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Attorneys for Intervener,
Good Pro Cheltenham, L.P.

IN RE: APPEAL OF WYNGATE
DEVELOPMENT HOMEOWNERS FROM
THE DECISION OF THE ZONING
HEARING BOARD CHELTENHAM
TOWNSHIP

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

No. 2014-17464

LAND USE APPEAL

STIPULATION AND SETTLEMENT AGREEMENT

This **STIPULATION AND SETTLEMENT AGREEMENT** (“Agreement”) is made and entered into this 6th day of March, 2015, by and among the parties of record in this appeal, the Wyngate Development Homeowners, Good Pro Cheltenham L.P., the Zoning Hearing Board of Cheltenham Township, and Cheltenham Township as well as JAMES A. ROSENSTEIN, ESQUIRE, attorney for Wyngate Development Homeowners (“Wyngate” or “Appellant”), the Appellant, PETER S. FRIEDMAN, ESQUIRE AND MICHAEL YANOFF, ESQUIRE, attorneys for Good Pro Cheltenham, L.P. (“Good Pro” or “Appellee”), CAROL M. LAUCHMEN, ESQUIRE, solicitor to the Zoning Hearing Board of Cheltenham Township (the “Board”), and JOSEPH M. BAGLEY, ESQUIRE, solicitor to Cheltenham Township (the “Township”).

BACKGROUND

a. Good Pro is the equitable owner of the premises consisting of 3.63± acres, having frontage on Ogontz Avenue, Limekiln Pike, MacDonald Avenue and Clubhouse Lane in Cheltenham Township, Montgomery County, Pennsylvania, as described on the attached Exhibit "A" (the "Property") and the premises consisting of approximately 3 +/- acres with frontage on Clubhouse Lane in Cheltenham Township, Montgomery County, Pennsylvania as labeled "Parcel 3B" and described on the attached Exhibit "B" ("Parcel 3B"), which is part of "Parcel 3" as shown on a certain Subdivision Plan, being sheet 1 of certain plans entitled "The Fairways at Cedarbrook Hill & Cedarbrook Apartments", prepared by Bohler Engineering, Inc., dated December 12, 2003, revised through September 30, 2004 and recorded on September 28, 2005 as Plan 25 (pages 260-272) in the Office of the Recorder of Deeds in and for Montgomery County (the "Recorder's Office").

b. Wyngate is a group of 29 residents of the Wyngate residential community development which is located directly adjacent to the Property, which is described on the attached Exhibit "C" ("Parcel 1"). The Wyngate residential community is a planned community which is approved for a total of 198 townhomes and is sometimes hereinafter referred to as the "Wyngate Townhome Community".

c. Good Pro submitted an application to the Board for approval of variances in connection with the development of the Property. The application is identified as Appeal No. 3468.

d. On or about May 12, 2014, the Board issued its Findings of Fact, Opinion and Order (the "Decision") approving the variance relief in connection with Good Pro's proposed development of the Property, a copy of which is attached as Exhibit "1."

e. On or about June 11, 2014, Wyngate filed a Notice of Land Use Appeal concerning the Decision in Appeal No. 3468 (the "Appeal").

f. On or about June 27, 2014, the Board filed an Entry of Appearance in the Appeal.

g. On or about July 1, 2014, the Township filed a Notice of Intervention in the Appeal.

h. On or about July 8, 2014, Good Pro filed a Notice of Intervention in the Appeal.

i. Good Pro, Wyngate, the Board and the Township have reached agreement on the terms of a settlement which will resolve all of the issues raised by Wyngate in the Appeal. This Agreement is entered into to confirm the agreement of the parties.

j. In order to implement several of the terms of this Agreement it will be necessary to create and impose various easements, rights, obligations and restrictions (collectively, the "New Easements") upon the Property (referred to as "Parcel 2" in the below mentioned Declaration of Easements) and Parcels 1 and 3A. Since they and the balance of Parcel 3 are already subject to a certain Declaration of Easements and Cross Easement Agreement, dated June 2, 2008, by and among Matrix CBH, L.P., a Pennsylvania limited partnership ("Matrix"), The Fairways at Cedarbrook Hills, L.P., a Pennsylvania limited partnership ("The Fairways") and the Township, recorded on June 5, 2008 in the Recorders Office, as Instrument No. 2008058865, in Deed Book 5695, at pages 295-316 (the "Declaration of Easements"), the most expeditious way to accomplish such implementation is to incorporate the New Easements into the Declaration of Easements by an amendment thereto, a draft of which is attached hereto as Exhibit "D" (the "Draft Amendment" and as it may be revised before becoming effective for one or more of the reasons described in paragraph 14 below, the "Amendment to Declaration of Easements").

k. The parties hereto agree that Wyngate Community Association, a Pennsylvania not-for-profit corporation (“Community Association”), in which the individuals and entities constituting Wyngate are members and which owns and/or will own portions of Parcel 1, Matrix and The Fairways are third-party beneficiaries to this Agreement because each of them holds equitable or legal title to some portion or portions of the Property and Parcels 1 and 3 that will be affected by the Amendment to Declaration of Easements.

TERMS OF SETTLEMENT

1. **Settlement Plan.** The parties agree to the development of the Property for a Wawa convenience food store with fuel dispensing facilities (the “Project”). However, the Project shall not include access from the Property to or from Clubhouse Lane. Accordingly, the Clubhouse Lane access depicted on the plan presented to the Board, a copy of which is attached hereto as Exhibit “E” (the “Approved Zoning Hearing Board Plan “), shall be eliminated. A copy of a plan including the elimination of such Clubhouse Lane access (the “Settlement Plan”) is attached hereto as Exhibit “F.” Further, Good Pro’s rights to use MacDonald Avenue shall be limited to the area crosshatched on the Settlement Plan. Therefore, the parties agree that the Property shall be developed in substantial conformity with the Settlement Plan and the conditions set forth in the Decision, except to the extent such conditions are modified herein.

2. **Signage.** Good Pro shall, at its own cost and expense, install the following signs and the underground electric wiring system serving them:

(a) A free-standing monument sign located on Parcel 2 in the position shown on the Settlement Plan (at the entrance to Clubhouse Lane from Limekiln Pike), the appearance of such sign being as depicted on the Clubhouse Lane Entrance Sign Plan attached hereto as Exhibit “G,” except that the lettering shall read “Wyngate Townhomes.” Such sign shall include

a light fixture so that the lettering can be seen at night. The sign shall be uniform with the sign that is currently installed near the Ross Court Homes on Route 309, but shall be approximately forty (40) to fifty (50) square feet in size, subject to code and Township approval.

(b) A free-standing monument sign located on Parcel 1 in the position shown on the Settlement Plan (on MacDonald Avenue near its intersection with Ogontz Avenue), the appearance of such sign to be as depicted on the MacDonald Avenue Sign Plan attached hereto as Exhibit "H," except that the lettering shall read "Wyngate Townhomes." Such sign shall include a light fixture so that the lettering can be seen at night. The sign shall be uniform with the sign that is currently installed near the Ross Court Homes on Route 309 but shall be approximately forty (40) to fifty (50) square feet in size, subject to code and Township approval.

(c) A sign (comparable in size and legibility to similar traffic signs) on each of MacDonald Avenue and Clubhouse Lane that reads "No Entrance to Wawa. Residents Only", one (1) of which shall be located on Parcel 1 before the exit from Ogontz Avenue onto MacDonald Avenue (to deter traffic from trying to access the Property from Ogontz Avenue via MacDonald Avenue) and the other such sign to be located on Parcel 3, before the exit from Limekiln Pike onto Clubhouse Lane (to deter traffic from trying to access the Property from Limekiln Pike). Such signs shall be located in the positions indicated on the Settlement Plan.

(d) A sign (comparable in size and legibility to similar traffic signs) on each of MacDonald Avenue and Clubhouse Lane that reads "No Parking and No Standing - Violators Will be Towed at Owner's Expense", which shall be located in the positions indicated on the Settlement Plan.

All such signage shall be subject to obtaining all necessary approvals from the Township. If approved, the signage shall be installed prior to the time that Wawa opens for business at the Property. In the event that the signage depicted on Exhibits "G" and "H" is not approved, Good

Pro shall install such free-standing signage as may be approved by the Township. In the further event that any signage described in this paragraph 2 is not approved by the Township, despite the good faith efforts of Good Pro to obtain such approval, this Agreement shall nevertheless remain in full force and effect. Community Association agrees that it shall be responsible for the maintenance, repair and/or replacement of the signage, as well as the cost of electricity to light the signage. The signage referred to in paragraphs 2(a) and (b) above and the bus shelter referred to in paragraph 3 below shall be wired by Good Pro into a new electric meter.

3. **School Bus Shelter.** Good Pro, at its own cost and expense, shall install a three-sided, transparent, walled and roofed school bus shelter with bench seating for 15 children, standing room for additional children and equipped with a light fixture. The school bus shelter shall be installed on a concrete pad with paving, together with an ancillary driveway and walkway. The appearance and type of construction of the school bus shelter shall be approved by Community Association, which approval shall not be unreasonably withheld or delayed. The school bus shelter and ancillary driveway and walkway shall be located on Parcel 3B in the area depicted on the Settlement Plan as "School Bus Shelter Easement Area"; provided, however, that Community Association reserves the option to relocate the school bus shelter to another location on Parcel 3B that is determined by Community Association to be safest for the children residing in the Wyngate Townhome Community; and further provided that such relocation occurs prior to the time that Good Pro's land development plan is approved by the Township. Such school bus shelter and its ancillary driveway and walkway shall be subject to obtaining all necessary approvals from the Township. If approved, the school bus shelter shall be completed prior to the time that Wawa opens for business at the Property. In the further event that the school bus shelter and its ancillary driveway and walkway are not approved by the Township, despite the good faith efforts of Good Pro to obtain such approval; this Agreement shall nevertheless remain

in full force effect. Good Pro agrees to assign to Community Association any and all warranties it may receive with respect to the school bus shelter and/or its ancillary driveway and walkway. Community Association agrees that it shall be responsible for the maintenance, repair and/or replacement of the school bus shelter and its ancillary driveway and walkway, as well as the metered cost of electricity to light the school bus shelter. Any advertising which may be installed on the school bus shelter shall be of a non-illuminated, non-electronic type and shall conform to all applicable Township Codes. Any compensation paid for advertising on the school bus shelter shall be paid to the Community Association.

4. **Fences:** Good Pro shall, at its own cost and expense, install a shadow-box fence along MacDonald Avenue towards Ogontz Avenue, ending at a point short of the driveway from the Property to MacDonald Avenue, at the location shown on the Settlement Plan, subject to determination by a professional traffic engineer taking into account the site triangles and other safety considerations. At its own cost and expense, Good Pro shall also install entry landscaping along the MacDonald Avenue side of the fence referred to in the foregoing sentence. An opening in the fence shall be provided allowing for a right-hand turn from the Property onto MacDonald Avenue and Ogontz Avenue, as is depicted on the Settlement Plan. In addition, Good Pro shall, at its own cost and expense, install a fence along Club House Lane towards Limekiln Pike as depicted on the Settlement Plan. The fence(s) shall be at least five feet (5') high and made of wood shadow-box fencing material. The installation of the fence(s) shall be subject to obtaining all necessary approvals from the Township. If approved, the fence(s) shall be installed prior to the time that Wawa opens for business at the Property. In the further event that the fences described above are not approved by the Township, despite the good faith efforts of Good Pro to obtain such approval, this Agreement shall nevertheless remain in full force and

effect. Good Pro agrees that it shall be responsible for the maintenance, repair and/or replacement of the fence, at its own cost and expense.

5. **MacDonald Avenue Median Strip:** In order to prevent traffic exiting the Property from turning left onto MacDonald Avenue and to prevent traffic from turning left into the Property from MacDonald Avenue, Good Pro shall, at its own cost and expense install a median strip in the center of MacDonald Avenue (on Parcel 1) as depicted on the Settlement Plan. Vehicular access from the Property onto MacDonald Avenue shall be limited to the area crosshatched on the Settlement Plan and as further described in the Amendment to Declaration of Easements, which shall be executed and recorded in the Montgomery County Recorder of Deeds' Office as provided in paragraph 14 below. The installation of the median strip shall be subject to obtaining all necessary approvals from the Township after Community Association has granted its approval, which Community Association approval shall not be unreasonably withheld or delayed. If approved, the median strip shall be installed prior to the time that Wawa opens for business at the Property. If the median strip is not approved, Good Pro shall instead install "No Left Turn" signs adjacent to its exit driveway on Parcel 2 just before its intersection with MacDonald Avenue and adjacent to MacDonald Avenue on Parcel 1 between its intersections with Ogontz Avenue and the exit driveway from the Property, prior to the time that Wawa opens for business at the Property. In the event that the median strip described above is not approved by the Township, despite the good faith efforts of Good Pro to obtain such approval, this Agreement shall nevertheless remain in full force and effect. Community Association agrees that it shall be responsible for the maintenance, repair and/or replacement of the median strip and the shaded portion of MacDonald Avenue.

