

LITIGATION SETTLEMENT AGREEMENT

This Litigation Settlement Agreement is made this _____ day of _____, 2024 by and between the Township of Neptune Zoning Board of Adjustment and College Achieve, A non-profit corporation of the State of New Jersey (hereinafter “College Achieve”) as filed in Monmouth County Superior Court – Law Division, under Docket Number: MON-L-682-24 (“Litigation”).

WHEREAS, the Township of Neptune Zoning Board of Adjustment (hereinafter, “Neptune Zoning Board” or “Board”) is the duly constituted zoning board of adjustment created by the governing body of the Township of Neptune by ordinance pursuant to N.J.S.A. 40:55D-69; and

WHEREAS, College Achieve is the Lessee of real property located at 3455 W. Bangs Avenue in the Township of Neptune, identified on the Neptune Township Tax Maps as Lot 2 in Block 3101 (hereinafter designated as “Holy Innocents Campus”); and

WHEREAS, College Achieve filed an application on August 29, 2024 to amend a previously granted use variance from a Place of Worship/K-8th Grade School to Place of Worship/Pre-Kindergarten to 12th Grade School (“Use Modification2022 Application”), and pursued that application to conclusion on September 20, 2023, when the Neptune Zoning Board voted to deny College Achieve’s application for use variance (as modified on record) for approval and other relief, with the Board adopting a memorializing resolution on November 2, 2023; and

WHEREAS, College Achieve, initiated the Litigation a Complaint in lieu of Prerogative Writs on December 13, 2023, challenging the decision of the Neptune Zoning Board denying the requested use variance and site plan approval; and

WHEREAS, after Case Management before the Hon. David A. Nitti, JSC, the parties discussed potential settlement of the Litigation in accordance with Whispering Woods at Bamm Hollow, Inc., v. Township of Middletown Planning Board, 220 N.J. Super. 161 (Law. Div. 1987) and Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Board, 407 N.J. Super. 404 (App. Div. 2009); and

WHEREAS, the parties have engaged in extensive negotiations in an attempt to settle the Litigation; and

WHEREAS, the Parties desire to fully and finally resolve the claims between and among them, including all claims and counterclaims which have been, or which could have been brought in the Litigation, without admitting the validity (or lack thereof) of any such claims, counterclaims, or defenses asserted or which could have been asserted in the Litigation and without admitting any issue of fact or law, and on the terms and subject to the conditions set forth herein.

WHEREAS, the parties have reached an agreement on the terms and conditions for settlement of the Litigation, said settlement being contingent upon conditions set forth herein and

which conform with the procedures set forth in Whispering Woods at Bamm Hollow, Inc., the Township of Middletown Planning Board, 220 N.J. Super. 161 (Law. Div. 1987).

NOW, THEREFORE, in consideration of the mutual covenants, promises and terms and conditions hereinafter provided, it is agreed by and between the Neptune Zoning Board and College Achieve as follows:

1. **Recitals.** The above recitals clauses are incorporated herein by reference.
2. **Effective Date.** The effective date of this Agreement shall be the date on which the Agreement is signed by the Parties.
3. **Definitions.** As used in this Agreement, the terms defined in this Agreement shall have the meanings set forth therein.
4. **Due Deliberation.** This Agreement is reached after due deliberation by the parties and is based upon the considered judgment of the parties that it is in the best interest of the public good and welfare to attempt to settle this litigation upon the terms and conditions contained in this Litigation Settlement Agreement in order to fully resolve the dispute between the parties.
5. **Stay of Litigation and Process for Dismissal.** Within ten (10) days of the final execution of the within Litigation Settlement Agreement, the parties agree to jointly file with the court a request to execute the attached Order to Stay the Litigation for a period of four months, which the parties may jointly request to extend to allow the parties to effectuate the terms of this Agreement. Should the parties successfully settle the Litigation in accordance with the terms of this Agreement, College Achieve, shall file a Stipulation of Dismissal with prejudice of the Litigation.

