

**FIRST AMENDMENT TO
AGREEMENT OF SALE**

THIS FIRST AMENDMENT TO AGREEMENT OF SALE (this “**Amendment**”) is executed this 11th day of January, 2023 but is effective as of the 31st day of December, 2022 by and between DOWNINGTOWN AREA SCHOOL DISTRICT, INC., (“**Seller**”) and AUDUBON MANAGEMENT CORP. (“**Purchaser**”).

RECITALS

WHEREAS, Seller and Purchaser entered into an Agreement of Sale dated July 13, 2022 (the “**Contract**”), whereby Seller agreed to sell and Purchaser agreed to purchase certain real property of Seller consisting of an approximately 240.9 acres, together with the buildings and improvements thereon, located in Uwchlan Township, Chester County, Pennsylvania, and as more particularly described in the Contract (the “**Property**”); and

WHEREAS, by Order dated November 28, 2022, the Contract was approved by the Court of Common Pleas of Chester County, Pennsylvania pursuant to §7-703 of the Pennsylvania School Code of 1949; and

WHEREAS, the Contract, in Section 15.3, permits modifications to the Contract by an agreement in writing signed by all parties; and

WHEREAS, the parties wish to amend and modify the Contract in certain respects as set forth in this Amendment; and

WHEREAS, the amendments and modifications to the Contract do not alter the Purchase Price as set forth in the Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties agree as follows:

1. Recitals and Controlling Terms. The foregoing Recitals are hereby incorporated by reference as if fully restated. All capitalized terms used herein which are not specifically defined shall have the meanings provided in the Contract. From and after the Amendment Date (as hereinafter defined), references to the Contract shall refer to the Contract as amended by this Amendment.

2. Deposit Schedule and Closing Date.

(a) Section 5.1.1 of the Contract is hereby amended to extend the Initial Closing Date from December 31, 2022 to December 31, 2023. Notwithstanding the provisions of Section 3.2 of the Contract, no Additional Deposit payments are required to be made by Purchaser in connection with the foregoing extension.

(b) Section 5.1.1 of the Contract is hereby further amended to reduce the number of Extension Options from four to two 6-month options the exercise of which shall be conditioned on there being no default by Purchaser under the Contract in existence beyond any applicable Cure Period on the then applicable Extension Notice Date or Closing Date. The exercise requirements of Section 5.1.1 and Additional Deposit requirements of Section 3.2 shall apply to the Extension Options. Accordingly, and for absence of doubt, (i) to exercise the first Extension Option, Purchaser must deliver a written Extension Notice on or before November 1, 2023 together with the Additional Deposit payments at the times and in the amounts currently shown on Exhibit C to the Contract as Additional Deposit #3, and (ii) to exercise the second Extension Option, Purchaser must deliver a written Extension Notice on or before May 1, 2024 together with the Additional Deposit payments at the times and in the amounts currently shown on Exhibit C to the Contract as Additional Deposit #4. Assuming both Extension Options are properly and timely exercised and the applicable Additional Deposit payments are made, the outside Closing Date under the Contract shall be December 31, 2024 and nothing contained in this Amendment shall be construed as permitting an extension of the Closing Date beyond December 31, 2024.

2. Performance Covenants. In consideration for and as a condition to the extension of the Closing Date as provided in Section 2 above, Purchaser covenants and agrees that it will use its best efforts to perform and meet the following milestones (each, a “**Performance Milestone**” and collectively, the “**Performance Milestones**”) relating to the Project (hereinafter defined) on or before the dates indicated below:

- A. December 31, 2022: Sketch Plan presentation to Uwchlan Township (the “**Township**”).
- B. March 31, 2023: Full and complete Township Zoning Hearing Board Variance or Approval Application submitted to the Township/Township Zoning Hearing Board.
- C. April 30, 2023: Full and complete Preliminary/Final Land Development Application submitted to the Township .
- D. June 30, 2023: Conditional Use Approval issued.
- E. December 31, 2023: Conditional Preliminary/Final Land Development Approval issued.
- F. December 31, 2023: Township Zoning Hearing Board Variances or Approvals issued.
- G. If the December 31, 2023 Closing Date is extended and required Additional Deposits paid, the following will apply:
 - (i) July 30, 2024: PA DEP NPDES Approval issued.

