

**RESOLUTION R:109-2012**

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP  
OF MONROE AUTHORIZING THE MAYOR TO EXECUTE A  
SETTLEMENT AGREEMENT IN THE LITIGATION CAPTIONED "BLAZE  
MILL DEVELOPMENT GROUP, LLC VS. MONROE TOWNSHIP,  
ET AL.", DOCKET NO. GLO-L-0000675-09**

**WHEREAS**, the Township of Monroe, Monroe Township Planning Board and Monroe Township Zoning Board have previously been named as Defendants in the Mt. Laurel litigation filed against the Township of Monroe challenging the Township affordable housing plan; and

**WHEREAS**, the parties have undertaken extensive negotiations with respect to a resolution of said litigation; and

**WHEREAS**, it has been determined that the parties desire to resolve all outstanding issues by the entry of this Settlement Agreement; and

**WHEREAS**, all parties are desirous of promoting affordable housing within the Township of Monroe in order to comply with the third round COAH regulations and obligation of the municipality to provide affordable housing; and

**WHEREAS**, the parties agree that it is in the best interest of all the residents of the Township to enter into this Settlement Agreement for the purposes of resolving all outstanding issues

**WHEREAS**, the Township Council of the Township of Monroe understands that the execution of this Settlement Agreement will resolve all outstanding issues between the parties and will permit the construction of an attractive affordable housing development within the Township of Monroe to promote the best interests of all said residents; and

**WHEREAS**, it has been determined that the execution of the Settlement Agreement is necessary in order to implement this type of affordable housing component within the Township of Monroe.


**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Monroe that the Mayor is hereby authorized to execute said Settlement Agreement between the Township of Monroe and Blaze Mill Development Group, LLC.

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OF MONROE AUTHORIZING THE MAYOR TO EXECUTE A  
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ET AL.", DOCKET NO. GLO-L-0000675-09

ADOPTED at a meeting of the Township Council of the Township of Monroe held  
on May 8, 2012.

TOWNSHIP OF MONROE

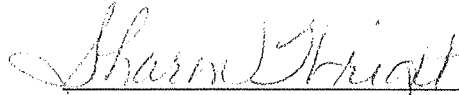
  
CNCL. PRES., FRANK J. CALIGIURI

ATTEST:

  
TWP. CLERK, SUSAN McCORMICK, RMC  
OR DEPUTY CLERK, SHARON WRIGHT, RMC

CERTIFICATION OF CLERK

The foregoing resolution was duly adopted at a meeting of the Township Council  
of the Township of Monroe held on the 8<sup>th</sup> day of May 2012 at the Municipal Building,  
125 Virginia Avenue, Williamstown, New Jersey 08094.

  
TWP. CLERK, SUSAN McCORMICK, RMC  
OR DEPUTY CLERK, SHARON WRIGHT, RMC

ROLL CALL VOTE

	Aye	Nay	Abstain	Absent
Cncl. Bryson		✓		
Cncl. Dilks	✓			
Cncl. DiLucia		✓		
Cncl. Garbowski	✓			
Cncl. Sebastian	✓			
Cncl. Teefy	✓			
Cncl. Pres. Caligiuri				
TALLY:	4	2		

NOTE: Cncl. Pres., Caligiuri  
requested to be listed as not voting  
on measure

SETTLEMENT AGREEMENT OF LITIGATION

**Blaze Mill Development Group, LLC v. Township of Monroe and the  
Planning Board of the Township of Monroe, Docket No.: GLO- L-  
000675-09 P.W.**

This Settlement Agreement of Litigation (this "Agreement") is entered into this \_\_\_\_\_ of \_\_\_\_\_, 2012 by and between Plaintiff, Blaze Mill Development Group, LLC ("Blaze Mill") with a business address of 701 Cooper Road, Voorhees, NJ 08043, New Jersey, and the Township of Monroe (the "Township") with a business address of 125 Virginia Avenue, Williamstown, New Jersey, 08094 and the Planning Board of the Township of Monroe (the "Planning Board") with a business address of 125 Virginia Avenue, Williamstown, New Jersey, 08094. Blaze Mill, the Township and the Planning Board are sometimes hereinafter individually referred to as "Party" and collectively as the "Parties."

