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**IN RE: APPEAL OF PREIT/CORNERSTONE  
JOINT VENTURE** : **COURT OF COMMON PLEAS**  
: **CHESTER COUNTY**  
:  
: **No. 03-03903**  
: **LAND USE APPEAL**

**SETTLEMENT AGREEMENT**

This Settlement Agreement is made this 10<sup>th</sup> day of September, 2007, by **PR New Garden/CHESCO Limited Partnership and PR New Garden Limited Partnership** (collectively, "**PREIT**") and the **Board of Supervisors ("Board")** of **New Garden Township**, Chester County, Pennsylvania ("**Township**").

**BACKGROUND**

A. On October 10, 2001, an application ("**Application**") was submitted to the Board for approval of a Conditional Use to develop multiple parcels of land, comprised of approximately 182.2 acres, located adjacent to the north and south sides of Route 41, east of Sharp Road and adjacent to Sunny Dell Road ("**Initial Property**"), as a Unified Development pursuant to Article XI of the Township's Zoning Ordinance ("**Zoning Ordinance**"). The Application was accompanied by a Conditional Use Plan prepared by Chester Valley Engineers, Inc. ("**CVE**"), dated 10-10-01 ("**Conditional Use Plan**"), which depicted the development of a 467,183 square foot retail center, seventy-four (74) single-family dwellings, both of which would be located on the south side of Route 41, and a ninety-five (95) unit age-restricted residential

community, to be located on the north side of Route 41.

B. At the time the Application was filed Michael L. Pia, John J. Pia, Louis J. Pia, M&J Mushrooms, LP, Kaolin Mushroom Farms, Inc., and Michael L. Pia and John J. Pia, Trustees under Trust Agreement of 9-25-02 (collectively, the “**Pias**”) were the owners of the Initial Property and PREIT/Cornerstone Joint Venture was the equitable owner of the Initial Property. PREIT is the successor to the equitable interest in the Initial Property formerly held by PREIT/Cornerstone Joint Venture. On January 11, 2006 PREIT completed the purchase of the Initial Property from the Pias. PREIT has also acquired approximately 4.863 acres of land (“**Additional Property**”) which is contiguous to the Initial Property. The Initial Property and the Additional Property comprise a total of 187.05 +/- acres, and are more fully described on **Exhibit “A”** attached hereto and are hereinafter collectively referred to as the “**Property**”.

C. The Property is located in the Township’s Unified Development Zoning District.

D. A hearing was convened by the Board on November 29, 2001, and further hearings were conducted on the following dates: December 19, 2001, January 10, 2002, January 24, 2002, February 20, 2002, March 13, 2002, April 10, 2002, May 8, 2002, May 22, 2002, June 13, 2002, July 18, 2002, July 25, 2002, August 22, 2002, September 16, 2002, October 23, 2002, December 3, 2002, December 11, 2002, January 7, 2003 and January 14, 2003 (“**Hearings**”).

E. The record was closed on January 14, 2003.

F. The New Garden Township Planning Commission, the New Garden Township Sewer Authority (“**Authority**”), a citizens group known as NGCAOD and various individual residents participated in the Hearings.

G. On April 23, 2003, the Board issued a written decision (“**Decision**”) approving the Application (“**Approval**”). However, the Board imposed ninety-seven (97) conditions

(“**Conditions**”) on the Approval.

H. On May 14, 2003 PREIT/Cornerstone Joint Venture filed an appeal (“**Appeal**”) to the Court of Common Pleas of Chester County (“**Court**”), asserting that seventy-six (76) of the Conditions were improper, unlawful and/or constituted an abuse of the Board’s discretion (“**Contested Conditions**”).

I. On May 23, 2003, the Township intervened in the Appeal. In addition, the Authority and the Pias (the “**Intervenors**”) intervened in the Appeal.

J. Because the Pias no longer have an interest in the Property they have lost their standing to participate in the Appeal; therefore they are not parties to this Agreement.

K. PREIT has proposed to the Board an alternative plan for the development of the Property. The alternative plan is comprised of: (i) a multi-tenant retail center on the portion of the Property that is contiguous to the south side of Route 41 (“**Retail Center**”); (ii) a walkable “town center” on the portion of the Property located to the south and west of the Retail Center (“**Town Center**”); (iii) a Retail Building (convenience store) containing no more than 6,300 square feet plus no more than twelve (12) gasoline or diesel fuel dispensing pumps adjacent to the north side of Route 41 (“**Convenience Store**”); and (iv) an age-restricted residential community on the north side of Route 41 (“**Age-Restricted Community**”). The Retail Center, Town Center and Age-Restricted Community are depicted and/or described on the plan attached hereto, marked as **Exhibit “B”**, prepared by Langan Engineering, dated January 20, 2007, identified thereon as drawing SK-38, and entitled “Concept Plan” (referred to herein as the “**Concept Plan**”). The Concept Plan depicts two (2) alternative layouts for the Town Center, identified as Town Center Options A and B, and also provides a narrative description of a town center, identified as Town Center Option C.

L. PREIT has also submitted to the Board the following additional materials:

(1) A revised aerial concept plan entitled "New Garden Town Center: Concept Plan for Road Improvements" dated 6/29/07 ("**Road Improvement Plan**") prepared by Traffic Planning and Design, Inc. ("TPD"), a copy of which is attached hereto as **Exhibit "C"**. Additionally, attached hereto as Exhibit C-1 is an engineering drawing graphically depicting a temporary relocation of a connecting road between Sharp Road and Sheehan Road. Such temporary improvement/relocation must be installed contemporaneously with the widening and other improvements along Route 41, at which time the Sheehan Road and Sharp Road intersections with Route 41 shall be terminated. The construction of the permanent connection between Sharp Road and Sheehan Road shall be integrated with the site and road improvements for the age-restricted community and shall be substantially completed before the occupancy permit for the first unit in the ARC is issued. PREIT will cooperate with the Township during the PennDOT review and approval process to facilitate closing the eastern section of Sheehan Road. The Township acknowledges that PREIT does not own the entire length of Sheehan Road to be closed and that at least one property owner obtains access to such property from the said eastern section of Sheehan Road. All new road improvements shall be constructed according to PaDOT standards, specifications, and procedures. The Road Improvement Plan conceptually depicts the following improvements to the roads in the vicinity of the Property ("**Proposed Road Improvements**"):

- (a) Widening of Sunny Dell Road.
- (b) Widening of Gap-Newport Pike (Route 41).
- (c) The termination, relocation and extension of Sharp Road.

(d) Installation of a new cul-de-sac at the proposed terminus of Sharp Road.

(e) Termination of Sheehan Road and the installation of a cul-de-sac at the proposed western terminus of Sheehan Road.

(f) Installation of a traffic signal at the intersection of Sunny Dell Road and Route 41.

(g) Installation of a traffic signal at the intersection of the Sharp Road Extension and Route 41.

(h) Installation of a traffic signal at the intersection of Limestone Road and the southerly off-ramp, which provides access from Limestone Road to/from Route 41, provided that the Pennsylvania Department of Transportation (“**PennDOT**”) approves of the installation of the signal.

(i) The construction criteria applicable to Township road improvements are set forth in **Exhibit “P”** attached hereto and made a part hereof.

(j) In addition, the following road improvements shall be constructed by PREIT:

1) Installation of a closed loop traffic signal system via fiber optic interconnection to coordinate the traffic signals to be located at Route 41 and Sunny Dell Road, Route 41 and Sharp Road, and Route 41 and Limestone Road interchange. The conduit and fiber cable shall be extended to the western limit of the reconstruction along Route 41 for future interconnection of Newark Road. Traffic signal construction plans and a system plan will be submitted to the Township for review in

addition to traffic signal permit plans.