- (ii) June 30, 2024: USACE/PA DEP Joint Permit(s) issued.
- (iii) June 30, 2024: PennDOT Highway Occupancy Permit issued.

All applications, permits and approvals shall be generally consistent with the project set forth in that certain Sketch Plan prepared by BL Companies dated October 24, 2022, Project No. 2201268, previously provided by Purchaser to Seller, and as amended by the attached Sketch Plan prepared by BL Companies dated December 12, 2022 a copy of which is attached hereto and made a part hereof as Exhibit "A" (the "Project"). Purchaser shall promptly commence and thereafter diligently pursue, using its best efforts, each Performance Milestone and comply with the requirements, requests and conditions of the Township and any other governmental authority having jurisdiction. Purchaser shall be solely responsible for and shall promptly pay any and all fees, costs and expenses associated with the Performance Milestones which amounts shall not be applicable to the Purchase Price. If Purchaser defaults under the Contract or the Contract is terminated, Purchaser shall not be responsible for such fees, costs and expenses that would normally be paid as part of pursuing actual construction of the Project such as recreation fees, open space fees, stormwater fees, fees related to waivers, financing required pursuant to the Municipalities Planning Code and related fees, or fees, costs and expenses related to any appeal, but only to the extent such fees, costs and expenses accrue subsequent to the date of Contract termination, it being understood that Purchaser shall be responsible for and shall pay all application/permit fees, Township consultant review fees, and Buyer's consultant's fees, costs and expenses accruing prior to the date of Contract termination. Purchaser shall provide Seller copies of all applications and approvals promptly upon their submission or issuance, as applicable, together with such other information and materials as Seller may reasonably request. Seller agrees to cooperate fully with Purchaser and agrees to execute and join in, and hereby consents to the filing and processing of all documents required in connection with the applications, permits and approvals and agrees not oppose or in any fashion hinder, Purchaser's applications, permits and approvals. Seller's cooperation shall not mean that Seller shall be required to expend any sums of money in providing the cooperation.

Seller agrees to cooperate with Purchaser, but at no cost to Seller, as to the removal of the gas pipeline easements or obtaining permission, to the satisfaction of Uwchlan Township, for the use of the surface of the gas pipeline easements.

Purchaser and Seller acknowledge and agree that achieving the Performance Milestones are covenants of Purchaser and are neither contingencies to nor conditions of Purchaser's obligation to complete Closing under the Contract. The Initial Deposit (and any Additional Deposits submitted by Buyer under the Contract as of the time of termination or default) shall remain nonrefundable regardless of whether or not Purchaser achieves any or all of the Performance Milestones. Failure of Purchaser to diligently pursue using its best efforts, pay for and/or achieve any of the Performance Milestones shall, following the expiration of a cure period of 60 days from the Performance Milestone date, but only with respect to Performance Milestones 2.D, 2.E, 2.F and 2.G, and provided Purchaser has timely and properly extended the Closing Date and timely paid the Additional Deposits in accordance with the terms of the Contract ("Performance Milestones Cure Period"; the "Performance Milestones Cure Period" shall be considered a "Cure Period"), at the option of DASD, constitute a default under the Contract.