6. **Parcel 3B.**

(a) Promptly after this Agreement has been fully executed and approved by the Court, Good Pro shall apply for all governmental approvals required to convey title to Parcel 3B separately from the balance of Parcel 3. If such approvals are granted, prior to the time that Wawa opens for business at the Property and subject to the provisions of paragraph 6(b) below, Good Pro shall convey (or cause the then owner of Parcel 3B to convey) to Community Association, in consideration of the sum of One and 00/100 Dollar (\$1.00), good and marketable fee simple title to Parcel 3B, by special warranty deed subject only to all rights of way, easements, agreements and restrictions of record. The date of the conveyance of Parcel 3B is herein referred to as the "Transfer Date." As such, from and after the Transfer Date, (i) Parcel 3B shall be for the exclusive use of Community Association, the owners of property in Parcel 1 and their respective invitees, (ii) Association shall be solely responsible for Parcel 3B, including (but not limited to) tax payments with respect to any subsequent time period, insurance and any and all necessary maintenance; (iii) Good Pro shall have absolutely no rights or obligations with respect to Parcel 3B and there shall be no access to or use of Parcel 3B by Good Pro after the Transfer Date, except as may be required in order to fulfill its obligations hereunder; and (iv) Community Association may make improvements to Parcel 3B at its own cost and expense, subject to obtaining any necessary approvals. Wyngate agrees that prior to the Transfer Date, Good Pro shall have the right to move dirt from Parcel 2 onto Parcel 3 during the construction of a convenience store and gasoline service station on Parcel 2, subject to any applicable governmental approvals; provided that the Bus Shelter Facilities are not adversely affected thereby; and further provided that the Owner of Parcel 2 promptly thereafter grades and seeds the portions of Parcel 3 on which such dirt is placed. Wyngate is relying on Good Pro's experience in grading, seeding and distributing the dirt from Parcel 2 onto Parcel 3B and other areas

acceptable to Matrix so as not to create a physical hazard for children residing in the Wyngate Community resulting from the grading, seeding and distributing of dirt from Parcel 2 onto Parcel 3B. All of the work described in this paragraph 6(a) shall be performed at the cost and expense of the Owner of Parcel 2, and shall be completed prior to such convenience store and gasoline service station opening for business. Upon the satisfactory completion of this work, such temporary easement shall terminate automatically, without the need for any further act or deed.

(b) In order to verify that Parcel 3B is in a condition that is acceptable to Community Association following the completion of Good Pro's movement of dirt from Parcel 2, promptly after Good Pro notifies Community Association in writing of such completion (the "Good Pro Notification"), Community Association shall have the right to cause to be conducted on that property (at its expense) either or both of a Phase I Environmental Assessment and a Phase II Environmental Assessment, each complying with ASTM standards therefor (the "Environmental Assessment(s)"), and Community Association is hereby granted a temporary easement on, over and in Parcel 3B for this purpose. Whether or not Community Association obtains the Environment Assessment(s) and regardless of the conclusions reached therein, Community Association shall also have the right to accept or reject the conveyance of Parcel 3B, which right shall be exercised by written notice to Good Pro given (i) within thirty (30) days after Community Association receives the report(s) of the Environmental Assessments, or (ii) if Community Association does not obtain the Environmental Assessments, within thirty (30) days after Community Association's receipt of the Good Pro Notification. If Community Association elects to accept the conveyance of Parcel 3B, Good Pro and Community Association shall proceed forthwith to consummate the conveyance of Parcel 3B pursuant to Paragraph 3(a) above, and Good Pro shall not be required to make any representations or warranties with respect to the environmental condition of Parcel 3B.

(c) If Good Pro is not able to obtain all governmental approvals required for the subdivision of Parcel 3B from the balance of Parcel 3 and conveyance of Parcel 3B to Community Association, notwithstanding its good faith efforts to so, or if Community Association does not agree to accept such conveyance pursuant to paragraph 6(b) above, The Fairways and/or Matrix shall grant or cause the then owner of Parcel 3B to grant to Community Association a perpetual easement to utilize the area upon which the school bus shelter and its ancillary driveway and walkway is or is to be located, which such area (subject to adjustment if required by agreement of Good Pro and Community Association) is outlined in red on the Settlement Plan and referred to as the "School Bus Shelter Easement Area."

7. **Utilities and Construction.** All work called for by this Agreement shall be performed in a good and workmanlike manner. All new power lines and other utilities to be installed by Good Pro on the Property and/or pursuant to this Agreement shall be installed underground.

8. **Insurance.** Good Pro shall use reasonable efforts to cause Wawa to add Community Association as an additional insured under Wawa's liability insurance policy; and Good Pro and its successors in title to Parcel 2 shall provide proof of insurance as required by the Declaration of Easements, as amended.

9. **Township Consent.** The Township hereby agrees that the provisions of the Amendment to Declaration of Easements do not materially affect the public interest, and therefore it does not require the consent or approval of the Township pursuant to Section 22 of the Declaration of Easements.

10. **Contribution.** In satisfaction of Condition 6 of the Decision, within thirty (30) days of the date that construction of the Wawa convenience store building commences, Good Pro shall contribute to Community Association the sum of One Hundred Fifty Thousand and 00/100

Dollars (\$150,000.00) for such uses and subject to such restrictions as Community Association may establish.

11. **Contingencies.** This Agreement is contingent upon:

(a) Approval of this Agreement and the Settlement Plan by Wawa, Inc. within forty-five (45) days of the date of this Agreement (the "Wawa Approval"); and

(b) Good Pro's receipt of a highway occupancy permit or similar document from the Pennsylvania Department of Transportation to Good Pro approving the access to and from the Property as is set forth on the Settlement Plan within one hundred eighty (180) days after the date the Township issues land development approval for the Project (the "PennDot Approval").

In the event that Good Pro does not receive the Wawa Approval within forty-five (45) days of the date of this Agreement, or, in the event that Good Pro does not receive the PennDot Approval within one hundred eighty days (180) days after the date the Township issues land development approval for the project, Good Pro shall have the right to cancel and terminate this Agreement by forwarding written notice to Wyngate, Community Association, the Board and the Township of such cancellation or termination or that it is waiving the contingencies set forth in this paragraph

11. Construction on the Project shall not commence until both contingencies have been satisfied or waived by Good Pro.

12. **Permits and Approvals.**

(a) Community Association, for itself and its members, covenants and agrees to cooperate with Good Pro, without cost or expense to Community Association, in connection with Good Pro's efforts to obtain land development approval, highway occupancy approval, and any other permits from regulatory agencies having jurisdiction over the development of the Project.

Upon request, Wyngate and/or the Community Association shall submit a letter of support to the Township or a regulatory agency having jurisdiction over the development of the Project.

(b) Neither the Settlement Plan (Exhibit "F" hereto) nor any other part of this Agreement shall relieve Good Pro and/or its successors and assigns, from compliance with the Township Subdivision and Land Development Ordinance during the land development process.

13. **Estoppel.** Upon the request of Good Pro, Wyngate shall execute and deliver to Good Pro an estoppel certificate on a form reasonably requested by Good Pro or Good Pro's lender certifying that Wyngate has no actual knowledge of: (i) any defaults by Good Pro under this Agreement or identifying any defaults of which it has knowledge, and (ii) any obligations required to be performed by Good Pro under this Agreement as of the date of the estoppel certificate, except any that are identified in the estoppel certificate. It is intended that such estoppel certificate may be relied upon by any prospective purchaser or mortgagee of any or a portion of Good Pro's interest in the Property.

14. **Cross Easement Agreement.** Although, the Draft Amendment contains the substantive provisions needed to implement many of the provisions of this Agreement, the parties hereto and those executing the Joinder hereto acknowledge that it may be necessary or desirable to revise it (in the same form as the Draft Amendment or in the form of an amended and restated Declaration of Easements) in which there will be one or more additional changes to the Declaration of Easements if and to the extent all of the parties thereto so agree or because one or more of the governmental approvals mentioned in paragraphs 2 through 6 above is not obtained or is modified. The parties hereto and to the Joinder hereto agree (a) to work in good faith to complete the Amendment to Declaration, consistently with the Draft Amendment, as expeditiously as is practicable within sixty (60) days after all of the governmental approvals mentioned in paragraphs 2 through 6 above are granted, modified or denied; (b) to execute and

acknowledge the Amendment to Declaration at least one (1) day prior to the Transfer Date; and (c) to cause it to be duly recorded in the Recorder's Office immediately prior to the time of recording of the deed for the conveyance of the Property by Matrix to Good Pro, so that it is not subordinate to any mortgage secured by the Property after such conveyance occurs.

15. **Court Approval.**

(a) Upon execution of this Agreement by the parties hereto, and entry of an Order by the Court of Common Pleas of Montgomery County (the "Court") approving this Agreement, the Appeal shall be deemed settled without prejudice to the right of any party to pursue the Appeal (or oppose the Appeal, as the case may be) in the event the contingencies set forth in Paragraph 11 are not satisfied or waived by Good Pro. In such event, Good Pro shall notify the parties of its inability to satisfy the contingency(ies) and its unwillingness to waive them; whereupon, if Wyngate wishes to pursue the Appeal, it shall notify the Court within thirty (30) days of receipt of said notice, to re-schedule the oral argument. If Wyngate fails to provide such notice to the Court, then any party to this Agreement may file a praccipe to mark the Appeal discontinued and ended with prejudice.

(b) The Court shall retain jurisdiction over the matter for purposes of enforcement of the terms of this Agreement, including (but not limited to) the specific performance of the terms of this Agreement, once the contingencies set forth in Paragraph 11 above have been satisfied or waived; provided, however, that if a dispute arises from the enforcement of Paragraphs 1 or 8 above, any party to such dispute may elect to submit it to binding arbitration as more fully hereinafter described. Within five (5) days after a party's receipt of written notice from one of the other parties hereto that such a dispute exists and that the party giving such notice wishes to resolve it through arbitration (the "Arbitration Notice"), the attorneys for the Community Association, Good Pro and Wyngate shall agree on the person to serve as the arbitrator of such

acknowledge the Amendment to Declaration at least one (1) day prior to the Transfer Date; and (c) to cause it to be duly recorded in the Recorder's Office immediately prior to the time of recording of the deed for the conveyance of the Property by Matrix to Good Pro, so that it is not subordinate to any mortgage secured by the Property after such conveyance occurs.

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(b) The Court shall retain jurisdiction over the matter for purposes of enforcement of the terms of this Agreement, including (but not limited to) the specific performance of the terms of this Agreement, once the contingencies set forth in Paragraph 11 above have been satisfied or waived; provided, however, that if a dispute arises from the enforcement of Paragraphs 1 or 8 above, any party to such dispute may elect to submit it to binding arbitration as more fully hereinafter described. Within five (5) days after a party's receipt of written notice from one of the other parties hereto that such a dispute exists and that the party giving such notice wishes to resolve it through arbitration (the "Arbitration Notice"), the attorneys for the Community Association, Good Pro and Wyngate shall agree on the person to serve as the arbitrator of such dispute, or (if they are unable to agree on the arbitrator) any party may ask the Court to appoint one. The parties to such dispute shall use their best efforts to conduct and

complete such arbitration as expeditiously as is practicable within thirty (30) days after appointment of the arbitrator. The arbitration shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association in effect at that time, as such rules may be amended by mutual consent of the parties to the arbitration; and judgment on the award rendered by such arbitrator may be entered in any court having jurisdiction thereof. The arbitrator's fees and expenses shall be borne by the parties to such dispute equally. The Township shall not be required to participate in any arbitration and will not be responsible for the payment of any arbitrator fees. A dispute arising from the enforcement of Paragraphs 1 or 8 shall not be construed to include any appeals under the Pennsylvania Municipalities Planning Code from subdivision or land development approval or denial.

(c) Upon satisfaction of all contingencies, terms and conditions stated in this Agreement, the parties shall execute and file with the Prothonotary of Montgomery County a praecipe to mark the Appeal discontinued and ended.

16. **Conflicts.** The parties agree that conditions 6, 10 and 11 of the Decision shall be of no further force and effect at such time as all contingencies under this Agreement have been satisfied or waived and building permits for the Project have been issued and are final and unappealable. To the extent that this Agreement conflicts with the Decision, this Agreement shall control. The conditions set forth in the Decision unless modified or eliminated herein shall remain in full force and effect.

17. **Township Approval.** The terms "Township approval" or "approvals from the Township" or words of similar import shall refer to the Board of Commissioners of Cheltenham Township or a department or office of Cheltenham Township. Neither the Settlement Plan nor any other part of this Agreement relieves Good Pro and/or its successors and assigns from compliance with the Township Subdivision and Land Development Ordinance during the land development process.

18. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. This Agreement may be enforced by any party hereto.

19. **Survival.** Provided that all contingencies set forth in paragraph 11 above are satisfied or waived and further provided that Good Pro and Wawa receive all permits necessary to construct the Project, all of the provisions of this Agreement shall survive the conveyance of the Property from Matrix to Good Pro.

20. **Amendments.** This Agreement may be modified or amended only by a written amendment executed by the signatories to this Agreement.

21. **Counterparts.** This Agreement may be signed in counterparts with the same force and effect as if all the parties had executed the same original of this Agreement.

IN WITNESS WHEREOF, the parties hereto, and their respective counsel, have executed this Agreement the day and year first above written.

WYNGATE DEVELOPMENT
HOMEOWNERS

Witness _____

By: _____
Name: Donna Powell

Witness _____

By: _____
Name: Angel Hall

FINEMAN KREKSTEIN & HARRIS, P.C.

By: _____
James A. Rosenstein, Esquire
Attorney for Wyngate Development
Homeowners

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM THE PRECEDING PAGE]

GOOD PRO CHELTENHAM, L.P.

By: Pinegood Cheltenham GP, LLC, its
General Partner

Witness _____

By: _____
Bruce A. Goodman, Manager

FRIEDMAN, SCHUMAN, P.C.

By: _____
Peter S. Friedman, Esquire
Attorney for Good Pro Cheltenham, L.P.

By: _____
Michael Yanoff, Esquire
Attorney for Good Pro Cheltenham, L.P.

ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP

Witness _____

By: _____
_____ [Name & title]

CAROL M. LAUCHMEN, P.C.

By: _____
Carol M. Lauchmen, Esquire
Solicitor to Zoning Hearing Board of
Cheltenham Township

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM THE PRECEDING PAGE]

CHEL'TENHAM TOWNSHIP

Witness _____

By: _____
_____ [Name & title]

WISLER PEARLSTINE, LLP

By: _____
Joseph M. Bagley, Esquire
Solicitor to Cheltenham Township

JOINDER

Intending to be legally bound, the undersigned Wyngate Community Association (on its behalf and on behalf of all its members) (the Community Association”), Matrix CBH, L.P. and The Fairways at Cedarbrook Hills, L.P. hereby agree and acknowledge that they are each third party beneficiaries of the foregoing Stipulation and Settlement Agreement (the “Agreement”) to the extent described therein and in Exhibit “D” thereto; and also hereby agree to such provisions thereof as are respectively applicable to them. Effective as of the date that the contingencies set forth in Paragraph 11 of the Agreement are satisfied or waived, the Community Association shall assume and perform all of the responsibilities and obligations of Wyngate set forth therein, and Wyngate shall have no further rights or obligations under the Agreement.

WYNGATE COMMUNITY ASSOCIATION

By: _____
William Stapleton, President

Attest: _____
Donna Powell, Secretary

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM THE PRECEDING PAGE]

MATRIX CBH, L.P.

By: Matrix/Ashbourne Management Corp., its
general partner

By: _____
Donald M. Epstein, Vice President

THE FAIRWAYS AT CEDARBROOK HILLS,
L.P.

By: Cedarbrook Fairways Development, LLC, its
general partner

By: Taylor/Epstein Investment Fund, LLC,
its sole member

By: _____
Donald M. Epstein, Member

Exhibit "1"

Zoning Hearing Board Decision

Exhibit "1"

Zoning Hearing Board Decision

**IN AND BEFORE THE ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP, PENNSYLVANIA**

**IN RE: Application of Good Pro Cheltenham, L.P.
Ogontz Avenue and Limekiln Pike
NO. 3468**

FINDINGS OF FACT, OPINION AND ORDER

I. PETITION

This matter is before the Board on the application of Good Pro Cheltenham, L.P. for property located at Ogontz Avenue and Limekiln Pike, Philadelphia, PA. Petitioner requested the following:

- a. A variance from Section 295-98, to permit the use of the property as a Wawa convenience store containing 5,585 square feet, with fueling stations;
- b. A variance from Section 295-102 for a reduction in the width of the 15 foot wide buffer along a public highway, in recognition of the existing width of the area between the proposed driveway and the Limekiln Pike right-of-way, of 11.1 feet;
- c. A variance from Section 295-101.A, to permit a canopy along Limekiln Pike to be located less than 60 feet from Limekiln Pike, at 35 feet;
- d. An interpretation under Section 295-221.B.(5)(a), or in the alternative, a variance, from Section 295-221.B(5)(a), to permit parking to be located between the building and the street;

e. A variance from Section 295-221.F, to increase the allowable parking area from the required 31 parking spaces for the proposed convenience store and fueling stations, to allow 64 parking spaces, which is in excess of the maximum parking standard;

f. A variance from Section 295.221.K.(1), to permit service and loading on the side of the proposed building, along Clubhouse Lane, in lieu of the requirement that loading be behind the building;

g. A variance from Section 295-196.A.(3), to permit five (5) internally illuminated directional signs, each containing 8.1 square feet;

h. Variances from Section 295-197.C.(1)(a), to permit:

(i) two (2) free-standing, internally illuminated, double-sided signs with LED price changer, one (1) containing 133.74 square feet with a height of 30 feet, to be located on Ogontz Avenue, and one (1) containing 99.94 square feet with a height of 25 feet, to be located on Limekiln Pike; and (ii) parallel wall signs with logo, one (1) containing 66.69 square feet, facing Limekiln Pike, and pump signs, each containing an additional 3.92 square feet, as shown on the signage plan, all of which parallel wall signs total 70.61 square feet, the total of all of which signs exceeds the maximum square footage and/or number of signs permitted;

i. A variance from Section 295-211.B.(5)(b), to permit off-street parking on a corner lot;

j. A variance from Section 295-221.C.(2)(e), to permit the width of driveway entrances along Limekiln Pike and Clubhouse Lane to be 30 feet, exceeding the maximum permitted width of 24 feet;

k. A variance from Section 295-223 of the Ordinance so as to permit the trash enclosure to be located approximately 20 feet from the rear yard setback area, a reduction of the required rear setback of 50 feet;

i. To the extent that it is determined that the right-of-way line is located on the conservation easement boundary, Applicant requests additional relief from Sections 295-102 and 295-101.A, as the setbacks may change.

The property is located in the C-1 Zoning District.

II. HEARINGS

Hearings on the subject application were held on the following dates:

July 8, 2013
July 16, 2013
August 20, 2013
September 17, 2013
October 29, 2013
November 18, 2013
December 9, 2013
February 18, 2014
March 18, 2014
April 21, 2014
May 12, 2014

The Hearings were held before Amee Farrell, Esq., Chairperson; Alan S. Gold, Vice Chairperson; Peter R. Labiak, Board Member of the Zoning Hearing Board; Solicitor at the July 8, 2013 Hearing was Neil Sklaroff, Esq.; at all other Hearings Carol M. Lauchmen, Esq. served as Solicitor for this Application.

The Hearings on July 8, 2013 and October 29, 2013 concerned procedural matters at which no evidence was presented. On April 21, 2014, the Zoning Hearing Board formally received the Proposed Findings of Fact and Conclusions of Law, through their respective

counsel, the applicant and from the Protestants, and the record was closed. On May 12, 2014, the Zoning Hearing Board made its decision on the application.

Throughout the proceedings the applicant was represented by Peter S. Friedman, Esquire and/or Michael Yanoff, Esquire. Gary Perkias, Esq. appeared at the September 17, 2013 Hearing representing a Protestant, Ethelyn Taylor. At the October 29, 2013 Hearing, Mr. Perkias entered his appearance for twenty-eight (28) additional objectors.

III. FINDINGS OF FACT

The following findings were made following competent testimony before the Board.

1. Applicant, Good Pro Cheltenham, L.P. (hereafter "Applicant"), is a limited partnership organized under the laws of the Commonwealth of Pennsylvania, having an address in care of Goodman Properties, 636 Old York Road, 2nd Floor, Jenkintown, Pennsylvania 19046 (Exh. ZHG-3).
2. Good Pro Cheltenham, L.P. is the equitable owner of the Property, having entered into an Agreement of Sale with Matrix CBH, L.P. to purchase the Property dated May 7, 2013. (N.T. 7/16/13 at 13-14, 22, 27). The Agreement of Sale is contingent upon the buyer obtaining various permits and approvals, including the zoning variances requested in these proceedings. (N.T. 7/16/13 at 27-28; Exh. A-2).
3. The subject property is vacant real estate having frontage on Ogontz Avenue, Limekiln Pike, MacDonald Avenue and Clubhouse Lane (the "Property"), comprising 3.65+ acres, which same property is known as Montgomery County Tax Map Parcel No. 31-00-17347-14-5, and is zoned C-1 Commercial under the Cheltenham

Township Zoning Ordinance (hereafter the "Zoning Ordinance") (N.T. 7/16/13, p. 4; Exh. ZHB-3).

4. Applicant seeks to develop the Property into a Wawa Convenience Store containing 5,585 square feet and 16 gasoline fueling stations to be open twenty-four (24) hours per day, seven (7) days per week (N.T. 7/16/13, p. 14; Exh. A-10).

5. In January, 2004, the Cheltenham Township Zoning Hearing Board issued a decision in Appeal Number 2985 on a variance application filed by Matrix CBH, L.P. preliminarily approving a hotel planned for the Property. The site, however, was never developed (N.T. 7/16/13, p. 18 and 30).

6. The Use Regulations for properties in a C1 Commercial Zoning District are set forth in Cheltenham Township Zoning Ordinance Section 295-98, which provides as follows:

A building may be erected or used and a lot may be used or occupied for any of the following purposes and no other:

- A. Office Building, medical clinic building, public utility office.
- B. Multiple dwelling, apartment hotel and hotel.
- C. Research laboratory, including commercial and industrial laboratory in which no commercial production is permitted, except for a pilot plant for experimentation when authorized as a special exception.
- D. Accessory use on the same lot with and customarily incidental to any of the above permitted uses. In multiple dwellings, apartment hotels and hotels, the term "accessory use" for purposes of this article shall include drug store, commissary, beauty parlor, barbershop, professional office for a lawyer, doctor, dentist, chiropractor and any other practitioner of the healing arts for humans, as licensed by the Commonwealth of Pennsylvania, flower shop, restaurant, valet service or tailor shop, but shall not include an office for the conduct of business.
- E. Any use of the same general character as any of the uses hereinbefore specifically permitted when authorized as a special exception.
- F. No use of any building, lot or premises shall be permitted which is noxious or offensive by reason of odor, dust, smoke, gas, vibration or noise.

G. Mobile home park consisting of any combination of single width or multiple width units when authorized as a conditional use by the Board of Commissioners...

7. The area surrounding the subject Property includes the partially built out Wyngate townhouse development immediately behind the site, with the 1,000 residential units Towers of Wyncote located immediately to the North of the site, a shopping center immediately to the South of the site, a Cheltenham school across Ogontz Avenue from the site, and the Cheltenham Shopping Center diagonally across Ogontz Avenue from the site (N.T. 7/16/13, p. 28; N.T. 11/18/13, p. 14-15).

8. The +/- 3.6 acre site is irregularly shaped; somewhat triangular and is bounded on all sides by roadways. Two private roads, Clubhouse Drive and MacDonald Avenue are to the west and public roads, Lincoln Pike and Ogontz Avenue to the south and east. (Exh. ZHB 7 and 8).

9. The Zoning Hearing Board has no jurisdiction over private rights related to the Property including restrictive covenants in the Deed, nor use of private roads, nor in the Wyngate Public Offering Document (Exh. A-1, A-2, and P-10). Such issues concerning private rights in the realty were raised by the Protestants, however, a Zoning Hearing Board has no authority to enforce or adjudicate private; i.e., non-public; rights in realty.

10. The owner of the Property, Matrix CBH, L.P. made marketing efforts including for permitted uses. The current listing agency, Fimeco Real Estate, was brought on by the owner in 2011. There was signage on the Property in 2007, then in 2012 (N.T. 9/17/13, p. 73, 77; N.T. 2/18/14, p. 133).

11. Applicant's experts, namely Bruce Goodman in real estate development (N.T. 7/16/13, p. 24-27); Adam Kohler in commercial real estate (N.T. 9/17/13, p. 73); and

Dennis E. Glackin in land planning (N.T. 11/18/13, p. 6-12), all opined that the Property is not suitable for any of the permitted C-1 uses given its size, irregular shape, market saturation; i.e., for office space, distance from industrial/office parks; i.e., providing no market for the uses (N.T. 7/16/13, p. 8-9; N.T. 9/17/13, p. 79-82; N.T. 11/18/13, p. 40-42; and Exh. A-16). The Zoning Hearing Board accepts these opinions.

