

**TOWNSHIP OF WORCESTER
MONTGOMERY COUNTY, PENNSYLVANIA**

RESOLUTION 2016-06

**A RESOLUTION TO PARTICIPATE IN A
REGIONAL BOARD OF APPEALS FOR BUILDING CODES**

WHEREAS, Article 9, Section 5 of the Pennsylvania Constitution and the Intergovernmental Cooperation Act of 1996 authorizes two or more local governments to jointly cooperate with each other in the exercise or performance of their respective governmental functions, powers and responsibilities; and,

WHEREAS, Worcester Township (“Township”) desires to join a regional Board of Appeals that has been established for the purpose of hearing and deciding appeals of orders, decisions or determinations made by a building official or code official relating to the application and interpretation of municipal building codes encompassed by the Uniform Construction Code;

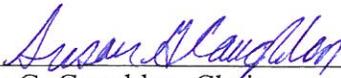
NOW, THEREFORE, BE IT RESOLVED:

1. The Township agrees to participate in the Board of Appeals in accordance with the terms and conditions as set forth in the Intergovernmental Cooperative Agreement dated February 9, 2005, attached hereto as Exhibit A.
2. The Chair of the Board of Supervisors is authorized to execute a Joinder Agreement, attached hereto as Exhibit B.
3. The Township hereby appoints George Marks to serve as its representative to the Board of Appeals, for a five-year term, in accordance with the Section 3.B of the aforementioned Intergovernmental Cooperative Agreement.

RESOLVED THIS 20TH DAY OF JANUARY, 2016.

FOR WORCESTER TOWNSHIP

By: _____


Susan G. Caughlan, Chair
Board of Supervisors

Attest: _____

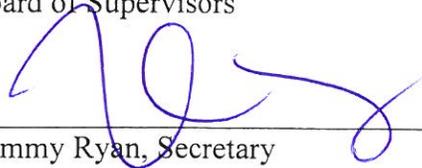

Tommy Ryan, Secretary

EXHIBIT A

INTERGOVERNMENTAL COOPERATION AGREEMENT TO CREATE A BOARD OF APPEALS

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT is entered this 9th day of February, 2005, by and between:

SKIPPACK TOWNSHIP, a Township of the Second Class organized under the laws of the Commonwealth of Pennsylvania with an address of 4089 Heckler Road, P.O. Box 164, Skippack, Pennsylvania 19474 and

NEW HANOVER TOWNSHIP, a Township of the Second Class organized under the laws of the Commonwealth of Pennsylvania with an address of 2943 North Charlotte Street, Gilbertsville, Pennsylvania 19525-9718 and

THE BOROUGH OF ROYERSFORD, a Borough organized under the laws of the Commonwealth of Pennsylvania with an address of Hail and Church Streets, Royersford, Pennsylvania 19468 and

THE BOROUGH OF COLLEGEVILLE, a Borough organized under the laws of the Commonwealth of Pennsylvania with an address of 491 East Main Street, Collegeville, Pennsylvania 19426 and

THE BOROUGH OF TRAPPE, a Borough organized under the laws of the Commonwealth of Pennsylvania with an address of 4525 West Main Street, Trappe, Pennsylvania 19426 and

THE TOWNSHIP OF LOWER FREDERICK, a Township of the Second Class organized under the laws of the Commonwealth of Pennsylvania with an address of 53 Spring Mount Road, Spring Mount, Pennsylvania 19478 and

THE TOWNSHIP OF PERKIOMEN, a Township of the Second Class organized under the laws of the Commonwealth of Pennsylvania with an address OF 1 Trappe Road, Collegeville, Pennsylvania 19426.

The above-described parties shall hereinafter be referred to collectively as "Members" or individually as a "Member."

