

SETTLEMENT AGREEMENT

^{June} This Settlement Agreement ("Agreement") is made and entered into on this ^{24th} day of ~~May~~, 2021 by, between and among the Borough of Fair Haven (the "Borough"), J&M DeNormandie Holding LLC ("J&M"), Fair Haven Yacht Works, Inc. ("Yacht Works")(J&M and Yacht Works collectively may be referred to as "FHYW") and the State of New Jersey (the "State"). The Borough, J&M, Yacht Works and the State shall each be referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, the Borough acquired from the State a Riparian Grant for the width of DeNormandie Avenue out into the North Shrewsbury River recorded January 11, 1962 in Liber T-4, Page 128. The grant at the end of DeNormandie Avenue extends approximately one hundred fifteen (115) feet to the bulkhead line established by the State of New Jersey and continuing approximately one hundred fifty (150) feet to the pier head line (all as defined in the Riparian Grant)(the "Grant");

WHEREAS, the Grant contains a reverter clause limiting the use of the Grant for certain defined public uses;

WHEREAS, J & M is the owner of certain real property located at 75 DeNormandie Avenue, known as Block 47, Lot 15 and Lot 15.01 as described on the tax map of the Borough of Fair Haven (the "Property") together with the adjoining riparian rights ("J&M's Riparian Rights");

WHEREAS, Yacht Works owns and operates a marina on the Property and maintains a pier, docks, boat slips and moorings adjacent to and extending into the Borough's Grant;

WHEREAS, a boatyard and marina has existed at 75 DeNormandie Avenue for approximately ninety five (95) years;

WHEREAS, on August 29, 1966, the Fair Haven Zoning Board of Adjustment (the "Zoning Board") granted a use variance to the Property approving the following resolution: "Resolved that the requested use variance for the use of the property for the purposes of storage, maintenance, repair and sale of boats be permitted and that the appellant be permitted to erect two buildings on the premises and enclose the entire premises, except on the northerly side, with a six foot chain-link fence" (the "Variance");

WHEREAS, the Borough alleges that a fixed dock and breakwater known as "D-Dock", and certain boat slips used and owned by FHYW extend into and encroach upon the Grant area (the "Encroachment");

WHEREAS, the Borough commenced an action in the Superior Court of the State of New Jersey, Monmouth County, Law Division, under Docket No. MON-L-0343-18, against J&M, Yacht Works and the State alleging, *inter alia*, that FHYW was encroaching on the Grant (the "Encroachment Suit");

WHEREAS, the Encroachment Suit was filed by the Borough to protect the residents of the Borough in an important property right;

WHEREAS, FHYW alleges, *inter alia*, that it is not encroaching on the Grant because the Grant reverted to the State and that Yacht Works is owed certain amounts by the Borough;

WHEREAS, on June 25, 2020, an Order was entered dismissing the Encroachment Suit in anticipation of a settlement with the Parties having the right to move to re-open the case should the settlement not become final;

WHEREAS, to address any zoning or engineering issues relating to the FHYW operations, the Borough issued summons No. 1313-SC-004974, to Jim Cerruti, J&M and Yacht Works alleging, *inter alia*, that FHYW was in violation of certain zoning regulations (the "Municipal Court Case");

WHEREAS, FHYW denied the Borough's allegations in the Municipal Court Case, a trial was held and a decision was rendered by Judge Smith (the "Municipal Court Decision" a copy of which is annexed as Exhibit A);

WHEREAS, FHYW thereafter applied to the Zoning Board for amended site plan approval related only to drainage improvements;

WHEREAS, the Zoning Board took the position that it was not bound by the Municipal Court Decision;

WHEREAS, FHYW thereafter withdrew its application to the Zoning Board;

WHEREAS, the matter returned to the Municipal Court and the Municipal Court held that it had no authority to compel the Zoning Board to limit its inquiry to the drainage issue and imposed a monetary fine upon FHYW;

WHEREAS, FHYW appealed the Municipal Court Decision; which appeal is pending;

WHEREAS, FHYW challenged the fees imposed by the Zoning Board professionals as part of its review of the Zoning Board application to the Monmouth County Construction Board of Appeals has been withdrawn; and

