

April 7, 2010  
Curtis Hall

A regular meeting of the **BUILDING AND ZONING COMMITTEE** was held tonight, Michael Swavola, Chairman, presiding. Members present were Commissioners Haywood, Portner and Sharkey. Also present was Ex-Officio Member Simon. Staff present were Joseph Bagley, Wisler Pearlstine LLC; Bryan T. Havir, Assistant Township Manager; Kenneth Hellendall, EMS Director; David M. Lynch, Director of Engineering, Zoning & Inspections; Kevin O'Brien, Deputy Chief of Police; John J. Norris, Chief of Police; Ruth Littner Shaw, Main Street Manager; and David G. Kraynik, Township Manager. A Public Attendance List is attached.

Mr. Swavola called the meeting to order.

1. The Committee reviewed the Zoning Hearing Board (ZHB) Agendas for April 12 and April 20, 2010 as follows:

**Appeal No. 3361**: Appeal of Clear Wireless, LLC, Prospective Tenant at 2960 W. Church Road, Glenside, PA (a/k/a Westminster Theological Seminary), from the Decision of the Zoning Officer for the following Zoning Relief in order for a Telecommunications installation consisting of two (2) Panel Antennas, and one (1) Panel Antenna with Dish Antenna mounted on top of the Panel Antenna (both antennas mounted on top of the Library Building Penthouse), and Telecommunication equipment on the roof of the Library Building:

- a. Variances from the Rules and Regulations of Class R-3 Residence District as outlined in Article V of Chapter 295 of the Cheltenham Code, as follows:
  - i. A variance from CCS 295-21. for the Proposed Telecommunication installation instead of one of the permitted enumerated uses.
  - ii. A variance from CCS 295.25. A. for a maximum building height of  $49.5 \pm$  AGL for the top of the antennas (including dish antenna) instead of the maximum permitted 40'.

The Building and Zoning Committee had asked for photo simulations.

Upon motion of Mr. Haywood, and unanimously approved by the Committee, the Township Engineer was directed to advise the ZHB that the Committee takes no action on this appeal, but recommends that the applicant submit photo simulations to the ZHB.

**APPEAL NO. 3363** - Appeal of New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, prospective tenant at 7309 Butcher Street, Elkins Park, PA (a/k/a "Butcher Street Water Tank Site") from the Decision of the Zoning Officer for the following Zoning Relief in order to attach twelve (12) panel antennas to existing water tank and to place a 11.5'W x 20' L x 10.08'H equipment cabinet at the base of the Water Tank:

- a. Grant of a Use Variance from the use provisions of CCS 295-57. of the Township Code (Use regulations for the R-7 District) to allow the installation of the AT&T Telecom Facility on the Property as depicted on the site plans.
- b. If determined to be necessary by the Zoning Hearing Board, grant of a Height Variance from CCS 295-61. to allow installation of the antennas as part of the AT&T Telecom Facility to be placed at an overall height of 112.3 feet on the side of the water tank. This is the same height as the existing T-Mobile antennas.
- c. A Variance from CCS 295-60.B. (4) for a lesser side yard setback of 7' instead of the minimum required 16' for the Equipment Cabinet.
- d. In the alternative, a determination that the Telecom Facility has been established as a valid, non-conforming use of the Property, established by court order on February 17, 1999. Regulations for such use are not presently provided in the governing ordinances of the Township by virtue of the repeal of the Telecom Ordinance in 2009. Pursuant to CCS 295-227.C. of the Township Code, a valid non-conforming use may be extended throughout the premises by grant of Special Exception.
- e. In the alternative, a determination that the AT&T Telecom Facility is permitted by a Validity Variance as to the use as recognized by the laws of the Commonwealth of Pennsylvania. In that regard, the Telecommunications Act of 1996 (the "TCA"), 42 U.S.C. § 332 (c)(7)(B)(i)(I), prevents unreasonable discrimination among providers of functionally equivalent services. AT&T is a telecommunications provider afforded protections under the TCA and provides wireless services which are functionally equivalent to wireless services now being provided by T-Mobile from this Property. To deny AT&T the establishment of the AT&T Telecom Facility on the Property would result in unreasonable discrimination.
- f. In the alternative, a determination that the AT&T Telecom Facility is permitted by a Validity Variance as to use as recognized by the laws of the Commonwealth of Pennsylvania. In that regard, the Telecommunications

