

BPG REAL ESTATE INVESTORS – STRAW PARTY I, L.P., :- **IN THE COURT OF COMMON**
Plaintiff : **PLEAS OF DELAWARE COUNTY,**
: **PENNSYLVANIA**

v. : **Civil Action No. 07-12999**

BOARD OF SUPERVISORS OF :
NEWTOWN TOWNSHIP, : **LAND USE APPEAL**
DELAWARE COUNTY :

BPG REAL ESTATE INVESTORS - STRAW PARTY II, L.P., : **IN THE COURT OF COMMON**
Plaintiff : **PLEAS OF DELAWARE COUNTY**
: **PENNSYLVANIA**

V. : **Civil Action No. 07-12998**

BOARD OF SUPERVISORS OF :
NEWTOWN TOWNSHIP, DELAWARE :
COUNTY, PA :
Defendant

SETTLEMENT AGREEMENT

This Settlement Agreement is made this _____ day of _____, 2008, by **BPG Real Estate Investors—Straw Party–1, L.P., BPG Real Estate Investors—Straw Party–2, L.P., Campus Investors Office B, L.P., Campus Investors 25, L.P., Campus Investors I Building, L.P., Campus Investors H Building, L.P., Campus Investors D, Building, L.P., Campus Investors Cottages, L.P., Campus Investors Office 2B, L.P., Ellis Preserve Owners Association, Inc., Kelly Preserve Owners Association, Inc., Cottages At Ellis Owners Association, Inc., and Genber/Management Campus, LLC, Berwind Property Group, Ltd., Executive Benefit Partnership Campus, L.P., Management Partnership-Benefit, Ellis Acquisition, L.P., as tenant in common (“TIC”), (collectively, “BPG Entities”)** and the **Board of Supervisors of Newtown Township (“Board”)**(collectively, the **“Parties”**).

BACKGROUND

A. The BPG Entities are the owners of approximately 219.17 acres of land (“**Tract**”) located in Newtown Township (“**Township**”), Delaware County, Pennsylvania. The Tract is bounded on the north by Goshen Road, on the south by West Chester Pike, and on the east by Route 252.

B. Pursuant to the Newtown Township Zoning Ordinance and Zoning Map, the Tract is located in the Township’s SU-1 Special Use District (“**SU-1 District**”).

C. The Tract is partially developed with:

- (1) A three-story, 131,512 square foot medical office building located on the “front lawn” portion of the Tract adjacent to West Chester Pike;
- (2) Various cottages used for office purposes;
- (3) Approximately 900,000 square feet of office buildings and ancillary facilities;
- (4) A 24,000 square foot conference center;
- (5) A 22,000 square foot fitness center.

D. On November 21, 2006, BPG Real Estate Investors – Straw Party-2, L.P. (“**BPG-2**”) submitted an application to the Township for conditional use approval of a second three-story, 140,060 square foot office building on the “front lawn” portion of the Tract adjacent to West Chester Pike (“**Second Office Building Application**”). The Second Office Building was approved by the Board subject to conditions. BPG-2 has appealed to the Court of Common Pleas of Delaware County from the conditions imposed, which appeal is presently pending under Civ. No. 07-12999 (“**Second Office Building Appeal**”). BPG-2 has also instituted a Mandamus Action in the Court of Common Pleas of Delaware County seeking the “deemed approval” of the Second Office Building Application, which Mandamus Action is presently pending under 07-

12998 (“**Mandamus Action**”).

E. On April 19, 2007, BPG Real Estate Investors Retail 3A, L.P., predecessor in title to TIC, submitted a preliminary land development application to the Township for the construction of three retail buildings to be known as the “Crossroads Center” on 13 acres of the Tract adjacent to West Chester Pike (“**By Right Application**”). The Township Planning Commission has recommended approval of the By Right Application and it is presently pending before the Board for final adjudication.

F. On or about October 15, 2007, BPG-2 submitted an application to the Township for conditional use approval of a third three-story, 178,083 square foot office building on the “front lawn” portion of the Tract adjacent to West Chester Pike (“**Third Office Building Application**”). The Township Planning Commission has recommended approval of the Third Office Building Application and it is presently pending before the Board for final adjudication.

G. On or about October 15, 2007, BPG Real Estate Investors – Straw Party-1, L.P. (“**BPG-1**”) submitted an application to the Township for conditional use approval of a 240 unit elderly housing development on 24.45 acres of the Tract located in the northeastern corner, adjacent to Goshen Road and Newtown Road (“**Elderly Housing Application**”). The Township Planning Commission has recommended approval of the Elderly Housing Application and it is presently pending before the Board for final adjudication.

H. The BPG Entities have proposed to the Board an alternative plan for the overall development/redevelopment of the Tract which provides for the preservation of significant areas of open space on the Tract. The BPG Entities’ alternative proposal divides the Tract into the four separate development sectors depicted on the Development Sector Master Plan prepared by Glackin Thomas Panzak, dated December 7, 2007, revised January 23, 2008, which is attached

hereto as **Exhibit “A” (“Development Sector Master Plan”)**, and provides for the development and/or redevelopment of each development sector pursuant to specific development criteria. Specifically, the BPG Entities have proposed:

(1) In Development Sector 1, the development of a “town center mixed-use community” to include a diverse mix of retail, office, residential, hotel, and entertainment uses and public spaces in a pedestrian-oriented environment (**“Proposed Town Center”**). The Proposed Town Center is depicted and/or described on the Town Center Concept Plan prepared by Glackin Thomas Panzak, dated December 7, 2007, last revised January 23, 2008, which is attached hereto as **Exhibit “B” (“Town Center Concept Plan”)**;

(2) In Development Sector 2, the further development of the “front lawn” portion of the Tract with one additional office building, structured parking and additional surface parking facilities, and the preservation of ±14 acres of open space, as depicted on the Sector 2 Concept Plan prepared by Glackin Thomas Panzak, dated December 7, 2007, last revised January 23, 2008, which is attached hereto as **Exhibit “C” (“Sector 2 Concept Plan”)**;

(3) In Development Sector 3, the development of residential dwellings, as depicted on the Sector 3 Concept Plan prepared by Glackin Thomas Panzak, dated December 7, 2007, last revised January 23, 2008, which is attached hereto as **Exhibit “D” (“Sector 3 Concept Plan”)**; and

(4) In Development Sector 4, the potential demolition of all or portions of the existing office building and replacement with an office building(s) containing (i) up to 5 stories, (ii) up to the same total square footage as the existing office building, and (iii) the preservation of an amount of green space equal to the Sector 4 green space which currently exists (**“Sector 4 Concept”**).

I. The Board and its consultants have reviewed the Development Sector Master Plan, the Town Center Concept Plan, the Sector 2 Concept Plan, the Sector 3 Concept Plan, the Sector 4 Concept, and other materials presented by the BPG Entities and have determined that (i) the preservation of open space is an important component of the BPG Entities' alternative plan for the overall development/redevelopment of the Tract, (ii) the development of the Tract in the manner schematically depicted on the Development Sector Master Plan, Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan, and Sector 4 Concept would avoid further litigation and would better serve the public's interests than the development of the Tract in accordance with the By Right Application, Second Office Building Application, Third Office Building Application and Elderly Housing Application; and (iii) if BPG-2 would agree to discontinue the Second Office Building Appeal and the Mandamus Action without any further cost to the Township, it would negotiate a settlement agreement with the BPG Entities which would permit the respective BPG Entities which own the land within each of the Development Sectors to develop the Tract as depicted in the Development Sector Master Plan, Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan, and the Sector 4 Concept.