In the event that the Neptune Zoning Board does not grant revised use variance approval and/or does not memorialize a Resolution based upon the approval of the revised application and hearing as set forth herein, (where the within terms are acknowledged to be satisfactory and negotiated between both parties), upon the presentation and board vote of the amended application, and in fact, votes for a DENIAL of the amended application, the following terms shall apply:

- a. College Achieve will have the right to reinstate the Litigation, or Motion to Reinstate if the Court administratively dismisses the Complaint in the Litigation. The parties retain all rights pursuant to N.J.S.A. 4:69 -1 et seq., Whispering Woods and MLUL.
 - a. Defendant Township may file a Motion to Dismissal with prejudice or Motion for Summary Judgment based on underlying transcript and transcript of hearing based upon Settlement Agreement and plans submitted.
- b. Motion shall be filed within 20 +0 days of the memorialization of the Resolution based on the amended application hearing which is the subject of this Settlement Agreement.
- c. The decision for Reinstatement or Dismissal with Prejudice of this pending litigation shall be based upon whether or not "arbitrary and capricious/prejudicial" behavior was exhibited by the Board or Professionals during rehearing in conjunction with a factual finding by the Court as to whether or not the Plaintiff/Applicant met their burden of proof at the amendment hearing.

- d. Due to the fact that the proposed hearing under Whispering Woods is based on an attempted Settlement Agreement and hearing for same, the parties acknowledge that there will be no appeal by either party in the event the Zoning Board denies the revised settlement application and the only re-dress is Motion to reinstate, which is described above.
 - e. In the event that the revised settlement application is approved by the Board in a manner satisfactory to both parties, and an appeal or objection is filed by a third party to the Superior Court based on the approval granted by the Neptune Zoning Board to College Achieve's revised Use Variance application, then the Neptune Zoning Board reserves the right to defend the decision of the Zoning Board on appeal prior to having the pending litigation moved for reinstatement or dismissal by either party.
6. The Amended Application to be heard and this Settlement Agreement shall be based on the following factors:
- a. **Proposed Use:** College Achieve has modified its request to allow use of the premises for grades 7-12, as shown on Exhibit A to this Litigation Settlement Agreement, which presents the conceptual plan for the revised classroom utilization for the amended application for Board Review. In addition, the existing open room above the Gym, which is depicted as "Stage" on Exhibit A will be re-constructed into a multipurpose breakout room and will be constructed as depicted in the architectural plans attached as Exhibit B.
 - b. College Achieve shall amend and revise the notice for their application as an Amended Application for a Use Variance for grades 7-12 to be housed at the site for the school years 2025 and beyond, as shown on Exhibit A.
 - c. The parties acknowledge that the Amended Application shall comply with the MLUL, and the proposed use as depicted in Exhibit A must meet the standards as required to demonstrate that the the building site and the proposed classrooms, depicted on Exhibit A, can accommodate the proposed use; 7-12 and satisfies all applicable state regulations governing classroom size and number of students for the grades involved as well as the existing 600 student use limitation.
 - d. The conceptual interior site plan provided by Plaintiff/Applicant College Achieve, attached as Exhibit A to this Litigation Settlement Agreement, presents the conceptual plan for the revised classroom utilization for the amended application for Board Review as provided by College Achieve. Further, in order to limit the timeline of the hearing, the parties acknowledge the testimony of the Applicant's Planner is required and the Board reserves the right to also require additional testimony from the Executive Director/Head of School for the Holy Innocents Campus ("Executive Director"). In light of the significant prior testimony of multiple experts, including the Executive Director, during the three hearings of the 2022 Application, and the significant negotiations preceding the amended application hearing, the Board will make all reasonable efforts to limit the testimony required. In good faith and to ensure that this process is effective and efficient, College Achieve will have the Executive Director present at the hearing.

- e. All other testimony is hereby waived by the parties as having been satisfied from prior hearings.

