

## SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This **SETTLEMENT AGREEMENT AND MUTUAL RELEASES** are made on this 4<sup>th</sup> day of December 2023 (the “Agreement”) by and between **EMILIO HERNANDEZ, LAZARA FERNANDEZ** and **115 POINT BREEZE, LLC** (hereinafter referred to collectively as the “Plaintiffs”), and the **UPPER GREENWOOD LAKE PROPERTY OWNERS’ ASSOCIATION, INC.** (hereinafter referred to as the “Association”) and **HEATHER BECKER** (hereinafter referred to collectively with the Association as “Defendants”).

### WITNESSETH

**WHEREAS**, Plaintiffs are the title owners of the properties located 111 Point Breeze Drive, Hewitt, New Jersey (hereinafter referred to as the “111 Property”) and 115 Point Breeze Drive, Hewitt, New Jersey (hereinafter referred to as the “115 Property”); and

**WHEREAS**, the Association is a New Jersey non-profit corporation which is the title owner of the lakebed of Upper Greenwood Lake (hereinafter referred to as the “Lake”) and certain lands surrounding the entire shoreline of the Lake commonly known in the community as “Parklands”; and

**WHEREAS**, Defendant, Heather Becker, is and was at all relevant times regarding this matter an elected member of the Association’s Board of Trustees; and

**WHEREAS**, Plaintiffs filed a lawsuit against Defendants in the Passaic County Superior Court, Chancery Division – General Equity Part under Civil Action No. PAS-C-30-22, (the “Lawsuit”), on March 29, 2022 alleging, among other things, that the individual Plaintiffs were wrongfully denied membership in the Association following the Plaintiffs’ re-construction of a bulkhead, construction of retaining walls and other landscaping features on the Parklands along the shoreline of the Lake fronting both the 111 Property and the 115 Property; and

**WHEREAS**, the Defendants filed a Counterclaim against the Plaintiffs seeking to compel the Plaintiffs to lower the bulkhead, restore the prior grade of the Parklands and remove obstructions preventing access to the Parklands, in accordance with the Association's fiduciary responsibilities to ensure that all easement holders in the community have reasonable access to Parklands; and

**WHEREAS**, the parties wish to amicably resolve all disputes, claims, issues, controversies and liabilities between and among them that were or could have been asserted in the Lawsuit, and wish to memorialize that agreement in this final, binding Settlement Agreement and Mutual Releases;

**NOW THEREFORE** in consideration of mutual covenants and obligations of this Agreement, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, do hereby agree to settle the Lawsuit as follows:

1. **Settlement.** Mindful of the vagaries of litigation, the uncertainty of any outcome thereunder, as well as the attendant expense and delays associated with such litigation before the ultimate resolution of such matter is achieved, the parties have knowingly and voluntarily agreed, with the assistance of counsel on their respective behalf, to conclusively settle the Lawsuit.

2. **Release by Plaintiffs.** Upon execution of this Agreement, Plaintiffs shall release Defendants and give up any and all claims and rights which Plaintiffs or anyone on Plaintiffs' behalf, may have against Defendants and/or any employees, agents, directors, officers of the Association regarding the subject matter of the Lawsuit. This releases all claims including those of which Plaintiffs are now aware, are not currently aware and those not mentioned in this Agreement resulting from anything which has happened up to the date of this Agreement.

With regard to the Lawsuit, Plaintiffs, on behalf of themselves, their attorneys, representatives, heirs, personal representatives, executors, administrators, insurers, subrogees, successors and assigns, do hereby fully and forever release, remiss and discharge Defendants and the Association's current and/or former employees, partners, agents, directors, officers, attorneys, representatives, successors, insurers and assigns from any and all claims, demands, damages, liabilities, obligations, judgments and losses of any nature and kind, both in law and in equity, from the beginning of time to the effective date of this Agreement, arising out of or related directly or indirectly to the Lawsuit, including any and all possible state or federal statutory, constitutional, contract, tort law against discrimination, contract or other theory of recovery, or common law claims and any and all other federal, state or local statutes, laws, rules, ordinances and regulations pertaining to or alleged in the Lawsuit.

3. **Release by Defendants.** Upon execution of this Agreement, Defendants shall release Plaintiffs and give up any and all claims and rights which Defendants or anyone on Defendants' behalf, may have against Plaintiffs and/or any employees, agents, successors, insurers and assigns of the Plaintiffs regarding the subject matter of the Lawsuit. This releases all claims including those of which Defendants are now aware, are not currently aware and those not mentioned in this Agreement resulting from anything which has happened up to the date of this Agreement.

