

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) made as of the ____ day of April, 2021 by and among KEVIN MALANGA, residing at 57 Ridge Road, West Orange, New Jersey 07052, his heirs and assigns, (“Plaintiff”); the TOWNSHIP OF WEST ORANGE, with its offices at 66 Main Street, West Orange, New Jersey 07052 (“Township”); THE TOWNSHIP COUNCIL OF WEST ORANGE, with its offices at 66 Main Street, West Orange, New Jersey (“Township Council”) and THE PLANNING BOARD OF THE TOWNSHIP OF WEST ORANGE, with its offices at 66 Main Street, West Orange, New Jersey (“Planning Board”) and all of the foregoing are collectively referred to as the “Parties”.

WHEREAS, West Orange Executive Office Park, LLC (“WOOEP”) is the record owner of properties identified as 100 Executive Drive, 200 Executive Drive and 10 Rooney Circle and identified respectively as Block 155, Lots 40.02, 42.02 and 41.02 on the tax maps of the Township of West Orange (the “Executive Drive Properties”) and the Executive Drive Properties are currently located in the OB-1 zoning district where office buildings are permitted uses; and

WHEREAS, on December 15, 2020, the West Orange Township Council adopted its Resolution 249-20 that designated the Executive Drive Properties as an area in need of redevelopment pursuant to the LRHL;

WHEREAS, on January 26, 2021 the Township Council adopted Ordinance 2632-21 which enacted the “Executive Drive – Rooney Circle Redevelopment Plan” dated January 18, 2021 (the “Redevelopment Plan”) for the Executive Drive Properties, and

WHEREAS, Plaintiff filed an action captioned Kevin Malanga v. Township of West Orange, Township of West Orange Council and the Township of West Orange Planning Board, Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-775-21,

challenging the designation of the Executive Drive Properties as an area in need of redevelopment (the “Executive Drive Litigation”); and

WHEREAS the Executive Drive Litigation is now pending before the Superior Court, Essex County Vicinage; and

WHEREAS on March 6, 2019, the Township Council adopted Resolution 99-19 which designated the Township’s Public Library and certain surrounding land (together the “Public Library”) as being an area in need of redevelopment.

WHEREAS Plaintiff filed an action captioned Kevin Malanga v. Township of West Orange, Township of West Orange Council and the Township of West Orange Planning Board, Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-3340-19, challenging the designation of the Public Library as an area in need of redevelopment and the Honorable Bridget A. Stecher, J.S.C. entered an Order on August 4, 2020 dismissing Plaintiff’s suit;

WHEREAS Plaintiff filed an appeal of Judge Stecher’s decision which is assigned Appellate Division Docket No. A-000178-20 which is now pending before the Court (the “Public Library Litigation”);

WHEREAS, Plaintiff has filed an action against the Township under the Open Public Records Act (“OPRA”) captioned Kevin Malanga v. Township of West Orange and Karen J. Carnevale in her capacity as municipal clerk and record custodian of the Township of West Orange, Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-2761-19 which is now on appeal before the Superior Court of New Jersey, Appellate Division, Docket No. A-0002287-19 related to Plaintiff’s OPRA Request to the Township on or about February 11, 2019 (the “OPRA Litigation” and collectively with the Executive Drive Litigation and Public Library Litigation are the “Litigations”); and

WHEREAS, Green Essex Partners Urban Renewal LLC, a New Jersey limited liability company with its offices at c/o BNE Real Estate Group, 16 Microlab Road, Suite A, Livingston, New Jersey 07039 is the contract purchaser of the Executive Drive Properties (“Redeveloper”);

WHEREAS, the Parties wish to resolve the Litigations and have reached an agreement regarding the rights and obligations of the Parties and of the Redeveloper to develop the Executive Drive Properties in a manner that addresses the concerns of all Parties; and

WHEREAS, the although there are dates set in this Agreement, the Parties agree to use reasonably best efforts to achieve the milestones sooner and without delay; and

WHEREAS, the Parties believe the terms of this settlement, if achieved, will provide benefits to the West Orange community which can be achieved by satisfying the conditions precedent set forth herein.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which each of the Parties hereby acknowledges, the Parties agree as follows:

1. The recitals set forth in the Preamble to this Agreement are incorporated herein by reference.
2. No Objection. The Parties shall support the satisfaction of the Conditions Precedent defined below which are all required to implement the desired resolution of the Litigations.
3. Settlement of Litigation. Upon execution of this Agreement, the parties agree to stay the Litigations pending satisfaction of the following “Conditions Precedent”:
 - a. Execution of Consent Orders of Dismissal of the Litigations. The parties shall execute Consent Orders of Dismissal with Prejudice of the Litigations which will be with prejudice and without costs to any party (“Consent Orders”). The Consent Orders shall be held

in escrow by James M. Turteltaub, Esq. pending satisfaction of all Conditions Precedent and the completion of the Closing as defined in Section 4 below and for filing same with the respective courts as set forth in Section 4.

