estate taxes, water and sewer rents and similar charges against the Property, and any use and occupancy taxes (collectively, "Charges") for all tax years preceding the year in which Closing is consummated, and shall pay and discharge the same at or before Closing. All Charges for the tax year in which Closing is consummated, shall be apportioned pro rata between Seller and Buyer as of the date of Closing. Seller and Buyer shall each be responsible for one-half (1/2) of any and all transfer taxes due on the transactions referred to in this Agreement and associated with their respective ownership interests in the Property. Each party shall bear the recording costs of any instruments received by that party, and Seller shall pay the recording costs on documents necessary to clear title at Closing. If the Property is only part of a tax parcel, the parties shall allocate the taxes attributable to the tax parcel between the Property and the remainder of the tax parcel according to acreage (with respect to the land component of the assessment) and according to which improvements are included in the Property, (with respect to the improvement component of the assessment). In the event that the Township waives its portion of the transfer taxes due in connection with the transactions referred to in this Agreement, the Buyer shall be entitled to a credit against the Purchase Price in the amount of the portion of the transfer taxes which Seller would have been obligated to pay pursuant to this Section 7.1. The obligations in this paragraph shall survive the Closing.

7.2 Seller shall be responsible for payment of any "roll-back taxes" and interest thereon resulting from any breach of any covenant to which the Property is subject under the Pennsylvania Farmland and Forest Land Assessment Act 319, as amended, and/or Act 515 resulting from or caused by any act or omission prior to Closing, or by the subdivision or the conveyance of the Property, and at Closing will cause the estimated rollback taxes and interest to be paid or deposited in escrow with the title company for payment when billed, such amount to be based on an estimate thereof obtained from the Delaware County Tax Assessment Office prior to Closing.

## VIII. COMMISSIONS

8.1 Buyer and Seller represent and warrant to the other that no real estate broker, salesman or finder has been involved in this transaction. If a claim for brokerage in connection with this transaction is made by any broker, salesman or finder claiming to have dealt through or on behalf of one of the parties hereto, such party shall indemnify, defend, and hold harmless the other party

ES III LP

hereunder, and such other party's officers, directors, agents and representatives, from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at all trial and appellate levels) with respect to said claim for brokerage. Anything to the contrary notwithstanding, the provisions of this paragraph shall survive the Closing and any cancellation or termination of this Agreement.

## IX. FURTHER INSTRUMENTS

9.1 Seller will, whenever and as often as it shall be reasonably requested so to do by Buyer, and Buyer will, whenever and as often as it shall be reasonably requested so to do by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement. The Seller further agrees to assign any and all warranties in connection with the Property and its improvements, if any, to the Buyer at the time of closing.

## X. TERMINATION AND REMEDIES

10.1 In the event that Seller shall have failed to have performed any of the covenants and/or agreements contained herein which are to be performed by the Seller, or if any of the conditions precedent to Seller's or Buyer's obligation to consummate the transactions contemplated hereby shall have failed to occur in the case of the failure of Seller to perform, or either party in the case of a failure of a condition precedent, Buyer may, at its option, terminate this Agreement in its entirety by giving written notice of termination to the other party and receive a full and immediate release of any and all Earnest Money Deposits previously deposited and neither party will be obligated to the other in any way whatsoever, or Buyer may seek to enforce specific performance of this Agreement, except in the case of the failure of a condition precedent.

10.2 If this Agreement is terminated by Buyer pursuant to any provision of this Agreement authorizing such termination, Buyer shall be entitled to the immediate release of any and all Earnest Money Deposits previously deposited, and thereafter Seller and Buyer shall have no further obligation or liabilities one to the other hereunder.

10.3 If Buyer fails to close the transaction contemplated hereby within the time periods set forth herein, Seller shall be entitled to receive the lesser of the Seller's actual damages sustained or the Earnest Money Deposit as may have been previously reserved as liquidated damages. Seller acknowledges that the Earnest Money Deposit is a reasonable amount of damages to compensate Seller for Buyer's failure to close the transaction contemplated hereby and that actual damages for such failure would be impossible to calculate and the forfeiture of the earnest money will be its sole remedy and in that event, neither party will be obligated to the other in any way whatsoever. However if Buyer's failure to close occurs after the Seller Purchaser Closing for any reason Seller may force the acquisition of the Property and the payment of the Purchase Price for the Property from the funds restricted pursuant to Section 5.8. of this Agreement. Buyer hereby acknowledges that absent such right of specific performance there is no adequate remedy at law to compensate Seller for the loss and damages that would accrue from said breach by Buyer.