7. **Future Use:** In the event the Amended Application is approved, the following shall apply;

- a. Should College Achieve find a new location for grades 9-12 (high school) in the future, the subject Holy Innocents Campus site shall revert back to a K-8 use provided College Achieve files a new Zoning Permit for the change in use not less than 45 days prior to the change and the structure has not been modified in a manner inconsistent with the permitted modified use set forth in paragraph 6(A) . Approval for said Zoning Permit shall not require a hearing and shall not be unreasonably withheld subject to building occupancy limitations, fire, sub code and state/local educational restriction standards (number of students/class/teacher, etc.). A new site map articulating the K-8 configurations shall be filed simultaneously with the Zoning Permit application.
- b. Alternatively for the future, should College Achieve be granted PRE-SCHOOL enrollment, College Achieve will find a new location for grades 8-12 (late middle and high school) and the subject Holy Innocents Campus site shall become a Pre K- 7 Use provided College Achieve files a new Zoning Permit for the change in Use not less than 45 days prior to the change. Approval for said Zoning Permit shall not require a hearing and shall not be unreasonably withheld subject to building occupancy limitations, fire, sub code and state/local educational restriction standards (number of students/class/teacher, etc.). A new site map articulating the Pre K-7 configurations shall be filed simultaneously with the Zoning Permit application.

8. **Hearing Process.** The parties have agreed to act in a collaborative, efficient and expedited basis. No fees shall be due to the applicant unless a special meeting is requested by the applicant.

- a. College Achieve shall file a complete application for the use variance approval for the Amended Application as soon reasonably practicable. The parties, including their respective consultants, shall fully cooperate relating to the Amended Application, including the details of Exhibit A and shall make all reasonable efforts to address the scope and completeness of the Amended Application.
- b. College Achieve shall provide public notice for the Amended Application in accordance with N.J.S.A. 40:55D-12.
- c. The parties agree to limit the number of hearings on the Amended Application and the total number of hearings shall not exceed 2 hearings, subject to the Zoning Board's regular agenda hearing notice of time allotted per hearing.
- d. Said hearings shall be held back to back, in sequential months unless Applicant indicates that it is not ready to proceed to a meeting or, if the parties determine that a special meeting or meetings is necessary to timely complete the public hearing on the application.

- e. In the event that further meetings are necessary, College Achieve understands that it will be subject to payment of a special meeting fee. However, the Neptune Zoning Board of Adjustment shall allocate a minimum of 1½ to 2 hours at each regular meeting for the application, and any special meeting shall be devoted solely to the College Achieve application. The beginning date of these successive meeting shall be scheduled with the Zoning Board Secretary upon notice so that the ZBA can allot the appropriate time given other pending applications.
- f. Testimony by witnesses for College Achieve and for the Board shall be limited to only planning testimony and that of the executive director, if necessary, as set forth above. The parties agree that it is unnecessary to have any witnesses on environmental impact, traffic or similar issues.
- g. The parties agree that there would be a dedicated meeting, if necessary to allow all public comments to be placed in the record, and the Board will exercise its usual discretion in providing for the review, scope and direction of the comments for the pending application.

9. **Dismissal of the Litigation.** Upon the Court's entry of the Stay Order, College Achieve shall sign a stipulation to dismiss the Litigation with prejudice and shall hold that stipulation in escrow. Once the Board adopts and publishes a resolution approving the New Application for the Holy Innocents Campus, College Achieve shall file the stipulation of dismissal with the Court.