With regard to the Lawsuit, Defendants, on behalf of themselves, their attorneys, representatives, heirs, personal representatives, executors, administrators, insurers, subrogees, successors and assigns, do hereby fully and forever release, remiss and discharge Plaintiffs and the Plaintiffs' current and/or former employees, agents, successors, insurers and assigns from any and all claims, demands, damages, liabilities, obligations, judgments and losses of any nature and kind,

both in law and in equity, from the beginning of time to the effective date of this Agreement, arising out of or related directly or indirectly to the Lawsuit.

4. **Plaintiffs' Membership in the Association.** The Association shall be prohibited from considering the individual Plaintiffs, their representatives, heirs, personal representatives, executors, administrators, successors and assigns as "Members Not in Good Standing" as a result of any conduct that was the subject matter of the Lawsuit and any conduct that occurred up to the date of this Agreement.

Plaintiffs shall be permitted to join the Association beginning in the calendar year 2024 and in perpetuity upon payment of the applicable annual membership fee as invoiced by the Association each year, subject to Plaintiffs remaining in compliance with the Association's by-laws, rules and regulations. The Association will further accept the individual Plaintiffs' membership in the Association beginning in 2024 pertaining to Plaintiffs' ownership of and/or ownership interests in any entity which owns other properties with easement rights in the Upper Greenwood Lake community including, but not limited to, 350 Warwick Turnpike, Hewitt, New Jersey, subject to Plaintiffs remaining in compliance with the Association's by-laws, rules and regulations.

5. **New Retaining Wall and Lowering of Bulkhead.** The Association is permitted to construct a retaining wall (hereinafter referred to as the "Wall"), at the Association's sole expense, in the locations specified by the pink-colored line in the map attached hereto as **Exhibit A**. The Association is further permitted, at the Association's sole expense, to lower the entirety of the existing bulkhead fronting the 111 Property and the 115 Property (hereinafter referred to as the "Bulkhead"), and to regrade the land (including removal of dirt and fill) between the Wall and the lowered level of the Bulkhead.

All construction work to be performed by the Association in accordance with this Agreement shall be in compliance with all applicable requirements of the Township of West Milford, including all necessary permits and inspections.

6. **New Retaining Wall – Parklands Fronting 111 Property.** On the Parklands fronting the 111 Property, the Wall shall run parallel to the Bulkhead up to fifteen (15) feet back from the edge of the Bulkhead. The Wall shall include the construction of a staircase for full access to the Parklands fronting the 111 Property at a location to be determined in the Association’s sole discretion. The Association shall further construct a four (4) foot wide ramp or other suitable access point for landscaping equipment to reach the lowered level of the Parklands in front of the Wall. Said ramp shall be located as close as possible to the boundary of the Parklands fronting the 111 Property and the Parklands fronting the property at 109 Point Breeze Drive, Hewitt, New Jersey, to be determined in the Association’s sole discretion.

7. **New Retaining Wall – Parklands Fronting 115 Property.** When the Wall reaches the boundary of the 115 Property, the Wall shall follow the contours of the shaded pink line and then follow the boundary line for the 115 Property as shown on **Exhibit A** until the Wall reaches an existing wall parallel to Elmer Court. The front of the Wall shall be constructed along the boundary line of the 115 Property, and Plaintiffs agree that the Wall can be constructed to a maximum of two feet in depth across the boundary line onto the 115 Property.

The Association shall leave a gap in the Wall four feet in diameter at a location to be determined by the Association, in consultation with the Plaintiffs, along the northeasterly boundary line of the 115 Property. Plaintiffs shall be permitted to construct a staircase within said gap on the 115 Property for access to the Parklands at Plaintiffs’ sole expense.

The Plaintiffs grant the Association its successors and assigns a perpetual easement permitting the portion of the Wall that will rest on the 115 Property, provided however, that the Association its successors and assigns indemnify the Plaintiffs against any and all damages, losses or claims including, but not limited to, property damage and personal injuries, caused by the construction and/or location of the portions of the Wall to be constructed on the 115 Property. Further, the Association its successors and assigns agree to maintain the portions of the Wall to be constructed on the 115 Property. This Agreement shall run with the land and shall be binding upon the Association its successors and assigns.

8. **Restoration of Access to Parklands.** The Association shall be permitted to modify any and all portions of Plaintiffs' construction work performed since 2019 to restore pedestrian access to the Parklands fronting both the 111 Property and the 115 Property including, but not limited to, lowering or removing parts of an existing wall parallel to Elmer Court that is not located on Plaintiffs' property.