CONDITIONS OF AGREEMENT AND BACKGROUND:

WHEREAS, Article 9, Section 5 of the Pennsylvania Constitution and the Intergovernmental Cooperation Act of 1996, 53 Pa. C.S.A. § 2301 *et seq.* (The "Act") authorize two or more local governments to jointly cooperate with other local governments in the exercise or performance of their respective governmental functions, powers and responsibilities; and

WHEREAS, the Pennsylvania General Assembly adopted the Pennsylvania Construction Code Act on November 10, 1999, as Act 45 of 1999, which is codified at 35 P.S. § 7210.101 through 7210.1103, ("Act 45") in order to create a statewide building code which would provide uniform

standards for the protection of life, health, property and the environment and for the safety and welfare of the owners and occupants of buildings and structures; and

WHEREAS, Act 45 went into effect on April 9, 2004; and

WHEREAS, pursuant to Act 45, each Member has adopted an ordinance wherein the respective municipality elected to administer and enforce the statewide building code, which consists of the provisions of Chapters 2-29 and 31-35 of the International Building Code, 2003 Edition ("IBC 2003"), and its successor codes as published by the International Code Council, Inc. ("ICC") as the municipality's Building Code (the "Building Code") and

WHEREAS, contemporaneously with adopting the IBC 2003, each Member also enacted ordinances which adopted one or more of the following codes published by the ICC:
International Existing Building Code, 2003 Edition
International Residential Code, 2003 Edition
ICC Electrical Code, 2003 Edition
International Mechanical Code, 2003 Edition
International Plumbing Code, 2003 Edition
International Fuel Gas Code, 2003 Edition
International Energy Conservation Code, 2003 Edition
International Fire Code, 2003 Edition
Sections AE501-AE503 and AE601-AE605 of Appendix E of the International Residential Code
Appendix E of the International Building Code
Appendix H of the International Building Code
Appendix G of the International Building Code
(hereinafter referred to as the "ICC Codes"); and

WHEREAS, the IBC 2003 and ICC Codes contemplate the creation of a Board of Appeals to hear and decide appeals of orders, decisions or determinations made by the respective municipality's building official or code official relating to the application and interpretation of the municipality's Building Code and related ICC Codes; and

WHEREAS, Act 45 and the regulations promulgated pursuant to Act 45 permit two or more municipalities to establish a joint Board of Appeals through an intergovernmental agreement adopted pursuant to the Act; and

WHEREAS, the parties hereto are desirous to form an intergovernmental Board of Appeals who shall act as the Members' Board of Appeals that will hear and decide appeals taken from the decisions of each of their municipal Code Official; and

WHEREAS, the Members desire to enter this Agreement to form the intergovernmental Board of Appeals (the "Board of Appeals") and to establish the framework, organizational structure and governing regulations under which the Board of Appeals shall operate, and to perform the functions described herein and in the Members' Building Code and related ICC Codes which have been adopted by the Members.

NOW THEREFORE, the Members hereto, intending to be legally bound, agree as follows:

1. **Formation of Intergovernmental Board of Appeals.** Pursuant to the authority granted in the Pennsylvania Constitution, the Act and in Act 45, the Members hereby form an intergovernmental Board of Appeals to be known as the Joint Board of Appeals (the "Board of Appeals"). The parties to this Agreement who are identified in the introductory paragraph shall participate in the Board of Appeals. Additional municipalities may join the Board of Appeals pursuant to the procedure in paragraph 8 herein.
2. **Jurisdiction of Board of Appeals.**
 - A. The Board of Appeals shall have jurisdiction over the following matters:
 - (1) appeals of orders, decisions or determinations made by the respective Members' Building Official or Code Official relating to the application and interpretation of the Members' Building Code and any other related ICC Code that was duly adopted by the Member;
 - (2) requests for a variance from a provision of the Members' Building Code and any other related ICC Code that was duly adopted by the Member; and
 - (3) requests for extension of time.
 - B. The Board of Appeals shall consider the following factors when deciding an appeal which is filed under paragraph 2.A(1) above:
 - (1) the true intent of the Member's Building Code or related ICC Code has been incorrectly interpreted by the Member's Building Official or Code Official;
 - (2) the provisions of the Building Code or related ICC Code do not fully apply;
 - (3) an equivalent or superior form of construction is proposed and should be permitted to be used in lieu of strict conformance with the Member's Building Code or related ICC Codes.
 - C. The Board of Appeals may consider the following factors when ruling on a request for an extension of time or a request for a variance which is filed pursuant to paragraph 2.A(2) or (3) above:
 - (1) the reasonableness of the Building Code or ICC Code's application in a particular case;
 - (2) the extent to which the granting of a variance or an extension of time will pose a violation of the Building Code or ICC Code or an unsafe condition.
 - (3) the availability of professional or technical personnel needed to come into compliance;
 - (4) the availability of materials and equipment needed to come into compliance;
 - (5) the efforts being made to come into compliance as quickly as possible;
 - (6) compensatory features that will provide an equivalent degree of protection to the Building Code or ICC Code.
 - D. The Board of Appeals shall not have jurisdiction over any appeal arising from the Member's Zoning Ordinance, Subdivision and Land Development Ordinances or any other ordinance enacted by the Members under the authority of the Pennsylvania Municipalities Planning Code.

