



July 24, 2023

John Paff

RE: Request for Public Records – Settlement Agreement

Dear Mr. Paff:

Thank you for your interest in the Borough of Penns Grove and your request for public records dated July 13, 2023.

As requested, please see the attached agreement between Flameworks At Penns Grove, LLC and Penns Grove Scattered Site Rehab, LLC v. Borough of Penns Grove.

Respectfully,

Sharon R. Williams, RMC
Municipal Clerk

C: Robert L. Tarver, Jr., Solicitor
File

Via Email: opra+request-48636-cbd8b172@requests.opramachine.com

1 State Street
Penns Grove, New Jersey 08069
(856) 299-0098, ext. 103

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (the “Agreement”) is entered into by and between Plaintiffs Flameworks at Penns Grove, LLC (“Flameworks”) and Penns Grove Scattered Site Rehab, LLC (“PGSSR,” collectively “Redeveloper”) and Defendant/Counterclaimant Borough of Penns Grove (“Borough”). Flameworks, PGSSR and the Borough are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Redeveloper filed a Complaint in Lieu of Prerogative Writ (“Complaint”) in the Superior Court of New Jersey, Law Division, Salem County, Docket No. SLM-L-181-19 captioned Flameworks at Penns Grove, LLC and Penns Grove Scattered Sites, LLC v. Borough of Penns Grove on or about October 4, 2019 (the “Action”), challenging the Borough’s revocation of the Redeveloper’s designation as redeveloper of the Penns Grove Flameworks Redevelopment Project, Block 43, Lots 1 and 2; Block 44, Lot 1; and Block 47, Lots 11, 12, 13.01, 14, 15 and 16 (“Flameworks Redevelopment Project”) and the redevelopment agreement governing same the Parties entered into in March 2019 (“Flameworks Agreement”), and seeking reinstatement of the agreement, that the resolution revoking the Redeveloper’s status be vacated, and a declaration that the Redeveloper remains the redeveloper for the Flameworks Redevelopment Project and that the Flameworks Agreement remains in effect;

WHEREAS, the Borough filed an Answer and Counterclaim (“Counterclaim”) in the Action on or about December 27, 2019, alleging that the Redeveloper had violated both the Master Redevelopment Agreement Broad Street/Main Street/Route 130 Study Area “Scattered Site” Overlay District (“Scattered Site Agreement”) the Borough entered into on or about November 17, 2017, as well as the Flameworks Agreement, seeking dismissal of the Complaint, payment of allegedly unpaid taxes and transfer of Block 47, Lots 13.01, 15 and 16 to the Borough;

WHEREAS, by Order dated September 25, 2020, the Court preliminarily enjoined the Borough from recording the deed to any of the properties subject to the Flameworks Agreement;

WHEREAS, the Complaint, the Counterclaim and all causes of action alleged therein involve arguable and disputed questions of fact and law;

WHEREAS, the Parties have agreed to compromise and settle the controversies and disputes between them as set forth herein;

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with each other, as follows:

1. **Whereas Clause Incorporation.** The prefatory clauses are incorporated herein and made part of this Agreement.

2. **Dismissal of Action.**

Contemporaneously with the execution of this Agreement, the Redeveloper and the Borough shall execute a stipulation of dismissal in the form attached hereto as **Exhibit “A,”** which shall be filed with the Superior Court of New Jersey, Law Division, Salem County, dismissing the Action.

3. **Consideration.**

As consideration for this Agreement and in settlement of all claims asserted in the Complaint and Counterclaim, the Redeveloper and the Borough agree that they shall enter into a new redevelopment agreement (“New Redevelopment Agreement”) that will supersede both the Scattered Site Agreement and Frameworks Agreement. The parties agree to make a good faith effort to enter into the New Redevelopment Agreement within two hundred and seventy (270) days of the dismissal of the Action, and further agree that they may adjust the target date for execution of the New Redevelopment Agreement depending on circumstances and drafting of the agreement and a revised and amended redevelopment plan (“Revised Redevelopment Plan”). As an inducement for the Redeveloper to enter into this Agreement, dismiss the Action and enter into the New Redevelopment Agreement, it is hereby agreed that the New Redevelopment Agreement, the terms of which shall be binding upon the Borough and the Redeveloper, shall adhere to the following principles and impose the following obligations upon the Parties:

- a. **Passage of Resolution Reinstating Redeveloper:** Within forty-five (45) days of the dismissal of the Action, the Borough will adopt a resolution formally vacating the resolution revoking the Redeveloper’s status a redeveloper, reinstating the Redeveloper as redeveloper of the Broad Street/Main Street/Route 130 Study Area “Scattered Site” Overlay District and the Frameworks Redevelopment Project, and revoking any conflicting

redevelopment agreements regarding either project that the Borough entered into with any other redevelopers.

