

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into as of the date it is fully executed by and between the Borough of Demarest (the "Borough"), a New Jersey municipal entity, 232 County Development, LLC (hereinafter referred to as "232 County"), a New Jersey Limited Liability Company, Sandriel K. Gentzel, Samantha K. Frank & Ehren Joseph Frank, personal representatives of the Estate of Ernest H. Frank (hereinafter referred to as "Frank"), Raymond Cywinski ("Cywinski") and Kyusoon Lee ("Lee") (individually, a "Party" and collectively, the "Parties").

WHEREAS, Cywinski and Lee filed claims against the Borough of Demarest and 232 County in the Superior Court of New Jersey, Bergen County Law Division under Docket No. BER-L-3217-26 and asserted objections and filed motions as Interested Parties in BER-L-738-25 (the "Litigation"); and

WHEREAS, a Notice of Lis Pendens was filed under Docket No. BER-L-3217-26 which listed Lee And Cywinski as Parties and claimed that the Litigation affected Borough owned property located at 129 Hardenburgh Avenue, Demarest, New Jersey, Block 23 Lot 15 (the "Borough Property") and affected property located at 232 County Road, Demarest New Jersey - Block 63, Lot 5 -- (hereinafter the "232 County Property") which 232 County is under contract to purchase and which Estate of Ernest H. Frank is the owner of 232 County Road, Demarest, New Jersey ; and

WHEREAS, Cywinski subsequently filed a voluntary dismissal without prejudice concerning his claims in Docket No. BER-L-3217-26; and

WHEREAS, the Borough, 232 County and Frank has alleged it has claims for an award of attorney's fees and costs of suit in connection with the Litigation; and

WHEREAS, after Cywinski removed his name from the Notice of Lis Pendens, the Borough then filed a Complaint and Order to Show Cause against Lee in the Superior Court of New Jersey, Bergen County Vicinage at Docket No. BER-L-3822-26 (collectively, the "Borough's Complaint") seeking an Order directing Lee to Discharge the Notice of Lis Pendens and an Order awarding the Borough reasonable attorney's fees and cost of suit; and

WHEREAS, within the Litigation, Cywinski and Lee sought to challenge various components of the Borough's settlement of its affordable housing fair share obligation, including but not limited to the Borough's Housing Element and Fair Share Plan, the challenges filed by Fair Share Housing Center and 232 County Development LLC, the Borough's subsequent adoption of Resolution 222-25 authorizing the Settlement Agreement regarding same and the subsequent sale of Block 23, Lot 15(the "Bank site"), and the Ordinances 1174, 1175, 1176 and 1177 which were thereafter adopted by the Borough in connection with same, including but not limited to allegations that the Ordinances were not properly adopted; and

WHEREAS, all motions filed and relief sought by Cywinski and Lee under Docket No. BER-L-738-25 have been wholly denied by the Court and the action was ultimately dismissed by the Court, resulting in defense costs incurred by the Borough; and

WHEREAS, Lee has since filed a Discharge of the Lis Pendens against the Borough Property and 232 County Property; and

WHEREAS, the parties are desirous of resolving all outstanding claims, causes of action and appealable rights, if any, each may have against the other; and

WHEREAS, the Parties deny liability to each other for the claims asserted in the Litigation and the Borough's Complaint; and

WHEREAS, without admitting liability or fault, and to avoid the delay and expense of additional litigation, the Parties intend to resolve all claims relating to the Litigation, the Borough's Complaint, and any appealable rights under the terms and conditions outlined in this Agreement.

AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals, which are expressly incorporated herein by reference and agreed upon, and in consideration of the following respective provisions and covenants, the Parties agree to the following terms:

1. Dismissal of Litigation. Within five (5) days from the date both parties execute this Agreement, the Parties agree to file a Stipulation of Dismissal with Prejudice for the matters filed under Docket Number BER-L-3217-26 and BER-L-3822-26 respectively. In the event that the stipulations of dismissal are not accepted by the Court, the Parties shall cooperate to cause all matters to be discontinued with prejudice and without costs to any Party.

2. Waiver of any appealable rights and future claims: The Parties specifically agree that each is waiving any and all claims each has, including any appealable rights, to file any further actions in any forum concerning the subject matter which formed the basis of the filing of the Litigation and Notice of Lis Pendens and to file any future claims or actions, whether known or unknown, regarding any matter against the Borough, Frank, 232 County, and their respective agents, officers, Mayor, Councilmembers, officials and employees which arose prior to and including the date of execution of this Agreement.

