

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between E. WHITELAND OUTDOOR, LLC (“**EWO**”), a Pennsylvania limited liability company having a business address of P.O. Box 1421, Malvern, Pennsylvania 19355, and EAST WHITELAND TOWNSHIP (“**Township**”), a political subdivision duly formed and existing under the laws of the Commonwealth of Pennsylvania having its office located at 209 Conestoga Rd., Frazer, PA 19355 (collectively, EWO and the Township are referred to as the “**Parties**”).

### **BACKGROUND**

A. EWO is in the business of developing, constructing, operating and maintaining commercial off-premises advertising billboards and monument displays.

B. EWO is the lessee of the property located within the Township at 32 Lancaster Avenue, Folio #42-4-332 (“**Subject Property**”).

C. On February 13, 2019 EWO filed three (3) separate conditional use applications with the Township to construct a freestanding electronic double-sided off-premises sign on each of the three (3) properties located at 32 Lancaster Avenue (Folio #42-4-332), 323 Lancaster Avenue (Folio #42-5-11), and 104-106 Lancaster Avenue (Folio #42-4-326) (collectively, the “**Conditional Use Applications**”).

D. On \_\_\_\_\_, 2020, EWO commenced a civil action via a Writ of Summons against the Township in the Chester County Court of Common Pleas under Case No. \_\_\_\_\_ (“**Civil Action**”).

E. If it were required to file a complaint in the Civil Action, EWO would seek declaratory and site specific relief under Pennsylvania law and the Municipalities Planning Code (“**MPC**”) alleging that the defacto exclusion of digital off-premises advertising signs under the

Township's Zoning Ordinance is unlawful and under Section 1006-A(c) of the MPC [53 P.S. §11006-A(c)], and that therefore, EWO is entitled to construct a digital billboard on the Subject Property as a successful challenger.

F. The Township disputes EWO's alleged claim and entitlement to relief that would be asserted in the Civil Action.

G. The Parties have met to discuss the Civil Action.

H. EWO has instead proposed construction of an alternative form of commercial off-premises advertising known as a "Monument Display" on the Subject Property in accordance with the terms of this Agreement.

I. The Township believes that the Monument Display form of commercial off-premises advertising located on the Subject Property is more appropriate for the Township as it incorporates enhanced aesthetics and creates a discernable sense of place more consistent with the Township's comprehensive land planning policies.

J. The Township believes that permitting an off-premise advertising Monument Display at the Subject Property satisfies the Township's obligation to reasonably provide for the use of off-premises advertising signs in the Township under *Casey* and Pennsylvania law.

K. After negotiations, the Parties have reached an agreement to permit EWO to construct an off-premise advertising Monument Display with enhanced aesthetics on the Subject Property in exchange for EWO's settling the Civil Action.

NOW, THEREFORE, the Parties, intending to be legally bound hereby, agree as follows:

1. Background. The above Background information is incorporated by reference as if fully set forth herein.

2. Proposed Monument Display on the Subject Property. EWO shall be permitted to construct and operate an off-premise advertising Monument Display on the Subject Property substantially similar to the plan(s) attached as **Exhibit “A” (“Monument Plan”)**. Specifically, the Monument Plan depicts a double-faced monument style digital LED automatic changeable copy off-premises monument advertising sign (**“Proposed Monument Sign”**). The Proposed Monument Sign may have a total digital active area of 511 square feet on each of the two (2) sides and shall have a maximum height of 35 feet measured from the existing grade at the base of the Proposed Monument Sign. The construction of the Proposed Monument Sign, including any grading or landscaping, shall not require land development approval but shall be reviewed and approved by the Township as part of EWO’s building permit application(s).

3. Hours of Operation. The Proposed Monument Sign may operate 18 hours per day, being extinguished from 12:00 AM to 6:00 AM.

4. Sign Permits. Upon full execution of this Agreement, EWO may submit its building, sign, electrical and all other necessary permit applications for the construction of the Proposed Monument Sign. The Township shall review, comment and/or approve the sign and electrical permit applications within thirty (30) days of EWO’s submission of its permit applications. Upon approval of the plans and all required permit applications, the Township shall issue the permits to EWO provided that the Court has approved this Agreement and the Agreement has been entered as an Order binding the Parties in the Civil Action as hereinafter provided. The Township shall cooperate with EWO in order for EWO to obtain any required permits from PennDOT for approval and construction of the digital Proposed Monument Sign. Notwithstanding anything herein to the contrary, EWO shall not be permitted to construct or use the Proposed

Monument Sign until all applicable permits are obtained, the Challenge is withdrawn, and the Order approving this Agreement and settling the Civil Action has been entered against the Parties.