Act of 1996, 42 U.S.C. § 332 (c)(7)(B)(i)(II), prevents decisions of local agencies which may prohibit or have the effect of prohibiting the ability of a wireless provider to provide service in an area. On November 18, 2009, the Federal Communications Commission issued a Declaratory Ruling which determined that a local agency may not deny a wireless facility siting application because service is available from another provider. AT&T is a telecommunications provider afforded protections under the TCA and provides wireless services which are functionally equivalent to wireless services now being provided by T-Mobile from this property. To deny AT&T the establishment of the AT&T Telecom Facility on the Property would result in effective prohibition of its wireless service to a significant portion of Cheltenham Township.

- g. If the decision of the Zoning Hearing Board is on the basis of grant of a Validity Variance or, alternatively, grant of a Special Exception as an extension of a non-conforming use, then AT&T further requests grant of a Validity Variance as to any applicable area and bulk requirements which pertain to the proposed AT&T Telecom Facility.
- h. AT&T also applies for such other interpretations, waivers and/or variances as may ultimately be required.

Mr. Lynch noted that the applicant requested 12 panels, 4 clusters of 3. In 1998, a Certificate of Appropriateness was denied and subsequently appealed to the Federal Court. Mr. Lynch further stated that at the most recent LaMott BHAR meeting a quorum of 5 was necessary to take a vote; however, there were four ayes and one abstention which failed to pass the motion in favor of relief. Mr. Simon noted that the Planning Commission Meeting minutes indicated that a recommendation for zoning relief was subject to Page 4 section b) sound tests and appropriate noise buffers; c) that STAC approve the landscaping and d) that a land development plan be submitted to the Township for its review and approval. Upon motion of Mr. Portner, and unanimously approved by the Committee, the Township Engineer was to advise the Zoning Hearing Board that the Committee takes no action on this appeal and recommends that if relief is granted, it be granted upon the conditions noted above in b, c and d.

**APPEAL NO. 3364** - Appeal of Thomas Ferrick, Owner of Premises known as 110 E. Waverly Road, Glenside, PA from the Decision of the Zoning Officer in order to develop the existing 18, 310 SF (.420 ± Acre) lot at the Southwest Corner of the intersection of Keswick Avenue and E. Waverly Road that currently contains an existing five (5) unit apartment building and separate garage building by demolishing the garage building and constructing six (6) new two (2) story townhouses on the Premises. Three of the townhouses shall measure 25' W x 40' L and contain three (3) bedrooms. Three (3) of the townhouses shall measure 20' W x 40' L and contain two (2) bedrooms. All of the townhouses shall have basements. In connection with the proposed townhouse development, a parking area containing ten (10) parking spaces shall be provided. In

addition to these ten (10) on-site parking spaces, there are ten (10) parking spaces on the adjacent street. The following Zoning Relief is required:

- a. Variances from the Rules and Regulations of the Class R-7 Residence District as outlined in Article X of Chapter 295 of the Cheltenham Code, as follows:
  - i. From CCS 295-57. for two (2) permitted uses (townhouse use and apartment use (legal nonconforming use)) on the premises instead of only one permitted use thereon.
  - ii. From CCS 295-58.B. for a lesser lot area of 1664.5 SF per family instead of the minimum required 2500 SF per family (Based on 11 Dwelling Units).
  - iii. From CCS 295-58.B. for zero lot width for the six (6) townhouses instead of the minimum required 20'.
  - iv. From CCS 295-59. for a Building Area of 41% instead of the maximum permitted 35%.
  - vi. From CCS 295-60 .A. (1) for a lesser Front Yard Setback of 5.25' for the Southeast (Front) side of the 25'W x 40'L Townhouse Triad.
  - vii. From CCS 295-60.B. (2) for the noted lesser Side Yard Setbacks instead of the minimum required 16', as follows:
    1. For a 5' Side Yard Setback for the Northwest unit of the 20' W x 40' L Townhouse Triad.
    2. For an 11' Side Yard Setback for the Southeast Unit of the 20' W x 40' L Townhouse Triad.
    3. For an 8' Side Yard Setback for the Northeast Unit of the 25' W x 40'L Townhouse Triad.
    4. For a 6' Side Yard Setback for the Southwest Unit of the 25' W x 40'L Townhouse Triad.
    5. For a 5.25' Side Yard Setback for the Southeast (Front) side of the 25' W x 40'L Townhouse Triad.
  - viii. From CCS 295-60.C. for the noted lesser Rear Yard Setbacks instead of the minimum required 25', as follows:
    1. For an 11' Rear Yard Setback for the Southwest (Rear) side of the 20' W x 40' D Townhouse Triad.
    2. For a 6' Rear Yard Setback for the Southwest Unit of the 25'W x 40'D Townhouse Triad.
    3. For an 11' Rear Yard Setback for the Northwest (Rear) side of the 25' W x 40' L Townhouse Triad.
- b. A Variance from the rules and regulations of the "Floodplain Conservation District" as outlined in CCS 295-156. so as to allow construction or development within the floodplain area.

- c. Zoning Relief from the Rules and Regulations of "Parking and Loading" as outlined in CCS 295-221., as follows:
  - i. A Variance from CCS 295-221.H. for a lesser amount of off-street parking spaces (for both townhouses and apartments).
  - ii. An interpretation that the ten (10) on-site parking spaces and ten (10) of the parking spaces on the adjoining Glenside Library Parking Lot satisfy the Project parking requirements per CCS 295-221.G.(2).

Mr. Harold Lichtman was present for the applicant and prepared a power point presentation and handouts for the Commissioners. Following a lengthy discussion regarding number of units and parking spaces for the number of units, The Commissioners asked the owner if he would consider reducing the number of units in the proposed condominium to allow for more parking.

Mr. Ferrick said he would consider it and would also be agreeable to a continuance.

Resident, Denise Fine questioned the parking. Resident, Loretta Leader, familiar with the property and the area stated that she is not in favor of additional parking permitted in Glenside.

Upon motion of Mr. Haywood and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee recommends continuance be granted, but if a continuance is not granted, the Committee recommends denial of said appeal.

2. Mr. Bagley, Township Solicitor, asked for consideration of recommendation to the Board of Commissioners for the approval of a Stipulated Settlement in the matter of the Township vs. CJK Development LLC. Mr. Bagley stated the settlement involves a) the removal of pending civil complaint and b) zoning appeal removed by applicant. The applicant will file a revised land development plan and the owner had asked to have application fees waived by the Township. Mr. Lynch stated there is a timeframe issue and landscaping issue. Mr. Lynch was asked how quickly he could make detailed notes. Mr. Lynch stated it would require some additional notes regarding landscaping. He would try to have this in time for the Public Works Committee meeting.

Upon motion of Mr. Swavola, and unanimously approved by the Committee, it is recommended to the Board of Commissioners that a Stipulated Settlement Agreement between the Township and CJK Development LLC be approved (see attached).

3. The Committee continued its review of the ZHB Agenda for April 12 and April 20, 2010 as follows:

**APPEAL NO. 3365** - Appeal of T-Mobile Northeast, LLC, proposed site leaseholder on premises known as 2000 Ashbourne Road, Elkins Park, PA (a/k/a Cheltenham Township School District Administration Building), from the Decision of the Zoning Officer for the

following Zoning Relief in order to replace an existing 41' high flagpole with a 100' high faux flagpole telecommunication tower with six (6) internal antennas and to install the associated telecommunication equipment (four (4) equipment cabinets) inside a 8' x 25' fenced equipment compound adjacent to the front of the existing Administration Building:

- a. Variances from the rules and regulations of the Class R-3 Residence District as outlined in Article V of Chapter 295 of the Cheltenham Code, as follows:
  - i. From CCS 295-21. for the proposed telecommunication complex instead of one of the enumerated permitted uses; and
  - ii. From CCS 295-25. for the 100'± high faux flagpole telecommunication tower instead of the maximum permitted 40' high structure height.