The Association Is permitted to replace, relocate and/or remove the two existing staircases on Parklands that presently lead down to the Plaintiffs' two docks.

The Association will remove a tree on the Parklands fronting the 115 Property next to the Plaintiffs' dock.

Plaintiffs agree that neither they nor their respective representatives, heirs, personal representatives, executors, administrators, successors and assigns shall be permitted to construct any type of improvements on the Parklands and/or that obstruct pedestrian access to Parklands without the Association's express written approval.

9. **Docks.** The Plaintiffs' two docks shall remain in place where they are presently located, so long as Plaintiffs remain members in good standing of the Association, and further

subject to reasonable future requests by the Association to relocate the Plaintiffs' docks based on the condition of the Lake and erosion control in the surrounding area in accordance with the Association's by-laws, rules and regulations. The Association shall ensure that any of its construction work pertaining to this Agreement will not impair the structural integrity of the docks nor obstruct access to the Plaintiffs' docks.

The Plaintiffs are permitted to remove their docks from the Lake at any time whether or not the Plaintiffs remain members of the Association.

10. **Notice of Commencement of Work.** The Association agrees to give the Plaintiffs no less than sixty (60) days' advance notice of when construction of the Wall will begin. At the time such notice is given, the Association shall inform the Plaintiffs whether the Association will require access through the 115 Property in order to perform the work, and the Plaintiffs shall grant such reasonable access. If the Association requires access across the 115 Property to perform the work, the Association shall not damage any structures or fixtures on the 115 Property, and shall restore the original condition of the 115 Property at the Association's expense following completion of the work.

Plaintiffs agree to give the Association no less than sixty (60) days' advance notice of when any construction on the 115 Property will begin that may interfere with the Association's construction of the Wall.

11. **Time to Complete Work.** The Association agrees to complete construction of the Wall and restore pedestrian access to Parklands within ninety (90) days of when the project begins. The parties agree to work together in good faith to extend this deadline if necessary due to events that are out of the parties' control including, but not limited to, the weather and the issuance of municipal permits.

12. **Easement and Indemnification – Inland Wall.** The Plaintiffs constructed a stone wall approximately three and one-half (3.5) feet high on the Parklands adjacent to the boundary line with the 111 Property as shown on **Exhibit A** (hereinafter referred to as the “Inland Wall”). The Association grants the Plaintiffs, their representatives, heirs, personal representatives, executors, administrators, successors and assigns a perpetual easement permitting the Inland Wall to remain in place, provided however, that the Plaintiffs, their representatives, heirs, personal representatives, executors, administrators, successors and assigns indemnify the Association against any and all damages, losses or claims including, but not limited to, property damage and personal injuries, caused by the construction and/or location of the Inland Wall. Further, Plaintiffs their representatives, heirs, personal representatives, executors, administrators, successors and assigns agree to maintain the Inland Wall during their ownership of the 111 Property. This Agreement shall run with the land and shall be binding upon the Plaintiffs, their representatives, heirs, personal representatives, executors, administrators, successors and assigns.

13. **Sprinklers.** The Plaintiffs represent that any and all sprinklers they installed on the Parklands fronting the 111 Property and the Parklands fronting the 115 Property have been removed. If any sprinklers are discovered on the Parklands fronting the 111 Property or the Parklands fronting the 115 Property are discovered after execution of this Agreement, the Plaintiffs shall remove any such sprinklers at the Plaintiffs’ sole expense.

14. **Township of West Milford and Other Governmental Entities.** The Plaintiffs represent that there are no open permits, applications, violations or notices with the Township of West Milford or any other governmental entity or agency with respect to the Plaintiffs’ construction work on the Parklands and the Bulkhead that is or was completed prior to the Association’s commencement of construction of the Wall pursuant to this Agreement.



15. **No Admission of Liability.** The parties agree that neither the execution of this Agreement nor the consideration provided herein shall be construed to be an admission of liability or wrongdoing by the other. The parties expressly deny any and all allegations of wrongdoing. The parties have entered into this Agreement to avoid further expense, inconvenience and continued litigation.

16. **Interpretation.** If a court of competent jurisdiction decides that any provision of this Agreement is not enforceable in the manner set forth herein, it is the intention of the parties to this Agreement that such provision should be enforceable to the maximum extent possible under applicable law and that such provision shall be modified to make it enforceable in accordance with the intent of the parties. If any provision of this Agreement is held to be invalid or unenforceable, said invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this Agreement.

17. **Entire Agreement.** This Agreement represents and contains the entire agreement and understanding between the parties and supersedes any and all prior oral and written agreements and understandings, and no prior representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless expressly stated herein.