5. Township Approval. The Township Board of Supervisors shall approve this Agreement at a public meeting following published notice of its intent to consider and take action on the Agreement in the newspaper generally used by the Township for publication of municipal notices.

6. Court Approval. Immediately after the Parties have executed this Agreement, the Parties shall file a Joint Petition seeking Court approval of this Agreement and an Order entering this Agreement against the Parties in the Civil Action. Counsel for EWO shall prepare and file the Joint Petition. The Township Solicitor shall review, approve and execute the Joint Petition on behalf of the Township. The Joint Petition and Court Order approving this Agreement shall settle the Civil Action.

7. Maintenance of the Proposed Monument Sign & Landscaping. EWO shall maintain the Proposed Monument Sign in good working order and repair at all times. EWO shall install and maintain any landscaping for the Proposed Monument Sign in accordance with the Monument Plan. EWO shall guarantee the landscaping for the entire operating life of the Proposed Monument Sign. Failure to replace dead, diseased or dying landscaping within three (3) months, weather and planting season permitting, of written notice from the Township to do so shall constitute a default by EWO under this Agreement.

8. Prior to operation of the Proposed Monument Sign, EWO shall establish a \$10,000 escrow with the Township to guarantee the maintenance of the landscaping. The \$10,000 escrow shall be maintained in perpetuity so long as the Proposed Monument Sign is operating. After providing thirty (30) days written notice to EWO of a default in maintaining the landscaping, the

Township may draw against the \$10,000 escrow to perform the necessary maintenance work if EWO has failed to cure the default in a commercially reasonable manner. EWO shall replenish any withdrawals from the \$10,000 escrow within ten (10) business days of written notice from the Township. The Township may issue a cease and desist notice suspending Proposed Monument Sign operations should EWO not timely replenish the \$10,000 escrow. Further, the Township may specifically enforce EWO's obligations to maintain the Proposed Monument Sign by commencing an action in Equity or by any other enforcement action permitted by law, including an action for contempt of the Court's Order approving this Agreement in the Civil Action Restrictions. The Proposed Monument Sign shall not:

- a. Advertise adult or sexually oriented businesses or materials, hate speech, advertisements related to abortion, or otherwise display any content prohibited by 18 Pa. C.S.A. §5903;
- b. Advertise obscene or profane language;
- c. Emit any verbal or musical announcements or noises;
- d. Display any moving, flashing, scrolling or animated text or video;
- e. Exceed a maximum nits level of 280 nits during night time hours (dusk until dawn) and 7500 nits during day time hours (dawn until dusk) when the billboard sign face is in direct sunlight. At all times, the Proposed Monument sign shall utilize ambient light sensors or photometric cells to automatically reduce the luminance (intensity of illumination) during periods of darkness during the day (e.g. cloudy or rainy days) and darkness at night. The illuminance shall be measured by a professional lighting consultant perpendicularly to the sign face at a distance not less than fifty (50) feet and not more than two hundred fifty (250) feet using a using a high-quality luminance meter (Minolta #LS-110 or equal), calibrated within the previous 5 years. In addition, the illumination of the Proposed Monument Sign shall not exceed 0.3 foot candles of light above the ambient light levels, measured at a perpendicular distance of 250 feet from the face of the Proposed Monument Sign when it is caused to display a completely white color. The illumination of the Proposed Monument Sign shall be measured by a professional lighting consultant using an appropriate and properly calibrated, high-quality illuminance meter (Minolta #T-1 or equivalent), calibrated within the previous 5 years held vertically at a height

of five feet above the grade at that location and aimed toward the Proposed Monument Sign; and

- f. Change copy more than once every eight (8) seconds; all copy changes shall be instantaneous and shall not fade in or out of the digital active area.
- g. There shall be no split display of the sign area.
- h. Signs that move, rotate, oscillate, vibrate or shimmer are not permitted.
- i. Signs that flash, scintillate or blink are not permitted.
- j. There shall be no instantaneous change of gradual or scrolling change of script. The change must occur in less than one (1) second.
- k. The entire electronic portion of the sign must change at the same time, thereby preventing different portions of the sign changing at different times.
- l. Shall not shall not use an active area background, defined as the color of the communication copy behind the graphics, images, and logos occupying more than 50% of the sign face, consisting of bright white, off-white, or other pale colors which would create excessive contrast or glare.

9. Emergency Alerts. EWO agrees that the Proposed Monument Sign shall be available at all times to public law enforcement authorities and the Township to display Amber Alerts and other emergency messages. Township covenants and agrees to indemnify, defend, and hold harmless EWO, and its respective officers, employees, members, partners, agents, and its and their respective affiliates (collectively, "**Owner Parties**") from and against any and all liabilities, judgments, suits, claims, losses, damages, costs and expenses incurred in connection with or arising from any of Township's messages posted on the Proposed Monument Sign, including but not limited to any claim for defamation, or infringement of any copyright, trademark, or other intellectual property or privacy right.