Mr. Richard Lemanowicz, Esquire, attorney for applicant was present to discuss application and stated that the Planning Commission at its March meeting had concerns about size and scale of flag pole. An alternative solution would be a ninety (90) foot single carrier solution with a 10" base which would remain in front of the building. This new alternative has not been presented to the School Board. Mr. Swavola stated that this needs to go back to the School Board, and a request for continuance was suggested based on the client producing a rendering.

Upon motion of Mr. Haywood, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee recommends a continuance be granted, but if a continuance is not granted, the Committee recommends denial of the said appeal by ZHB for lack of information.

**APPEAL NO. 3366** - Appeal of Martin L. Faigus, owner of premises known as 504 E. Glenside Avenue, Wyncote, PA, from the Decision of the Zoning Officer for the following Zoning Relief in order to construct a 16'W x 20' L Carport on the Southeast side of the Residence:

- b. Variances from the Rules and Regulations of the Class R-4 Residence District as outlined in CCS 295-39.B.(1), as follows:
  - i. For a lesser Side Yard Setback of 4' instead of the minimum required 10'.
  - ii. For a lesser aggregate Side Yard Setback of 14' instead of the minimum required 30'.

Upon motion of Mr. Swavola, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee takes no action on this appeal.

**APPEAL NO. 3367** - Appeal of Yoon Kyung Shim, prospective tenant of Unit 203A at 8033 Old York Road, Elkins Park, PA, from the Decision of the Zoning Officer for the following Zoning Relief in order to practice and administer acupuncture from Unit 203A:

- c. Zoning Relief from the Rules and Regulations of the Class C-4 Commercial and Business District as outlined in Article XVIII of Chapter 295 of the Cheltenham Code, as follows:
  - i. A Special Exception in accordance with CCS 295-127.L. for the proposed acupuncture use as said use is of the same general character as any of the other uses permitted within the C-4 Zoning District.
  - ii. In the alternative to a.i., above, a Variance from CCS 295-127. for the proposed acupuncture use instead of one of the permitted enumerated uses.

Jerri Johnson, office manager, representing the applicant provided photographs of the property. The Committee asked how many persons will occupy space and the response was one. Upon motion of Mr. Swavola, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee recommends approval of this appeal.

**APPEAL NO. 3336** (Continued and Amended) – Appeal of Matrix Ashbourne Associates, L.P., owner of premises known as 1100 Ashbourne Road, Cheltenham, PA (a/k/a “Ashbourne Country Club”), from the Decision of the Zoning Officer for Zoning Relief in order to develop the Premises into a 240 Unit Development consisting of forty-five (45) Single-Family Residences and one-hundred and ninety five (195) Carriage Homes. In addition, an area containing approximately 1.5 Acres has been set aside for a future Clubhouse, Restaurant and/or Retail Shops; Zoning Relief is not being sought for any potential uses on the approximately 2.0 Acre Area at this time. The premises is within the Class R-1 Residence District.

The following Zoning Relief is required:

- a. A Variance from the rules and regulations of the “Floodplain Conservation District” as outlined in CCS 295-156. so as to allow construction of portions of Stormwater Management Basins # 2C, # 2D and # 2E and replacement of the existing 8” T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area.
- b. Variances from the rules and regulations of the “Steep Slope Conservation District” as outlined in Article XXII of the Cheltenham Code, as follows:
  - i. From CCS 295-167. for the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools,