WHEREAS, in order to avoid the costs and uncertainties of litigation and to achieve clarity as to the Parties' respective rights, the Parties have agreed to resolve all issues relating to the Encroachment Suit and the Municipal Court Case on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. FHYW "As Built" Drawing. FHYW has provided a current "As Built" Drawing of the Property, prepared by Landmark Surveys, dated April 18, 2016, last revised August 1, 2019, consisting of one sheet to the Borough Engineer who has reviewed it for accuracy only with respect

to the Property, the land based portions of the "As Built" Drawing. A Consent Order with the "As Built" Drawing attached (the "Consent Order"; copy annexed as Exhibit B) shall be submitted to the Honorable Joseph P. Quinn, who presided over the Encroachment Suit for entry. The Consent Order will be recorded by FHYW in the Monmouth County Clerk's Office. The Consent Order will serve the dual purpose of enabling the Borough to take enforcement action should FHYW or its successors fail to adhere to the land based portions of the "As Built" Drawing and enabling FHYW and its successors to operate the marina without the need for site plan approval provided it does so in the manner consistent with the land based portions of the "As Built" Drawing. Any expansion or modification of the FHYW business operations that are inconsistent with the Variance and this Agreement will require approval from the appropriate Land Use Board of the Borough. As further explanation of that portion of the "As Built" Drawing identified as "Seasonal Boat, Kayak, Paddle Board, PWC, and Trailer Storage", the Parties acknowledge and agree that those areas may be used for the storage of the identified items and other comparable watercraft but, that the in season use shall be limited to not more than thirty six (36) racks for the storage of such watercraft, with each rack for the storage of such watercraft not to exceed six (6) feet in height, provided however, that this shall not be construed to limit the continued use of: (i) the area for off rack storage; and (ii) the existing two tier boat rack depicted on the "As Built" Drawing.

2. The Parties' Riparian Rights Will be Modified. FHYW and the Borough will take the following actions to modify the Parties' riparian rights, in accordance with the drawing annexed hereto as Exhibit C, so that there will be no area of conflicting riparian rights and so that FHYW's D-Dock and the remaining east facing slips will not encroach upon the Borough's Grant:

a. Annexed hereto as Exhibit C, is a drawing showing modifications to the Borough's Grant and J&M's Riparian Rights so that: (i) the westerly north-south boundary of the modified Grant will run parallel to "D Dock", slightly east of D Dock's pilings; (ii) the northern boundary of the modified Grant will end at a point approximately where the southernmost border of FHYW's four (4) remaining east facing slips will begin; and (iii) the easterly north-south boundary of J&M's Riparian Rights will be modified to continue to run parallel to "D Dock", slightly east of D Dock's pilings, to the pierhead line, all in accordance with Exhibit C. Annexed hereto as Exhibit D is a "metes and bounds" description of the Borough's Grant and of the modification to J&M's Riparian Rights, as shown on Exhibit C and as modified by the TRC Grant Modification, as hereinafter defined;

b. FHYW, at its sole cost and expense, will prepare and pursue an application, on behalf of FHYW and the Borough, to the Tidelands Resource Council to modify the Parties' riparian rights in accordance with the drawing referred to in the above subparagraph. Approval of the application to modify the Borough's Grant and J&M's Riparian Rights by the Tidelands Resource Council shall be referred to as the "TRC Grant Modification";

c. The Borough will assist FHYW, as needed, in preparing and pursuing the application to the Tidelands Resource Council to modify the Borough's Grant and J&M's Riparian Rights and will sign any necessary consent to an application, where required, which complies with the provisions of this Agreement. The State will not oppose submission of the application. Once complete, the application will be reviewed and decided on its merits before the TRC/DEP. Nothing in this agreement shall be construed as requiring the TRC/DEP to approve the application; and

d. FHYW, at its sole cost and expense, will obtain a survey, on behalf of the Borough, showing the Borough's Grant as modified by the TRC Grant Modification.

