

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") dated this 31st day of JANUARY 2018, is made by and between the BERGEN ROCKLAND ERUV ASSOCIATION, INC., (hereinafter referred to as "BREA"), YISROEL FRIEDMAN, AND S. MOSHE PINKASOVITS (hereinafter collectively referred to as the "Plaintiffs") and the TOWNSHIP OF MAHWAH (hereinafter referred to as the "Township" or "Defendant"). Plaintiffs and Defendant are sometimes hereinafter collectively referred to as the "Parties" and each may be severally referred to as a "party."

WHEREAS, a dispute arose between the Parties concerning Plaintiffs' right to affix thin PVC plastic pipes (hereinafter referred to as "lechis") to effectuate the installation and/or expansion of an "Eruv" to utility poles in the Township;

WHEREAS, in relation to such dispute, Plaintiffs filed a Complaint in the United States District Court District of New Jersey ("Court") on or about August 11, 2017 entitled *Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits v. Township of Mahwah*, bearing Civil Docket Number 2:17-cv-06054 (JM/CLW) (hereinafter referred to as the "Litigation"); and

WHEREAS, the Parties now desire to amicably resolve all claims asserted in the Litigation without any admission of liability, which claims are more fully described below.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, and intending to be legally bound, it is hereby AGREED as follows:

1. RECITALS. The above recitals are hereby referred to and incorporated by reference.
2. SCOPE OF AGREEMENT.
 - a. This Agreement sets forth the terms and conditions under which the Parties mutually agree to resolve any and all claims as between them set forth in the Complaint, including all claims against each Parties' officials, agents, representatives, and employees. For the avoidance of doubt, this Agreement shall also resolve all claims or potential claims as between the Parties related to acts or omissions by the Parties (including through their officials, agents, representatives, and employees) with respect to the lechis and/or Eruv that occurred up until and through the date of execution of this Agreement, including any and all claims for reimbursement of costs for Litigation expenses, attorneys' fees and Litigation costs up to and through the date of this Agreement (which might have required payment by Defendant to Plaintiffs of approximately \$311,000.00). Notwithstanding anything to the contrary herein, the Township shall pay to Plaintiffs' attorneys, within twenty (20) days of the execution of this Agreement, the sum of \$10,000.00, or an amount mutually agreed upon, representing compensation for a portion of Plaintiffs' legal fees and costs incurred in the Litigation. Such additional amount, if any, shall be agreed upon by the Parties within the 20-day period. If no agreement is reached by the Parties within the 20-day period for any additional amount, the \$10,000.00 shall constitute the full and final compensation for legal fees and costs.

