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Attorneys for James A. Viviano

JAMES A. VIVIANO)	SUPERIOR COURT OF NEW JERSEY
)	BERGEN COUNTY
)	LAW DIVISION
Plaintiff)	DOCKET NO. L-2570-99
)	
vs.)	CIVIL ACTION
)	(MOUNT LAUREL II)
THE TOWNSHIP OF)	
WASHINGTON and THE)	
PLANNING BOARD OF THE)	
TOWNSHIP OF WASHINGTON)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Settlement Agreement") is entered into this day of July 26, 2001 by and between James A. Viviano, with a business address of 863 Monmouth Road, Cream Ridge, NJ 08514 ("Plaintiff" or "Viviano"), The Township of Washington, County of Bergen, State of New Jersey, a municipal corporation of the State of New Jersey, with a business address located at 350 Hudson Avenue, Washington Township, NJ 07675 (the "Township"), and the Planning Board of the Township, with a business address located at 350 Hudson Avenue, Washington Township, NJ 07675 (the "Planning Board"). Viviano, the

Township and the Planning Board are sometimes hereinafter individually referred to as "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Viviano instituted certain litigation against the Township and the Planning Board now pending in the Superior Court of New Jersey, Bergen County, New Jersey (the "Court") captioned James Viviano vs. The Township of Washington and the Planning Board of the Township of Washington, Docket No. L-2570-99 (Mount Laurel II) (Sup. Ct.) (the "Litigation"); and

WHEREAS, the Parties have reached an amicable settlement of the Litigation and desire and intend to memorialize same by the execution of this Settlement Agreement;

WHEREAS, the principles of the settlement were presented to the Court on March 2, 2001, the Court having found apparent merit to the settlement and a Fairness Hearing is about to be scheduled;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, TERMS AND CONDITIONS SET FORTH HEREIN, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Purpose.** This Settlement Agreement is reached after due deliberation by the Parties and upon the considered judgment of the Parties that it is in their best interest to avoid the cost, burden, delay and risk of further litigation and in the best interest of the public good and welfare to settle the Litigation upon the premises, terms and conditions contained herein so as to advance the purposes and objectives of *Mt. Laurel*/compliance in a manner consistent with sound land use planning principles.

2. **Court Approval:**

a. **Court Approval of this Settlement Agreement.** The obligations of the Parties under this Settlement Agreement are premised upon Court approval of this Settlement Agreement and a finding at the Fairness Hearing that the Township's proposed "Compliance Plan", hereinafter defined, shall receive credits of affordable

housing toward fulfillment of satisfaction of its affordable housing obligation from the Compliance Plan including the development of the Viviano Site consistent with the terms hereof. No other Court approval shall be required for the efficacy of this Settlement Agreement. The implementation of this Settlement Agreement, the adoption of an amendment to the Township Zoning Ordinance consistent with the provisions set forth in **EXHIBIT A**, attached hereto and made a part hereof and the Board's consideration, review and voting on any related application of Viviano for development approvals (the "Development Application") shall be conditioned upon the Court's approval of the Compliance Plan at the Fairness Hearing but shall not be conditional upon the entry of a Judgment of Repose.

b. **Application to the Court for Approval of Compliance Plan.** Said "Compliance Plan" shall include a Realistic Development Potential ("RDP") of 24 units, a credit against that RDP of thirteen (13) units on account of community residences for the developmentally disabled, as defined in N.J.S.A. 40:55D-66.2, and the purchasing of the balance of eleven (11) units pursuant to a Regional Contribution Agreement ("RCA"). Upon the execution of this Settlement Agreement by all parties, the Planning Board and the Township will prepare and adopt a "Housing Element" and "Fair Share Plan" as those terms are defined in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and the regulations of the New Jersey Council of Affordable Housing (the "Compliance Plan"), which Compliance Plan will include the development contemplated for the Viviano Site pursuant to this Settlement Agreement, for presentation to the Court for its approval. This Settlement Agreement is conditioned upon the Court's approval of the Compliance Plan at the Fairness Hearing and the Parties shall cooperate in the Township's submission to the Court of the Compliance Plan for which Court approval will be sought and which shall consist, in part, of the proposed development of the Viviano Site, as set forth herein, and such other agreements, rezoning and other action as the Township determines to submit for Court approval. The Parties acknowledge that a court hearing for approval of this

Settlement Agreement and the Compliance Plan (the "Fairness Hearing") is about to be scheduled by the Court. Viviano agrees not to challenge any provision of the proposed Compliance Plan, provided that the Compliance Plan is not modified to detrimentally affect the rights of Viviano under this Settlement Agreement.