2) For the intersection of the Route 41 South ramps with Limestone Road, in the event that traffic volumes are insufficient to satisfy PennDOT traffic signal warrant requirements, PREIT will monitor (at regular time intervals, not more frequently than every two years) the intersection traffic volumes for a period of six (6) years commencing with the issuance of Certificates of Occupancy for eighty (80%) percent of the leaseable space in the Retail Center. The required monitoring will be conducted for the purposes of determining whether traffic volumes satisfy PennDOT traffic signal warrant requirements. If during the said six (6) period the traffic volumes establish compliance with PennDOT signalization warrant requirements, a traffic signal will be installed by PREIT at this intersection.

3) Improvements to Limestone Road consistent with the intent of Exhibit C; provided, however, that PennDOT may require different improvements in conjunction with the Highway Occupancy Permit.

(k) When relocated Sharp Road is constructed as provided in paragraph L. (1) above a sidewalk shall be constructed on one side of the road with a grass buffer beside the shoulder and within the Sharp Road right of way for the purposes of pedestrian and bicycle traffic extending from the sidewalks and the age-restricted community to the signal at Route 41. The foregoing pedestrian/bike facility may be constructed either beside the shoulder or next to the Sharp Road right-of-way line.

In the alternative, PREIT shall have the option of constructing an off-road trail, sufficient for pedestrian and bicycle traffic to facilitate pedestrian and bicycle traffic from the age-restricted community to Route 41.

(2) Architectural renderings prepared by CREATE, Architectural Planning & Design depicting representative appearances of buildings and amenities (similar façade appearances are referred to herein as “**Elevations**”) within the Town Center and Retail Center, which are attached hereto as **Exhibit “D”**, and architectural drawings and elevations for the Wawa, which are attached hereto as **Exhibit “D-1”**.

(3) A Conceptual Landscape Plan (“**Conceptual Landscape Plan**”) dated March 10, 2007, prepared by Seidel Planning & Design, Ltd. depicting, in schematic form, the landscaping treatment proposed within the Town Center and Retail Center, which is attached hereto as **Exhibit “E”**.

(4) A Stormwater Management Report (“**Stormwater Management Report**”) prepared by CVE dated November 21, 2006 revised February 20, 2007, which has been reviewed by the Township’s consultants. As a result of that review, a separate Conceptual Stormwater Management Plan (“**Conceptual Stormwater Management Plan**”) will govern the implementation, design and construction of stormwater-related improvements for the project. A copy of the Conceptual Stormwater Management Plan is attached hereto and incorporated herein as **Exhibit “F”**.

(5) Proposed Design Guidelines dated August 10, 2007 for the Town Center, which set forth the design objectives of the Town Center and establish specific criteria relating to architectural and design features of the 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 (“**Town Center Design Guidelines**”), which are attached hereto as **Exhibit “G”**.

(6) Proposed Design Guidelines dated August 10, 2007 for the Retail Center, which set forth the design objectives of the Retail Center and establish specific criteria relating to architectural and design features of the Town Center, including, but not limited to, building materials, signage, pedestrian walkways, sidewalks and crosswalks, and landscaping, parking and lighting (“**Retail Center Design Guidelines**”), which are attached hereto as **Exhibit “H”**.

(7) The Convenience Store (a Wawa) as referenced hereafter shall comply with design criteria, architectural and elevations generally consistent with elevations and architecture as has been approved by the Township Consultant, Thomas Comitta. The final details of such architecture and elevations have not been completed and the final elevations and architecture shall be subject to the approval of the Township’s Consultant, Thomas Comitta, which approval shall not be unreasonably withheld.

(8) The Lighting Plans for the Retail Center and Town Center shall be generally consistent with the June 19, 2007 communication from C. Stanley Stubbe (incorporated herein by reference); provided, however, that subject to Thomas Comitta’s review and approval, lighting fixtures may be installed as high as thirty (30’) feet, provided that light levels at the property lines are less than 0.5 foot candles. The final details of the Lighting Plans shall be reviewed as part of the Land Development process.

M. The Board and its consultants have reviewed (i) the Concept Plan, (ii) Road Improvement Plan, (iii) Elevations; (iv) Conceptual Landscape Plan, (v) Conceptual Stormwater

Management Plan; (vi) Town Center Design Guidelines; and (vii) Retail Center Design Guidelines (hereinafter collectively referred to as “**Concept Plans and Materials**”) and have determined that the development of the Property in the manner schematically depicted in the Concept Plans and Materials would avoid further litigation and would better serve the public’s interests than the development of the Property in accordance with the Conditional Use Plan. PREIT and the Board have agreed that, subject to the requirements, terms and conditions of this Settlement Agreement and exhibits, and in compliance with the procedures specified herein, PREIT may develop the Property in accordance with (i) the Concept Plans and Materials, (ii) the area, bulk and other dimensional criteria (“**Dimensional Criteria**”) contained in Paragraph N. of the Background to this Agreement; (iii) the Permitted Uses contained in Subparagraph N.(f) to the Background to this Agreement (“**Permitted Uses**”); (iv) the Development Conditions contained in Paragraph 5 of this Agreement (“**Development Conditions**”); and (v) the provisions of this Agreement.

N. The following are the Dimensional Criteria which shall apply to the Proposed Development and which supersede all area, bulk and dimensional requirements of the Unified Development Zone and all other requirements of the Zoning Ordinance, and which shall supersede those provisions of the Township Subdivision and Land Development Ordinance (SALDO) which are inconsistent therewith:

- (1) The Retail Center and Town Center shall be governed by the following regulations:
  - (a) Minimum lot size: 3 acres.
  - (b) Minimum lot width at street line: 150 feet.
  - (c) Minimum lot width at building line: 150 feet.

- (d) Minimum front yard: 75 feet.
- (e) Minimum side yard: 50 feet.
- (f) Minimum rear yard: 50 feet.
- (g) Maximum Building Height: 45 feet, inclusive of mechanical equipment which may be placed on the roof.
- (h) Maximum Building Coverage: 35%.<sup>1</sup>
- (i) Maximum Lot Coverage : 65%.
- (j) Signage: Shall be in accordance with the Retail Center Design Guidelines and the Town Center Design Guidelines.

(2) No portion of any structure (including the canopy) on the Convenience Store portion of the project shall be located closer than fifty feet (50') from the ultimate right-of-way line of Sheehan Road and forty (40') feet from the ultimate right-of-way line of Route 41, with no setback from any property line being less than forty (40') feet. The development and construction of the Convenience Store shall not result in a violation of the maximum 65% percent impervious coverage limitation in the Retail Center, Town Center and Convenience Store areas (combined), as currently depicted on the Plans. Development of the portion of the Property with the Convenience Store shall comply with the Township's current Stormwater Management Ordinance, New Garden Township Ordinance No. 165 ("**Storm Water Management Ordinance**").

(3) The Age-Restricted Community shall be governed by the following regulations and representations:

- (a) The number of homes will be no greater than eighty-three (83);

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<sup>1</sup> Maximum Building Coverage and Maximum Lot Coverage shall be determined by multiplying the total area of the Property, less the actual, legal rights of way of state or township roads which abut the Property, by the appropriate percentage, i.e. 35% for Maximum Building Coverage and 65% for maximum lot coverage.

their location will be in substantial conformity with the Concept Plan.

(b) The dimensional regulations imposed by Section 1104.3.B through L of the New Garden Township Zoning Ordinance in effect as of the date of this Agreement, provided, however, that the five (5) (+/-) acres of land leased to the title owner of the Hartefeld Golf Course shall be considered as constituting Open Space within the development of the Age-Restricted Community, provided that it is deed-restricted against the construction of residential buildings.

(c) The current Storm Water Management Ordinance (Chapter 165).