J. In furtherance of its settlement discussions with the Township and its proposed development/redevelopment of the Tract in accordance with the Development Sector Master Plan, Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan, and Sector 4 Concept, the BPG Entities have also submitted to the Board the following additional materials (hereinafter collectively referred to as the **“Master Plans”**):

(1) A stormwater management plan for the overall development of the Tract (**“Master Stormwater Management Plan”**),

(2) A road layout plan for the overall development of the Tract which depicts the major road network through the Tract and the location of the entrances to the Tract from Route 3 and Route 252 (“**Master Circulation Plan**”);

(3) A landscape plan which depicts the perimeter and roadway landscaping proposed in connection with the development of the Tract (“**Master Landscaping Plan**”);

(4) An open space plan which depicts the areas designated to be preserved as open space in connection with the development of the Tract (“**Master Open Space & Trail Plan**”); and

(5) An aerial photograph on which a concept plan entitled "Concept Plan for Road Improvements" dated _____, 2007 (“**Off-Site Road Improvement Plan**”) has been superimposed. The Off-Site Road Improvement Plan conceptually depicts the following improvements to the roads in the vicinity of the Tract (“**Proposed Off-Site Road Improvements**”):

(a) The construction of the remaining portion of the “Loop Road” connection from Route 3 to Route 252;

(b) Construction of an additional eastbound thru lane on Route 3 from College Avenue to the Newtown Square Shopping Center driveway;

(c) Construction of an additional westbound thru lane on Route 3 from the Newtown Square Shopping Center driveway to the SAP driveway;

(d) Construction of two additional lanes on the southbound Clyde Lane approach to Route 3;

(e) Construction of a center left turn lane along Clyde Lane from Munger Road to Winding Way;

(f) Construction of a northbound right turn lane on Bishop Hollow Road at Route 3;

(g) Construction of an eastbound right turn lane on Route 3 at Route 252;

(h) Construction of an eastbound left turn lane on Winding Way at Route 252;

Each of the plans contained in the Master Plans are more fully described on **Exhibit “E”**

K. The Township and the BPG Entities have agreed that if BPG-2 causes the Second Office Building Appeal and Mandamus Action to be discontinued without any further cost to the Township, the BPG Entities may substitute the Master Plans and the Development Sector Master Plan, Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan, and Sector 4 Concept for the By Right Application, Second Office Building Application, Third Office Building Application and the Elderly Housing Application, and that the respective BPG Entities which own the land within each of the Development Sectors may proceed with the development of the Tract in accordance with (i) the Master Plans, (ii) the Development Sector Master Plan, the Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan, and Sector 4 Concept, (iii) the use, area, bulk and other dimensional criteria for each of the respective development sectors set forth in Paragraphs 4, 6, 8 and 10 of this Agreement, and (iv) the general development conditions contained in Paragraph 12 of this Agreement (“**General Development Conditions**”), subject to the terms and conditions contained in this Agreement, and provided that the overall development of the Tract does not exceed the following:

(1) **Town Center Sector**. Within the Town Center Sector, in addition to the existing buildings, there shall be no more than:

- (a) Commercial/retail/restaurant 464,560 square feet
- (b) Office 136,415 square feet
- (c) Residential 310 units
- (d) Hotel 120,000 square feet

(e) Although the existing office use of the existing cottages is not included within the overall office limitation set forth in (b) above, any change in use of the existing cottages from office to commercial/retail/restaurant shall count towards the commercial/retail/restaurant square footage limitation set forth in (a) above.

(f) Although the existing fitness facility is not included within the overall commercial/retail/restaurant limitation set forth in (a) above, any building addition to the existing fitness facility shall count towards the commercial/retail/restaurant square footage limitation set forth in (a) above.

(2) **Sector 2.** Within Sector 2 (front lawn), there shall be no more than 400,000 square feet of total office square footage in no more than two buildings, exclusive of parking structures.

(3) **Sector 3.** Within Sector 3, there shall be no more than 100 residential dwelling units, provided that there are no more than 410 residential units on the Tract as a whole.

(4) **Sector 4.** Within Sector 4 (redevelopment parcel), there shall be no more square footage constructed than currently exists within the existing office building.

L. Based upon the foregoing, the Board and the BPG Entities have agreed to resolve their disputes with regard to the development of the Tract and desire to set forth that agreement

in this Settlement Agreement.

TERMS

NOW, THEREFORE, in consideration of the facts set forth in the Background to this Agreement, and in consideration of the mutual covenants and agreements contained herein, the parties hereto intending to be legally bound hereby, agree as follows:

1. **INCORPORATION OF BACKGROUND.** The entire Background of this Agreement is incorporated herein and agreed as terms of this Agreement as if fully set forth in the body of this Agreement.

2. **APPROVAL OF THE AGREEMENT.** The Board approved this Agreement at its public meeting held on _____, 2008.

3. **COURT APPROVAL.** Within five (5) days after the date of complete execution of this Agreement, the parties shall file with the Court the “Joint Motion For Entry of Agreed Order” which is attached hereto as **Exhibit “F”** requesting that the Court issue an Order in the form attached hereto as **Exhibit “G” (“Order”)** approving this Agreement as an Order of the Court.

4. **DEVELOPMENT OF TOWN CENTER SECTOR.** BPG Real Estate Investors - Straw Party-1, L.P., Ellis Preserve Owners Association, Inc., Campus Investors Cottages, L.P., Cottages at Ellis Owners Association, Inc. and TIC (“**BPG Sector 1 Owners**”) shall be permitted to develop the Town Center Sector (Sector 1) of the Tract in accordance with the Master Plans, the Development Sector Master Plan, the Town Center Concept Plan, the General Development Criteria set forth in Paragraph 9 of this Agreement and the following use and dimensional criteria (“**Town Center Use and Dimensional Criteria**”) which shall supersede all use, area, bulk and dimensional requirements of the SU-1 zoning district and all other requirements of the Zoning Ordinance, and which shall supersede those provisions of the

Township Subdivision and Land Development Ordinance (“**SALDO**”) and other ordinances which are inconsistent therewith:

(A) The following uses, and no others, may be located in the Proposed Town Center, Sector 1:

(1) Multifamily dwellings and townhouses, including residences in mixed-use commercial/residential buildings.

(2) Retail store(s).

(3) Personal service establishments, tailor, barber, beauty, shoe repair, spa, dressmaking shop, and other personal service shop or store.

(4) Bank or other similar financial institution, including a drive-in banking facility or automated teller facility.

(5) Business, administrative, executive, governmental, professional, sales and/or similar offices.

(6) Places of indoor amusement, recreation or assembly, including movie theaters.

(7) Restaurant, café, including establishments dispensing or serving food for consumption on the premises outdoors. Drive-in food stands shall not be permitted.

(8) Grocery or convenience store.

(9) Hotel or inn.

(10) Educational institution.

(11) Conference center.

(12) Public and private garages and parking lots.

(13) Civic uses such as a police station, municipal office, fire station, post office, EMS service, and transit facility.

(14) Playgrounds, parks, tot lots or open spaces.

(15) Health club, fitness center, indoor squash, tennis, or racquetball facilities, or other similar uses.

(16) Nursery schools and day care centers.

(17) Accessory use on the same lot with and customary and incidental to any of the foregoing Permitted Uses.

(B) Mix requirements.

(1) Residential uses. Of the total new gross floor area for the Proposed Town Center, at least 10%, but no more than 50%, shall be devoted to residential uses. Existing buildings and uses shall not be part of this calculation.

(2) Retail uses. Of the total new gross floor area for the Proposed Town Center, no more than 75% shall be devoted to retail, restaurant, markets, or cinema uses. Existing buildings and uses shall not be part of this calculation.

(3) Other Uses. The remaining new gross floor area for the Proposed Town Center, which is not specifically regulated above, shall be devoted to office, hotel, civic or other uses permitted by Paragraph 4(A) herein. Existing buildings and uses shall not be part of this calculation.

(C) Traditional lot area and yard setbacks shall not be required. Building setbacks shall instead be provided from adjacent uses, streets and parking areas as follows:

(1) All buildings shall be set back a minimum distance of thirty-five

(35) feet from existing or proposed curb lines of Route 3. Such setback areas shall be devoted to walkways, street trees, green areas, or a combination thereof. Limited driveway and road access through such setbacks shall be permitted.

(2) All buildings shall be set back a minimum distance of ten (10) feet from existing or proposed curb lines of proposed streets. Such setback areas shall be devoted to walkways, street trees, green areas, or a combination thereof. Limited driveway and road access through such setbacks shall be permitted. No off-street parking shall be permitted within such setback areas.

(3) All buildings shall be set back a minimum distance of fifty (50) feet from adjacent residential zoning district boundary lines on the Tract.

(4) All buildings shall be set back a minimum distance of 250 feet from the current right-of-way of both Route 252 and Goshen Road.

(5) No more than thirty percent (30%) of the area of the Proposed Town Center shall be occupied by buildings.

(D) Driveways and private streets with two way traffic shall have a minimum cartway width of twenty-four (24) feet. Paved areas shall be increased to twenty-seven (27) feet if parallel parking is proposed on one side and to thirty-six (36) feet if parallel parking is proposed on both sides.