c. **Representations of the Parties Regarding the Fairness Hearing, Master Plan and Zoning Amendment.** The Parties shall be available to provide testimony by their representatives, professional planners and/or other consultants in support of the Court's review and approval of this Settlement Agreement. Viviano agrees not to challenge any provision of the proposed Compliance Plan, provided that the Compliance Plan is not modified to detrimentally affect the rights of Viviano under this Settlement Agreement.

d. **Defense of this Settlement Agreement.** The parties agree that each shall be exclusively responsible for all costs which they may incur in obtaining Court approval. The Parties shall cooperate and actively participate in the defense of any challenge to or appeal of Court approval of this Settlement Agreement each at their own cost and expense. Further, the Parties agree that, if the terms and conditions of this Settlement Agreement are not met, and which failure may be subjected to the remedies of specific performance or damages, any of the Parties may apply to the Court for relief, which may be granted in a summary manner and which relief may include but not be limited to a motion in aid of litigants rights.

3. Viviano Site. The subject property consists of Lot 2, Block 1306 on the Office Tax Map of the Township being approximately 13.29 acres, having frontage on Van Emburgh Road and being owned in fee simple by Plaintiff ("Plaintiff Parcel") and Lot 1.05, Block 1305 on the Official Tax Map of the Township being approximately 1.19 acres adjacent to Plaintiff Parcel, having no road frontage and being owned in fee simple by Township of Washington ("Township Parcel"). The Plaintiff Parcel and the Township Parcel are hereinafter collectively referred to as the "Viviano Site".

4. Purpose of Ordinance and Master Plan Amendments. The purpose of these master plan and ordinance amendments is to permit construction of 73 dwelling units consisting of 48 Single Family detached units and 25 multifamily-townhouse style units as a principal permitted use as a matter of right (i.e. without the necessity of seeking any variances, waivers or additional approvals other than subdivision and site plan approval) on the Viviano Site as shown in the Conceptual Plan entitled "Concept Plan Re: Viviano vs. Township of Washington Lot No. 1.03 in Block No. 1305 & Lot No. 2 in Blk. No 1306", prepared by Azzolina, Feury & Raimondi Engineering Group, dated July, 2001, which Conceptual Plan is attached as **EXHIBIT B**. If at any time further ordinance or master plan amendments are necessary to permit construction of these units as a matter of right in accordance with this plan, defendants will consider and act upon them upon within 60 days of a written request by the plaintiff.

5. Amendment of Ordinance and Master Plan.

Within ninety (90) days after the execution of this Settlement Agreement by all parties, the Planning Board agrees to amend the Master Plan, in particular the land use and housing elements thereof, to implement the development of the Viviano Site consistent with the purposes of this Settlement Agreement and the Conceptual Plan. Within the same ninety-day period, the Council of the Township of Washington agrees to introduce a ordinance the zoning attached as **Exhibit A** to implement the development of the Viviano Site in accordance with the Conceptual Plan, refer said ordinance to the Planning Board and, after second reading, conduct a public hearing thereon. The said ordinance shall be adopted by the Council within thirty (30) days of the Court approving this Settlement Agreement and the Township's Compliance Plan at the Fairness Hearing.

6. Contribution in Lieu of Construction of Low and Moderate Income Housing.

a. Plaintiffs affordable housing obligation for the Viviano Site shall be twenty (20%) percent of the number of units ultimately receiving all final land development

approvals. For example, if 73 units ultimately receive all final land development approvals then the affordable housing obligation for the Viviano Site shall be 14.6 affordable units which shall be rounded up to 15 affordable units. In lieu of plaintiff constructing 15 affordable units as part of the development to be constructed on the Viviano Site, plaintiff will make a contribution to a housing trust fund to be established by Washington Township in the amount of \$25,000.00 per affordable unit for a total contribution of \$375,000.00. The parties agree and stipulate that this sum has been arrived at in accordance with and in satisfaction of the COAH regulation (N.J.A.C. 5:93-6.5(c)) addressing payments for affordable units transferred by way of Regional Contribution Agreements. Full compliance by Viviano with its funding obligation hereunder shall be in lieu of any requirement to construct affordable lower income units on the Viviano Site and shall satisfy the entire affordable housing obligation attributable to the Viviano Site.

b. Washington Township shall adopt an ordinance establishing an affordable housing trust fund, which shall be used for the exclusive purpose of providing for safe, decent housing for low and moderate income households in accordance with the terms of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. and the implementing regulations of the New Jersey Council on Affordable Housing. The operation of this trust fund shall be the exclusive responsibility of Washington Township. Plaintiff has no right, power or duty to direct or oversee the maintenance or expenditure of monies in this fund, including money contributed by plaintiff.

