

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

FILED

<p>ADRIAN A. CASTELLI et als.</p> <p>Petitioners,</p> <p>v.</p> <p>NATURAL LANDS TRUST, INC. et als.</p> <p>Respondents.</p>	<p>NOV 23 2021</p> <p>Clerk of Orphans' Court Chester County, PA</p> <p>O.C. ACTION NO.</p> <p><i>1521-2754</i></p>
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PRELIMINARY DECREE

AND NOW, this ____ day of _____, 20__ upon consideration of the annexed Petition of The Commonwealth of Pennsylvania, by Petitioners Adrian A. Castelli, Mary G. Love, Marshall Jacobs, Geralyn Jacobs, Joanne Berwind, Frederick T. Seving, Christine S. Seving, Steven C. Sharkey, Heidi M. Sharkey, Deborah Warden and Samuel D'Angelo, through the Charitable Trusts and Organizations Section, it is hereby **ORDERED** and **DECREED** that a Citation is hereby awarded, directed to Respondents Natural Lands Trust, Inc., the County of Chester, Willistown Township, John Kenneth Nimblett, as co-trustee of the Inter Vivos Trust of Martha Stengel Miller, Robert P. Goldman, as co-trustee of the Inter Vivos Trust of Martha Stengel Miller and the Brandywine Conservancy and Museum of Art, to show cause why they should not be compelled to appear and show cause why the Court should not grant the prayer of the PETITION FOR CITATION OF MISUSE OF TRUST PROPERTY.

The aforesaid Citation shall be returnable on _____.

BY THE COURT:

J.

**SILVERANG, ROSENZWEIG
& HALTZMAN, LLC**
Philip S. Rosenzweig, Esquire
PA Atty ID No. 62461
Woodlands Center
900 E. 8th Avenue, Suite 300
King of Prussia, PA 19406
(610) 263-0115
prosenzweig@sanddlawyers.com
Attorneys for Petitioners

NOTICE TO PLEAD

TO: Respondents

You are hereby notified to file a written response to the Petition within twenty (20) days from the date of notice or on or before the date when the pleading is to be filed, whichever is later, or the court may deem that you have no objection to the relief requested therein and may grant such relief without further notice to you.

By: /s/ Philip S. Rosenzweig
Philip S. Rosenzweig, Esquire

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS COURT DIVISION

ADRIAN A. CASTELLI
6029 Goshen Road
Newtown Square, Pennsylvania 19073

MARY G. LOVE
6029 Goshen Road
Newtown Square, Pennsylvania 19073

MARSHALL JACOBS
6019 Goshen Road
Newtown Square, Pennsylvania 19073

GERALYN JACOBS
6019 Goshen Road
Newtown Square, Pennsylvania 19073

JOANNE BERWIND
11 Marlborough Road
Newtown Square, Pennsylvania 19073

FREDERICK T. SEVING
6035 Goshen Road
Newtown Square, Pennsylvania 19073

CHRISTINE S. SEVING
6035 Goshen Road
Newtown Square, Pennsylvania 19073

O.C. ACTION NO. *1521-2754*

STEVEN C. SHARKEY
6011 Goshen Road
Newtown Square, Pennsylvania 19073

HEIDI M. SHARKEY
6011 Goshen Road
Newtown Square, Pennsylvania 19073

DEBORAH WARDEN
4719 Mill Hollow Lane
Edgemont, Pennsylvania 19028

SAMUEL D'ANGELO
4701 Mill Hollow Lane
Edgemont, Pennsylvania 19028

WILLIAM S. MEZZANOTTE
6031 Goshen Road
Newtown Square, Pennsylvania 19073

SANDRA MEZZANOTTE
6031 Goshen Road
Newtown Square, Pennsylvania 19073

and

JOHN AND JANE DOES
whose true names are as yet unknown
to Petitioners, these parties being the
persons, if any, having or claiming a
property interest adversely affected by
the plan of Natural Lands Trust, Inc. to
develop Summerhill Preserve as
described in the Complaint,

Petitioners,

v.

NATURAL LANDS TRUST, INC.
1031 Palmers Mill Road
Media, Pennsylvania 19063

COUNTY OF CHESTER
313 West Market Street
West Chester, PA 19380

1521-2754

WILLISTOWN TOWNSHIP
688 Sugartown Road
Malvern, Pennsylvania 19355

JOHN KENNETH NIMBLETT,
as co-trustee of the Inter Vivos Trust
of Martha Stengel Miller,
46 Greenville Street
Somerville, Massachusetts 02143

ROBERT P. GOLDMAN, as co-
trustee of the Inter Vivos Trust of
Martha Stengel Miller,
c/o Pregmon Law Offices,
640 Sentry Parkway, Suite 102
Blue Bell, Pennsylvania 19422

and

**BRANDYWINE CONSERVANCY
AND MUSEUM OF ART, (f/k/a
BRANDYWINE CONSERVANCY,
INC.),**
1 Hoffman's Mill Road
P.O. Box 141
Chadds Ford, PA 19317

Respondents.

1521-2754

FILED

NOV 23 2021

PETITION

Clerk of Orphans' Court
Chester County, PA

Petitioners Adrian A. Castelli, Mary G. Love, Marshall Jacobs, GERALYN JACOBS, Joanne Berwind, Frederick T. Seving, Christine S. Seving, Steven C. Sharkey, Heidi M. Sharkey, Deborah Warden and Samuel D'Angelo (collectively the "Neighbors" or "Petitioners") by and through their undersigned counsel, Silverang, Rosenzweig & Haltzman LLC, bring this action against respondents Natural Lands Trust, Inc. ("NLT"), the County of Chester ("Chester County"), Willistown Township, John Kenneth Nimblett, as co-trustee of the Inter Vivos Trust of Martha Stengel Miller ("Nimblett"), Robert P. Goldman, as co-trustee of the Inter Vivos Trust

of Martha Stengel Miller (“Goldman”) and the Brandywine Conservancy and Museum of Art (“Brandywine,” or together with NLT, Chester County, Willistown Township, Nimblett and Goldman, the “Respondents”), alleging the claims herein upon knowledge, information and belief.

SUMMARY OF ACTION

1. The Neighbors all own properties bordering a property referred to by Respondents as the Summerhill Preserve, located at 6023 Goshen Road, Newtown Square, Pennsylvania, and which is owned and maintained by Respondent NLT.

2. Respondent NLT has announced its intention to install a paved road, create a public parking lot, erect signage, create a trail system, and open Summerhill Preserve to the public seven days a week, sun up to sun down.

3. Nimblett and Goldman are co-trustees of the May 27, 1994 Inter Vivos Agreement of Trust of Martha Stengel Miller (the “Trust”), which Trust was most recently Amended and Restated in its entirety as of May 22, 2007, and in their capacity as co-trustees have failed to abide by the directions of the grantor, the late Martha Stengel Miller (“Grantor”), as set forth in various covenants encumbering Summerhill Preserve and surrounding properties executed between 1978 and Grantor’s death in 2008. The provisions of the Trust prohibit certain activities on the land encumbered by those covenants and on adjacent parcels thereto, including development thereof, signage thereon and general public access thereto.

4. Brandywine is named in certain of the covenants as an instrument for enforcement of the terms therein, but has failed and refused to protect Summerhill Preserve and prevent NLT’s intended development.

5. Chester County and Willistown Township have failed to exercise the powers of enforcement granted to them by the Trust and under the various covenants encumbering Summerhill Preserve and surrounding and adjacent parcels.

6. Like Summerhill Preserve, most of the Neighbors' properties are encumbered by conservation covenants.

7. The Neighbors believe, and therefore aver, that NLT's development plan for Summerhill Preserve will result in traffic congestion, noise, refuse, animal excrement and environmental pollution on the Summerhill Preserve itself and on the Neighbors' surrounding properties, and that such NLT plans will substantially negatively impact sensitive existing stormwater management issues, wildlife, vegetative cover, scenic resources and the watershed of Crum Creek.

8. For these reasons, the Neighbors respectfully request relief in the form of (1) declaratory judgment setting forth the precise meaning of the restrictive covenants burdening Summerhill Preserve; (2) injunctive relief prohibiting Respondent NLT from installing a paved road, creating a public parking lot on Summerhill Preserve or adjacent properties, erecting signage on Summerhill Preserve or adjacent properties, creating a trail system on Summerhill Preserve and opening Summerhill Preserve to the public seven days a week, sun up to sun down; (3) an order directing Respondents Brandywine, Chester County and/or Willistown Township to enforce the language of the Parcel C 1988 Covenant; and/or (4) an order directing Respondents Nimblett and Goldman to amend the Lots 5 and 6 2016 Easement in order to ensure its compliance with the provisions of the 1978 Indenture and the Lots 5 and 6 2007 Easement.

PARTIES

9. Petitioner Adrian A. Castelli is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 6029 Goshen Road, Newtown Square, Chester County, Pennsylvania. Mr. Castelli's residence abuts the common dirt road shared by the Neighbors and Respondent.

10. Petitioner Mary G. Love is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 6029 Goshen Road, Newtown Square, Chester County, Pennsylvania. Ms. Love's residence abuts the common dirt road shared by the Neighbors and Respondent.

11. Petitioner Marshall Jacobs is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 6019 Goshen Road, Newtown Square, Chester County, Pennsylvania. Ms. Jacobs' residence abuts Summerhill Preserve.

12. Petitioner Geralynn Jacobs is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 6019 Goshen Road, Newtown Square, Chester County, Pennsylvania. Mrs. Jacobs' residence abuts Summerhill Preserve.

13. Petitioner Steven C. Sharkey is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 6011 Goshen Road, Newtown Square, Chester County, Pennsylvania. Mr. Sharkey's residence abuts Summerhill Preserve.

14. Petitioner Heidi M. Sharkey is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 6011 Goshen Road, Newtown Square, Chester County, Pennsylvania. Mrs. Sharkey's residence abuts Summerhill Preserve.