O. Access, Parking and Circulation. The following parking and circulation requirements shall govern the Retail Center and Town Center:

(1) Parking spaces may consist of surface parking areas or structured parking in the form of deck, garage or roof parking areas.

(2) On-street parallel parking spaces shall be permitted along Roads located in the Town Center.

(3) A minimum of 4.5 parking spaces shall be provided for each one thousand (1,000) square feet of commercial gross leasable area, or fraction thereof, contained within the Property, regardless of the specific uses contained on the Property.

(4) A minimum of one and one-half (1.5) parking spaces for each residential dwelling unit within the Town Center shall be provided in addition to the parking requirements of ¶O(3) above.

(5) Surface parking spaces and parking spaces located within a parking structure shall be at least nine feet by eighteen feet (9' x 18'). On-street parallel parking spaces shall be at least eight feet (8') by twenty-two feet (22').

(6) Roads located in the Town Center shall have a minimum of two (2) twelve foot (12') travel lanes. On-street parking bays along Roads located in the Town Center shall be a minimum of eight feet wide by twenty-two feet (8' x 22') for each space.

(7) Vertical curbing shall be installed along Roads in the Town Center and within and around parking areas.

(8) Crosswalks, which shall be handicap accessible, shall be provided at each intersection of Roads located in the Town Center as depicted in the Design Guidelines.

(9) The loading and unloading requirements of Section 200-107 of the Zoning Ordinance shall not apply, provided that loading and unloading spaces shall be of sufficient size for the intended use, and screened from view from adjacent properties and public roads.

P. The Retail Center and the Town Center may be used for the following purposes (“Permitted Uses”) and no others:

(1) Retail store/trade.

(2) Personal service establishments.

(3) Eating and/or drinking establishment providing inside and/or outside seating and service. Drive-through service for fast food restaurants is not permitted unless specific relief is granted by the Township in its sole discretion.

(4) Bakery or confectionary.

(5) Pharmacy, with or without drive-through service.

(6) Grocery store or convenience food market.

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

- (8) Health spa, dance or exercise studio.
- (9) Passive open space accessible to the public for public events and passive recreation.
- (10) Professional or business office(s).
- (11) Medical or dental office(s).
- (12) Automobile servicing but excluding (a) fuel dispensing; and (b) automotive body repair. Automobile servicing shall be permitted only in the Retail Center.
- (13) Day care center.
- (14) Post office.
- (15) Library.
- (16) Theater.
- (17) Bowling alley.
- (18) Subject to Paragraph Q. below, dwellings may be located only on the second story of buildings which contain any of the Permitted Uses. Offices may be located on either floor of the Town Center.
- (19) Accessory uses customary and incidental to the permitted uses..
- (20) Any uses which are of the same or similar character as any of the above permitted uses, if approved by the Board.

Q. In the Town Center there shall be not less than seven (7) separate retail uses or stores, and seven (7) separate buildings in a layout substantially similar to those which are presented in the Concept Plan and the Town Center Design Guidelines (**Exhibits "B" and "G"**). No one (1) retail use or building footprint shall exceed 65,000 square feet. There may be two (2)

other retail uses each of which may contain up to 30,000 square feet. All other retail uses shall not exceed 10,000 square feet for each use. The commercial use in the Town Center shall not exceed 250,000 square feet. The maximum footprint of all structures in the Town Center shall not exceed 250,000 square feet. On the second floor areas of the Town Center, there may be a combination of residential and commercial office space of up to 160,000 square feet, provided that the number of residential units shall not exceed 80.

R. Based upon the foregoing, the Board and PREIT have agreed to resolve their disputes with regard to the development of the Property and desire to set forth that agreement in this Settlement Agreement. The Authority joins in this Agreement in order to implement the terms specified herein, as agreed to by the Board.

### 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 the signing of this Agreement at its public meeting held on June 25, 2007.
3. **COURT APPROVAL.** Within five (5) days after the date of complete execution of this Agreement, the parties hereto shall file with the Court the "Joint Motion For Entry of Agreed Order" which is attached hereto as **Exhibit "I"** requesting that the Court issue an Order in the form attached hereto as **Exhibit "J" ("Order")** approving this Agreement as an Order of

the Court.

4. **AMENDMENT OF CONDITIONAL USE APPROVAL.** The Application is hereby amended by substituting the Concept Plan and Materials for the Conditional Use Plan and associated materials submitted to the Board during the Hearings. The Conditions set forth in the Board's April 22, 2003 Order are hereby stricken. The Concept Plan is understood and acknowledged to be conceptual and not a fully engineered plan. PREIT does not have tenants for all of the commercial, office or retail space depicted on the Concept Plan. Therefore, the size and configuration of the buildings in both the Town Center and the Retail Center may be changed, but the buildings will be in the approximate location as depicted on the Concept Plan. The aggregate size of the buildings will not exceed the limitations set forth in ¶5 of this Agreement. It is also acknowledged that the tenants of the Retail Center and the Town Center will change after initial occupancy and use. Redevelopment and reconfiguration of the Retail Center and the Town Center will occur and will be approved based on the procedure set forth herein.

5. **AGREEMENT GOVERNS DEVELOPMENT.** PREIT and the Board acknowledge that the development depicted in the Concept Plans and Materials are substantially different from the zoning and other development criteria contained in the Township's Zoning Ordinance. PREIT and the Board agree that this Agreement, the Concept Plans and Materials, the Dimensional Criteria and the Development Conditions shall supersede the requirements of the Zoning Ordinance and shall govern all aspects of the development, use occupancy or redevelopment of the Property, and (ii) to the extent that the provisions of the Township's Subdivision and Land Development Ordinance conflict with the terms of this Agreement, the terms of this Agreement shall govern. In lieu thereof the Property shall be

developed in accordance with the Concept Plans and Materials, Dimensional Criteria and the following Development Conditions:

(A) Retail Center Commercial Space. It is specifically agreed that no more than 490,955 square feet of commercial space shall be constructed within the Retail Center.

(B) Town Center Commercial and Residential Space. No more than 250,000 square feet of commercial space, plus combined second-floor residential dwellings (the maximum number of which dwelling units is 80) and office units, may be constructed within the Town Center. Provided however, that: (i) if the Retail Center depicted on the Final Plans (hereinafter defined) contains less than 490,955 square feet of commercial space, the number of square feet of commercial space permitted to be constructed in the Town Center may be increased by the difference between 490,955 square feet and the actual number of square feet of commercial space contained in the Retail Center, provided that such increased commercial space be permitted only on the second floor of the Town Center, thus leaving intact the maximum footprint for all structures in the Town Center at 250,000 square feet; and (ii) if the number of second-floor residential dwelling units depicted on the Final Plans is less than eight (80), then 2,000 square feet of second story office space may be substituted for each second floor dwelling unit less than eighty (80) depicted on the Final Plans

(C) Age-Restricted Community. No more than eighty-three (83) single-family detached dwellings shall be constructed in the Age-Restricted Community. The ownership and occupancy of such dwellings is to be predominately limited to persons fifty-five (55) years of age and older, pursuant to the terms authorized by the Federal Fair

Housing Act, 42 U.S.C. §3607(b)(2). Notwithstanding the foregoing, the Age-Restricted Community shall comply with the zoning and SALDO requirements in existence at the time of the submission of the original Application, subject to the provision set forth herein pertaining to considering the land used by the Hartefeld Golf Course as Open Space.

(D) Exclusion of Certain Structures from Space Calculation. The areas of buildings occupied by the Hayden House and the Barn (both of which are described herein) will not count toward the maximum square footage of commercial space figures set forth immediately above.

(E) Architectural Design. The architectural design of all commercial buildings within the Town Center shall be substantially consistent with the Elevations attached hereto as **Exhibit "D"** and the Design Guidelines (**Exhibits "G" & "H"**), subject to such revisions as are hereafter agreed to by the parties, based on the comments issued by Thomas Comitta Associates, Inc., dated August 2, 2007.