c. Plaintiff shall contribute to Washington Township's affordable housing trust fund on the following schedule:

i. Provided that plaintiff has obtained fee simple title to the Township Parcel, within 10 days after the expiration of the period for appeals from the adoption of a resolution by the Planning Board granting final subdivision and site plan approval for 73 units (48 Single Family units and 25 townhouse Units) in accordance with the

Conceptual Plan attached as **EXHIBIT B** or the favorable conclusion of all appeals from the adoption of such resolution, whichever occurs later: \$125,000.00.

ii. Upon closing of title for sale of 25 percent of the units proposed to be constructed: \$125,000.00.

iii. Upon the closing of title for sale of an aggregate total of 50 percent of the units proposed to be constructed: \$125,000.00.

iv. Anything to the contrary notwithstanding, no permit of any kind shall be issued by Washington Township in connection with the Viviano Site unless and until final subdivision and site plan approval has been obtained from the Washington Township Planning Board, the final subdivision and site plan map has been signed by the appropriate township officials, and the \$125,000.00 referenced in subparagraph (i) above has been paid to Washington Township simultaneously with the signing of the final subdivision site plan map.

d. Within 10 days after the expiration of the period for appeals from the adoption of resolution by the Planning Board granting final subdivision and site plan approval for 73 units in accordance with the Conceptual Plan attached as **EXHIBIT B**, or the favorable conclusion of all appeals from the adoption of such resolution, whichever occurs later, and as a condition precedent for the issuance of any permit in connection with the Viviano Site, plaintiff shall provide Washington Township with two letters of credit in a form acceptable to the Township attorney each for \$125,000.00, condition only upon the occurrence of the events described in paragraphs (c)(ii) and (c) (iii) of this section, respectively, as security for the second and third payments provided therein.

7. Expedited Processing of Site Plan Application.

a. Township and Planning Board acknowledge that the Viviano Site is a developable, available, suitable and approvable site for the development contemplated by this Settlement Agreement and by the proposed zoning ordinance

and that such proposed development constitutes an integral component of the Township's Compliance Plan.

b. Defendant Planning Board agrees that the application shall be reviewed consistent with the terms of this Settlement Agreement.

c. Defendant Planning Board will consider plaintiff's application for subdivision and site plan approval on an expedited basis. Plaintiff shall have the right but not the obligation, to pursue simultaneously all land development approvals from Planning Board including preliminary and final major subdivision approval and preliminary and final site plan approval. Anything herein contained to the contrary notwithstanding, Plaintiff shall not have the right to apply for subdivision/site plan approval prior to the approval by the Court of this Settlement Agreement and the Compliance Plan at the Fairness Hearing and the adoption by the Council of the zoning ordinance amendment contemplated herein.

d. Defendant Planning Board shall determine if the application is complete within 21 days after the filing of the application(s) and payment of all application fees and escrows. If the application is not determined to be incomplete within 21 days of filing it shall be deemed complete. Defendant Planning Board shall take final action on the application within 75 days of its being deemed complete. It shall hold the public hearing at special meetings at which no other matters of are considered. To avoid conflict with other business, such special meetings shall be in addition to, and conducted on days other than, the regularly scheduled meetings. The Planning Board shall hold sufficient special meetings to take final action within 75 days of the application being deemed complete. If the Planning Board fails to take final action within 75 days of the application being deemed complete, the application shall be deemed granted.

e. Defendant Planning Board has reviewed the plan attached as **EXHIBIT B** and approves it on a conceptual basis. Upon subdivision and site plan application, review by the Planning Board shall be limited to determining whether the application

substantially conforms to **EXHIBIT B** and to determining those issues lawfully within the Planning Board's jurisdiction which are not resolved by **EXHIBIT B**. By way of illustration, but not limitation, the Planning Board shall determine the landscaping and buffering that will be required.

f. Plaintiff shall not be required to construct or pay for any off-site improvements except improvements authorize by N.J.S.A. 40:55D-42 which are made necessary by the development. Plaintiff shall not be required to pay any impact fees, development fees, or linkage fees related to this development application except as provided for in paragraph 6 of this Settlement Agreement. Nothing herein contained, however, shall relieve Plaintiff from the obligation to pay, in a timely fashion, all application fees and escrows associated with its application(s) to the Planning Board.

g. The Parties acknowledge that, consistent with COAH regulations and *Mount Laurel* precedent, variances and waivers in order to minimize costs and to eliminate undue cost-generative requirements and provisions may be required and should be freely given. Viviano's agreement to the terms and conditions hereof shall not be deemed to embody its agreement not to seek such variances and/or waiver's if appropriate for purposes of developing the Viviano Site consistent with the zoning ordinance and/or the Conceptual Plan.

