

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) of claims, dated this 1st day of April 2024, is made between Floyd E. Hertzfeld (“Hertzfeld”) and Charlestown Township (the “Township”) collectively, as the “Parties”, and each, generically, as a “Party.”)

BACKGROUND

1. Floyd E. Hertzfeld is the owner of a parcel of land located at 1133 Valley Hill Road consisting of 11.3 acres identified as Tax Parcel 35-07-0014.00 in Charlestown Township (the “Property”); and

2. The Property is improved with, *inter alia*, a single-family, detached dwelling, driveways, and a number of accessory structures, including, but not limited to, a garage, an office building, and a number of storage buildings and sheds; and

3. The Property is located in the Township’s FR (Farm Residential) Zoning District; and

4. Hertzfeld, at some point in the past, undertook certain uses on the Property related to the operation of a commercial sewage disposal service business, which is currently operated as Ace Disposal Corporation and Ace Portables, Inc., that became the subject matter of the dispute between the Parties hereto; and

5. The Township issued a Zoning Violation/Enforcement Notice, dated September 18, 2023 (the “Enforcement Notice”), alleging violations of the Zoning Ordinance based on the operation of a commercial business on the Property, where such use is not presently permitted in the Township’s FR Zoning District; and

6. Hertzfeld filed an appeal of the Zoning Violation/Enforcement Notice and an alternatively-raised application for variance relief to the Zoning Hearing Board of Charlestown Township (the “Zoning Hearing Board”) on or about October 18, 2023, which remains pending before the Township’s Zoning Hearing Board; and

7. The parties now wish and desire that all claims they had, have or may have against each other, be settled in accordance with this Agreement.

NOW, THEREFORE, in consideration of the promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **INTENDING TO BE LEGALLY BOUND**, the Parties agree as follows:

1. **Incorporation of Background Paragraphs.** The foregoing Background paragraphs are incorporated by reference as if set forth at length here.

2. **Mutual Release.** Hertzfeld and the Township, for themselves, their indemnitors, affiliates, agents, employees, successors, shareholders, officers, representatives, attorneys, administrators, and assigns, hereby remise, release, and discharge one another, their indemnitors, affiliates, heirs, agents, employees, successors, shareholders, officers, representatives, executors, attorneys, administrators, and assigns and all other persons and entities from any and all manner of actions, causes of action, suits, claims, administrative and local government proceedings, reckonings, damages or demands whatsoever that each ever had from the beginning of time up to and including the date of this Agreement, whether at law, statute, ordinance, regulation or in equity, including, but not limited to, any and all claims and/or counterclaims that were or could have been asserted concerning their disputes, including claims for attorneys' fees and/or costs. Without limiting the generality of the foregoing, the Parties expressly waive, release, and agree to forbear in asserting any claim arising out of or related to the use of the Property.

3. **Withdrawal and Dismissal of Enforcement Notice and Appeal.** The Township hereby withdraws the Enforcement Notice and Hertzfeld withdraws the Appeal and Application to the Zoning Hearing Board, with prejudice, subject to the conditions set forth herein.

4. **Limited Commercial Use Permitted.** Notwithstanding any prior position, interpretation, assertion, or other statement of any type whatsoever, it is expressly acknowledged and agreed by the Parties hereto, that the commercial sewage disposal service business, which is currently operated as Ace Disposal Corporation and Ace Portables, Inc. on the Property, shall be permitted to continue operation on the Property in its current state until December 31, 2025, at which time the commercial use of the Property shall be discontinued entirely. All materials associated with the operation of the commercial use shall be removed from the Property no later than March 31, 2026.

5. **Agricultural and Residential Uses.** After December 31, 2025, the conclusion of the commercial use on the Property, all uses of the Property shall be in accordance with the terms of the Zoning Ordinance. Furthermore, Hertzfeld agrees he will not assert any sort of nonconforming use of the Property based upon the previous commercial use on the Property. Nothing shall preclude Hertzfeld (including his successors, grantees, and/or assigns) from using the Property in compliance with applicable Township Code provisions, nor from pursuing and obtaining zoning relief which would allow for deviations therefrom.

6. **Declaration of Covenants and Restrictions.** The Parties agree that the Parties' Declaration of Covenants and Restrictions, attached hereto and incorporated herein, marked as Exhibit "A", shall be deemed part of the Parties' Settlement Agreement and Mutual Release.

7. **Enforcement.** Either Party shall have the right to enforce the terms of this Agreement.

8. **Good Consideration.** The Release of said claims shall act in part as good and valuable consideration for the mutual release of all claims by the Parties hereto. This and the other promises and mutual releases set forth herein constitute good consideration for this Agreement and its

undertakings, including the covenants, representations, and promises as provided hereinabove from and to all Parties to this Agreement.