- sanitary sewers, stormwater management facilities, other underground utilities and landscaping.
- ii. A Determination that the Lines and Grades Plans submitted with the Application substantially conforms with the Lines and Grade Plan(s) requirements set forth in CCS 295-168.
  - iii. In the alternative to, b.ii, above, a Variance from CCS 295-168. for not submitting plans conforming to the stated Lines and Grades Plan(s) requirements.
- c. A Variance from the rules and regulations of "Parking and Loading" as outlined in CCS 295-221.F., for a greater amount of parking of 631 parking spaces instead of the maximum permitted 120% of the required parking spaces which equals 491 parking spaces.
  - d. Zoning Relief from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII of Chapter 295 of the Cheltenham Code, as follows:
    - i. A Special Exception in accordance with CCS 295-242.B.1 for the Age Restricted Development.
    - ii. A Variance from CCS 295-242.B.2 so as to permit restaurants small-scale retail, personal service shops, professional service shops in a separate building or buildings situated in the approximately 1.5 acre area designated on the Concept Plan as "Potential Commercial Area". Such building(s) shall not have residential units therein.
    - iii. A Special Exception in accordance with CCS 295-242.B.3. for a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities.
    - iv. A Special Exception in accordance with CCS 295-242.B.3 for a swimming pool for the residents of the Age Restricted Community only.
    - v. A Variance from CCS 295-243.B.8.a. to permit sanitary sewer facilities (if required) and Stormwater Management Basins #2C, #2D and #2E within the floodplain.
    - vi. A Variance from CCS 295-243.B.e.d. to permit development within areas having a slope of 15% or greater.
    - vii. A Variance from CCS 295-243.B.8.e. to permit sanitary sewer facilities (if required) and Stormwater Management Basins #1A, # 2C and #2E within the Riparian Buffer Areas.
    - viii. A Variance from CCS 295-244 for a minimum distance between buildings of 20' instead of the minimum required 30'.
  - e. A Variance from the entirety of the rules and regulations of the

“Preservation Overlay District” as outlined in Article XXIV of Chapter 295 of the Cheltenham Code.

- f. In the alternative to 1.e., above, an interpretation that the rules and regulations of the “Preservation Overlay District” as outlined in Article XXIV of Chapter 295 of the Cheltenham Code are not applicable due to the provisions of the last sentence of CCS 295-241.

Mr. Lynch, Township Engineer stated that this appeal is continued to May 10, 2010 and May 25, 2010 at 7:30 p.m. at Curtis Hall.

Mr. Zygmund-Felt, Carter Lane, Elkins Park, Co-President of the CC4A, reiterated a previous request that stormwater and sanitary sewer concerns be addressed for this proposed development.

Upon motion of Mr. Swavola, and unanimously approved by the Committee, the ZHB was urged to accept a continuance request. If a continuance is not granted, the Committee recommends denial of said application.

4. Upon motion of Mr. Swavola, and unanimously approved by the Committee, the Planning Commission Meeting Minutes of March 22, 2010 were received.
5. Upon motion of Mr. Swavola, and unanimously approved by the Committee, the AdHoc Zoning Revision Committee Meeting Minutes of March 22, 2010 were received.
6. The Committee reviewed and approved the recommendations of the Economic Development Task Force for issuance of a Certificate of Appropriateness for signage within the Commercial Enhancement Districts as follows:

Upon motion of Mr. Swavola, and unanimously approved by the Committee, a Certificate of Appropriateness was issued to New Venice Pizza, 419 Cheltenham Avenue, for a sign.

7. Upon motion of Mr. Swavola, and unanimously approved by the Committee, the March report of the Building Inspector was received.

There being no further business, upon motion of Mr. Swavola, and unanimously approved by the Committee, the meeting was adjourned.

  
David G. Kraynik  
Township Manager

Submitted by  
Kathryn McDevitt



**PUBLIC ATTENDANCE LIST**  
**Public Affairs Committee, 7:30 p.m.**  
**Public Safety Committee, 7:45 p.m.**  
**Building and Zoning Committee, 8:00 p.m.**  
**Wednesday, April 7, 2010**  
**Curtis Hall**

