

SETTLEMENT AGREEMENT

(Final)

A. Background

WHEREAS, on July 7, 2015, the Township of Chatham ("Township") filed a Declaratory Judgment Complaint with the Superior Court of New Jersey, Morris County, Law Division ("Court"), captioned In the Matter of the Township of Chatham for a Judgment of Compliance of Its Third Round Housing Element and Fair Share Plan, Docket No. MRS-L-1659-15; and

WHEREAS, a component of the Township's proposed Third Round Housing Element and Fair Share Plan is to extend the affordability controls on the seventy-two (72) units known as the Vernon Grove Condominium ("Condominium"); and

WHEREAS, on June 23, 2016, the Township Committee of the Township of Chatham adopted Resolution 2016-146, titled "Resolution of the Township Committee of the Township of Chatham Extending Affordable Controls at Vernon Grove and Sutton Woods", extending the affordability controls at the Vernon Grove Condominium until July 1, 2046 and the Sutton Woods Condominium until March 1, 2049; and

WHEREAS, on August 30, 2016, the Township recorded Declarations of Restrictive Covenant Extension of Affordability

Controls applicable to both the Vernon Grove and Sutton Woods Condominiums; and

WHEREAS, on July 18, 2016 and August 29, 2016, the Vernon Grove Condominium Association, Inc. ("Association"), filed with the Court an objection to the extension of the affordability controls; and

WHEREAS, in addition to the Association's objection, individual Unit Owners at the Condominium filed with the Court objections to the extension of the affordability controls; and

WHEREAS, the Association met with its members to determine whether the membership desired to withdraw the objection to the Township's extension of the affordability controls and to amend the Master Deed of the Vernon Grove Condominium to extend the affordability controls on the seventy-two (72) units at the Condominium for thirty (30) years consistent with the Declaration of Restrictive Covenant Extension of Affordability Controls; and

WHEREAS, the Association and Condominium membership reached a consensus to extend the affordability controls and approve this Settlement Agreement subject to a vote of the Condominium membership; and

WHEREAS, the Township and Association have determined that a desirable means of promoting an adequate supply of low- and moderate-income housing in the Township is to extend the affordability controls on the Condominium for a period longer than the initial term; and

WHEREAS, the Township and Association, as a result of this Settlement Agreement, will promote the well being of the Condominium membership by undertaking certain capital and deferred maintenance improvements to enhance the Condominium; and

WHEREAS, that it is desirable for the Township and Association to settle this matter on the following terms and conditions.

B. Defined Terms

"95/5 Deed" means a Deed as defined in the Uniform Housing Affordability Controls regulation, N.J.A.C. 5:80-26.1 et seq.

"Association" means the Vernon Grove Condominium Association, Inc.

"Condominium" means the seventy-two (72) units known as the Vernon Grove Condominium.

"Court" means the Superior Court of New Jersey, Law Division, Morris County.

"Party" or "Parties" means the Association and Township.

"Township" means the Township of Chatham.

"Unit Owner" means the individual condominium unit owners at the Condominium.

C. Settlement Terms and Conditions

The Township of Chatham and the Vernon Grove Condominium Association, Inc., for good and valuable consideration as detailed in this Settlement Agreement hereby agree to the following terms and conditions:

1. The Township recognizes that, from time to time, the Association is unable to complete certain capital improvements and deferred maintenance because of funding shortages.

2. The Township desires to assist the Association in meeting a portion of the capital and/or deferred maintenance expenditures by making an annual contribution to the Association not to exceed \$29,000.00 for these expenses.

3. The annual contribution to the Association will be for capital and/or deferred maintenance expenses as set forth in the annual budget of the Association detailing the capital and/or deferred maintenance expenses for the given fiscal year which shall be provided to the Township within fourteen (14) days of the approval of the annual budget for the applicable fiscal year, but no later than January 31<sup>st</sup> of the applicable fiscal year.

4. Annual contributions will not commence until thirty (30) days after this Settlement Agreement becomes effective as described below. However, once the Settlement Agreement becomes effective, the first annual payment will be for the year 2017 and continue annually for the period of the extended affordability controls.

5. The Township will within thirty (30) days of receipt of the annual budget deposit \$29,000.00 for capital and/or deferred maintenance expenses into an escrow account in the name of both the Township and the Association against which specific capital and/or deferred maintenance expenses approved by the Association may be drawn by the Association upon submission to the Township of documentation of the specific expenses supporting the draw. It is expressly understood and agreed that the Association is under no obligation to draw down the entire \$29,000.00 amount in any given fiscal year and that amounts for capital and/or deferred maintenance may be accumulated from year to year without waiver of any rights of the Association to utilize those funds for capital and/or deferred maintenance. In the event that at the expiration of the affordability controls at the Condominium there are unexpended funds in the escrow account, those funds shall be returned to the Township without any further obligation on the part of the Township. However, in the

event that the affordability controls are extended for another period, then the unexpended funds shall remain in the escrow account to be used for the same purpose and disbursed in the same manner as described in this Settlement Agreement.

6. A one (1) time capital contribution of \$60,000.00 to the Association for repaving the Association's parking lot supported by a proposal approved by the Association for this capital expense shall be paid by the Township within thirty (30) days of submission of the proposal and this Settlement Agreement becomes effective as described below.

