

In the Court of Common Pleas of Berks County
Orphans' Court Division
In re: Kemp Family Cemetery
File No. 87273

Settlement Agreement

By and through this Settlement Agreement (the "Agreement"), the parties to the above-captioned matter, Brenda Winkler, Juli Winkler, Meredith Brunt Goldey, and Linda Landis-Heffeman (collectively, "Petitioners"), Duke Realty Limited Partnership ("Duke Realty"), and Carol J. Wessner and Charles D. Wessner (the "Wessners") hereby agree to the following terms, which shall be memorialized and presented to the Court by Duke Realty for approval in the form of a joint proposed Final Decree, in resolution of the Petition to Open/Strike filed by the Petitioners on January 25, 2021 (the "Petition") and the Preliminary Objections thereto filed by Duke Realty on February 25, 2021, as Joined by the Wessners on February 26, 2021:

1. Duke Realty's obligations and any of Wessners' commitments hereunder are contingent, expressly conditioned, and shall only be enforceable upon (i) closing on the purchase of the property located at 4 Hilltop Road, Maxatawny Township, Pennsylvania, 19530 (the "Property"); and (ii) receipt of a duly authorized and fully executed lease for Lot 3 of the Valley Logistics Park (the "Project") from East Penn Manufacturing Co. ("East Penn") and commencement of vertical construction under the lease. Without the concessions made by Duke Realty's prospective tenant East Penn this Settlement is not possible.

2. The Wessners and Duke Realty agree that they will not relocate or remove the remains interred in the Historic Kemp Family Burial Ground¹ (the "Burial Ground"), which is located on the Property. Provided, however, that the Wessners' agreement herein shall apply only to the extent that (i) the Property remains under Agreement of Sale with Duke Realty; (ii) that transaction proceeds to a settlement/closing ("Closing"), at which time Duke Realty takes title to the Property; and (iii) the Wessners are paid in full for the purchase price of the Property. If the foregoing events do not occur, the Wessners shall have no duties or obligations hereunder, and they shall not be barred, prevented or precluded from seeking in the future, either on their own or through some designee or assignee, permission from the Court upon notice to Petitioners to relocate or remove the remains interred at the Burial Ground.

3. Duke Realty will perform the following tasks, using its best efforts and at its sole expense, in order to restore and reconstruct the Burial Ground, which are intended to be one-time tasks (unless explicitly stated otherwise):

(a) Reconstruct the currently crumbling and deteriorated brick wall surrounding the Burial Ground, including the installation of footers to ensure the long-term physical integrity of the reconstructed wall. The wall shall be capped; efforts will be made to

¹ This definition is used solely as a result of Petitioners' preference for purposes of this Agreement only. It is not intended to refer to, or otherwise ascribe any meaning to, the term or any similar term as may exist under Pennsylvania law and shall not be construed as an admission by Duke Realty or by the Wessners.

utilize bricks from the existing wall, where possible; and the work shall be completed by a local masonry contractor selected by Duke Realty and approved by the Petitioners, such approval not to be unreasonably withheld.

(b) Refurbish, or provide a replica of, the Burial Ground gate. The work shall be completed by a contractor selected by Duke Realty and approved by the Petitioners, such approval not to be unreasonably withheld. If the gate cannot be refurbished and if a replica is needed, then Duke Realty will donate the old gate to a person or entity selected by the Petitioners for the purpose of historic preservation.

(c) Provide a tasteful memorial plaque providing salient details about the Kemp family, including, Revolutionary War Captain George Kemp. Petitioners will review and/or provide text for this plaque and the one referenced in Paragraph 3(d) below.

(d) Provide a tasteful memorial plaque in recognition of Hannah, who is presumed to have been a slave for the Kemp family buried in the Burial Ground without memorial or marker.

(e) Restore and/or repair existing gravestones and markers, where possible, using a qualified professional approved by the Petitioners, such approval not to be unreasonably withheld. For gravestones and markers that are not suitable for restoration and/or repair, provide a suitable replacement. All gravestones and markers, once restored, repaired and/or replaced will be reinstalled upright as closely aligned with their original position and/or in accordance with the agreed upon layout for gravestones and markers to be provided by the Petitioners.

(f) Provide gravestones and/or markers for unidentified remains (which refers to any remains discovered as a result of the geophysical survey referenced in Paragraph 6 below that are not located immediately beneath a headstone or not otherwise determined to be those of a particular individual based upon other circumstantial surface or historical evidence).

4. In addition to the above restoration-related tasks, Duke Realty will perform the following tasks for the betterment, preservation and security of the Burial Ground:

(a) Install and maintain a flagpole(s) with both an American flag and a 13-star Colonial flag, the location of which shall be approved by the Petitioners, such approval not to be unreasonably withheld. Lighting and a timer will be installed near, but outside the walls of the Burial Ground, so that the flags will be lit during hours of darkness.

(b) Install and maintain a parking area near the Burial Ground, with at least three non-handicapped parking spaces, and not less than one handicapped parking space.

(c) Maintain the grounds of the Burial Ground as part of its ongoing overall landscaping on the Property, including but not limited to mowing the grass and installing year-round vegetation.