(E) Parking and Loading. The following shall govern the parking and loading within the Proposed Town Center:

(1) For multi-family dwelling units within the Proposed Town Center, there shall be at least one (1) garage parking space and .75 off-street parking spaces for each multi-family dwelling unit.

(2) For hotels, there shall be a minimum of one (1) parking space for each hotel room.

(3) For retail stores, banks, restaurants, and other commercial buildings, there shall be four and one-half (4.5) parking spaces for every one thousand (1000) square feet of gross floor area.

(4) For offices, there shall be three and one-half (3.5) parking spaces for every one thousand (1000) square feet of gross floor area.

(5) Off-street parking spaces shall measure a minimum of nine (9) feet by eighteen (18) feet.

(6) Where efficiencies may be derived from shared parking, and more open spaces provided, a reduction in the number of parking spaces shall be permitted when there will be a sharing of parking spaces by uses with different periods of peak parking demand, or where BPG Sector 1 Owners can provide adequate justification for reduced parking. This analysis shall include a submission of calculations indicating that parking demands will be met during peak demands for parking. Such a reduction of the required parking of up to 20% may be made.

(7) The stormwater management system shall be designed to handle the total required parking spaces, including the parking spaces held in reserve.

(8) On-street parking shall be permitted along private access drives and streets within the Proposed Town Center. On-street parking shall count as part of the overall parking requirement.

(9) Off-street loading and unloading space with proper access from a

street or alley shall be provided where a building for trade or business is located. Loading and unloading spaces may be accessed from parking areas.

(10) Required parking lot green area. Where parking areas, loading and unloading facilities and accompanying access from a street or driveway exceeds 3,000 square feet, a minimum of 10% percent of all paved areas shall be devoted to green areas, or 5% may be provided if the parking is substantially located to the rear of the buildings and it can be demonstrated that views of the parking lot from the public right of way are shielded by a combination of landscaping and/or berming. In such a case, there shall not be a requirement for green areas between rows of parking spaces. Green area requirements shall not be applicable in structured parking or multi-level parking facilities.

(F) Multi-family dwelling units and townhouses within the Proposed Town Center shall be governed by the following additional dimensional requirements::

- (1) Setback to curb line: 15 foot minimum
- (2) Building to Building Separation Distance: 40 feet
- (3) Building Height: No more than 5 habitable stories.

(G) Mixed uses in buildings devoted to a mix of residential and nonresidential uses within the Proposed Town Center shall be governed by the following additional dimensional requirements:

- (1) Setback to curb line: 10 foot minimum
- (2) Building to Building Separation Distance: 10 feet
- (3) Building Height: The maximum height of any mixed use building within the Proposed Town Center shall be limited to 6 stories.

(H) Non-residential uses within the Proposed Town Center shall be governed by the following additional dimensional requirements:

(1) Setback to curb line: 15 foot minimum

(2) Building to Building Separation Distance: 20 feet

(3) Building Height: The maximum height of any non-residential building within the Proposed Town Center shall be limited to 4 stories, except that a hotel can be up to 6 stories.

(I) Town Center Design Guidelines. All development within the proposed Town Center shall be in accordance with the Town Center Design Guidelines dated December 24, 2007, last revised _____, 2008, attached hereto as **Exhibit “H” (“Town Center Design Guidelines”)**, which set forth the design objectives of the Proposed Town Center and establish specific criteria relating to architectural and design features of the Proposed Town Center, including, but not limited to, building materials, banners and signage, pedestrian walkways, sidewalks and crosswalks, landscaping, parking, buffering, screening and lighting, pavilions, gazebos and plazas, and street furniture and amenities.

(J) The construction of all public streets within the Proposed Town Center shall be in accordance with the construction specifications and regulations established in the Newtown Township SALDO, except as otherwise provided in the Town Center Design Guidelines.

(K) The architectural design of all non-residential buildings within the Proposed Town Center shall be substantially consistent with the Elevations attached hereto as **Exhibit “I”** and the Town Center Design Guidelines, subject to such revisions

as are hereafter agreed to by the parties.

(L) A pedestrian pathway system shall be provided that shall include a combination of sidewalks, pathways and trails to provide reasonable access from buildings within the Proposed Town Center to the central open spaces located on the Tract and to provide pedestrian circulation through the Proposed Town Center.

(M) Sidewalks shall be located through the retail area of the Proposed Town Center and shall be wide enough to accommodate walking and outdoor dining where appropriate.

(N) Street Furniture shall be provided which shall include such items as benches, waste containers, planters, bicycle racks, water fountains and bollards. Such items shall be provided at appropriate locations throughout the Proposed Town Center. Street furniture must be compatible with the architecture of the surrounding buildings, and character of the area and other elements of the streetscape.

(O) Exterior Lighting shall be provided in accordance with the Town Center Design Guidelines and shall be architecturally compatible with the style, materials, colors, and details of the buildings. The mounting height of parking lot lighting shall not exceed 28 feet as measured to the top of the fixture from grade.

(P) All trash containers shall be screened in six foot (6') high, three-sided masonry or wood enclosures, to be compatible with the architecture of the Proposed Town Center, and shall be located in the rear of the buildings. Trash collection shall occur only between 7:00 a.m. and 9:00 p.m.

M. Outdoor retail sale of garden goods or related product shall not be permitted in the parking areas, except for seasonal or special events.

5. **CHANGES TO MASTER PLANS AND TOWN CENTER CONCEPT**

PLAN. The parties acknowledge that the Town Center Concept Plan is illustrative of what may be constructed within Sector 1, and that the BPG Sector 1 Owners may make the following changes to the Town Center Concept Plan without approval from the Township: (i) change the specific Town Center uses depicted on the Town Center Concept Plan to other permitted Town Center uses, provided the overall permitted capacity of development identified on the Town Center Concept Plan and permitted by the Town Center Use and Dimensional Criteria is not exceeded, (ii) change the layout of the streets that will connect to the roads depicted on the Master Road Plan, and/or (iii) change the specific location of the Town Center uses depicted on the Town Center Concept Plan. Any such changes will be reflected on the BPG Sector 1 Owners' Land Development Plan for the phase(s) of construction of the Town Center in which such change(s) will occur, and the Township shall approve such Land Development Plan in accordance with the procedure described in this Agreement if such Land Development Plan otherwise complies with the applicable criteria of this Agreement, the Master Plans, the General Development Conditions and the Town Center Use and Dimensional Criteria, notwithstanding such changes to the Town Center Concept Plan.

(A) If changes are required to any of the Master Plans or the Town Center Concept Plan as a condition of any Agency Approvals or by any agency in the process of reviewing the Town Center Concept Plan or any of the Master Plans, then the BPG Sector 1 Owners shall be permitted to make such changes without consent from the Township. The Township Engineer shall be permitted to participate in all proceedings with other agencies to obtain the Agency Approvals.

(B) In the event that the BPG Sector 1 Owners determine that changes are

necessary to any of the Master Plans or to the Town Center Concept Plan, other than changes required for Agency Approvals or during agency review, consent of the Township to such changes shall be required, such consent not to be unreasonably withheld. In the event that the BPG Sector 1 Owners and the Township are unable to reach agreement with regard to any changes to the Master Plans or Town Center Concept Plan requiring the Township's consent, at any time either party may request that the parties each designate an expert with respect to the particular issue on which they are unable to reach agreement. The parties' experts shall attempt to reach agreement regarding the issue. If within ten (10) days after a request for designation of the experts the parties' experts are unable to reach agreement with respect to the issue, then either party may request that the two experts designate an independent third party expert to determine the changes that are to be permitted to the Master Plans or Town Center Concept Plan. If the parties' experts are unable to agree on the third party expert within five (5) days after a request for designation of the third party expert, then either party may request the Court to appoint an independent third party expert to make such determination. Within ten (10) days after the designation of the third party expert, each party shall present to the third party expert such information as it may reasonably choose in support of its position. The third party expert shall review the information presented and render a decision in writing on the dispute within twenty (20) days after the request for resolution, and such decision shall be final and binding on all parties. The fees for the third party expert shall be borne equally by the Township and the BPG Sector 1 Owners.