12. Protestants' experts Leslie Smallwood Lewis, in real estate development (N.T. 12/9/13, p. 21) and Joseph McCann as hotel real estate, (N.T. 2/18/14, p. 21) opined that the Property was suitable for hotel or other permitted uses (N.T. 12/9/13, p. 24-27; N.T. 2/18/14, p. 30-31). The Board does not accept these opinions because neither expert studied the actual feasibility of a permitted use on the Property (N.T. 12/9/13, p. 37-39; N.T. 2/18/14, p. 61-63). Mr. McCann's efforts to obtain from Farneco information on the site was offered to show that Farneco didn't market the Property for hotel use. An Agreement of Sale with the Applicant had been entered into prior to said efforts of Mr. McCann (Exh. P-7, 8 and A-2).

13. The Board finds that the Property cannot be used in strict conformity with the use provisions of the Zoning Ordinance in the C-1 Zoning District.

14. The Board finds that this unnecessary hardship has not been created by the Applicant.

15. Protestants expressed their concerns about living in close proximity to gasoline underground tanks and filling pumps. There was no evidence of prior problems at Wawa facilities, nor any facilities that met government standards. Credible testimony by Susan Bratton, speaking for Wawa, detailed the safety measures to be installed and operational for the proposed fueling component were in excess of those required and that

there had been no leakage from underground storage tanks at any Wawa since 1996 when Wawa began pumping gas (N.T. 9/17/13, p. 110-117).

16. Protestants expressed concerns that the proposed use would negatively affect the quality of their Wyngate neighborhood. The Board finds three (3) facts countering this concern:

(a) While this Property has been vacant and unused for years, there are 30 built but unsold homes in the Wyngate development (N.T. 7/16/13, p. 115);

(b) A homebuilder that is now building out the townhouse development (62 lots) supports the proposed Wawa facility as an asset (Exh. A-4);

(c) In this Zoning District, the minimum green area is 40%, but the Applicant proposes 49.9%, a lesser effect on neighborhood aesthetics. Also, the building is significantly smaller than permitted. (Exh. A-10).

17. Further mitigation of a negative impact on residential neighbors is the requested variances to permit service and loading on the south side of the building, further away from Wyngate than the required behind the building placement. (Cheltenham Twp. Z.O. Section 295-221.K.(1)).

18. The variance request (Cheltenham Twp. Z.O. Section 295-101.A) to permit the canopy over the gas pumps to be 35 feet rather than 60 feet from Limekiln Pike also results in less impact to neighbors because without this relief the whole module of pumps and building would be closer to residences (N.T. 8/20/13, p. 67).

19. For better traffic access and egress for commercial sites, a 30 foot rather than 24 foot width at the driveways at Limekiln Pike and Clubhouse Lane is found to be necessary (Cheltenham Twp. Z.O. Section 295-221.C(2)(c)) (N.T. 9/17/13, p. 19-20). It should be noted that the variance relief for the Clubhouse Lane driveway is not an

endorsement of the use of the Lane; rather, it is here granted only in the event the Applicant and owner of the private roads come to an agreement per condition #7, Part IV, below.

20. The Board finds the other dimensional and parking variances to be necessary given the lot shape and surrounding road frontage; namely,

- (a) Section 295-102 for a buffer of 11.1, not 15;
- (b) Section 295-221.B(5)(a) for parking between the building and the street;
- (c) Section 295-221F to increase parking spaces from 31 required to 66;
- (d) Section 295-223 permitting the trash enclosure to be 20 feet, not 50 feet in the rear yard setback;
- (e) Section 295-221.B(5)(b) to permit off-street parking on a corner lot.

(Exh.A-10).

21. The Applicant's signage requests were amended to eliminate a back wall sign and to make smaller/lower the two pole signs. The Zoning Hearing Board finds that for the peculiarities of this Property, the variances are both necessary and reasonable.

22. The Applicant specifically approved on the record each condition made part of the Zoning Hearing Board's Order either by offering it or by affirmatively accepting when asked by the Board.

23. The Zoning Hearing Board finds that traffic congestion would not be significantly exacerbated by the proposed use. Ogontz Avenue now carries between 16,000 and 17,000 vehicles, each direction, each day. Limekiln Pike carries over 8,000 vehicles per day. Now trips, i.e., vehicles specifically making a drive to the site, rather than pass-bys who enter the site, will be approximately 50 in and 50 out on weekdays during each morning and evening peak time (Exh. A-13).

24. The Board finds that the approval of the requested variances is not contrary to the public interest based on credible expert testimony. Specifically, in reviewing the criteria of Cheltenham Twp. Z.O. Section 295-209(C):

C. In determining whether the allowance of a special exception or a variance is contrary to the public interest, the Board shall consider whether the application, if granted, will:

- (1) Adversely affect the public health, safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values and neighborhood aesthetic characteristics.
- (2) Be in accordance with the Cheltenham Township Comprehensive Plan.
- (3) Provide the required parking.
- (4) Adversely affect the logical, efficient and economical extension or provision of public services and facilities such as public water, sewers, refuse collection, police and fire protection and public schools.
- (5) Otherwise adversely affect the public health, safety, orals or welfare.

the Board finds as follows:

1. The proposed use will not negatively affect the public health, safety and welfare due to traffic, drainage, air quality, noise, natural features and neighborhood aesthetics.

If the Applicant proceeds through the Township Land Development process, issues such as storm water management will be addressed. The effect on traffic will be minimal. There will be no outside music playing from Wawa and the wall above the proposed building and the topography should help ameliorate any noise impact above that generated by traffic on Limekiln Pike and Ogontz Avenue. There was no evidence

presented regarding a diminution of residential property values nor of the intense commercial property in the immediate area.

2. The Comprehensive Plan, approved by the Township in 2005, does not specifically address the subject parcel but references it as part of a "golf community" and in conjunction with a proposed revision of the zoning ordinance and the zoning map, the subject site would be rezoned to C-2, Commercial Corridor zoning, and the proposed new zoning district would include uses such as retail stores, personal service shops, restaurants, bars, taverns, shopping centers, service stations, automotive repair shops and vehicular sales shops, none of which uses would be inconsistent with the proposed Wawa (Exh. A-16).

3. The Applicant's proposal includes parking in excess of that required by the Zoning Ordinance.

4. Public utilities are available for the site and refuse collection is private, police patrols and fire protection are already provided in this portion of the Township, which is not a remote area requiring new patrols and service, the proposed use will not generate the need to accommodate additional school-age children, and the addition of this use will generate additional tax dollars for use by the Township in providing municipal services (Exh. A-16).

5. The conditions offered and/or accepted by the Applicant mitigate the impact of the proposed use on the neighbors.

25. Rulings deferred during the Hearings are as follows:

(a) The Motion to Strike Mr. Joseph McCann's testimony is denied. He was accepted as an expert.

(b) Any and all objections to hearsay of record, not previously ruled upon are overruled.

(c) A witness; Miss Lehman Draving, sought party status. She lives in Abington Township. Her request for party status is denied.

(d) Mr. Earl Stamm, also sworn as a witness, lives at 209 Ribbie Road in Wyncote, is also denied party status because he is not an immediate neighbor.

IV. DISCUSSION

A. Evidentiary Rulings:

The Zoning Hearing Board overruled all outstanding hearsay objections and overruled the request to strike the testimony of one of the Protestant's expert.

Pennsylvania Municipalities Planning Code Section 908, 53 P.S. Section 10908 provides that the Zoning Hearing Board "shall conduct hearings and make decisions in accordance with the following requirements...(6) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded."

The Board has broad discretion to accept evidence and testimony and to weigh such.

B. Variance requests:

Section 910.2 of the Municipalities Planning Code, 53 P.S. Section 10910.2, provides in part as follows:

The Board may grant a variance provided the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the

provisions of the zoning ordinance in the neighborhood or district in which the property is located;

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

(3) That such unnecessary hardship has not been created by the appellant;

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue."

To show unnecessary hardship an Applicant must prove that either: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) the property can be confirmed for a permitted use only at a prohibitive expense; or (3) the property is valueless for any purpose permitted by the zoning ordinance. SPC Co., Inc. v. Zoning Bd. Of Adjustment of the City of Phila., 773 A.2d 209 (Pa. Cmwlth.2001).

Here, the Applicant presented the requisite hardship for the grant of the use variances. Not only is the subject property irregularly shaped, it is bounded on all sides by roads both public and private. The property has been vacant for an unknown amount of time. The owner received permission to construct a hotel, a permitted C-1 use, over ten (10) years ago, but nothing was built. The owner has marketed the property for years to no avail. The Board thus concludes that the property has no value for any permitted use.

The Protestants' experts opined that the property could be used for at least several of the permitted uses. The Board, however, gave more weight to the Applicant's experts who

delineated why the site would not be developed for each of the uses listed as permitted in C-1. The reasons given were primarily site specific as to size and location.

The Board further finds that the hardship was not self-imposed. The Applicant did not alter the use of the subject parcel. The fact that the property has not been developed nor sold for a permitted use is not the Applicant's doing. Further, Applicant's knowledge of existing zoning restrictions does not constitute self-inflicted hardship. Bernotas v. Zoning Hearing Bd. Of City of Bethlehem, 68 A.3d 1042, Cmwlth. 2013.

As stated in our Findings of Fact, the Board finds that the variances will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

The zoning district is commercial (C-1) and there is intense commercial use south and east of the site. There is a partially build out townhome development to the north of the site where most of the Protestants live. There are built but not sold homes in this development (Wyngate). The Protestants offered no evidence that the proposed use would have negative market value impact on their homes nor the yet unsold homes. However, there was evidence that the residential developer now building out Wyngate believed the proposed use as a Wawa with fueling pumps would be an asset to the community.

The Board finds further that the proposed use is not detrimental to the public welfare. The design of the site with the retaining wall, topped by another wall, the lighting and landscaping all minimize the appearance and impact on the residential neighbors. Traffic intersections in the area are already congested and won't be significantly worsened by the proposed use. Most vehicles using the site will be part of the heavy traffic on Ogontz

(Rt. 309). Applicant's traffic expert opined that approximately fifty (50) vehicles per a.m. and per p.m. peak hours would not be part of the already existing traffic, but rather would be making the Wawa the destination. Neither side presented any evidence how that number compared to destination trips that would be generated by a hotel or other permitted use. The Applicant, by its testimony and by this Order, is bound to safety standards that exceed current state and federal requirements regarding fuel storage and pumping.

With regard to the fifth criterion, the Board notes that the proposed plan exceeds the minimum forty (40%) percent green area by almost ten (10%) percent and the building is much smaller than permitted.

Finally, the Board imposed conditions, many of which were proposed by the Applicant and all were accepted by the Applicant. Each of these minimizes the impact of the proposed use on the residential neighbors.

Having found that the Applicant is entitled to the use variance, the Board also grants the dimensional and parking variances requested, with the exception of the Applicant's request "to the extent that it is determined that the right-of-way line is location on the conservation easement boundary, Applicant requests additional relief from Sections 295-102 and 295-101.A, as the setbacks may change", and that request is too broad to approve.

Variances to Section 295-102, Section 295-221.B.(5)(a) and (b) and Section 225-223 were necessitated either by the irregular lot shape and by the site being bound on all sides by roadways.

Variances to Section 295-221.F, Section 295-221.K.(1), Section 295-196.A.(3), Section 295-197.C.(1)(a), and Section 295-221.C.(2)(c) are necessary for traffic safety and circulation.

The variance to Section 295-101.A is necessary to minimize the impact on the residential neighborhood by moving the building forward.

V. ORDER

WHEREFORE, on May 12, 2014, the Cheltenham Township Zoning Hearing Board votes to grant relief to the Applicant subject to conditions. The following variances were granted:

- a. A variance from Section 295-28, to permit the use of the property as a Wawa convenience store containing 5,585 square feet, with fueling stations;
- b. A variance from Section 295-102 for a reduction in the width of the 15 foot wide buffer along a public highway, in recognition of the existing width of the area between the proposed driveway and the Limekiln Pike right-of-way, of 11.1 feet;
- c. A variance from Section 295-101.A, to permit a canopy along Limekiln Pike to be located less than 60 feet from Limekiln Pike;
- d. A variance from Section 295-221.B(5)(a), to permit parking to be located between the building and the street;
- e. A variance from Section 295-221.F, to increase the allowable parking area from the required 31 parking spaces for the proposed convenience store and fueling stations, to allow 64 parking spaces, which is in excess of the maximum parking standard;
- f. A variance from Section 295.221.K.(1), to permit service and loading on the side of the proposed building, along Clubhouse Lane, in lieu of the requirement that loading be behind the building;
- g. A variance from Section 295-196.A.(3), to permit five (5) internally illuminated directional signs, each containing 8.1 square feet;

h. Variances from Section 295-197.C.(1)(a), to permit:

(i) two (2) free-standing, internally illuminated, double-sided signs with LED price changer, one (1) containing 133.74 square feet with a height of 30 feet, to be located on Ogontz Avenue, and one (1) containing 99.94 square feet with a height of 25 feet, to be located on Limekiln Pike; and (ii) parallel wall signs with logo, one (1) containing 66.69 square feet, facing Limekiln Pike, and pump signs, each containing an additional 3.92 square feet, as shown on the signage plan submitted as Exhibit ZHB-9, all of which parallel wall signs total 70.61 square feet, the total of all of which signs exceeds the maximum square footage and/or number of signs permitted by this Section of the Zoning Ordinance;

i. A variance from Section 295-211.B.(5)(b), to permit off-street parking on a corner lot;

j. A variance from Section 295-221.C.(2)(c), to permit the width of driveway entrances along Limekiln Pike and Clubhouse Lane to be 30 feet, exceeding the maximum permitted width of 24 feet; and

k. A variance from Section 295-223 of the Ordinance so as to permit the trash enclosure to be located approximately 20 feet from the rear property line at MacDonald Avenue, within the required 50 foot rear yard setback.