3. **Project Work Product.** In the event this Contract is terminated for any reason other than a Seller default, all Due Diligence Materials and Project Work Product shall become the property of Seller. As used herein “**Due Diligence Materials**” means boundary surveys, topographic surveys, tree surveys, wetland determinations, floodplain surveys, environmental reports, geotechnical soil reports, wildlife studies and archeological studies prepared by or on behalf of Purchaser in connection with the Property or the Project. As used herein, “**Project Work Product**” means all work product prepared by or on behalf of Purchaser, including without limitation, all plans, surveys, reports and studies relating to the Property or the Project or any Performance Milestone or any agreement or application for any Project permit, approval, consent or entitlement including all related applications and agreements, or utility access or reservation agreements, involving, submitted to or issued by any governmental body having jurisdiction. Seller and Purchaser agree that all approvals, permits, consents and entitlements, including all related applications and agreements, including any utility access or reservation agreements, involving, submitted to or issued by any governmental body having jurisdiction shall run with the land, to the full extent permitted under applicable law. Upon the termination of this Contract for an reason other than a default by Seller hereunder, the Due Diligence Materials and Project Work Product shall be delivered to Seller and title and ownership of all Due Diligence Materials and Project Work Product shall be transferred and assigned to Seller, free of third party rights, unpaid costs, and/or liens as of the date of the termination of Contract, and at no cost to Seller, it being the express intention of the parties that Seller or a successor purchaser or developer shall be entitled to the benefit of the future use all such materials. Purchaser shall not be required to complete any of the Due Diligence Materials and Project Work Product after the date of termination and the Due Diligence Materials and Project Work Products shall be transferred and assigned in the state they are in as of the date of termination of the Contract. Purchaser agrees that all contracts with all third party vendors and providers of any of the Due Diligence Materials and Project Work Product shall include language authorizing and permitting the foregoing assignment and future use free and clear of any rights and/or liens of such vendors and providers and without any further payment from Seller. As a condition to Seller’s obligations under this Amendment, Purchaser shall have executed and delivered to Seller a written assignment in the form attached hereto as Exhibit B (the “**Project Work Product Assignment**”) assigning, conveying or otherwise surrendering to Seller for Seller’s benefit, all of Purchaser’s right, title and interest in and to all Due Diligence Materials and Project Work Product. The executed Project Work Product Assignment shall be retained in the possession of counsel for Seller and shall become immediately valid and enforceable, without further act or action, and may be released by counsel for Seller to Seller upon written notice by Seller sent concurrently to Purchaser (the “**Materials Notice**”) that this Contract has been terminated, after any applicable Cure Period, for reasons other than a Seller default and counsel for Seller shall release the Project Work Product Assignment to Seller within five (5) business days following receipt of the Materials Notice unless, prior to the expiration of such five (5) business day period, Purchaser delivers to counsel for Seller and to Seller written notice of dispute setting forth in detail the full and complete basis for such dispute. Absent earlier termination of this Contract, the Project Work Product Assignment shall be returned to Purchaser upon the completion of Closing.

4. Project Status Meetings and Documents. Within twenty (20) days following the Amendment Date (hereinafter defined), Seller and Purchaser shall hold an in-person meeting to review the status of the Project and the Performance Milestones. Thereafter, Seller and Purchaser shall hold in-person or electronic status meetings at least quarterly. Purchaser shall provide Seller a copy of each submission or application regarding the Project made to any governmental body having jurisdiction at the time of each submission. In addition, Purchaser shall make any other Due Diligence Materials and Project Work Product available to Seller for inspection and/or copying at any time during normal business hours upon reasonable request.

5. Option to Terminate. Notwithstanding anything contained within the Contract and this Amendment to the contrary, Buyer shall have the reserved right at any time prior to the time of Closing to terminate the Contract (and this Amendment), for any or no reason at all, by delivering written notice to Seller of such election to terminate (the “**Termination Notice**”), and in such event, Seller shall keep the Initial Deposit any any Additional Deposits submitted by Buyer to Seller as of the date of such Termination Notice, and the Contract (and this Amendment) shall terminate and neither Seller nor Buyer shall have any further rights, liabilities or obligations thereunder except as otherwise expressly set forth therein.

6. Entire Agreement, Ratification and Reconciliation; Successors and Assigns. The Contract (including the Exhibits) and this Amendment contain the final and entire agreement between the parties with respect to the sale and purchase of the Property, and are intended to be an integration of all prior negotiations and understandings. Except as modified in this Amendment, the Contract is hereby ratified and remains in full force and effect. The terms and provisions of this Amendment shall be reconciled with the terms and provisions of the Contract to the fullest extent reasonably possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this Amendment and any term or provision of the Contract, such term or provision of this Amendment shall control. This Amendment shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7. Approval. This Amendment is conditioned upon the approval by Seller’s Board of Directors.