15. Petitioner Joanne Berwind is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 11 Marlborough Road, Newtown Square, Chester County, Pennsylvania. Ms. Berwind's residence abuts Summerhill Preserve.

16. Petitioner Frederick T. Seving is an adult individual and resident of the State of Florida who owns property located at 6035 Goshen Road, Newtown Square, Chester County, Pennsylvania. Mr. Seving's property abuts Summerhill Preserve.

17. Petitioner Christine S. Seving is an adult individual and resident of the State of Florida who owns property located at 6035 Goshen Road, Newtown Square, Chester County, Pennsylvania. Mrs. Seving's property abuts Summerhill Preserve.

18. Petitioner Deborah Warden is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 4719 Mill Hollow Lane, Edgemont, Delaware County, Pennsylvania. Ms. Warden's property abuts Summerhill Preserve.

19. Petitioner Samuel D'Angelo is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 4701 Mill Hollow Road, Edgemont, Delaware County, Pennsylvania. Mr. D'Angelo's property abuts Summerhill Preserve.

20. Petitioner William S. Mezzanotte is an adult individual and citizen of the Commonwealth of Pennsylvania who owns a residence located at 6031 Goshen Road, Newtown Square, Pennsylvania 19073. Mr. Mezzanotte's property abuts Summerhill Preserve.

21. Petitioner Sandra Mezzanotte is an adult individual and citizen of the Commonwealth of Pennsylvania who owns a residence located at 6031 Goshen Road, Newtown Square, Pennsylvania 19073. Mrs. Mezzanotte's property abuts Summerhill Preserve.

22. Petitioners John and Jane Does, whose true names are as yet unknown to Petitioners, are persons, if any, who have or claim to have a property interest adversely impacted

by the plan of respondent Natural Lands Trust, Inc. to develop Summerhill Preserve, as described herein below.

23. Respondent NLT is a Pennsylvania domestic non-profit corporation established on January 23, 1961 under entity No. 247269, with an address of 1031 Palmers Mill Road, Media, Delaware County, Pennsylvania 19063.

24. Respondent Chester County is a Pennsylvania third class county which was organized in 1681 and exists pursuant to 16 P.S. § 202 *et seq.*

25. Respondent Willistown Township is a second class township founded in 1704 and organized under the Second Class Township Code of the Commonwealth of Pennsylvania.

26. Respondent John Kenneth Nimblett is, upon information and belief, an adult individual and co-trustee of the Martha Stengel Miller Trust, with an address of 46 Greenville Street, Somerville, Massachusetts 02143.

27. Respondent Robert P. Goldman is, upon information and belief an adult individual and co-trustee of the Martha Stengel Miller Trust, with an address in care of Pregmon Law Offices, 640 Sentry Parkway, Suite 102, Blue Bell, Pennsylvania 19422.

28. Brandywine is a Pennsylvania nonprofit corporation originally incorporated on September 6, 1967 as Brandywine Conservancy, Inc. under entity No. 362052, with an address of 1 Hoffman's Mill Road, P.O. Box 141, Chadds Ford, Pennsylvania 19317.

VENUE AND JURISDICTION

29. Jurisdiction over Respondents NLT and Brandywine in the courts of the Commonwealth of Pennsylvania is proper pursuant to the provisions of 42 Pa.C.S.A. § 5301(a)(2)(i) insofar as they have been incorporated under the laws of this Commonwealth at all times relevant hereto.

30. Jurisdiction over Respondents Chester County and Willistown Township in the courts of the Commonwealth of Pennsylvania is proper pursuant to the provisions of 42 Pa.C.S.A. § 721(2).

31. Jurisdiction over Respondents Nimblett and Goldman in their capacities as co-trustees of the Trust in the courts of the Commonwealth of Pennsylvania is proper pursuant to the provisions of 42 Pa.C.S.A. §§ 5301(a)(3)(iii) and 5322(a)(1) insofar as the Trust carries on a continuous and systematic part of its general business within this Commonwealth, and/or insofar as the Trust has transacted business in in the Commonwealth, including “[t]he ownership, use or possession of any real property situate within this Commonwealth.” 42 Pa.C.S. § 5322(a)(1)(v).

32. Venue in the Chester County Court of Common Pleas, Orphans Court Division is proper pursuant to 231 Pa. C.S.A. § 1006(a) by virtue of the fact that the cause of action arose in Chester County out of Respondent NLT’s plans to alter Summerhill Preserve, which is located in Chester County, and pursuant to 20. Pa. C.S. §711(21) insofar as this case involves “[t]he administration and proper application of funds . . . to a nonprofit corporation heretofore or hereafter organized under the laws of the Commonwealth of Pennsylvania for a charitable purpose . . . at the direction of a settlor or testator of a trust or estate.”

FACTUAL ALLEGATIONS

Summerhill Farm

33. Summerhill Farm in Willistown Township, Chester County, Pennsylvania was owned by Martha Stengel Miller together with her husband, Henry Stuckert Miller.

34. As the various contractual property interests described herein below document, starting in the 1970s, Mr. and Mrs. Miller embarked on a program to limit residential development on the Summerhill Farm and to impose restrictions on the property consistent with their strong desire to protect and preserve the ecosystems, flora, fauna, viewsheds, soil and water quality throughout all of the land comprising Summerhill Farm, including prohibiting construction (outside of single-family farmstead homes), development, mining, forestry and other environmentally damaging activities on the Summerhill Farm property.

35. In 1989, Mr. and Mrs. Miller created a subdivision plan for approximately 111 acres of Summerhill Farm, which they updated in 1995.

36. As more specifically described herein below, the Millers imposed conservancy easements upon each lot in the Summerhill Farm subdivision plan.

37. After Mr. Miller passed away in 1999, Mrs. Miller continued the couple's environmental conservation effort with respect to Summerhill Farm unabated until her death in 2008.

38. Initially, on May 17, 1978, prior to the subdivision of Summerhill Farm, Mr. and Mrs. Miller granted Respondent Brandywine an easement over 9.904 acres of Summerhill Farm (the "1978 Indenture," a true and correct copy of which is attached hereto as Exhibit 1).

39. The 1978 Indenture gives Brandywine the power to prevent tree cutting, depositing of waste, quarrying, and construction of buildings or utilities on the easement area. Ex. 1 pp. 1-2 ¶¶ a-e.

40. Notably, Mr. and Mrs. Miller made clear that their desire to protect the natural environment of Summerhill Farm did not amount to public access to the land; Section 8 of the 1978 Indenture specifically states that “[n]othing herein shall be construed to grant to the general public or to any other person the right to enter upon the easement area, said right [of entry] being limited to Brandywine or its duly authorized agents, for the purposes set forth herein.” Ex. 1 ¶ 5 (emphasis supplied).

41. On January 18, 1983, Mrs. Miller and Brandywine amended the 1978 Indenture by and through the execution of a Covenant and Amendment of Grant of Conservation Easement and Indenture (the “1983 Amendment,” a true and correct copy of which is attached hereto as Exhibit 2). The 1983 Amendment prohibits transfer of the easement area without approval from Martha Stengel Miller for a period of ten years. Ex. 2 p. 2 ¶ 1.

42. On October 30, 1986, Mrs. and Mrs. Miller subdivided a 111.098 acre portion of Summerhill Farm into Parcels A, B and C. A map of the 1986 subdivision of 111.098 acres of Summerhill Farm is attached hereto as Exhibit 3.

43. On April 13, 1989, Mr. and Mrs. Miller further subdivided 67.836-acre Parcel A of Summerhill Farm into a new 47.177-acre Parcel A and separate Lots A-1 (4 acres), A-2 (4.841 acres) and A-3 (10.839 acres), as documented on the “Final Subdivision Plan of ‘Summerhill’” made by Yerkes Associates, Inc. The “Final Subdivision Plan of ‘Summerhill’” was revised May 29, 1991 (“Summerhill Subdivision Plan 1”). A true and correct copy of Subdivision Plan 1 is attached hereto as Exhibit 4.

44. Six (6) years later, the Millers further subdivided Parcel A of Summerhill Farm into Lots 1 through 6, as documented on the February 13, 1995 “Final Plan of Subdivision ‘Summerhill 2’” prepared by Yerkes Associates, Inc. (“Summerhill Subdivision Plan 2”), a true and correct copy of which is attached hereto as Exhibit 5.

45. The minimum lot acreage of Summerhill Subdivision Plan 2 is 4 acres. Id. Lot 1 is 14.92 acres (plus a 2.692 acre roadway, by which all six lots access Goshen Road), Lot 2 is 7.98 acres, Lot 3 is 5.22 acres, Lot 4 is 6.47 acres, lot 5 is 5.69 acres and Lot 6 is 5.15 acres. Id.

46. Upon completion of Summerhill Subdivision Plan 2, the Summerhill subdivision consisted of Lots A-1, A-2, A-3, 1, 2, 3, 4, 5 and 6 and Parcels B and C, which are depicted on the map attached hereto as Exhibit 6.

47. The 1978 Indenture and its 1983 Amendment encumber Lots A-1, A-2, A-3 and Lots 1 through 6 of the Summerhill Subdivision Plan 2.

48. Lots A-1 and A-2 of Summerhill Subdivision Plan 2 are currently owned by Petitioners Frederick and Christine Seving, who purchased them on or about June 11, 2007. The sale was recorded on June 19, 2007 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 7189 page 516. A true and correct copy of Mr. and Mrs. Seving’s deed for Lots A-1 and A-2 is attached hereto as Exhibit 7.

49. The Sevings purchased Lots A-1 and A-2 of Summerhill Subdivision Plan 2 (hereinafter the “Seving Property”) with knowledge of the benefits and burdens imposed by the 1978 Indenture and the 1983 Amendment.

50. The Seving Property is approximately 8.8 acres in size.

51. The Seving Property borders Lots 5 and 6 of Summerhill Subdivision Plan 2, separated by the common dirt roadway, fifteen feet in width, by which the Sevings and their invitees access the Seving Property.