10. Abandonment & Removal of the Proposed Monument Sign. In the event that the Proposed Monument Sign shall cease to operate continuously for a period of six (6) consecutive months, with the exception of with the exception of a casualty event which requires the repair or

replacement of any portion of the Proposed Monument Sign, EWO shall remove and demolish the Proposed Monument Sign upon sixty (60) days advance written notice from the Township.

11. Prohibition Against Future Off-Premises Signs. Upon the Court's issuance of an order approving this Agreement, EWO shall withdraw with prejudice the Conditional Use Applications. Additionally, EWO agrees on behalf of itself, its successors, and affiliates that, except for the Proposed Monument Sign, they shall not be permitted to erect another off-premises advertising sign along any portion of Lancaster Avenue in the Township.

12. Cooperation. The Parties shall cooperate and take all necessary and reasonable steps in order to effectuate the permitting and construction of the Proposed Monument Sign in accordance with this Agreement. Specifically, the Township agrees to assist EWO, if necessary, in obtaining the any required sign permit(s) from the Pennsylvania Department of Transportation.

13. Indemnification. EWO hereby agrees to defend, indemnify, protect, save and hold harmless the Township from and against any and all claims arising out of, or from the implementation of, the terms of this Agreement, whenever or however occurring, whether at law, in equity or otherwise, including, but not limited to, any actions brought against the Township challenging the validity of this Agreement and/or any actions taken by the Township pursuant thereto, and specifically including all related costs and reasonable attorneys' fees in connection therewith.

14. Miscellaneous.

(a) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(b) Specific Performance and Enforcement of Settlement Agreement. The Parties agree that, in addition to all remedies at law or equity, either may petition the Court of

Common Pleas for specific performance and/or enforcement of this Agreement without having to exhaust administrative remedies. The Parties further agree that the Court may retain jurisdiction for purposes of enforcing the terms of this Agreement. The Parties understand and agree that any violation of the terms of this Agreement, after receipt of written notice and 30 days opportunity to cure or if such violation is of such nature that it cannot be completely cured within such thirty (30) days, if EWO does not commence such curing within such thirty (30) days and thereafter proceed with reasonable diligence and in good faith to cure such violation, may be enjoined or enforced by any legal or equitable means available and specifically including a Petition for Contempt under the Civil Action docket number. The prevailing party in any enforcement action shall be entitled to receive reimbursement of costs and all reasonable attorneys' fees actually incurred from any other party found in contempt by virtue of their breach of this Agreement.

(c) Entire Agreement. This Agreement shall constitute the entire agreement among the Parties and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof.

(d) Amendment. This Agreement may be amended upon the written consent of the Parties to this Agreement, which shall not be unreasonably withheld. No waiver or discharge of any provision of this Agreement shall be effective against any party unless that party shall have consented thereto in writing.

(e) Assignment. This Agreement may be assigned by EWO. No assignment shall be effective without the assignee's or successor's written assumption and acceptance of all of the obligations under this Agreement. EWO shall provide written notice of the assignment of this Agreement to the Township along with a copy of the written assumption and acceptance of all of the obligations under this Agreement by the assignee or successor.

(f) Time of the Essence. Time, whenever mentioned herein, is of the essence of this Agreement.

(g) Governing Law and Construction. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania. Since each of the Parties hereto has had ample opportunity to have this Agreement reviewed by their own attorneys, no language in the Agreement shall be construed for or against any party solely as a result of such language being written or requested by a particular party or that party's counsel.

(h) Notices. All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail, postage prepaid or by private carrier guarantying next day delivery, addressed as follows:

If to EWO addressed as follows:

E. Whiteland Outdoor, LLC  
P.O. Box 1421  
Malvern, PA 19355  
Attn: Thaddeus Bartkowski

with a copy to:

John Snyder, Esquire  
Saul Ewing, LLP  
1200 Liberty Ridge Drive  
Suite 200  
Wayne, PA 19087-5569

If to the Township:

East Whiteland Township  
209 Conestoga Rd.  
Frazer, PA 19355  
Attn: Township Manager

with a copy to:

Joseph J. McGrory, Jr., Esquire  
Hamburg, Rubin, Mullin, Maxwell, Lupin, P.C.  
375 Morris Road  
P.O. Box 1479  
Lansdale, PA 19446

(i) Counterparts. This Agreement may be executed in multiple counterparts such that all counterparts together shall create a fully executed and complete Agreement.

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(Remainder of page left blank intentionally)

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year.