h. The Township and the Planning Board agree to take all action which is necessary and appropriate and consistent with their obligations under *Mount Laurel II*, the Act and COAH regulations to assist in obtaining adequate utility services and sewage treatment and conveyancing capacity for the development to be constructed on the Viviano Site and shall cooperate with Viviano in its efforts with regard thereto. If easements are necessary for the purpose of providing for such infrastructure and site access in an economical manner consistent with *Mount Laurel II*, the Act and COAH regulations, and if Viviano is unable after diligent efforts to obtain such easements, the Township agrees to undertake the acquisition of such easements at the sole cost and expense of Viviano. Notwithstanding the foregoing, the Township

and the Planning Board shall not be obligated to expend any funds to obtain or assist in obtaining utility services, sewerage treatment or road improvements.

i. The Township and the Planning Board shall cooperate with Viviano to obtain all necessary approvals and permits from all relevant public entities and utilities; such as, by way of example only, the County of Bergen, the Bergen County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Soil Conservation District and the like. Notwithstanding the foregoing, the Township and the Planning Board shall not be obligated to expend any funds to obtain or assist in obtaining such approvals or permits.

8. Township Parcel. The parties acknowledge and agree that the Viviano Site comprises and the Conceptual Plan incorporates the Plaintiff Parcel and the Township Parcel. It is the intention of the parties that Plaintiff shall lawfully acquire from Township and Township shall lawfully convey to Plaintiff good, marketable and insurable (at regular rates) fee simple title to the Township Parcel. The Township represents that the Township Parcel is land-locked and that it is not on the Green Acres Inventory. The method of sale to the Plaintiff shall be at the discretion of the Township and consistent with law. It is understood and agreed that Plaintiff's ability to acquire the Township Parcel is an essential part of this Agreement and that if Plaintiff is unsuccessful in acquiring the said Township Parcel, Plaintiff may terminate this Settlement Agreement on written notice to the other parties. The Township shall not be obliged to convey the Township Parcel to Plaintiff unless and until the Court has approved this Settlement Agreement and the Compliance Plan at the Fairness Hearing. Said conveyance shall be made within sixty (60) days of the court's approval of this Settlement Agreement and the Compliance Plan at the Fairness Hearing. The Deed will contain a provision providing for a reverter to the Township in the event the Settlement Agreement is terminated.

9. Defense of Settlement Agreement. Plaintiff and Defendants agree to jointly defend this Settlement Agreement the zoning ordinance and any master plan amendments adopted in implementation of this Settlement Agreement, and any action taken by Defendants in implementation of this Settlement Agreement against any challenge in any court or before any municipal, county, state or federal agency. Each party shall bear its own legal expenses in conducting any such defense.

10. Remedies After Dismissal.

- a. **Reinstatement of Litigation.** If any of the following events occurs, plaintiff may reinstate the present Litigation as if filed as of the date the Litigation was originally filed:
- i. Inability to acquire the Township Parcel.
 - ii. Failure of the Planning Board to amend the Master Plan and adopt the Fair Share Housing Plan provided for in this Agreement.
 - iii. Failure of the Township Council to amend the zoning ordinance as provided for in this Agreement.
 - iv. If any term of the zoning ordinance adopted in implementation of this Settlement Agreement is amended, repealed or modified, or any term of any other ordinances including, but not limited to, zoning, subdivision, site plan, or environmental ordinances, is adopted, amended, repealed or modified that would impair or impede the development of the Viviano Site under the terms of this Settlement Agreement;
 - v. If any provision of this Settlement Agreement or the ordinance or master plan amendment is held by any court to be invalid, void or unenforceable, and after the exhaustion of all appeals, the parties are unable to reach agreement on mutually acceptable modifications of this Settlement Agreement or ordinance or master plan amendment;
 - vi. If the Planning Board fails to grant preliminary subdivision and site plan approvals to plaintiff within six months of the filing of subdivision

and site plan application that substantially conforms to **EXHIBIT B** or grants subdivision and site plan approval with conditions inconsistent with the Settlement Agreement.

b. **Proceeding in Lieu of Prerogative Writ.** If the Washington Township Planning Board denies subdivision or site plan approval, plaintiff objects to the imposition of any condition imposed by the Planning Board in approving the subdivision and site plan, or plaintiff claims that the Planning Board has improperly failed to act, or delayed acting, upon an application for development approvals, plaintiff may elect as permitted by law to seek relief by proceeding in lieu of prerogative writ or by motion in aid of litigants rights.

