

## **AGREEMENT**

This Agreement is made as of 31st day of December, 2010, by and between Barley Mill, LLC, a Delaware limited liability company, Greenville Center Associates, LLC, a Delaware limited liability company, 20 Montchanin Associates, LLC, a Delaware limited liability company and 3704 Kennett, LLC, a Delaware limited liability company (collectively “Stoltz”), being all of, and the only, parties having title to and control over the Properties as hereinafter defined, and Citizens For Responsible Growth in New Castle County, Inc., a non-profit Delaware corporation (“CRG”).

For and in consideration of the promises herein made and exchanged, and for other good and valuable consideration, the receipt and adequacy of which are mutually acknowledged, the parties make and agree to perform and abide by the covenants in this Agreement. In addition, irrespective of other consideration, the parties make this Agreement under Seal, intending hereby to be legally bound.

### **Article I PURPOSE**

This Agreement sets forth the terms and conditions upon which Stoltz shall proceed with the processing of “Compromise Plans” for those projects in New Castle County, Delaware, referred to as “Barley Mill Plaza” (“BMP”), “Greenville Center” (“CG”) and “20 Montchanin Road” (“20 Montchanin”) (collectively the “Properties” and each a “Property”). This Agreement also sets forth the terms and conditions upon which CRG shall support, in writing, and by attending and providing testimony at public

hearings and meetings, the Compromise Plans to be filed by Stoltz for the Properties, to include the rezoning of portions of BMP and 20 Montchanin, and parking variances for GC as well as for 3704 Kennett Pike (“Kirkwood”), and shall refrain from taking certain actions adversely affecting the Compromise Plans. In addition, this Agreement provides a mechanism for expeditiously addressing and resolving any future disputes between the parties under this Agreement regarding the Properties and Kirkwood, each of which is more particularly described and shown on Exhibit “A” attached hereto and made a part hereto.

## **Article II**

### **REPRESENTATIVES**

Each party shall designate a representative (“Representative”) who shall be authorized to act on behalf of the party in connection with the implementation of this Agreement. Because the implementation of this Agreement will require mutual trust and respect, the Representative designated by each party shall be reasonably acceptable to the other. Until further notice, the initial Representative of Stoltz shall be Keith Stoltz, and the initial Representative of CRG shall be John Danzeisen. Each party agrees that its initial Representative shall continue to serve as such unless and until he withdraws, and each initial Representative confirms his intention to serve as such until the Compromise Plans have been approved and recorded and any applicable appeal period has run, as well as during a reasonable period for construction of the development proposed by the Compromise Plans, extending with respect to each Property for five (5) years from and after recordation of approval for the Compromise Plans for such Property, and expiration of the applicable appeal period.

**Article III**  
**COMPROMISE PLAN PROCESS**

Within twenty (20) business days of the execution of this Agreement, Stoltz shall submit to the New Castle County Department of Land Use (“NCCDLU”) the Compromise Plans for each of the Properties and for Kirkwood, which shall in all material respects be in the form attached hereto as Exhibit “A”, which Compromise Plans will be processed by NCCDLU in accordance with the provisions of Article 31 as well as other provisions of the New Castle County Unified Development Code (“UDC”) in effect as of the time of execution of this Agreement, and the provisions of the New Castle County Code applicable thereto. CRG understands and accepts that upon submission of the Compromise Plans to NCCDLU, NCCDLU intends to hold in abeyance those plans that had been filed with NCCDLU for BMP, being Application No. 2008-0275, and for GC, being Application No. 2008-0272 (collectively the “Filed Plans”), pending Preliminary Plan approval of the Compromise Plans by NCCDLU and rezoning approval for BMP and 20 Montchanin. In the event that rezoning approval, Preliminary Plan approval, approval of the parking variances, approval of the deed restriction amendment or approval of the Record Plans contemplated in this Agreement, as applicable, are not obtained from New Castle County for all of the Properties, CRG understands that Stoltz is free to abandon all (and not just some) of the Compromise Plans and undertake, upon restoring the status quo ante with respect to all Properties for which any requested approvals and/or rezoning had already been obtained, to continue processing the Filed Plans, and Stoltz understands that CRG is free to retract any support it had given for the retracted Compromise Plans and may continue opposing approvals for the Filed Plans

that are again being processed, the same as if this Agreement had never been entered into with respect to the Properties, whereupon the terms and conditions of this Agreement shall automatically terminate and be null and void (except for this provision and Article XI) without any further action by any of the parties hereto with respect to such Properties. Concurrently with the submission of the Compromise Plans to NCCDLU for any Property, a complete copy of the submission for such Property shall be provided to CRG. Stoltz shall also concurrently provide to CRG a copy of subsequent submissions and/or applications relating to the Compromise Plans (which for purposes of this Agreement shall be deemed an integral part of any Compromise Plan that requires same) all of which shall specifically meet the terms and conditions of this Agreement. Once filed, the Compromise Plans shall not be materially altered except as rightfully required by the NCCDLU or other governmental agencies having jurisdiction, or except as further proposed for revision by Stoltz and confirmed by CRG or resolved by binding mediation in accordance with the procedures outlined herein. Notwithstanding the provisions of this Agreement, Stoltz shall have the right to terminate this Agreement, so long as the status quo ante as to all Properties is restored, at any time that: (i) the approvals needed for a Compromise Plan are denied or otherwise not obtained within the time permitted by applicable law; or (ii) if any approvals otherwise obtained are appealed and such appeal is not dismissed with prejudice within ninety (90) days; or (iii) if litigation is filed either in the form of injunctive relief to stop the process for obtaining the approvals needed for a Compromise Plan or otherwise to challenge such approval process and such litigation is not dismissed (or, if not dismissed, then not otherwise resolved to the satisfaction of Stoltz) within ninety (90) days; or (iv) any change to existing law, policy or regulation is

enacted or adopted that would materially and negatively impact the approvals needed for a Compromise Plan. Prior to exercising its right to terminate the Agreement, Stoltz shall contact CRG's Representative to advise of its intention to terminate the Agreement and the reason therefore.