ES III LP

**XI.  
RISK OF LOSS**

11.1 Risk of loss until the Closing shall be borne by Buyer.

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**XII.  
NOTICES**

12.1 Any notice, request, demand, instruction or other communication to be given to either party hereunder, except those required to be delivered at Closing, shall be in writing, and shall be deemed to be given upon receipt, if hand delivered, delivered by express delivery service, electronic mail, transmitted by facsimile with confirming receipt, or four (4) days after deposit of such notice in registered or certified mail, return receipt requested (except as to notices of termination which shall be deemed delivered upon deposit in registered or certified mail, return receipt requested), addressed as follows:

**IF TO BUYER:**

Radnor Township  
301 Iven Avenue  
Wayne, PA 19087-5297  
Attn: Robert A. Zienkowski  
Phone: (610) 688-5600  
Facsimile: (610) 688-1279  
[rzienkowski@radnor.org](mailto:rzienkowski@radnor.org)

**WITH A COPY TO:**

Grim, Biehn & Thatcher  
104 So. Sixth Street, P.O. Box 215  
Perkasie, PA 18944  
Attn: John B. Rice, Esquire  
Phone: (215) 257-6811  
Facsimile: (215) 257-5374  
[jrice@grimlaw.com](mailto:jrice@grimlaw.com)

**IF TO SELLER:**

Edgar Scott  
107 Twaddell Mill Road  
Wilmington, DE 19807  
Phone: (610) 246-6666  
Facsimile: (302) 654-4860  
[ccrscott@hotmail.com](mailto:ccrscott@hotmail.com)

**WITH A COPY TO:**

Saul Ewing  
1200 Liberty Ridge Drive, Suite 200  
Wayne, PA 19087-5569  
Attn: John C. Snyder, Esquire  
Phone: (610) 251-5079  
Facsimile: (610) 408-4409  
[jsnyder@saul.com](mailto:jsnyder@saul.com)



12.2 The addresses and addressees for the purpose of this article may be changed by either party by giving notice of such change to the other party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein shall be deemed to continue in effect for all purposes.

### XIII. MISCELLANEOUS

13.1 Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between the parties, and no promise, representation, warranty or covenant not included in this Agreement or any such referenced agreements has been or is relied upon by either party.

13.2 Reliance. Neither party has made any representations, warranties or covenants to the other concerning any tax benefits or tax treatment which may accrue to either party in connection with the transactions contemplated hereby. In addition Seller acknowledges that the Buyer has not made, and by entering into this Agreement does not make, any representation or warranty as to the tax impact, if any, upon Seller or any third party purchaser of a lot from Seller, which may or may not result from the placement of a conservation easement or other restrictive covenant or agreement on any lot owned or acquired by the Seller or any third party purchaser of a lot from Seller. Each party has relied upon its own examination of the full Agreement and the provisions thereof, and the counsel of its own advisors, and the warranties, representations and covenants expressly contained in this Agreement itself. Additionally, Buyer has made no representation, warranty or covenant to Seller guaranteeing, either expressly or impliedly, any plan approval, permit or other approval within the jurisdiction of Buyer.

13.3 No Oral Modification. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by both Buyer and Seller.

13.4 Choice of Law. In the event that any litigation arises hereunder, it is specifically stipulated that this Agreement shall be interpreted and construed according to the laws of the Commonwealth of Pennsylvania.

13.5 Counterparts. This Agreement may be signed in one or more counterparts, and by different parties on different counterparts. Transmission of a copy of this Agreement bearing the signature of a party by PDF, electronic mail, facsimile, or similar electronic means shall have the same effect as delivery of an original.

13.6 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and, to the extent permitted hereunder, their assigns. Seller agrees that the Township shall have the right to assign this Agreement and/or designate a third party to acquire title to all or any part of the Property prior to Closing, provided that the Township has imposed on the Property restrictions for the benefit of Seller and Buyer preserving the Open Space Purpose of the Property. Furthermore, Buyer acknowledges that any Township development of Parcel "C" with a walking trail is intended to be a mowed trail, and in the event that the Township determines to improve any trails upon Parcel "C" beyond a mowed trail, any such trails shall be set back fifty (50) feet from the Rye Field Buffer Area as described in Paragraph 5.4.4. In addition any cultivation of Parcel "C" shall also be set back at least fifty (50) feet from the Rye Field Buffer Area.