6. **DEVELOPMENT OF SECTOR 2 (FRONT LAWN).** BPG-1, BPG-2, Ellis Preserve Owners Association, Inc., and Campus Investors Office 2B, L.P. (“**BPG Sector 2**

Owners’) shall be permitted to further develop Sector 2 of the Tract, provided that such development is in accordance with the Master Plans, the Development Sector Master Plan, the Sector 2 Concept Plan, the General Development Criteria set forth in Paragraph 12 of this Agreement and the following development criteria, all of which shall supersede all use, area, bulk and dimensional requirements of the SU-1 zoning district and all other requirements of the Zoning Ordinance and SALDO which are inconsistent therewith (**“Sector 2 Use and Development Criteria”**):

(A) All of the uses permitted in the SU-1 District shall be permitted by right in Sector 2.

(B) All development within Sector 2 shall comply with the area, bulk and dimensional requirements of the SU-1 zoning district, except with regard to the following:

(1) Impervious coverage shall be based upon the Tract as a whole and shall be governed by the General Development Conditions set forth in this Agreement;

(2) The required minimum building setback from West Chester Pike shall be 200 feet;

(3) The required minimum building setback from adjacent properties shall be 100 feet;

(4) Maximum Building Height shall be five stories;

(5) There shall be three and one-half (3.5) parking spaces for every one thousand (1,000) square feet of gross floor area. This requirement shall apply to both existing and proposed buildings within Sector 2 and existing parking

within Sector 2 may be modified accordingly.

(6) Off-street parking spaces shall measure a minimum of nine (9) feet by eighteen (18) feet.

(C) No more than two buildings shall be located in Sector 2 up to a maximum of 400,000 square feet. Structured parking facilities shall be in addition to the two office buildings.

(D) The existing medical office building located in Sector 2 shall be permitted to remain. In the event that the BPG Sector 2 Owners choose, in their sole discretion, to demolish, modify and/or expand the existing medical office building, such further development shall be subject to the requirements of this Agreement.

7. **CHANGES TO SECTOR 2 CONCEPT PLAN.** The parties acknowledge that the Sector 2 Concept Plan is illustrative of what may be constructed within Sector 2, and that the BPG Sector 2 Owners may make the following changes to the Sector 2 Concept Plan without approval from the Township: (i) change the specific uses depicted on the Sector 2 Concept Plan to other permitted uses, provided that the overall capacity of development permitted by the Sector 2 Use and Development Criteria is not exceeded, and/or (ii) change the specific location and configuration of the buildings depicted on the Sector 2 Concept Plan. Any such changes will be reflected on the BPG Sector 2 Owners' Land Development Plan for the phase(s) of construction of Sector 2 in which such change(s) will occur, and the Township shall approve such Land Development Plan in accordance with the procedure described in this Agreement if such Land Development Plan otherwise complies with the applicable criteria of this Agreement, the Master Plans, the General Development Conditions and the provisions of this Agreement, notwithstanding such changes to the Sector 2 Concept Plan.

(A) If changes are required to the Sector 2 Plan as a condition of any Agency Approvals or by any agency in the process of reviewing the Sector 2 Plan, then the BPG Sector 2 Owners shall be permitted to make such changes without consent from the Township. The Township Engineer shall be permitted to participate in all proceedings with other agencies to obtain the Agency Approvals.

(B) In the event that the BPG Sector 2 Owners determine changes are necessary to the Sector 2 Plan due to changes in the Town Center Concept Plan, Master Plans, or otherwise, other than changes required for Agency Approvals or during agency review, consent of the Township to such changes shall be required, such consent not to be unreasonably withheld. In the event that the BPG Sector 2 Owners and the Township are unable to reach agreement with regard to any changes to the Sector 2 Plans requiring the Township's consent, at any time either party may request that the parties each designate an expert with respect to the particular issue on which they are unable to reach agreement. The parties' experts shall attempt to reach agreement regarding the issue. If within ten (10) days after a request for designation of the experts the parties' experts are unable to reach agreement with respect to the issue, then either party may request that the two experts designate an independent third party expert to determine the changes that are to be permitted to the Sector 2 Plans. If the parties' experts are unable to agree on the third party expert within five (5) days after a request for designation of the third party expert, then either party may request the Court to appoint an independent third party expert to make such determination. Within ten (10) days after the designation of the third party expert, each party shall present to the third party expert such information as it may reasonably choose in support of its position. The third party expert shall review the

information presented and render a decision in writing on the dispute within twenty (20) days after the request for resolution, and such decision shall be final and binding on all parties. The fees for the third party expert shall be borne equally by the Township and the BPG Sector 2 Owners.

8. **DEVELOPMENT OF SECTOR 3 (RESIDENTIAL)** BPG-1, Ellis Preserve Owners Association, Inc., and TIC (“**BPG Sector 3 Owners**”) shall be permitted to develop Sector 3 of the Tract in accordance with the Master Plans, the Sector 3 Concept Plan, the General Development Criteria set forth in Paragraph 12 of this Agreement and the following use and dimensional criteria (“**Sector 3 Use and Dimensional Criteria**”) which shall supersede all use, area, bulk and dimensional requirements of the SU-1 zoning district and all other requirements of the Zoning Ordinance, and which shall supersede those provisions of the Township SALDO which are inconsistent therewith:

(A) The following uses, and no others, may be located in Sector 3:

- (1) Single-family detached dwellings;
- (2) Two-family dwellings;
- (3) Single family semi-detached dwellings (twins);
- (4) Townhouses;
- (5) Accessory use on the same lot with and customary and incidental

to any of the foregoing Permitted Uses.

(B) Single family detached residential dwelling units within Sector 3 shall be governed by the following dimensional requirements:

- (1) Minimum Lot Area: 6,000 square feet
- (2) Minimum Lot Width at Building Line: 55 feet

- (3) Minimum Lot Width at Street Line: 45 feet
- (4) Minimum Depth of Front and Rear Yards: 15 feet
- (5) Side Yards: 5 feet minimum; 15 feet aggregate
- (6) Building Height: No more than 3 stories

(C) Townhouse, two family residential and twin dwelling units within Sector 3 shall be governed by the following dimensional requirements::

- (1) Minimum unit width: 30 feet
- (2) Setback to curb line: 10 foot minimum or 25 feet where there are garages in the front of the unit and the driveway provides for parking in front of the garage.
- (3) Building to Building Separation Distance: 15 feet side to side; 50 feet front to front and rear to rear.
- (4) Building Height: No more than three 3½ stories.
- (5) There shall be no more than five single-family townhouse dwellings in a row.
- (6) There shall be at least one (1) garage parking space and one (1) off-street parking space for each single-family dwelling, townhouse and two-family dwelling, and .25 off-street guest parking spaces provided.
- (7) Sidewalks shall be located on at least one side of all residential streets within Sector 3, which shall be 4 feet in width and have a 4 foot green area between the sidewalk and curb.

9. **CHANGES TO SECTOR 3 CONCEPT PLAN.** The parties acknowledge that the Sector 3 Concept Plan is illustrative of what may be constructed within Sector 3, and that

the BPG Sector 3 Owners may make the following changes to the Sector 3 Concept Plan without approval from the Township: (i) change the specific uses depicted on the Sector 3 Concept Plan to other permitted Sector 3 uses, provided the overall capacity of development permitted by the Sector 3 Use and Dimensional Criteria is not exceeded, and/or (ii) change the specific location and configuration of the buildings depicted on the Sector 3 Concept Plan. Any such changes will be reflected on the BPG Sector 3 Owners' Land Development Plan for the phase(s) of construction of Sector 3 in which such change(s) will occur, and the Township shall approve such Land Development Plan in accordance with the procedure described in this Agreement if such Land Development Plan otherwise complies with the applicable criteria of this Agreement, the Master Plans, the General Development Conditions and the Sector 3 Use and Dimensional Criteria, notwithstanding such changes to the Sector 3 Concept Plan.

(A) If changes are required to the Sector 3 Plan as a condition of any Agency Approvals or by any agency in the process of reviewing the Sector 3 Plan, then the BPG Sector 3 Owners shall be permitted to make such changes without consent from the Township. The Township Engineer shall be permitted to participate in all proceedings with other agencies to obtain the Agency Approvals.