NAME (Please Print)	ADDRESS	E-MAIL/TELEPHONE
Mark Simon	306 Boyer Rd Cheltenham, PA	
Anita Petito	306 Boyer Rd Cheltenham, PA	
Man Kim	8033 Old York Rd Eltz Park PA	
Greg Destefano	2415 Rosemore Ave. Glenside	
ROB BERNHARD	123 TOOKANY CREEK PKWY CHELTENHAM	r1bernhard@ hotmail.com
Sara Koval	7461 Oak Hill Dr.	
Joseph W	Medrose center	
Soo IL Jung	MenRose Center	



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**Public Affairs Committee, 7:30 p.m.**  
**Public Safety Committee, 7:45 p.m.**  
**Building and Zoning Committee, 8:00 p.m.**  
**Wednesday, April 7, 2010**  
**Curtis Hall**

NAME (Please Print)	ADDRESS	E-MAIL/TELEPHONE
Mark Garvin	7816 Haines Rd	
Fern + Bob Billa	36 Mulberry Lane	
Joe Vesovic	107 Tookany Creek	
HANK WALKER	Cheltenham	
Debra Marberger	131 Tookany Creek	
TIM CLIFTON	431 Greenwood Ave	
Denise Finer	4 Pike's Way Apt	
Tom Jerruck	110 E WATKINS	



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**Public Safety Committee, 7:45 p.m.**  
**Building and Zoning Committee, 8:00 p.m.**  
**Wednesday, April 7, 2010**  
**Curtis Hall**

NAME (Please Print)	ADDRESS	E-MAIL/TELEPHONE
Doug Schleicher	Klehr Harrison 1835 Market St Rhila PA	dschleicher@klehr.com 215-569-2795
Eleanor Creyan	61 Tashany Creek Pkwy	RYANCT199@MSN.
Michael Ewers	648 Graydon Rd.	MEOWERS30@comcast.com (215)379-2410
Jose M. Ciullo	741 Mt Laurel Ave Glenide	jciullo@verizon

## SETTLEMENT AGREEMENT

**CJK DEVELOPMENT, LLC**, with offices located at 11 Summer House Hill Road, Holmdel, NJ 07733 (hereinafter "CJK") and **TOWNSHIP OF CHELTENHAM**, with an office located at 8230 Old York Road, Elkins Park, PA 19027 (hereinafter "Township"), enter into this Agreement to resolve disputed claims and terminate litigation.

**WHEREAS**, Township instituted a civil complaint against CJK in Magisterial District Court No. 38-1-02 (hereinafter "Litigation") regarding a certain fence located on CJK's parcel at Dewey Road between Brief Road and Belmar Avenue and further identified as Block 87D, Unit 48 and Block 87E, Unit 1, commonly known as the "Melrose Shopping Center"; and

**WHEREAS**, CJK filed a certain application with the Township Zoning Hearing Board from the issuance of a municipal notice of violation and from the revocation by the Township of a building permit issued to CJK on May 8, 2008 (hereinafter "Zoning Appeal"); and

**WHEREAS**, the parties hereto wish to amicably resolve the Litigation and the Zoning Appeal.

**NOW THEREFORE**, the parties hereto, incorporate by reference the background set forth above and exchange the following mutual promises and obligations:

1. **Fence No. 1**. CJK shall replace or position behind the current fence, which has a point of origin at Front Street and extends to Brief Road for a length and distance of approximately 100 feet along Dewey Road, a new, slatted chain link fence that will, by itself or in combination with the current fence, extend between 15 feet and 16 feet high above the ground surface (hereinafter " Fence No. 1"). Fence No. 1 shall either have green or white slats for visual screening.

2. **Fence No. 2.** CJK shall install an auxiliary fence or fencing for the purpose of preventing pedestrian passage and obstructing litter (hereinafter " Fence No. 2"), along the bottom course of the existing white fence surrounding the Sav-A-Lot store (excluding Fence No. 1 previously referenced). Photographs of an example of Fence No. 2 are attached hereto collectively as Exhibit "A". Fence No. 2 shall be green or white in color, preferably white.

3. **Screening.** CJK shall install vegetative screening the length of the fences along Dewey Road north of Front Street, comprised of Fences Nos. 1 and. 2. CJK shall plant six hundred (600) liriop plants (liriop muscari) in a good and workmanlike manner, in two (2) evenly staggered rows, 12"-14" on centers, or such modified pattern as CJK's landscaper believes is appropriate given the expected potential growth of the plants, subject to the Township's reasonable approval.