- b. Resolution of Tax-Related Issues: Reinstated Redeveloper shall not be delinquent with regard to any outstanding taxes or obligations to the Borough. The Redeveloper's obligation to pay off any existing tax liens on the properties subject to the New Redevelopment Agreement and the Revised Redevelopment Plan shall be completed before the agreement and plan are submitted to the Borough Council for final approval. The Parties acknowledge that the Redeveloper will be making an application pursuant to N.J.S.A. 40A: 20-1 et seq. and potentially N.J.S.A. 40A:21-1, et seq., in connection with the New Redevelopment Agreement and Revised Redevelopment Plan and that the Redeveloper regards approval under one or both of those provisions as material to the success of the redevelopment project.
- c. Criminal Background Check: The Borough will require the reinstated redeveloper, its principals and shareholders and those of the LLCs entering into the New Redevelopment Agreement to authorize the Borough to conduct a criminal background check; and to certify that neither the redeveloper, its principals, nor any shareholder thereof, has been subject of an indictment by any state or federal authority.
- d. Provision of Corporate Documents: The Redeveloper will provide the Borough with corporate documents such as the Certificate of Formation and good standing for all LLC's that enter into the New Redevelopment Agreement.
- e. Scope of New Redevelopment Agreement: The New Redevelopment Agreement will govern the redevelopment of the properties within the Frameworks District which are identified in the Frameworks Agreement and selected properties governed by the Scattered Site Agreement as follows:
 - i. Frameworks Agreement: The New Redevelopment Agreement will affirm Plaintiff's redevelopment rights with respect to all properties subject to the Frameworks

Redevelopment Agreement with the exception of Block 44, Lot 1, which has been sold to a third-party, including the following:

- Block 43, Lots 1 and 2 (site of the former Poland Building).
- Block 47, Lots 11, 12 (proposed site of student townhouses), 13.01 (existing building), 14 (existing building), 15 (site of the Dalbow Building) and 16.

- ii. Incorporation of Select Properties from the Scattered Sites Agreement: Upon receipt of an updated list of Borough owned properties within the Scattered Site Overlay District, which shall be provided within fifteen (15) days of the dismissal of the Action, the Redeveloper will, in consultation with the Borough, designate specific properties which will be redeveloped pursuant to the New Redevelopment Agreement, including as many properties included within the original Scattered Site Agreement as is commercially practicable. The Parties agree to exercise good faith and fair dealing in selecting and agreeing on such properties. The parties agree that the scattered sites and properties subject to redevelopment pursuant to the above noted New Redevelopment Agreement will exclude the waterfront properties identified as Block 55, Lot 2, Block 57, Lots 1, 3, 4, 5, 6 (6.01), Block 59, Lots 3, 4, 6, 7, 12 (14) and Lot 119, Block 2.
- iii. Incorporation of Block 60, Lot 2: The Redeveloper holds title to Block 60, Lot 2, which has an address of 74 W. Main Street in Penns Grove. Although that property is not included in the Frameworks Agreement, it is eligible for inclusion in the New Redevelopment Agreement.

- f. Conveyance of Foreclosed Property: The Borough conducted a tax lien foreclosure with respect to 8-10 Broad Street, Penns Grove (Block 47, Lot 13) ("Broad Street Property"). The Broad Street Property is integral to the redevelopment contemplated in the New Redevelopment Agreement. Accordingly, the Borough agrees it will take whatever action is necessary to convey ownership of the Broad Street Property to the Redeveloper, after which it will be governed by the New Redevelopment Agreement and included within the Revised Redevelopment Plan.
- g. Covenant for Good Faith Assistance with Revised Redevelopment Plan: The Parties agree, and the New Redevelopment Agreement shall contain, a covenant to work and cooperate in good faith in drafting and adopting a Revised Redevelopment Plan, subject to the approval of redevelopment entity which is the Borough Council, pursuant to N.J.S.A. 40A:12A-4(a)(3), which will revise the original redevelopment plans governed by the Scattered Site Agreement and Frameworks Agreement, with the objective of making the Revised Redevelopment Plan commercially practicable under current conditions. Such revisions to the original redevelopment plans will include, but are not limited to:
- (i) Permission for Demolition: The Redeveloper will have the right to demolish any buildings subject to the New Redevelopment Agreement as it sees fit, with the Borough assisting the Redeveloper in securing any approvals required by the Borough that are necessary for such demolition.
 - (ii) Allowance for Greater Density and Height: Redeveloper will have the right, subject to all approvals, to build properties with greater height and density than contemplated in the original redevelopment plans, and the Borough will assist the Redeveloper in securing all necessary approvals.