- b. It is the Parties' mutual intention to settle (through this Agreement) all claims as specified in the immediately above paragraph, which are hereinafter referred to collectively and defined as the "Settled Claims." Subject to the Township's strict compliance with this Agreement in all respects, Plaintiffs further agree not to file any further charges with any local, state or federal agency against the Township and/or any of its employees, agents or administrators arising from dealings that have occurred up to and through the date of execution by all Parties to this Agreement.
3. UNDERSTANDING OF THE PARTIES. In full and final satisfaction and accord of the Settled Claims above, and in consideration for the Release as more fully set forth in Paragraph 4, below, the Parties agree as follows:
- a. Subject to Paragraph 3(c) below, the Township consents to the existence, restoration, maintenance, repair and upkeep of the lechis comprising the Eruv in compliance with applicable safety standards, as and where they currently exist on utility poles presently located in the Township. Notwithstanding anything to the contrary herein, nothing in this Agreement shall preclude Plaintiffs, their agents, successors and/or assigns from future expansion(s) and/or modification of the Eruv within and/or outside of the Township; provided, however, that in the event Plaintiffs seek to expand or alter the Eruv within the Township, the Parties shall confer in good faith on such expansion and/or modifications, including without limitation, reasonable alternatives to any proposed route(s) for such expansion and/or modifications.
- b. The Township of Mahwah will take no action impairing Plaintiffs' ability to restore, repair, keep or otherwise maintain the Eruv, including, without limitation, by seeking to enforce or adopt any ordinance or resolution prohibiting or impeding the attachment, existence, restoration, maintenance, repair, upkeep and/or expansion of existing and/or future lechis by Plaintiffs or their agents. To the extent any repairs and/or maintenance require the assistance, supervision or oversight of one or more Township agents, including, without limitation, Township police and/or code enforcement, the Township agrees to cooperate fully with BREA in providing the requisite Township agents as necessary.
- c. At the Township's request, BREA agrees at its sole cost, within twelve (12) months from the date hereof, to recolor and/or replace each existing lechi to match the applicable utility pole as closely as practicable, and to do likewise as pertains to any future lechis installed within the Township; provided, however, in the event Orange and Rockland Utilities, Inc. (and any of its subsidiaries) and/or Verizon New Jersey Inc. (and any of its subsidiaries) (each a "Utility"), as applicable, insist any lechi be of a certain color, the Parties agree to comply with the requests of such Utility and will seek to utilize a color that is as minimally perceptible as permitted by the Utility, and BREA shall not be deemed in breach of this Agreement because of such Utility's directive. With respect to any work done to color and/or replace existing or future lechis, the Township shall provide a police escort for the duration of such work at BREA's cost.

- d. BREa shall maintain the Eruv without any public funding from the Township. Notwithstanding the foregoing, the Township, including, without limitation, Township police, shall promptly respond to any acts of vandalism and/or any other illegal acts against the lechis tending to impair BREa's ability to maintain the Eruv.
- e. In the event any Township agent shall damage one or more lechis while conducting his or her duties on the Township's behalf, the Township shall provide all funds required for BREa to make repairs necessitated by such agent's actions.
- f. BREa shall restore and repair any and all damage to Township property that may occur in connection with actions by BREa or its agents to install, maintain or repair the lechis, and shall indemnify and hold harmless the Township, its officials, and employees from and against any claims for personal injury or property damages arising from or in connection with such maintenance and repair. For the avoidance of doubt, the foregoing indemnity shall not apply to any installation, repair or restoration efforts undertaken by any agent of the Township, except in the event BREa requests or consents in advance in writing to such efforts by the Township.
- g. Prior to commencing work on any lechis, BREa (or any agent engaged or hired by BREa) shall furnish to the Township a certificate of insurance in the amount required by the applicable Utility listing the Township as an additional insured. BREa or its agent shall maintain such coverage at all times while conducting work on the lechis and/or while the Township conducts any work on the lechis that BREa has requested or consented to in advance. BREa or its agent shall promptly inform the Township Business Administrator if the requisite insurance lapses during any mandatory coverage period.
- h. BREa or its agents agree to reasonably notify the Business Administrator in advance of any maintenance or repair, or expansion of, the Eruv, identifying the exact location of the pole(s) on which such maintenance, repair and/or expansion work shall be conducted. Subject to Paragraph 3(c) above, the Township shall promptly provide, at BREa's cost, any Township personnel (e.g., police) required for BREa or its agent to complete the noticed work within the timing specified by BREa in its sole discretion.
- i. Nothing herein shall be construed to conflict with any pole attachment agreements between BREa, on the one hand, and any applicable Utility, on the other, the terms of which are in no respect amended, modified, or otherwise affected by this Agreement.
- j. The Court shall retain jurisdiction to enforce the terms of this Agreement. In the event that the Court finds that a Party has breached this Agreement, the Court will have the power to enforce this Agreement at equity, including through the issuance of injunctive relief. The Parties further agree that Plaintiffs may seek an order of the Court acknowledging its retention of jurisdiction over this Agreement ("Retention Order"). The Parties agree that any proceeding to enforce the provisions herein will be expedited, and in the case of any proceeding for

