

SETTLEMENT AGREEMENT OUTLINE 7/31/08

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BACKGROUND: PARAGRAPH M

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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: PARAGRAPH 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

BACKGROUND: PARAGRAPH 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”). *(Error: Approximately 9.5 acres are in a commercial C1 District, approximately 14.5 acres are in an Industrial I District, and approximately 195 acres are in the SU-1 District).*

BACKGROUND: PARAGRAPH C

The Tract is partially developed with:

- A three-story, 131,512 square foot medical office building;
- Various cottages used for office purposes;
- Approximately 900,000 square feet of office buildings and ancillary facilities;
- A 24,000 square foot conference center;
- A 22,000 square foot fitness center.

BACKGROUND: PARAGRAPH L

The BPG Entities propose to divide BPG’s 219 +/- acres into 4 Sectors

(1) Town Center Sector

- 464,560 sq. ft – commercial/ retail/ restaurant
- 136,415 sq. ft – office
- 310 units – residential
- 120, 000 sq. ft – hotel
- 100,000 sq. ft – flexible space for office and/or hotel
(Existing offices in cottages and fitness center are not included in these areas – future changes in use shall count as footage limitations)

(2) Sector 2 – Front Lawn

400,000 sq. ft. total office space (no more than 2 buildings exclusive of parking structures)

(3) Sector 3

100 residential dwellings (provided that no more than 410 residential units on entire Tract)

(4) Sector 4 – Redevelopment Parcel

No additional square footage than currently existing in office buildings

TERMS

1. INCORPORATION OF BACKGROUND

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The entire Background of this Agreement is incorporated into 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. TOWN CENTER SECTOR DEVELOPMENT

Uses:

1. Multi-family dwellings and townhouses where residential is mixed with commercial in same building
2. Retail store(s)
3. Personal service – tailor, barber, beauty, shoe repair, spa, dressmaker and other
4. Bank or financial institution including drive – in and ATM
5. Business, administrator, executive, government, professional, sales and/or other offices
6. Indoor amusement, recreation, assembly, including movie theater
7. Restaurant, café, outdoor dining (no drive-through)
8. Grocery/ convenience store
9. Hotel or inn
10. Educational institution
11. Conference center
12. Public/ private garages & parking lots
13. Civic space - police station, municipal office, fire station, post office, EMS, transit facility
14. Playgrounds, parks, tot lots, open space
15. Health club, fitness center, indoor squash, tennis, racquetball
16. Nursery schools, daycare center
17. Accessory uses

These uses can be mixed in same buildings

- Residential uses between 10% and 50% of new total gross floor area (existing buildings excluded)
- Retail uses between 20 and 75% of new total gross floor area (existing buildings excluded)
- Other uses – remaining new gross floor area will be office/ hotel/ civic/other

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Footprints

1 building at 75,000 sq. ft.

2 buildings at 45,000 sq. ft

Others not to exceed 40,000 sq. ft

Lot size – set backs

No traditional (i.e. Twp. Ordinance) lot areas and yard set backs are required

Proposed:

- 35 ft. set back from Rt. 3 between Clyde & Winding Way
 - Buildings larger than two stories west of Winding Way to be set back 75 ft.
 - Set backs can include sidewalks and driveways
 - Buildings set back a minimum of 10 feet from curb line – can include walkways, driveways, etc.
 - Building set back a minimum of 50 ft to adjacent residential zones
 - Set backs - 250 ft. from ROW for Rt. 252 and Goshen Rd.
 - No more than 30 % of “Proposed Town Center” (does this mean Sector 1 only?) shall be occupied by buildings
-

Driveways and private streets

10-12 feet travel lanes with 7-8 ft. parallel parking lanes

Parking/ Loading

- Residential units – 1 parking garage space and a $\frac{3}{4}$ (?) off-street parking space
 - Hotels – 1 parking space/ room
 - Retail/ Commercial – 4 $\frac{1}{2}$ spaces per each 1,000 sq. ft. of gross floor area
 - Offices – 3 $\frac{1}{2}$ spaces for every 1,000 sq. ft of gross floor area
 - Space size – 9 x 18 or 10 x 18
 - Where determined, reduced parking permitted
 - On street parking permitted (unlike other areas of township) and counts as part of the parking requirements
 - Green area requirements no applicable to structured parking
-

Building Height /Dimensions

Residential

Height – 5 stories or 65 ft. plus, plus 27 ft. of gables (92 ft) (no height restriction on clock tower)

Mixed Use

Height – 5 stories or 65 ft, plus 27 ft. of gables (92 ft) (no height restriction on clock tower)

Non-Residential

Height – 4 stories or 60 ft, plus 27 ft. of gables (87 ft) (no height restriction on clock tower)

No building within 75 ft of West Chester Pike shall be greater than 60 ft. or 4 stories, plus 27 ft. of gables (87ft)

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(no height restriction on clock tower)

Design

It is difficult to determine construction, style, and layout of proposed Town Center without viewing all of the Plans which are Exhibits to the Settlement Agreement.