3. Organizational Structure/Qualifications of Board Members/Officers.
- A. The Board of Appeals shall consist of five (5) representatives and two (2) alternate representatives. Each Member shall appoint one (1) representative who must have the qualifications and training described in paragraph 3.C below. After each Member has appointed one representative to serve on the Board of Appeals, the Members shall thereafter choose among the seven (7) representatives appointed to determine which representative shall serve as the alternate representative.
- B. The Members have agreed the terms of office for each representative shall be as follows:
- (1) New Hanover Township's member shall serve a five-year term; -
 - (2) The Borough of Royersford's member shall serve a four-year term;
 - (3) The Borough of Collegeville's member shall serve a three-year term;
 - (4) The Borough of Trappe's member shall serve a two-year term;
 - (5) Skippack Township's member shall serve a one-year term.
- Thereafter, all newly appointed representatives on the Board of Appeals shall serve for a five year term or until the Members appoint a successor representative. When a vacancy occurs due to the expiration of the term, resignation, or removal of a representative, the vacancy shall be filled by appointment by the same Member which appointed the representative whose seat had been vacated. Any representative on the Board of Appeals once qualified and appointed may be removed from office for malfeasance, misfeasance or nonfeasance in office or for other cause by majority vote of the governing body of the Member which appointed him or her, or by majority vote of all Members taken after the Member has received 15 days advance notice of the intent to cause such removal or to take such a vote. A hearing shall be held in connection with such vote if the Member requests it. An appointment made to fill a vacancy arising before the expiration of a representative's term shall be for the unexpired term.
- C. The representatives on the Board of Appeals must be qualified by experience and training to pass on matters pertaining to building construction and shall be from one of the following professions or disciplines:
- (1) Registered design professional who is a registered architect; or a builder or superintendent of building construction with at least ten (10) years experience, five (5) of which shall have been in responsible charge of work;
 - (2) Registered design professional with structural engineering or architectural experience;
 - (3) Registered design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten (10) years experience, five (5) of which shall have been in responsible charge of work;
 - (4) Registered design professional with electrical engineering experience; or an electrical contractor with at least ten (10) years experience, five (5) of which shall have been in responsible charge of work;

- (5) Registered design professional with fire protection engineering experience; or a fire protection contractor with at least ten (10) years experience, five (5) of which shall have been in responsible charge of work.
 - D. The representatives on the Board of Appeals shall not be elected officials or employees of the Members.
 - E. The Members shall strive to appoint representatives who are residents in the Member's municipalities, however, if the Members cannot find qualified residents to serve on the Board of Appeals, they shall be authorized to appoint a non-resident representative to the Board of Appeals.
4. **Officers/Term of Representatives/Disqualification.**
- A. The representatives on the Board of Appeals shall select one representative to serve as Chairman and one representative to serve as Secretary. The Chairman shall preside over all meetings and hearing of the Board of Appeals. The Secretary shall keep a detailed record of all proceedings before the Board of Appeals and shall provide copies of all written decisions rendered by the Board of Appeals to each Member.
 - B. The Chairman and Secretary shall serve for a term of one (1) year or until such time as the representatives on the Board of Appeals appoint a new Chairman or Secretary.
 - C. A representative or alternate representative on the Board of Appeals shall not rule on any appeal in which he or she has a personal interest in the outcome of the appeal.
5. **Term of Agreement.** This Agreement and the Board of Appeals created herein shall have an initial term of five (5) years, which term shall commence on the Effective Date of this Agreement (as defined in paragraph 25). At the expiration of the initial five-year term, this Agreement shall automatically renew for successive one (1) year terms unless a majority of the Members vote to terminate this Agreement and their Member's participation in the Board of Appeals.
6. **Member's Ability to Terminate Membership in Board.** Notwithstanding the provisions in paragraph 5 above, a Member may terminate its participation in the Board of Appeals provided that the governing body of the Member enacts a resolution authorizing such termination. If a Member's governing body enacts such resolution, the termination shall be effective immediately or a later date which is specified in the Resolution.
7. **Costs incurred by the Board of Appeals.** Each Member shall pay its own costs and expenses in processing a property owner's appeal to the Board of Appeals (for example, if a property owner in Skippack Township files an appeal to the Board of Appeals, Skippack Township shall pay for all costs and expenses associated with such appeal). Each Member shall

establish its own application fees for filing an appeal to the Board of Appeals, which fees shall be established from time to time by resolution of the governing body of each Member.