b. Acquisition of Carriage House. Within 60 days of the date of this Agreement, the Township shall enter into a contract to purchase the land and building located at 36 Ridge Road and designated as Block 80.05, Lot 40.02, on the tax map of the Township of West Orange (“Carriage House”) and acquire good and insurable title to the Carriage House within 180 days of the date of this Agreement. Within 60 days of the Township acquisition of title to the Carriage House, the Township’s Historic Commission shall designate the Carriage House as a historic structure that is to be preserved. In addition, the title to the Carriage House acquired by the Township shall contain a deed restriction to preserve the Carriage House for the benefit of the general public along with a covenant to permanently preserve and maintain the structure of the Carriage House. The deed restriction shall also limit any use of the Carriage House structure to public educational and historic research purposes as well as prohibit any modifications, alterations, or finishings to the structure that would change the structures’ historic character from its original purpose of housing horses and carriages.

i. Stabilization of the Carriage House. The Redeveloper without unreasonable delay shall, upon the Township’s purchase of the Carriage House, stabilize the building’s structure by the installation of steel tension rods to replace the existing cables or such other means as is necessary to protect the integrity of the structure. In addition, the Redeveloper shall undertake any necessary repairs to the floor joists that may be separated from supporting cross beams, the pediment on the west side of the building and such other repairs necessary to make the building a safe and sound structure.

ii. Carriage House Roof Repair. The Redeveloper shall, upon the Township's purchase of the Carriage House, immediately remove the Carriage House's existing asphalt shingle roof, its roof sheathing where necessary and replace same with dimensional lumber of a size in accordance with the existing historic sheathing, shall install waterproof adhesive roofing membrane, and replace the Carriage House roof with a lightweight slate roof or artificial slate roof system to maintain the historic character of the building.

iii. Carriage House Fire Protection. The Redeveloper shall, upon the Township's purchase of the Carriage House, immediately remove the existing Carriage House electrical wiring and install a new circuit breaker panel of sufficient capacity to serve, at a minimum, smoke and fire protection devices with alarms connected to the Township Fire Department and adequate lighting deemed necessary for public safety.

c. Acquisition of Ridge Road Forest Property. Within 60 days of the date of this Agreement, the Township shall enter into a contract to purchase the properties located at 2 Ridge Road and 10 Ridge Road which are designated as Block 80.03, Lots 10 and 21 on the tax map of the Township of West Orange ("Ridge Road Forest") and acquire good and insurable title to Ridge Road Forest within 180 days of the date of this Agreement. The title to the Ridge Road Forest shall contain a deed restriction to the benefit of the public that shall require the Township to permanently preserve and maintain the Ridge Road Forest as passive open space.

i. Preservation of Ridge Road Forest. The Township agrees that the Ridge Road Forest shall be permanently preserved as passive open space comprised of forested land with absolutely no amenities, facilities or structures installed on or incorporated into the Ridge Road Forest. For the avoidance of doubt, there shall be no structures, facilities, or equipment including, but not limited to, buildings or structures of any kind, memorial monuments, athletic fields, athletic equipment, exercise stations, lighting, paths, seating,

benches, tables, barbecue facilities, entertainment facilities, portable or permanent rest rooms, telescope or binocular stations, antennas, and fences to be allowed on the Ridge Road Forest property.

ii Ridge Road Forest Conservation Easement. In order to ensure the permanent preservation of the Ridge Road Forest as passive open space, the Township shall grant a conservation easement to The Land Conservancy of New Jersey, 19 Boonton Avenue, Boonton, NJ 07005. If the Land Conservancy of New Jersey declines to accept the conservation easement, then the parties shall consult with each other in good faith and agree on a substitute entity.

iii. Ridge Road Forest Signage. The Township shall, upon acquisition of the Ridge Road Forest, immediately install a sign at the gate that marks the entrance to the forest along with listing the following prohibited uses:

- A. Hikers must remain on trails;
- B. ~~Only service~~Any animals are ~~permitted and~~ must be kept on leash;
- C. Fires and cooking are prohibited;
- D. Camping is prohibited;
- E. Alcohol beverages are prohibited;
- F. Motorized vehicles are prohibited;
- G. Bicycles are prohibited;
- H. Removal of plants, animals, or natural features is prohibited;
- I. Carving on trees is prohibited;
- J. Audible music playing is prohibited; and
- K. Hunting and trapping are prohibited.

The Township shall enact an Ordinance memorializing these restrictions on the permitted uses of the Ridge Road Forest.

d. Redeveloper Approvals. Within 180 days of the date of this Agreement,

Redeveloper shall obtain the following final, unappealable approvals and agreements:

1. Township of West Orange Planning Board Approvals;
2. New Jersey Department of Environmental Protection approvals for storm water and sewers;
3. NJDEP Freshwater Wetlands General Permits 2, 10A & 1;
4. NJDEP Freshwater Wetlands Transition Area Waiver;
3. Water service commitment from New Jersey American Water;
4. Flood Hazard Area (“FHA”) verification and individual permit;
5. Construction financing for the redevelopment of Executive Park Drive Properties,
6. Essex County Planning Board; and
7. Amended Redevelopment Agreement or such other agreement as may be necessary with the Township.