In the event that Stoltz proposes any material modifications to the Compromise Plan(s), Stoltz shall provide CRG with copies of the proposed modifications and CRG shall have ten (10) business days after receiving same within which to either confirm to Stoltz in writing that the Compromise Plan(s) as modified appear to meet the terms of this Agreement or are otherwise acceptable, or explain to Stoltz in writing the basis for CRG's concerns that it does not meet the terms of this Agreement. In the latter event, Stoltz may elect to revise the Compromise Plan(s) and again provide CRG with a review copy, following receipt of which CRG shall have seven (7) business days within which to respond in writing to Stoltz. If CRG continues to have concerns, Stoltz may elect to further revise the Compromise Plan(s) and again provide CRG with a review copy, following receipt of which CRG shall have seven (7) business days within which to respond in writing to Stoltz. At any time after CRG has expressed concerns, either party may request that the Representatives promptly meet and endeavor to resolve any disagreement. If they are unable to achieve a resolution within five (5) business days of their first meeting together to address a particular disagreement, either party may call for binding mediation as provided in a later section of this Agreement.

## **Article IV**

### **COMMUNITY ASSURANCE PROCESS**

Upon Stoltz's filing of the Compromise Plans, CRG shall draft and provide Stoltz with (i) a review copy of proposed deed restrictions running with the land and enforceable by The Kennett Pike Association and Delaware Greenways, and (ii) in the case of variances or special exceptions, a review copy of proposed conditions of approval, which Deed Restrictions and Approval Conditions shall be consistent with the terms and conditions of this Agreement, and which CRG shall request that Stoltz offer as voluntary assurances in connection with any rezoning ("Deed Restrictions"), or invite as conditions of approval in connection with any variance or special exception ("Approval Conditions"), in return for CRG's support of such rezoning, variance or special exception. Stoltz shall have ten (10) business days after receiving such review copy within which either to confirm to CRG in writing that the Deed Restrictions and/or Approval Conditions appear to meet the terms of this Agreement, or explain to CRG in writing the basis for Stoltz's concerns that they do not meet the terms of this Agreement. In the latter event, CRG may elect to revise the Deed Restrictions and again provide Stoltz with a review copy, following receipt of which Stoltz shall have seven (7) business days within which to respond in writing to CRG. If Stoltz continues to have concerns, CRG may elect to further revise the Deed Restrictions and/or Approval Conditions and again provide Stoltz with a review copy, following receipt of which Stoltz shall have five (5) business days within which to respond in writing to CRG. At any time after Stoltz has expressed concerns, either party may request that the Representatives promptly meet and endeavor to resolve any disagreement. If they are unable to achieve a resolution

within seven (7) business days of their first meeting together to address a particular disagreement, either party may call for binding mediation as provided in a later section of this Agreement.

Upon receiving confirmation from Stoltz that the proposed Deed Restrictions and Approval Conditions, as applicable, meet the terms of this Agreement, or are otherwise acceptable, or upon revision of the Deed Restrictions and/or Approval Conditions in accordance with binding mediation, Stoltz shall, as applicable and in accordance with the following mechanisms, offer same as a voluntary assurances in connection with any proposed rezoning of the subject Property or as conditions of approval in connection with any proposed variance or special exception for the subject Property. With respect to voluntary assurances, Stoltz shall execute such Deed Restrictions and CRG shall execute a Consent to Extinguishment of such Deed Restrictions which will be placed into escrow with a third party escrow agent acceptable to both Stoltz and CRG, for recordation as hereinafter provided. The Deed Restrictions will be recorded as customarily occurs concurrently with the granting of the requested rezoning in connection with which such deed restrictions were offered; however, such deed restrictions shall by their terms provide for their extinguishment if the rezoning is overturned, or the plans are revoked by reason of any appeal thereto, or if this Agreement is terminated and upon restoration of the status quo ante in accordance with the provisions of Articles III or XI hereof. The Consent to Extinguishment shall also be placed into escrow with an escrow agent acceptable to both Stoltz and CRG, to be recorded concurrently with the undoing of the rezoning and plan approval with respect to which the Deed Restrictions being extinguished had been offered. With respect to the Approval Conditions offered for any

variance or special exception, CRG shall concurrently execute and deliver in escrow, as outlined above, a Consent to Revocation of such variance and special exception, including the Approval Conditions, if the variance or special exception is overturned on appeal or the variance or special exception extinguished by termination of this Agreement and restoration of the status quo ante in accordance with the provisions of Articles III or XI hereof. Stoltz represents and warrants that Deed Restrictions executed by it and Approval Conditions offered by it shall, upon recordation or when included in any variance that is granted, be effective to bind the subject Property and all parties having an interest therein without the signature of any other owner or party having an interest in the Property (except as otherwise expressly excepted elsewhere in this Agreement). Based on such deed restrictions being executed and delivered for recordation or conditions being incorporated into the requested variance or special exception, as applicable, CRG shall support the proposed rezoning, variance or special exception. Stoltz shall not alter, amend or withdraw, or seek the alteration, amendment or withdrawal, of any Deed Restrictions or Approval Conditions established under the foregoing procedures without the prior written consent of CRG, except upon termination of this Agreement in accordance with the provisions of Articles III or XI hereof.

