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March 4, 2014

John B. Rice, Esquire  
Solicitor, Township of Radnor  
Grimm, Biehn & Thatcher  
104 S. Sixth Street, P.O. Box 215  
Perkasie, PA 18944

Re: MUST Ordinance

Dear Mr. Rice:

The undersigned, S. David Fineman, Esquire, and Nicholas J. Caniglia, Esquire, are writing this letter to you as counsel for BioMed Realty Trust, Inc. (“BioMed”), in reference to the MUST Ordinance. Kindly provide this letter to the Board of Commissioners, members of the Planning Commission, and appropriate Township Staff. This letter is being transmitted to you on BioMed’s behalf (a) to provide the Commissioners with relevant facts and analysis for their use in preparing the Ordinance and (b) to address gross inaccuracies provided to the Commissioners by Brandywine Realty Trust (“Brandywine”) via its counsel’s letter of February 14, 2014, which inaccuracies cannot provide a reliable foundation upon which the Commissioners can base their final drafting of the Ordinance. BioMed respectfully submits that consideration of demonstrable facts and the results derived therefrom will provide sound and rational premises to assist the Commissioners in drafting the final Ordinance.

#### **Brandywine’s Current PLO Build-Out Analysis**

In response to Brandywine’s current PLO build-out argument in its February 14, 2014, letter, BioMed respectfully requests that the Commissioners consider the following<sup>1</sup>:

1-2. Brandywine contends that the Township’s Director of Community Development’s existing PLO density analysis is excessive and the existing PLO ordinance would yield less overall building square footage. Brandywine and its expert provide no analysis, however, for how they arrived at these numbers. Ultimately, this assertion is merely a self-serving allegation. The facts are that, currently, the BioMed site contains 427,109 square feet of gross floor area. Both the Zoning Hearing Board and the Board of

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<sup>1</sup> The paragraph numbers refer to Brandywine’s numbers used in its February 14th letter.

Commissioners approved a plan permitting 475,088 square feet of floor area. The total gross square footage under the plan approved by the Board of Commissioners can be converted to all office use solely by the construction of additional parking, which parking has already been reviewed and deemed to be in compliance by the Township's Director of Community Development.

3-4. Brandywine states in its letter that BioMed can only build 267,560 square feet of office space if it scrapes the site. Without providing any support for this number, Brandywine further states that only the Radnor Racquet site could achieve more square footage under current PLO zoning. BioMed is in the process of filing with the Township a by-right plan that scrapes the site of all buildings and provides for 572,640 square feet of gross floor area, all of which is designated as office use. Of course, it is only logical that BioMed would never build under any proposed MUST Ordinance if the Ordinance limits square footage to less than what BioMed could construct by right, or if it imposes conditions that would make a build-out under the MUST economically unfeasible.

#### **Brandywine's MUST Ordinance Build-Out Argument**

Brandywine claims that the MUST would allow for more than double the density achievable under existing PLO conditions. Brandywine's putative claim lacks foundation in facts or an analysis based on engineering applied to hard facts. By contrast, BioMed's figures are transparent, with a foundation in clearly stated facts that the Township itself can test, and an analysis applied to those facts that the Township can likewise verify. Under the current PLO, BioMed has a plan to develop 572,640 square feet of floor area, all of which is permissible as office. With the elimination of the Blue Route Right of Way, the new density for the site is approximately 70% of the previous density proposed under the Ordinance, despite the fact that the traffic analysis showed that the Ordinance achieved its intended result of traffic mitigation.

1. In reality, BioMed will not attempt to develop the site under the current scenario, without a modification of the percentages governing maximum density and office density.
2. Brandywine also states that BioMed can only develop its site for 267,560 square feet of office. The Director of Community Development states that number to be 475,088 square feet. Currently existing on the site is 427,109 gross square feet. BioMed has proposed a by-right plan of 572,640 square feet of office. Further, Brandywine has taken the comments of the Township's attorney out of context by quoting a small section of a statement he made. The Solicitor actually opined that BioMed would need to acquire a building permit prior to the commencement of construction to prove that they could construct 475,088 square feet of office on the site. This statement does not diminish the Director of Community Development's determination that the conversion of the site to all office is feasible.

### **Brandywine's Traffic Impact Argument**

Finally, in response to Brandywine's arguments on the traffic impact of BioMed's development, BioMed respectfully requests that the Commissioners consider the following:

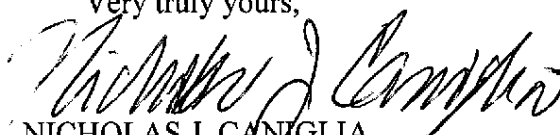
1-3. Brandywine has made a concerted effort to show that the amount of trips currently generated by the site is below the true numbers. Brandywine's figures are based on a traffic study done in May of 2013 for which the occupied space was much lower (and the vacant space much higher) than the study performed by BioMed approximately one year earlier, with no adjustment for traffic generated by the additional vacant space. The traffic numbers provided by BioMed have been verified as accurate by the Township's own traffic expert. In fact, the Township's expert has concluded that the MUST Ordinance, even before the exclusion of the right-of-way, achieved the intended result of the MUST regarding traffic impact due to the mixing of uses, the minimization of traffic impacts, and the advantages of mass transit. Brandywine's own traffic consultants have used the 15% proposed transit reduction on projects much further from transit lines than the properties governed by the MUST, including a project on Radnor Chester Road across from the high school. A 15% transit reduction is customary and routinely approved in similar circumstances by the Pennsylvania Department of Transportation and is consistent with national standards. Further, both Brandywine's traffic consultants and attorneys have used an internal capture rate as high as 36% at the site of the old Valley Forge Golf Course, a project specifically mentioned over a year ago by some Township representatives as a model for BioMed to consider when changing from an all-office development to a mixed-use development. BioMed is providing a 15% internal capture reduction, as supported by the Township's traffic expert and national standards, despite a 30% internal capture rate being customary on this type of project.

Despite the drastic reduction in maximum and office square footage by removing the right of way from site area calculations and the conclusions reached by the Township's own traffic expert that trip generation will be reduced under the MUST from current by-right plans, Brandywine continues its opposition to the MUST Ordinance. BioMed does not begrudge Brandywine a right to be heard. Brandywine's position as the largest commercial landlord in the Township, however, should provide it with no rights beyond those held by anyone else to be heard on the actual facts and the actual merits derived from those facts, including (but not limited to) a smaller competitor in the same market place such as BioMed. Brandywine's letters directed to the Commissioners and others should not affect outcomes through claims that are not supported in fact. BioMed is ready and willing to discuss and address these facts with the Commissioners, Brandywine and other interested persons to aid the Commissioners in their

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efforts to determine the actual facts when deciding on the final version of the Ordinance.

Very truly yours,



NICHOLAS J. CANIGLIA



S. DAVID FINEMAN

cc: Kevin Kochanski