13.7 Parties Bound. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal representatives, successors and assigns whenever the context so requires or admits.

13.8 Enforceability. If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties hereto may still effectively realize the complete benefit of the transaction contemplated hereby.

13.9 Attorneys' Fees. The prevailing party in any litigation between the parties arising under this Agreement shall be entitled to recover reasonable attorneys' fees.

13.10 Time of the Essence. Time is of the essence with respect to all times, time periods and dates specified in this Agreement. If any time period or date is modified by subsequent written agreement of the parties, time shall be of the essence with respect to such extended or modified time period or date whether or not expressly stated in such writing.

13.11 Confirmation of Time Periods. At the request of either party, the other party shall confirm to the requesting party any date or deadline by which any event (e.g., the Review/Approval Period) is to take place or the date on which any time period specified in this Agreement ends. If a party gives notice to the other party confirming such date(s) ("Confirmation Notice"), the recipient shall be deemed to have confirmed the accuracy of such date(s) unless the recipient objects thereto within ten (10) business days after its actual receipt of such Confirmation Notice.

13.12 Effectiveness. THE FURNISHING OF THIS FORM OF AGREEMENT OF SALE DOES NOT CONSTITUTE AN OFFER OR OTHER BINDING AGREEMENT ON THE PART OF EITHER PARTY. THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES HERETO ONLY WHEN SIGNED AND DELIVERED BY BOTH SELLER AND BUYER.

13.13 Recital Paragraphs. The introductory recital paragraphs "A" through "D" are hereby incorporated by reference herein as if they were set forth within the body of this agreement.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

ES III LP

**ARDROSSAN AGREEMENT OF SALE AND PURCHASE**

IN WITNESS WHEREOF, each of the undersigned has executed and delivered this Agreement as of the date first written above.

**BUYER:**

**RADNOR TOWNSHIP**

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

Name: Elaine P. Schaefer

Title: President, Board of Commissioners

**ATTEST:**

By

\_\_\_\_\_  
Name: Robert A. Zienkowski, Secretary

**SELLER:**

**ESIII, LP**

By: ESIII – Ardrossan, LLC  
Its General Partner

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

Edgar Scott, Managing Member

**ESIII LP**

---

# EXHIBIT "A"

ESHILP

# MOMENEE AND ASSOCIATES, INC.

924 COUNTY LINE ROAD • BRYN MAWR, PENNSYLVANIA 19010  
610-527-3030 • FAX 610-527-9008  
E-Mail: info@momenee.com  
www.momenee.com

Description of Parcel "A" a portion of "The Ardrossan Farm", (AKA: The Wheeler Field and Schoolhouse Lot) Situate in the Township of Radnor, Delaware County and Commonwealth of Pennsylvania according to a plan prepared by Momenee Survey Group Inc. titled "Boundary Survey of Ardrossan Farm" Sheet 1 of 1" dated July 27, 1999 as follows to wit:

**BEGINNING** at a point being the northeasterly corner of Parcel "A", said beginning point being the intersection of the title line of Darby-Paoli Road (33 feet wide) and the title line of Saw Mill Road (33 feet wide), thence from said beginning point along said Darby-Paoli Road Title line, the following seven courses and distances, 1) S 47°57'20" E, 103.77 feet to a point, 2) S 19°54'20" E, 344.80 feet to a point, 3) N 66°53'00" E, 11.30 feet to a point, 4) S 36°17'00" E, 95.65 feet to a point 5) S 54°51'00" E, 426.60 feet to a point 6) S 56°14'53" E, 737.07 feet to a point, 7) S 51°34'00" E, 607.00 feet to a point being the intersection of the title line of Darby-Paoli Road and Godfrey Road, thence leaving said Darby-Paoli Road Title line, along line of lands N/F of Domenic Ciliberto and lands N/F of Robert C. and Nancy P. Steinmann S 57°37'22" W, 283.36 feet to a point being a corner of lands of Steinman and lands N/F of Robert J. and Annette Shields, thence along line of lands of Shields and lands N/F of Joseph L. and Christina Fox and The Township of Radnor N 88°18'36" W, 934.900 feet to a corner point in or near the bed of Darby Creek, thence along the path of Darby Creek, the following twelve courses and distances; 1) N 14°43'21" W, 132.99 feet to a point, 2) N 21°18'36" W, 132.03 feet to a point, 3) N 36°34'56" W, 230.23 feet to a point, 4) N 59°31'46" W, 201.82 feet to a point, 5) N 51°13'16" W, 99.06 feet to a point, 6) N 10°08'36" W, 138.35 feet to a point, 7) N 22°38'26" W, 69.79 feet to a point, 8) N 30°27'46" W, 243.15 feet to a point, 9) N 36°04'26" W, 117.64 feet to a point, 10) N 06°52'06" W, 169.77 feet to a point, 11) N 03°37'56" W, 121.46 feet to a point, 12) N 06°56'22" E, 145.13 feet to a point, in the bed of Saw Mill Road, thence along a line in the bed of Saw Mill Road, the following two courses and distances; 1) N 78°50'00" E, 84.5 feet to a point, 2) N 60°20'35" E, 133.86 feet to the first mentioned point and place of beginning.