8. Counterpart Copies. This Fifth Amendment may be executed in any number of counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy hereof.


9. Amendment Date. The execution date of this Amendment shall be the date last signed (the “**Amendment Date**”); provided, however, that the effective date of this Amendment shall be December 31, 2022.

[Signature page follows]

IN WITENSS WHEREOF, the parties have set their hands and seals as of the date written below each signature.

SELLER:

DOWNINGTOWN AREA SCHOOL
DISTRICT

By: 
Name: Leeann Wisdom
Title: School Board President
Date: 1/30/23

PURCHASER:

AUDUBON MANAGEMENT CORP., a
Pennsylvania corporation

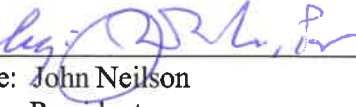
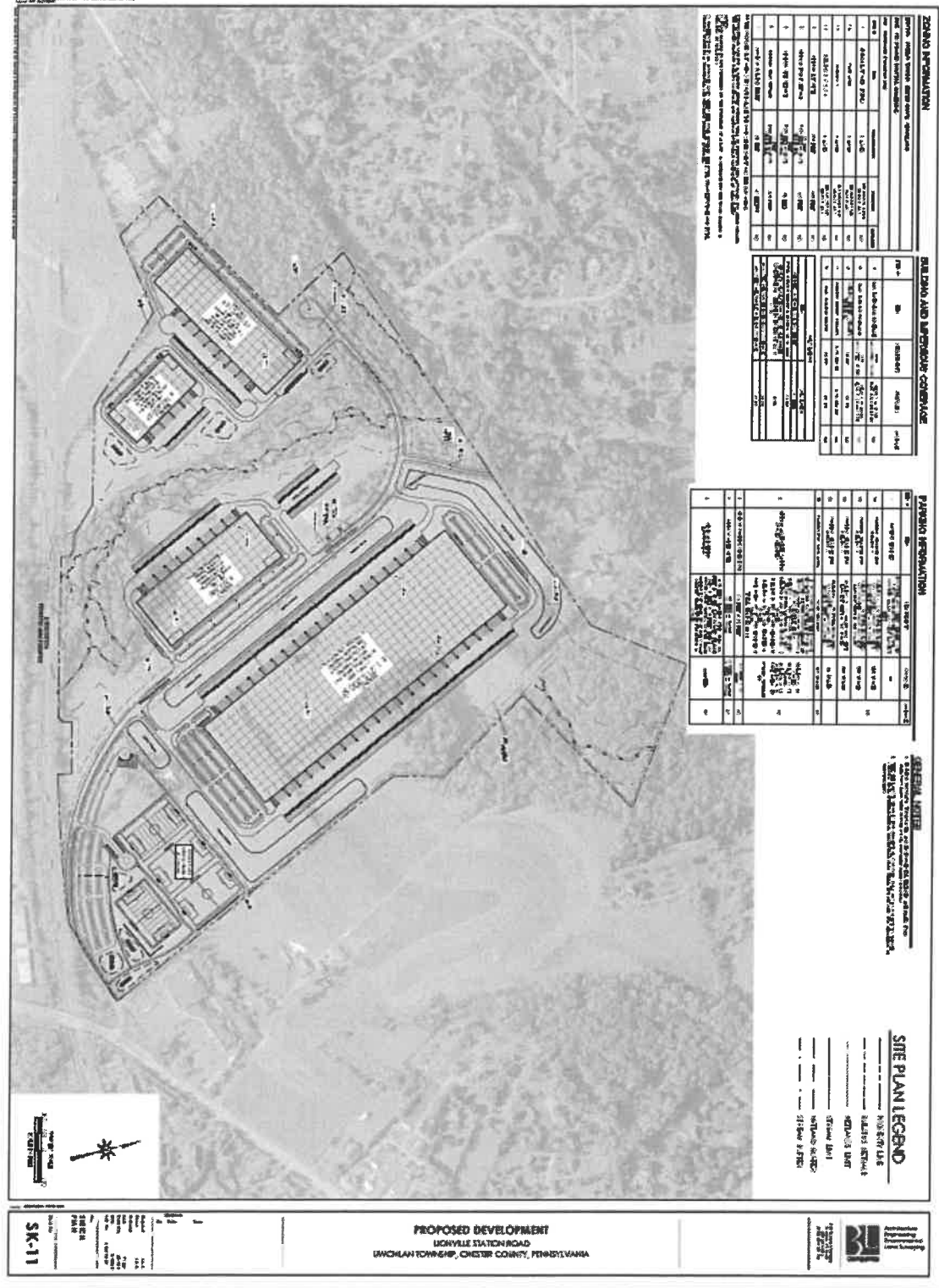
By: 
Name: John Neilson
Title: President
Date: 1-17-23