3. FHYW to Reduce the Number of Slips East of D Dock. FHYW, at its sole cost and expense, will take the following actions to reduce the number of slips east of D-Dock down to four (4) slips in accordance with the drawing annexed hereto as Exhibit C:

a. FHYW will modify the license application on file with the Tidelands Resource Council, or if required, file a new application for a license for four (4) east facing slips east of D-Dock in accordance with Exhibit C. Approval of the application for this license by the Tidelands Resource Council shall be referred to as the "TRC D-Dock License". The Borough will withdraw its opposition to FHYW's license application and will sign any necessary consent, if required, to an application which complies with the provisions of this Agreement. The State will not oppose submission of the application. Once complete, the application will be reviewed and decided on its merits before the TRC/DEP. Nothing in this agreement shall be construed as requiring the TRC/DEP to approve the application;

b. FHYW will apply to the New Jersey Department of Environmental Protection ("NJDEP") Division of Land Use Regulation ("Land Use") to modify the waterfront development permit previously issued by Land Use to reduce the size of the floating dock and to move the floating dock to attach it to the floating dock at the end of D-Dock in accordance with Exhibit C. Approval of the application to modify the permit issued by Land Use shall be referred to as the "Land Use Permit". The Borough will sign any necessary consent, if required, to an application which complies with the provisions of this Agreement. The State will not oppose submission of the application. Once complete, the application will be reviewed and decided on its merits before the TRC/DEP. Nothing in this agreement shall be construed as requiring the TRC/DEP to approve the application;

c. After receiving the Required Approvals, as hereinafter defined, FHYW will remove the pilings that form the seven (7) slips closest to the beach in accordance with Exhibit C;

d. After receiving the Required Approvals, as hereinafter defined, FHYW will remove the existing floating dock, ramp and platform in accordance with Exhibit C;

e. After receiving the Required Approvals, as hereinafter defined, FHYW will move approximately four (4) pilings east ward, away from D-Dock, out into the river, to form the four (4) east facing slips, in accordance with Exhibit C;

f. After receiving the Required Approvals, as hereinafter defined, FHYW will attach a 60' floating dock to the existing floating dock at the end of D Dock and drive approximately five (5) pilings to maintain the position of the new floating dock 8' away from D Dock and form the four (4) east facing slips, in accordance with Exhibit C;

g. After receiving the Required Approvals, as hereinafter defined, FHYW will attach two (2) floating fingers to the 60' floating dock which will extend eastward to allow access to the sides of 3 of the 4 boats in those four (4) slips. One of the fingers will extend out 16' and the southernmost finger, closest to the beach, will extend out 30' and will enclose the southernmost slip, closest to the beach, in accordance with Exhibit C; and

h. The boats assigned to these four (4) east facing slips will not be longer than 30' in length.

4. FHYW to Increase the Number of Slips on B-Dock. FHYW, at its sole cost and expense, will be permitted to take the following actions to extend B-Dock to increase the number of slips accessible from B-Dock in accordance with the drawing annexed hereto as Exhibit C:

a. FHYW has an existing license, pending renewal, with the Tidelands Resource Council for the north facing slips currently at the end of B-Dock. FHYW will apply to modify the existing license with the Tidelands Resource Council to: (i) move the existing north facing slips at the end of B-Dock north, out into the river with two (2) floating fingers added to the existing float; and (ii) to add a 50' floating dock extension to B-Dock, with four (4) floating fingers, and to include three (3) slips on each side of the floating dock extension facing east and west respectively, in accordance with Exhibit C. Approval of the application to modify the license for B-Dock by the Tidelands Resource Council shall be referred to as the "TRC B-Dock License". The Borough will sign any consent, if required, to an application which complies with the provisions of this Agreement. The State will not oppose submission of the application. Once complete, the application will be reviewed and decided on its merits before the TRC/DEP. Nothing in this agreement shall be construed as requiring the TRC/DEP to approve the application; and

b. After receiving the Required Approvals, as hereinafter defined, FHYW will move approximately twelve (12) pilings to move the floating dock at the end of B-Dock further out into the river and install approximately twelve (12) additional pilings to support the extended floating dock and fingers that will form the new slips along B-Dock, in accordance with Exhibit C.