**CONTAINING:** 27.654 acres more or less.

ES III LP

---

# EXHIBIT "B"

ESMCP

## MOMENEE AND ASSOCIATES, INC.

924 COUNTY LINE ROAD • BRYN MAWR, PENNSYLVANIA 19010  
610-527-3030 • FAX 610-527-9008  
E-Mail: [Info@momenee.com](mailto:Info@momenee.com)  
[www.momenee.com](http://www.momenee.com)

**Description of Parcel "B" a portion of "The Ardrossan Farm",  
(AKA: The Quarry Tract) Situate in the Township of Radnor,  
Delaware County and Commonwealth of Pennsylvania  
according to a plan prepared by Momenee Survey Group Inc.  
titled "Boundary Survey of Ardrossan Farm" Sheet 1 of 1"  
dated July 27, 1999 as follows to wit:**

**BEGINNING** at a point being the northeasterly corner of Parcel "B", said beginning point being the intersection of the title line of Darby-Paoli Road (33 feet wide) and the title line of Newtown Road (33 feet wide), thence from said beginning point along said Darby-Paoli Road Title line, the following four courses and distances, 1) S 36°28'58" E, 51.75 feet to a point, 2) S 20°00'00" E, 155.49 feet to a point, 3) S 07°25'00" E, 441.45 feet to a point, 4) S 04°08'30" W, 646.05 feet to a point, thence leaving said Darby-Paoli Road Title line, crossing a monument, along lands N/F of The Township of Radnor "Skunk Hollow Park" the following three courses and distances; 1) S 89°13'49" W, 276.57 feet to a point, 2) N 45°20'33" W, 341.83 feet to a point, 3) N 18°01'30" W, 786.87 feet to a corner point on line of lands N/F of The Township of Radnor "The Willows Park", thence along line of lands of The Willows Park, N 66°55'10" E, 727.10 feet to the first mentioned point and place of beginning.

**CONTAINING:** 16.336 acres more or less.

---

# EXHIBIT "C"

ESM LP



# MOMENEE AND ASSOCIATES, INC.

924 COUNTY LINE ROAD • BRYN MAWR, PENNSYLVANIA 19010

610-527-3030 • FAX 610-527-9008

E-Mail: Info@momenee.com

www.momenee.com

## EXHIBIT

Description of Parcel "C" a portion of "The Ardrossan Farm", (AKA: The Rye Field) Situate in the Township of Radnor, Delaware County and Commonwealth of Pennsylvania according to a plan prepared by Momenee And Associates Inc. titled "Plan of Parcels - The Ardrossan Farm" Sheet 1 of 1" dated September November 4, 2013 as follows to wit:

**BEGINNING** at a point being the northeasterly corner of Parcel "C", said beginning point being the intersection of the title line of Darby-Paoli Road (33 feet wide) and the title line of Newtown Road (33 feet wide), thence from said beginning point along said Newtown Road Title line, N 66°43'41" E, 1,250.80 feet to a point, thence leaving said Newtown Road Title Line along a line through Lands of Ardrossan Farm the following twelve courses and distances, 1) S 23°16'19" E, 128.51 feet to a point of curvature, 2) along the arc of a circle curving to the right, having a radius of 33.50 feet and a central angle of 61°55'36" an arc distance of 36.21 feet to a point of tangency, 3) S 38°39'36" W, 159.27 feet to a point of curvature, 4) along the arc of a circle curving to the left, having a radius of 616.50 feet and a central angle of 41°24'53" an arc distance of 445.62 feet to a point of tangency, 5) S 02°45'17"E, 232.43 feet to a point of curvature, 6) along the arc of a circle curving to the right, having a radius of 383.50 feet and a central angle of 45°11'19" an arc distance of 302.46 feet to a point of tangency, 7) S 42°26'03" W, 264.73 feet to a point, 8) Along the arc of a circle curving to the left, having a radius of 140.00 feet, a central angle of 64°41'00", an arc distance of 158.05 feet, a chord bearing of S 43°46'23" W, a chord distance of 149.79 feet to a point, 9) S 42°26'03" W, 84.72 feet to a point of curvature, 10) along the arc of a circle curving to the left having a radius of 225.11 feet, and a central angle of 36°56'15" an arc distance of 145.13 feet, a chord bearing of S 57°23'03" W, a chord distance of 142.63 feet to a point, 11) S 25°08'33" E, 126.18 feet to a point, 12) S 64°53'30" W, 388.10 feet to a point on the title line of Darby-Paoli Road, thence along said Darby-Paoli Road title line the following six courses and distances, 1) N 10°41'30" W, 88.07 feet to a point, 2) N 03°32'38" W, 72.05 feet to a point, 3) N 04°08'30" E, 646.05 feet to a point, 4) N 07°25'00" W, 441.45 feet to a point, 5) N 20°00'00" W, 155.49 feet to a point, 6) N 36°28'58" W, 51.75 feet to the first mentioned point and place of beginning.

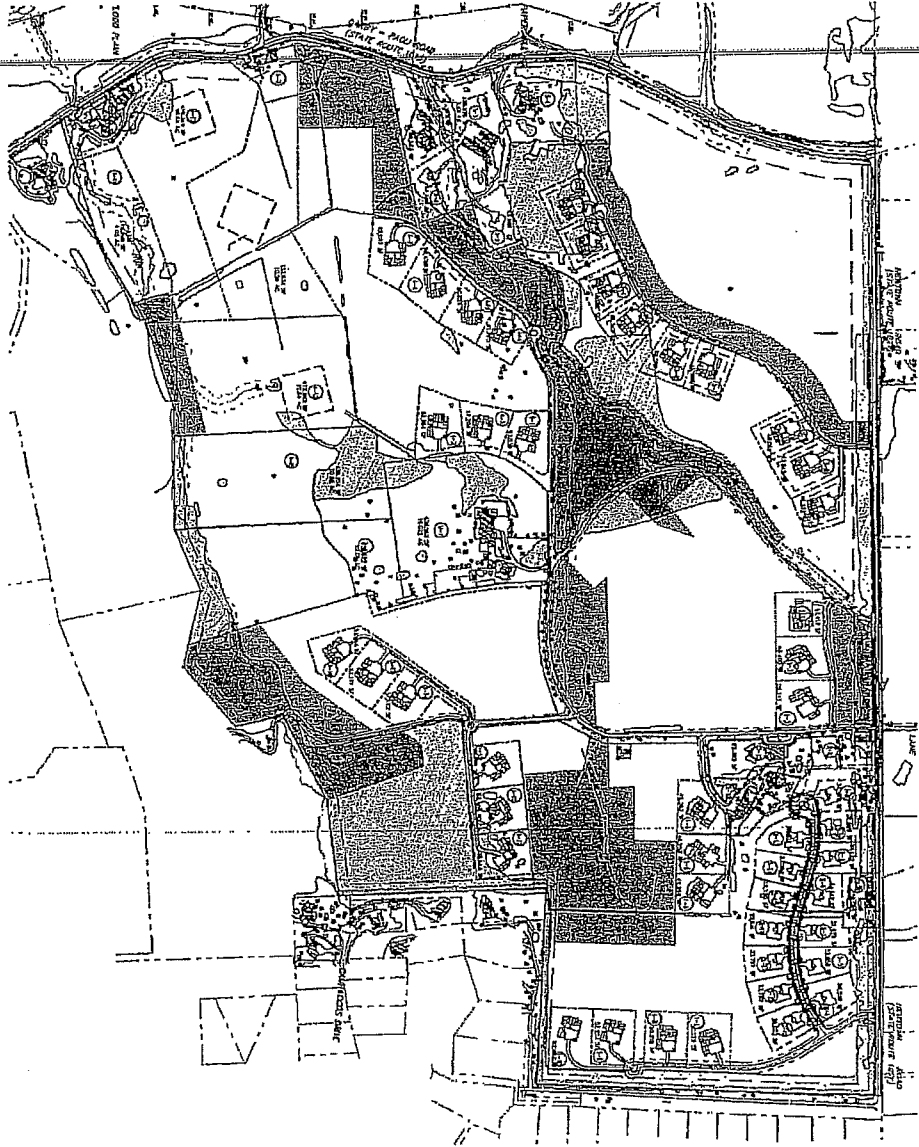
**CONTAINING:** 27.04 acres more or less.