52. Lot A-3 and Lot 2 of Summerhill Subdivision Plan 2 are owned by Petitioners Adrian Castelli and Mary “Molly” Love, who purchased them on July 5, 2018. The sale was recorded on July 17, 2018 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 9778 page 258. A true and correct copy of Mr. Castelli’s and Ms. Love’s deed for Lot A-3 and Lot 2 is attached hereto as **Exhibit 8**.

53. Mr. Castelli and Ms. Love purchased Lot A-3 and Lot 2 of Summerhill Subdivision Plan 2 (hereinafter the “Castelli/Love Property”) with knowledge of the benefits and burdens imposed by the 1978 Indenture and the 1983 Amendment.

54. The Castelli/Love Property is approximately 18.78 acres in size.

55. The Castelli/Love Property borders Lot 5 of Summerhill Subdivision Plan 2, separated by the common dirt road, fifteen feet in width, by which Mr. Castelli and Ms. Love and their invitees access the Castelli/Love Property.

56. Lot A-3 of the Castelli/Love Property is further benefitted and burdened by a certain conservation easement between the Trust and Respondent NLT dated December 22, 2009 (the “Lot A-3 2009 Conservation Easement”) recorded on December 29, 2009 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 7837 page 597. A true and correct copy of the Lot A-32009 Conservation Easement is attached hereto as **Exhibit 9**.

57. The purpose of the Lot A-3 2009 Conservation Easement is “to protect large intact areas of wildlife habitat and connect patches of wildlife habitat,” “protect the quality of water resources within or in the vicinity of the Property . . . by retaining continuous vegetative

cover within the Property to protect water resources from sediment and non-point pollution and promote the infiltration, detention and natural filtration of precipitation and storm water,” “enhance the enjoyment of visitors to Summerhill Preserve by preserving the Property, sometimes called the ‘sheep meadow,’ from residential development [by] protect[ing] all of the grasslands and meadows abutting the Common Drive that provides public access to Summerhill Preserve,” and “ensure that Agricultural and other uses, to the extent that they are permitted, are conducted in a manner that will neither diminish the biological integrity of the Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes.” Ex. 9 § 1.04(a)((i)-(iv).

58. The Lot A-3 2009 Conservation Easement prohibits in perpetuity all uses of Lot A-3 other than certain delineated “[n]on-commercial and recreational and open-space activities and uses that (i) do not require Improvements other than those permitted within the Property, (ii) do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and (iii) do not require motorized vehicular use other than for resource management purposes.” Id. § 4.03(e).

59. Respondent NLT has the duty to enforce the terms of the Lot A-3 2009 Conservation Easement against any violator. Id. § 5.02(a).

60. However, if Respondent NLT “fails to enforce this Conservation Easement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Conservation Easement may be (i) exercised by a Beneficiary . . .” Id. § 5.01(a). However, the Beneficiaries of the Lot A-3 2009 Conservation Easement are not identified therein. See id. § 1.08 (“As of the Easement Date, no Beneficiaries of this Conservation Easement have been identified by the undersigned Owner or Owners and Holder.”).

61. Mr. Castelli and Ms. Love purchased the Castelli/Love Property with knowledge of the benefits and burdens imposed by the Lot A-3 2009 Conservation Easement.

62. Mr. Castelli and Ms. Love have abided by and continue to abide by all of the terms of the Lot A-3 2009 Conservation Easement.

63. Petitioners William and Sandra Mezzanotte purchased Lot 1 of Summerhill Subdivision Plan 2 (the “Mezzanotte Property”) from its prior owner, non-party Lori Goldstein, by deed dated May 5, 2021. The sale was recorded on May 26, 2021 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 10554 page 1435. A true and correct copy of the Goldstein deed for Lot 1 is attached hereto as **Exhibit 10**.

64. The Mezzanottes purchased the Mezzanotte Property with knowledge of the benefits and burdens imposed by the 1978 Indenture and the 1983 Amendment.

65. The Mezzanotte Property is approximately 17.61 acres in size and borders Parcel C as well as Lots 3, 4 and 5 of Summerhill Subdivision Plan 2.

66. Mr. Castelli, Ms. Love, the Mezzanottes and the Sevinges have complied with the terms of the 1978 Indenture and the 1983 Amendment, and have refrained from all of the development, construction and usage activities prohibited in the 1978 Indenture. In exchange, they have enjoyed living in a uniquely natural setting and have the valid expectation that all neighboring owners whose properties are similarly benefitted and burdened by the framework of conservation easements established by Mrs. Miller would similarly honor the terms thereof.

67. The Mezzanotte Property is also benefitted and burdened by a certain conservation easement between Mrs. Miller and Respondent NLT dated January 5, 2006 (the “Lot 1 2006 Conservation Easement”) recorded on December 29, 2009 in the Office of the

Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 7837 page 597. A true and correct copy of the Lot 1 2006 Conservation Easement is attached hereto as Exhibit 11.

68. The Lot 1 2006 Conservation Easement pertains to approximately 15 acres of the approximately 18 acre Mezzanotte Property. Ex. 11 § 1.01.

69. In 2006, non-parties Frank and Keith Pension were equitable owners of the Mezzanotte Property as predecessors-in-title to Ms. Goldstein, Mrs. Miller was the owner in fee of the Mezzanotte Property; they all joined NLT in executing the 2006 Lot 1 Conservation Easement as “a conservation servitude over the Conservation Area in perpetuity” and explicitly acknowledging that their ownership interest in the Mezzanotte Property would be bound by the terms of the 2006 Lot 1 Conservation Easement. Id. §§ 1.01 & 5.01

70. The Lot 1 2006 Conservation Easement divides the Mezzanotte Property into a minimal protection area – the land upon which improvements such as the home, garage, shed, playhouse and retaining walls sit – and the standard protection area, which is the remainder of Lot 1/the Mezzanotte Property. Id. § 1.02 & Ex. B thereto.

71. The purpose of the Lot 1 2006 Conservation Easement is “to protect both the quality and quantity of water resources by restricting Impervious Coverage and minimizing soil disturbance within the Standard Protection Area so as to maintain water quality of streams, wetlands and other water resources[,]” “to preserve meadow and woodland resources within the Conservation Area,” “to protect large intact areas of wildlife habitat and connect patches of wildlife habitat,” “to preserve the relationship of scenic resources within the Conservation Area to natural and scenic resources in its surrounds,” to promote land use that will neither diminish the biological integrity of the Conservation Area nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes.” Id. § 1.03(a)((i)-(v)).

72. The Lot 1 2006 Conservation Easement specifically notes that “[t]he Conservation Area adjoins more than forty acres of meadows and woodlands (“Summerhill Preserve”) owned by the Holder as a result of donations by the undersigned Owner within which Crum Creek and associated wetlands are located.” Id. § 1.03(a)(i).

73. The Lot 1 2006 Conservation Easement also specifically notes that “Summerhill (including both Summerhill Preserve and the Conservation Area) has been maintained as a working farm owned by members of the Stengel family for over 100 years.” Id. § 1.03(a)(v).

74. The Lot 1 2006 Conservation Easement regulates improvements, grazing, landscaping, agriculture, composting, sewage disposal and signage on the Goldstein Property. Id. §§ 3.01-3.03.

75. Within the standard conservation area, the Lot 1 2006 Conservation Easement only allows “[n]on-commercial recreational and open-space uses that do not require Improvements other than those permitted within the Standard Protection Area; do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and do not require vehicular use other than for resource management.” Id. § 3.03(d).

76. Mrs. Miller clearly intended the enforcement of the Lot 1 2006 Conservation Easement by any means necessary; while she did not include a named beneficiary, she explicitly instructed that “[t]his provision does not preclude Owners or other Persons having an interest in this Conservation Easement from petitioning a court of competent jurisdiction to exercise remedies available under this Conservation Easement for breach of duty by Holder [Respondent NLT].” Id. § 7.05.

77. The Mezzanottes purchased the Mezzanotte Property with knowledge of the benefits and burdens imposed by the 2006 Lot 1 Conservation Easement, and has abided by the terms of the 2006 Lot 1 Conservation Easement.

78. Mr. Castelli, Ms. Love, the Sevings and the Mezzanottes have complied with the terms of the 1978 Indenture and the 1983 Amendment, and have refrained from all of the development, construction and usage activities prohibited in the 1978 Indenture. In exchange, they have enjoyed living in a uniquely natural setting and have the valid expectation that all neighboring owners whose properties are similarly benefitted and burdened by the framework of conservation easements established by Mrs. Miller would similarly honor the terms thereof.

79. On the same day that she executed the Lot 1 Conservation Easement, Mrs. Miller also executed the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Summerhill (the “2006 Restatement,” a true and correct copy of which is attached hereto as **Exhibit 12**).

80. The 2006 Restatement pertains to Lots 1-6 and A-1, A-2 and A-3 of Summerhill Subdivision Plan 2. Id. It ratifies the Summerhill Subdivision Plan 2 insofar as it pertains to the common road which provides access from each of the aforementioned Lots to Goshen Road. Id. § 1.05(a).

81. Specifically, as the common road is located entirely within Lot 1, the 2006 Restatement “clarify[ies] the rights and obligations of the Owners of the Lots with respect to use of the area identified as the ‘Private Road Area,’” Id. § 1.05(a), and “is binding upon and runs to the benefit of the Owners and their heirs, personal representatives, successors and assigns as a covenant running with the land identified as the Lots.” Id. § 3.01.

82. At the time, Mrs. Miller owned Lots 1, 2, 5, 6, and A-3 of Summerhill Subdivision Plan 2. Respondent NLT owned Lots 3 and 4, and non-party Jocelyn Howe owned Lots A-1 and A-2 of Summerhill Subdivision Plan 2 (which would become the Seving Property). See Ex. 12 p. 2 § 1.04.

83. The 2006 Restatement gives Lot 2 “a right-of-way over that portion of the private drive within Lot 1 . . . to the extent reasonably required to connect with the existing driveway within and servicing Lot 2.” Id. §1.05(c).