W I T N E S S E T H:

**WHEREAS (1st)**, Blaze Mill is the developer and equitable owner of property that is identified on the tax maps of the Township as Block 14101, Lot 1 and Block 141.0602, Lot 1.01, consisting of approximately sixty-one (61) acres (the "Property");

**WHEREAS (2nd)**, on or about April 16, 2009, Blaze Mill filed a Complaint against the Township and the Planning Board challenging the validity of the Township zoning ordinances

pursuant to *Southern Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel*, 67 N.J. 151 (1975) ("Mount Laurel I"), *Southern Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel*, 92 N.J. 158 (1983) ("Mount Laurel II") and the regulations of the New Jersey Council on Affordable Housing seeking, in part, a builder's remedy for the Property (the "Litigation");

**WHEREAS (3<sup>rd</sup>)**, Plaintiff, as part of the Litigation, sought a builder's remedy to construct a substantial, inclusionary development on the Property, which development would provide a substantial amount of affordable housing for low income and moderate income households;

**WHEREAS (4<sup>th</sup>)**, during the pendency of the Litigation, Blaze Mill, and representatives of the Township and the Planning Board have met to discuss a potential, collective resolution of the Litigation;

**WHEREAS (8<sup>th</sup>)**, during such settlement discussions, Blaze Mill and representatives of the Township and Planning Board developed a revised concept plan for Property that would allow Blaze Mill to construct an inclusionary, mixed use project that would serve the interests of Blaze Mill, the Township and low income and moderate income households;

**WHEREAS (9<sup>th</sup>)**, the Parties, rather than proceed with potentially protracted and costly proceedings with respect to

the Litigation have agreed to terms that will settle the Litigation;

**NOW, THEREFORE,** in consideration of the premises, terms and conditions set forth herein, intending to be legally bound hereby, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties incorporate the foregoing recitals as incorporated herein and made a part hereof.

2. **Purpose of Agreement.** The purpose and intent of this Agreement is to (a) enhance the realistic opportunity for the provision of low and moderate income housing units through Blaze Mill's contribution to the Township's Affordable Housing Trust for the future development of affordable housing within the Township; (b) develop the Property in accordance with the proposed zoning amendment in a manner that will adequately address the Township's development needs for the Property as well as assist the Township in its efforts to satisfy its affordable housing obligations; and (c) promote sound local, regional and state land use and utility planning objectives.

3. **The Land Use Plan.** The intentions of the Parties, as expressed above, are intended to be implemented by (a) the Township's consideration of the Proposed Zoning Ordinance (the "Proposed Ordinance"), which shall be applicable to the Property and which is attached hereto and incorporated by reference

herein as Exhibit "A"; (b) Blaze Mill's contribution toward necessary off-tract improvements and services within the Township including Blaze Mill's pro rata contribution toward the roadway improvements impacted by the development of the Project; and (d) the Township and the Planning Board otherwise extending full cooperation to secure all required outside agency governmental permits, licenses, authorizations and approvals.

4. **The Total Project.** The total Project (the "Project") shall include the construction of both residential (the "Residential Component") and non-residential uses (the "Non-Residential Component"). The Proposed Ordinance (Exhibit "A") shall provide for uses and standards that shall allow for the construction of a maximum of two hundred fifty (250) residential units within the Residential Component, all of which shall be townhomes. The Proposed Ordinance shall also provide for uses and standards that will call for the construction of a minimum of 100,000 square feet of non-residential development within the Non-Residential Component on an area of the Property of approximately fifteen (15) acres. The Residential Component shall also provide for the funding of affordable housing units as further described at Section 5(b), below. Upon Blaze Mill's written consent, the Non-Residential Component can be expanded, so long as the two hundred fifty (250) residential units within the Project are maintained.