5. FHYW to Renew Existing Licenses. FHYW has applications pending to renew its existing licenses for the mooring field and for the north facing slips at the end of D-Dock. Approval of the application to renew these licenses by the Tidelands Resource Council shall be referred to as the "TRC License Renewals". The Borough will sign any consent, if required, to an application which complies with the provisions of this Agreement. The State will not oppose submission of the application. Once complete, the application will be reviewed and decided on its merits before the TRC/DEP. Nothing in this agreement shall be construed as requiring the TRC/DEP to approve the application.

6. Applications to Renew the Licenses. The Borough will not oppose applications by FHYW as referenced in this Agreement or its successors in interest to renew the licenses issued pursuant to and consistent with the terms of this Agreement. The State will not oppose submission of the applications. Once complete, each of the applications will be reviewed and decided on its merits before the TRC/DEP. Nothing in this agreement shall be construed as requiring the TRC/DEP to approve the applications.

7. Required Approvals. As used herein, the term "Required Approvals" shall mean: (i) the Consent Order having been entered by the Court; (ii) the TRC Grant Modification having been issued; (iii) the TRC D-Dock License having been issued; (iv) the Land Use Permit having been issued; (v) the TRC B-Dock License having been issued; and (vi) the TRC License Renewals

having been issued. All applications for the Required Approvals shall be filed within forty-five (45) days of this Agreement and will be diligently pursued by FHYW.

8. Contribution. Within sixty (60) days of execution of this Agreement, FHYW will contribute twenty-two thousand five hundred (\$22,500.00) dollars to the Borough's bank stabilization and end of road rain garden project at the terminus of DeNormandie Avenue (the "Rain Garden"). Should FHYW continue to rent and/or use any of the seven (7) slips closest to the beach in the Borough's Grant while the applications for the Required Approvals or any appeals taken therefrom by FHYW shall still be pending in the year 2024 or any year thereafter, FHYW will contribute seven thousand five hundred (\$7,500.00) dollars to the Borough's Rain Garden for each such year in which such rental and/or use occurs.

9. Release of Claim for Past Storage Fees. Upon execution of this Agreement, FHYW will release any claim to the past due storage fees from the 2015 invoice, in the amount of four thousand one hundred fifty (\$4,150.00) dollars.

10. Joint Statement. The Borough and FHYW jointly acknowledge that they have reached this Agreement, that is fair and is in the best interests of the Parties. This negotiated Agreement protects and preserves the Borough's property and riparian rights while also allowing FHYW to efficiently operate an important local business. The Borough and FHYW want to thank Senator Declan O'Scanlon for his initial intervention and acknowledge the good faith and hard work of all those involved in the ongoing negotiations that led to this Agreement.

11. Mutual Releases. The Borough on the one hand and J&M and Yacht Works on the other hand each shall execute general releases in the forms annexed hereto as Exhibits E and F respectively (the "General Releases"). The General Releases shall be held in escrow by the Parties' respective counsel and shall be released from escrow and exchanged by counsel after receiving the Required Approvals. This Agreement is intended to be a full and final settlement of all actions, claims, proceedings, controversies and disputes between the Parties arising from the beginning of time to the date hereof.

12. Appeal of the Municipal Court Decision. Upon execution of this Agreement, FHYW shall withdraw the appeal of the Municipal Court Decision it filed which is pending in the Superior Court. FHYW also shall make application to the Municipal Court Judge to have the fine imposed in the Municipal Court Case suspended. The Borough will sign any consent, if required, to that application and the State will not oppose that application.

13. Appeal to the Construction Board of Appeals. FHYW has withdrawn the appeal to the Construction Board of Appeals it filed and, upon execution of this Agreement, FHYW shall pay the outstanding invoices of the Zoning Board's professionals from which FHYW appealed.