## **Article V**

### **BARLEY MILL PLAZA**

The Compromise Plan for Barley Mill Plaza, and the Community Assurances for Barley Mill Plaza, will reflect and address the following principles, which CRG shall support in writing, and by attendance and testimony in support thereof at public hearings:

## 5.1 Retail Development

**5.1.1 CR Rezoning.** Up to 37 contiguous acres of the BMP site, along the frontage between the Barley Mill Road intersection and the intersection of Route 141 and Route 48 will be rezoned from Office Regional, “OR”, to Commercial Regional, “CR” (the “Retail Site”) as shown on the Compromise Plan.

**5.1.2 Retail Density.** No more than 454,000 square feet of Gross Floor Area (“GFA”) will be constructed on the Retail Site. As used herein and throughout this Agreement, the term “Gross Floor Area” shall have the meaning as set forth in Section 40.33.300 of the UDC in effect at the time of the execution of this Agreement, which pursuant to the provisions of Section 40.05.050K of the UDC excludes the square footage of parking structures. However, as to BMP specifically, the GFA of any parking structure constructed on the Retail Site, except for a parking structure exclusively serving a hotel on the Retail Site, shall be counted toward the total GFA permitted on the Retail Site. The total GFA for existing buildings on the Retail Site is 490,000 square feet. The GFA in any existing buildings on the Retail Site will be counted towards the said 454,000 GFA limitation, until such time as the existing building(s) are demolished. The parties understand and agree that because the existing buildings on the Retail Site exceed the 454,000 GFA limitation, there may be a period of time, which shall expire if and when the total GFA on the Office Site exceeds 1,164,000 square feet, when the total GFA on the Retail Site between the existing buildings and new retail buildings being constructed may exceed the 454,000 square feet limitation by 36,000 square feet (for a total not exceeding 490,000 square feet) by reason of one or more existing office buildings not yet being demolished.

**5.1.3 Retail Heights.** Heights of buildings on the Retail Site will not exceed either one (1) story or forty (40) feet, except that a four story building combining first floor retail and three floors of hotel, if constructed, shall be located generally as shown on the Compromise Plan and shall not exceed fifty (50) feet, plus rooftop mechanical equipment not exceeding an additional ten (10) feet in height. As used herein, and throughout this Agreement, the term “height” shall have the meaning as set forth in Section 40.33.300 of the UDC in effect as of the time of execution of this Agreement. Decorative spires, cupolas, architectural chimneys and flag poles shall not be subject to the height limitations of this Agreement.

**5.1.4 Big Box Size.** During the first twenty (20) years following issuance of the first certificate of occupancy for a newly constructed building on the Retail Site, no single user store or single user building on the Retail Site will be larger than 75,000 GFA, except food stores or furniture stores, which shall not exceed 90,000 GFA. Upon and following the expiration of said 20 year period, no single user building on the Retail Site will be larger than 95,000 GFA. The parties understand and agree that the GFA limitations for the Retail Site do not apply to a building or buildings occupied by more than one user. For this purpose, affiliated companies or specialty businesses operated by one or more separate owners within what would customarily be considered a single store (such as, by way of illustration and not limitation, a pharmacy or bank branch in a super market), shall be regarded as a single user.

**5.1.5 Exterior Usage.** Except for construction activities while new structures are being erected or existing structures are being renovated or repaired, no portions of the Retail Site will be used for storage trailers or for the display, storage or sale of

merchandise or other materials. Uses within the Retail Site shall be permitted to have temporary special sales events making use of the sidewalks or side or rear yards (where no walks exist) adjacent to the building or buildings occupied by the merchant or merchants sponsoring such events. The prohibition as to exterior usage does not apply to outdoor dining associated with restaurants within the Retail Site.

**5.1.6 Pad Sites.** No more than eight (8) pad sites shall be created on the Retail Site, of which no more than five (5) shall be located along Route 141. No pad site shall be used for a gas station or automobile service station or for fuel pumps incidental to any other retail or commercial use. No pad site shall be used for a convenience store as such use is reasonably defined by Wawa, 7 Eleven, and Cumberland Farm; or used for a fast food restaurants as such use is reasonably defined by McDonalds, Burger King, Wendy's, Arbys, Kentucky Fried Chicken, Taco Bell, Chick-fil-A, Hardees, Jack in the Box, Dairy Queen, Popeyes, Sonic, Subway, Pizza Hut, Papa John's, Dominios Pizza, Bojangles, Quiznos, Roy Rogers, Little Caesar's and Church's Chicken. The parties recognize that the fast food genre may evolve in the future in ways that cannot now reasonably be anticipated, and that the parties may reasonably disagree as to whether presently existing businesses not named above fall within the genre illustrated by the businesses named above. Stoltz shall have reasonable latitude in accommodating such evolutions or other existing business for the four (4) pad sites located along Route 48, but such evolutions or other existing businesses shall not be accommodated against the reasonable objections of CRG on the other four (4) pad sites located directly on Rt. 141, closest to Greenville.

**5.1.7 Lighting.** The community is concerned about excessive and intrusive lighting of the Retail Site, particularly along the northeastern-most 1,500 feet along Rt.