7. This one (1) time capital contribution is not due until thirty (30) days after this Settlement Agreement becomes effective as described below.

8. In consideration of the above contributions, the Association agrees to submit to the Association membership the following Ballot Question to amend the Master Deed of the Vernon Grove Condominium:

I hereby agree to amend the last sentence of Article 17.3 of the Master Deed of the Vernon Grove Condominium as follows:

"Such restrictions shall run for a period of thirty (30) years following the recording of an amended Master Deed and extend the affordability control restrictions on each individual Unit in the Vernon Grove Condominium for thirty (30) years following the recording of the Master Deed amendment."

9. The Ballot Question may, prior to submission to the Condominium membership, be modified by mutual agreement of the Association and the Township to address circumstances that may arise after this Settlement Agreement is executed.

10. This Ballot Question must be adopted upon the affirmative vote of two-thirds (2/3) of the Condominium membership, which affirmative vote is to be memorialized by a recorded Master Deed amendment.

11. In the event that the Master Deed amendment does not receive a two-thirds (2/3) affirmative vote, this Settlement Agreement will not become effective and is null and void.

12. Additionally, in connection with subsequent sales of any Units within the Condominium, new Unit Owners must sign 95/5 Deeds in the form provided by the Uniform Housing Affordability Controls regulations.

13. Prior to this Settlement Agreement becoming effective, this Settlement Agreement must be approved by the Court, upon notice to the Condominium membership.

14. Prior to this Settlement Agreement becoming effective, the Association will provide the Condominium Unit mortgage holders with a copy of this Settlement Agreement and notice that the Settlement Agreement must be approved by the Court.

15. In the event that the Township is not credited by the Court for seventy-two (72) affordable housing units at the Condominium to meet part of the Township's Third Round affordable housing obligation or that during the thirty (30) year term of this Settlement Agreement, the Settlement Agreement is successfully set aside by a court or administrative agency of competent jurisdiction, no further annual contributions from the Township to the Association will be due and payable and the affordability controls on all Units shall be deemed to expire as of the date this Settlement Agreement is successfully set aside.

16. This Settlement Agreement is contingent upon the Court approving the extension of controls on the entire Condominium for a period of thirty (30) years.

17. In the event that the Court conditions approval of this Settlement Agreement upon all of the Unit Owners signing 95/5 Deeds, then this Settlement Agreement will not become effective until that condition is met.

18. Unless otherwise specified, it is intended that the provisions of this Settlement Agreement are to be severable. The validity of any article, section, clause or provision of this Settlement Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Settlement Agreement shall be adjudged by a



court or administrative agency of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

19. This Settlement Agreement shall be governed by and construed by the laws of the State of New Jersey.

20. This Settlement Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

21. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Settlement Agreement.

22. The Parties acknowledge that each has entered into this Settlement Agreement of its own volition without coercion or duress after consulting with its counsel, that each Party is the proper person and possesses the authority to sign the Settlement Agreement, that this Settlement Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

23. 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.

24. This Settlement Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

25. Anything herein contained to the contrary notwithstanding, the effective date of this Settlement Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Settlement Agreement.

26. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to

the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

To Association:  
Vernon Grove Condominium Association, Inc.  
c/o Daniel Barros, Esq.  
Cutolo Barros, LLC  
151 Highway 33 East, Suite 204  
Manalapan, New Jersey 07726

To Township:  
Clerk  
Township of Chatham  
58 Meyersville Road  
Chatham, New Jersey 07928

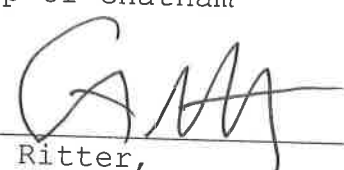
In witness thereof, the Parties enter into this Settlement Agreement as of January \_\_\_\_\_, 2017.

Attest:

Township of Chatham

  
Gregory LaConte,  
Township Clerk

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

  
Curt Ritter,  
Mayor

Attest:

Vernon Grove Condominium  
Association, Inc.

\_\_\_\_\_

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

, President

State of New Jersey

SS.

County of Morris

I CERTIFY that on May 26, 2017, Gregory LaConte personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) he is the Clerk of the TOWNSHIP OF CHATHAM, the municipal corporation named in the attached document;
- (b) he is the attesting witness to the signing of this document by the proper municipal officer, who is Curt Ritter, Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) he knows the proper seal of the municipal corporation which was affixed to this document; and
- (e) he signs this proof to attest to the truth of these facts.

Gregory LaConte  
Gregory LaConte, Township Clerk

Witness my hand and seal.

Notary Public

Printed Name: Margaret M. Smith Margaret Smith

My Commission Expires:

MARGARET M. SMITH  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 3/11/2020

STATE OF \_\_\_\_\_

SS:

COUNTY OF \_\_\_\_\_

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
\_\_\_\_\_ personally came before me and stated to my  
satisfaction that this person

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as  
\_\_\_\_\_ of VERNON GROVE CONDOMINIUM  
ASSOCIATION, INC., the entity named in this instrument; and
- (c) executed this instrument as the act of VERNON GROVE  
CONDOMINIUM ASSOCIATION, INC.

Witness my hand and seal.

Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_