11. Waiver of Certain Defenses to Reinstated Litigation. In the event the Litigation is reinstated, Defendants waive any defenses other than those arising out of facts occurring prior to the filing of the present Litigation. Defendants waive any claim that plaintiff is not entitled to a builder's remedy because of the filing of exclusionary litigation against Washington Township subsequent to the effective date of this Settlement Agreement by any other party, the status of any such litigation, or any order or judgment entered in any such litigation. The parties stipulate that if the Litigation is reinstated under the terms of this Settlement Agreement, the extent of Washington Township's liability for non-compliance with its fair share housing obligation shall be determined as the same date it would have been determined in the present Litigation.

12. Filing of site plan application. Plaintiff will file an application for preliminary and/or final subdivision and site plan approval within 8 months of the effective date of the zoning ordinance adopted pursuant to paragraph 5 of this Settlement Agreement, or within 8 months of the favorable conclusion of all appeals from this Settlement Agreement, or within 8 months of the favorable conclusion of all appeals from the adoption of the ordinance or master plan amendments provided for in paragraph 5 of this Settlement Agreement, whichever occurs last. The Mayor and Council shall, upon

written request by the plaintiff, grant one or more extension of this period totaling up to 30 months if any of the following occurs and makes it infeasible to file or prosecute such application:

- a. any action or inaction by a federal, state, county or local governmental entity or a political subdivision or agency thereof;
- b. or any other event outside the control of the plaintiff (except for its inability to obtain financing).

If the occurrence involves or results in litigation or administrative proceedings, the Mayor and Council shall, upon written request by the plaintiff, grant extensions for a period extending eight months beyond the completion of such litigation or administrative proceedings and all appeals. Plaintiff shall keep the Township apprised to the status of any such litigation or administrative proceedings and all appeals. Plaintiff shall keep the Township apprised to the status of any such litigation or administrative proceeding.

13. Development by Plaintiff.

a. Plaintiff shall apply for building permits for the project within one year after obtaining all final unappealable permits and approvals from any local, county, state or federal body, board or agency necessary to construct the project and give plaintiff the unconditional right to apply for and receive such building permits. Unless construction is precluded by legal limitations (not including financing or market conditions), if Plaintiff has not proceeded with substantial bona fide construction and development of project within two years after obtaining building permits, the Township may terminate this Settlement Agreement on ninety days written notice to plaintiff, during which period plaintiff has the unconditional right to cure such default. In the event of such termination, the Township shall return to plaintiff all monies paid into the housing trust fund in accordance with Paragraph 6 above and release any letters of credit which may have been posted by plaintiff pursuant to Paragraph 6 above. In addition, in the event of such termination, the Township Parcel will revert

to the Township and Plaintiff will abandon any further right to develop the Viviano Site pursuant to this Settlement Agreement. Further, in the event of such termination, Plaintiff shall not file any new affordable housing litigation against the Township.

b. During the first sixty (60) days of marketing for sale of the single family units, Plaintiff shall market the single family units for a purchase price of no less than four hundred fifty thousand (\$450,000.00) dollars per single family unit. Upon the expiration of the above referenced sixty (60) day period and provided Plaintiff has during that sixty (60) day period marketed the single family units for no less than four hundred fifty thousand (\$450,000.00) dollars per single family unit, Plaintiff shall thereafter be free to market the single family units at any purchase price Plaintiff, in its sole discretion, deemed appropriate.

14. Waiver. Any waiver of any provision of this Settlement Agreement will be effective only if made in writing. Failure to enforce any of the provisions of this Settlement Agreement by any of the parties shall not constitute a waiver of these provisions.

15. Entire Agreement. This Settlement Agreement and the exhibits attached hereto contain the entire agreement between the parties. No representative, agent or employee of any party has been authorized to make any representations or promises with reference to this Settlement Agreement or to vary, alter or modify the terms hereof except as stated herein. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the parties hereto.

16. Assignment. The benefits and obligations of this Settlement Agreement may be assigned by the Plaintiff in whole or in part, with the consent of the Mayor and Council, which shall not be unreasonably withheld. Consent of the Mayor and Council shall not be required for assignment of the benefits and obligations of this Settlement Agreement to a financial institution or insurance company for purposes of obtaining

financing or sureties or of complying with or enforcing the rights under, any financing or surety agreement. Wherever reference in this Settlement Agreement is made to "plaintiff", that reference shall also mean the successors in interest and assigns of the plaintiff.

17. Mutual Notice. The parties shall provide each other with immediate notice of any lawsuits, action or governmental declaration threatened or pending of which they are actually aware which may affect the provisions of this Settlement Agreement or implementation thereof.

18. Preparation. Each of the Parties hereto acknowledges that this Settlement Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Settlement Agreement; and (ii) it has conferred due authority for execution of this Settlement Agreement upon the persons executing it.