141. The community, including CRG, will be given an opportunity to provide input on lighting at the appropriate time.

## **5.2 Office Development**

**5.2.1 OR Zoning.** Rezoning of the remaining approximately 59 acres at BMP that is not part of the Retail Site but is presently zoned “OR” (the “Office Site”) will be prohibited. Mixed use, or other development of BMP that could result in use of the Office Site for retail, commercial or industrial uses will be prohibited; provided, however, that retail or commercial uses located in office buildings which primarily (though not exclusively) serve the convenience of those working in the office buildings on the Office Site such as (but not limited to) barbershop, beautician, magazine shop, coffee shop, cafeteria, dry cleaning drop-off/pickup, tailor and other uses and which are not among the uses prohibited for Pad Sites on the Retail Site, are permitted. In addition, the following Limited Uses (as that term is defined in the UDC) shall be permitted subject to compliance with the specific provisions of the UDC: school, library, museum, civic/cultural arts center, conference center, day care, preschool and passive recreational uses.

**5.2.2 Office Density.** No more than 1,200,000 square feet of GFA will be constructed on the Office Site. The GFA in any existing buildings on the Office Site that are not demolished will be counted toward total GFA , until they are demolished so that at no time shall the total GFA of all buildings on the Office Site exceed 1,200,000 square feet.

**5.2.3 Office Heights.** Heights of all buildings on the Office Site which are not used for vehicular parking (garage) purposes will not exceed either four (4) stories or

fifty (50) feet, plus rooftop mechanical equipment not exceeding an additional ten (10) feet in height. As to those buildings identified on the attached Exhibit “B”, located along the northeast property line adjoining the railroad right-of-way, Stoltz shall use best efforts to buffer sound emanating from the rooftop mechanical equipment against the adjoining residential communities (“Nearby Homes”) and to cause such mechanical equipment to be located no closer to the Nearby Homes than the mid-point of the roof on which such mechanical equipment is placed, when measured from the closest boundary lines of the communities in which the Nearby Homes are located.

**5.2.4 Garage Heights.** Heights of all parking structures (i.e., garages) on the Office Site shall not exceed either a ground level floor plus three stories, or thirty-six (36) feet. Stoltz shall use best efforts to design the parking structures so that the walls nearest Nearby Homes will be constructed so as to significantly block the direct shining of vehicular headlights towards Nearby Homes.

**5.2.5 Building Placement.** The Office Site shall be designed so as to place as much of the parking structures as is reasonably feasible along the northeast boundary nearest the railroad right-of-way, and so as to place as little of the office buildings as is reasonably feasible along the boundary nearest the railroad right-of-way, as more specifically shown on Exhibit “B”.

### **5.3 Stormwater Management**

**5.3.1 Statutory Stormwater Requirements.** The design, construction, use, operation, maintenance, repair and replacement of Barley Mill Plaza in all aspects, portions and in its totality will comply with all applicable statutes, codes and regulations of all federal, state and local governments having jurisdiction.

**5.3.2 Additional Mitigation.** In addition to complying with all statutory requirements as set forth above, Stoltz shall set aside and construct an approximate four (4) acre stormwater storage basin on the Office Site, generally in the location as shown on Exhibit “C” hereto, which will provide stormwater runoff management above and beyond statutory requirements by collecting and managing stormwater runoff from areas to the north of the Barley Mill Plaza property. Construction of such stormwater facility shall be completed at such time as the area to be devoted to the additional mitigation is no longer leased for office purposes and accompanying parking. Prior to submission of the Compromise Plans to NCCDLU, Stoltz’s engineers shall meet with an engineer for the Town of Elsmere, and, if available, an engineer from New Castle County and/or the State of Delaware, to discuss storm water management issues and how Elsmere will be protected against an increase in downstream flooding from the proposed development; it being understood, however, that ultimate approval of storm water management plans lies with the governmental agencies having jurisdiction over such matters.

## **5.4 Landscaping**

**5.4.1 Route 141 Trees.** To the extent that removal of trees along Route 141 is neither required for purposes of constructing the improvements shown on the Compromise Plan for Barley Mill Plaza, nor necessary to achieve reasonable line of sight for the Retail Site along Route 141, as determined by Stoltz (the “Line of Sight”), such trees shall not be removed except where necessary due to the health condition of the tree. All pruning of trees for Line of Sight or other purposes shall be performed by a Delaware licensed arborist. The parties understand that to the extent that any of the trees that are not required to be removed due to Line of Sight are located within the easement area of a

utility and such utility has the right to prune or remove the trees, Stoltz does not have the authority to prohibit such pruning or removal.

**5.4.2 Additional Plantings.** The parties shall collaborate in good faith to achieve visual screening against automobiles parked in the parking lots near Route 141 within the Retail Site, by the placement of additional low height plantings that satisfy, at reasonable cost to Stoltz without materially interfering with the Line of Sight, the applicable statutory requirements for landscaping. In return, CRG will not urge the Delaware Department of Transportation (“DelDOT”) or other governmental or non-profit agency to place trees within the Route 141 right-of-way that Stoltz reasonably regards as interfering with the Line of Sight, nor will CRG support other persons in doing so.

**5.4.3 Railroad R.O.W. Trees.** Stoltz will use best efforts to retain all trees, shrubs, brush or other vegetation currently located along the northeasterly property line, between the railroad right-of-way abutting the Barley Mill Plaza property and the existing buildings and proposed future buildings on the Office Site, that do not interfere with Stoltz’s proposed development. In that regard, trees, brush and other vegetation may be removed and replaced with substantially the same or better materials as required by the applicable provisions of the UDC.