preliminary injunctive relief (but not relief in the form of a temporary restraining order), allow for reasonably limited discovery and a hearing. The Parties preserve all remedies at law, equity or otherwise in connection with any proceeding to enforce the provisions herein. The Parties agree that a violation of this Agreement and/or the covenants herein will cause substantial and irreparable harm to the injured Party. Therefore, if any of the Parties and/or their agents, officials, attorneys, successors, or assigns breaches this Agreement, the injured party may seek with the Court immediate injunctive relief, without bond. Immediate injunctive relief, if sought by Plaintiffs, may take the form of an immediate temporary restraining order (including, without limitation, on an *ex parte* basis) pending a hearing on preliminary injunctive relief, upon a mere showing that the action taken, or to be taken, by the Township will prevent any lechi or other necessary portion of the eruv from being in place in Mahwah on any Sabbath or Yom Kippur.

- k. Plaintiffs agree, within seven days after the later of execution of this Agreement or issuance of the Retention Order, to apply for dismissal of the Litigation with prejudice and with each party to bear their or its own respective litigation costs and attorneys' fees. Dismissal with prejudice shall not impact the Court's retention of jurisdiction to hear any claim or proceeding brought to enforce this Agreement.
- l. Except with respect to enforcement of the terms of this Agreement, and so long as the existing eruv remains valid and the Township complies with Section 3(a) above, both of which determinations shall be at Plaintiffs' sole discretion, Plaintiffs agree not to initiate any new litigation against the Township concerning the erection of a new eruv for a period of two (2) years from the date of this Agreement

4. RELEASE AND EXTINCTION OF CLAIMS.

- a. As a condition of the aforementioned promises, the Parties agree that neither is a prevailing party in the Litigation and each Party waives any damages or payment, including but not limited to attorneys' fees, expenses for litigation and/or costs of suit, whether based upon statute, regulation, court rule, or the common law.
- b. Plaintiffs agree to and hereby release and give up the Settled Claims as against Defendant, its employees, elected officials, representatives, agents, attorneys, successors, and assigns. This releases all claims or potential claims resulting from any conduct with respect to the lechis and/or Eruv that has occurred up until the date of execution of this Agreement.
- c. Defendant, on behalf of itself, its elected officials, representatives, agents, employees, attorneys, successors and assigns, agrees to and hereby releases and gives up the Settled Claims as against Plaintiffs, their employees, representatives, agents, attorneys, successors, and assigns. This releases all claims or potential claims resulting from any conduct with respect to the lechis and/or Eruv that has occurred up until the date of execution of this Agreement.

- d. For the avoidance of doubt, nothing in this Agreement shall affect any pending litigation between the Township and the State of New Jersey, nor shall any orders or issued or agreements made in connection with such litigation be deemed an act by or on behalf of Plaintiffs.

5. NO ADMISSION OF LIABILITY.

- a. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as, nor shall be represented by any Party, their attorneys or their agents to be, an admission or determination of liability by such Party.
- b. Additionally, it is further agreed that this Agreement shall not be used by a Party as evidence in any proceeding against the other Party, except for any action arising from the breach of this Agreement.

6. NO RIGHTS CONFERRED UPON NON-PARTIES.

- a. The Parties further agree that they are bound by this Agreement to the end of time. Anyone who succeeds to Plaintiffs' rights and responsibilities is also bound in the same manner. This Agreement shall also be binding upon each of Defendant's subsequently-elected or appointed officials, agents, employees, representatives, and all other successors and/or assigns who succeed to the Township's rights and responsibilities hereunder.
- b. Accordingly, this Agreement is intended to confer rights and benefits only upon the Parties (including their respective officials, agents, employees, representatives, successors and assigns) and is not intended to confer any right or benefit upon any other person or entity. No person or entity other than the Parties shall have any legally enforceable rights under this Agreement. All rights of action to enforce this Agreement are hereby reserved to the Parties.