(B) In the event that the BPG Sector 3 Owners determine that changes are necessary to the Sector 3 Plan due to changes in the Town Center Concept Plan, Master Plans, or otherwise, other than changes required for Agency Approvals or during agency review, consent of the Township to such changes shall be required, such consent not to be unreasonably withheld. In the event that the BPG Sector 3 Owners and the Township are unable to reach agreement with regard to any changes to the Sector 3 Plans requiring the Township's consent, at any time either party may request that the parties each designate

an expert with respect to the particular issue on which they are unable to reach agreement. The parties' experts shall attempt to reach agreement regarding the issue. If within ten (10) days after a request for designation of the experts the parties' experts are unable to reach agreement with respect to the issue, then either party may request that the two experts designate an independent third party expert to determine the changes that are to be permitted to the Sector 3 Plans. If the parties' experts are unable to agree on the third party expert within five (5) days after a request for designation of the third party expert, then either party may request the Court to appoint an independent third party expert to make such determination. Within ten (10) days after the designation of the third party expert, each party shall present to the third party expert such information as it may reasonably choose in support of its position. The third party expert shall review the information presented and render a decision in writing on the dispute within twenty (20) days after the request for resolution, and such decision shall be final and binding on all parties. The fees for the third party expert shall be borne equally by the Township and the BPG Sector 3 Owners.

10. **DEVELOPMENT OF SECTOR 4 (REDEVELOPMENT PARCEL)**. In the event that BPG-1, Kelly Preserve Owners Association, Campus Investors Office B, L.P., Campus Investors 25, L.P., Campus Investors I Building, L.P., Campus Investors H Building, L.P. and Campus Investors D Building, L.P. ("**BPG Sector 4 Owners**") choose, in their sole discretion, not to demolish the existing office building and ancillary facilities located within Sector 4 ("**Existing Sector 4 Facilities**"), the BPG Sector 4 Owners shall have the right to adaptively re-use the Existing Sector 4 Facilities for any of the uses presently permitted in the SU-1 zoning district, provided that the impervious coverage within Sector 4 shall not be increased by more

than 1% of the impervious coverage of Sector 4 shown on the Development Sector Master Plan.. In the event that the BPG Sector 4 Owners choose, in their sole discretion, to demolish the Existing Sector 4 Facilities, the BPG Sector 4 Owners shall be permitted to redevelop Sector 4 of the Tract, provided that such development is in accordance with the Master Plans, the General Development Criteria set forth in Paragraph 12 of this Agreement and the following development criteria (“**Sector 4 Use and Development Criteria**”), all of which shall supersede all area, bulk and dimensional requirements of the SU-1 zoning district and all other requirements of the Zoning Ordinance and SALDO which are inconsistent therewith:

(A) All of the uses permitted in the SU-1 District shall be permitted by right in Sector 4.

(B) All development within Sector 4 shall comply with the area, bulk and dimensional requirements of the SU-1 zoning district, except with regard to the following:

(1) Impervious coverage shall be based upon the Tract as a whole and shall be governed by the General Development Conditions set forth in this Agreement;

(2) The required minimum building setback from Goshen Road shall be 300 feet;

(3) The required minimum building setback from adjacent properties shall be 50 feet;

(4) Maximum Building Height shall be 5 stories;

(5) There shall be three and one-half (3.5) parking spaces for every one thousand (1000) square feet of gross floor area.

(6) Off-street parking spaces shall measure a minimum of nine (9) feet by eighteen (18) feet.

11. **CHANGES TO SECTOR 4 CONCEPT.** The parties acknowledge that the type of future redevelopment that could potentially occur on Sector 4 is presently unknown and that the BPG Sector 4 Owners shall be permitted to redevelop Sector 4 in any manner that complies with the Master Plans, General Development Conditions, Sector 4 Use and Development Criteria and the provisions of this Agreement.

12. **DEVELOPMENT CONDITIONS.** In addition to the Master Plans, the Development Sector Master Plan, the Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan and Sector 4 Concept, and the specific use and dimensional criteria governing each development sector, the following Development Conditions shall govern the Tract as a whole:

(A) No more than 60% of the gross acreage of the Tract shall be covered with impervious materials.

(B) A landscaped buffer shall be maintained adjacent to Goshen Road and Route 252, which shall be landscaped in conformity with the Master Landscaping Plan included in the Master Plans attached hereto as Exhibit "E".

(C) Green areas within the Tract, including the major open space areas required by the Open Space Master Plan included in the Master Plans attached hereto as Exhibit "E", may include paving for site amenities such as plaza areas, pedestrian trails and walkways, which shall not count against the impervious requirements of the Tract.

(D) A pedestrian pathway system shall be provided through the Tract, which shall include a combination of sidewalks, pathways and trails to provide reasonable

access from nonresidential areas and residential areas to the central open spaces and to provide pedestrian circulation through the Tract. Pedestrian pathways will be coordinated with a Township system of pathways, where possible. Trails shall be within a corridor of approximately 10 feet in width through which passes or will pass a 6-8 foot trail as part of the overall trail system. Trails may be constructed of pervious or impervious materials as appropriate for their location. The trail may be designed to serve walkers, runners, or bicyclists. Trails shall not be used by motorized vehicles except as authorized by the BPG Entities for maintenance, management or emergency purposes. Trails shall connect to sidewalks, when appropriate to create an interconnected pedestrian system.

(E) The open space areas depicted on the Master Open Space Plan and required to be preserved shall be owned and maintained by the BPG Entities unless the BPG Entities elect to offer all, or a portion of said open space for dedication to the Township. If the Township accepts dedication of such open space, said open space areas shall continue to be included in all area and bulk calculations for the remainder of the Tract.

(F) All ground level mechanical units, refuse, recycling and similar facilities shall be screened from view using materials consistent with the building style, or landscaped when located at or near the ground.

(G) Bus shelters with benches shall be provided along Route 3 and Route 252 if there are SEPTA bus stops in existence, or planned as a result of the development or redevelopment of the Tract. Bus shelters may be provided within the Tract as determined by the BPG Entities.

(H) Public Sewer and Public Water. All new buildings hereinafter constructed

on the Tract shall be served by public sewer through the Newtown Township Municipal Authority and shall be served by public water through Aqua of Pennsylvania.

(I) All buildings to be constructed on the Tract shall have sprinkler fire protection systems, pursuant to applicable codes and regulations.

(J) Fire hydrants shall be installed at locations not more than seven hundred feet (700') apart. All fire lanes shall be appropriately painted, and proper signage shall be installed.

(K) All HVAC and compressor type equipment shall be enclosed or screened, but may be placed on roof tops where they will not be required to be enclosed or screened; provided, however, that they must not be visible from public roads or surrounding properties.

(L) Construction of improvements or disturbance of areas of steep slopes shall be permitted to the extent necessary to permit the development of the Tract in accordance with the Master Plans and the Development Sector Master Plan, Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan and Sector 4 Concept without any further conditional use hearings or approvals.

(M) The following Sections of the SALDO are hereby waived in their entirety with regard to the development of the Tract:

- (1) §104-11 To the extent that it requires identification of all existing trees
- (2) §104-14 Minimum planting requirements
- (3) §134-7 Permitted Uses within Slope Conservation District
- (4) §134-8.A Permissible disturbed area

- (5) §148-25 Blocks
- (6) §148-26 Lots and Lot Sizes
- (7) §148-27 Streets
- (8) §148-28 Traffic Impact Study
- (9) §148-29 Street construction
- (10) §148-30 Private Streets
- (11) §148-31 Driveways
- (12) §148-32 Alleys and Service Streets
- (13) §148-33 Parking areas
- (14) §148-35 Curbs
- (15) §148-41 Recreational land requirements including fee-in-lieu

provisions

13. **CONSTRUCTION OF OFF-SITE TRAFFIC IMPROVEMENTS.** It is understood and agreed between the parties that the BPG Entities’ “fair share” contribution towards off-site road improvements required to mitigate the impact of future development within the Township shall be Eight Million Six Hundred Thousand Dollars (\$8,600,000.00) (“**BPG’s Fair Share Contribution**”). It is further understood and agreed between the parties that the off-site road improvements depicted on the Master Off-Site Road Improvement Plan that is included in the Master Plans attached hereto as Exhibit F (“**Traffic Improvements**”) will cost approximately \$8,600,000.00 to construct. In lieu of paying BPG’s Fair Share Contribution to the Township, the BPG Entities shall construct and complete the Traffic Improvements depicted on the Master Off-Site Road Improvement Plan, provided that all state and local permits and approvals required to complete the Traffic Improvements are obtained.

