

## **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

This Mutual Release and Settlement Agreement (hereinafter, the “Agreement”) is entered into by Plaintiff Tower Hill Condominium Association, Inc. (“Plaintiff”) and Defendant Borough of Red Bank (“Defendant”). Plaintiff and Defendant are hereinafter referred to collectively as the “Parties.”

**WHEREAS**, on March 10, 2021, Plaintiff filed a Complaint in Lieu of Prerogative Writs against Defendant in the Superior Court of New Jersey, Monmouth County under Docket No. MON-L-845-21 (the “Action”), challenging certain amounts allegedly owed by Plaintiff to Defendant for water and sewer utility services; and

**WHEREAS**, on April 21, 2021, Defendant filed an Answer to Plaintiff’s Complaint, denying the allegations contained therein; and

**WHEREAS**, the Parties acknowledge and agree that the Action involves arguable and disputed questions of fact and law; and

**WHEREAS**, the Parties have agreed to compromise and settle the controversies and disputes at issue in the Action;

**NOW, THEREFORE**, in consideration of the following terms, covenants and conditions, the Parties hereby agree as follows:

1. Consideration. The Parties acknowledge and agree that in full and final settlement of all claims contained in the Action by and between the Parties, Plaintiff agrees to pay to Defendant the total amount of Two-Hundred-Twenty-Five-Thousand-Seven-Hundred-Thirty-Three Dollars and Sixty Cents (\$225,733.60), as follows:

- A. Within ten (10) days of the execution of this Agreement by the Parties, Plaintiff shall pay to Defendant the amount of \$93,733.60; and
- B. For four (4) years following the execution of this Agreement by the Parties, Plaintiff shall pay to Defendant the amount of \$8,250.00 with each of Plaintiff’s quarterly utility billings (for a total of sixteen (16) additional quarterly billings of \$8,250.00).

The Parties acknowledge and agree that the payments and mutual releases contained herein, as well as the mutual avoidance of continued litigation, are good and valuable consideration for entering into this Agreement.

2. Dismissal of Action. Upon the Parties’ execution of this Agreement, Plaintiff shall provide Defendant with a Stipulation of Dismissal with Prejudice signed by Plaintiff’s attorney providing for the dismissal of the Action with prejudice and without any additional costs to any party.

3. Mutual Releases.

- A. Upon Plaintiff's receipt of this Agreement executed by Defendant, Plaintiff releases and forever discharges Defendant, its predecessors, successors, insurers, assigns, officers, directors, attorneys, employees, agents and representatives, and each of them, from any and all claims plead in the Action, which the Plaintiff had, now has, or claims to have against Defendant as a result of the circumstances giving rise to the Action.
- B. Upon Defendant's receipt of: (1) this Agreement executed by Plaintiff; (2) the Stipulation of Dismissal referenced in paragraph 2 hereof; and (3) all of the payments referenced in paragraph 1 hereof, Defendant releases and forever discharges Plaintiff, its predecessors, successors, insurers, assigns, officers, directors, attorneys, employees, agents and representatives, and each of them, from any and all claims plead in the Action, which the Defendant had, now has, or claims to have against Plaintiff as a result of the circumstances giving rise to the Action.

4. No Admission. This Agreement does not constitute an admission by any party of any wrongful action or violation of any duty owed, or any violation of a Federal or State Statute, code or regulation, local ordinance, or any other possible or claimed violations of law or rights.

5. Nonadmissability. This Agreement shall not be admissible in any legal proceeding except to enforce its terms, nor shall the terms herein prejudice any party hereto in any other proceeding. This Agreement has no precedential value and is not intended as, nor shall it be construed as, an admission of any fact or as an interpretation of any contract or agreement.

6. 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 hereto 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.

7. Fees and Expenses. Except as expressly set forth herein, the Parties acknowledge and agree to pay their own expenses, including legal fees, incurred in the negotiation, preparation and execution of this Agreement.

8. Representation of Comprehension. The Parties represent to each other 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 provided with the opportunity to review this Agreement with independent legal counsel.

9. Construction. It is acknowledged and agreed that the Parties have had the opportunity to review 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. 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. This Agreement is entered into in the State of New Jersey and shall be construed and interpreted in accordance with its laws. The jurisdiction and venue for any legal proceeding shall be the Superior Court of New Jersey, Monmouth County. 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.

10. Governing Law. This Agreement shall be construed in accordance with the procedural and substantive laws of the State of New Jersey.

11. Effective Agreement. This Agreement may be pleaded as a full and complete defense to, may be used as the basis for and injunction against, any suit, action or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

12. Who Is Bound. The Parties are bound by this Agreement. Any person or entity who succeeds to their respective rights and responsibilities is also bound.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year written below.

**FOR PLAINTIFF:**

\_\_\_\_\_  
*Tower Hill Condominium Association, Inc.*

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name/Title

**FOR DEFENDANT:**

\_\_\_\_\_  
*Pasquale Menna, Mayor*  
*Borough of Red Bank*

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

*Pamela Borghi, Red Bank Borough Clerk*