Witness/Attest

E. Whiteland Outdoor, LLC

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness/Attest

East Whiteland Township

\_\_\_\_\_

Secretary

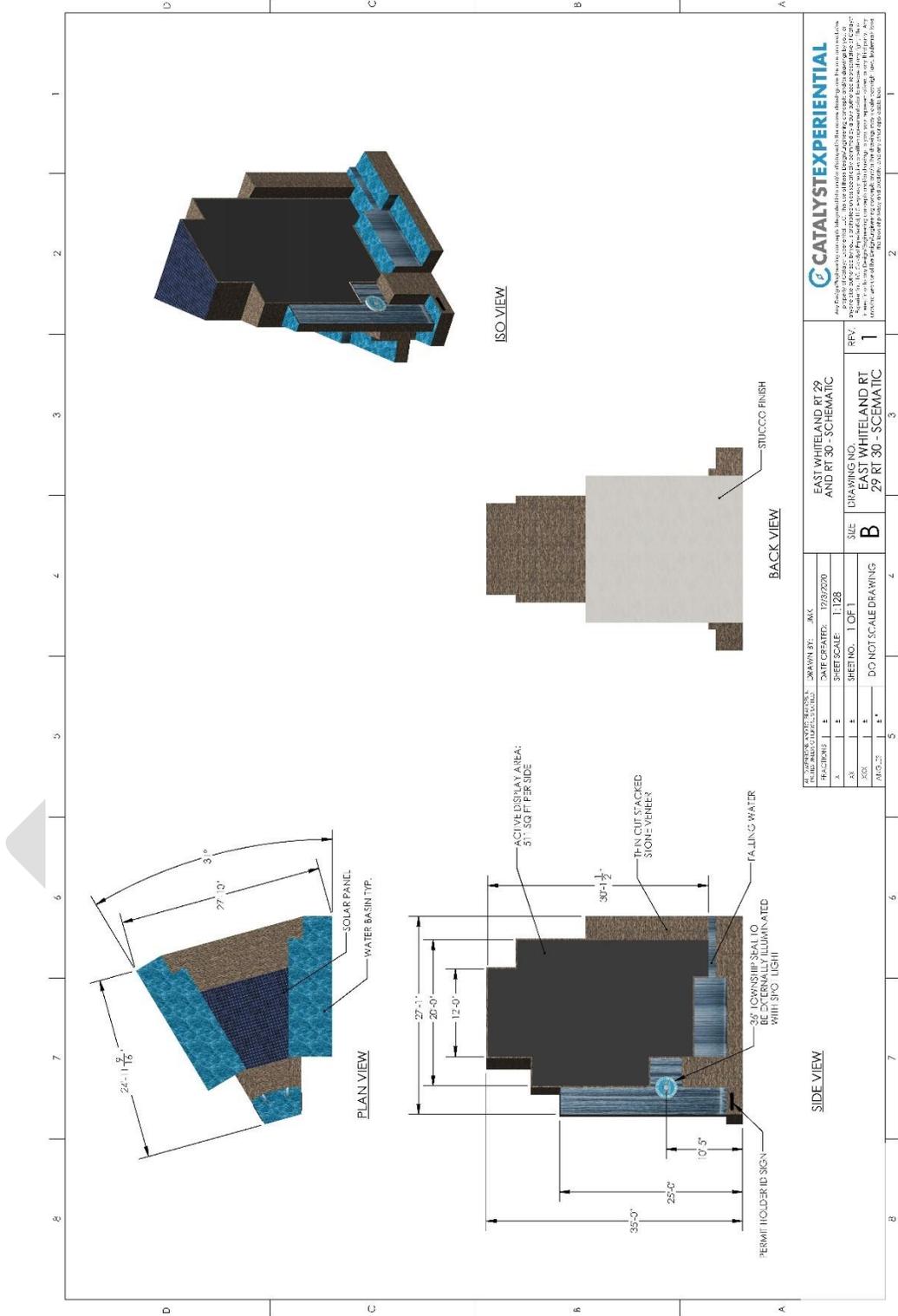
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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# EXHIBIT "A"



		<b>EAST WHITELAND RT 29 AND RT 30 - SCHEMATIC</b>	
DRAWING NO. <b>29 RT 30 - SCHEMATIC</b>	SHEET NO. <b>1</b>	SIZE <b>B</b>	REV. <b>1</b>
PROJECT NO. <b>17092020</b>		DATE CREATED <b>1/1/20</b>	
DRAWN BY <b>JMK</b>		CHECKED BY <b>JMK</b>	
DO NOT SCALE DRAWING			

ALL DIMENSIONS UNLESS OTHERWISE NOTED.  
 ALL DIMENSIONS TO FACE UNLESS NOTED OTHERWISE.  
 ALL DIMENSIONS TO CENTERLINE UNLESS NOTED OTHERWISE.  
 ALL DIMENSIONS TO SURFACE UNLESS NOTED OTHERWISE.  
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