14. Notices. Any notice required to be given hereunder shall be sent by email and either certified mail, return receipt requested, or overnight delivery, signature required, to the Parties at the following addresses:

If to the Borough:

Borough of Fair Haven
c/o Allyson Cinquegrana

748 River Road
Fair Haven, NJ 07704
acinquegrana@fhboro.net

With a copy to: Salvatore Alfieri, Esq.
Cleary Jacobbe Alfieri Jacobs LLC
955 State Route 34 – Suite 200
Matawan, NJ 07747
salfieri@cgajlaw.com

If to J&M or Yacht Works: Fair Haven Yacht Works
c/o James Cerruti
75 DeNormandie Avenue
Fair Haven, NJ 07704
yachtworks@aol.com

With a copy to: John Greco, Esq.
Betancourt, Van Hemmen, Greco & Kenyon, LLC
151 Bodman Place – Suite 200
Red Bank, NJ 07701
JGreco@bvqklaw.com

and

Anthony J. Sposaro, Esq.
444 E. Main Street
Chester, NJ 07930
asposaro@njfarmlaw.com

If to the State: Office of the Attorney General of New Jersey
c/o Nicholas Seminoff, Esq.
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625
Nicholas.Seminoff@law.njoag.gov

15. Governing Law. This Agreement and the obligations of the Parties hereunder shall be governed by the laws of the United States and where applicable, the laws of the State of New Jersey.

16. No Admissions. The resolution set forth in this Agreement is acknowledged to be a consensual resolution. Except as provided herein, nothing contained herein shall be considered as an admission of liability or past or present wrongdoing by the Parties.

17. Fees and Expenses. Except as otherwise set forth herein, the Parties shall each bear all of their own attorney's fees, costs, and expenses incurred in the negotiation and execution of this Agreement.

18. Full Knowledge of Terms. The Parties each represent and warrant that they have authority or obtained the proper authority to enter into this Agreement, and that prior to executing this Agreement, they have fully discussed its meaning and effect with their attorneys and they fully understand its meaning and effect, and that they have voluntarily executed this Agreement.

19. Construction. The Parties acknowledge and agree that each of them has participated in drafting this Agreement and, as a result, nothing in this Agreement shall be construed in favor of one Party against another Party.

20. Severability. Should any provision of this Agreement be held by any court of competent jurisdiction to be illegal, invalid or unenforceable, then the remaining portions of this Agreement will nonetheless remain in full force and effect, unless such portion of the Agreement is so material that its deletion would violate the obvious purpose and intent of the Parties.

21. Binding Effect. This Agreement shall be binding upon and inure to benefit of the assigns, representatives, heirs and successors of the Parties hereto.

22. Entire Agreement. The Parties acknowledge that this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and all prior agreements, negotiations, and understandings with respect to the subject matter hereof are canceled and superseded by this Agreement.

23. Modification of Agreement. The Parties agree that this Agreement may not be varied in its terms by an oral agreement or representation or otherwise, except by an instrument in writing of subsequent date hereof executed by all of the Parties.

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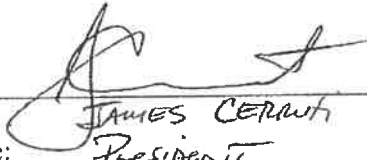
24. Counterparts; Signatures. This Agreement may be executed in one or more counterparts, any of which need not contain the signatures of more than one party, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. Facsimile and electronically transmitted signatures shall be treated in all manner and respects as a binding and any such signature of any party shall be considered for these purposes as an original signature.

IN WITNESS WHEREOF, the Parties have each executed this Agreement as of the date and year first above written.

BOROUGH OF FAIR HAVEN

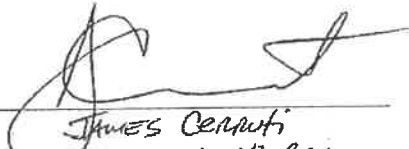
FAIR HAVEN YACHT WORKS, INC.

By:
Title:

By: 
Title: *President*

J&M DENORMANDIE HOLDING LLC

STATE OF NEW JERSEY

By: 
Title: *MANAGING MEMBER*


By:
Title:

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BOROUGH OF FAIR HAVEN

FAIR HAVEN YACHT WORKS, INC.



By: BENJAMIN J. LUCARELLI
Title: MAYOR


By: J. Ceravito
Title: President

J&M DENORMANDIE HOLDING LLC

STATE OF NEW JERSEY


By: J. Ceravito
Title: MANAGING MEMBER


By: Nicolas Semnoff
Title: Deputy Attorney General