84. The 2006 Restatement also gives Lot 1 “a right-of-way over that portion of the private drive within Lot 2 . . . to the extent reasonably required to connect with the existing driveway within and servicing Lot 1.” Id. §1.05(d).

85. The 2006 Restatement gives “Summerhill Preserve” – defined as Lots 3 and 4 and Parcel C -- Lot 2 “a right-of-way over that portion of the private drive within Lot 1 . . . along the southwesterly boundary of Lot 4 and a portion of the southwest boundary of Lot 3.”” Id. §1.05(b).

86. Indeed, Respondent NLT had obtained Lots 3 and 4 from Mrs. Miller on April 8, 2004, which transfer was recorded on April 22, 2004 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 6129 page 179. A true and correct copy of the Respondent’s deed for Lots 3 and 4 is attached hereto as **Exhibit 13**.

87. Lots 3 and 4 are benefitted and burdened by the 1978 Easement, the 1983 Amendment of Easement and the 2006 Restatement, as are the Seving Property, the Mezzanotte Property and the Castelli/Love Property. See Ex. 1 & 2.

88. During the same time period, on April 1, 2004, Mrs. Miller transferred ownership of Parcel C to Respondent NLT, which transfer was recorded on April 22, 2004 in the Office of

the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 6129 page 184. A true and correct copy of the Respondent's deed for Parcel C is attached hereto as **Exhibit 14**.

89. Parcel C of Summerhill Subdivision Plan 2 is 29.293 acres. Id.

90. Parcel C is subject to a Conservation Easement and Declaration of Restrictive Covenants dated December 12, 1986 by and between Respondents NLT and Brandywine (the "Parcel C 1986 Covenant"), and recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Book 941 page 170. A true and correct copy of the Parcel C 1986 Covenant is attached hereto as **Exhibit 15**.

91. The purpose of the Parcel C 1986 Covenant was to preserve and conserve Parcel C in order to "yield a significant public benefit for the following reasons: (a) The Easement Area is a relatively natural area or environment in which a significant wildlife and plantlife community or similar ecosystem normally lives; (b) The Easement Area consists of open space valuable for its scenic beauty; and (c) The Easement Area consists of open space the preservation of which is in furtherance of the conservation policy set forth by Willistown Township." Id. pp. 1-2 ¶ 2.

92. The Parcel C 1986 Covenant permits "maintenance of access roads or drives in connection with a use of the Property permitted hereunder provided that such access roads or drives shall be designed and construed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife and conservation purposes set forth herein . . ." Id. p. 4 ¶ C(2)(b). It prohibits "signs . . . [except] (a) to state the name of the Easement Area; and (b) to regulate the use of the Easement Area (for example, no trespassing and/or no gunning signs)." Id. p. 5 ¶ C(5).

93. Crucially, the Parcel C 1986 Covenant explicitly states that it “shall extend only to the following uses and no other and **shall in no event be construed to grant a general right of entry onto the Property to the general public[.]**” *Id.* p. 3 ¶ B (emphasis supplied). The Parcel C 1986 Covenant was entered into by Brandywine and Respondent, setting forth restrictions on industrial activities, commercial activities, surface mining, quarrying, timber cutting, removal/destruction of trees, waste disposal and signage on Parcel C “which shall run with and bind the Easement Area in perpetuity[.]” Ex. 15 pp. 4-6 ¶ C(1) *et seq.*

94. In 1988, two years after the Parcel C 1986 Covenant was executed, Respondent NLT conveyed Parcel C of Summerhill Subdivision Plan 2 to Brandywine by deed dated January 6, 1988 and recorded in the Office of Recorder of Deeds in and for Chester County, Pennsylvania on March 22, 1988 in Record Book 1085 page 245.

95. Two (2) months later, on March 14, 1988, Brandywine executed a Declaration of Restrictive Covenants with respect to Parcel C (the “Parcel C 1988 Covenant”), which was recorded March 22, 1988 in the Office of Recorder of Deeds in and for Chester County, Pennsylvania in Book 1085 page 251. A true and correct copy of the Parcel C 1988 Covenant is attached hereto as **Exhibit 16**.

96. The Parcel C 1988 Covenant was entered into by Brandywine “on behalf of itself, and its successors and assigns,” and **the restrictions therein “run with and bind Parcel C in Perpetuity.”** *Id.* p. 3 ¶ 2 (emphasis supplied).

97. The Parcel C 1988 Covenant directs that Brandywine “shall hold Parcel C exclusively for Conservation purposes in perpetuity.” *Id.*

98. Like the Parcel C 1986 Covenant, it permits “maintenance of access roads or drives in connection with a use of Parcel C permitted hereunder provided that such access roads

or drives shall be designed and construed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife and Conservation Purposes set forth herein . . .” *Id.* pp. 3-4 ¶ 2(c)(2). It prohibits “signs . . . [except] (1) to state the name of Parcel C; and (2) to regulate the use of Parcel C (for example, no trespassing and/or no gunning signs).” *Id.* p. 4 ¶ 2(f).

99. The Parcel C 1988 Covenant is to be enforced by “any governmental body or agency of the Commonwealth of Pennsylvania, the County of Chester or the Township of Willistown . . . by proceedings in law or equity[.]” *Id.* p. 5 ¶ 3(a).

100. Martha Stengel Miller died on December 30, 2008. She conveyed Lots 5 and 6 by her will to Nimblett and the late Rusty Miller, who were also named co-trustees of the Trust. On August 24, 2010, Robert P. Goldman was named co-trustee of the Miller Trust together with Mr. Miller and Mr. Nimblett. On June 7, 2016, Mr. Miller unexpectedly died, leaving Mr. Nimblett owner of Lots 5 and 6, and leaving Mr. Nimblett and Mr. Goldman the sole co-trustees of the Miller Trust. On December 23, 2017, Mr. Nimblett granted Respondent NLT title to Lots 5 and 6 by deed transfer recorded on December 28, 2017 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 9674 page 1973.

101. Lots 5 and 6 of the Summerhill Subdivision Plan 2 are further burdened by a December 19, 2007 Conservation Easement (the “Lots 5 and 6 2007 Easement”) between Martha Stengel Miller and Respondent NLT. The Lots 5 and 6 2007 Easement was recorded on December 21, 2007 in Book 7332 page 2130, ad a true and correct copy is attached hereto as **Exhibit 17**.

102. The Lots 5 and 6 2007 Easement carves two acres out of Lots 5 and 6 which are designated a “minimal protection area,” and the remaining eight and a half acres are designated a “standard protection area.” Ex. 17 p. 1 § 1.02.

103. The stated purpose of the Lots 5 and 6 2007 Easement is:

- a. “to protect the quality of water resources by minimizing Impervious Coverage outside the Minimal Protection Area and by retaining continuous vegetative cover within the Standard Protection area so as to maintain water quality of streams, wetlands and other water resources . . .” id. pp. 1-2 §1.03(a)(i);
- b. “to preserve the Hedgerow and adjoining grasslands as a vegetative buffer . . .” id. p. 2 §1.03(a)(ii);
- c. “to protect large intact areas of wildlife habitat and connect patches of habitat [and protect] the habitat provided by Summerhill Preserve for a number of nesting birds and other Native Species.” id. p. 2 §1.03(a)(iii);
- d. “to maintain open, pastoral, scenic views . . .” id. p. 2 §1.03(a)(iv);
- e. “to promote good stewardship of the Standard Protection Area so that its soil and other natural resources will always be able to support Sustainable Agriculture or Sustainable Forestry.” id. p. 2 §1.03(b)(i); and
- f. “to promote compatible land use and development within the Minimal Protection Area so that it will be available for a wide variety of activities, uses and Additional Improvements, subject to the minimal constraints necessary to achieve Conservation Objectives outside the minimal Protection Area.” id. p. 2 § 1.03(b)(ii).

104. The Lots 5 and 6 2007 Easement allows “the opportunity for development [within the minimal protection area] with a single-family residence while protecting the scenic and natural resources of the Property as described above” *Id.* p. 2 §1.03(b)(vi).¹

105. The Lots 5 and 6 2007 Easement was amended and restated on December 14, 2016, after the death of Martha Stengel Miller, by her son-in-law, John Kenneth Nimblett, and by Robert P. Goldman, as co-trustees of the Trust, together with Respondent NLT. The Amended and Restated Grant of Conservation Easement and Declaration of Covenant (the “Lots 5 and 6 2016 Easement”) was recorded in the Office of the Recorder of Deeds for Chester County, Pennsylvania on December 14, 2016 in Record Book 9465 Page 1477. A true and correct copy of the Lots 5 and 6 2016 Easement is attached hereto as **Exhibit 18**.

106. The stated conservation objectives of the Lots 5 and 6 2016 Easement as set forth therein are:

- a. “To maintain and improve the quality of water resources, both surface and groundwater, within, around and downstream of the Property” Ex. 16 p. 2 § 1.04(a)(1);
- b. “To protect and improve the quality of natural habitat for animals, plants, fungi and other organisms, particularly Native Species.” *id.* p. 2 § 1.04(a)(2);
- c. “To prevent loss and depletion of soil on the Property.” *id.* p. 2 § 1.04(a)(3);
- d. “To protect scenic views of the Property visible from public rights of way and other public access points outside the Property.” *id.* p. 2 § 1.04(a)(4);
- e. “To absorb within the Property rainwater that otherwise might cause erosion and flooding downstream of the Property; to sequester carbon in plants and soil to

¹ Upon information and belief, no residence has been constructed on Lot 5 or Lot 6.

mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes.” *id.* p. 2 § 1.04(a)(5); and

- f. “To promote good stewardship of the land so it will always be able to support open space activities **including use as a Preserve**, Sustainable Agriculture or Sustainable Forestry.” *id.* p. 2 § 1.04(b)(1) (emphasis supplied).