18. **Enforcement.** In the event of a breach of any of the provisions of this Agreement, the non-breaching party shall be entitled to seek all available remedies in a Court of law or equity including, but not limited to, injunctive relief, monetary damages as well as reasonable attorneys fees, costs and expenses incurred in enforcing this Agreement.

19. **Dismissal.** Upon full execution of this Agreement, the parties shall authorize and direct their respective attorneys to promptly to enter into a Stipulation of Dismissal, with Prejudice,

of all claims and Counterclaims asserted by the parties against each other in the Lawsuit, with each party to bear his/her/its own attorneys' fees, costs, expert fees, and expenses incurred therein.

20. **Representation by Counsel.** The parties acknowledge that they have been represented in negotiations for, and in the preparation of, this Agreement by counsel of their own choosing, that they are fully aware of the contents and the legal effect of this Agreement, and that each party is voluntarily entering into this Agreement upon the legal advice of their respective counsel.

21. **Inadmissible as Evidence.** This Agreement and the contents hereof shall not be admissible as evidence in any civil litigation except to enforce the terms expressed herein and shall not be deemed to be an admission of liability by any party to this Agreement.

22. **Governing Law.** This Agreement is given in the State of New Jersey and shall be governed by the laws of the State of New Jersey.

23. **Warrant of Authority.** This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors, heirs and assigns. The Parties represent and warrant that they have not sold, assigned, transferred, conveyed, hypothecated or otherwise disposed of any claim or demand covered by this Agreement.

24. **Non-Disparagement.** The Parties agree not to make any statement (oral or in writing or on the internet) or take any actions or induce or encourage others to make any statement or take any actions that, in the eyes of a reasonable observer, would be disparaging, derogatory or could harm the reputation and/or the goodwill of the other Parties.

25. **Counterparts.** This Agreement may be executed in counterparts, which shall be taken together as the entire agreement of the parties herein. This Agreement may also be exchanged by parties via facsimile or electronic mail and will be fully enforceable as an original

document. The Parties agree that this Agreement, and any other documents to be delivered in connection herewith, may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties also agree that this Agreement, and any other documents to be delivered in connection herewith, may be electronically signed by e-signature or digital signature (including, without limitation, “PDF”, “TIF”, “JPG”, DocuSign, AdobeSign or other registered electronic notary or verification platform which is consistent with the New Jersey Uniform Electronic Transactions Act § 12A:12-1 et seq.). The Parties further agree that any electronic signatures appearing on this Agreement, and any other documents to be delivered in connection herewith, are the same as handwritten (“wet”) signatures for the purposes of validity, enforceability, and admissibility. However, should any of the Parties fail to execute this Agreement, then this Agreement shall be null and void as to all Parties.

26. **Signatures.** Each person signing this Agreement on behalf of a corporate entity warrants and represents that he/she is fully authorized by that entity to execute this Agreement and to bind the said entity to all of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have executed this Settlement Agreement as of the date first written above.

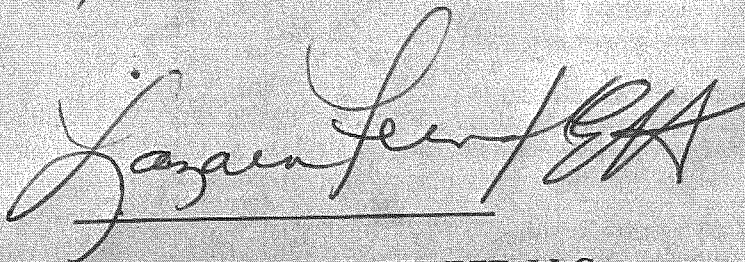
**PLAINTIFFS:**



EMILIO HERNANDEZ



LAZARA FERNANDEZ

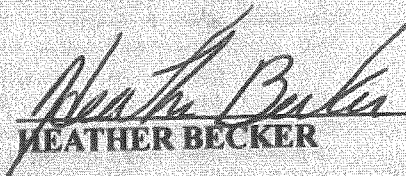


Member, 115 POINT BREEZE, LLC

**DEFENDANTS:**

DOUG GRAYSON

President, Upper Greenwood Lake Property Owners' Association, Inc.



HEATHER BECKER

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**PLAINTIFFS:**

**DEFENDANTS:**

  
**EMILIA  
GRAYSON**

**HERNANDEZ**

  
**DOUG**

President, Upper Greenwood  
Lake Property Owners'  
Association, Inc.

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# **EXHIBIT A**