7. MATERIALITY. The Parties agree that each paragraph and subsection of this Agreement is material. In the event that any portion of this Agreement is determined to be illegal, the Parties agree, in advance, to reform this Agreement in good faith to provide each Party with the full benefit of the settlement memorialized by this Agreement to the extent permitted by law.

8. FULL UNDERSTANDING. This Agreement sets forth the complete understanding and entire Agreement between the Parties and supersedes any and all prior agreements or understandings between the Parties. This Agreement may not be modified, altered, changed, discharged, terminated or waived except upon express written consent of the Parties wherein specific reference is made to this Agreement. By executing this Agreement, the Parties represent and acknowledge that they have not relied upon any representation or statement not set forth in this Agreement with regard to the Settled Claims.

9. SERVICES OF COUNSEL. The Parties certify that they have had the opportunity to discuss this Agreement with counsel. They are fully satisfied with the services of their

counsel with respect to both this Agreement and all other aspects of the Litigation and they enter into this Agreement knowingly, willingly and without any coercion or improper inducements.

10. AUTHORITY OF SIGNATORIES. Each signatory represents that s/he or it is a Party or has been duly authorized by the applicable Party to sign on that Party's behalf and that in the case of the Township all procedural and/or legal formalities attendant or precedent to the execution of this Agreement have been satisfied. The signatory for the Township further covenants that s/he is duly empowered by the Township to sign this Agreement and that nothing prevents the Township from completely performing its obligations under this agreement.
11. LAW GOVERNING. This Agreement shall be governed by the laws of the State of New Jersey and the United States of America, and any dispute arising out of this Agreement or action to enforce this Agreement shall be subject to the exclusive jurisdiction of the United States District Court for the District of New Jersey.
12. SEVERABILITY. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.
13. EXECUTION IN COUNTERPARTS. The Parties agree that this Agreement may be signed in counterparts and that facsimiles or emailed copies of signatures will have the same force and effect as original signatures.

[Signature Pages Follow]

PLAINTIFFS:

BERGEN ROCKLAND ERUV ASSOCIATION

_____ DATED: 1.31.2018

YISROEL FRIEDMAN,

_____ DATED: _____

S. MOSHE PINKASOVITS

_____ DATED: _____

WITNESSED BY:

WEIL GOTSHAL & MANGES, LLP
Attorneys for Plaintiffs

_____ DATED: _____

PLAINTIFFS:

BERGEN ROCKLAND ERUV ASSOCIATION

_____ DATED:

YISROEL FRIEDMAN,

Yisroel Friedman 1/31/2018 DATED:

S. MOSHE PINKASOVITS

_____ DATED:

WITNESSED BY:

WEIL GOTSHAL & MANGES, LLP
Attorneys for Plaintiffs

_____ DATED:

PLAINTIFFS:

BERGEN ROCKLAND ERUV ASSOCIATION

_____ DATED:

YISROEL FRIEDMAN,

_____ DATED:

S. MOSHE PINKASOVITS

 _____ DATED: 1/31/2018

WITNESSED BY:

WEIL GOTSHAL & MANGES, LLP
Attorneys for Plaintiffs

_____ DATED:

PLAINTIFFS:

BERGEN ROCKLAND ERUV ASSOCIATION

_____ DATED:

YISROEL FRIEDMAN,

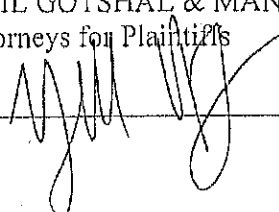
_____ DATED:

S. MOSHE PINKASOVITS

_____ DATED:

WITNESSED BY:

WEIL GOTSHAL & MANGES, LLP
Attorneys for Plaintiffs

 _____ DATED: 1/31/2018

DEFENDANT TOWNSHIP OF MAHWAH

Mayor Bill L...
Authorized Representative as per Township

Resolution dated 1/31/18

WITNESSED BY:

TOWNSHIP ATTORNEY

Brian Chewcaskie DATED: 1/31/18
MF
Brian Chewcaskie, Esq.