This grant of relief is not a waiver of any provision of the Cheltenham Township Zoning Ordinance not specifically addressed in this decision.

The above variances are granted subject to each and every of the following conditions:

(1) The evergreen screen as shown on the proposed view in Applicant's Exhibit A-3 will be planted at a minimum of 10 to 12 feet in height at the time of planting.

(2) In addition to the evergreen screen noted above, the Applicant will also plant a landscape buffer, specifically including trees in a form and layout as approved by the Township Zoning Officer on the neighbors' side of MacDonald Lane if, in fact, the neighbors and the HOA agree to such planting.

(3) All light standards on the property would be a maximum of 20 feet in height.

(4) The top of the fence at the rear retaining wall will also be no greater than 20 feet above finish grade.

(5) All Limekiln Pike improvements will be at the expense of the Applicant, that the Township will be involved in the PennDOT approval process so that Township concerns related to those improvements can also be addressed.

(6) With respect to the existing three acres of open space that is across Clubhouse Lane from the proposed Wawa, if the HOA can agree on a community use for the acreage, Applicant agreed to pay to install those improvements and to support the ongoing maintenance of those improvements until 198 units are completed at Wyngate and that that improvement and maintenance contribution is capped at \$150,000.

However, irrespective of whatever improvements may or may not ultimately be agreed upon by the Applicant and the HOA, Applicant did agree at a minimum that they would relocate the existing school bus stop and install sidewalk as was shown on its exhibits, if in fact Applicant gains access to the private roads.

(7) The approval of the plan is not conditioned upon Applicant having access as shown on Clubhouse Lane and MacDonald Avenue, that if the Applicant cannot establish its right to use the private roads or otherwise reach agreement with the party controlling the private roads, the project can be developed by access only along Ogontz and Limekiln,

provided the Applicant procures, obviously, all required Penn DOT and Township approvals.

(8) Irrespective of how that above condition is resolved, if, in fact, the Applicant can procure full access at Limekiln Pike through the PennDOT HOP process, the Applicant will eliminate the Clubhouse Lane access.

(9) If the Applicant does secure use of the private roads, the MacDonald Avenue driveway will be a right-out, egress-only driveway.

(10) If the Applicant does secure use of the private roads, the exit from the Wawa onto Clubhouse Lane will be left turn only and will be properly signed as such.

(11) If the Applicant does secure use of the private roads, Applicant at its expense will add "no stopping" and "no idling" signs of the type and at the locations as required by the zoning officer along those private roads.

(12) Applicant, at its sole expense, will improve pedestrian access at Limekiln and Ogontz, the scope of which will be determined during land development.

(13) There will be no deliveries and no trash pick-up between the hours of 10:00 p.m. and 6:00 a.m.

(14) All truck deliveries and trash pick-up will be via the Ogontz and/or Limekiln Pike driveways.

(15) The fuel delivery and storage systems will at a minimum be as described in the testimony, which was described as being in excess of current state and federal standards.

(16) If required by the Township Police Department, additional exterior cameras will be added to the building.

- (17) There will be no advertising ^{or} in the windows between the counter and the canopy.
- (18) There will be no music outside of the building or under the canopy.
- (19) There will be no T.V. monitors at the pumps.
- (20) If the HOA designates a representative to receive notification of emergencies, Wawa will contact that designated residence, should any emergencies arise.

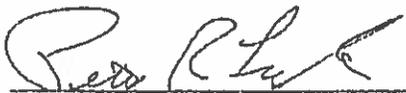
CHELTHENHAM TOWNSHIP ZONING HEARING BOARD



AMEE FARRRELL, CHAIR



ALAN S. GOLD, VICE CHAIR AND SECRETARY



PETER R. LABIAK, MEMBER

Exhibit "A"

The Property

LEGAL DESCRIPTION OF PARCEL 2

BEGINNING AT A POINT, A CORNER OF PARCEL 1 ON THE WESTERLY SIDE OF LIMEKILN PIKE; THENCE, ALONG SAID ROAD THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1. SOUTH 06 DEGREES 07 MINUTES 00 SECONDS EAST, 148.20 FEET TO A POINT;
2. SOUTH 14 DEGREES 08 MINUTES 30 SECONDS WEST, 605.55 FEET TO A POINT, A CORNER OF PARCEL 3;

THENCE, ALONG PARCEL 3 THE FOLLOWING COURSES AND DISTANCES:

1. NORTH 75 DEGREES 51 MINUTES 30 SECONDS WEST, 10.91 FEET TO A POINT;
2. ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 65.00 FEET, THE CHORD OF WHICH BEARS NORTH 40 DEGREES 49 MINUTES 26 SECONDS WEST FOR A DISTANCE OF 74.63 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 79.49 FEET TO A POINT;
3. NORTH 05 DEGREES 47 MINUTES 22 SECONDS WEST, 24.48 FEET TO A POINT;
4. ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 110.00 FEET, THE CHORD OF WHICH BEARS NORTH 30 DEGREES 01 MINUTES 01 SECONDS WEST FOR A DISTANCE OF 90.28 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 93.03 FEET TO A POINT;
5. NORTH 54 DEGREES 14 MINUTES 41 SECONDS WEST, 30.38 FEET TO A POINT;
6. ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 240.00 FEET, THE CHORD OF WHICH BEARS NORTH 34 DEGREES 48 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 159.68 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 162.78 FEET TO A POINT;
7. NORTH 15 DEGREES 23 MINUTES 01 SECONDS WEST, 89.83 FEET TO A POINT;
8. ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 25.00 FEET, THE CHORD OF WHICH BEARS NORTH 25 DEGREES 28 MINUTES 07 SECONDS EAST FOR A DISTANCE OF 32.71 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 35.65 FEET TO A POINT, A CORNER OF PARCEL 1;

THENCE, ALONG PARCEL 1 THE FOLLOWING COURSES AND DISTANCES:

1. ALONG A REVERSE CURVE TO THE LEFT, WITH A RADIUS OF 260.00 FEET, THE CHORD OF WHICH BEARS NORTH 42 DEGREES 15 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 211.97 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 218.33 FEET TO A POINT;
2. ALONG A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 259.81 FEET, THE CHORD OF WHICH BEARS NORTH 48 DEGREES 01 MINUTES 17 SECONDS EAST FOR A DISTANCE OF 258.35 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 270.39 FEET TO A POINT;
3. ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 25.00 FEET, THE CHORD OF WHICH BEARS SOUTH 54 DEGREES 08 MINUTES 34 SECONDS EAST FOR A DISTANCE OF 37.17 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 41.91 FEET TO THE POINT OF BEGINNING.

CONTAINING: 158,324 SQUARE FEET OR 3.63 ACRES OF LAND, MORE OR LESS.

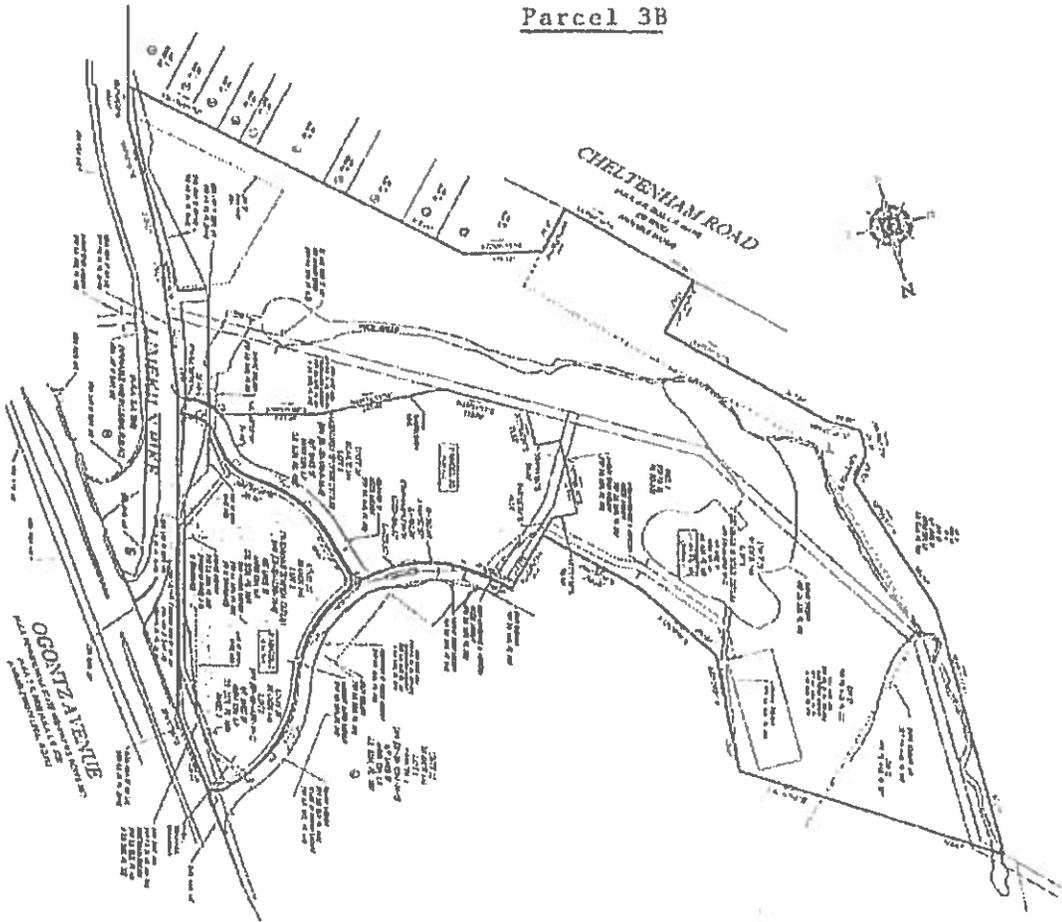
Exhibit "B"

Parcel 3B

[Legal Description or Bohler Subdivision Plan]

Exhibit "B"

Parcel 3B



CHELTENHAM TOWNSHIP DEVELOPMENT APPLICATION NO. 123456789

SCALE
1" = 100'

DATE: 11/15/2023
DRAWN BY: J. BOHLER
CHECKED BY: J. BOHLER
APPROVED BY: J. BOHLER

ADJACENT PARCELS

Parcel No.	Owner Name	Address
100	John Doe	100 Main St
101	Jane Smith	101 Main St
102	Bob Johnson	102 Main St
103	Alice Brown	103 Main St
104	Charlie White	104 Main St
105	Diana Green	105 Main St
106	Frank Black	106 Main St
107	Grace King	107 Main St
108	Henry Lee	108 Main St
109	Ivy Hill	109 Main St

PROPERTY DATA

Field	Value
Parcel No.	3B
Area (Acres)	1.23
Permitted Use	Residential Single-Family
Assessed Value	\$123,456
Property Tax	\$1,234
Owner Name	John Doe
Address	100 Main St
City/Township	Cheltenham Township
County	Delaware County
State	PA