(d) Install and maintain a sufficient buffer between the Burial Ground and the adjacent secured truck court area, including: maintaining a buffer of at least 14 feet at the southwest corner of the Burial Ground and installing fencing and bollards surrounding the truck court.

(e) Ensure that there is appropriate drainage of surface water and storm water away from the Burial Ground.

(f) Duke Realty warrants that it will provide to Petitioners drawings/plans depicting the changes to the Burial Ground contemplated under this Paragraph and Paragraph 3 for their review and input. Petitioners shall cooperate in good faith with Duke Realty in presenting any proposed changes to the drawings/plans. Any such requests shall be made in writing to Duke Realty within thirty (30) days of receipt of the drawings/plans.

5. Duke Realty warrants that it will draft a restrictive covenant for the requirements of Paragraph 4 that will run with the land, and which it will provide to Petitioners for their review and input. Petitioners shall present any proposed changes to the restrictive covenant in writing to Duke Realty within ten (10) days of receipt of the restrictive covenant. Duke Realty will work with Petitioners in good faith to consider and adopt any proposed changes, but Duke Realty shall be under no obligation to accept said changes. Duke Realty shall, within 30 days of obtaining title to the Property, or 30 days after execution of this Agreement, or 30 days of finalizing the language of the restrictive covenant after consideration of Petitioners' input, if any (whichever is later), cause the restrictive covenant to be recorded, at its own expense, with the Berks County Recorder of Deeds and to provide a recorded copy to Petitioners. Duke Realty shall not be obligated to perform any of the tasks identified in Paragraphs 3 and 4 above in the event that it ceases to be the record owner of the Property.

6. It is represented that Duke Realty provided the Petitioners with a copy of the April 8, 2021 report prepared by RETTEW Field Services, Inc. ("RETTEW"), which provides details (including grid mapping) of the geophysical survey fieldwork completed by RETTEW on March 8, 9, and 10, 2021 in and around the Burial Ground. RETTEW used both ground penetrating radar ("GPR") and electromagnetic terrain conductivity (EM-31) mapping to determine the approximate number of burials within the Burial Ground and whether any burials existed within 50 feet of the Burial Ground boundary.

7. During excavation and construction on the Property for the Project, Duke Realty will ensure that the Burial Ground is appropriately safeguarded by providing project managers and supervisors to monitor and oversee these processes, and by employing the same methods as would be applied for protection of wetlands.

8. Upon completion of the Project and restoration of the Burial Ground, Duke Realty will provide a one-time donation in the amount of Five Thousand Dollars (\$5,000) to the Berks County Association for Graveyard Preservation, and a one-time donation in the amount of Five Thousand Dollars (\$5,000) to the Kutztown Area Historical Society, Inc.

9. For any special events organized by Petitioners where large crowds are anticipated to gather at the Burial Ground, or where more than four (4) parking spaces will be required, the Petitioners shall inform Duke Realty and the current tenant in writing at least thirty (30) days in advance of the special event, and shall coordinate parking with the current tenant.

10. Notices to be given under this Agreement shall be provided as below:

(a) Notice to Duke shall be sent to:

(b)

(c) Notice to the Wessners shall be sent to:

(d) Notice to each Petitioner shall be sent to:

(i)

11. The Petitioners will refrain from publicly or privately opposing Duke Realty's plans and/or applications to Maxatawny Township and any and all State or Federal agencies related to the permitting for construction of the Project. By agreeing to refrain from opposing the Project, the Petitioners specifically agree that they will refrain from, among other things, supporting, through monetary contributions or otherwise, any individuals or groups in their efforts to oppose the Project or to challenge any favorable decisions, rulings or permit issuances by any governmental agencies. Notwithstanding the foregoing, no finding of breach of this Paragraph can be had, in whole or in part, on (a) communication as between Petitioners, (b) conduct by a Petitioner's spouse or immediate family member, or (c) aiding or communication as between any Petitioner and that Petitioner's spouse or immediate family member.

12. The Petitioners, on their own behalf and on behalf of their representatives, attorneys, agents, successors, heirs and assigns or assignee of any of the above (the "Releasing Parties"), hereby release and forever discharge the Wessners of and from all claims, of whatever kind, that Releasing Parties have made, could have made, or could in the future make against the Wessners that in any way relate to or arise out of the Petition so long as the three conditions set forth as items (i) through (iii) of the second sentence of Paragraph 2 are fully met and satisfied.

13. This Agreement is expressly conditioned upon the Berks County Court of Common Pleas, Orphans' Court Division's approval of all of the specific terms and conditions contained herein without modification. If the Court fails to grant such approval, or modifies any of the terms and conditions herein, this Agreement will terminate and be of no force and effect unless the parties agree in writing to waive the application of this provision.

14. If the conditions precedent stated in Paragraphs 1, 2, and 12 are not met, then this Agreement is void and each party respectively reserves a right to take positions as that party solely

deems appropriate to litigate the issues in this docket, including those positions stated in the preliminary objections and responses thereto which are pending before the Court, and will submit to the court a joint stipulation for an enlargement of time to conduct discovery by not more than 120 days.

15. This Agreement may be executed in counterparts, and each such counterpart shall be as valid as if all signatures appeared on the same page. Delivery of an executed counterpart of this Agreement by attachment to electronic mail, facsimile or other electronic method of