**5.4.4 Possible Berms.** If construction activities on BMP generate excess clean fill, Stoltz will undertake, insofar as construction schedules reasonably and practically permit, to deliver such fill without charge to the westerly side of Route 141, across from BMP, as and where requested by DelDOT so that DelDOT can make use of such material for the construction of berms. This provision is intended to work to the mutual benefit of

Stoltz and the community and shall not be applied in a manner that generates additional cost to Stoltz or creates construction impediments or difficulties.

### **5.5 Signage**

CRG agrees to work with Stoltz in the event that variances may be needed to accommodate signage on the Barley Mill Plaza site. CRG further understands that with respect to the Retail Site, signage is dictated by the tenants and their specific sign requirements. Stoltz acknowledges that CRG is opposed to signs that are internally lit, flashing or changing, and prefers externally lit ground monument signs with brick or stone bases, and a limited number of building signs, in all cases mounted on buildings walls rather than roofs. The parties agree to work in good faith on a case by case basis to reach a reasonable accommodation between Stoltz's desire for sign variances and CRG's desire for signs that are aesthetically pleasing. If the parties reach an agreement upon which CRG is willing to support Stoltz's applications for sign variances, the terms of such agreement may be the subject of additional Approval Conditions, and CRG may ask the Board of Adjustment to include such terms as a condition of approving the variances. CRG agrees to work with Stoltz in developing reasonable conditions with respect to signage and Stoltz agrees to work with CRG in achieving aesthetically pleasing signs of the kind that CRG can support.

### **5.6 Traffic**

Stoltz will cause its engineers to provide CRG's engineers with copies of all traffic related studies, reports and materials as and when same are provided to the DelDOT, NCCDLU, or any other governmental agency, and, in turn, CRG shall provide to Stoltz copies of such traffic related documentation generated by CRG's consultants.

The parties' objective shall be to achieve, within the parameters of the applicable statutory requirements, a mutually fair and beneficial accommodation that serves the legitimate interests of both the developer and the community. To this end, the parties will work constructively, reasonably and expeditiously with DelDOT and the County to resolve traffic issues or disagreements. CRG shall have the opportunity and right to communicate its views and recommendations regarding traffic issues to every governmental official, agency and department having responsibility for such matters and, if it does so, will also provide the same information to Stoltz. CRG shall not seek the further downsizing of Barley Mill Plaza, nor attempt to prohibit the subdivision and rezoning of the Retail Site from "OR" to "CR" on the terms hereinbefore provided, nor attempt to impose unfair financial burdens or unreasonable conditions on Stoltz as to the Barley Mill Plaza project. Stoltz understands that CRG will take the position that Stoltz should contribute its fair share of the cost to construct highway improvements as required by DelDOT in accordance with applicable law, to accommodate traffic generated by development of the Property. As a last resort, unless submitted to and resolved by alternate dispute resolution in accordance with this Agreement, CRG reserves its right to seek a legal ruling on any traffic related matter that it believes is not being reviewed, evaluated, processed or approved in accordance with applicable law.

### **5.7 Plan Approvals**

CRG understands that from the time of the filing of the Compromise Plans, Stoltz shall have twelve (12) months plus two (2) ninety (90) day extensions to obtain rezoning and preliminary plan approval for the Compromise Plan for BMP, and will have approximately twelve (12) months to obtain final record plan approval for the

Compromise Plan for BMP. CRG is sensitive to the timeframes outlined herein and agrees to work diligently with Stoltz to meet the timeframes for obtaining the necessary approvals for the Compromise Plan for BMP.

**Article VI**  
**GREENVILLE CENTER**

The Compromise Plan for Greenville Center, and the Community Assurances for Greenville Center, will reflect and be based on the following concepts:

**6.1**     Building Heights. Heights of buildings at Greenville Center shall not exceed fifty (50) feet, plus rooftop mechanical equipment not exceeding an additional ten (10) feet in height, except that the building proposed at the intersection of Buck Road and Route 52 shall not exceed one (1) story or twenty five (25) feet in height, plus mechanical systems not more than an additional ten (10) feet in height, and except that heights of all structures used exclusively for vehicular parking purposes (in contrast with structures with parking under office or commercial floors) shall not exceed either a ground level floor plus three stories, or thirty-six (36) feet. Stoltz shall use best efforts to design garages so that the walls closest to Greenville Manor will be constructed so as to substantially block the direct shining of vehicular headlights towards homes in Greenville Manor.

**6.2**     Drive-Through Building Limitations. The height of the proposed Drive-Through Building at the intersection of Buck Road and Route 52 shall not exceed one story nor be greater than twenty-five (25) feet in height, plus mechanical systems not more than an additional ten (10) feet in height which shall be fully screened from all

sides. The size of the Drive-Through Building shall not exceed 4,000 square feet of GFA, and it shall be completely finished on all four (4) sides. The physical area constituting the Drive Through space shall not be counted toward GFA. The Drive-Through Building shall not be used for fast food restaurants prohibited for the Pad Sites at the BMP Retail Site as identified earlier in this Agreement, nor for convenience store, gas station or automobile repair or service station.