Lot No.	Area (Acres)	Permitted Use
3B-1	0.10	Residential Single-Family
3B-2	0.10	Residential Single-Family
3B-3	0.10	Residential Single-Family
3B-4	0.10	Residential Single-Family
3B-5	0.10	Residential Single-Family
3B-6	0.10	Residential Single-Family
3B-7	0.10	Residential Single-Family
3B-8	0.10	Residential Single-Family
3B-9	0.10	Residential Single-Family
3B-10	0.10	Residential Single-Family
3B-11	0.10	Residential Single-Family
3B-12	0.10	Residential Single-Family
3B-13	0.10	Residential Single-Family
3B-14	0.10	Residential Single-Family
3B-15	0.10	Residential Single-Family
3B-16	0.10	Residential Single-Family
3B-17	0.10	Residential Single-Family
3B-18	0.10	Residential Single-Family
3B-19	0.10	Residential Single-Family
3B-20	0.10	Residential Single-Family
3B-21	0.10	Residential Single-Family
3B-22	0.10	Residential Single-Family
3B-23	0.10	Residential Single-Family
3B-24	0.10	Residential Single-Family
3B-25	0.10	Residential Single-Family
3B-26	0.10	Residential Single-Family
3B-27	0.10	Residential Single-Family
3B-28	0.10	Residential Single-Family
3B-29	0.10	Residential Single-Family
3B-30	0.10	Residential Single-Family
3B-31	0.10	Residential Single-Family
3B-32	0.10	Residential Single-Family
3B-33	0.10	Residential Single-Family
3B-34	0.10	Residential Single-Family
3B-35	0.10	Residential Single-Family
3B-36	0.10	Residential Single-Family
3B-37	0.10	Residential Single-Family
3B-38	0.10	Residential Single-Family
3B-39	0.10	Residential Single-Family
3B-40	0.10	Residential Single-Family
3B-41	0.10	Residential Single-Family
3B-42	0.10	Residential Single-Family
3B-43	0.10	Residential Single-Family
3B-44	0.10	Residential Single-Family
3B-45	0.10	Residential Single-Family
3B-46	0.10	Residential Single-Family
3B-47	0.10	Residential Single-Family
3B-48	0.10	Residential Single-Family
3B-49	0.10	Residential Single-Family
3B-50	0.10	Residential Single-Family
3B-51	0.10	Residential Single-Family
3B-52	0.10	Residential Single-Family
3B-53	0.10	Residential Single-Family
3B-54	0.10	Residential Single-Family
3B-55	0.10	Residential Single-Family
3B-56	0.10	Residential Single-Family
3B-57	0.10	Residential Single-Family
3B-58	0.10	Residential Single-Family
3B-59	0.10	Residential Single-Family
3B-60	0.10	Residential Single-Family
3B-61	0.10	Residential Single-Family
3B-62	0.10	Residential Single-Family
3B-63	0.10	Residential Single-Family
3B-64	0.10	Residential Single-Family
3B-65	0.10	Residential Single-Family
3B-66	0.10	Residential Single-Family
3B-67	0.10	Residential Single-Family
3B-68	0.10	Residential Single-Family
3B-69	0.10	Residential Single-Family
3B-70	0.10	Residential Single-Family
3B-71	0.10	Residential Single-Family
3B-72	0.10	Residential Single-Family
3B-73	0.10	Residential Single-Family
3B-74	0.10	Residential Single-Family
3B-75	0.10	Residential Single-Family
3B-76	0.10	Residential Single-Family
3B-77	0.10	Residential Single-Family
3B-78	0.10	Residential Single-Family
3B-79	0.10	Residential Single-Family
3B-80	0.10	Residential Single-Family
3B-81	0.10	Residential Single-Family
3B-82	0.10	Residential Single-Family
3B-83	0.10	Residential Single-Family
3B-84	0.10	Residential Single-Family
3B-85	0.10	Residential Single-Family
3B-86	0.10	Residential Single-Family
3B-87	0.10	Residential Single-Family
3B-88	0.10	Residential Single-Family
3B-89	0.10	Residential Single-Family
3B-90	0.10	Residential Single-Family
3B-91	0.10	Residential Single-Family
3B-92	0.10	Residential Single-Family
3B-93	0.10	Residential Single-Family
3B-94	0.10	Residential Single-Family
3B-95	0.10	Residential Single-Family
3B-96	0.10	Residential Single-Family
3B-97	0.10	Residential Single-Family
3B-98	0.10	Residential Single-Family
3B-99	0.10	Residential Single-Family
3B-100	0.10	Residential Single-Family

<p>BOHLER ENGINEERING</p> <p>1000 Locust Street Philadelphia, PA 19104 Tel: 215-592-1234 Fax: 215-592-5678 www.bohler-engineering.com</p>	<p>J.S. BARAN Professional Engineer No. 123456789 PA State License No. 123456789</p>	<p>GOOD PAD CHELTHENHAM, PA FURNISHED WITH ELECTRICITY WATER & SEWERAGE CONNECTIONS AVAILABLE</p>	<p>PREPARED BY: J.S. BARAN DATE: 11/15/2023</p>	<p>SCALE: 1" = 100'</p>	<p>CHLTHENHAM TWP. DEC 11/15/2023</p>	<p>APPROVED BY: [Signature]</p>
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Exhibit "C"

Parcel 1

[Legal Description]

Exhibit "C"

Parcel 1

~~Exhibit 1.0~~

Legal Description of the Property

THIS LEGAL DESCRIPTION IS THAT LEGAL DESCRIPTION FOR THE PORTION OF LAND IDENTIFIED AS "PARCEL 1" ON PAGE 1 OF THAT RECORD PLAN THE FAIRWAY AT CEDARBROOK HILL & CEDARBROOK APARTMENTS OVERALL SUBDIVISION PLAN, 8400, 8440-8480 LIMEKILN PIKE, PREPARED BY JOHN H. LEAPSON, TEI CONSULTING ENGINEERS, INC. SOUTHAMPTON, PA DATED 12/1/2003, LAST REVISED 9/30/2004, RECORDED 9/28/2005 IN PLAN BOOK 25 PAGE 260 ("THE RECORD PLAN") AND ENCOMPASSES LOT 6, LOT 7, LOT 8, LOT 10 AND LOT 1 AS SHOWN ON PAGE 3 OF THE RECORD PLAN.

ALL THAT CERTAIN LOT OR PIECE OF GROUND WITH THE BUILDINGS AND IMPROVEMENTS TO BE ERRECTED THEREON SITUATE IN CHELTENHAM TOWNSHIP, MONTGOMERY COUNTY, COMMONWEALTH OF PENNSYLVANIA, IDENTIFIED AS "PARCEL 1" ON, AND DESCRIBED ACCORDING TO A PLAN ENTITLED, "RECORD PLAN THE FAIRWAYS AT CEDARBROOK HILL & CEDARBROOK APARTMENTS OVERALL SUBDIVISION - 8400, 8440 - 8480 LIMEKILN PIKE," SHEET 1 OF 13, DATED DECEMBER 1, 2003 AND LAST REVISED SEPTEMBER 30, 2004, PREPARED BY JOHN H. LEAPSON, P.L.S., TEI CONSULTING ENGINEERS, INC., AND RECORDED WITH THE MONTGOMERY COUNTY RECORDER OF DEEDS ON SEPTEMBER 28, 2005, AT PLAN BOOK 25, PAGE 260 AS FOLLOWS, TO WIT:

BEGINNING AT A POINT, SAID POINT BEING SOUTH 46 DEGREES 15 MINUTES, 00 SECONDS, 107.22 FEET FROM THE SOUTHERLY SIDE OF EASTON ROAD; THENCE, NORTH 72 DEGREES 33 MINUTES 18 SECONDS EAST, 175.48 FEET TO A POINT OF CURVATURE; THENCE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 375.00 FEET, THE CHORD OF WHICH BEARS NORTH 74 DEGREES 07 MINUTES 06 SECONDS EAST FOR A DISTANCE OF 20.46 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 20.47 FEET TO A POINT; THENCE, SOUTH 50 DEGREES 32 MINUTES 12 SECONDS EAST, 597.45 FEET TO A POINT; THENCE, SOUTH 41 DEGREES 22 MINUTES 56 SECONDS EAST, 186.96 FEET TO A POINT; THENCE, SOUTH 51 DEGREES 37 MINUTES 50 SECONDS EAST, 196.30 FEET TO A POINT; THENCE, NORTH 44 DEGREES 05 MINUTES 30 SECONDS EAST, 21.18 FEET TO A POINT; THENCE, SOUTH 45 DEGREES 03 MINUTES 04 SECONDS EAST, 774.92 FEET TO A POINT; THENCE NORTH 74 DEGREES 59 MINUTES 30 SECONDS EAST, 73.66 FEET TO A POINT; THENCE, SOUTH 01 DEGREES 54 MINUTES 14 SECONDS EAST, 732.29 FEET TO A POINT; THENCE, NORTH 86 DEGREES 03 MINUTES 10 SECONDS EAST, 93.67 FEET TO A POINT; THENCE, NORTH 29 DEGREES 38 MINUTES 24 SECONDS EAST, 163.73 FEET TO A POINT; THENCE, NORTH 76 DEGREES 59 MINUTES 12 SECONDS EAST, 345.13 FEET TO A POINT ON THE WESTERLY SIDE OF LIMEKILN PIKE; THENCE, ALONG SAME THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 852.00 FEET, THE CHORD OF WHICH BEARS SOUTH 09 DEGREES 33 MINUTES 55 SECONDS EAST FOR A DISTANCE OF 102.50 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 102.56 FEET TO A POINT;
2. SOUTH 06 DEGREES 07 MINUTES 00 SECONDS EAST, 108.67 FEET TO A POINT;
3. SOUTH 06 DEGREES 07 MINUTES 00 SECONDS EAST, 88.26 FEET TO A POINT, A CORNER OF PARCEL 2;

THENCE, ALONG PARCEL 2 THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1. ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET, THE CHORD OF WHICH BEARS NORTH 54 DEGREES 08 MINUTES 31 SECONDS WEST FOR A DISTANCE OF 37.17 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 41.91 FEET TO A POINT;
2. ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 259.81 FEET, THE CHORD OF WHICH BEARS SOUTH 48 DEGREES 01 MINUTES 17 SECONDS WEST FOR A DISTANCE OF 258.35 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 270.39 FEET TO A POINT;

THENCE, PARTIALLY ALONG PARCEL 2 AND PARTIALLY ALONG PARCEL 3, ALONG A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 260.00 FEET, THE CHORD OF WHICH BEARS SOUTH 75 DEGREES 42 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 438.59 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 521.90 FEET TO A POINT; THENCE, ALONG PARCEL 3 THE FOLLOWING SIX (6) COURSES AND DISTANCES:

1. NORTH 46 DEGREES 46 MINUTES 53 SECONDS WEST, 44.00 FEET TO A POINT;
2. SOUTH 43 DEGREES 11 MINUTES 22 SECONDS WEST, 124.63 FEET TO A POINT;
3. NORTH 46 DEGREES 23 MINUTES 34 SECONDS WEST, 225.08 FEET TO A POINT;

4. NORTH 32 DEGREES 29 MINUTES 59 SECONDS WEST, 199.49 FEET TO A POINT;
5. NORTH 03 DEGREES 29 MINUTES 05 SECONDS EAST, 235.44 FEET TO A POINT;
6. NORTH 57 DEGREES 50 MINUTES 41 SECONDS WEST, 543.83 FEET TO A POINT, A CORNER OF PARCEL 4;

THENCE, ALONG PARCEL 4 THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1. NORTH 46 DEGREES 10 MINUTES 26 SECONDS WEST, 30.59 FEET TO A POINT;
2. NORTH 04 DEGREES 41 MINUTES 44 SECONDS EAST, 164.57 FEET TO A POINT;

THENCE, NORTH 44 DEGREES 05 MINUTES 30 SECONDS EAST 320.12 FEET TO A POINT; THENCE, NORTH 45 DEGREES 54 MINUTES 30 SECONDS WEST, 241.51 FEET TO A POINT; THENCE, NORTH 44 DEGREES 05 MINUTES 30 SECONDS EAST, 90.00 FEET TO A POINT; THENCE, NORTH 46 DEGREES 15 MINUTES 00 SECONDS WEST, 1046.10 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,300,087 SQUARE FEET OR 29.85 ACRES OF LAND, MORE OR LESS.

Exhibit "D"

Draft Amendment to Declaration of Easements

PREPARED BY AND RETURN AFTER RECORDING TO:

James A. Rosenstein, Esq.
Flineman, Krekstein & Harris, P.C.
1735 Market Street,
Philadelphia, PA 19103
(215) 893-8709

Being a portion of Parcel Number 31-00-17347-00-1
Being a portion of Parcel Number 31-00-17347-14-5
Being a portion of Parcel Number 31-00-17347-13-6

**AMENDMENT TO
DECLARATION OF EASEMENTS AND CROSS EASEMENT AGREEMENT**

THIS AMENDMENT TO DECLARATION OF EASEMENTS AND CROSS EASEMENT AGREEMENT (this "Amendment") is made as of _____, 2015, by and among MATRIX CBH, L.P., a Pennsylvania limited partnership having an address at Forsgate Drive, CN 4000, Cranbury New Jersey 08512 ("Matrix CBH"); THE FAIRWAYS AT CEDARBROOK HILLS, L.P., a Pennsylvania limited partnership having an address at CN 4000, Cranbury, New Jersey 08512 ("The Fairways"); and WYNGATE COMMUNITY ASSOCIATION, a Pennsylvania not for profit corporation having an address at c/o Matrix Development Group, CN 4000, Cranbury, New Jersey 08512 ("Community Association") on its own behalf and on behalf of all its members, who constitute all of the "Unit Owners" (as hereinafter defined).