- (iii) Market Rate Units: The principal objective of the properties subject to the New Redevelopment Agreement and included in the Revised Redevelopment Plan will be to attract individuals and businesses who can pay the full market rate. This objective will be subject to the Borough's affordable housing obligations required by the State of New Jersey. To the extent that the Revised Redevelopment is subject to the Borough's affordable housing obligations required by the State of New Jersey, the Redeveloper shall have the option of satisfying those obligations via properties selected from those in Scattered Site Overlay District and included in the original Scattered Site Agreement.
 - (iv) Reduction of Retail Component: The Revised Redevelopment Plan will reduce the retail component of the original redevelopment plans as commercially necessary.
- h. Incorporation into Borough's Master Plan: Prior to conducting feasibility studies in connection with the New Redevelopment Agreement and Revised Redevelopment Plan, the Borough will provide the Redeveloper with a summary of the yet to be finalized Master Plan, to ensure that the Revised Redevelopment Plan will be harmonious with the Master Plan.
- i. Establishment of Reasonable Timeframes: The Parties will set reasonable timelines for the completion of the redevelopment required by the New Redevelopment Agreement and Revised Redevelopment Plan. The timelines for completion of particular phases will be dictated by a number of factors, and the New Redevelopment Agreement and Revised Redevelopment Plan will include flexibility so long as the parties continue to work in good faith, and allow for reasonable extensions for force majeure events.

- j. Use and Promotion of Green Energy: The Redeveloper will make a good faith effort to utilize solar panels and LED lighting, among other “Green Energy” measures, in the new and rehabilitated buildings governed by the New Redevelopment Agreement and included in the Revised Redevelopment Plan, which may be subject to the Borough's sustainable and green energy goals.

4. **Mutual Release.**

Flameworks, PGSSR and the Borough hereby absolutely and unconditionally mutually release and forever discharge each other from any and all claims, demands, obligations, losses, causes of action, damages, penalties, costs, expenses, attorney's fees, liabilities, and indemnities of any nature whatsoever, whether based on contract, tort, statute of other legal or equitable theory of recovery, whether known or unknown, foreseeable or unforeseeable, which the parties had, now have, or may at any time in the future have against each other which could have been, asserted in the in the Action, except for the enforcement of this Agreement and rights thereunder. The failure to execute the New Redevelopment Agreement consistent with the principles and terms detailed herein shall constitute a breach of the Agreement, absent a mutual agreement to forgo executing same consistent with the principles and terms detailed herein. This Release expressly includes any claims to attorney's fees and costs of suit incurred in the Action.

5. **Warranty of Authority.**

Each of the Parties represents and warrants that: (a) they are fully authorized to enter into this Agreement; (b) they have relied on the advice and representation of legal counsel of their own choosing with respect to the matters set forth herein; and (c) their duly authorized representative has signed the Agreement voluntarily, without duress or undue influence on the part, or on behalf, of any party.

6. **Non-Assignment.**

The Parties warrant and represent to each other that they have not heretofore assigned or transferred or purported to assign or transfer to any person or entity not a party hereto, the released matter or any part thereof, and agree to indemnify and hold each other harmless from and against any claim based on, in connection with or arising out of such assignment or transfer or purported or claimed assignment or transfer.

7. Disclaimer of Liability.

The Parties acknowledge and agree that the settlement of the Action and the execution of this Agreement are the result of compromise and shall not for any purpose be considered an admission of liability or of responsibility concerning any of the claims referred to in the Action, and no past or present wrongdoing on the part of any of the Parties to this Agreement shall be implied by such payment or execution.

8. Integration Clause.

This Agreement represents and contains the entire agreement and understanding with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the Parties unless incorporated herein. This Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

9. Fees and Expenses.

The Parties acknowledge and agree to pay their own expenses, including legal fees, incurred in the prosecution and defense of the Action, including those incurred in the negotiation, preparation and execution of this Agreement.

10. Representation of Comprehension.

The Parties represent that they have completely read this Agreement, fully understand its terms and voluntarily accept same of their own choice. The Parties further represent and acknowledge that they have been represented by independent counsel in the negotiation of this Agreement.