Exterior Lighting

Not to exceed 28 ft. above grade (interior) and not to exceed 20 ft along Rt. 3 and Rt. 252 except as otherwise to satisfy PennDot and PECO

5. CHANGES TO MASTER PLANS AND TOWN CENTER CONCEPT

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 (**“Permitted Town Center Plan Changes”**).

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.

NOTES:

Owners can make changes to Concept Plan **without** Township consent required if the changes are **“Permitted Town Center Plan Changes”**

If changes to any Plans are required by agencies, then Owners may make changes **without** Township approval, but Township engineer can participate

If **other** changes are requested by Owner, Township consent required

6. DEVELOPMENT OF SECTOR 2 (FRONT LAWN)

- Uses as in SU-1
- Building requirements as in SU-1 except: impervious coverage, minimum set backs, building height (5 stories/ 70 ft plus another 27 ft. of gables (no height restrictions for clock towers)
- No more than two buildings on Sector 2 up to 400,000 square feet
- Existing medical office building may remain or can be demolished at Owner’s sole discretion

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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 (“Permitted Sector 2 Plan Changes”).

Otherwise, changes to SECTOR 2 PLANS to be made in accordance with process as in Sector 1

8. DEVELOPMENT OF SECTOR 3 (RESIDENTIAL)

Uses

Single family detached, 2-family (?) dwelling, single family semi-detached (twins), townhouses and accessory uses (2 family dwelling not defined)

Single family (6,000-7,500 sq. ft. lots)

- No more than 3 stories
- Rear yard 15-25 feet; side yard 0-15 feet aggregate.

Townhouses, 2 family and twins

- Set backs 10 ft.
- Height not more than 3 ½ stories
- Width of unit – at least 30 ft.
- Sidewalks on at least 1 side of a residential street
- No more than 5 single family townhouses in a row

9. CHANGES TO SECTOR 3 CONCEPT PLANS

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 (“Permitted Sector 3 Plan Changes”).

Otherwise, changes to SECTOR 3 PLANS to be made in accordance with process as in Sector 1

10. DEVELOPMENT OF SECTOR 4 – (REDEVELOPMENT PARCEL)

Owner can use Sector 4 for any use allowed in SU-1

If Owner chooses to demolish (in its sole discretion) buildings in Sector 4, Owner can redevelop in any way in accord with the Master Plans and in accord with Paragraph 12 of the Settlement Agreement and the following:

- Set back from Goshen Rd. – 300 feet; minimum for adjacent properties – 50 feet
- Max. height building – 5 stories or 70 ft with an additional 27 ft. for gables (no height restriction for clock towers)
- Impervious coverage based on entire Tract

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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.**

Changes – (Could this mean another TC as in Sector 1?)

12. DEVELOPMENT CONDITIONS FOR ENTIRE TRACT:

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:

- No more than 60% gross acreage covered with impervious
- Landscape buffers along Goshen Rd. & Rt. 252
- Green space can include paving
- Pedestrian pathway system to be provided throughout Tract
- Bus shelters along Rt. 3 and 252 if SEPTA offers service
- Township's governing ordinances are modified as follows:
 1. §104-11 not all trees to be identified
 2. §104-14 minimum planting requirements replaced by this Agreement
 3. **Chapter 134 – Steep slopes requirements shall not be applied**
 4. §148-25 concerning length, width and shape of blocks does not apply
 5. §148-26 regarding lot size not applicable
 6. §148-27 street design criteria does not apply
 7. § 148 – 28 deemed satisfied - no further traffic studies required by owners
 8. §148-30 street design criteria shall not apply
 9. §148-31 driveway design criteria shall not apply
 10. §148-29 street construction specifications shall not apply
 11. §148-32 alley and street design requirements shall not apply
 12. §148-33 parking area requirement shall not apply
 13. §148-35 curbing requirements shall not apply
 14. Passive open space on Plans shall be deemed to satisfy §148-41 – the recreational land requirements

Construction of Off-Site Traffic Improvements (provided state and local permits and approvals obtained)

BPG to pay \$8.6 M for traffic improvements which it will construct including the remaining portion of the loop road in interior of Tract and make/construct and the following:

- Left turn lane eastbound Winding Way at Rt. 252
- Additional eastbound lane on Rt. 3 from College Avenue to Newtown Sq. Shopping Center
- Additional westbound lane on Rt. 3 from Newtown Sq. Shopping Center to SAP driveway
- Two additional lanes on southbound Clyde to Rt. 3
- Center turn lane along Clyde from Munger to Winding Way
- Northbound right turn lane on Bishop Hollow Rd. at Rt. 3

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- Eastbound right turn lane on Rt. 3 at Rt. 252
- Eastbound left turn lane on Winding Way at Rt. 252

If costs of improvements less than \$8.6M, BPG shall pay Township the difference. Township required to only use the funds for additional improvements on Routes 3 and 252 within 5 years or returned to BPG Entities. Owners responsible for design and obtaining permits. If additional rights-of-way or easements are needed, Owner shall attempt to obtain

If Owner cannot acquire the rights/ way or easements, Township will condemn properties and Owner will reimburse Township for all out-of-pocket costs. (In addition to \$8.6 M? – this needs to be clarified.)

14. Development in Phases

Improvements may be submitted for approval and constructed in phases.

15. Preparation of Preliminary Plans for Proposed Town Center

When Owner is ready to develop a Sector, its engineer will prepare preliminary plans in accord with the Settlement Agreement and Plans and SALDO unless they are replaced by an alternate to SALDO chosen by Owner that is “equal or better than” the Township’s ordinances. If parties don’t agree as to what is “equal or better than”, they shall request an independent engineer to resolve the dispute.

Township agrees it cannot identify “ordinances that may interfere with development of Town Center.” Therefore, it will agree that Owners need not comply with “Other Governing Ordinances” so long as Owner demonstrates that an ordinance interferes with the Town Center Standards. Board will approve the Preliminary Plans, notwithstanding non-compliance with such Other Ordinance Requirement.

16. REVIEW BY TOWNSHIP ENGINEER TOWNSHIP. Township Engineer shall issue a report

17. REVIEW BY TOWNSHIP PLANNING COMMISSION. Preliminary Plans shall be reviewed by Township Planning Commission at next regularly-scheduled meeting after Township engineer report issued.

18. Preliminary Plan Approval

If Township Engineer and Owner do not agree on preliminary plans, both will attempt to agree on the method to redesign. The Owner will make changes and resubmit revised Plans and the procedures to resolve disputes as in Paragraphs 15 and 16 Settlement Agreement shall apply. **If a dispute remains, either party may submit the controversy to an “INDEPENDENT ENGINEER” whose decision is final and binding.**

19. Final Plan Approval

Once preliminary plans approved, Owners shall obtain permits, approvals, waivers, etc. and Township will not object to any application for an Agency Permit. Changes required by Agencies shall be added to Final Plan if they comply with the Settlement Agreement. If there are disputes with respect to the Final Plans, they will be resolved by procedures in Paragraphs 15 and 16. Owners shall have the approved right to commence improvements shown on approved Preliminary Plans, upon receipt of the NPDES permit

20. Preliminary and Final Plan Approvals for Sectors 2, 3, and 4

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.

21. Proceeding with Development

Once the first building permit for any development on the Tract is issued, the **Owner’s rights to develop per**

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existing Township ordinances shall terminate and all development shall be in accord with this Agreement.

22. SEWER

- Tract to be served by public sewer and Board of Supervisors to cooperate with BPG to get DEP approval
- BPG to use RHM for existing buildings
- Future service to new buildings by CDCA & DELCORA from facilities owned and operated by the Newtown Township Sewer Authority
- If CDCA and DELCORA not available, BPG has right to provide public sewer through another sewer service provider
- Project requires 300,000 g/day
- BPG to give Township easements to supply sewer to its site and for future development of BPG site. If CDCA/ DELCORA not available, BPG not obligated to use them

23. BUILDING PERMITS

Despite the Township ordinances, at any time after Final Plans submitted, BPG may submit building plans. BPG has the right to submit permit application to an independent reviewer if it deems Township Engineer delays issuing permits

Fire Marshal has confirmed that the fire fighting apparatus designed for parking garages is an acceptable means for fire protection in the parking garages and **Owner shall provide to the Township's Fire Company, a fire fighting apparatus designed for parking garages at its expense**

24. Occupancy Permits

All buildings to be inspected by the Township inspector. If BPG thinks inspector incorrectly applies UCC standards or delays in issuing occupancy permits, BPG has right to have building inspected by an independent inspector. Within 5 days of the certification from the independent inspector, the Township code officer shall issue the occupancy permit.

25. Fees

BPG Entities to pay for all topping fees, Township solicitor's fee for negotiating the Settlement Agreement, Township engineer fees for plan review, Township fees for landscape consultant, traffic engineer, building permits, occupancy permits, etc. No other fees shall be imposed on BPG Entities in connection with the review and approval of plans, issuance of permits, etc.