4. **Maintenance.** CJK shall keep Fence No. 1, Fence No. 2 and the plantings in good and workmanlike repair and condition. Any damaged part of either fence shall be repaired in a good and workmanlike manner within sixty (60) days of it being damaged.

5. **Township's Contribution.** The Township's total contribution towards the cost of all replacement fencing, slats and vegetative screening shall be \$8,000.00. The Township's contribution shall be paid to CJK as follows: 33 1/3% contemporaneous with the execution of this Agreement; 33 1/3% upon approval by the Board of Commissioners of a Revised Land Development Plan (defined below); and 33 1/3% on or before the later of (i) 30 days after completion of the fence construction and plantings referred to herein in accordance with the Revised Land Development Plan (discussed below) and (ii) 20 days after a post-construction/installation invoice has been delivered to the Township for its review.

6. **Termination of Litigation.** Within ten (10) days after erection of Fence No. 1 and Fence No. 2 and the placement of vegetative screening in accordance with the foregoing

paragraphs, the Township shall file the documents necessary to terminate the Litigation in Magisterial District Court 38-1-02 with prejudice, unless CJK fails to completely fulfill its obligations set forth herein. The Township shall take all appropriate steps for there to be no further proceedings regarding such Litigation during the activities to implement this Settlement Agreement, unless CJK fails to completely fulfill its obligations set forth herein.

7. **Termination of Zoning Appeal.** Within ten (10) days after payment of the Township's total contribution to CJK described above, CJK shall take all steps necessary to withdraw the Zoning Appeal, unless the Township fails to completely fulfill its obligations set forth herein. CJK shall take all appropriate steps for there to be no further proceedings regarding such Zoning Appeal during the activities to implement this Settlement Agreement, unless the Township fails to completely fulfill its obligations set forth herein.

8. **Revised Land Development Plan.** Prior to the erection of any of the replacement fencing, CJK shall file with the Township, and obtain approval of, a revised land development application and plan in conformity with the obligations set forth herein (hereinafter "Revised Land Development Plan"). Notes on the Revised Land Development Plan specifically referencing this Agreement and detailed descriptions of the new fencing configurations amending the existing land development plan will be submitted for approval under the Township's Subdivision and Land Development Ordinance. Both CJK and the Township acknowledge that such new plan constitutes a land development plan within the meaning of the Township's Subdivision and Land Development Ordinance, upon its approval. The Revised Land Development Plan shall also include a detailed description of the plantings described in paragraph 3 above. Township shall waive the application fee for the Revised Land Development Plan and all review fees. CJK shall be not responsible for the ordinary professional services escrow required of every land development applicant. CJK's Revised Land Development Plan

shall be approved by the Township if it complies with all applicable Township Subdivision and Land Development Ordinance provisions, as well as the mutual agreements set forth herein. CJK covenants to diligently pursue approval of the Revised Land Development Plan.

9. **Each Party to Bear its Own Costs.** Except as otherwise set forth herein, the parties shall bear their own respective costs.

10. **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be legally binding upon, all parties hereto and upon their successors and assigns.

11. **No Admission.** This Agreement is a compromise of disputed claims, and pursuant hereto, it is not to be construed as an admission for any purpose other than as necessary to enforce the terms of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and the terms are contractual and not merely a recital. There are no written or oral undertakings or agreements directly or indirectly related to this Agreement that exist without being incorporated in this Agreement. Further, this Agreement shall not be modified except through written agreement signed by both parties hereto.

IN WITNESS WHEREOF, the parties set their respective hands and seals.

**CJK DEVELOPMENT, LLC**

**TOWNSHIP OF CHELTENHAM**

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

By: \_\_\_\_\_  
Morton J. Simon, Jr. President

Witness: \_\_\_\_\_

Attest: \_\_\_\_\_  
David G. Kraynik

Date: \_\_\_\_\_