19. Governing Law. This Settlement Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey.

20. Captions and Titles. Captions and titles to this Settlement Agreement and the several sections are inserted for convenience of reference only and are in no way to be construed as defining, limiting or modifying the scope and intent of the various provisions of this Settlement Agreement.

21. Notices. All written notices required under this Settlement Agreement shall be given by Certified Mail:Return Receipt Requested or by overnight delivery by a nationally recognized courier or by personal delivery or by facsimile followed by a regular mail copy, as follows:

James A. Viviano
863 Monmouth Road
Cream Ridge, NJ 08514

With a copy to:

Ronald L. Shimanowitz, Esq.
Hutt & Shimanowitz, P.C.
459 Amboy Avenue, PO Box 648
Woodbridge, NJ 07095
Fax No. (732) 634-0718

Washington Township:

Clerk, Washington Township
350 Hudson Avenue
Washington Township, NJ 07675
Fax No. (201) 664-8281

With a copy to:

Kenneth Poller, Esq.
The Atrium
80 Route 4
Paramus, NJ 07652
Fax No. (201) 712-0055

Planning Board of Washington Township:

Planning Board Clerk
Washington Township
350 Hudson Avenue
Washington Township, NJ 07675
Fax No. (201) 664-8281

With a copy to:

Elliot Urdang, Esq.
19 Engle Street
Tenafly, NJ 07670
Fax No. (201) 568-2004

23. Change in Law. The validity and terms of this Settlement Agreement shall not be affected by any change in law subsequent to its effective date.

24. Legal Duties of Defendants. Nothing in this Settlement Agreement shall operate in derogation of the duty of Washington Township and the Planning Board to conform in good faith to the procedural requirements of the Municipal Land Use Law and the requirements of the Open Public Meeting Act.

25. Effective Date. This Settlement Agreement shall become effective upon the Court approving this Settlement Agreement and the Compliance Plan at the Fairness Hearing.

26. Parties Bound/Assignment. The terms and conditions set forth in this Settlement Agreement, shall bind and inure to the benefit of and/or be the responsibility of any successor-in-interest of any of the Parties to this Settlement Agreement and may be enforced by any of the parties or any such successor-in-interest.

27. Effect of Counterparts. This Settlement Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original.

28. Waiver. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Settlement Agreement. Failure to enforce any of the provisions of this Settlement Agreement by any of the Parties shall not be construed as a waiver of these provisions.

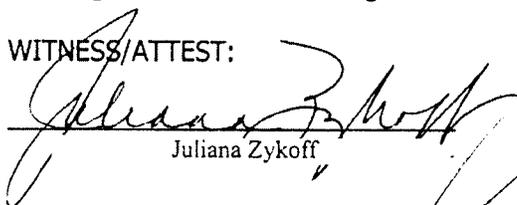
29. Validity. In the event any one or more of the material provisions of this Settlement Agreement shall be held to be invalid, void or unenforceable, the Parties shall, within thirty (30) days of such determination, attempt, in good faith, to restructure this Settlement Agreement consistent with its intent. If the Parties fail to resolve such a restructuring, any of the Parties may seek Court review and a ruling to restructure this Settlement Agreement in a legally acceptable manner while reflecting the underlying intent of the Parties as expressed herein. No such holding that this Settlement Agreement is invalid, void or unenforceable shall otherwise effect the obligations of the Parties hereunder unless so material that this Settlement Agreement is rendered ineffective in the context of the intent of the Parties as expressed herein.

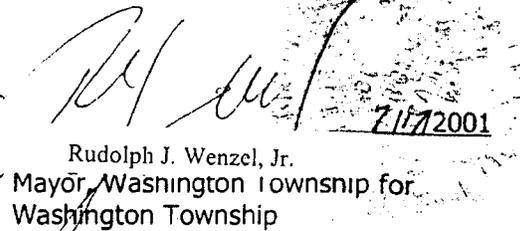
30. Cooperation. The Parties agree to fully cooperate with each other in order to carry out the provisions of this Settlement Agreement.

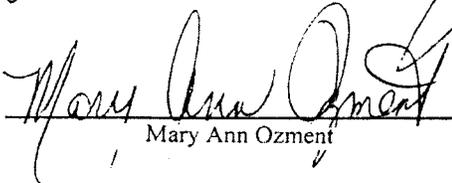
IN WITNESS WHEREOF, the parties and/or their authorized representatives

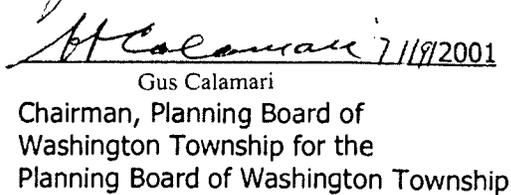
have signed this Settlement Agreement.