5. **Obligations of the Blaze Mill.** Blaze Mill, through execution of this Agreement, agrees to perform the following:

a. **Presentation of a Mixed Use Project.** Blaze Mill agrees to develop the Property in the manner set forth in the Proposed Ordinance and depicted in the December 7, 2011 Site Concept Plan, a true and correct copy of which is attached hereto as Exhibit "B." In the event that Blaze Mill proceeds with the Residential Component of the Project first, Blaze Mill agrees to reserve approximately fifteen (15) acres of the Property for the Non-Residential Component in accordance with the standards set forth in the Proposed Ordinance. The Residential Component of the Project shall be two hundred fifty (250) market rate townhomes, the location of which shall be at the discretion of the Planning Board, but generally consistent with the location depicted at Exhibit "B." The Project shall maintain a buffer minimum of fifteen (15) acres between the Residential Component of the Project and the existing Hunter Woods residential subdivision within the Township, which buffer shall be supplemented with plantings that include oak trees.

b. **Contribution Toward the Township's Affordable Housing Inventory and/or Affordable Housing Trust Fund.** Due to the current uncertainty of affordable housing obligations within the Township and the State of New Jersey, the parties agree that a contribution to the Township's Affordable Housing Trust Fund

is the most appropriate means by which Blaze Mill can assist the Township in complying with any *Mount Laurel* obligation that Township may incur in the future. Accordingly, Blaze Mill shall contribute to the Township's Affordable Housing Trust Fund an amount equal to six thousand one hundred and sixty dollars (\$6,160.00) for each market rate unit constructed as part of the Residential Component of the Project. Such a payment shall be payable for residential unit constructed with 50% of said payment being due at the time of issuance of a building permit for each unit and the remaining 50% of said payment being due at the issuance of certification of occupancy for each residential unit.

**c. Municipal Improvements Fee** - Blaze Mill agrees to make an annual payment toward the costs of other municipal improvements that are necessitated as a result of the Project (the "Municipal Improvements Fee"). The Municipal Improvements Fee shall be twenty five thousand dollars (\$25,000.00) per year and shall be paid into a separate dedicated fund for uses at the discretion of the Township for items such as parks and recreation, library and the like. The payment shall commence at \$6,250.00 per quarter annum at the time of the issuance of the first Certificate of Occupancy for the Residential Component and annually thereafter until such time as Blaze Mill receives a certificate of occupancy for the first 25,000 square feet within



the Non-Residential Component. In the event that Blaze Mill commences construction for at least 25,000 square feet of development within the Non-Residential Component prior to receipt of any certificate of occupancy for any unit within the Residential Component, the Municipal Improvements Fee shall not be required. The municipal improvement fee is in addition to any and all real estate taxes, including County, School Board and local taxes that are associated with the undeveloped land.

**d. Recreation Facilities and/or Open Space within the Residential Component.** In connection with the development of the Residential Component, Blaze Mill shall be required to make a payment in the amount of one thousand and forty dollars (\$1,040.00) for each market rate unit within the Residential Component, which payment shall be utilized for recreation facilities and/or open space within the Township (the "Recreation Requirement"). The Recreation Requirement for each market rate unit shall be payable in lump sums for all units in each phase upon issuance of the first building permit for that phase within the Residential Component.

Blaze Mill shall be entitled to a credit of up to fifty thousand dollars (\$50,000.00) against the Recreation Requirement for the construction of the following recreational facilities which shall be included within the Residential Component:

i. A six foot (6') wide pedestrian access and bikeway from the current municipal bike trail to the Non-Residential Component within the Project, which access and bikeway shall also run through the open space buffer to be located between the Residential Component and the Hunter Woods subdivision within the Township; and

ii. A small usable open space area within the Residential Component of the Project accessible to the proposed bikeway.

Blaze Mill reserves the right to construct and/or provide additional recreational and/or open space amenities, however, in no event shall Blaze Mill be entitled to a credit in excess of \$50,000.00 regardless of the amount of recreational facilities constructed by Blaze Mill. The costs of the recreation facilities constructed by Blaze Mill shall be certified by the Township engineer within twenty (20) days of Blaze Mill's notice of completion of each recreational facility within the Residential Component.