11. Construction.

- 11.1 It is acknowledged and agreed that counsel for each party has reviewed this Agreement, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 11.2 In the event that one or more of the provisions or portions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall

continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

- 11.3 This Agreement is entered into in the State of New Jersey and shall be construed and interpreted in accordance with its laws. The parties agree to submit all matters relating to the enforcement of this Agreement to the Superior Court of New Jersey, Salem County.
- 11.4 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.
- 11.5 This Agreement may only be amended by a writing signed by the Parties which refers to itself as an Amendment to this Agreement.
- 11.6 Each party agrees to take such steps and execute such documents as may be reasonably necessary or proper to carry out and effectuate the covenants and purposes of this Agreement. The Parties agree not to undertake any act that shall undermine or impede the rights of the other Party to realize the benefits of this Agreement.
- 11.7 Non-defaulting party shall notify the defaulting party of the alleged default within 5 days that the default occurs; upon receipt of the notice of default, the defaulting party shall then have up to 10 days to cure the default. Thereafter, if the default is not cured the non-defaulting party may immediately file a motion to enforce the Agreement. The parties agree at all times to attempt to resolve matters at the lowest possible level through good faith negotiations.

12. **Agreement Binding on Successors.** This Agreement shall be binding upon and shall inure to the benefit of the assigns, successors, and transferees of each of the Parties, whether by change of control, operation of law, election, or otherwise. This Agreement shall not create any third-party rights.

13. **Notices.** Any notice, request, instruction, consent or other document to be given hereunder by any Party to any other Party shall be in writing and delivered personally or sent by overnight delivery service, addressed as follows:

Paul E. Minnefor, Esq.
Giordano Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, New Jersey 07701
Attorneys for Plaintiff Flameworks at Penns Grove, LLC and Penns Grove Scattered Site Rehab, LLC

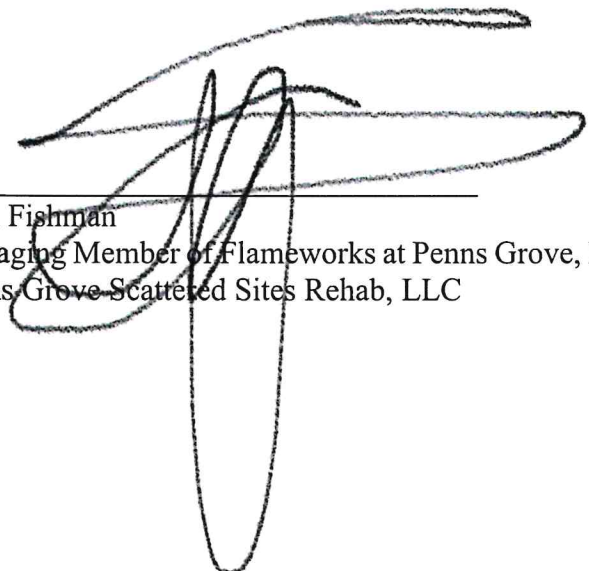
Cristal Holmes-Bowie, Esq.
Michael A. Armstrong & Associates, LLC
79 Mainbridge Lane
Willingboro, NJ 08046
Attorneys for Defendant/Counterclaimant Borough of Penns Grove

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year written below:



The Hon. LaDaena D. Thompson
Mayor of Borough of Borough of Penns Grove, NJ

Dated: April 1, 2023



Glen Fishman
Managing Member of Flameworks at Penns Grove, LLC and
Penns Grove Scattered Sites Rehab, LLC

Dated: March 16, 2023

EXHIBIT "A"

Paul Minnefor (034491999)

GIORDANO, HALLERAN & CIESLA, P.C.

125 Half Mile Road, Suite 300

Red Bank, N.J. 07701-6777

(732) 741-3900

Attorneys for Plaintiff Flameworks at Penns Grove, LLC and
Penns Grove Scattered Site Rehab, LLC

FLAMEWORKS AT PENNS GROVE, LLC
and PENNS GROVE SCATTERED SITE
REHAB, LLC,

Plaintiffs,

v.

BOROUGH OF PENNS GROVE,

Defendant/Counterclaimant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SALEM COUNTY

DOCKET NO. SLM-L-181-19

Civil Action

STIPULATION OF DISMISSAL

THIS MATTER, having been brought before the Court on the consent of the undersigned attorneys for Plaintiffs Flameworks at Penns Grove, LLC and Penns Grove Scattered Site Rehab, LLC and Defendant/Counterclaimant Borough of Penns Grove has been resolved amicably between the Parties pursuant to and in reliance on a separate, written settlement agreement between them. It is hereby stipulated and agreed that the same be and is hereby dismissed with prejudice and without costs against either of the Parties.

MICHAL A. ARMSTRONG & ASSOCIATES, LLC

Attorneys for Defendant/Counterclaimant

Borough of Penns Grove

By: _____
Cristal Holmes-Bowie, Esq.

Dated:

GIORDANO, HALLERAN & CIESLA, P.C.

Attorneys for Plaintiffs Flameworks at Penns Grove, LLC and
Penns Grove Scattered Sites Rehab, LLC

By: _____
Paul E. Minnefor

Dated:

Docs #6187217-v1