9. **Entire Agreement; Amendment.** This instrument states the entire Agreement between the Parties and may not be amended except by written agreement executed by the Parties hereto.

10. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of each Parties' heirs, successors, and assigns.

11. **Severability.** If any provision of this Agreement is declared invalid or unenforceable by any court at law or in equity, the balance of this instrument shall not be affected thereby and shall continue in full force and effect.

12. **Recording.** Any Party hereto may record this Agreement in Chester County and index such recording to the properties and also to any real property owned by any Party in the Township at the time of this Agreement. Upon such recording, this Agreement shall run with the land and be binding upon the successors in title to any Party hereto.

13. **No Admission.** This Agreement shall not constitute or be construed in any way as an admission of liability by any Party hereto.

14. **Governing Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, and the parties hereto consent to the exclusive jurisdiction and venue of the Chester County Court of Common Pleas for the resolution of any dispute that may arise hereunder.

15. **Advice of Counsel.** The Parties have each read this Agreement in its entirety, have been fully advised by their counsel with respect to its contents and legal effect, and each knows and understands the contents and effect of this Agreement.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

HERTZFELD

By: 
Floyd E. Hertzfeld

CHARLESTOWN TOWNSHIP

Attest:  By:
Chris Heleniak, Secretary


Frank Piliero, Chairman

Approved at a duly-constituted meeting of the Charlestown Township Board of Supervisors on this 1st day of April, 2024.

EXHIBIT “A”

Prepared By:

Mark P. Thompson, Esquire
Lamb McErlane PC
24 E. Market St.
P.O. Box 565
West Chester, PA 19381

RECORDER OF DEEDS
CHESTER COUNTY, PA

2024 APR 10 AM 10:10

Return To:

Ryan M. Jennings, Esquire
Unruh Turner Burke & Frees
Post Office Box 515
West Chester, PA 19381

UPI No: 35-7-14

DECLARATION OF COVENANTS AND RESTRICTIONS

**Between Floyd E. Hertzfeld and Charlestown Township
Re: 1133 Valley Hill Road, UPI No.: 35-7-14**

B: 11192 P: 1011

Parcel # 35-7-14

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (“Declaration”) is made this 1st day of April, 2024 by FLOYD E. HERTZFELD (the “Declarant”) and CHARLESTOWN TOWNSHIP (the “Township”).

BACKGROUND

A. Declarant is the owner of a certain parcel of land, located at 1133 Valley Hill Road, Malvern, Charlestown Township, Pennsylvania, being Tax Parcel No.: 35-7-14 (referred to as the “Property”) and more particularly described in Exhibit “A”.

B. Declarant operated a commercial sewage disposal service business on the Property that was the subject of a zoning enforcement action filed by Charlestown Township.

C. Declarant and Charlestown settled the enforcement action by way of a Settlement Agreement that, as a condition of the approval, required the filing of this Declaration limiting the future use of the Property.

NOW, THEREFORE, Declarant for itself and its successors, grantees and assigns, hereby declares and provides as follows:

1. **Restrictions to Run with the Land.** From and after the date of this Declaration, the Property shall be perpetually held subject to and with the burdens and benefits of the restrictions contained herein. All successors, grantees or assigns of Declarant who acquire any interest in the Property (“Future Owners”) or any portion thereof shall hold such interest under and subject to and with the benefits and burdens of the restrictions of this Declaration as restrictions running with the land.

2. **Restriction on further subdivision.** In exchange for the promises set forth in the Settlement Agreement with Charlestown Township, Declarant declares that the Property is hereby restricted from further subdivision in perpetuity.

3. **Restriction on use.** In exchange for the promises set forth in the Settlement Agreement with Charlestown Township, and subject to the provisions of the Settlement Agreement, Declarant declares that the Property shall heretofore be used in compliance with the requirements of the Charlestown Township Zoning Ordinance (unless and until requisite zoning relief is sought and obtained by Declarant and/or Future Owners of the Property, which would allow deviation(s) therefrom).

4. **Enforcement.** Charlestown Township shall have authority to enforce the provisions of this Declaration.

5. Miscellaneous.

a. Headings. Headings preceding the paragraphs of this Declaration are intended for convenience of reference only and shall not be applied in the interpretation of the subject matter of this Declaration.

b. Governing Law. This Declaration shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

c. Counterparts. This Declaration may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument.

d. Term. Unless otherwise canceled, terminated or released, or unless otherwise provided for herein, the restrictions granted in this Declaration and all the rights and obligations hereunder shall continue in perpetuity.