4. Satisfaction of Conditions. The Conditions Precedent shall be satisfied by the simultaneous closing (“Closing”) of the Township’s acquisition of title to the Carriage House, Ridge Road Forest with the appropriate deed restrictions set forth above placed in each property’s title. In addition, the Closing shall include:

- i. The Township’s acquisition of title to 10 Rooney Circle, West Orange, New Jersey which is designated as Block 155, Lot 41.02 on the Township of West Orange, County of Essex, New Jersey tax map.
- ii. The Redeveloper’s acquisition of title to 100 Executive Park Drive, West Orange, New Jersey which is designated as Block 155, Lot 40.02 on the Township of West Orange, County of Essex, New Jersey tax map.
- iii. The Redeveloper’s acquisition of title to 200 Executive Park Drive, West Orange, New Jersey which is designated as Block 155, Lot 42.02 on the Township of West Orange, County of Essex, New Jersey tax map.

The Closing shall occur at the earlier of:

1. 30 days from the date the Redeveloper approvals are final and unappealable, or
2. 180 days from the date of this Agreement.

Upon the Closing and recordation of the foregoing deeds, the Consent Orders shall be released and filed with the Court.

5. No Further Objections. The Parties acknowledge their mutual desire to effectuate the purposes of this Agreement which includes the acquisition and preservation of the Carriage House and Ridge Road Forest as well as the redevelopment of the Executive Drive Properties, the relocation of the West Orange Public Library to 10 Rooney Circle, West Orange, New Jersey, and the development of senior housing on the current site of the West Orange Public Library, and shall cooperate and support same. In this regard, neither Plaintiff, his agents, business entities, or immediate household members shall file or lodge any objection, either directly or indirectly, to the adoption of any resolutions and/or ordinances or approvals or permits authorizing the Redeveloper's project, the relocation of the Township Library to 10 Rooney Circle or the redevelopment of the current Public Library site.

6. Extensions of Time Periods. Nothing in this Agreement shall preclude the parties from mutually agreeing, in writing, to extensions of the time periods set forth in this Agreement, and such agreement shall not be unreasonably withheld by either party if the extension of not more than 30 days is required for reasons beyond the control of the parties.

7. Non-satisfaction of Conditions. In the event that any of the Conditions Precedent set forth above and the Closing are not satisfied within 180 days of the date of this Agreement or any agreed to extensions thereof as provided in Section 6, and if all of the Parties do not agree to waive such condition(s) or extend the times as permitted in Section 6, any party may terminate this Agreement and recommence the Litigations and, in such event, each Party shall be returned to the status quo ante as of the date of this Agreement.

8. Modification/Entire Agreement. This Settlement Agreement may be modified or amended only by written instrument duly signed by each of the Parties or their respective

successors or assigns. This document contains the entire agreement of the Parties and fully supersedes any and all prior agreement or understandings between the Parties hereto pertaining to the subject matter of this Settlement Agreement.

9. Controlling Law. This Settlement Agreement shall be construed in accordance with the laws of the State of New Jersey.

10. Execution. The submission of this Settlement Agreement for examination does not constitute an offer by or to either party. This Settlement Agreement shall be effective and binding only after execution and delivery by the Parties hereto.

11. Further Assurances. After the execution hereof, the Parties shall, whenever requested by any other Party, shall execute such further instruments as permitted by law, as the Party or their counsel may reasonably require in order to effectuate the transactions contemplated by this Settlement Agreement.

12. Binding Effect. This Settlement Agreement shall inure to the benefit of and bind the Parties, their heirs, executors, administrators, personal and legal representatives, successors and permitted assigns. This Settlement Agreement (and such other agreements as may be referred to herein) constitute the entire agreement between the Parties as to the subject matter of this settlement.

13. No Admissions. The negotiation of this Agreement and the terms contained herein are not deemed to be admissions by any Party. In addition, this Agreement is a negotiated settlement by the Parties that is non evidential except to enforce the terms herein.

14. Captions. The Section headings contained in this Settlement Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Settlement Agreement.

15. Counterparts. This Settlement Agreement may be executed and delivered in

several counterparts each of which, when so executed and delivered, shall constitute an original fully enforceable counterpart for all purposes. The Parties intend that signatures sent by email in PDF format or the like constitute original signatures and that an agreement sent by email in PDF format or the like, containing the signatures of all the Parties (with or without originals) shall be binding upon all signatories.

[signatures on following page]

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement or caused this Settlement Agreement to be executed as of the date first above written.

KEVIN MALANGA

TOWNSHIP OF WEST ORANGE

By: _____

Name:

Title:

TOWNSHIP COUNCIL OF THE TOWNSHIP OF
WEST ORANGE

By: _____

Name:

Title

PLANNING BOARD OF THE TOWNSHIP OF
WEST ORANGE

By: _____

Name:

Title:

As to Section 3(b)(i), (ii) and (iii) only

Green Essex Partners Urban Renewal LLC

By: _____

Name:

Title

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