(F) Acquisition of Right-of-Way. PREIT shall use commercially reasonable efforts to acquire all easements and rights-of-way necessary to construct the Proposed Road Improvements depicted on the Road Improvement Plan and provide proof thereof to the Board.<sup>2</sup> PREIT's initial offer to acquire such real property is to be

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<sup>2</sup> In order to use "commercially reasonable efforts to acquire all easements and rights of way" necessary to construct the Proposed Road Improvements depicted on the Road Improvement Plan PREIT shall be required to take the following actions, and only the following actions:

(1) Cause the preparation of the portion of construction plans for the road improvements depicted on the Road Improvement Plan for the area where the easements and rights of way will have to be acquired ("**Easement Plans**");

(2) From the Easement Plans determine what easements and rights of way will be required to be obtained for PREIT to construct the improvements depicted on the Easement Plans;

(3) Cause the engineer who prepares the Easement Plans to prepare a drawing which accurately depicts each necessary easement and right of way, together with a metes and bounds description of the area encompassed by each necessary easement and right of way ("**Right of Way Drawing**");

consistent with an appraisal or statement of value prepared by a qualified PaDOT approved appraiser and will comply with PaDOT publication #98, "A guide for Local Public Agency Acquisition of Right of Way". In the event that PREIT is unable to acquire such easements and rights-of-way within sixty (60) days of date of first contacting the title owner or agent of such parcel, the Township will acquire such easements and rights-of-way, and PREIT will reimburse the Township for all costs, negotiated purchase price (for which PREIT'S prior approval must be obtained, but which shall not be unreasonably withheld or conditioned), condemnation awards and 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. PREIT will, at its expense, prepare all plans and other supporting information to facilitate the Township's condemnation of right-of-way necessary to complete the off-site improvements.

(G) Substantial Completion of Road Improvements.

1) All Road Improvements in the Retail Center and Town

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(4) Engage a licensed real estate appraiser to prepare an appraisal of the fair market value of each necessary easement and right of way, as depicted on the appropriate Right of Way Drawing;

(5) Provide the owner of each parcel of ground over which a necessary easement or right of way is required written notice of PREIT's intention to purchase the necessary right of way;

(6) Present to each such owner a copy of the appraisal for the necessary easement or right of way PREIT intends to purchase from such owner;

(7) Present PREIT's offer to purchase the necessary easement or right of way, which offer shall be for an amount which is at least equal to the appraised value of such necessary easement or right of way;

(8) Document in writing each negotiation and the results of such negotiation;

(9) Provide each owner 30 days to consider the PREIT's offer and to obtain his, her, or its own appraisal;

(10) If the owner obtains an appraisal prepared by a licensed real estate appraiser, such appraisal is based upon the same methodology as the PREIT appraisal, and the owner's appraiser determines that the fair market value of the necessary easement or right of way is not greater than 25% more than the fair market value determined by PREIT's appraiser, PREIT shall offer to the owner the amount determined by the owner's appraiser to be the fair market value for the necessary easement or right of way.

Center (i.e., all Road Improvements other than the Sharp Road realignment and associated installation of cul-de-sacs), as depicted on the Road Improvement Plan, or otherwise approved by PennDOT and the Township, shall be substantially complete so that they can be used by vehicular traffic at the time that the Certificate of Occupancy for the first building to be occupied in the Proposed Development is issued. No Certificate of Occupancy shall be issued unless such road construction is substantially completed. All Road Improvements in the Age-Restricted Residential Community (i.e., the Sharp Road realignment and associated installation of cul-de-sacs) will be substantially completed prior to the issuance of a Certificate of Occupancy is issued for the first home to be occupied in the Age-Restricted Community.

2) With respect to both of the obligations identified immediately above, Certificates of Occupancy will be issued if safe and efficient access to the Property is provided, but substantial completion of the pertinent Road Improvements is precluded by factors beyond the control of PREIT, such as protracted litigation pertaining to permitting of the road improvements (other than those providing direct access to the Retail Center and/or the Town Center), delays occasioned by the filing of preliminary objections or other challenges pertaining to condemnation of land necessary for the construction of Road Improvements, or similar circumstances beyond the control of PREIT. Delays occasioned by inclement weather conditions will not be considered a factor beyond the

control of PREIT.

3) Further, the Concept Plan depicts a boulevard entrance to the Town Center from Reynolds Road. Such boulevard entrance from Reynolds Road shall be removed from the Plan. The Township, in its discretion, may at land development require the Developer to install grass pavers and a gate at Reynolds Road solely for the purposes of emergency access.

4) During the preliminary and final plan approval process, PREIT will coordinate with the Transportation Management Association of Chester County with regard to providing bus stops, shelters, or other related facilities on the Property to encourage future transit service and use thereof.

5) Upon agreement of PREIT and the Board, PREIT will incorporate into the preliminary and subdivision/land development plans traffic calming measures to be installed along the limit of the improved section of Sharp Road to discourage high-speed, cut-through traffic.

(H) Sewage generated by the Proposed Development will be treated and disposed of as provided below, subject further to the terms of a separate agreement pertaining to the construction of the SSTP and installation of sewage conveyancing and treatment (“**Sewer Agreement**”) to be hereafter developed, as additional details are developed concerning the SSTP design parameters and requirements for the issuance of appropriate permitting by the Commonwealth of Pennsylvania Department of Environmental Protection (“**DEP**”):

(1) The Authority owns and operates a facility identified as the Shangri La Sanitary Sewage Treatment Plant, a/k/a, the South End Plant, which contains two lagoons, one for treatment and one for storage ("**Lagoons**") and is currently operating at a permitted treatment capacity of 104,000 gallons of sewage per day of sewage ("**gpd**"). PREIT has estimated its sanitary sewage disposal needs for the full development of the Property to be approximately 80,000 gpd. PREIT will design and construct a new mechanical sanitary sewage treatment plant ("**SSTP**"), which will have the capacity to treat 200,000 gpd in order to serve the existing users of the Shangri La facility and to provide sewage treatment for the Property, with the potential (depending upon the terms of DEP approval) that some additional capacity might be available to the Township at no additional cost to the Township..

(2) The plant design must permit expansion so that the SSTP is capable of treating 250,000 gpd, through the future installation of modules or components which enable the then-existing capacity to be utilized without interruption

(3) The detailed terms pertaining to the construction by PREIT and dedication of the SSTP to the Township will provide for reimbursement to PREIT, as provided for in the Pennsylvania Municipality Authorities Act, 53 Pa.C.S.A. §5601, *et seq.*, and specifically including 53 Pa.C.S.A. §5607(d)(31), provided, however, that such reimbursement will only occur if the SSTP treatment capacity is expanded by PREIT in order to exceed 200,000 gpd.

(4) Of the treatment capacity to be made available at the SSTP,

approximately 80,000 gpd will be allocated to PREIT. The new treatment plant will be constructed by PREIT at PREIT's sole expense to serve PREIT's approximate 80,000 gpd needs as well as the Township's existing 104,000 gpd, as well as an additional 16,000 gallons of treatment capacity. .

(5) Because PREIT will be constructing all of the treatment conveyance and disposal capacity required to treat and dispose of all of the sewage to be generated by all components of the Retail Center, Town Center, Age Restricted Community and Convenience Store it shall not be required to pay to the Township or the Authority any tapping fees for the use of any Township or Authority facilities.

Quarterly user fees will be charged beginning with the usage of the SSTP by PREIT, or its tenants, or other occupants of buildings on the Property.

Any additional capacity (estimated to be 16,000 gpd – i.e. 200,000 minus the total of 184,000 gpd for the existing plant treatment capacity and PREIT's estimated treatment requirement) shall be allocated to the Township at no expense to the Township.

