

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Agreement”) is entered into and made effective this 3rd day of December, 2024, by and between **FINOMOUS BLOOMFIELD RE HOLDINGS, LLC**, having a business address of 163 Washington Street, Unit 104, Warren, New Jersey (hereinafter “Finomous”), and **THE TOWNSHIP OF BLOOMFIELD PLANNING BOARD**, having a business address of 1 Municipal Plaza, Bloomfield, New Jersey (hereinafter “Board”). Collectively, Finomous and the Board are referred to herein as the “Parties.”

WHEREAS, Finomous is the owner of property formerly known as Friendly’s Restaurant and having an address of 1243 Broad Street and more formally designated as Block 1088, Lot 59 (hereinafter the “Property”); and

WHEREAS, Finomous submitted on or about February 7, 2022, an application for site plan and other related approvals to the Board concerning the Property requesting approvals to redevelop the Property for with a single building containing two fast-food restaurants, a Wendy’s and Taco Bell (the “Application”); and

WHEREAS, as proposed, both restaurants would have indoor seating and an exterior walk-up window, with the latter intended to serve remote food orders; and

WHEREAS, the Application required sign and fence variances pursuant to N.J.S.A. 40:55D-70(c) and a design waiver to permit parking in front of the proposed building; and

WHEREAS, hearings on the Application were held on September 27, 2022, November 2, 2022, and December 6, 2022; and

WHEREAS, among the exhibits entered into evidence as the hearings was a site plan set site plan prepared by East Point Engineering, LLC, dated November 12, 2021 and last revised August 4, 2022 (the “Site Plan”); and

WHEREAS, at the December 6, 2022, hearing, the Board voted to deny the Application; and

WHEREAS, the Board adopted a resolution memorializing its decision on January 18, 2023 (the “Resolution”); and

WHEREAS, Finomous appealed the Board’s denial by way of an Action in Lieu of Prerogative Writs, filed in the Superior Court of New Jersey, Essex Vicinage, captioned Finomous Bloomfield RE Holdings, LLC v. Township of Bloomfield Planning Board, and bearing Docket Number ESX-L-982-23 (the “Trial Court Action”); and

WHEREAS, the Trial Court Action was assigned to the Hon. Robert H. Gardner, J.S.C.; and

WHEREAS, on June 27, 2024, Judge Gardner issued an Order and oral opinion reversing the Board’s decision and approving the Application without conditions; and

WHEREAS, the Board filed a Notice of Appeal in the Appellate Division on August 7, 2024, which was assigned Docket No. A-3847-23 (the “Appeal”), which is currently pending; and

WHEREAS, the Parties have agreed to resolve the Appeal which will involve the Board entertaining a revised application reflecting certain modifications to the Site Plan, which may include variance relief, waivers, exceptions, and the imposition of limiting conditions of approval (the “Amended Application”); and

WHEREAS, the Board has agreed to an expedited public hearing on the Amended Application, which will rely to some extent on the record created during the prior hearings.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual terms and conditions set forth herein, the Parties, their successors and assigns intending to be legally bound, hereby agree as follows:

1. The Board agrees to consider the Amended Application through an expedited review process, which will involve a hearing relying on the transcripts of the 2022 hearings before the Board and all exhibits entered during those hearings, including professional reports.

2. To that end, the Parties will endeavor to schedule a special meeting of the Board on December 17, 2024, or as soon thereafter as possible, to conduct a public hearing on the Amended Application consistent with the standards governing such settlement hearings established by Whispering Woods of Bamm Hollow, Inc. v. Township of Middletown Planning Board, 220 N.J. Super. 161 (Law Div. 1987), and Gandolfi v. Town of Hammonton, 367 N.J. Super. 527 (App. Div. 2004).

3. The public hearing will conform with all procedural requirements of the Municipal Land Use Law and the Township's Land Development Ordinance, including the submission of required escrow fees, and will be noticed in conformity with the Open Public Meetings Act and the MLUL. Full public participation will be permitted.