ES III LP

# EXHIBIT "D"

ESWLP

# EXHIBIT "D-1"



NOTE: THESE ARE SHEETS 1 AND 2 OF A 40 SHEET PLAN SET ENTERED AS EXHIBIT WP-16 IN THE CONDITIONAL USE HEARING FOR ARDROSSAN FARM DATED 10/17/13. THE REMAINING 38 SHEETS ARE INCORPORATED HEREIN AND ARE ALSO PART OF EXHIBIT D FOR THE PURPOSES OF SECTION 54.1.

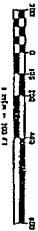
NON-EXISTING BUILDINGS SHOWN ON PROPOSED LOTS ARE CONCEPTUAL ONLY AND ARE NOT INTENDED TO REPRESENT THE AREA AND BULK OF THE HOMES TO BE BUILT ON THOSE LOTS

CONDITIONAL USE PLAN

for

**THE ARDROSSAN FARM**

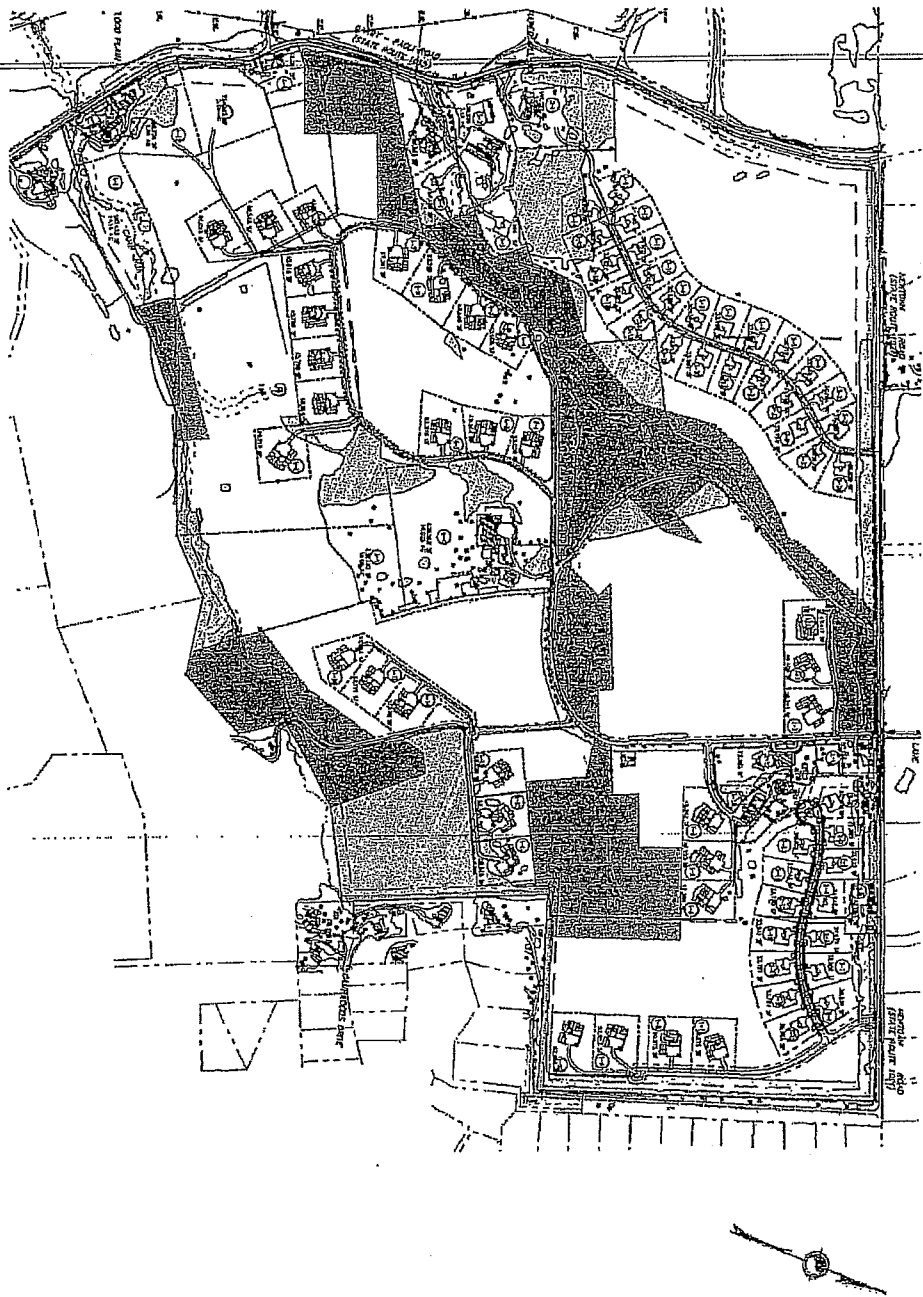
RAIMONT TOWNSHIP - DELAWARE COUNTY



	SUBMITTER: BY PLAN - DE 1001 CONDITIONAL USE PLAN THE ARDROSSAN FARM RAIMONT TOWNSHIP - DELAWARE COUNTY - PENNSYLVANIA	<b>WOMENEC &amp; ASSOCIATES, INC.</b> CIVIL ENGINEERS AND LAND SURVEYORS 801 COLONY BLDG. 2ND FLOOR, 2ND FLOOR 1000 SOUTH BROADWAY, SUITE 200 WILMINGTON, DE 19801 TEL: 302-478-7777 FAX: 302-478-7778	CALL BEFORE YOU DIG A utility located under the ground may be damaged if you dig without proper precautions. Call before you dig to locate underground utilities.
	SHEET NO. 1 TOTAL SHEETS 40 DATE: 10/17/13		

BSH/LP