(6) The location, type, technology, design and equipment shall be subject to Township and Authority review and approval, which approval shall not be unreasonably withheld, delayed or conditioned, subject to the development of an agreement pertaining to the type of mechanical treatment plant anticipated to be constructed and essential components related and accessory thereto.

(7) PREIT shall be responsible at its sole cost and expense to acquire

title to land or easement(s) for the installation of sewage storage, at PREIT's expense, for the volume of estimated treated sewage effluent to be generated by the uses of the Property ("Lagoon Area"). PREIT will not incorporate the Lagoons (i.e. the Township Lagoons) into its design for storage of the treated or untreated sewage generated by its development, but will provide other areas for such storage of the approximately 80,000 gpd that it expects to generate. The Township/Authority will be responsible to provide the area for storage of the anticipated 16,000 gpd of treatment capacity that will be allocated to the Township by the further provisions of this Agreement.

(8) PREIT shall use commercially reasonable efforts to acquire such Lagoon Area<sup>3</sup> and provide proof of such an attempt to the Board. If, after using commercially reasonable efforts to do so, PREIT is unable to acquire the Lagoon Area the Township will acquire such Lagoon Area and PREIT will reimburse the Township for all costs, negotiated purchase price (for which PREIT's prior approval must be obtained but which shall not be unreasonably withheld or conditioned), condemnation awards and out of pocket costs of acquiring the Lagoon Area including, but not limited to just compensation, legal fees, appraisal and engineering costs. PREIT will, at its expense, prepare all plans and other supporting information to facilitate the Township's condemnation of the Lagoon Area.

(9) With respect to disposal of currently existing treated sewage effluent, the Township by and through the Authority, will continue to be

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<sup>3</sup> In order to use commercially reasonable efforts to acquire such Lagoon Area PREIT shall be required to perform substantially the same tasks provided for in footnote 3 above.

responsible for storage and disposal of 104,000 gpd after completion of the SSTEP. With respect to the disposal of treated sewage effluent generated by improvements to the Property, PREIT has determined that it will be possible to dispose of approximately 95,000 to 125,000 gpd of treated effluent on the land occupied by the Hartefeld Golf Course (which is estimated to be more than adequate to handle the disposal needs of PREIT's approximately 80,000 gpd and the Township's additional 16,000 gpd) all of which disposal requirements shall be completed and paid for by PREIT. Such disposal needs are permitted on the Hartefeld Golf Course pursuant to the terms of a document entitled "*Memorandum of Understanding with Respect to Spray Irrigation in Golf Course and Open Space Lands*" ("**Spray Irrigation Memorandum**"), dated August 10, 1993, and recorded in the Office of the Recorder of Deeds of Chester County at Misc. Bk. 641, page 1529, *et seq.* PREIT has obtained preliminary agreement of the owners of Hartefeld to do so and expects to enter into a formal agreement with such owners. However if PREIT is not able to enter into a formal agreement with the owners of Hartefeld Golf Course the Township will, at PREIT's expense, enforce the terms of the Spray Irrigation Memorandum in order to enable PREIT to utilize the lands currently occupied by the Hartefeld Golf Course for disposal of treated sanitary sewage effluent. In the event disposal capacity is available in excess of 80,000 gpd, such excess up to 16,000 gpd shall be allocable to Township at no cost to the Township. The formal agreement with the owner of the Hartefeld Golf Course for the disposal of treated effluent on the Hartefeld Golf Course shall be subject to approval by the Township Solicitor, which

approval will not be unreasonably withheld, delayed or conditioned.

(10) It is presently anticipated that with the exception of the aforementioned 16,000 gpd of treated effluent that will also be disposed of on the Hartefeld Golf Course, virtually all of the treated effluent that will be disposed of on the Hartefeld Golf Course will be generated by the development of the Property. Therefore PREIT agrees that if it elects to do so, the Authority may isolate the costs associated with the operations of the disposal facility on the Hartefeld Golf Course as a separate sewer district so that such costs are charged to the users of such facilities.

(11) It may hereafter be determined that it is not feasible, cost-effective, or permissible to use land located on the Hartefeld Golf Course to dispose of some or all of the treated sewage effluent generated by the various uses and building on the Property. In this event, the Township will cooperate in PREIT's efforts to obtain any necessary approvals or permits authorizing the disposal of treated sewage effluent, through spray irrigation, sub-surface disposal, or any other methodology approved by DEP on any other land, at PREIT's sole cost and expense and further subject to a separate agreement between the Township and PREIT. It is acknowledged that any alternative method of disposal shall be subject to review and approval of the Township's Engineers, Consultants and DEP, which approval shall not be unreasonably withheld, delayed or conditioned..

(12) Township will take all reasonable and appropriate steps as may be necessary or expeditious in order to facilitate the issuance of required permits and authorization for the construction of the SSTP and disposal of treated sanitary

sewage effluent, including, but not limited to, the adoption of appropriate amendments to the Township Act 537 Plan, as contemplated and required by the Pennsylvania Sewage Facilities Act, 35 P.S. §750.1-750.20(a) (referred to as “Act 537”), the approval of planning modules, and the issuance of such other documentation as may be requested by PREIT.

(13) There is a recently discovered possibility that some or all of the sewage generated by the development of the Property may be able to be treated by the Avondale Plant, to which the Township has certain rights. If such possibility becomes a reality within the time frame required by PREIT, the Township and Township Authority and PREIT shall cooperate to determine the feasibility and cost thereof (it being noted that the force main may be inadequate to convey sewage from the Project). If it is determined that some or all of the sewage generated by the development of the Property is to be conveyed to the Avondale Plant PREIT shall pay the then current tapping fee for use of capacity in the Avondale Plant. It is also anticipated that if some or all of the sewage generated by the development of the Property is conveyed to the Avondale Plant the sewer line located at the Hewlett-Packard Facility located approximately 1200 feet from the Property may or may not be able to be used to convey such sewage .

The Proposed Development will be served by public water.

(I) The 2,910 square foot existing barn located on the Property, between Sheehan Road and Route 41 (“**Barn**”), together with the land in the immediate vicinity thereof, comprised of 3.778 acres (the “**Barn Property**”), as described in **Exhibit “K”** shall remain. A sewage transmission line will be installed by PREIT to the boundary line

of the Barn Property to serve the Barn. PREIT shall, upon completion and substantial occupancy of the Retail Center, offer to dedicate the Barn and Barn Property to the Township. If the Township does not accept dedication of the Barn and Barn Property within three (3) months after it is offered for dedication, the offer of dedication shall automatically terminate and PREIT shall have the right (but not the obligation) to adaptively re-use the Barn as retail or office space or a combination thereof for any purpose permitted herein. In the event that PREIT does not adaptively re-use the Barn as above, it shall perpetually maintain the Barn in good condition. Access to the Barn shall be limited to Sheehan Road. The Barn Property shall continue to be deemed to be open space for purposes of al area and bulk requirements contained in this Agreement.

(J) PREIT shall maintain and use commercially reasonable efforts to adaptively reuse the Hayden House for any of the uses permitted by this Agreement.

The parties' consultants have prepared, and the parties have reviewed, certain cost projections (including design, construction and land or right-of-way acquisition costs) pertaining to three (3) separate off-site roadway intersections, as well as a calculation of the percentage of traffic projected to be generated by the uses depicted on the Concept Plan. Based thereon, PREIT shall pay a proportionate contribution to the cost of offsite road improvements in the amount of \$376,564 at or prior to the issuance of the first Certificate of Occupancy for the Retail Center; provided however, that if PREIT is required by PennDOT to construct the improvements at one or more of these three off-site intersections as a condition of the issuance of a highway occupancy permit, the amount expended by PREIT to design, permit, construct and obtain approval of such

improvements shall be credited against the said \$376,564.00.<sup>4</sup> In addition, PREIT shall, at the time of Final Plan Approval and prior to the execution and delivery of Plans to PREIT, pay to the Township the sum of \$200,000.00, which may be used by the Township at its sole discretion for municipal purposes. In connection with the road work to be completed by PREIT, it is agreed that the road beds of portions of Sharp Road and Sheehan Road, which are to be abandoned in connection with construction of the new cul-de-sac road, shall be removed and restored to grass.