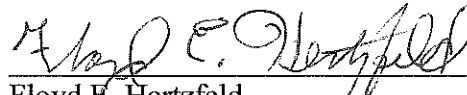
e. Amendment. This Declaration may not be changed, modified or amended, in whole or in part, except in writing, signed by all Parties.

f. No Interference. No person shall hinder, restrict, endanger or otherwise inhibit the use and enjoyment of the Property by the Declarant or Future Owners.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.


DECLARANT:

FLOYD E. HERTZFELD

By: 
Name: Floyd E. Hertzfeld

TOWNSHIP:

CHARLESTOWN TOWNSHIP

By: 
Name: Frank Piliro
Title: Chairman, Board of Supervisors
Charlestown Township

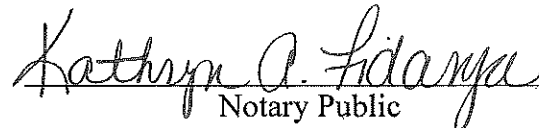
~~State of Pennsylvania
County of Chester
on this 1st day of April 2024
before me, Frank Piliro
personally appeared before me
on this date.
In witness thereof
Kristen N. Mammarella
Notary Public~~ [see attached]

Commonwealth of Pennsylvania - Notary Seal
Kristen N. Mammarella, Notary Public
Chester County
My commission expires January 27, 2028
Commission number 1355527
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF CHESTER :

On this 4th day of April, 2024, before me, the undersigned officer, personally appeared Floyd E. Hertzfeld, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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



Notary Public

My Commission Expires:

Commonwealth of Pennsylvania - Notary Seal Kathryn A. Fidanza, Notary Public Chester County My commission expires April 23, 2026 Commission number 1189437 Member, Pennsylvania Association of Notaries
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COMMONWEALTH OF PENNSYLVANIA :
 : ss
COUNTY OF CHESTER :

On this 2nd day of April, 2024, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Frank Piliero, who acknowledged himself to be the Chairman of the Board of Supervisors of Charlestown Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Kristen N. Mammarella
Notary Public

My Commission Expires:

Commonwealth of Pennsylvania - Notary Seal
Kristen N. Mammarella, Notary Public
Chester County
My commission expires January 27, 2028
Commission number 1355527
Member, Pennsylvania Association of Notaries

Exhibit "A"

BEGINNING at a point in the bed of Valley Hill Road (T429-Variable Width), said point being at the distance of 1,142 feet in westerly direction from a point marking the intersection of the title line of North Valley Hill Road with title line of Conestoga Road; thence extending from the beginning point, along the title line, in the bed of North Valley Hill Road the two following courses and distances: (1) South 65 degrees 29 minutes 00 seconds West, 230.34 feet to a point; and (2) South 65 degrees 57 minutes 10 seconds West, 165.92 feet to a point; thence extending along lands of Anthony F. and Dorothy E. Corrado, North 24 degrees 19 minutes 50 seconds West, crossing an iron pin set at 24.09 feet, the total distance of 107.34 feet to an iron pin set; thence still by same, south 63 degrees 25 minutes 02 seconds West, 481.17 feet to a point in line of lands of Robert P. and Shirley A. Deist; thence extending along said lands of Deist, North 25 degrees 26 minutes 37 seconds West, 439.75 feet to an iron pin set in line of lands of Conestoga Associates; thence extending along said lands of Conestoga Associates, North 62 degrees 07 minutes 27 seconds East, 479.38 feet to an iron pin found; thence extending still by same, North 25 degrees 02 minutes 32 seconds West, 160.10 feet to an iron pin set, a corner of lands of John M. and Diane L. Hilton; thence extending along said lands of Hilton and lands of Philadelphia Electric Company, North 65 degrees 29 minutes 00 seconds East, 406.79 feet to an iron pin found, a corner of lands of Patrick J. and Patricia A. Joyce; thence extending along said lands of Joyce, South 24 degrees 31 minutes 00 seconds East, 337.00 feet to an iron pin found; thence still by same, North 65 degrees 29 minutes 00 seconds East, 40.00 feet to an iron pin found, a corner of lands of Robert S. and Amy Jo B. Borst; thence extending by lands of Borst, South 24 degrees 31 minutes 00 seconds East, 358.14 feet to an iron pin found on the North side of the aforementioned Valley Hill Road (50 feet wide at this point); thence extending along said side of road South 65 degrees 29 minutes 00 seconds West, 40.00 feet to an iron pin set; thence extending, South 24 degrees 31 minutes 00 seconds East, 24.09 feet to the first mentioned point and place of beginning.

CONTAINING Eleven and Eight Hundred Fifty-Five One-Thousandths Acres (11.855 Acres).