4. The general layout of the improvements shown on the Site Plan shall remain unchanged. However, Finomous shall revise the Site Plan to provide a pedestrian walkway connecting the public sidewalk along Broad Street to the striped pedestrian walkway that begins between two ADA complaint parking spaces in front of the building.

5. Finomous shall revise the Site Plan to depict enhanced landscaping in the southeast corner of the site between the restaurant building and abutting residential properties fronting on Macleod Lane.

6. Finomous shall revise the Site Plan to depict a monument sign rather than a pylon sign and may seek variance relief from the Board for the proposed sign, including for its 40-square foot size, its setback of 10 feet from the front property line, its internal illumination, and for any other deviations.

7. Finomous may seek any other variances or site plan design exceptions and waivers that may be necessitated by the Amended Application.

8. If the Amended Application is approved, Finomous will agree to a condition requiring the exterior walk-up window in each restaurant to be closed between the hours of noon to 8:00 p.m., Monday through Friday.

9. Finomous will also agree to a condition requiring it to cooperate, to the extent practicable, with reasonable requests from the Township Police Department regarding traffic issues that may arise from the operation of the site.

10. The Amended Application will be subject to the review of the Board's consulting engineer and consulting planner, to the comments and suggestions of the Board members raised during the public hearing, and to public questions and comments. The Board agrees to rely on the previously submitted traffic reports.

11. The Board has filed a motion with the Appellate Division advising of a settlement of the Appeal seeking a remand to the Board for its consideration of the proposed revisions to the Site Plan at a public hearing held pursuant to Whispering Woods of Bamm Hollow, Inc. v. Township of Middletown Planning Board, 220 N.J. Super. 161 (Law Div. 1987), which also

requests that the Appellate Division retain jurisdiction over the Appeal during the pendency of the remand. Finomous shall timely support the Board's motion so that the Amended Application can be considered by the Board on December 17, 2024.

12. Should the Board approve the Amended Application, the the Board shall take whatever steps are necessary to dismiss or withdraw the Appeal with prejudice. If the Board does not vote to approve the Amended Application on December 17, 2024 (or at a subsequent hearing date to which the hearing is carried), then the Parties shall, within three (3) days thereafter, notify the Appellate Division of same, request that the Appeal be reactivated, and request that a new briefing schedule on the Appeal be issued so that the Parties may resume proceedings thereon.

13. If the Amended Application is approved by the Board, it is expected that Finomous, prior to the adoption of a memorializing resolution (since the Board will not reorganize until January 28, 2025), shall submit construction drawings to the Township' construction for purpose of obtaining construction permits. It is understood, however, that no construction permits shall be issued until the resolution is adopted and the responsible municipal officials assure the construction plans conform with the resolution.

14. If the Board approves the Amended Application, Finomous agrees that it shall not pursue enforcement of Judge Gardner's Order.

15. Finomous agrees that it will not seek to collect any costs or fees associated with the Trial Court Action.

16. This Agreement shall be binding upon and inure to the benefit of the Parties, as well as their attorneys, assigns, representatives, and successors.

17. Each Party makes the following representations and warranties to each of the other Parties:

- A. This Agreement has been duly executed by the Party or the Party's attorney, and constitutes a legal, valid, and binding obligation of the Party enforceable in accordance with its terms;
- B. The signatories for each Party are fully authorized to enter into and execute this Agreement for and on behalf of the Party that he/she represents and they are duly authorized as such, as reflected on the attached signature page(s);
- C. The Parties hereto acknowledge that each of them has consulted with, or had the opportunity to consult with, legal counsel of their own selection about this Agreement and its attachments. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding; and
- D. The Parties and all of their respective members, officers, agents, representatives, consultants and employees shall cooperate and conduct themselves in good faith to effectuate the terms and objectives of this Agreement. Such cooperation shall include, by way of example and not limitation, the timely submission and review of reports and documents; timely inspections; execution of documents or applications for other coordinate agencies endorsing any and all necessary application for the extension of utilities or facilities to the Property or the entity for permits or approvals necessary for the development of the Property.

18. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

19. This Agreement shall not be amended or modified without the express and written consent of all parties.

20. No party to this Agreement shall challenge the validity of this Agreement or any of the actions deemed necessary in furtherance of this Agreement. In the event the Agreement is challenged by a third party, the Parties agree to coordinate the defense of such action and take any and all steps necessary to uphold the validity of this Agreement.

21. No member, official or employee of the Board shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law, absent the need to invoke the Rule of Necessity.

22. The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

23. The terms and conditions and obligations of this Agreement shall run with the land and shall bind the respective parties and respective heirs, executors, assigns or successors.

24. By executing this Agreement, all parties so execute and acknowledge its validity and accordingly, agree to carry out the terms of this Agreement in good faith and to refrain from any and all acts which question or jeopardize this Agreement. All parties to this Agreement will execute any and all further documents and instruments necessary to effectuate this Agreement or to evidence the party's good faith, cooperation or compliance.

25. This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Essex County. The Parties waive formal service of process for any action arising out of this Agreement and agree to accept service by email upon their respective attorneys. The Parties expressly waive trial by jury in any such litigation.

26. The Parties acknowledge that this Agreement is entered into in settlement and compromise of disputed claims. It is expressly acknowledged and agreed that nothing in this Agreement shall constitute or be construed as an admission of liability, fault, wrongdoing, or

violation of any rule, regulation, or law, or as evidence of such. It is further agreed that nothing in this Agreement shall constitute or be construed as an admission by any of the Parties hereto of any issue of law, fact, or liability, including the existence or lack of probable cause to file the Trial Court Action in good faith. Any evidence of the existence, terms, or negotiation of this Agreement shall be inadmissible in any subsequent litigation except for an action seeking to enforce the Parties' rights and obligations under this Agreement.

27. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter herein contained and merges and supersedes all prior agreements, writings, commitments, discussions and understandings between them. This Agreement may only be modified by a separate writing executed by all Parties.

28. If any term of this Agreement is held invalid or illegal, that term shall be severed from this Agreement, and the remaining terms shall remain valid and enforceable and continue in full force and effect.

29. No delay, omission, or failure by any Party to exercise any right or remedy provided to it in this Agreement shall be deemed to be a waiver or acquiescence, and the Parties may exercise such right or remedy in the manner it deems expedient.

30. The provisions of this Agreement related to the release of claims, confidentiality, non-disclosure and admissibility shall survive this Agreement's performance, termination, or expiration.

31. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of New Jersey.

32. Headings, the title of this Agreement, and the terms used to reference each party as used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

33. The Parties acknowledge that this Agreement was jointly drafted and agree that no terms will be strictly construed against any Party as the “drafter.”

34. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The effective Date of this Agreement shall be the date upon which the last Party signs and executes this Agreement.

35. The Parties agree that signatures transmitted electronically, whether sent via facsimile or as attached files (e.g., pdf), shall be acceptable to bind the Parties and shall not in any way affect this Agreement’s validity.

[SIGNATURES ON NEXT PAGE]

Intending to be Legally Bound, the Parties have executed this Agreement as of the date first above set forth.

FINOMOUS BLOOMFIELD RE HOLDINGS, LLC

By:  _____

Name: Rupal Patel

Title: Managing Member

TOWNHISP OF BLOOMFIELD PLANNING BOARD

By: _____
 ALAN LAQUAGLIA, Chairperson

Intending to be Legally Bound, the Parties have executed this Agreement as of the date first above set forth.

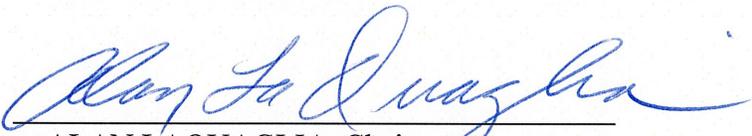
FINOMOUS BLOOMFIELD RE HOLDINGS, LLC

By: _____

Name: Rupal Patel

Title: Managing Member

TOWNHISP OF BLOOMFIELD PLANNING BOARD

By: 
ALAN LAQUAGLIA, Chairperson