(K) PREIT has submitted to the Township a complete and accurate copy of its Phase I and Phase II Environmental Assessment Reports for the Property. No additional environmental site assessment will be required. In the event any environmental contamination is discovered during construction, PREIT shall immediately implement all measures necessary to remediate and prevent off-site discharge.

(L) PREIT shall request in writing, prior to any earthmoving activities, from all property owners with on-site wells within one thousand feet (1,000') of its Property on the south side of Route 41, the right to conduct water sampling of all wells to establish a base line for the quality and potability of such water. Samples shall include testing for potential contaminants as set forth on **Exhibit "L"**. Copies of test results shall be provided to the properties and Township prior to commencement of work. Upon final plan approval and prior to recording of same, PREIT shall enter into a Well Guarantee Agreement with the Township, a copy of which is attached hereto and incorporated herein as **Exhibit "M"**.

(M) All buildings within the Town Center and Retail Center shall have

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<sup>4</sup> The parties acknowledge that at a pre-HOP application meeting at PennDOT to discuss the Road Improvements PennDOT's permits manager stated that as a condition to issuing the required HOP, PennDOT will demand assurance from the Township that the said \$376,564.00 will be used to improve the area road network.

sprinkler fire protection systems, pursuant to applicable codes and regulations.

(N) Fire hydrants shall be installed within the commercial portions of the Proposed Development, at locations not more than seven hundred feet (700') apart. All fire lanes relating to commercial portions of the Proposed Development shall be appropriately painted, and proper signage shall be installed and subject to Fire Company approval.

(O) 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, including the Hartefeld residential development.

(P) All trash containers shall be screened in six foot (6') high, three-sided masonry or wood enclosures, to match the architecture of the Proposed Development, 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.

(Q) PREIT shall design all stormwater management facilities in accordance with the Conceptual Stormwater Management Plan attached hereto and incorporated herein as **Exhibit "F"**. PREIT, its successors or assigns, shall execute a Stormwater Management/Access Agreement with the Township, a copy of which is attached hereto and incorporated herein as **Exhibit "N"**, the terms of which shall require annual inspection and report by PREIT of the condition of all stormwater management facilities.

(R) If permitted by DEP and the Army Corps of Engineers, encroachment into wetlands shall be permitted but only to the extent necessary to permit the development of the Property in accordance with the Concept Plans.

(S) As reflected on the Concept Plans and materials, the areas devoted to stormwater basins will not be considered impervious coverage.

(T) Construction of improvements or disturbance of areas of steep slopes shall be permitted to the extent necessary to permit the development of the Property in accordance with the Concept Plans.

(U) Outdoor retail sale of garden goods or related product shall not be permitted in the parking area.

(V) PREIT shall provide reasonable security services for the Town Center and Retail Center during regular business hours. Such reasonable security services shall commence no later than the date on which 50% of the total square footage of the Retail Center and Town Center is occupied.

6. **PREPARATION OF PRELIMINARY PLANS.** Within one hundred and twenty (120) days after the issuance of the Order, PREIT shall cause CVE to prepare preliminary plans for the development of the Retail Center on the Property, and subdivision of the Property (such plans individually and collectively referred to herein as the “**Preliminary Plans**”) to the Board and Township Engineer in accordance with this Settlement Agreement.

(A) The Preliminary Plans shall depict (i) the subdivision and development of the portion of the Property to be developed for the Retail Center and the Age-Restricted Community in accordance with this Settlement Agreement and the layout depicted on the Concept Plans and Materials, (ii) the subdivision and development of the portion of the Property to be developed for the Town Center in accordance with (a) the layout of Town Center Option A, (b) the layout of Town Center Option B or (c) the narrative description set forth as Town Center Option C (collectively, the “**Layout**”); (iii) this Settlement

Agreement and all other portions of the Concept Plans and Materials; (iv) the Dimensional Criteria, (v) the 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 (vii) a provision or provisions of the SALDO is (are) replaced with an alternative(s) chosen by CVE 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), or (viii) the SALDO provision(s) that is (are) deviated from causes an undue hardship. (The Concept Plans and Materials, Dimensional Criteria, Development Conditions, and the Applicable SALDO Regulations are sometimes hereinafter collectively referred to as the “**Standards**”). The Board acknowledges that it is virtually impossible at this stage of the design of the subdivision and development of the Property 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 subdivision and development of the Property in accordance with the Standards, the Board will approve the Preliminary Plans even though they do not comply with every provision of the SALDO.

(B) If the Preliminary Plans depict the subdivision and development of the Property in accordance with the Standards, the Board will approve the Preliminary Plans even though they do not comply with every provision of the SALDO. The parties have identified the following SALDO provisions for which waivers are hereby approved for the Town Center and Retail Center only:

Section 613.2.B.1 as to the construction of common private driveways (The plans to be hereafter developed and approved may

depict the installation and use of a common driveway serving more than two 2) “lots or units”;

Section 614.2.B.2. as to 25% maximum slope disturbance;

Section 614.4.D.1. as to stormwater management methodology (The requirements of which are satisfied by Exhibit F, the approved Conceptual Stormwater Management Plan);

Section 618.3.B.2. as to landscaped islands;

Section 618.3.B.3. as to parking planting strips;

Section 625.1.C. as to total open space percentages;

Section 625.1.D. as to use of stormwater management facilities as open space;

Section 625.1.E. as to the dimensional criteria for open space;

Section 625.2.C. as to total open space criteria;

Section 625.2.D. as to stormwater facilities as open space; and

Section 625.2.E. as to the dimensional criteria for open space.

(C) In the event that a dispute arises as to: (i) whether an alternative chosen by CVE 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, or (ii) whether the SALDO provision that CVE intends to deviate from causes an undue hardship, PREIT and the Township shall jointly request Theodore Gacomis, 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 PREIT.

7. **REVIEW OF PRELIMINARY PLANS.** Within ten (10) days after receipt of Preliminary Plans, the Township Engineer shall issue written notification to PREIT and its engineer indicating whether the submission is considered administratively complete. Within sixty (60) days of receipt of administratively complete 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.

8. **PRELIMINARY PLAN APPROVAL.**

(A) **Approval without Modification.** If the Township Engineer’s Report indicates that the preliminary plan complies 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 must be approved conditionally.

(B) **Disputes with regard to Preliminary Plans.** If the Township Engineer’s Report indicates that the Preliminary Plan does not comply with the standards, CVE 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, CVE shall implement the agreed upon changes, resubmit the Preliminary Plans as so revised, and the procedures set forth in Paragraph 7 and 8 shall be recommenced. If the Township Engineer and CVE do not resolve the controversy with regard to any of the said deviations from the Standards within thirty (30) days of receipt by PREIT of the Township Engineer’s Report, either party may submit the controversy to the Independent Engineer pursuant to the procedure set forth in

Paragraph 3.C above. If the Independent Engineer determines that deviations from the Standards exist, PREIT 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.

9. **FINAL PLAN APPROVAL.**

(A) **Other Permits.** Promptly after approval of the Preliminary Plans, PREIT intends 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 Retail Center on the Property (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. PREIT 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 PREIT’s 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 Chester 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 PREIT obtains all of the Agency Permits, it shall deliver copies thereof to the Township. At the same time, PREIT shall cause CVE 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. When PREIT elects to proceed with the construction of the Town Center Age Restricted Community and/or the Convenience Store the same procedure shall be implemented.