BPG's Fair Share Contribution shall be fully satisfied by the construction of the Traffic Improvements and the BPG Entities shall not be required to pay any other traffic fee or make any other off-site road improvements in connection with the development of the Tract. The procedure for the BPG Entities' construction of the Traffic Improvements shall be as follows:

(A) The BPG Entities' construction of the Traffic Improvements shall be permitted to be phased according to the following:

(1) The BPG Entities shall complete the construction of the Loop Road prior to the occupancy of any new building within the Proposed Town Center (**"Phase I Traffic Improvement"**);

(2) The BPG Entities shall complete the construction of the Clyde Lane and Bishop Hollow Road improvements and an additional eastbound Winding Way left turn lane at Route 252 prior to the occupancy of 162,600 square feet of new non-residential space on the Tract (**"Phase II Traffic Improvement"**);

(3) The BPG Entities shall complete the construction of an additional thru lane on westbound and eastbound Route 3 from between Winding Way and Clyde Lane to the Newtown Square Shopping Center driveway and a Route 3 eastbound right turn lane at Route 252 prior to the occupancy of more than 566,170 square feet of new non-residential space and 230 residential units on the Tract (**"Phase III Traffic Improvement"**);

(4) The BPG Entities shall complete the construction of an additional thru lane on westbound and eastbound Route 3 from College Avenue to between Winding Way and Clyde Lane prior to the occupancy of more than 310,000

square feet of additional new non-residential space (**“Phase IV Traffic Improvement”**);

(5) The BPG Entities shall complete the remainder of the Traffic Improvements prior to the occupancy of more than 170 additional residential units (**“Phase V Traffic Improvement”**);

(6) Prior to issuance of a building permit for a building within that phase of development to which the Phase I, Phase II, Phase III, Phase IV, or Phase V Traffic Improvement is tied, the BPG Entities shall post an irrevocable letter of credit as financial security in an amount necessary to secure completion of the Phase I, Phase II, Phase III, Phase IV or Phase V Traffic Improvement (**“Required Financial Security”**) with the Township, which Required Financial Security shall be administered and released in accordance with the procedures set forth in Section 510 of the Municipalities Planning Code, 53 P.S. §10510.

(B) The BPG Entities shall be responsible for the design of the Traffic Improvements and shall obtain all required permits and approvals for the construction of the Traffic Improvements. To the extent that one or more highway occupancy permits (**“HOP(s)”**) from the Pennsylvania Department of Transportation (**“PADOT”**) are required to construct any portion of the Traffic Improvements, the BPG Entities shall be required to obtain the necessary HOP(s) and such HOP(s) shall name the Township as the permittee.

(C) If additional rights-of-way or easements, including utility easements, are required for the BPG Entities to construct the Traffic Improvements, the BPG Entities shall make an initial attempt to acquire all such necessary easements and rights-of-way. In the event that the BPG Entities are unable to acquire such easements and rights-of-way after

a period of thirty (30) days from the date of first contact, the Township will condemn such easements and rights-of-way and the BPG Entities will reimburse the Township for all out-of-pocket costs of obtaining all necessary easements and rights-of-way, including, but not limited to, just compensation, legal fees, appraisal and engineering costs. The BPG Entities will prepare all plans and other supporting information to facilitate the Township's condemnation of the necessary rights-of-way or easements.

14. **DEVELOPMENT IN PHASES.** The improvements depicted on the Master Plans and the Town Center Concept Plan, Sector 2 Concept Plan, Sector 3 Concept Plan and/or Sector 4 Concept may be submitted for approval and constructed or installed in phases (each a "Phase" and any combination of two or more being referred to as "Phases"), over time, as determined by the respective BPG Entities.

15. **PREPARATION OF PRELIMINARY PLANS FOR PROPOSED TOWN CENTER.** When the BPG Sector 1 Owners are ready to proceed with the development of the Proposed Town Center, the BPG Sector 1 Owners shall cause their civil engineer to prepare preliminary land development plans for all or a portion or portions of the Proposed Town Center ("**Preliminary Plans**") to the Board and Township Engineer in accordance with this Settlement Agreement.

(A) The Preliminary Plans shall depict the development of the Proposed Town Center in accordance with (i) this Settlement Agreement, (ii) the Master Plans, (iii) the Town Center Concept Plan, (iv) the Town Center Dimensional Criteria, (v) the General Development Conditions, and (vi) the applicable provisions of the SALDO ("**Applicable SALDO Requirements**"). For purposes of this Agreement the term "Applicable SALDO Requirements" shall mean the provisions of the SALDO, unless a provision or provisions of the SALDO is (are) replaced with an alternative(s) chosen by the BPG

Sector 1 Owners which provide(s) a solution to the issue addressed by the replaced SALDO provision(s) which solution(s) is (are) equal or better than the solution intended by the replaced SALDO provision(s) (The Master Plans, Town Center Concept Plan, Town Center Dimensional Criteria, General Development Conditions, and the Applicable SALDO Regulations are sometimes hereinafter collectively referred to as the “**Town Center Standards**”).

(B) In the event that a dispute arises as to: (i) whether an alternative chosen by the BPG Sector 1 Owners provides a solution to the issue addressed by the replaced SALDO provision which is equal to, or better than the solution intended by the replaced SALDO provision, the BPG Sector 1 Owners and the Township shall jointly request _____, P.E. (“**Independent Engineer**”), or another mutually agreed upon engineer, to resolve such dispute by rendering a written Decision with regard to such dispute. Each party to such dispute shall present to the Independent Engineer such information as it may choose. The Independent Engineer’s decision shall be final and binding on all parties. The Independent Engineer shall be paid his/her regular hourly rate for the time he/she spends with regard to the dispute and such fees shall be paid entirely by the BPG Sector 1 Owners.

(C) The Board acknowledges that it is virtually impossible at this stage of the design of the development of the Tract to identify every provision of the SALDO with which it is not practical for the Preliminary Plans to comply. Accordingly, the Board has agreed that if the Preliminary Plans depict the development of the Tract in accordance with the Town Center Standards, the Board will approve the Preliminary Plans if they comply with the Applicable SALDO Provisions.

16. **REVIEW OF PRELIMINARY PLANS.** Within sixty (60) days of the submission of the Preliminary Plans, the Township Engineer shall issue a report (“**Township Engineer’s Report**”)

(A) Stating whether he/she believes that the Preliminary Plans have been prepared in accordance with this Settlement Agreement and with the Standards; and

(B) Specifying which, if any, of the aspects of the Preliminary Plans deviate from the Standards, and such Standard must be identified.

17. **PRELIMINARY PLAN APPROVAL.**

(A) **Approval without Modification.** If the Township Engineer’s Report indicates that the Preliminary Plan comply with the Standards, the Board shall approve the Preliminary Plans within forty-five (45) days after issuance thereof. If other agency approvals have not been received, the plans shall be approved conditionally.

(B) **Disputes with regard to Preliminary Plans.** If the Township Engineer's Report indicates that the Preliminary Plans do not comply with the standards, the BPG Sector 1 Owners and the Township Engineer will attempt to agree on the method to redesign that aspect(s) of the Preliminary Plans which contain the objected to deviation from the Standards. Thereafter, the BPG Sector 1 Owners shall implement the agreed upon changes, resubmit the Preliminary Plans as so revised, and the procedures set forth in Paragraphs 15 and 16 shall be recommenced. If the Township Engineer and the BPG Sector 1 Owners do not resolve the controversy with regard to any of the said deviations from the Standards within thirty (30) days of receipt by the BPG Sector 1 Owners of the Township Engineer's Report, either party may submit the controversy to the Independent Engineer pursuant to the procedure set forth in Paragraph 15.B above. If the Independent Engineer determines that deviations from the

Standards exist, the BPG Sector 1 Owners shall cause the Preliminary Plans to be revised to eliminate the deviation from the Standards and shall resubmit such further revisions for review by the Township Engineer. The Township Engineer shall review the said revisions to determine whether the deviation from the Standards has been eliminated. If the Township Engineer determines that the deviations have been corrected, he/she shall promptly issue a written report (“**Township Engineer’s Supplemental Report**”) indicating such approval, and the Board shall approve the Preliminary Plans within thirty (30) days after the receipt of the Township Engineer's Report.