# EXHIBIT "D-2"



NOTE: THESE ARE SHEETS 1 AND 2 OF A 40 SHEET PLAN SET ENTERED AS EXHIBIT MR. 48 IN THE CONDITIONAL USE HEARING FOR ARDROSSAN FARM DATED 10/17/76. THE REMAINING 38 SHEETS ARE INCORPORATED HEREIN AND ARE ALSO PART OF EXHIBIT D FOR THE PURPOSES OF SECTION 54.1.

NON-EXISTING BUILDINGS SHOWN ON PROPOSED LOTS ARE CONCEPTUAL ONLY AND ARE NOT INTENDED TO REPRESENT THE AREA AND BULK OF THE HOMES TO BE BUILT ON THOSE LOTS

CONDITIONAL USE PLAN

for

**THE ARDROSSAN FARM**

WAGON TOWNSHIP, TARRANT COUNTY



<p>DATE: 10/17/76 SHEET NO. 2</p>	<p><b>THE ARDROSSAN FARM</b> WAGON TOWNSHIP, TARRANT COUNTY</p>	<p>CONTRACOR: M&amp;A THE ARDROSSAN FARM OWNER: TARRANT COUNTY &amp; MUNICIPALITY COC-CHIL: 123-234 BLANK: 01 DATE: 10/17/76</p>	<p><b>MOHRNEE &amp; ASSOCIATES, INC.</b> CIVIL ENGINEERS AND LAND SURVEYORS 1234 E. MAIN ST., SUITE 100 DALLAS, TEXAS 75201 PHONE: 754-1234</p>	<p>CALL BEFORE YOU DIG A WARNING TO THE PUBLIC IF YOU SEE A SIGN OR HEAR A BELL STOP! CALL 811 OR YOUR LOCAL UTILITY COMPANY FOR HELP</p>	<p>1/4" = 100'</p>
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ES 11/1 LP

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# EXHIBIT "E"

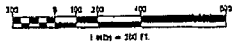
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ES1112P