8. **Additional Members.** Other municipalities may join the Board of Appeals provided that a majority of the Members agree and the governing body of such municipality enacts a resolution approving its participation in the Board of Appeals and provided an authorized officer of such additional municipality(ies) executes a written Joinder agreeing to be bound by the terms of this Agreement and any By-laws adopted for the Board of Appeals.

9. **Functions of the Board.** It shall be the function of the Board of Appeals to rule upon:
- A. Appeals from decisions rendered by the code enforcement officers of the member municipalities regarding the meaning of Uniform Construction Code provisions or the applicability of such provisions to prospective building projects.
 - B. Applications for variance from the provisions of the Uniform Construction Code or for extensions to the time extended, by either the Code or the code enforcement officer of a Member municipality, to an owner requiring that he take some required action.

10. **Rules and Procedures.** The Board of Appeals shall be authorized to establish policies and procedures necessary to carry out its duties provided that each Member approves the same by resolution of the Member's governing body.

11. **Appeals Procedure.**

- A. **Filing of Appeal.** Appeals to the Board of Appeals shall be filed in the Member municipality where the subject property is located on forms provided by each Member. All appeals from orders, decisions and determinations made by a Member's Building Official or Code Official must be filed within thirty (30) days of the date of the order, decision or determination which is being appealed.
- B. **Notice of Meeting.** The Board of Appeals shall hold a hearing within sixty (60) days from the postmark date or personal service of an appeal, unless the appellant agrees in writing to an extension of time within which to commence the hearing. Notice of the public hearing shall be sent by the Member's Manager or Secretary to all representatives of the Board of Appeals, the appellant landowner, the governing body of each Member, the Member's Building Official (if the appeal relates to the Member's Building Code) or Code Official (if the appeal relates to the ICC Codes). In addition, notice shall be advertised one in a newspaper of general circulation within the municipality where the subject property is located not less than seven (7) nor more than twenty-one (21) days prior to the date of the hearing. Where notices have been sent to any person entitled to receive notices under the terms hereof, the failure to receive such notice shall not be a basis for the invalidation of the hearing, nor deprive the Board of Appeals of jurisdiction, nor compel readvertising.

- C. **Public Hearing.** All hearings of the Board of Appeals shall be held in the Member municipality where the appeal was filed and shall be open to the public and transcribed by a stenographer. The hearing shall be conducted under and pursuant to the procedure designated in the Local Agency Law of the Commonwealth of Pennsylvania. The majority of the Board of Appeals shall constitute a quorum, and the majority of the representatives of the Board of Appeals present and voting may render a decision on any matter before the Board of Appeals. At the hearing, the appellant shall be entitled to be represented by counsel and those persons enumerated in paragraph 10. B, as well as any other persons authorized by the Board of Appeals, in its discretion, shall be permitted to intervene as parties.
 - D. **Adjourned Meeting.** When the necessary number to constitute a quorum of the Board are not present, if the testimony has not been concluded or for any other reason in the discretion of the Board of Appeals, the Board of Appeals may continue the hearing to a future date. If the hearing is not continued to a date certain, the hearing must be readvertised in accordance with the procedure in paragraph 10. B prior to the continued hearing.
 - E. **Legal Counsel.** Where legal counsel is desired, an attorney, other than the solicitor of the Member Municipalities, may be appointed to serve as counsel to the Board of Appeals.
12. **Rulings.** In ruling on an appeal, the board shall find for Appellant if it determines that:
- A. The true intent of the Uniform Construction Code, or the act which establishes it as a statewide code, was incorrectly interpreted by the code enforcement officer.
 - B. The provisions of the Pennsylvania Construction Code Act, Act of November 10, 1999, P.L. 491, 35 P.S. §7210.101 et. Seq., do not apply to the circumstances out of which arose the decision appealed from.
 - C. A form of construction, equivalent in the Uniform Construction Code, is to be used.
13. **Request for Extension of Time.** In ruling on a request for extension of time or variance, the board shall consider the following:
- A. The reasonableness of the Uniform Construction Code's applicability to a given set of circumstances.
 - B. The degree to which the variance or extension of time requested deviates from strict adherence to the requirements of the Uniform Construction Code.
 - C. The extent to which granting the variance or extension of time requested will create an unsafe condition.
 - D. The availability of professional or technical personnel needed to come into compliance.