107. Thus, after Mrs. Miller’s 2008 death and the untimely 2016 death of her son, Messrs. Nimblett and Goldman changed Mrs. Miller’s stated conservation objectives for Lots 5 and 6 of the Summerhill Subdivision Plan 2; no longer desiring to build a house there, it was now intended for use “as a preserve”. This *ultra vires* act – imposing a change to the conservation objectives to Lots 5 and 6 despite Mrs. Miller’s explicit wish, as expressed on the face of the Parcel C 1986 Covenant, that her indentures and easements not “be construed to grant a general right of entry onto the Property to the general public”² – was wrongful and unlawful.

108. When Respondent NLT became the owner in fee of Lots 5 and 6 of the Subdivision Plan 2, the unlawful *ultra vires* “easement” created by Messrs. Nimblett and Goldman on behalf of the Trust by and through the Lots 5 and 6 2016 Easement was assigned by Respondent NLT to Brandywine by Assignment of Grant of Easement and Declaration of Covenants (the “Lots 5 and 6 2017 Assignment”) dated December 11, 2017 and recorded December 28, 2017 in the Office of the Recorder of Deeds for Chester County, Pennsylvania in Record Book 9674 Page 1968. A true and correct copy of the Lots 5 and 6 2017 Assignment is attached hereto as **Exhibit 19**.

109. Thus, Respondent NLT currently owns Parcels B and C and Lots 3, 4, 5 and 6 of the Summerhill Subdivision Plan 2. See Ex. 6.

² Ex. 16 p. 3 ¶ B.

The Berwind Property

110. Petitioner Joanne Berwind holds a life estate interest in two parcels of property located at or about 11 Marlborough Road, Willistown Township, Chester County, Pennsylvania, Tax Parcel Nos. 54-7-63 and 54-7-65 (hereinafter the “Berwind Property”). True and correct copies of the deeds for the collective Berwind Property are attached hereto as **Exhibit 20**.³

111. The Berwind Property borders the Seving Property, the Mezzanotte Property, the Castelli/Love Property and Respondent NLT’s Parcel C. See Ex. 6.

112. . Approximately eleven acres of the Berwind Property are subject to a June 30, 2008 Restrictive Covenant between Brandywine and Petitioner Berwind’s late husband, C. Graham Berwind, Jr. (the “Berwind 2008 Covenant”). The Berwind 2008 Covenant was recorded on July 17, 2008 in the Office of the Recorder of Deeds for Chester County, Pennsylvania in Record Book 7481 Page 413. A true and correct copy of the Berwind 2008 Covenant is attached hereto as **Exhibit 21**.

113. The Berwind 2008 Covenant references and acknowledges the conservation easements encumbering the neighboring properties. See Ex. 19 p. 4 (“[T]he Property is bordered on three (3) sides by other lands either already permanently protected with conservation easements or agricultural easements or are soon to be placed under conservation easement agreement with Grantee [Brandywine] or other land trusts . . .”). It manifests Mr. Berwind’s

³ Tax Parcel 54-7-63 of the Berwind Property consists of a single property transferred on December 21, 2009 to the late G. Graham Berwind, Jr. under the February 28, 1963 Deed of Trust of Charles G. Berwind, Sr. See Ex. 20. Upon C. Graham Berwind, Jr.’s death on November 3, 2010, a life estate in the property was transferred to Petitioner Berwind by quitclaim deed dated February 25, 2011, recorded May 17, 2011 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 8178 page 1072. Tax Parcel 54-7-65.1 of the Berwind Property consists of two properties. The first was acquired by C. Graham Berwind from the Trustees of the Family Trust of J. Peter Williams III, deceased, by deed dated July 16, 2008, and the second was acquired by C. Graham Berwind Penelope Pryor Watkins, by deed also dated July 16, 2008. See Ex. 20. Upon C. Graham Berwind, Jr.’s death on November 3, 2010, a life estate in the combined properties was transferred to Petitioner Berwind by quitclaim deed dated March 29, 2011, recorded May 17, 2011 in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania in Deed Book 8178 page 1081.

intention “that the Conservation Values of the Property be preserved and maintained by this Easement in Perpetuity and that the continuation of current land uses including, without limitation, residential and agricultural uses existing at the time of this Easement, shall not be permitted to interfere with those values[.]” Id.

114. The Berwind 2008 Covenant prohibits “commercial recreational activities,” quarrying, excavating, filling, groundwater mining, damming, dumping and construction on the property, and strictly regulates agricultural activities and signage on the property. Id. §§ 3A-3B.

The Jacobs and Sharkey Properties

115. Petitioners Marshall Jacobs and Geralynn Jacobs own 7.6 acres of property located at 6019 Goshen Road, Willistown Township, Chester County, Pennsylvania (the “Jacobs Property”), also identified as Tax Parcel 54-7-66. A true and correct copy of the deed for the Jacobs Property is attached hereto as Exhibit 22.

116. The Jacobs Property borders Parcel C owned by Respondent NLT. See Ex. 6.

117. Mr. and Mrs. Jacobs purchased the Jacobs Property from Arthur A. Zimmerman and Anne L. Zimmerman by deed dated August 13, 1990 and recorded on August 14, 1990 in the Office of the Recorder of Deeds for Chester County, Pennsylvania in Record Book 2111 Page 332.

118. The Jacobs Property is not encumbered by any easements or covenants related to the Summerhill Preserve.

119. Petitioners Steven and Heidi Sharkey reside on 3.5 acres of property located at 6011 Goshen Road, Willistown Township, Chester County, Pennsylvania (the “Sharkey Property”), also identified as Tax Parcel 54-7-67.

120. The Sharkey Property borders Parcel C owned by Respondent NLT. See Ex. 6.

121. Mr. Sharkey purchased the Sharkey Property from non-party Andrew J. Melman by deed dated August 5, 2005 and recorded on August 12, 2005 in the Office of the Recorder of Deeds for Chester County, Pennsylvania in Record Book 6583 Page 229. A true and correct copy of the deed for the Sharkey Property is attached hereto as **Exhibit 23**.

122. The Sharkey Property is not encumbered by any easements or covenants related to the Summerhill Preserve.

Mill Hollow/Thayer Tract

123. The late Eliza T. Thayer owned Mill Hollow (also called the Thayer Tract), which is located in portions of Edgmont Township and Newtown Township, both in Delaware County, Pennsylvania.

124. Mill Hollow is just over the Chester County/Delaware County line from Summerhill Farm, is contiguous to Summerhill Farm and – like Summerhill Farm – includes portions of Crum Creek.

125. On December 29, 1977, Mrs. Thayer granted Brandywine a permanent conservation easement over approximately sixteen acres of Mill Hollow (the “1977 Mill Hollow Easement”), which was recorded in the Office of the Recorder of Deeds for Delaware County, Pennsylvania in Record Book 2635 Page 1142. A true and correct copy of the 1977 Mill Hollow Easement is attached hereto as **Exhibit 24**.

126. The 1977 Mill Hollow Easement prohibits dumping, quarrying, excavation, tree cutting, building construction and water drainage on the conserved property. Ex. 21 p. 2 ¶¶ 1-4.

127. Importantly, as Mrs. Miller did with the Parcel C 1986 Covenant, Mrs. Thayer made explicit in the 1977 Mill Hollow Easement her expectation that “**[n]othing herein shall be construed to grant the right to enter upon the easement lands set forth herein unto the**

general public or any other person or persons other than Grantee, its successors or assigns, or its duly authorized agents, for the purposes set forth herein.” *Id.* p. 4 (emphasis supplied).

128. Mrs. Thayer’s lands were subdivided according to a plan completed by Yerkes and Associates, Inc. on April 6, 1981, and approved by Newtown Township on April 8, 1981 and Edgmont Township on July 7, 1981 (the “Thayer Subdivision”).

129. By deed dated December 30, 1981 recorded in the Office of the Recorder of Deeds in and for Delaware County, Pennsylvania in Deed Book 2810 page 136, Mrs. Thayer granted a one-half interest in Lot 7 of the Thayer Subdivision to Respondent NLT; NLT became the owner in fee of Lot 7 of the Thayer Subdivision at some point thereafter.

130. Mrs. Thayer died on November 22, 1990, and non-party Mary Stokes Drayton purchased Lots 3, 4, 5 and 6 of the Thayer Subdivision from Mrs. Thayer’s estate in November 1992.

131. On December 12, 1997, Mrs. Drayton recorded an Easement and Declaration of Restrictive Covenants between herself and Brandywine pertaining to 8.631 acres (the “1997 Drayton Covenant”) in the Office of the Recorder of Deeds in and for Delaware County, Pennsylvania in Deed Book 1660 page 1992, a true and correct copy of which is attached hereto as Exhibit 25.

132. The 1997 Drayton Covenant is premised upon the fact that “the Property is adjacent to and in close proximity of other lands currently owned in fee by or permanently protected by conservation easements or agricultural easements with Grantee [Brandywine] and other non-profit environmental organizations” including the easements protecting the lots created from Summerhill Farm, and reflects Mrs. Drayton’s intention that “the Conservation Value of the Property be preserved and maintained by this easement in perpetuity” and Brandywine’s

promise “to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property from soil erosion, water pollution, and other man-induced disturbance for the benefit of this generation and generations to come.” Ex. 22 pp. 3-4

133. The 1997 Drayton Covenant allows a 20 foot wide trail for activities *limited to* hiking, jogging, cross-country skiing, horseback riding, nature study, scientific research, painting, sketching and photography. *Id.* §§ 3A(i)-(v). It also strictly limits signage and all commercial and industrial uses on the property. *Id.* §§ 4A-J.

134. On October 10, 2000, Petitioner Warden and her then-husband Jeffrey C. Warden purchased Lots 5 and 6 of the Thayer Subdivision, located at 4701 Mill Hollow Lane and 4707 Mill Hollow Lane, Edgemont, Pennsylvania.⁴ On March 18, 2013, Mrs. Drayton deeded 4719 Mill Hollow Lane, Edgemont, Pennsylvania (formerly Lots 3 and 4 of the Thayer Subdivision, subsequently combined into a single Lot 3) to Jeffrey C. Warden and Petitioner Deborah Warden, and recorded on April 4, 2013 in the Office of the Recorder of Deeds in and for Delaware County, Pennsylvania in Deed Book 5299 page 1542.