251148



-  PARCEL A
-  PARCEL B
-  PARCEL C
-  100' BUFFER



<p>NOT TO SCALE</p> <p>DATE: 11/15/11</p> <p>PROJECT: 111111</p>	
<p>NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.</p>	
<p><b>MOYNEE &amp; ASSOCIATES, INC.</b>        CIVIL ENGINEERS AND LAND SURVEYORS        21100 N. 15th Ave., Suite 200        Phoenix, Arizona 85021        Phone: (602) 998-1111        Fax: (602) 998-1112</p>	
<p>PROJECT A        111111 PARCEL A        111111 PARCEL B        111111 PARCEL C        111111 100' BUFFER</p>	
<p>DATE: 11/15/11        SHEET NO. 1        OF 1        SCALE: 1" = 200'        FILE NO. 111111-01</p>	

J. LAWRENCE GRIM, JR.  
JEFFREY G. TRAUGER  
MARY C. EBERLE  
JOHN B. RICE  
DIANNE C. MAGEE \*  
DALE EDWARD CAYA  
DAVID P. CARO \*  
DANIEL J. PACI \* †  
JONATHAN J. REISS ◊  
GREGORY E. GRIM †  
PETER NELSON \*  
COLBY S. GRIM  
DIANE M. SODANO \*  
PATRICK M. ARMSTRONG  
JOEL STEINMAN  
SEAN M. GRESH  
KELLY L. EBERLE \*  
MATTHEW J. MCHUGH

\* ALSO ADMITTED IN NEW JERSEY  
◊ ALSO ADMITTED IN NEW YORK  
† MASTERS IN TAXATION  
\* ALSO A CERTIFIED PUBLIC ACCOUNTANT

LAW OFFICES  
**GRIM, BIEHN & THATCHER**

A PROFESSIONAL CORPORATION

SUCCESSOR TO  
GRIM & GRIM AND BIEHN & THATCHER  
ESTABLISHED 1895 AND 1956,  
RESPECTIVELY  
116TH ANNIVERSARY 1895-2011

[www.grimlaw.com](http://www.grimlaw.com)

PLEASE REPLY TO:  
PERKASIE

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RT #09-97

December 3, 2013

VIA ELECTRONIC CORRESPONDENCE

Delaware County Daily Times  
Attn: Legal Department  
500 Mildred Avenue  
Primos, PA 19018

Re: Agreement of Sale-Wheeler, Quarry and Rye Fields at Ardrossan-Radnor Township

Dear Legal Department

Enclosed please find for advertisement one (1) time in the December 6<sup>th</sup> edition of your newspaper, a Legal Notice for the possible enactment of the above ordinance by the Board of Commissioners of Radnor Township at their meeting on December 16, 2013. Kindly provide proofs of publication and your invoice for the advertisement directly to Radnor Township, c/o Robert Zienkowski, 301 Iven Avenue, Wayne, PA 19087. A full copy of the text of the ordinance is enclosed for public availability. If you have any questions regarding the enclosed, please do not hesitate to contact my office.

GRIM, BIEHN & THATCHER

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

  
John B. Rice

JBR/LDG

Enclosures

cc: Robert A. Zienkowski – via email  
Jennifer DeStefano – via email

## LEGAL NOTICE

Notice is hereby given that the Radnor Township Board of Commissioners will consider for possible enactment an Ordinance that is titled and summarized as follows:

### ORDINANCE 2013-22 RADNOR TOWNSHIP

AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, APPROVING AN AGREEMENT OF SALE AND PURCHASE BETWEEN THE TOWNSHIP OF RADNOR AND ES III, L.P., A PENNSYLVANIA LIMITED LIABILITY COMPANY, BY ITS GENERAL PARTNER, ESIII-ARDROSSAN LLC, FOR THE PURCHASE OF 71 ACRES OF OPEN SPACE

The proposed ordinance provides for the purchase of 71 acres of open space, portions of Delaware County Folio No. 36-04-02463-00, currently the property of the Tyler Trust, and portions of Folio No. 36-04-02464-00, currently the property of the Montgomery Trust. The property is located at the intersections of Newtown Road and Darby Paoli Road in Radnor Township.

The Board of Commissioners will hold a public hearing on December 16, 2013, 7:00 p.m., at the Radnor Township Municipal Building, 301 Iven Avenue, Wayne, PA 19087 to consider enactment of Ordinance 2013-22. Copies of the full text of the proposed ordinance are available at the Township offices, the Delaware County Law Library and the offices of this newspaper during normal business hours.

RADNOR TOWNSHIP  
BOARD OF COMMISSIONERS  
301 Iven Avenue  
Wayne, PA 19087-5297