- E. The availability of materials and equipment needed to come into compliance.
- F. The efforts of Applicant to come into compliance as quickly as possible.
- G. Compensatory measures that will provide an equivalent degree of protection to the community.

14. **Decisions.**

- A. Action of the Board of Appeals. The Board of Appeals shall affirm, modify or reverse the decision of the Building Official or Code Official by a majority vote of the representatives of the Board of Appeals hearing the appeal. The failure to obtain a majority vote shall constitute affirmance of the action of the Building Official or Code Official.
- B. Rendering of decision. The Board shall render a written decision within forty-five (45) days of the close of the hearings and shall make findings of fact relevant to said application and apply the applicable law to said findings of fact in the rendering of its decision. Copies of the decision shall be mailed by first class mail to each party before the Board of Appeals and to the governing body of each Member, provided, however, that failure to render a decision within the forty five (45) day period herein stated shall not constitute an affirmance or denial.
- C. Deny the request in whole or in part.
- D. Grant the request in whole or in part.
- E. Grant the request upon certain conditions being satisfied.
- F. Enforcement of decision. The Member's Building Official or Code Official shall take immediate action in accordance with the decision of the Board of Appeals.
- G. The Member, whether or not a party before the Board of Appeals, and any party before the Board of Appeals who is aggrieved by the decision of the Board of Appeals may appeal to the Court of Common Pleas of Montgomery County within thirty (30) days from the date of the rendering of the decision of the Board. The Court of Common Pleas shall review the record on certiorari to determine whether or not the Board of Appeals abused its discretion or committed an error at law.
- H. The Board of Appeals may not act upon appeals, requests for variances or for extensions of time relating to accessibility. Such appeals and applications are within the exclusive purview of the Accessibility Advisory Board under §403.142 of the Uniform Construction Code.

15. **Reorganization.** The Board of Appeals shall reorganize annually, at its first scheduled meeting, by selecting one of its Members as chairman and another as secretary. It shall be the function of the chairman to conduct meetings and preside at hearings before the Board. In the

chairman's absence, the secretary shall assume the chair with the third member substituting as secretary. In the absence of the secretary, the third member shall assume his role. It shall be the function of the secretary to prepare and publish public notice of board meetings, keep minutes of all Board proceedings, prepare all items of Board correspondence and draft and circulate the decisions of the Board. In all matters brought before the Board, the presence of two (2) of the Board's three (3) Members shall be sufficient to allow for the transaction of business.

16. **Compensation.** Each member of the Board of Appeals shall be entitled to compensation for his service in the amount \$ _____ per matter adjudicated.

17. **Fees.** Each Member municipality of the Board of Appeals shall establish a fee to be imposed upon those Appellant-Applicants who present a petition to the Board pertinent to construction within that municipality. The fee shall be used to defray the cost of public notice of any Board meetings held to hear or deliberate upon the matter raised in the petition, to compensate the Members of the Board and to cover any other costs incurred in the proceedings. Within thirty (30) days of the date of the written decision, the municipality shall forward to the Appellant an itemized statement listing all draws upon the fee paid at the outset of the appeal. The statement shall be accompanied by the municipality's check in the sum of the unused portion of the Appellant's fee.

18. **Location of Hearing.** When an appeal or application concerns construction within a particular Member municipality, all Board meetings pertinent to the petition shall be held at a facility within that municipality. The municipality, through its code enforcement officer, shall be a party to each proceeding pertinent to construction within its border.

19. **Application of Uniform Construction Code.** When an appeal or application concerns construction within a particular Member municipality, the Board of Appeals shall apply the Uniform Construction Code with such modifications to the Uniform Commercial Code as that municipality has enacted through its governing body.