3. Releases. In consideration of the promises in this Agreement, Cywinski and Lee release and forever discharges the Borough, Frank, 232 County and their respective agents, officers, Mayor, Councilmembers, officials and employees from any and all liability arising from or related to the Litigation, the Notice of Lis pendens, and any other claims or actions, known or unknown, through the date of execution of this Agreement.

4. Borough's Waiver and Release. The Borough releases and forever discharges Cywinski and Lee from any liability arising from or related to the Litigation, the Notice of Lis pendens and any other claims or actions, known or unknown through the date of execution of this Agreement, excluding any tax liability as residents of the Borough.

5. Effect of Breach. In recognition of the fact that as of the date of execution of this Agreement, all motions filed by Cywinski and Lee and ruled upon have been universally denied by the Court, at the expense of the Borough 232 County and Frank, Cywinski and Lee agree that in the event either breaches any term of this Settlement Agreement, subject to a finding that the Borough and/or 232 County and Frank is/are a prevailing party, the Borough and/or 232 County, and Frank shall be entitled to an award of reasonable attorney's fees and costs of suit incurred in any future action filed to enforce the terms of this Settlement Agreement and/or to defend any future action or claim filed by Lee and/or Cywinski arising out of the subject matter of this Agreement. Nothing contained herein shall limit the damages to be sought by the Borough and/or 232 County Road and Frank and the Borough and 232 County retains the right to seek any additional damages, including but not limited to injunctive relief, compensatory and punitive damages.

6. Joint Participation. The Parties participated jointly in negotiating and preparing this Agreement. The Agreement shall be construed as if the Parties jointly prepared it per this Paragraph, and any uncertainty or ambiguity shall not be interpreted against any one Party or in favor of the other.

7. Advice of Counsel. Each party represents that it has received independent advice from legal counsel of its own choosing concerning the advisability of entering into this Agreement or has had the opportunity to obtain such counsel and has declined to exercise its right to do so.

8. Authority. Each person who signs this Agreement represents and warrants that he or she has the authority and capacity to act on behalf of the Party for whom they are signing and to bind the Party and all who might claim through it to the terms of this Agreement.

9. Reliance. Each party agrees that it has not relied upon any representation, warranty, condition, understanding or agreement of any kind in entering into this Agreement other than those set forth in this Agreement or its attachments.

10. No Assignment. The Parties represent and warrant that they have not assigned, transferred, or purported to assign or transfer, in whole or in part, any interest in any of the rights and claims that are the subject of this Agreement and shall not so assign any right.

11. No Amendment or Waiver. This Agreement cannot be amended, modified, terminated, or canceled in any respect, except by a written instrument executed by Cywinski, Lee the Borough, and 232 County and Frank. The failure to exercise or a delay in exercising any right, remedy, or power under this Agreement shall not operate as a waiver thereof. The failure of

a Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof nor deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Governing Law. This agreement shall be interpreted, construed, and enforced under the laws of the State of New Jersey without giving effect to the conflict of laws principles thereof.

13. Construction. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to resolve completely those claims and disputes between the Parties, as more fully described herein related to the Litigation and the Borough's Complaint, and each Parties purported damages. If a court of competent jurisdiction holds any portion of this Agreement is invalid, void, illegal, or inoperative, the other portions of this Agreement shall be deemed valid and operative. So far, as it is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid, void, illegal, or inoperative.

14. Counterparts. This Agreement may be executed in counterparts and copies may be used instead of originals. The executed counterparts shall be construed as and constitute one document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their own names or their corporate names by a proper officer or representatives duly authorized to do so as of the dates indicated.

Kyusoon Lee

Dated: _____

Raymond Cywinski

Dated: _____

WITNESS:



Julie Falkenstern, R.M.C.



Mayor Brian Bernstein

Dated: 6/8/26

232 County Development, LLC

By: _____
Michael Feinstein, Member

Dated: _____

Estate of Ernest H. Frank

By: _____
Sandriel K. Frank

Dated: _____

By: _____
Samantha K. Frank

Dated: _____

By: _____
Ehren Joseph Frank

Dated: _____