PRELIMINARY STATEMENT

A. Matrix CBH, The Fairways and the Township of Cheltenham, a township of the first class of the Commonwealth of Pennsylvania, situate within Montgomery County, Pennsylvania (the "Township") are the parties to a certain Declaration of Easements, dated June 2, 2008 and recorded on June 5, 2008 as Instrument No. 2008058865 in the Office of the Recorder of Deeds in and for Montgomery County (the "Recorder's Office") in Deed Book 5695, at page 295 (the "Declaration of Easements"). By its terms, the Declaration of Easements encumbers the "Overall Tract" which consist of real estate described therein that was then owned by The Fairways (called "Parcel 1" therein and herein) and other abutting real estate also described therein that was then owned by Matrix CBH (called therein and herein "Parcel 2" and "Parcel 3"). Parcels 1, 2 and 3 together constitute the Overall Tract. Among other things, the Declaration of Easements created various easements, rights, obligations and restrictions with respect to Parcels 1, 2 and 3 and the respective owners thereof from time to time.

B. On June 23, 2008, The Fairways recorded in the Recorder's Office, as Instrument No. 2008064812, a Declaration of Wyngate, a planned community, in Deed Book 5697, at page 643.(the "HOA Declaration"), which has been subsequently amended of record various times (as so amended, the "Amended HOA Declaration"). The Amended HOA Declaration encumbers Parcel 1 and (among other things) provides for the conveyance of certain portions of Parcel 1 referred to therein and herein as "Units" to others (referred to therein and herein as "Unit Owners") and the balance of Parcel 1(referred to therein and herein as "Common Facilities") to be conveyed or leased to the Community Association for the shared use and enjoyment of the Unit Owners.

C. Subsequently various portions of Parcel 1 have been conveyed to various Unit Owners as Units and other portions of Parcel 1 have been conveyed or leased to the Community Association as part of the Common Facilities; and it is expected that other portions of Parcel 1 will be conveyed in the future as Units or Common Facilities.

D. By the recordation in the Recorder's Office on _____, 2015, as Plan _____ of a certain Subdivision Plan, prepared by Bohler Engineering, Inc., dated _____ (the "Second Subdivision Plan"), Parcel 3 has now been subdivided into two lots (called therein and herein "Parcel 3A" and "Parcel 3B", respectively).

E. Matrix CBH, in its capacity as the owner of Parcel 2, on behalf of itself and its successors and assigns, wishes to amend the Declaration of Easements as hereinafter set forth in order to facilitate the development, ownership and operation of Parcel 2 as a commercial property. The Township has determined that such amendment does not materially affect the public interest, and therefore (pursuant to Section 22 of the Declaration of Easements) it does not have the right to consent to or approve this Amendment; and the other parties to the Declaration of Easements (and their respective successors in title) have agreed to such amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree and declare that the foregoing Preliminary Statement are deemed to be operative provisions of the Amendment and that the Easement Agreement shall be, and hereby is amended (as of the time of recordation hereof), as follows.

1. All references to "Parcel 2" are hereby deleted from Section 1(a), and the following is hereby inserted at the end of this section: "The Fairways hereby grants to the Owner of Parcel 2, for the benefit of Parcel 2 and use by its Permittees, a perpetual non-exclusive

right of way and easement ('Access Easement A1') over, upon and across the portion of the Easement Area A Driveway (which is also known as 'MacDonald Avenue') labeled 'Prop. Wawa Development Egress Area' on the two page site plan that is attached hereto and labeled 'Exhibit A' (the 'Settlement Plan') for, subject to Section 12 below, egress from Parcel 2 to Limekiln Pike. Additionally, The Fairways hereby grants to the Owner of Parcel 2, for the benefit of Parcel 2 and use by its Permittees, a temporary exclusive easement for the construction of a roadway divider in the bed of the Easement Area A Driveway at the location marked on the Proposed Wawa Site Plan as 'Proposed 4' Wide Mountable Curb'. Such construction shall be performed at the cost and expense of the Owner of Parcel 2 and such temporary easement shall terminate automatically, without the need for any further act or deed, upon the satisfactory completion of such roadway divider."

2. Section 1(c) is hereby deleted in its entirety.
3. Sections 2(c), (d), (e) and (f) are hereby added as follows:

"(c) The Owner of Parcel 1 hereby grants to the Owner of Parcel 2, for the benefit of Parcel 2 and use by its Permittees, an exclusive temporary easement for the installation of any and all underground electric lines and associated equipment in Parcel 1 that serve one or more of the illuminated signs described in Section 10 (d) hereof. Such installation shall be performed at the cost and expense of the Owner of Parcel 2 and such temporary easement shall terminate automatically, without the need for any further act or deed, upon the satisfactory completion of such installation."

"(d) Matrix CBH, as the Owner of Parcel 3, hereby grants to the Owner of Parcel 2, for the benefit of Parcel 2 and use by its Permittees, an exclusive temporary easement for the installation of underground electric lines and associated equipment in Parcel 3 that serve one or more of the illuminated signs described in Section 10(d) hereof. Such installation shall be performed at the cost and expense of the Owner of Parcel 2 and such temporary easement shall terminate automatically, without the need for any further act or deed, upon the satisfactory completion of such installation."

"(e) Matrix CBH, as the Owner of Parcel 3, hereby grants to the Owner of Parcel 2, for the benefit of Parcel 2 and use by its Permittees, an exclusive temporary easement for the installation of any and all underground electric lines and associated equipment in Parcel 3 that serve the 'School Bus Shelter Facilities' described in Section 7(a) hereof. Such installation shall be performed at the cost and expense of the Owner of Parcel 2

and such temporary easement shall terminate automatically, without the need for any further act or deed, upon the satisfactory completion of such installation.”

“(f) Matrix CBH, as the Owner of Parcel 2, hereby grants to the Owner of Parcel 1, for the benefit of Parcel 1 and use by its Permittees, an exclusive perpetual easement for use & Maintenance of the electric lines and associated equipment described in Section 2 above, and any and all underground electric lines and associated equipment located in Parcel 2 that serve one or more of the illuminated signs described in Section 10(d) hereof.”

4. Section 7 is hereby deleted in its entirety, and is hereby replaced by the following:

7. School Bus Easement and Other Uses of Parcel 3.

(a) Matrix CBH, as the Owner of Parcel 3, hereby grants to the Owner of Parcel 2, for the benefit of Parcel 2 and use by its Permittees, an exclusive temporary easement for the installation of an illuminated school bus shelter and ancillary vehicular access driveway and pedestrian walkway at the locations on Parcel 3 shown on the Settlement Plan (labeled respectively ‘Prop. Bus Shelter’, ‘Prop. Edge of Asphalt Paving’, ‘Prop. 5’ Wide Concrete Sidewalk’ and ‘Prop. 4’ Wide Asphalt Sidewalk’ (collectively, the ‘School Bus Shelter Facilities’). Matrix CBH, in its capacity as the Owner of Parcel 3, hereby grants the Owner of Parcel 1 and its Permittees an exclusive permanent easement for the use and Maintenance of the School Bus Facilities, at the cost and expense of the Owner of Parcel 1. Any advertising that may be installed on such school bus shelter shall be of a non-illuminated, non-electronic type and shall conform to all applicable township Codes. Any compensation paid for such advertising on such school bus shelter shall be paid to the Community Association.

(b) Matrix CBH, as the Owner of Parcel 3, hereby grants to the Owner of Parcel 2 for the benefit of Parcel 2 and use by its Permittees an exclusive temporary easement to move “clean dirt” from Parcel 2 onto Parcel 3 during the construction of a convenience store and gasoline service station on Parcel 2, subject to any applicable governmental approvals; provided that the elevation of Parcel 3 is not thereby materially increased or the Bus Shelter Facilities adversely affected thereby; and further provided that the Owner of Parcel 2 promptly thereafter grades and seeds the portions of Parcel 3 on which such dirt is placed.. All of the work described in this Section 7(b) shall be performed at the cost and expense of

the Owner of Parcel 2, and shall be completed prior to such convenience store and gasoline service station opening for business. For the purpose of this Section 7(b), "clean dirt" shall mean soil that is suitable for use on residential and recreational properties because it consists only of uncontaminated, non-water soluble, non-decomposable, inert solid material. Upon the satisfactory completion of this work, such temporary easement shall terminate automatically, without the need for any further act or deed.

5. Section 9 (titled "Grant of Landscape Buffer Easement") is hereby amended by deleting it in its entirety and replacing it with the following:

"Matrix CBH, as the Owner of Parcel 2, hereby grants to the Owner of Parcel 1, for the benefit of Parcel 1 and use by its Permittees, a nonexclusive perpetual easement to perform (a) Maintenance of the shadowbox fence that the Owner of Parcel 2 has agreed to install at the location on Parcel 2 shown on the Settlement Plan and labeled thereon as 'Prop. 5' High Wooden Shadow Box Fence', and (b) Maintenance, replanting, reseeding and re-grading of an adjacent 10' wide landscape buffer that the Owner of Parcel 2 has agreed to install at the location on Parcel 2 shown on the Settlement Plan and labeled thereon as 'Landscape Buffer Easement'; it being agreed that in the event that the Owner of Parcel 2 fails to perform any or all Maintenance, replanting, reseeding and/or re-grading described above in this Section 9 after written notice of the need therefor and to pay all costs and expenses thereof, and the Owner of Parcel 1 performs it on behalf of the Owner of Parcel 2, the latter shall promptly reimburse the Owner of Parcel 1 for all costs and expenses incurred by the Owner of Parcel 1 in performing such Maintenance, replanting, reseeding and/or re-grading."

6. Section 10 is hereby amended by:

- (a) Deleting Section 10(a) in its entirety and replacing it with the following:

"(a) Matrix CBH, as the Owner of Parcel 2, hereby grants to the Owner of Parcel 1, for the benefit of Parcel 1 and use by its Permittees, exclusive permanent easements for the use of two free-standing illuminated monument signs to be constructed by the Owner of Parcel 2 at its cost and expense, each sign containing the inscription 'Wyngate Townhomes' (and each labeled 'Prop. Wyngate Townhomes' Monument Sign'), at the locations on Parcel 2 shown on

the Settlement Plan. After their completion, such signs shall be owned by the Owner of Parcel 1, who shall be responsible for their Maintenance and the costs and expenses thereof.

(b) Adding the following Sections 10(d) and (e):

“(d) Matrix CBH, as the Owner of Parcel 2, hereby grants to the Owner of Parcel 1, for the benefit of Parcel 1 and its Permittees, an exclusive permanent easement for the use of one free-standing sign containing the inscription “No entrance to Wawa. Residents Only” (a ‘No Wawa Entrance sign’) to be constructed by the Owner of Parcel 2 at the location on Parcel 2 shown on the Settlement Plan adjacent to Clubhouse Lane (where it is labeled ‘Prop. No Entrance. Residents Only sign’). The Fairways, hereby also grants to the Owner of Parcel 2, and its Permittees, a temporary exclusive easement to construct a No Wawa Entrance sign at the location on Parcel 1 shown on the Settlement Plan adjacent to MacDonald Avenue. The construction described in this Section 10 (d) shall be performed at the cost and expense of the Owner of Parcel 2, and such temporary easement shall terminate automatically, without the need for any further act or deed, upon the satisfactory completion of construction of such sign. After such No Wawa Entrance signs have been constructed by the Owner of Parcel 2, they shall both be owned by the Owner of Parcel 1, who shall also be responsible for their Maintenance and the costs and expenses thereof.

(e) Matrix CBH, as the Owner of Parcel 2, hereby grants to the Owner of Parcel 1, for the benefit of Parcel 1 and its Permittees, an exclusive permanent easement for the use of one free-standing sign containing the inscription ‘No Parking and No Standing. Violators will be Towed at Owner’s Expense’ (a ‘No Parking sign’) to be constructed by the Owner of Parcel 2 at the location on Parcel 2 shown on the Settlement Plan adjacent to Clubhouse Lane (where it is labeled ‘Prop. No Entrance. Residents Only sign’). The Owner of Parcel 1 hereby grants to the Owner of Parcel 2 and its Permittees an exclusive temporary easement to construct a No Parking sign at the location on Parcel 1 shown on the Settlement Plan adjacent to MacDonald Avenue. Such construction shall be performed at the cost and expense of the Owner of Parcel 2, and such temporary easement shall terminate automatically, without the need for any further act or deed, upon the satisfactory completion of such sign. After such No Parking signs have been constructed by the Owner of Parcel 2, they shall both be owned by the Owner of Parcel 1, who shall also be responsible for their Maintenance.

7. All provisions of the Declaration of Easements shall remain in full force and effect except if and to the extent they are expressly amended by this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

MATRIX CBH, L.P.

By: Matrix/Ashbourne Management Corp., its General Partner

By: _____
Donald M. Epstein, Vice President

Attest: _____
_____, Secretary

THE FAIRWAYS AT CEDARBROOK HILLS, L.P.