(B) **Approval and Recording of Final Plans.** Within sixty (60) days after receipt of all Agency Permits and the properly prepared Final Plans, the Board shall approve the Final Plans and shall deliver to PREIT 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, PREIT 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 PREIT and its 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 Chester County at the time that financial security is posted as described below.

(C) **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 Property 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.

(D) **Execution of Improvement Agreement, Delivery of Financial Security and Payment of Fees by PREIT.** At such time as PREIT desires to commence the construction of any of the improvements depicted on the Final Plans, PREIT shall (a) sign an Improvement Agreement in a form to be agreed upon by the Township Solicitor and PREIT's 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 Improvement Agreement shall incorporate the Road and Street Design and Construction Criteria as set forth in **Exhibit "O"**, a copy of which is attached hereto and incorporated herein, and the As-Built Plan Requirements as set forth on **Exhibit "P"**, a copy of which is attached hereto and incorporated herein. The Financial Security to be posted shall include not only those improvements that are intended to be dedicated to the Township or other

governmental entity but also other improvements customarily required to be escrowed or secured by the Township, including, but not limited to, stormwater management facilities, sanitary sewers, and all appurtenances related thereto, landscaping, lighting, internal roads and parking areas not intended to be dedicated, etc. 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 Chester County, and shall immediately deliver the receipt evidencing such filing to PREIT (hereinafter referred to as the “**Receipts**”). PREIT shall have the right to construct the Proposed Development in separate phases conditioned upon Township and Chester County Conservation District approval of the phasing plans prior to recording by PREIT; 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, PREIT 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 PREIT 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.

10. **TOWNSHIP COOPERATION WITH PERMITTING AND RESERVING**

**SEWAGE TREATMENT CAPACITY.**

(A) **Township Cooperation With Permitting And Reserving Sewage Treatment Capacity.** The Board and the New Garden Township Sewer Authority (which joins in this Settlement Agreement solely for the purpose of acknowledging its intent to implement such terms hereof which are within its proper jurisdiction) shall cooperate fully and in good faith with PREIT in securing DEP approval of a planning module(s) (in multiple applications, if required) and in reserving capacity at such sewage treatment plants as may be required in order to provide sanitary sewage treatment capacity for the Proposed Development; provided, and condition that such modules and submissions are approved by the Township Sewer Consultants, which approvals shall not be unreasonably withheld, delayed or conditioned.

(B) **Planning Modules For Land Development.** PREIT shall have the right to submit "Planning Modules for Land Development" ("Planning Modules") to Township Engineer and Township Sewer Consultant, Spencer Andress, at any time after the complete execution of this Agreement. Within forty-five (45) days after receipt the Township Engineer and Township Sewer Consultant shall (i) review the Planning Modules for compliance with the applicable Township regulations and this Agreement, and (ii) deliver to PREIT written comments pertaining to the Planning Modules. If the Planning Modules are properly prepared, the Township Engineer and Township Sewer Consultant shall confirm the proper preparation of the Planning Modules, in writing, to the Board and to PREIT. If it is Township Engineer's and/or Consultant's opinion that the Planning Modules have not been properly prepared, the Township Engineer and CVE shall have ten (10) days from the date that the Township Engineer issues her opinion that

the Planning Modules have not been properly prepared to resolve their differences with regard to the content of the Planning Modules. If the Township Engineer and CVE are not able to resolve their dispute within the said ten-day period such unresolved controversy shall be referred to the Independent Engineer for resolution. Within ten (10) days after the end of the said ten-day period each party to such dispute shall present to Independent Engineer such information as it may choose. The Independent Engineer's decision shall be in writing, made within ten (10) days after receipt of such information, and 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 borne equally by the Township and PREIT. Upon resolution of such differences, Township Engineer shall confirm to the Board and PREIT, in writing, that the Planning Modules have been properly prepared. Within ten (10) days after the next regularly scheduled Board Meeting after receipt by the Board of confirmation, the Board shall approve the Planning Modules and transmit them to DEP for its review and approval. The Township shall cooperate with PREIT in the processing of the Planning Modules by DEP and the Board will not interfere in any manner in PREIT's efforts to obtain DEP's approval of the Planning Modules.

11. **BUILDING PERMITS.** Notwithstanding any provision contained in any township ordinance, rule, regulation or custom, at any time after the Final Plans have been submitted, PREIT may submit building plans and the appropriate building permit application to the Township for review and approval. Such plans shall be reviewed within twenty (20) days after the date of submission and the appropriate Township official shall issue a written report to regarding his/her comments about the building plans. PREIT may thereafter submit and

resubmit revisions to the building plans until such time as the then current version of the building plans satisfy all of the objections of the Township Code Enforcement Officer. When the building plans are in a form upon which a building permit could be issued, the Township Code Enforcement Officer shall indicate in writing to PREIT that a building permit will be issued, within ten (10) days after submission of a completed application and payment of the building permit fee, subsequent to the recording of the approved Final Plans. Any tenant, grantee or other party lawfully authorized to utilize a portion of the Property may submit an application for the issuance of a building permit, a Certificate of Occupancy, or any other municipal authorizations as may be required in order to construct, use or occupy a building.

12. **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 Proposed Development as are necessary and reasonable to facilitate the prompt review of the plans in accordance with this Agreement.

13. **MISCELLANEOUS.**

(A) **Release of Restrictive Easement.** The Board acknowledges that two separate agreements were previously entered into pertaining to a 420 acre tract of land, of which the Property is a part. The first agreement is the Spray Irrigation Memorandum. The second agreement is entitled "*Declaration of Land Development Covenants*", also dated August 10, 1993, and recorded in the Office of the Recorder of Deeds of Chester County at Misc. Bk. 641, page 1541, *et seq.* These agreements were developed in the course of Township approval of a subdivision and land development of a portion of the

original 420 acre tract currently occupied and used as Hartefeld Golf Course and residential development known as "Hartefeld". The Township is the sole beneficiary of both such agreements. The Board shall execute and release for recording a document by which both agreements will be modified so that the restrictive terms thereof do not apply to the Property, or that the development of the Property, as provided herein, is specifically authorized.

(B) **Fees.** With the exception of (i) tapping fees to be paid by PREIT if some or all of the sewage generated by the Property is conveyed to the Avondale Plant, as contemplated by this Agreement, (ii) invoices generated by the Township Solicitor and engineering, land planning and/or permitting consultants (including George Brutscher, Esq., GTS Engineering, Government Specialists, Inc., Thomas Comitta, and McMahon Associates, but not including any other consultant or lawyer) relating to the review of plans and the negotiation and development of this Settlement Agreement (which fees shall be reimbursed by PREIT to the Township as follows: (1) fifty percent (50%) thereof upon presentation of invoices to PREIT; and (2) the reimbursement of the remaining fifty percent (50%) at the time of issuance of final plan approval); (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 Township Solicitor and consultants including, but not limited to, McMahon Associates, GTS, Thomas Comitta; and (v) the Township's then 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

PREIT 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 Property in accordance with this Agreement. Without limiting the exclusions set forth herein, PREIT will not be required to pay for any fees or expenses pertaining to the Application, the conditional use hearings or the Decision pertaining to thereto. 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, and that the number of consultants attending future meetings will be limited to no more than two, unless PREIT consents to attendance by additional personnel, which consent is not to be unreasonably withheld.

(C) Notwithstanding the foregoing, PREIT shall pay a fee in lieu of land dedication for recreation equal to One Thousand Dollars (\$1,000.00) for each residential unit in the age-restricted community on the north side of Route 41. Each payment shall be made prior to the issuance of a Use and Occupancy Permit for such residence.