**6.3** Expansion/Replacement. CRG will support Stoltz's plan to expand Greenville Center, in addition to the Drive-Through Building, by the addition of approximately 19,000 square feet of expansion and/or replacement gross floor area ("GFA"), by means of "squaring off" into a rectangle the building presently occupied as a post office and jewelry store (without increasing the present height thereof) and by replacing the existing two story building heretofore ding occupied by Wachovia (and soon to be occupied by Wells Fargo) as shown on the attached Exhibit "D" (the "Replacement Building"). Expansions or replacements of existing buildings shall not be located closer to Route 52 than the closest existing building at Greenville Center. No parking garage or elevated parking structure shall be located along Route 52. As to expansions or replacements of existing buildings or construction of new buildings that abut Greenville Manor, Stoltz shall use best efforts to buffer sound emanating from the rooftop mechanical equipment against homes in Greenville Manor.

**6.4** Parking Space Variance. CRG will support Stoltz's application for a parking space variance in connection with the Drive-Through Building. Stoltz acknowledges and agrees that CRG is free to request, concurrently with and as a condition of its support of Stoltz's application for a parking variance, that the Board of

Adjustment impose conditions in granting such variance for the protection of the community which are consistent with the terms of this Agreement, and Stoltz agrees not to oppose such conditions. Stoltz shall not undertake to add GFA at GC until the required parking spaces for which a variance was sought and obtained are replaced on site and the variance is thereafter surrendered or extinguished; provided, however, that Stoltz may construct a new parking structure under the Replacement Building without replacing any parking spaces.

**6.5** Buck Road Entrance. Stoltz will cause its engineers to provide CRG's engineers with copies of all traffic related studies, reports and designs relating to the Buck Road entrance as and when same are provided to DelDOT, the NCCDLU, or any other governmental agency. CRG shall similarly provide to Stoltz copies of all such information relating to the Buck Road entrance which CRG has provided to any governmental agency. The parties' objective shall be to achieve, within the parameters of the applicable statutory requirements, a mutually fair and beneficial accommodation that serves the legitimate interests of both the developer and the community. To this end, the parties will work constructively, reasonably and expeditiously with DelDOT and the County to resolve traffic/entrance design issues or disagreements. CRG shall have the opportunity and right to communicate its views and recommendations regarding traffic issues to every governmental official, agency and department having responsibility for such matters. However, CRG shall not seek to limit the development of Greenville Center based on traffic/entrance considerations beyond what is provided in the paragraphs above, nor attempt to impose unfair financial burdens or unreasonable conditions on Stoltz. As a last resort, unless submitted to and resolved by alternate

dispute resolution in accordance with this Agreement, CRG reserves its right to seek a legal ruling on any matter related to traffic and entrance design for GC that it believes is not being reviewed, evaluated, processed or approved in accordance with applicable law.

**6.6** Mortgage Subordination. CRG acknowledges and agrees that Stoltz is not required to obtain subordination by the holder of the present mortgage against Greenville Center to the deed restrictions prepared and recorded to reflect the Community Assurances called for in this Agreement. However, any new mortgage shall be subordinated to the deed restrictions, and Stoltz shall use best efforts to obtain subordination of any renegotiated mortgage.

**6.7** Plan Approval. CRG understands that from the time of the filing of the Compromise Plans, Stoltz shall have until March 17, 2011 to obtain preliminary plan approval for the Compromise Plan for GC, and will thereafter have eighteen (18) months plus two (2) ninety (90) day extensions in order to obtain final record plan approval for the Compromise Plan for GC. CRG is sensitive to the timeframes outlined herein and agrees to work diligently with Stoltz to meet the timeframes for obtaining the necessary approvals for the Compromise Plan for CG.

## **Article VII**

### **20 MONTCHANIN ROAD**

The Compromise Plan for 20 Montchanin Road, and the Community Assurances for 20 Montchanin Road, will reflect and be based on the following concepts:

**7.1** Building Height. The height of the additional building proposed along Montchanin Road (“New Building”) shall not be greater than twenty five (25) plus

rooftop mechanical equipment not exceeding an additional ten (10) feet in height which shall be fully screened to the extent visible from Montchanin Road. The height of any future expansion of the present building at 20 Montchanin Road shall not materially exceed its present height (excluding decorative spires, chimneys and copulas).

**7.2 Building Density.** The additional building proposed along Montchanin Road (“New Building”) shall not exceed 6,000 square feet of GFA, exclusive of the physical area constituting any drive through space,. The total GFA of all buildings at 20 Montchanin Road, including the New Building, shall not exceed the present limitation of the deed restrictions in effect for 20 Montchanin less the 6,000 square feet proposed in the New Building.

**7.3 Building Set-Back.** The New Building shall not be closer than 90 feet to the right of way line for the Montchanin Road right-of-way, as shown on the attached Exhibit “E” and shall be accessed by the existing entrance off of Montchanin Road. The attached Exhibit “E” establishes a building limitation line so that no expansion of the presently existing building or construction of a new building shall be closer to Brecks Lane or to the adjoining property owned by the Raskob Foundation, than the building limitation line shown on the attached Exhibit “E”. In addition, any expansion of the existing building or construction of a an additional building(s), other than the New Building, shall occur only within the area identified as “Buildable Area” on the attached Exhibit “E”.

**7.4 CN Rezoning.** CRG shall support Stoltz’s application for the rezoning of a two acre parcel abutting Montchanin Road and Route 141 from Office Regional, “OR”, to Commercial Neighborhood, “CN” to accommodate the New Building as shown on the

Compromise Plan for 20 Montchanin Road. All sides of the New Building shall be fully finished and comparable to the presently existing building at 20 Montchanin Road, and it shall be served solely by the same entrance/exit drive. The New Building, proposed as a drive through facility, shall not be used for a drive through restaurant, gas station or convenience store, tavern, bar not incidental to a restaurant, or other potentially nuisance uses such as tattoo parlors and arcades. Existing berms and landscaping along Montchanin Road and outside of the “Buildable Area” shown on Exhibit “E” shall be preserved insofar as possible.