135. After her divorce from Jeffrey C. Warden, Petitioner Warden became sole owner of newly-created Lot 3, Tax Parcel 29-00-00417-04 (the “Warden Property”), by deed recorded May 6, 2016 in the Office of the Recorder of Deeds in and for Delaware County, Pennsylvania in Deed Book 5804 page 1563. A true and correct copy of the deed for the Warden Property is attached hereto as Exhibit 26.

136. Petitioner Warden purchased the Warden Property with knowledge of the benefits and burdens imposed by the 1977 Mill Hollow Easement and the 1997 Drayton Covenant.

⁴ Lots 3, 4, 5 and 6 of the Thayer Subdivision were reconfigured according to a Subdivision Plan for Mary Stokes Drayton, dated October 10, 2001 and revised January 9, 2002, which was prepared by Howard W. Doran Engineering and Surveying, a division of Conver and Smith Engineering, Inc.

137. The Warden Property borders Lot 7 of the Thayer Subdivision, which is owned by Respondent NLT.

138. Petitioner Warden sold a portion of her property located at 4701 Mill Hollow Lane, Edgemont, Pennsylvania (the “D’Angelo Property”) to Petitioner Samuel D’Angelo on December 6, 2017 by deed recorded on December 6, 2017 in the Office of the Recorder of Deeds in and for Delaware County, Pennsylvania in Deed Book 6098 page 1584. A true and correct copy of the deed for the D’Angelo Property is attached hereto as **Exhibit 27**.

139. Petitioner D’Angelo purchased the D’Angelo Property with knowledge of the benefits and burdens imposed by the 1977 Mill Hollow Easement and the 1997 Drayton Covenant.

140. The D’Angelo Property borders Parcel C of the Summerhill Subdivision Plan 2.

NLT’s Plans to Develop Summerhill Preserve

141. Respondent NLT announced its plans to create “Summerhill Preserve” out of Lots 2-6 of the Subdivision Plan 2 and Parcel C of Summerhill Subdivision Plan 2, and to connect the Summerhill Preserve to the Mill Hollow Preserve existing on Lot 7 of the Thayer Subdivision.

142. In a letter dated March 9, 2021, a true and correct copy of which is attached hereto as **Exhibit 28**, Respondent explained its plans to Petitioners thusly:

The 52 acres of land which Natural Lands owns, referred to as the Summerhill Preserve, was donated by Martha Stengel Miller and then more recently, her son Rusty Miller and his husband, Ken Nimblett. Mr. Miller's desire was to expand public access to the Preserve and thus with his involvement in 2016, Natural Lands developed a vision statement and budget to accommodate public use of the Preserve. After Mr. Miller’s unexpected death in 2016, Mr. Miller’s husband, Ken Nimblett, donated the last 10.5-acre parcel that was added to the Preserve. Mr. Nimblett’s donation was made with the desire and expectation that Natural Lands take steps to encourage and accommodate more public use of the Preserve. In keeping with that desire, upon accepting the donation in 2017, Natural Lands adopted a Resolution that “in the future [the

Preserve] will be improved with an entrance sign, 10-car parking lot, kiosk, and trails, to increase public visitation.”

. . . Natural Lands has now decided to seek permits and approval for a 20-foot-wide paved access driveway off of Goshen Road, located parallel to the shared driveway and entirely on Parcel 54-7-68.2 [Parcel C]. The driveway is approximately 180 feet long and leads to a small parking lot with eight parking spaces, including one ADA spot.

Ex. 24 pp. 1-2.

143. At present, the plan for public access to Summerhill Preserve will include a 20 foot wide paved macadam public roadway which will culminate in an eight-car (reduced from ten) paved parking lot with kiosk and signage.

144. The planned Summerhill Preserve will be open to unmonitored and uncontrolled public access seven days per week, sun-up to sundown.

145. The planned Summerhill Preserve includes no planning or provision for refuse removal, public safety, parking enforcement, pet management, storm water runoff, noise abatement, view shed preservation or the prevention of trespassing upon the Neighbors' properties.

146. Although Respondent NLT has dismissively promised the Neighbors that its Summerhill Preserve development plans “will not overwhelm the Preserve or jeopardize the conservation objectives outlined in the recorded declarations,” see Ex. 26, NLT ignores the fact that its plans for Summerhill Preserve violate the clear terms of the Parcel C 1986 Covenant, the Lots 5 and 6 2007 Easement and even the improper Lots 5 and 6 2016 Easement.

147. The Neighbors are all intended beneficiaries of the various covenants burdening and benefitting their properties and the Summerhill Preserve under the doctrine of privity of estate, as demonstrated by the 2006 Restatement. The doctrine of privity of estate under these circumstances was explained by the Superior Court as follows:

As was said in McCloskey v. Kirk, [243 Pa. 319, 90 A. 73 (Pa. 1914)]: “Whether it runs with the land or whether it is an easement is immaterial, provided the creation of the restriction is clearly defined and is understood by the parties at the time.” The subject is expounded in 26 C.J.S. Deeds, 167, page 546, as follows: **“The right of a person not a party thereto to enforce in equity a restriction on the use of property depends on whether or not the restrictive covenant or agreement was imposed on the land owned by defendant for the benefit of the land owned by plaintiffs who are seeking to enforce the restriction; if so, equitable relief should be granted to the plaintiffs,** if not plaintiff should be denied the equitable relief prayed. The question is largely determined by the intention of the parties, and it must appear from the terms of the grant or from the situation of the parties and the surrounding circumstances that it was the intention of the grantor, when inserting the restriction, to create a servitude or equity in the nature of an easement which would inure to the benefit of complainant's land and equitably be annexed as an appurtenance. **A restriction imposed for the benefit of the owner of other property creating an equitable right in the nature of an easement in his behalf may be enforced in equity without regard to whether it is inserted by way of condition, covenant, or otherwise. Complainant's right does not rest on whether or not the restriction runs with the land, nor on privity of estate or contract, but there must be found somewhere the clear intent to establish the restriction for the benefit of the party attempting to restrain its infringement, of which defendant must have either actual or constructive notice.”**

Appeal of J.C. Grille, Inc., 181 Pa. Super. 456, 463-64, 124 A.2d 659, 663-64 (Pa. Super. 1956)(emphasis supplied).

148. “Section 541 of the Restatement of the Law of Property, quoted approvingly and followed by the Pennsylvania Supreme Court in Mariner v. Rohanna, 371 Pa. 615, 617-18, 92 A.2d 219, 220 (1952), provides: ‘The persons initially entitled to enforce the obligation of a promise respecting the use of land are the promisee and such third persons as are also beneficiaries of the promise. See also: P.L.E. Covenants § 21; Annot., 51 A.L.R.3d 556 (1973) (general theory behind the right to enforce restrictive covenants is that the covenants must have been made with or for the benefit of the one seeking to enforce them).’ Fey v. Swick, 308 Pa. Super. 311, 316-317, 454 A.2d 551, 554 (Pa. Super. 1982).

149. In response to the Neighbors' concerns about the development of Summerhill Preserve and constant unregulated public access thereto, Respondent promised to "plant trees and landscaping to provide a visual buffer [of the parking lot] from land to the southwest[.]" install "signage to direct the public to the new public driveway and lot and to indicate the private nature of the neighbors' driveways and lots," establish "rules for public use . . . [to] be clearly posted in the information kiosk and on any printed trail maps that Natural Lands provides in the future," and "seek volunteer ambassadors to be present in/near the parking lot on weekends when the Preserve first opens to the public[, although] it cannot guarantee coverage at all times" Ex. 26 pp. 2-3.

150. In response to the Neighbors' specific safety concerns, Respondent assured them it would "request that the Willistown Police to routinely patrol the driveway and lot[.]" *Id.* p. 3.

151. Respondent NLT's Summerhill Preserve plans expressly disregard the fact that the Parcel C 1986 Covenant, the Lot 1 2006 Conservation Easement and the Lots 5 and 6 2007 Easement are intended to enforce Mrs. Miller's clear intent that Summerhill Farm *not* be made available for unrestricted public use, but rather be conserved for the benefit of wildlife, water quality, vegetative cover and scenic resources, with a focus on sustainable land uses, in order to support the biological integrity of the land and not disrupt the local ecosystem.

152. Substantial stormwater runoff volume flows currently from the Summerhill Preserve toward Goshen Road and the properties belonging to Petitioners Frederick Seving, Christine Seving, William Mezzanotte, Samdra Mezzanotte, Steven Sharkey, Heidi Sharkey, Marshall Jacobs and GERALYNN JACOBS along Goshen Road, which occasionally causes flooding to those properties and to Goshen Road itself.

153. The current stormwater-related flooding issues will be significantly exacerbated by the addition of the impervious cover contributed by Respondent NLT's planned roadway and parking area as described in NLT's letter, which as planned would fall right in the portion of the Preserve that currently creates the excess runoff. Specifically, the proposed access drive and parking area are immediately behind the Jacobs Property and adjacent to the Sharkey Property and the Mezzanotte Property, all of which front Goshen Road and are downgradient from the Preserve. In addition to the noise and other concerns of having the drive and parking area so proximate to these properties, which are already subject to excessive stormwater flow from Summerhill Preserve lands, and which stormwater problems would only be compounded by the addition of Respondent NLT's proposed paving.

154. Pursuant to existing Pennsylvania Department of Environmental Protection regulations, because the construction of the roadway and parking lot at the Respondent NLT's proposed Summerhill Preserve will involve earth disturbance activities exceeding 5000 square feet, Respondent NLT must design and implement an adequate erosion and sediment control (E&SC) plan showing how the land is to be protected against accelerated erosion through the use of any of the following: silt fence, mulch, diversion ditches, sediment traps and basins, and the planting of grasses or similar vegetation. Upon information and belief, Respondent NLT has failed to design an ES&C plan.