**e. Contribution of Right-of-Way.** The Parties recognize that certain intersection improvements are currently planned for the intersection of Route 322 and Fries Mill Road (the "Intersection Improvements"). The Intersection Improvements proposed as of the date of this Agreement are not anticipated to impact Blaze Mill's ability to development the Property in accordance with the Concept Plan depicted at Exhibit

"B." Accordingly, Blaze Mill agrees to provide, without any additional compensation, any and all right of way on the Property that may be reasonably required by the County of Gloucester and/or the State of New Jersey to allow for construction of the Intersection Improvements. Blaze Mill's obligation to provide the aforementioned right of way, however, shall be conditioned upon Blaze Mill's ability to develop the Property in the manner and scope anticipated by this Agreement and depicted at Exhibit "B." If the scope and/or design of the Intersection Improvements are revised so as to impact Blaze Mill's ability to develop the Property in accordance with Exhibit "B," Blaze Mill may be entitled to just compensation for the additional right of way requested by the County of Gloucester and/or State of New Jersey.

**f. Dismissal of Litigation.** Within forty-five (45) days of the Court's approval of this Agreement, Blaze Mill shall dismiss the Litigation subject to the Parties right to enforce the terms of this Agreement pursuant to R. 1:10-3 of the New Jersey Rules of Court.

**6. Obligations of the Planning Board.** The Planning Board shall conduct all reviews of Blaze Mill's applications for the Project strictly in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL"), COAH's Rules, the

Residential Site Improvement Standards (the "RSIS"), and this Agreement.

7. **Obligation of the Township.** In order to achieve the objectives of this Agreement, within forty-five (45) days of the Superior Court's entry of a Judgment approving this Agreement and in accordance with Section 11 of this Agreement, the Township agrees to introduce and consider adoption of the Proposed Ordinance (Exhibit "A"). The Proposed Ordinance shall include the following regulations: (i) minimum lot sizes for townhome lots shall be a twenty foot (20') width x a one hundred foot (100') depth and (ii) front & rear setbacks for townhomes shall be twenty feet (20') from primary structure.

Regardless of the timing for completion and/or approval of the Proposed ordinance and/or Compliance Plan, Plaintiff shall be permitted to pursue development approvals for the Project with the Planning Board, which the Planning Board shall expeditiously process in accordance with Sections 6 and 9 hereof, so long as, in accordance with Section 10 of this Agreement, the Superior Court has entered Judgment approving this Agreement.

If the Proposed Ordinance is not timely adopted in accordance with this Section, Plaintiff and the Township shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

8. **Role of the Court's Special Master in the Development Approval Process for the Project.** The Parties may request the Special Master to assist the Parties during the application process for any approvals and permits relating to development of the Project. The Special Master's involvement may be requested by any of the Parties without the consent of the other.

Unless otherwise agreed by the Parties through their respective attorneys, the cost of the Special Master shall be paid by the Party seeking the Master's assistance to resolve a problem real or perceived. Further, the costs of Special Master incurred in the Special Master's review and potential approval of this Settlement Agreement shall be the sole responsibility of Plaintiff.

9. **Mount Laurel Cost Reduction Entitlements.** As is customary with respect to *Mount Laurel* projects, the following specific cost reduction entitlements apply to the Residential Component:

a. With the exception of sidewalk waiver fees or as otherwise set forth in this Agreement, no recreation, tree replacement, or other costs generative impact fees (except sidewalk waiver fees) that may otherwise be required of development projects by existing Township Ordinances shall be required to be paid in connection with the development of the Project.

10. **Court Approval Of Agreement Required.** The Parties acknowledge that pursuant to applicable *Mount. Laurel* decisional law this Agreement requires Superior Court approval subsequent to the Superior Court conducting a Fairness Hearing upon adequate notice to the protected class and the general public. Within ten (10) days of execution of this Agreement by all Parties, the Parties shall jointly pursue the scheduling of a Fairness Hearing with the Superior Court, at which time the Agreement shall be submitted to the Superior Court for its review and approval. Upon the scheduling of a Hearing date, the Township shall comply with all Notice requirements imposed or directed by the Superior Court and shall fully support and endorse approval of this Agreement at the Hearing.

11. **Defense of Agreement and Payment of Costs.** The Parties shall fully cooperate with each other to secure Superior Court approval of this Agreement and to defend said approval against all challenges and/or appeals pursued by third parties. The Township shall promptly notify Plaintiff and the Superior Court's Special Master of all challenges and appeals. Each Party shall be responsible for their own costs and expenses in securing Superior Court approval and defending any Superior Court Judgment approving this Agreement.