By: Cedarbrook Fairways Development, LLC, its General Partner

By: Taylor/Epstein Investment Fund, LLC, its sole member

By: _____
Donald M. Epstein, Member

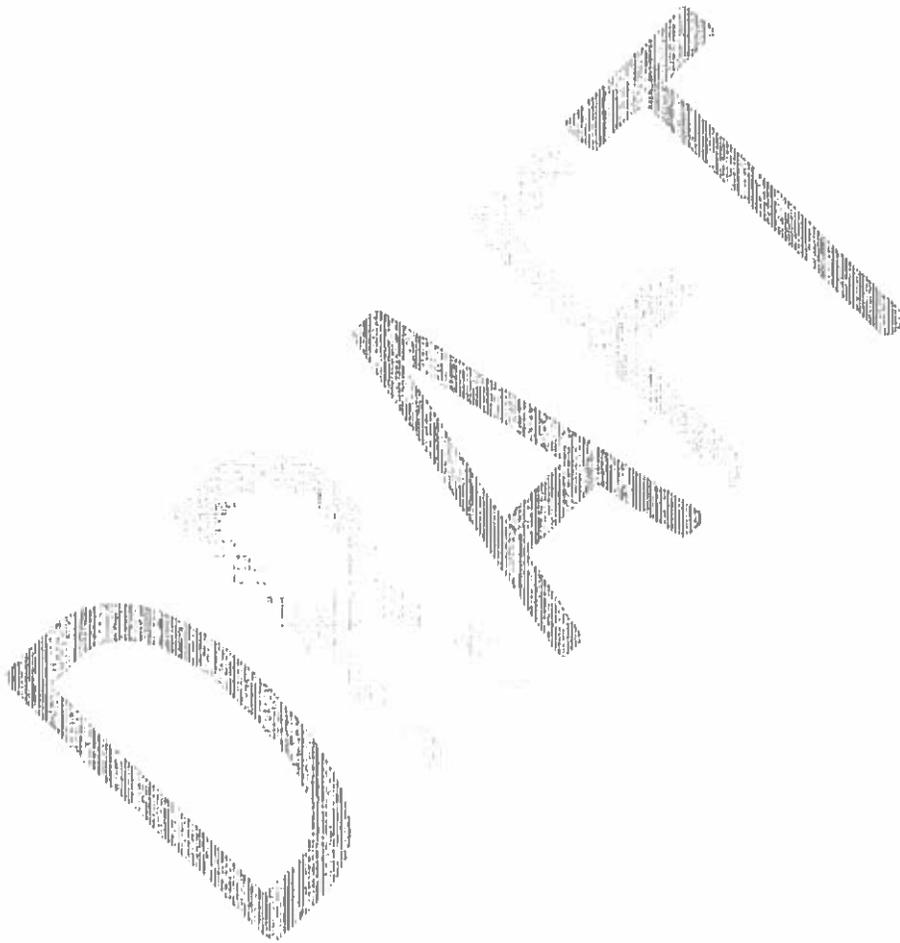
WYNGATE COMMUNITY ASSOCIATION

By: _____
William Stapleton, President

Attest: _____
Donna Powell, Secretary

EXHIBIT A

Settlement Plan



ACKNOWLEDGMENT

STATE OF NEW JERSEY:

: SS.

COUNTY OF MIDDLESEX:

On the ___ day of ___, 2015, before me, a Notary Public in and for the above referenced State and County, the undersigned officer, personally appeared Donald M. Epstein, who acknowledged himself to be the Vice President of MATRIX/ASHBOURNE MANAGEMENT CORP., the general partner of MATRIX, CBH, L.P., a Pennsylvania limited partnership, and that he as such officer of such general partner, being authorized to do so, executed the foregoing instrument on behalf of such limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

ACKNOWLEDGMENT

STATE OF NEW JERSEY:

: SS.

COUNTY OF MIDDLESEX:

On the ___ day of ___, 2015, before me, a Notary Public in and for the above referenced State and County, the undersigned officer, personally appeared Donald M. Epstein, who acknowledged himself to be a member of Taylor/Epstein Investment Fund, LLC, the sole member of CEDARBROOK FAIRWAYS DEVELOPMENT, LLC, the general partner of THE FAIRWAYS AT CEDARBROOK HILLS, L.P., a Pennsylvania limited partnership, and that he as a member of the sole member of such general partner, being authorized to do so, executed the foregoing instrument on behalf of such limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

ACKNOWLEDGMENT

STATE OF NEW JERSEY:

: SS.

COUNTY OF MIDDLESEX:

On the ___ day of ___, 2015, before me, a Notary Public in and for the above referenced State and County, the undersigned officer, personally appeared William Stapleton, who acknowledged himself to be the President of WYNGATE COMMUNITY ASSOCIATION, a Pennsylvania not-for-profit corporation, and that he, as such officer being authorized to do so, executed the foregoing instrument on behalf of such corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Exhibit "E"

Approved Zoning Hearing Board Plan

Exhibit "E"

APPROVED ZONING HEARING BOARD PLAN



Exhibit "F"

Settlement Plan

[Bohler "Site Plan" sheets 1 & 4 (with red outlining of "School Bus Shelter Easement Area")]

Exhibit "F" Settlement Plan

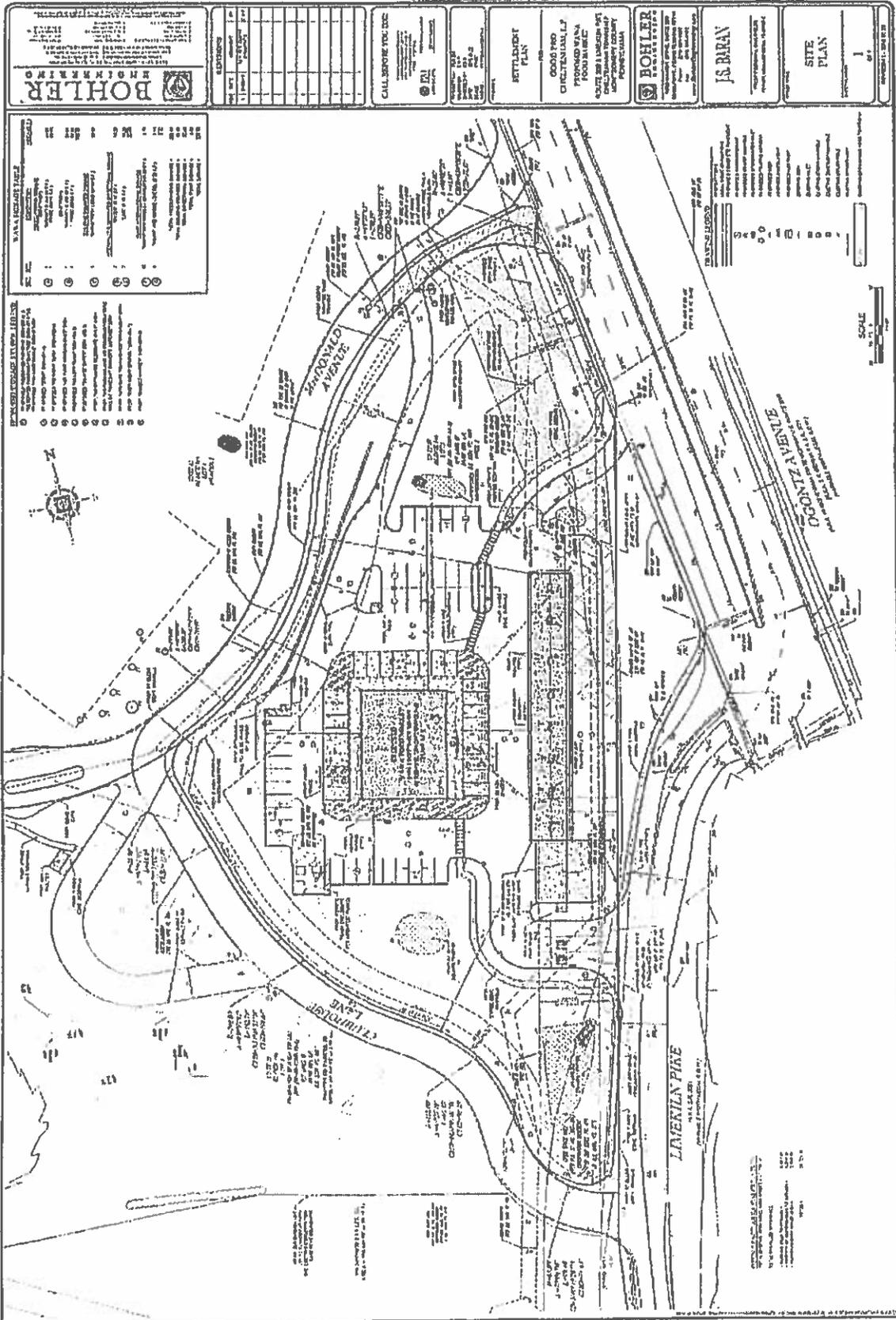


Exhibit "G"

Clubhouse Lane Entrance Sign Plan

[Photo]

EXHIBIT G

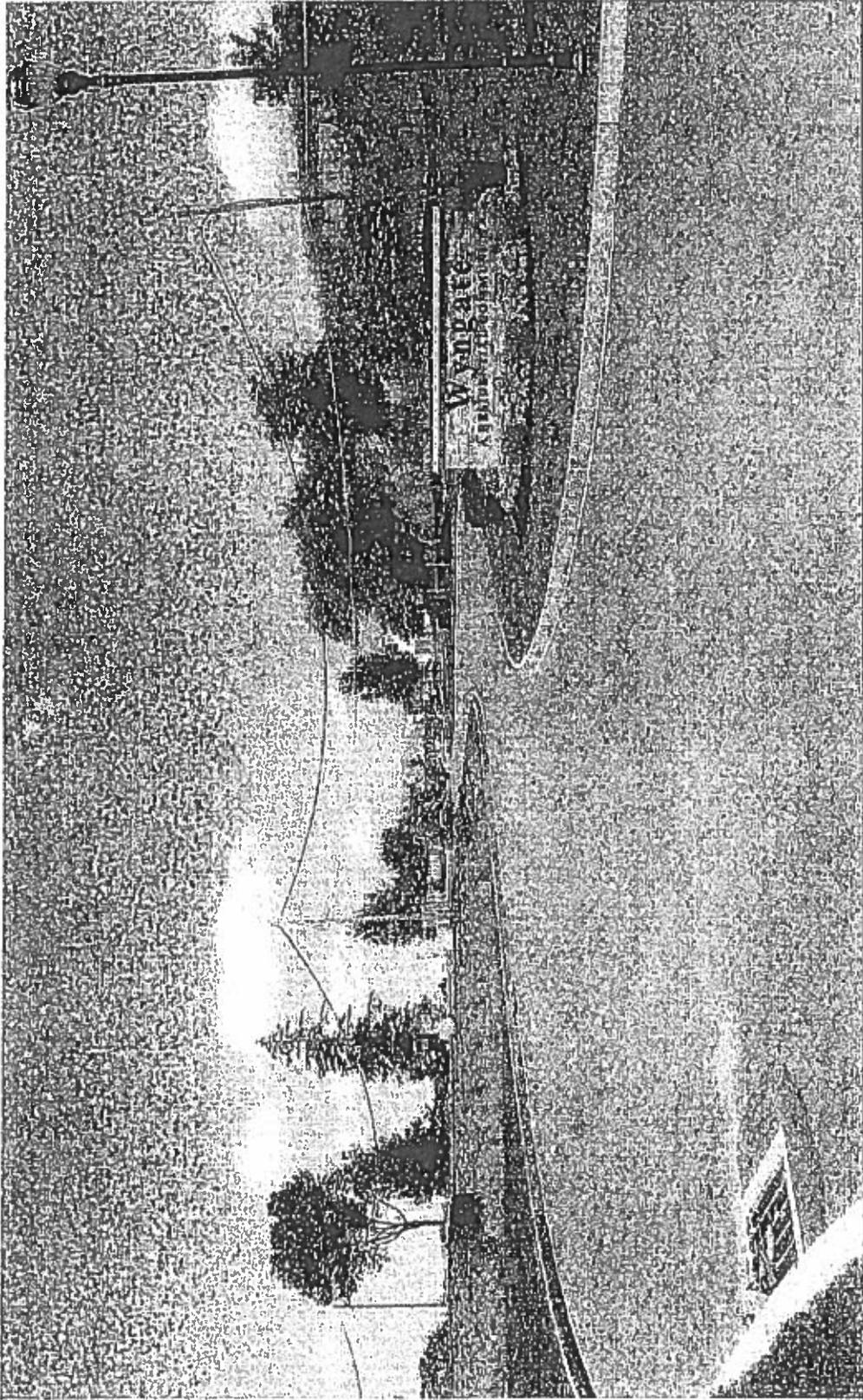


Exhibit "H"

MacDonald Avenue Sign Plan

[Photo]

EXHIBIT "H"