18. **FINAL PLAN APPROVAL.**

(A) **Other Permits.** Promptly after approval of the Preliminary Plans, the BPG Sector 1 Owners intend to take the action necessary to obtain all of the permits, approvals, waivers and agreements required to be obtained by it from governmental agencies and public and municipal authorities, other than the Township and those entities controlled by or appointed by the Board, which have jurisdiction over the development of the Proposed Town Center (hereinafter referred to as the “**Agency Permits**”). The Township will not object to any application for an Agency Permit which is substantially consistent with the approved Preliminary Plans. The BPG Sector 1 Owners will notify the Township Manager and such engineering or other consultant as is considered appropriate of any pre-application or technical review meetings to be conducted by government agencies pertaining to any applications for Agency Permits. If Agency Permit(s) are inconsistent with the Preliminary Plans, they shall be identified by the BPG Sector 1 Owners’ engineer as changes to the Final Plans. Within forty-five (45) days after receipt of by the Township of properly prepared and substantially correct sewer

planning modules, highway occupancy permits, traffic signal permit applications and any similar or dissimilar applications which require the approval or consent of the Township in order for PennDOT, the Pennsylvania Department of Environmental Protection, the Delaware County Soil Conservation Service or any other agency to act, the Board or such other appropriate Township official shall approve such applications, provided that such plans and applications are consistent with the terms of this Settlement Agreement. When the BPG Sector 1 Owners obtain all of the Agency Permits, they shall deliver copies thereof to the Township. At the same time, the BPG Sector 1 Owners shall cause their civil engineer to add to the Preliminary Plans revisions agreed upon during the reviews and those additional categories of items that are necessary to convert the Preliminary Plans to Final Plans (“**Final Plans**”). After the Preliminary Plans are converted into the Final Plans, copies thereof shall be delivered to the Township and the Township Engineer. Within thirty (30) days after receipt, the Township Engineer shall determine whether the Preliminary Plans have been properly converted into the Final Plans and shall issue his written report regarding such review.

(B) **Disputes With Regard to Final Plans.** If the Township Engineer's Report indicates that the Preliminary Plans have not been properly converted into the Final Plans, the BPG Sector 1 Owners and the Township Engineer will attempt to agree on the method to redesign that aspect(s) of the Final Plans which contain the objected to deviation from the Preliminary Plans. Thereafter, the BPG Sector 1 Owners shall implement the agreed upon changes, resubmit the Final Plans as so revised, and the procedures set forth in Paragraph 15 and 16 shall be recommenced. If the Township Engineer and the BPG Sector 1 Owners do not resolve the controversy with regard to any

of the objected to deviations from the Preliminary Plans within thirty (30) days of receipt by the BPG Sector 1 Owners of the Township Engineer's Report, either party may submit the controversy to the Independent Engineer pursuant to the procedure set forth in Paragraph 15.B above. If the Independent Engineer determines that objected to deviations from the Preliminary Plans are proper, the BPG Sector 1 Owners shall cause the Final Plans to be revised to eliminate the objected to deviation from the Preliminary Plans and shall resubmit such further revisions for review by the Township Engineer. The Township Engineer shall review the said revisions to determine whether the objected to deviation from the Preliminary Plans has been eliminated. If the Township Engineer determines that the objected to deviations have been corrected, he/she shall promptly issue a written report (“**Township Engineer’s Supplemental Report**”) indicating such approval, and the Board shall approve the Final Plans within thirty (30) days after the receipt of the Township Engineer's Report.

(C) **Approval and Recording of Final Plans.** Within sixty (60) days after receipt of all Agency Permits and the Township Engineer’s Report indicating approval of the Final Plans, the Board shall approve the Final Plans and shall deliver to the BPG Sector 1 Owners a letter confirming the approval. At least ten (10) days prior to the Public Meeting at which the Final Plans are to be approved by the Board, the BPG Sector 1 Owners shall deliver to the Township four (4) copies of those sheets of the Final Plans which are to be recorded. Such sheets shall have been appropriately signed by the BPG Sector 1 Owners and their Engineers. Immediately thereafter, the Township Manager shall cause the Township Engineer and the representatives of the Township Planning Commission to sign the Final Plans and at the Public Meeting at which the Final Plans

are approved by the Board, the Board shall cause the Final Plans to be appropriately signed by the appropriate members of the Board. Thereafter, the Final Plans shall be delivered to the Township Solicitor, for the purpose of recording in the Office of the Recorder of Deeds of Delaware County at the time that financial security is posted as described below.

(D) **Submittal of Plans.** All Plans and submissions shall be made and submitted by paper as well as electronically. Additionally, all Preliminary Plans and Final Plans may be submitted so as to authorize development of the Tract in phases; provided such phasing is approved by the Township as part of the Land Development process, which approval shall not be unreasonably withheld, delayed or conditioned.

(E) **Execution of Improvement Agreement, Delivery of Financial Security and Payment of Fees by BPG.** At such time as the BPG Sector 1 Owners desire to commence the construction of any of the improvements depicted on the Final Plans, the BPG Sector 1 Owners shall (a) sign an Improvement Agreement in a form to be agreed upon by the Township Solicitor and the BPG Sector 1 Owners' counsel, (b) return two (2) fully signed copies thereof to the Township Solicitor, and (c) deliver financial security (hereinafter referred to as the "**Security**") to the Township in the form permitted by Section 509 of the MPC. The Financial Security to be posted shall include those public improvements identified on the list of public improvements attached hereto as Exhibit "J". **[ENGINEERS TO PROVIDE LIST]** Upon delivery of the Improvement Agreement and required Security, the Township Solicitor shall cause the signed copies of the Final Plans to be immediately recorded in the Office of the Recorder of Deeds of Delaware County, and shall immediately deliver the receipt evidencing such filing to

BPG (hereinafter referred to as the “**Receipts**”). The BPG Sector 1 Owners shall have the right to construct the Proposed Town Center in separate phases conditioned upon Township and Delaware County Conservation District approval of the phasing plans prior to recording by the BPG Sector 1 Owners; Township approval shall not be unreasonably withheld, delayed or conditioned. Only those Township approved Final Plans for which Financial Security has been posted (or for which all public improvements for a given phase or development have been completed) may be released for recording.

Notwithstanding the foregoing, the BPG Sector 1 Owners shall have the right, in accordance with Section 509 of the Pennsylvania Municipalities Planning Code, 53 Pa.St. §10509, to commence improvements shown on the Plan after Preliminary Plan Approval, the receipt of an NPDES Permit, and may commence or complete some or all of those improvements as shown on the Plan prior to release of Final Plan Approval. Any improvements not completed at the time that the BPG Sector 1 Owners desires to record the Final Plan Approval, shall require the appropriate Financial Security Agreement (“**Improvement Agreement**”) as provided in this Agreement and the Municipalities Planning Code.

19. **SUBMISSION AND APPROVAL OF DEVELOPMENT PLANS FOR SECTOR 2, SECTOR 3 AND SECTOR 4 DEVELOPMENT.** The process for submission, review and approval of preliminary and final land development plans by the BPG Sector 2 Owners, BPG Sector 3 Owners and BPG Sector 4 Owners for future Sector 2, Sector 3 and/or Sector 4 development shall be identical to the process set forth in Paragraphs 15, 16, 17 and 18 above.

20. **SEWER.** The Tract shall be serviced by public sewer. The Board shall

cooperate fully and in good faith with the BPG Entities in securing DEP approval of any planning module(s), planning module exemption(s) and water quality permit applications (in multiple applications, if required) to permit all development and redevelopment of the Tract. The Board shall also cooperate fully and in good faith with the BPG Entities in allocating, reserving and purchasing both sewer conveyance and treatment capacity as may be required in order to provide the necessary capacity for the future development and redevelopment of the Tract.

(A) **Public Sewer Service Providers.** The BPG Entities shall be permitted to use multiple public sewer systems in order to provide public sewer service to the existing and future development and redevelopment of the Tract. Currently, the sewage flows generated from existing development of the Tract are serviced by the Radnor Haverford Marple Sewer Authority (“**RHM**”) public sanitary sewer system. RHM will also serve certain other pending and proposed development of the Tract. Other future development and redevelopment of the Tract will be serviced by the Central Delaware County Authority (“**CDCA**”) with treatment of sewage flows to occur at the wastewater treatment plant owned by the Delaware County Regional Water Quality Control Authority (“**DELCORA**”). To the extent that public sewer service via CDCA and DELCORA is not readily available, the BPG Entities shall have the right to provide public sewer service for the existing and future development and redevelopment of the Tract through another sewer provider.