20. **Notices.** Whenever a notice is required to be given to any Member, the addresses listed above shall be used unless a different address is specifically designated by such Member. The notices shall be addressed to each Member's manager. Notices given by certified mail will be considered to have been given two (2) business days after being deposited in the United States mail. Notices given by personal delivery shall be considered to have been given on the date of delivery. Notices given by overnight courier shall be considered to have been given on the first business day after the date deposited with such overnight courier. Notices given by telecopier shall be deemed given upon completion of transmission as evidenced by the confirmation sheet generated by the sending facsimile machine. Notices may be given on behalf of any party by its counsel.

21. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the law of the Commonwealth of Pennsylvania.

22. Severability. Should any sentence, clause, paragraph, term or provision of this Agreement hereafter be declared to be unconstitutional, illegal, invalid or unenforceable for any reason, such declaration shall not affect or impair the validity or enforceability of the remainder of this Agreement, it being the intention of the Members that this Agreement would have been made and entered into had not such unconstitutional, illegal or invalid provision been incorporated herein.

23. Entire Agreement. This writing constitutes the entire agreement among the Members. No modification of the terms of this Agreement shall be effective as to any Member unless approved in writing by such Member in a signed addendum to this Agreement.

24. Counterparts. This Agreement may be executed in any number of counterparts each of which when executed, shall be deemed to be an original but all such counterparts shall constitute one and the same instrument.

25. Effective Date. This Agreement shall be effective on _____, 2005 ("Effective Date") provided that an authorized representative of each Member has executed this Agreement and each Member has enacted an ordinance authorizing participation in the Board of Appeals.

IN WITNESS WHEREOF, the Members have caused these presents to be duly executed and attested with the seal of the respective Member as of the date first mentioned hereinabove.

ATTEST: SKIPPACK TOWNSHIP:



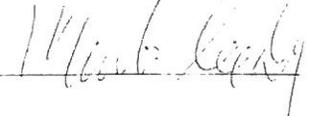
Mark Marino Chairman

By: 

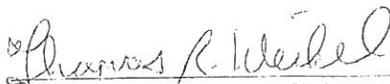
ATTEST: NEW HANOVER TOWNSHIP:



Chairman

By: 

ATTEST: BOROUGH OF ROYERSFORD



Chairman

By: 

ATTEST: BOROUGH OF COLLEGEVILLE

Charles P. ... Chairman By: ...

ATTEST: BOROUGH OF TRAPPE

... Chairman By: ...

ATTEST: LOWER FREDERICK TOWNSHIP

... Chairman By: ...

ATTEST: PERKIOMEN TOWNSHIP:

... Chairman By: ...

EXHIBIT B

JOINDER AGREEMENT OF WORCESTER TOWNSHIP REGARDING INTERGOVERNMENTAL COOPERATION AGREEMENT

WHEREAS, Skippack Township, New Hanover Township, Royersford Borough, Collegeville Borough, Trappe Borough, Lower Frederick Township and Perkiomen Township duly executed a certain Intergovernmental Cooperative Agreement dated February 9, 2005 ("Intergovernmental Agreement"); and,

WHEREAS, the Intergovernmental Agreement authorized the aforementioned municipalities to jointly cooperate with other local governments in the exercise of their respective governmental functions, powers and responsibilities, and specifically authorized the formation of an Intergovernmental Joint Board of Appeals ("Board") pursuant to Act 45 of 1999; and,

WHEREAS, the Intergovernmental Agreement provides for the joinder of other municipalities to the Board by the adoption of a resolution by the governing body of the municipality, and by the execution of a written joinder by which the municipality agrees to be bound to the terms of the Intergovernmental Agreement and the by-laws of the Board;

NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Worcester Township, intending to be legally bound, agrees as follows:

1. Worcester Township shall be bound by the terms and provisions of the aforementioned Intergovernmental Agreement; and,
2. Worcester Township further agrees to be bound by the by-laws duly adopted by the Board as and when they are issued.

IN WITNESS WHEREOF, Worcester Township has caused this joinder to be duly executed and attested as of this 20th day of January, 2016.

FOR WORCESTER TOWNSHIP

By: _____
Susan G. Caughlan, Chair
Board of Supervisors

Attest: _____
Tommy Ryan, Secretary