12. **Violation and Default.** In the event that any Party shall fail to perform any undertaking required to be performed

by it pursuant to the terms of this Settlement Agreement, unless the Party (or Parties) for whose benefit such obligation was intended waive such obligation in writing, such failure to perform shall constitute an event of default under this Agreement. Upon any such event of default, the non-defaulting Party shall have available any and all rights and remedies that may be provided in law or in equity including, but not limited to, the right of specific performance and/or the right to prosecute a motion in aid of litigant's rights.

13. **Third-Party Actions.** The Parties and their respective counsel agree to immediately provide each other with notice of any lawsuits, actions, governmental proceedings or administrative proceedings, threatened or pending, which could have a material adverse impact on the Project.

14. **Notice by and Among the Parties.** All notices required under this Agreement shall be in writing and shall be given by facsimile or by certified mail, return receipt requested, or by Fedex, UPS or a similarly recognized receipted overnight delivery service. All notices shall be deemed received upon the date of delivery which is set forth in the mailing certifications or receipts used, and all times for performance based upon such notices shall be from the date set forth in such proof of delivery. The persons and entities to

receive notice shall be as follows or to any successor designated by the respective recipient:

To Plaintiff: Blaze Mill Development Group, LLC  
701 Cooper Road  
Voorhees, NJ 08043  
Attn: Ken Schatz  
Fax: (856) 346-4401

Don Paparone  
c/o of Paparone Housing  
1111 Markkress Road  
Cherry Hill, NJ 08002

Richard J. Hoff, Jr., Esquire  
Bisgaier Hoff, LLC  
21 Tanner Street  
Haddonfield, NJ 08033  
Fax: (856) 795-0312

To the Township: Clerk, the Township of Monroe  
125 Virginia Avenue  
Williamstown, New Jersey, 08094

Charles Fiore, Esquire  
34 South Main  
PO Box 525  
Williamstown, NJ 08094  
Fax: (856) 875-1412

To the Planning Board:

Secretary, Planning Board of the Township of  
Monroe  
125 Virginia Avenue  
Williamstown, New Jersey, 08094

Leonard Schwartz, Esquire  
Slotnick & Schwartz  
PO Box 796  
1350 N Black Horse Pike  
Williamstown, NJ 08094  
Fax: (856) 629-1902



15. **Captions.** Captions and titles to this Agreement are inserted for the purposes of convenience and reference only, and are in no way to be construed as limiting or modifying the scope and intent of the various purposes and substantive provisions of this Agreement.

16. **Cooperation.** The Parties expressly agree to cooperate with each other in order to effectuate and carry out the purposes of this Agreement as well as the *Mount Laurel* Doctrine, the FHA, and COAH's Rules that are in effect as of the date of this Agreement.

17. **Waiver.** Each of the Parties waives all rights to challenge the validity and enforceability of this Agreement. Failure to enforce provisions or obligations in this Agreement by any Party shall not be construed as a waiver of these provisions and obligations.

18. **Entire Agreement.** This Agreement, including its prefatory statements, background recitals and exhibits, constitutes the entire Agreement between the Parties with respect to the resolution of the Litigation and the related subject matters hereof. No representative, agent or employee of any Party has been authorized to make any representations and/or promises that are not contained herein or to otherwise modify, amend, vary or alter the terms hereof except as stated herein.

No modifications, amendments, variations or alternations shall be binding unless reduced to writing and signed by the Parties.

19. **Validity.** In the event that any provision of this Agreement shall be held to be invalid, unenforceable or void, the Parties shall, within thirty (30) days of such determination, attempt to restructure this Agreement consistent with its underlying intent. If the Parties fail to agree to such a restructuring, any Party may seek Superior Court review and a ruling to restructure the Agreement in a legally acceptable manner reflecting the underlying intent of the Parties as expressed herein.

20. **Preparation.** The Parties acknowledge that the Parties' attorneys have jointly prepared this Agreement as a means of settling the Litigation. Therefore, this Agreement shall be construed on a parity among the Parties and any presumption for resolving ambiguities against the drafter shall not apply.