(1) **Public Sewer Service by RHM.** Specifically, RHM is servicing or will service the sewage flows generated from the following existing and future development and redevelopment of the Tract:

[insert list of existing and proposed structures and respective sewage flows to be serviced by RHM]

(a) The BPG Entities shall be permitted to continue to utilize RHM to service the sewage flows generated by the above existing and future development and redevelopment of the Tract. The BPG Entities shall also be permitted to maintain, increase, expand, alter, rehabilitate, lease, release, occupy, renovate, reconstruct, etc. the above existing and future development and redevelopment of the Tract using RHM as the public sewer provider.

(2) Public Sewer Service by CDCA and DELCORA. To the extent that sufficient sewer conveyance and treatment capacity is available, the BPG Entities shall use the CDCA and DELCORA public sewer system to service the future development and redevelopment of the Tract not serviced by RHM.

(a) Future Development Sewer Capacity. At this time, the BPG Entities estimate that the future development and redevelopment of the Tract to be serviced by CDCA and DELCORA will generate approximately **300,000 gallons per day (“gpd”)** of sewage flows. The Board shall allocate, reserve and make 300,000 gpd of the Township’s capacity in the CDCA/DELCORA sewer system available to the BPG Entities for the future development and redevelopment of the Tract. ???

Tapping fee/capacity charge payment ???

(b) Township Sewer System Improvements. The Township shall construct, upgrade and install all sewer conveyance improvements to

convey the sewage flows generated by the future development and redevelopment of the Tract into the CDCA/DELCORA sewer system.

(c) CDCA and other Municipalities' Sewer System Improvements. The Parties recognize that the capacity to convey the sewage flows generated by the future development and redevelopment of Tract through the CDCA sewer system to DELCORA's wastewater treatment plant is dependent upon the actions of unrelated third parties and the sewer conveyance capacity of those third parties' sewer systems. To the extent that any portion of the CDCA sewer conveyance system located in a municipality other than the Township is not capable of conveying the sewage flows generated by the future development and redevelopment of the Tract, the BPG Entities shall not be obligated to utilize the CDCA/DELCORA sewer system and shall have the right to provide public sewer service for the future development and redevelopment of the Tract through another sewer provider.

(B) Sewage Facilities Planning Module. The BPG Entities shall submit to the Township sewage facilities planning module(s) or exemption(s) ("**Planning Module**") for all or portions of the development and redevelopment of the Tract. The Township shall process the Planning Module in accordance with the applicable DEP sewage facilities planning module regulations. Within sixty (60) days of submission of a Planning Module, the Board shall approve the Planning Module and forward the approved Planning Module to DEP for its review and approval. The approved Planning Module shall attach a copy of this Agreement. If the BPG Entities submit a Planning

Module exemption, the Township shall complete, execute and process the exemption, including obtaining the signatures of the public sewer provider, within thirty (30) days of submission. Immediately thereafter, the Township shall forward the fully executed Planning Module exemption to DEP for its review and approval. The Township shall cooperate with the BPG Entities in the processing of the Planning Module by DEP, including any revisions, corrections or resubmissions thereof, and the Board shall not interfere in any manner in the BPG Entities' efforts to obtain DEP's approval of the Planning Module.

(C) **Water Quality Management Permit Applications.** To the extent required by DEP, the BPG Entities shall submit all necessary water quality management ("Part II") permit applications to the Township. The Township shall review and approve the Part II permit application(s) within sixty (60) days of submission. Immediately thereafter, the Township shall forward the approved Part II permit application to DEP for its review and approval. The Township shall also cooperate with the BPG Entities in obtaining any Part II permit approvals from CDCA or any other authority or governmental unit having jurisdiction to the extent required by DEP.

21. **BUILDING PERMITS.** Notwithstanding any provision contained in any township ordinance, rule, regulation or custom, at any time after the Final Plans have been submitted, the BPG Entities may submit building plans and the appropriate building permit application to the Township for review and approval. All building permit applications shall conform to the standards of the Pennsylvania Uniform Construction Code ("UCC") and the procedure for review and approval of all building permit applications shall be in accordance with the UCC.

22. **OCCUPANCY PERMITS.** As provided for in the UCC, the BPG Entities have the right to engage an independent Certified Building Official to inspect the construction of the buildings to be constructed in the Proposed Town Center and intends to do so. The independent Certified Building Official shall not be an employee of the BPG Entities. The BPG Entities shall pay the fees charged by the independent Certified Building Official. Within five (5) days after receipt of the written certification of a Certified Building Official that a building has been properly constructed, the Township Code Enforcement Officer shall issue an Occupancy Permit for such building. If the BPG Entities employ a Certified Building Official to inspect the buildings to be constructed on the Tract, the Township shall not charge a review fee for the issuance of occupancy permits by the Township Code Enforcement Officer, but may still impose an application fee.

23. **ADDITIONAL ACTIONS.** The Township, the Board, its Township Manager, its Zoning Officer, Code Enforcement Officer and all other Township consultants, representatives and employees shall take all such actions with regard to the Preliminary Plans, the Final Plans, the Building Plans and any other aspect of the development of the Tract as are necessary and reasonable to facilitate the prompt review of the plans in accordance with this Agreement.

24. **FEES.** With the exception of (i) tapping fees to be paid by the BPG Entities in connection with obtaining the necessary sewage capacity to serve the Tract, (ii) invoices generated by the Township Solicitor relating to the negotiation of this Settlement Agreement and/or plan review, (iii) invoices submitted by the Township Engineer, (or the Township for services by independent contractors of the Township) for plan reviews and construction inspections of improvements to be constructed pursuant to this Agreement, (iv) invoices

submitted by the Township's traffic engineer and/or landscape consultant, and (v) the Township's applicable fee(s) for the review and issuance of building permits, inspections, and use and occupancy permits, except as specifically provided in this Agreement, no other fee, cost, expense, etc. shall be imposed upon the BPG Entities in connection with any aspect of the submission, review or approval of the Preliminary Plans, Final Plans, building permits, use and occupancy permits, or any other plans or applications submitted in connection with the development of the Tract in accordance with this Agreement. It is further understood that future professional consultant expenses are to be in accordance with the standard municipal hourly rate for such consultant with itemized billings detailing time, date, place and nature of services provided.

25. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors, administrators and assigns.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Agreement shall be effective against either party unless that party shall have consented thereto in writing. Legal counsel for the Board and the BPG Entities have jointly drafted this Agreement; therefore its provisions will not be construed in favor or against the interests of either party.

27. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

28. **NOTICES.** All notices or other communications required or permitted to be

given under the terms of this Agreement shall be in writing and shall be sent by certified mail, postage prepaid or by private carrier guarantying next day delivery, addressed as follows:

(A) If to the BPG Entities, addressed as follows:

With a copy to:

Marc B. Kaplin, Esquire
Kaplin Stewart Meloff Reiter & Stein
910 Harvest Drive
P. O. Box 3037
Blue Bell, PA 19422

(B) If to Township, addressed as follows:

Newtown Township
Attention: Township Manager
209 Bishop Hollow Road
Newtown Square, PA 19073

With a copy to:

Bruce A. Irvine, Esquire
Bruce A. Irvine & Associates, P.C.
117 - 119 North Olive Street
Media, PA 19063

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

WITNESS: **BPG Real Estate Investors-Straw Party-1, L.P.**

_____ By: _____

WITNESS: **BPG Real Estate Investors-Straw Party-2, L.P.**

_____ By: _____

WITNESS:

Campus Investors 25, L.P.

By: _____

WITNESS:

Campus Investors I Building, L.P.

By: _____

WITNESS:

Campus Investors H Building, L.P.

By: _____

WITNESS:

Campus Investors D, Building, L.P.

By: _____

WITNESS:

Campus Investors Cottages, L.P.

By: _____

WITNESS:

Campus Investors Office 2B, L.P.

By: _____

WITNESS:

Ellis Preserve Owners Association, Inc.

By: _____

WITNESS:

Kelly Preserve Owners Association, Inc.

By: _____

WITNESS:

Cottages At Ellis Owners Association, Inc.

By: _____

WITNESS:

Genber/Management Campus, LLC, Berwind Property Group, Ltd., Executive Benefit Partnership Campus, L.P., Management Partnership-Benefit, Ellis Acquisition, L.P., as tenant in common

By: _____

WITNESS:

Newtown Township

By: _____

By: _____

By: _____

By: _____

By: _____