**7.5** Deed Restrictions. The existing deed restrictions shall be extinguished and replaced with restrictions consistent with the terms of this Agreement which shall include a prohibition against further rezonings or non-office uses at 20 Montchanin Road (however, this prohibition shall not preclude the New Building being used for the non-office purposes specified above). All new construction or expansion of existing structures shall meet the stormwater/drainage requirement of the UDC, so as not to increase run-off onto the homes along Brecks Lane or the Raskob Foundation.

**7.6** Mortgage Subordination. CRG and Stoltz agree that Stoltz will use best efforts to obtain subordination by the holder of the present mortgage against 20 Montchanin to the deed restrictions prepared and executed to reflect the Community Assurances called for in this Agreement. Any new mortgage shall be subordinated to the deed restrictions. CRG shall not be required to support the CN rezoning application unless whatever mortgage will be against 20 Montchanin at the time of the rezoning is subordinated to the new deed restrictions. CRG and Stoltz shall work together as

appropriate so that the timing of any such rezoning will occur after such subordination takes effect.

**Article VIII**  
**3704 KENNETT PIKE**

CRG will support a parking variance for the addition of 19 parking spaces at 3704 Kennett Pike as shown on the plan appended hereto as Exhibit "A" for Kirkwood. Stoltz agrees that such parking spaces are to support the existing building. Stoltz shall not seek to expand the existing building, or construct a new building that is higher than thirty five (35) feet in height or materially closer to Route 52 than sixteen (16) feet. Prior to submission of the Compromise Plans to NCCDLU, Stoltz's engineers shall meet with an engineer for Westover Hills Woods, and if available an engineer from New Castle County and/or the State of Delaware, to discuss storm water management issues and how homes in Westover Hills Woods will not experience an increase in downstream flooding from the proposed development; it being understood, however, that ultimate approval of storm water management plans lies with the governmental agencies having jurisdiction over such matters.

**Article IX**  
**GENERAL PRINCIPLES**

The parties acknowledge having reached very specific and detailed agreement on some matters, while "agreeing not to agree" on certain other matters. Where the parties have "agreed not to agree," each party retains its right to advocate its position and views with whatever government agency may have the power to decide the matter. The intent of

this Agreement is to achieve a resolution of the parties' differences within the parameters of applicable statutes, codes and regulations, and neither party is agreeing to contend for or support development that does not comply with the law. Accordingly, CRG's unequivocal support for the Compromise Plans does not require it to approve design features or to sanction results that do not comply with the law. However, an important general principle on which the parties both agree is that neither of them shall seek to circumvent the clear intent of this Agreement or undermine its fundamental benefits for the other. By way of illustration and without limiting the scope or application of this general principle, CRG agrees that it will not insist all highway improvement work must be completed in advance before development of BMP can proceed; and that it will not contend that Stoltz must make all required payments towards highway improvements in advance before development of BMP can proceed. CRG's unequivocal support for the Compromise Plans does not mean it endorses their design concepts as reflecting the best possible land planning principles and techniques, but CRG shall not seek design changes that are not required for compliance with the law. By way of further illustration and without limiting the scope or application of this general principle, Stoltz acknowledges and agrees that development of the Compromise Plans may not lawfully increase storm water drainage on other properties (except within natural watercourse channels as permitted by Delaware law), and agrees that it will not make grade changes that have the effect of materially increasing building heights above what otherwise would have resulted from construction at present grade or that materially lower or reduce existing berms (unless otherwise provided in this Agreement); nor will Stoltz invite disregard of the protections in this Agreement for the community nor solicit government

“requirements” that materially change the Compromise Plans or evade or circumvent the community protections in this Agreement.

## **Article X**

### **BINDING MEDIATION**

It is anticipated that various issues may arise from time to time that the parties did not foresee and address at the time when this Agreement was made or which, while important, are minor in significance compared to scope of the overall Agreement . If and when such issues arise, the parties will cause their Representatives promptly to discuss in good faith ways to resolve such issues in a manner that achieves the reasonable and legitimate objectives of each party. Except as excluded at the end of this Section of the Agreement. if the parties are unable to agree, then either of them (the “Initiating Party”) may submit the matter to binding mediation, by providing the other with the name and curricula vitae of an independent, unbiased person trained or experienced in commercial matters and in mediation. Within ten (10) business days of receiving such name, the other party (“Responding Party”) shall provide the Initiating Party with the name and curricula vitae of an independent, unbiased person trained or experienced in commercial matters and in mediation, failing which, the Responding Party shall be deemed to have accepted the person named by the Initiating Party as the sole mediator. If each side has named a mediator, those two shall appoint a third independent, unbiased person with experience in commercial matters to serve as the binding decision maker (the “arbitrator”). The parties’ disagreement shall then expeditiously be mediated in accordance with such procedures as the mediators and arbitrator, after considering the suggestions and schedules of the parties, shall determine. The objective of the mediation