(D) PREIT expressly acknowledges that one of the major inducements to the Township in entering into this Settlement Agreement is PREIT's guarantee that the Town Center will be constructed generally in accordance with the Concept Plans. Upon commencement of development of the Town Center, all public improvements and other common amenities shall be completed within two (2) years from the date that development agreements are executed for the Town Center. No other use of any kind shall be permitted in the area set forth as the Town Center other than the Town Center, and until such time as the Town Center is constructed, such area must remain Open

Green Space. Such Open Green Space shall be either maintained as grass or utilized for agricultural purposes for production of hay. Such requirement that the Town Center area remain as Open Space shall be set forth in a Declaration of Restriction to be executed by PREIT and recorded at the Recorder of Deeds of Chester County, Pennsylvania, which restrictions are for the sole use and benefit of the Township and which restrictions shall be released by the Township at such time as PREIT, or its successor, proceeds with the development of Town Center.

(E) The procedures and time periods pertaining to the review and approval of the Preliminary Plans and Final Plans for the Retail Center shall govern the review, approval, securitization and recording of plans pertaining to the Convenience Store, Town Center, and Age-Restricted Community, provided that preliminary and final development (and/or subdivision) plans for the Convenience Store, Town Center, and Age-Restricted Community are to be submitted within the time period specified in ¶14. It is acknowledged that this Settlement Agreement is binding upon the parties, their heirs, successors, administrators and assigns, and, accordingly, PREIT, for itself, its successors and assigns, irrevocably agrees and commits that the Town Center will be constructed in accordance with the Concept Plans and Materials, and this Settlement Agreement.

14. **VESTED RIGHTS.** The five-year period provided for under Section 508(4)(ii) of the Municipalities Planning Code shall commence with regard to the Property when the Preliminary Plans are approved by the Board. However the vested rights period is agreed to be extended to ten (10) years, by mutual agreement of the parties.

15. **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.

16. **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 PREIT have jointly drafted this Agreement; therefore its provisions will not be construed in favor or against the interests of either party.

17. **ASSIGNMENT.** The Board recognizes that PREIT intends to convey the portion of the Property on which the Age-Restricted Community will be constructed to a home builder and that such homebuilder will be solely responsible to supply the Financial Security required in connection with the development of the Age-Restricted Community. Therefore, upon delivery to the Township of the Development Agreement and Financial Security for the Age-Restricted Community PREIT shall be automatically released from any further liability or obligation in connection with the development of the Age-Restricted Community

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

19. **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 PREIT, addressed as follows:

Christopher Mrozinski  
PREIT  
The Bellevue  
200 South Broad Street

Philadelphia, PA 19102

With a copy to:

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

(B) If to Township, addressed as follows:

New Garden Township  
Attention: Township Manager  
299 Starr Road  
Landenberg, PA 19350

With a copy to:

George A. Brutscher  
Brutscher, Foley, Milliner & Land, LLP  
213 East State Street  
Kennett Square, PA 19348

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

WITNESS: ~~PR New Garden/CHESCO Limited Partnership and L.P.~~  
By: \_\_\_\_\_

WITNESS: PR New Garden Limited Partnership  
By: \_\_\_\_\_

WITNESS: New Garden Township

*Kathy Parker*  
\_\_\_\_\_

By: *Robert Bennett*  
\_\_\_\_\_

By: *Paul Shing*  
\_\_\_\_\_

By: *NS All*  
\_\_\_\_\_

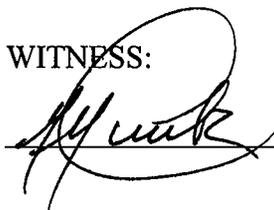
By: *Barclay Hoopes*  
\_\_\_\_\_

By: *James M. Keel*  
\_\_\_\_\_

PR NEW GARDEN/CHESCO LIMITED PARTNERSHIP

By: PR New Garden/Chesco LLC, its sole general partner  
By: PREIT Services, LLC, its non-member manager  
By: PREIT Associates, L.P., its sole member  
By: Pennsylvania Real Estate Investment Trust,  
its general partner

WITNESS:

  
\_\_\_\_\_

By:   
\_\_\_\_\_

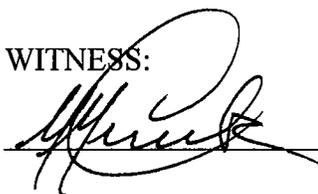
Print: Douglas Grayson

Title: Executive Vice President

PR NEW GARDEN, L.P.

By: PR New Garden LLC, its sole general partner  
By: PREIT Associates LP, its sole member  
By: Pennsylvania Real Estate Investment Trust,  
its general partner

WITNESS:

  
\_\_\_\_\_

By:   
\_\_\_\_\_

Print: Douglas Grayson

Title: Executive Vice President

**KAPLIN STEWART MELOFF REITER & STEIN, P.C.**

**By: Marc B. Kaplin, Esquire  
John J. Mahoney, Esquire  
Attorney ID Nos. 04465, 32946  
Union Meeting Corporate Center  
910 Harvest Drive, P.O. Box 3037  
Blue Bell, PA 19422  
610-260-6000**

**Attorneys for Appellants**

**IN RE: APPEAL OF PREIT/CORNERSTONE  
JOINT VENTURE**

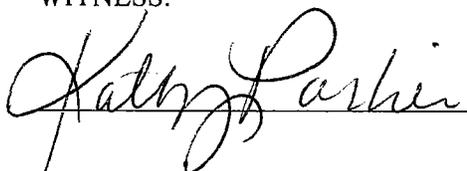
**: COURT OF COMMON PLEAS  
: CHESTER COUNTY  
:  
: No. 03-03903  
: LAND USE APPEAL**

**JOINDER OF NEW GARDEN TOWNSHIP SEWER AUTHORITY  
IN SETTLEMENT AGREEMENT**

TO THE HONORABLE JUDGES OF THE COURT OF COMMON PLEAS:

The New Garden Township Sewer Authority joins in the Settlement Agreement which has been entered into between PR New Garden Limited Partnership and PR New Garden Limited Partnership (collectively "PREIT") and the Board of Supervisors ("Board") of New Garden Township, Chester County, Pennsylvania ("Township"), and hereby acknowledges that it will implement the terms thereof, as agreed to by the Board, and further agrees that the Settlement Agreement may be incorporated by reference into a Court Order, and enforced as an order of Court.

WITNESS:

  
\_\_\_\_\_

**New Garden Sewer Authority**

By:   
\_\_\_\_\_

## EXHIBITS

*[Pagination to be updated/finalized, in execution copies of Agreement]*

Exhibit A	Metes and bounds description and/or survey of lands comprising Initial Property and Additional Property (p. 2)
Exhibit B	Concept Plans (drawing SK-38) (p. 3, 13)
Exhibit C	Road Improvement Plan (P. 4)
Exhibit D	Architectural Renderings and Elevations (p. 7, 17)
Exhibit D-1	Architectural Renderings and Elevation for Convenience Store (p. 7)
Exhibit E	Conceptual Landscape Plan (p. 7)
Exhibit F	Conceptual Stormwater Management Plan (p. 7, 27)
Exhibit G	Town Center Design Guidelines (p. 8, 13, 17)
Exhibit H	Retail Center Design Guidelines (p.8, 17)
Exhibit I	Joint Motion for Entry of Agreed Order (p. 14)
Exhibit J	Form of Order approving and incorporating terms of Stipulation (p. 14)
Exhibit K	Metes and bounds description and/or survey of lands comprising the Barn Property (p. 25)
Exhibit L	List of potential well contaminants (p. 26)
Exhibit M	Well Guarantee Agreement (p. 27)
Exhibit N	Stormwater Management/Access Agreement (p. 28)
Exhibit O	Road and Street Design and Construction Criteria (p. 5, 35)
Exhibit P	Stormwater Management As-Built Plan Requirements (p. 35)