155. Similarly, because NLT's proposed Summerhill Preserve will disturb one or more acres, Respondent NLT must obtain authorization through a National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities before beginning any earth disturbance activity. Respondent NLT does not qualify for an exception to this permitting requirement because Summerhill Preserve will involve point

source discharge to surface water. Upon information and belief, Respondent NLT has failed to obtain the appropriate NPDES permit.

156. In addition, Respondent NLT is required to submit to Willistown Township a conservation plan with respect to its development of Summerhill Preserve pursuant to § 73-11 of the Willistown Township General Code. Upon information and belief, Respondent NLT has failed to do so.

157. Respondent NLT is also required to seek a floodplain permit from the Floodplain Administrator of Willistown Township with respect to its plan to develop Summerhill Preserve pursuant to § 73-17 *et seq.* of the Willistown Township General Code. Upon information and belief, Respondent NLT has failed to do so.

158. Pursuant to § 73-64 of the Willistown Township Zoning Code, Respondent NLT is required to submit in connection with its plan to develop Summerhill Preserve a riparian buffer area management plan. Upon information and belief, Respondent NLT has failed to do so.

159. Pursuant to § 139-152 of the Willistown Township Zoning Code, Respondent NLT is required to submit in connection with its plan to develop Summerhill Preserve a traffic impact study, a community impact study (including but not limited to a fire protection study, solid waste study, historical study, water study and sewer study) and an environmental impact study “which surveys environmental information and which addresses how these sensitive areas will be conserved and protected. This information shall serve as a basis for designing the development which is responsive to environmental conditions as provided in this article and the Environmental Protection Ordinance.” Upon information and belief, Respondent NLT has failed to do so.

160. Petitioners, and each of them, took title to their respective properties with the expectation that the mutual covenants applicable thereto – which combine to form a network of protection over the large swaths of encumbered land and restrict development and activities thereupon – would be honored.

161. In the recent past, Respondent NLT conducted invitation-only bird watching events at Summerhill Preserve under the supervision of Respondent NLT personnel.

162. The Petitioner Neighbors have indicated their willingness to provide access and designated parking on their properties in order to facilitate the continued, low-impact use of Summerhill Preserve, in lieu of Respondent NLT's plan to provide unrestricted and unmonitored public access to Summerhill Preserve. Upon information and belief, Respondent NLT has rejected this offer.

163. Respondent NLT's Summerhill Preserve plan directly and unequivocally violates the rights, benefits, protections, restrictions and requirements of the multitude of filed of record and legally binding covenants, restrictions and conservation easements with respect to Summerhill Farm and adjacent lands.

COUNT I
DECLARATORY JUDGMENT
(Petitioners v. NLT and Brandywine)

164. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

165. Petitioners Seving, Mezzanotte, Castelli and Love are mutually benefitted and burdened by the series of declarations and easements created by Martha Stengel Miller with respect to the property formerly known as Summerhill Farm.

166. Petitioners Jacobs, Sharkey, Warden, D'Angelo and Berwind, as owners and occupiers of properties adjacent to and bordering the property formerly known as Summerhill Farm and/or the proposed Summerhill Preserve, are intended beneficiaries of the series of declarations and easements created by Martha Stengel Miller with respect to the property formerly known as Summerhill Farm.

167. Petitioners seek a declaration from the Court that NLT's announced plan to pave a 20 foot wide macadam roadway, construct a paved parking lot on lot 3 and/or Parcel C of the Summerhill Subdivision Plan 2, erect signage and a kiosk thereupon, and open Summerhill Preserve for unrestricted and unmonitored public access seven days per week, 52 weeks per year, sun up to sun down violates the express terms of the Parcel C 1986 Covenant.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter a declaratory judgment by way of Order in their favor and against Respondents NLT and Brandywine declaring that Respondent NLT's plan to construct and operate Summerhill Preserve violates the terms of the Parcel C 1986 Covenant, and further that the Court award Petitioners costs and attorneys' fees, as well as such other and further relief as is just and equitable.

COUNT II
INJUNCTIVE RELIEF
(Petitioners v. Natural Lands Trust, Inc.)

168. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

169. Petitioners, as owners and occupiers of properties near and/or adjacent to the property proposed to be developed as Summerhill Preserve by NLT, will be immediately and irreparably harmed by the stormwater runoff created by the addition of a paved 20-foot wide roadway and parking lot, by the pollution and safety issues caused by near-constant, unregulated

public and vehicular access, and by the diminishment in their property values and enjoyment thereof caused by the reduction to their viewsheds, and by the irreversible loss of the natural and unspoiled condition of the land as a direct result of Respondent NLT's plans.

170. These and other harms cannot be adequately compensated by damages insofar as Petitioners' properties are unique and no amount of compensatory damages can make Petitioners whole for the loss of any element or contributing elements of these unique properties.

171. Petitioners, as owners and occupiers of properties near and/or adjacent to the property to be developed as Summerhill Preserve by NLT, will suffer greater harm if Respondent NLT's development of Summerhill Preserve is permitted than any theoretical harm Respondent NLT will suffer if such development is enjoined.

172. No other interested parties will be harmed by issuance of an injunction. Since public access to the Summerhill Preserve is currently expressly prohibited, other than on an invitation-only basis during special events thereupon at which NLT staff is present, neither Respondent NLT nor the public will be harmed by such an injunction.

173. A preliminary injunction will maintain the status quo by preventing Respondent NLT from developing Summerhill Preserve, thus keeping all affected lands as they currently exist.

174. Petitioners' right to relief is clear and Petitioners are likely to prevail at trial, since development of the Summerhill Preserve according to NLT's current plan is a clear violation of the Parcel C 1986 Covenant and the purport and intent of the other conservation covenants governing the Summerhill Preserve and the adjoining properties as expressly set forth hereinabove.

175. A preliminary injunction prohibiting development of the Summerhill Preserve according to Respondent NLT's current plan is reasonably suited to abate the offending activity.

WHEREFORE, Petitioners respectfully request that this Honorable Court hereby enjoin and restrain Respondent NLT and enter an Order enjoining Respondent Natural Lands Trust, Inc. from developing the Summerhill Preserve according to Respondent NLT's current plan and awarding Petitioners their costs and attorneys' fees, as well as such other and further relief as is just and equitable.

COUNT III
MANDAMUS
(Petitioners v. County of Chester and Willistown Township)

176. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

177. Petitioners have a clear legal right to have the provisions of the Parcel C 1988 Covenant enforced against Respondents Brandywine and NLT, insofar as they are its intended beneficiaries under the doctrine of privity of estate.

178. Respondents Chester County and/or Willistown Township have a third-party right of enforcement under the terms of the Parcel C 1988 Covenant, as such right is defined in the Conservation and Preservation Easements Act, 32 P.S. §§ 5051 *et seq.*

179. Respondents Chester County and/or Willistown Township have a duty to enforce the terms of the Parcel C 1988 Covenant pursuant to its terms.

180. Petitioners lack any other adequate and appropriate remedy to permanently prevent Respondent NLT from developing the Summerhill Preserve according Respondent NLT's stated plans.

181. In the absence of mandamus relief, Petitioners will suffer irreparable injury as set forth in Counts I and II of this Complaint as a result of Respondent NLT's development of the Summerhill Preserve.

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter an Order requiring and mandating that Respondent(s) Chester County and/or Willistown Township enforce the terms of the Parcel C 1988 Covenant against Respondents Brandywine and Natural Lands Trust, Inc., and award Petitioners their costs and attorneys' fees as well as such other and further relief as is just and equitable.

COUNT IV
BREACH OF TRUST

(Adrian Castelli, Mary Love, Frederick Seving, Christine Seving, William Mezzanotte, Sandra Mezzanotte, Steven Sharkey, Heidi Sharkey, Marshall Jacobs and GERALYNN JACOBS v. John Kenneth Nimblett and Robert P. Goldman)

182. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

183. Petitioners Castelli, Love, Seving, Sharkey and Jacobs, owners and occupiers of properties adjacent to and bordering Lots 5 and 6 of the Summerhill Subdivision Plan 2, are intended beneficiaries of the Lots 5 and 6 2007 Easement, or alternatively, these Petitioners are the *de facto* beneficiaries thereof.

184. The Lots 5 and 6 2007 Easement clearly reflect Mrs. Miller's desire to protect the quality of water resources," to "minimiz[e] Impervious Coverage," to "retain[] continuous vegetative cover," to "maintain water quality of streams, wetlands and other water resources," "to preserve . . . grasslands as a vegetative buffer," "to protect large intact areas of wildlife habitat and connect patches of habitat," "to maintain open, pastoral, scenic views" and "to promote good stewardship of the" land. Ex. 17 p. 2 § 1.04.

185. After the demise of Mrs. Miller and the untimely death of her son and sole blood relation, Rusty Miller, Respondents Nimblett and Goldman took it upon themselves to execute the Lots 5 and 6 2016 Easement, thereby clearing the way for Summerhill Farm to be developed into Summerhill Preserve by Respondent NLT.

186. Pursuant to 20 Pa. C.S. § 7781, a breach of trust consists of “violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.” Remedies for breach of trust are “any appropriate relief, including the following: (1) Compelling the trustee to perform the trustee’s duties. (2) Enjoining the trustee from committing a breach of trust. (3) Compelling the trustee to redress a breach of trust by paying money, restoring property or other means . . . (7) Removing the trustee as provided in section 7766 (relating to removal of trustee — UTC 706). (8) Reducing or denying compensation to the trustee. (9) . . . (i) voiding an act of the trustee; . . .; or (iii) tracing trust property wrongfully disposed of and recovering the property or its proceeds.”

187. Execution of the Lots 5 and 6 2016 Easement constitutes a breach of trust by Respondents Nimblett and Goldman.

188. As a result of said breach of trust, Petitioners Castelli, Love, Seving, Sharkey and Jacobs have been injured.

WHEREFORE, Petitioners Castelli, Love, Seving, Mezzanotte, Sharkey and Jacobs respectfully request that this Honorable Court enter judgment in their favor and against Respondents Nimblett and Goldman based on these co-respondents’ breach of trust, and enter an Order enforcing any of the remedies provided for under 20 Pa. C.S. § 7781, as well as monetary damages in an amount to be determined at trial, together with interest, costs and attorneys’ fees, and for compensatory damages, as well as such other and further relief as is just and equitable.