shall be to arrive at a consensus between the parties, utilizing the services of the two mediators but without participation of the arbitrator, other than listening to such presentations (if any) as the parties may make to each other during the course of the mediation. If a consensus can be reached, the parties shall act in accordance therewith and, if appropriate, the Community Assurances shall be amended accordingly. If no such consensus can be achieved, the mediators shall report to the arbitrator as to (i) the compromise (if any) that each party was willing to make with the other in order to resolve the dispute, and (ii) the good faith with which each party did, or did not, engage in the mediation and seek to achieve a reasonable compromise. Each party shall also have an opportunity to address the arbitrator, who shall then make a determination as to how the matter should be resolved. The arbitrator's decision shall be binding, final and non-appealable, and enforceable by and against the parties in any court of competent jurisdiction; provided, however, that the arbitrator cannot amend or contradict the express terms of this Agreement, of any deed restriction, or of any applicable law, nor shall any governmental agency be bound by the arbitrator's decision except to the extent that such decision is taken as the position of the parties in dealing with such agency. As to any dispute regarding the interpretation of federal, state or county statutes, ordinances, regulations or other laws applicable to the processing and approval of the Compromise Plans, those disputes shall be exempt from the binding mediation provisions of this Agreement and shall be adjudicated by a court of law or equity pursuant to the provisions of Delaware law. Nothing elsewhere in this Agreement shall be interpreted as precluding either party from seeking a judicial resolution of these excluded disputes.

## **Article XI**

### **BREACH**

In the event of a material breach of the terms and conditions of this Agreement and failure by the breaching party to cure same within ten (10) business days of receipt of written notice thereof, or if the nature of the breach is such that it cannot be cured within ten (10) days, then in the event of the breaching party's failure to diligently commence and prosecute all necessary efforts to cure same as quickly as the nature of the breach will allow, the non-breaching party shall have the right to terminate this Agreement with respect to all of the Properties, provided such termination shall be conditioned upon restoration of the status quo ante with respect to such Property or Properties as to which any approvals, variances or rezonings for the Compromise Plan or Plans have previously been obtained hereunder for such Property or Properties; the non-breaching party shall have the right to proceed with an action in specific performance to enforce the provisions of this Agreement. To achieve prompt and complete restoration of the status quo ante if this Agreement is terminated, the parties shall fully cooperate with one another and each shall promptly take such action as is necessary to achieve such restoration.

## **Article XII**

### **SCOPE AND INTERPRETATION**

This Agreement is a sealed instrument that shall be governed by Delaware law, each party accepting equal responsibility for the language herein and each party agreeing to accept the exclusive jurisdiction of the Courts of the State of Delaware sitting in New Castle County. It shall not be recorded, since the parties intend that Community

Assurances be prepared and recorded for each of the Compromise Plans. It shall be binding upon and enforceable against the parties' respective successors, assigns, grantees and successors in interest to any of the Properties for a period of five (5) years from the later of (i) date of this Agreement or (ii) the recordation of Deed Restrictions hereunder or imposition of the Community Assurances as conditions in any variance granted with respect to such Property, as applicable. The above limitation on the term and duration of this Agreement shall not apply to any of the Deed Restrictions, Approval Conditions or other Community Assurances, which when recorded or incorporated as conditions of any variance shall be covenants running with the land. Stoltz understands that CRG has no authority to, and has not purported to, bind any person or organization other than itself. In the event that any person or entity take a position contrary to that which CRG has taken in supporting a rezoning or variance, or any aspect of a Compromise Plan or Community Assurance, CRG will make clear that such person or entity does not speak for CRG and that CRG believes its position in support of the proposed rezoning, variance, as of a Compromise Plan or Community Assurance, reflects the mainstream position of a majority of its members. No person or entity who or that is a member, manager, officer, director, principal, shareholder, trustee, beneficiary or otherwise has an equity interest in a party or has a voting interest in any party, or is or has been employed in any capacity by a party, shall have any individual liability hereunder. This Agreement shall not be amended orally but only in and by a writing, duly signed by both parties. Notices hereunder shall be given by nationally recognized overnight courier to each party at the last known address of its Representative, and shall be deemed received on the date delivered during business hours on a business date, or on the first date thereafter that is a

business day. Each person signing this Agreement represents and warrants that he has all necessary right, power and capacity to do so on behalf of the party for which he is signing, and that this Agreement has been duly authorized and will, to his layman's knowledge and belief, be binding upon and enforceable against the party for which he has signed in accordance with its terms.

*{Signatures appear on the following page}*

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year first above mentioned.

BARLEY MILL, LLC

By: \_\_\_\_\_ (Seal)  
Keith D. Stoltz  
Authorized Member

GREENVILLE CENTER  
ASSOCIATES, LLC

By: \_\_\_\_\_ (Seal)  
Keith D. Stoltz  
Authorized Member

20 MONTCHANIN ASSOCIATES, LLC

By: \_\_\_\_\_ (Seal)  
Keith D. Stoltz  
Authorized Member

3704 KENNETT, LLC

By: \_\_\_\_\_ (Seal)  
Keith D. Stoltz  
Authorized Member

CITIZENS FOR RESPONSIBLE  
GROWTH IN NEW CASTLE  
COUNTY, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

[Company Seal]

**EXHIBIT "A"**  
**COMPROMISE PLANS**

**EXHIBIT "B"**

**BARLEY MILL**

**BUILDINGS FOR WHICH ROOFTOP MECHANICAL UNITS  
WILL BE SOUND BUFFERED**

**EXHIBIT “C”**  
**STORMWATER MITIGATION AREA**

**EXHIBIT “D”**

**EXISTING TWO STORY BUILDING AT GREENVILLE CENTER**

**EXHIBIT “E”**

**20 MONTCHANIN**

**BUILDING LIMITATION LINE AND BUILDABLE AREA**