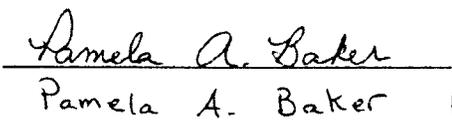
WITNESS/ATTEST:


Juliana Zykoff


Rudolph J. Wenzel, Jr.
Mayor, Washington Township for
Washington Township


Mary Ann Ozment


Gus Calamari
Chairman, Planning Board of
Washington Township for the
Planning Board of Washington Township


Pamela A. Baker


James A. Viviano

EXHIBIT A
ZONING ORDINANCE

Planned Single Family/Townhouse District.

1 Permitted Principal Uses:

- A. Detached single-family dwellings;
- B. Townhouse dwelling units.

2. Permitted Accessory Uses

- A. Off street parking;
- B. Fences and walls;
- C. Recreational and passive open space areas devoted to parks, tennis courts, swimming pools, and related accessory uses and structures customarily incidental to principal permitted uses for use by the occupants of the Planned Single Family/Townhouse Zone;
- D. Directional and traffic safety control signs;
- E. Essential services.

3. Area and Bulk Requirements The following standards setting forth area and bulk requirements shall be applicable to the Planned Single Family/Townhouse Zone:

A. Tract Regulations

- 1) Minimum Tract Area 10 acres
- 2) Maximum Tract Density 6 dwelling units per acre, but not to exceed 48 detached single family dwellings and 25 townhouse units.

B. Townhouse Regulations

- 1) Minimum Lot Area 2.5 acres
- 2) Minimum Perimeter Setback 35 feet
- 3) Minimum Distance Between Buildings:
 - a) Front to front units 60 feet
 - b) Back to back units 60 feet
 - c) Front to back units 60 feet
 - d) Front to side units 45 feet
 - e) Side to side units 35 feet
 - f) Side to back units 35 feet
- 4) Minimum Internal Road Setback 22 feet
- 5) Maximum Lot Area 3.5 acres
- 6) Maximum Density 10 du/acre, but no more than 25 units
- 7) Maximum Building Height 2.5 stories/35 feet
- 8) Maximum Building Coverage 30 percent
- 9) Maximum Impervious Coverage 65 percent
- 10) Maximum Building Length 160 feet
- 11) Location Townhouses shall occupy the eastern portion of the tract, adjacent to Garden

St. Pkwy. The area delineated for townhouse development shall be setback a max. 400 feet from the Pkwy as measured along the tract's north dimension, max. 400 feet at the midpoint of the tract's frontage with the Pkwy, and max. 500 feet along the tract's south dimension from the Pkwy.

12) Buffer Area.

- a) A buffer strip of at least 20 feet shall be provided along all external tract lines of the townhouse lot, provided that where a unit abuts or faces a lot with a detached single-family dwelling, a minimum 25 foot buffer shall be required. This buffer strip shall be landscaped with a dense planting of evergreen shrubs or trees at least 6 feet high, either alone or in combination with a wooden fence. The buffer strip may be coincidental with and included within any required setbacks.
- b) No principal or accessory use or structure including, without limitation, off-street parking areas, shall be permitted in a required buffer, but the approving authority may permit a portion of a buffer area to be used for utility easements or driveways to ensure access to or from a public street or adjacent property.
- c) Required buffers shall be included for the purpose of computing compliance with any open space requirements and may be conveyed to unit owners as part of common elements. In no case shall a buffer area be utilized for any active recreational or other active area or used for such computations, but nothing herein contained shall be deemed to require an active recreation area.

13) Townhouse Design.

- a) An overall architectural theme shall be utilized within the townhouse development for the purpose of presenting an aesthetically desirable effect, and shall be such that it incorporates varied building elevations, design and appearance within the context of the overall theme.
- b) The front facade of a row of attached units shall not continue on the same plane for a linear distance of more than the width of two units. Minimum two foot offsets shall be required at breaks in the facade planes.
- c) The townhouse development shall be provided with a liberal and functional landscape component. Building foundation plantings, planting clusters located in strategic areas, shade trees along roadways and pedestrian paths, shall be incorporated into an overall landscape plan.
- d) Driveways. All roads shall be owned and maintained by the homeowners owners association and shall comply with the standards of the Township and ordinances of the Township regarding construction.