COUNT V
DECLARATORY JUDGMENT

**(Adrian Castelli, Mary Love, Frederick Seving, Christine Seving, William Mezzanotte,
Sandra Mezzanotte, Steven Sharkey, Heidi Sharkey, Marshall Jacobs and Geralynn Jacobs
v. NLT, Brandywine, John Kenneth Nimblett and Robert P. Goldman)**

189. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

190. Martha Stengel Miller, whose family owned Summerhill Farm for more than a century, expressed her clear intent to protect and preserve Lots 5 and 6 of the Summerhill Subdivision Plan 2 by and through her execution of the Lots 5 and 6 2007 Easement. See Ex. 17.

191. In the Lot 5 and 6 2007 Easement, Mrs. Miller designated a two-acre “minimal protection area” wherein a residence could be constructed. Ex. 17 § 1.03(b)(ii). The remaining eight acres of Lots 5 and 6 were designated a “standard protection area.”

192. In the standard protection area of Lots 5 and 6, Mrs. Miller’s express purpose was “to protect the quality of water resources by minimizing Impervious Coverage outside the Minimal Protection Area and by retaining continuous vegetative cover within the Standard Protection area so as to maintain water quality of streams, wetlands and other water resources,” “to preserve the Hedgerow and adjoining grasslands as a vegetative buffer,” “to protect large intact areas of wildlife habitat and connect patches of habitat [and protect] the habitat provided by Summerhill Preserve for a number of nesting birds and other Native Species,” “to maintain open, pastoral, scenic views” and “to promote good stewardship of the Standard Protection Area so that its soil and other natural resources will always be able to support Sustainable Agriculture or Sustainable Forestry.” Id. §§ 1.03(a)(i)-1.03(b)(i).

193. Even creation of the permitted residence in the minimal protection area was to be accomplished “while protecting the scenic and natural resources of the Property as described above” Id. p. 2 §1.03(b)(vi).

194. The Lot 5 and 6 2007 Easement permits the following “Recreational and Open-Space Uses”

Non-commercial recreational and open-space uses that do not require Improvements other than those permitted within the Standard Protection Area; do not materially adversely affect scenic views and other value described in the Conservation Objectives; and do not require vehicular use other than for resource management purposes.

Ex. 17 § 4.03(d).

195. Respondent’s NLT’s announced plan to pave a 20-foot-wide roadway parallel to the existing dirt cartway, install a paved parking lot, signage and kiosk, and open the property to unlimited public use seven days per week, sun-up to sundown was not permitted under the terms of the Lot 5 and 6 2007 Easement.

196. Eight (8) years after Mrs. Miller’s death, her son Rusty Miller and his husband Respondent Nimblett joined with Respondent NLT to amend the Lot 5 and 6 2007 Easement, by and through the Lots 5 and 6 2016 Easement, which suddenly and inexplicably allowed Lots 5 and 6 to be “use[d] as a Preserve” Ex. 18 p. 2 § 1.04(b)(1). Brandywine is responsible for the enforcement of those terms.

197. Rusty Miller tragically died shortly after execution of the Lots 5 and 6 2016 Easement.

198. As it is clear that Mrs. Miller did not permit Lots 5 and 6 to be used as a preserve, and her intentions with respect to lots 5 and 6 were to prohibit vehicular traffic thereupon as well as signage, pollution, interruption of greenspaces, damage to animal and bird habitats, spoliation

of viewsheds and affect upon water quality, the Lots 5 and 6 2016 Easement must be declared null and void as an *ultra vires* act.

WHEREFORE, Petitioners Castelli, Love, Mezzanotte, Seving, Sharkey and Jacobs respectfully request that this Honorable Court enter a declaratory judgment by way of Order in their favor and against Respondents NLT, Brandywine and Messrs. Nimblett and Goldman declaring that the Lots 5 and 6 2016 Easement is null and void, and further that the Court award Petitioners costs and attorneys' fees, as well as such other and further relief as is just and equitable.

COUNT VI
ANTICIPATORY BREACH OF CONTRACT/BREACH OF CONTRACT
(Petitioners v. NLT and Brandywine)

199. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

200. Petitioners were and are the intended beneficiaries of the 1978 Indenture, the 1983 Amendment of Easement, the Parcel C 1988 Covenant, the Lot 1 2006 Conservation Easement, the 2006 Restatement, the Lots 5 and 6 2007 Easement, and the Lot A-3 2009 Conservation Easement.

201. Respondent NLT is bound by the terms of the 1978 Indenture, the 1983 Amendment of Easement, the Parcel C 1988 Covenant, the Lot 1 2006 Conservation Easement, the 2006 Restatement, the Lots 5 and 6 2007 Easement, and the Lot A-3 2009 Conservation Easement as either a beneficiary or a signatory of each.

202. Brandywine is responsible for the enforcement of the Parcel C 1988 Covenant, the Lots 5 and 6 2007 Easement, and the Lot A-3 2009 Conservation Easement.

203. The terms of these agreements, and each of them, prevent the addition of excessive impervious cover and the introduction of environmental pollution as NLT proposes in its announced plan for the development of the Summerhill Preserve.

204. NLT's announced plan for the development of the Summerhill Preserve violates both the intent and the terms of the 1978 Indenture, the 1983 Amendment of Easement, the Parcel C 1988 Covenant, the Lot 1 2006 Conservation Easement, the 2006 Restatement, the Lots 5 and 6 2007 Easement, and the Lot A-3 2009 Conservation Easement.

205. Respondent NLT's planned development of the Summerhill Preserve is an anticipatory breach of these contracts and will be a breach of these contracts if permitted to proceed.

206. Brandywine has failed and refused to intervene to halt the development of the Summerhill Preserve.

207. As a result of Respondent NLT's announced plan for the development of the Summerhill Preserve and Brandywine's failure to prevent it, Petitioners have been damaged insofar as their property values have declined or will decline substantially in an amount to be determined at trial.

208. Petitioners will continue to be damaged by Respondent NLT's and Brandywine's continuing breach of both the intent and the terms of the 1978 Indenture, the 1983 Amendment of Easement, the Parcel C 1988 Covenant, the Lot 1 2006 Conservation Easement, the 2006 Restatement, the Lots 5 and 6 2007 Easement, and the Lot A-3 2009 Conservation Easement if Respondent NLT develops Summerhill Preserve, and Petitioners' properties are subjected to pollution, intrusion, erosion and other damaging forces, as well as the vast impact on Petitioners'

properties by the irreversible loss of the natural and unspoiled condition of the land as a direct result of Respondent NLT's plan.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against Respondents NLT and Brandywine in an amount to be determined at trial, together with interest, costs and attorneys' fees, and for compensatory damages, as well as such other and further relief as is just and equitable.

COUNT VII
BREACH OF PUBLIC TRUST
(Petitioners v. County of Chester
and Willistown Township)

209. Petitioners incorporate by reference the averments of the preceding paragraphs as if set forth at length herein.

210. The citizens of the County and Willistown Township have an inherent and indefatigable right to the land in its natural state – and the health, environmental, historical, scenic and aesthetic benefits conveyed therefrom.

211. "Article I, Section 27 of the Pennsylvania Constitution provides: 'The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.'" Pilchesky v. Doherty, 941 A.2d 95, 100 (Pa. Commw. 2008).

212. Petitioners have purchased and maintained their properties subject to the burdens imposed by an interwoven protective covering of easements designed to preserve the land in its natural state while allowing them to inhabit dwellings and conduct activities of daily living thereupon.

213. The public trust in the preservation and protection of natural open spaces does not equate with public access thereto, but rather with governmental protection thereof.

214. “Public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.’ The trust relationship does not contemplate a settlor placing blind faith in the uncontrolled discretion of a trustee; the settlor is entitled to maintain some control and flexibility, exercised by granting the trustee considerable discretion to accomplish the purposes of the trust.” Robinson Twp. v. Commonwealth, 623 Pa. 564, 654, 83 A.3d 901, 956 (Pa. 2013)(citing and quoting Nat’l Audubon Soc’y v. Superior Court, 33 Cal. 3d 419, 658 P.2d 709, 724 (Cal. 1983)); see also Lang v. Commonwealth, 515 Pa. 428, 528 A.2d 1335, 1345 (Pa. 1987).

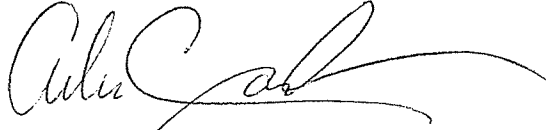
215. Thus, Petitioners are called upon to enforce the public trust against the County and Willistown Township.

216. The Pennsylvania Supreme Court has determined “that [it is] the responsibility of government to protect the environment from private injury” Machipongo Land & Coal Co. v. Dep’t of Env’tl. Prot., 569 Pa. 3, 10, 799 A.2d 751, 754-755 (Pa. 2002).

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against Respondents the County of Chester and Willistown Township for violation of public trust in an amount to be determined at trial, together with interest, costs and attorneys’ fees, and for compensatory damages, as well as such other and further relief as is just and equitable.

VERIFICATION

I, Adrian A. Castelli, being duly sworn according to law, hereby depose and say that I am the petitioner in this action. The facts set forth in the foregoing Petition and the documents attached thereto as exhibits, are true and correct to the best of my knowledge, information and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read 'Adrian Castelli', with a long horizontal flourish extending to the right.

ADRIAN A. CASTELLI

**SILVERANG, ROSENZWEIG
& HALTZMAN LLC**

By: _____

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Dated: November 18, 2021

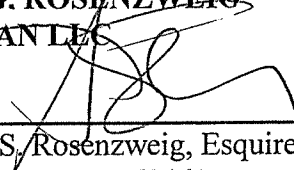
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