EXHIBIT "A"



ZONING INFORMATION

NO.	DESCRIPTION	AREA (SQ. FT.)	PERCENTAGE
1	RESIDENTIAL SINGLE-FAMILY	1,200,000	100%

AREA AND SURVEY COVERAGE

NO.	DESCRIPTION	AREA (SQ. FT.)	PERCENTAGE
1	AREA UNDER SURVEY	1,200,000	100%

PERMITS INFORMATION

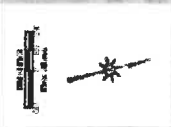
NO.	DESCRIPTION	DATE	STATUS
1	PROPOSED DEVELOPMENT	10/15/2011	PENDING

GENERAL NOTES

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. SEE ATTACHED SURVEY FOR EXISTING CONDITIONS.
3. ALL UTILITIES TO BE DELETED OR RELOCATED AS SHOWN.

SITE PLAN LEGEND

- RESIDENTIAL
- DRIVEWAY
- STREET LIGHT
- STREET SIGN



SK-11

PROPOSED DEVELOPMENT
 UNIONVILLE STATION ROAD
 UNIONVILLE TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA



EXHIBIT "B"

ASSIGNMENT

THIS ASSIGNMENT is made this __ day of _____, 2022, by AUBUBON MANAGEMENT CORP., a Pennsylvania corporation ("Assignor") in favor of DOWNINGTOWN AREA SCHOOL DISTRICT, a school district in the Commonwealth of Pennsylvania ("Assignee").

BACKGROUND

Assignor and Assignee are parties to that certain Agreement of Sale dated July 13, 2022 (the "Original Agreement"), as amended by that certain First Amendment to Agreement of Sale dated _____, 2022 (the "First Amendment" and together with the Original Agreement collectively, the "Agreement") pursuant to the terms of which Assignee has agreed to sell and Assignor has agreed to purchase, that certain tract or parcels of land located at 401, 420, 450, 455, and 459 Lionville Station Road, known as Property ID Numbers (i) 33-1-27, (ii) 33-1-26, (iii) 33-1-25, (iv) 33-1-28, and (v) 33-1-28.1, respectively, consisting of approximately 240.9 acres, together with the buildings and improvements thereon, situate in Uwchlan Township, Chester County, Pennsylvania, and more particularly described in Exhibit A attached to the Agreement (the "Property").

Pursuant to Section 3 of the First Amendment, and as a condition thereof, Assignor has agreed to assign all of Assignor's right, title and interest in certain due diligence materials and project work product to Assignee in the event the Contact is terminated for any reason other than a Seller default ("Contract Termination").

ASSIGNMENT

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Assignor hereby agrees as follows:

FOR VALUE RECEIVED, Assignor, for itself and its successors, assigns and affiliates, does hereby irrevocably and unconditionally assign, transfer and convey all of its right, title and interest in, and under any and all Due Diligence Materials and Project Work Product (collectively, the "Assigned Materials") to Assignee, its successors and assigns, forever, it being the express intent of Assignor and Assignee that Assignee or a successor shall be entitled to the full use and benefit of the Assigned Materials in connection with the future development of the Property. This Assignment is self-operative and shall be effective without any further act or action on the part of Assignor. As used herein (i) "Due Diligence Materials" means boundary surveys, topographic surveys, tree surveys, wetland determinations, floodplain surveys, environmental reports, geotechnical soil reports, wildlife studies and archeological studies prepared by or on behalf of Assignor in connection with the Property or the Project; (ii) "Project Work Product" means all work product prepared by or on behalf of Assignor, including without limitation, all plans, surveys, reports and studies relating to the Property or the Project or any Performance Milestone or any agreement or application for any Project permit, approval, consent or entitlement including all related applications and agreements, or utility access or reservation agreements, involving, submitted to or issued by any governmental body having jurisdiction; (iii) "Project" means that development project generally set forth in that certain Sketch Plan prepared by BL Companies dated October 24, 2022, Project No. 2201268, previously provided by Assignor to Assignee, as amended by that certain Sketch Plan prepared by BL Companies dated December 12, 2022 (the "Project"); and (iv) "Performance Milestone" means any and all of the following:

- Sketch Plan presentation to Uwchlan Township (the “Township”);
- Full and complete Preliminary/Final Land Development Application submitted to the Township.
- Full and complete Township Zoning Hearing Board Variance or Approval Application submitted to the Township/Township Zoning Hearing Board.
- Conditional Use Approval.
- Preliminary/Final Land Development Approval.
- Township Zoning Hearing Board Variances or Approvals.
- PA DEP NPDES Approval.
- USACE/PA DEP Joint Permit(s).
- PennDOT Highway Occupancy Permit.

The Assigned Materials shall include any and all other or related approvals, permits, consents and entitlements, including all related applications and agreements, including any utility access or reservation agreements, involving, submitted to or issued by any governmental body having jurisdiction and all boards, agencies, individuals, corporations or associations, departments, public utilities, governmental or otherwise, relating directly or indirectly to the ownership, use, operation and/or development of the Property, whether heretofore or hereafter issued or executed. Assignor is not required to continue to pursue any of the Assigned Materials to completion to the extent such Assigned Material has not been completed prior to Contact Termination.

Assignor represents and warrants that the Assigned Materials are being assigned and conveyed free of all third party rights, unpaid costs, and/or liens as of the date of Contract Termination. This is the Project Work Product Assignment referred to in Section 3 of the First Amendment.

Assignor shall take such further action (including, but not limited to, the execution, acknowledgement and delivery of the Assigned Materials, or any of them, and all documents or other tangible items in Assignor’s possession) as may reasonably be requested by Assignee in order to facilitate the implementation and performance of this Assignment, and in default thereof, hereby appoints Assignee its attorney-in-fact to execute any and all such documents. The foregoing power of attorney is irrevocable and coupled with an interest and shall be unaffected by the termination of the Agreement.

For purposes of this Assignment, (i) the term “Assignor” shall be deemed to include, and this Assignment shall be binding upon, any affiliate or other related entity in the name of which Assignor has sought, applied for, contracted for, obtained or entered into any of the Assigned Materials, and (ii) the term “Assignee” shall be deemed to include, and this Assignment shall inure to the benefit of, any future person or entity having any interest in the Property or to whom Assignor subsequently assigns or conveys any of the Assigned Materials.

This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Assignee shall be entitled to rely on the signatures and authority of all such persons executing this Assignment and any modifications hereof without any obligation of investigation whatsoever including, without limitation, their identity or incumbency in office.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Assignment the date and year first above written.

WITNESS:

AUDUBON MANAGEMENT CORP., a Pennsylvania corporation

[Signature]

By: [Signature]
Name: John Neilson
Title: President

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF Montgomery ss:

On this, the 17th day of January, 2023, before the subscriber, a Notary Public in and for the above jurisdiction, personally appeared JOHN NEILSON who has satisfactorily been proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be the President of AUDUBON MANAGEMENT CORP., a Pennsylvania corporation, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

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

[Signature]
Notary Public

My Commission Expires: 11/5/2025

Commonwealth of Pennsylvania - Notary Seal
Barbara J. Cieri, Notary Public
Montgomery County
My commission expires November 5, 2025
Commission number 1026909
Member, Pennsylvania Association of Notaries