- e) Garages. There shall be at least 1 enclosed one-car garage for every dwelling unit.
- f) Off-street parking. The minimum size of each parking space shall be 9 feet by 18 feet. Where the driveway apron between the garage and the street, or between the garage and the sidewalk, where there is a sidewalk, equals to or exceeds 9 feet by 18 feet, this area shall be considered 1 off-street parking space.
- g) Lighting. All exterior lighting shall be arranged so as to reflect light away from all adjoining residents.
- h) Open Space.

- 1) A minimum of 35% of the site shall be retained as open space. The required open space shall not include areas designated as sidewalks, roads, drives, or parking areas.
- 2) Where required, a homeowners association shall be established for the purposes of owning and maintaining common facilities. The association shall comply with the provisions set forth in the Township Ordinances regulating such association.
- 3) The location of open space areas shall be consistent with the declared function of such open spaces and, where possible, active open space areas shall be planned as a contiguous area located for the maximum benefit of the residents it is designed to serve. Passive open space shall be designed to preserve and, where possible, enhance natural features. The required open spaces shall only be for the use of the owners or occupants of the development and their guests. These areas may contain active or passive recreational facilities or remain in its natural state, as determined to be appropriate. The Planning Board may require provision for reasonable landscaping to supplement areas where natural vegetation is sparse or nonexistent. The developer shall furnish a plan at the time of the application specifying the type of recreational improvements, if any, to be provided. Active recreation facilities such as swimming pools, tennis courts and nature paths shall be permitted.

18) Additional Townhouse Regulations:

a)	Minimum unit width	20 feet
b)	Minimum total parking per unit	As per RSIS
c)	Minimum garage parking space per unit	1 space
d)	Minimum Aisle Width (2-way)	24 feet
e)	Minimum Aisle Width (one way)	12 feet
f)	Minimum Ingress/Egress Per Unit	2
g)	Minimum No Walls With Window Exposures	2
h)	Maximum number of units per bldg	6 units

C. Detached Single-Family Dwelling Regulations

- | | | |
|-----|-----------------------------------|----------------------------|
| 1) | Minimum Lot Area | 6,000 square feet |
| 2) | Minimum Lot Width | 60 feet |
| 3) | Minimum Lot Depth | 100 feet |
| 4) | Minimum Front Yard | 25 feet |
| 5) | Minimum Side Yards | 9 feet each |
| 6) | Minimum Side Yards, Combined | 20 feet |
| 7) | Minimum Rear Yard | 25 feet |
| 8) | Minimum Landscaped Buffer | 10 feet to tract perimeter |
| 9) | Minimum Setback to Van Emburgh Av | 25 feet |
| 10) | Maximum Building Coverage | 25 percent* |
| 11) | Maximum Impervious Coverage | 50 percent |
| 12) | Maximum Building Height | 2.5 stories/35 feet |

* Provided that lots abutting the townhouse tract may have a 27% building coverage.

D Contribution to Township of Washington Mount Laurel Housing Trust Fund.

The developer shall be required to provide a contribution of a fee to be deposited into the Township of Washington Mount Laurel Housing Trust Fund, as provided in the Stipulation of Settlement in the matter of Viviano v Township of Washington.

E. Homeowners Association

- 1) Where individual attached dwelling units are 'for sale' units, a homeowners association shall be established which shall own open spaces, common areas and recreational open space areas and facilities for the purposes of owning and maintaining such areas designed within the development. The homeowners association shall incorporate the following provisions.
- 2) The association shall be responsible for liability insurance, taxes, maintenance and any other obligations assumed by the association and shall hold the Township harmless from any liability.
- 3) The association shall maintain the common property and all facilities thereon and, in case of a default by the association, the Township shall have the power to maintain the common property, open spaces, recreational open space areas and facilities in accordance with the provisions of N.J.S.A. 40:55D-43.
- 4) The articles of incorporation, covenants, bylaws, model deeds and other legal instruments shall ensure that control of the homeowners association shall be transferred to the property owners based on a percentage of the dwelling units sold and/or occupied and shall clearly indicate that the Township may perform such maintenance and repair work that may be required in the public interest where the association has not performed, with the costs being levied upon each property owner according to the pro rata share in the association and which may become a lien on the property not only owned by the association but pro rata upon each property owner's dwelling unit.
- 5) The homeowners association shall not be dissolved and shall not dispose of any common areas, open spaces, recreational open space areas and facilities by sale.

conveyance or otherwise, except to an organization conceived and established to own and maintain the open spaces, common areas, recreational open space areas and facilities for the benefit of such development, and thereafter such organization shall not be dissolved or disposed of any of its common areas, open spaces, recreational open space areas and facilities without first offering to dedicate the same to the Township provided, however, that the Township agrees to accept such.

EXHIBIT A (continued)

EXHIBIT B
CONCEPTUAL PLAN