21. **Construction.** This Agreement shall be construed, governed and enforced in accordance with the laws of the State of New Jersey and the rules and regulations of COAH. Jurisdiction with respect to any litigation related to this Agreement by way of enforcement or post-judgment relief shall exclusively be in the Superior Court of New Jersey for Gloucester County. Service of any complaint, motion or judgment

enforcement proceedings may be affected consistent with the terms hereof for the delivery of notices. The Parties hereby consent to service of process in such manner and waive any other service of process. Process may be affected by written notice pursuant to the terms hereof for notices. The Parties expressly waive a trial by jury in any such litigation or proceedings.

22. **Parties Bound and Assignment.** The Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Plaintiff shall expressly be permitted to sell, convey and/or assign its rights to develop one or more phases or sections of the Project to other developers and/or users who shall be entitled to rely upon and enforce this Agreement as to the remaining Parties. Advanced written permission to sell and assign is not intended and shall not be required.

23. **Holiday and Weekends - Time for Performance.** Should any date on or before which the performance of any act is required under the terms of the Agreement fall on a Saturday, Sunday, legal holiday and/or generally recognized religious holiday in the State of New Jersey (such as Christmas, Good Friday, etc.), the date for performance shall be extended to and shall occur on the next succeeding business day. All references to "days" shall be deemed to refer to calendar days unless the context clearly and unequivocally requires otherwise. Except as

otherwise set forth herein, any act to be performed on or before a certain day shall be deemed to be required to be performed on or before 5:00 p.m. on the day set forth and, if performed after 5:00 p.m., shall be deemed not to have been performed on said date.

24. **Counterpart Signature.** This Agreement may be executed simultaneously or in one or more counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Facsimile counterparts shall be accepted and enforceable. Immediately following the delivery of a facsimile counterpart, the sending Party shall deliver a counterpart with the original execution page.

**IN WITNESS WHEREOF,** the Parties hereto have hereunto set their hands and seals the day and year appearing below their names.

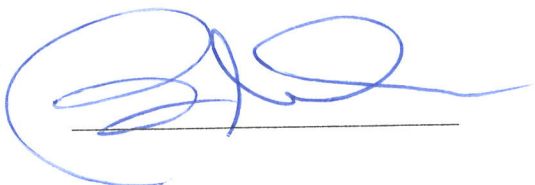
**IN WITNESS WHEREOF,** the Parties and/or their authorized representatives have signed this Agreement.

Attested by:

**BLAZE MILL DEVELOPMENT GROUP, LLC**



By:   
Kenneth Schatz, Member



By:   
Donald Paparone, Member



Attested by:

The Township of Monroe,  
a New Jersey Municipal Corporation

*Susan McCormick*

Susan McCormick, RMC  
Municipal Clerk

*[Signature]*

By:

Michael F. Gabbianelli  
Mayor

STATE OF NEW JERSEY:

SS.:

COUNTY OF GLOUCESTER:

I CERTIFY that on July 10, 2012, Michael F. Gabbianelli, Mayor of the TOWNSHIP OF MONROE, a New Jersey Municipal Corporation, personally came before me and acknowledged under oath, to my satisfaction, that he signed this Settlement Agreement of Litigation ("Agreement") on behalf of the Township of Monroe, and that the Township of Monroe has entered into this Agreement in consideration of and for the terms and conditions it contains as authorized by the Township of Monroe Council Resolution No.109-2012, dated May 8, 2012.

*Sharon A. Wright*  
(Notary)



Attested by:

THE PLANNING BOARD OF  
THE TOWNSHIP OF MONROE,

Dawn M. Farrell  
Dawn Farrell  
Administrative Clerk

By: Cornelius A. O'Brien  
Cornelius A. O'Brien  
Chairman

STATE OF NEW JERSEY:

SS.:

COUNTY OF GLOUCESTER:

I CERTIFY that on July 12, 2012, Cornelius O'Brien, Chairman of the PLANNING BOARD OF THE TOWNSHIP OF MONROE, personally came before me and acknowledged under oath, to my satisfaction, that he signed this Settlement Agreement of Litigation ("Agreement") on behalf of said Planning Board, and that the said Planning Board has entered into this Agreement in consideration of and for the terms and conditions it contains as authorized by the Township of Monroe Planning Board Resolution No.25-12 dated June 15, 2012.

Sharon A. Wright  
(Notary)



**EXHIBITS**

A - Proposed Ordinance