10. **Releases.**

a. From College Achieve to the Board. College Achieve, on behalf of itself and its (i) subsidiaries, associated, affiliated, and related entities, (ii) predecessors, successors, and assigns, and (iii) current and former officers, directors, shareholders, members, managers, partners, employees, agents (collectively, the "College Achieve Releasors") hereby release and give up any and all claims and rights that College Achieve Releasors may have against the Board, or any of its respective (A) subsidiaries, associated, affiliated, or related entities, (B) predecessors, successors, or assigns, or (C) current or former officers, officials, directors, shareholders, members, managers, partners, employees or agents, in their official, professional or personal capacities, including but not limited to, any and all Professionals (Architect, Engineers, Professional Planner, Attorney or other such appointed Board Professional) serving the Board at the time of the hearings which are the subject matter of this litigation. (collectively, the "Board Released Parties"), which claims and rights arise out of or relate to the events and actions that were the subject matter of the Litigation, including claims arising out of or relating to the events and actions that gave rise to the Litigation which College Achieve Releasors, or any of them, are not aware of and/or which are not mentioned in this release This release applies to claims arising out of or relating to the events and actions that were the subject matter of the Litigation and that happened on or before the execution and delivery of this Agreement his release shall not include Board Released Parties express obligations under this Agreement.

b. From the Zoning Board to College Achieve. The Zoning Board on behalf of itself and its respective (i) subsidiaries, associated, affiliated, and related entities, (ii) predecessors, successors, and assigns, and (iii) current and former officers, officials, directors, shareholders,

members, managers, partners, employees, and agents (collectively, the “Board Releasers”) hereby releases and gives up any and all claims and rights that the Board Releasers may have against College Achieve or any of its (A) subsidiaries, associated, affiliated, or related entities, (B) predecessors, successors, or assigns, or (C) current or former officers, directors, shareholders, members, managers, partners, employees, attorneys, accountants, or agents, in their official or personal capacities (collectively, the “College Achieve Released Parties”), which claims and rights arise out of or relate to the events and actions that were the subject matter of the Litigation, including claims arising out of or relating to the events and actions that gave rise to the Litigation which the Board Releasers are not aware of and/or which are not mentioned in this release. This release applies to claims arising out of or relating to the events and actions that were the subject matter of the Litigation and that happened on or before the date of the last public hearing which is the subject matter of the within litigation. This release shall not include College Achieve’s express obligations under this Agreement.

11. **Further Assurances.** The Parties agree that they will cooperate in good faith to effectuate the terms of this Agreement and that they will accept and abide by all of the terms of this Agreement. The Parties will execute and deliver such further documents and instruments as are necessary or appropriate to carry out the terms of this Agreement.

12. **No Admission of Liability.** Each Party to this Agreement expressly denies any wrongdoing, and this Agreement shall in no way constitute an admission, nor shall it be construed as an admission, of any wrongdoing or of any liability whatsoever on the part of any Party to this Agreement.

13. **Notices.** All notices given under this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, overnight courier that provides a receipt for delivery, personal delivery, facsimile transmission, or electronic mail, to each Party at the address set forth below, or at such other address as such Party may specify in a written notice given in accordance with this Section. Notices shall be deemed to have been duly given when delivered. Addresses for notices are as follows:

If to College Achieve, to:

3455 West Bangs Avenue
Neptune, New Jersey 07753
Attention: Jaime Cullen
Email: jcullen@collegeachieve.org

With a copy to:

Connell Foley, LLP
56 Livingston Avenue
Roseland, New Jersey 07068
Attention: Agnes Antonian, Esq.
Email: aantonian@connellfoley.com

If to the Zoning Board, to:

Neptune Township Board of Adjustment
25 Neptune Boulevard
Neptune, NJ 07753

Attn: Heather Kepler, Secretary (hkepler@neptunetownship.org)
Copy: Gina LaPlaca, Township Administrator (glaplaca@neptunetownship.org)
George Waterman, Acting Land Use Director (gwaterman@neptunetownship.org)

With a copy to:

Monica C. Kowalski, Esq.
Law Offices of
Monica C. Kowalski, LLC
601 State Route 35
Neptune, New Jersey 07753
Email: mckowalskiesq@gmail.com

14. **Amendments, Waivers.** This Agreement may not be modified, amended, or supplemented, except by a writing signed by the party against whom enforcement thereof is sought. No waiver by any party, whether express or implied, of any right or remedy on any one occasion shall bar such party from exercising any of its rights or remedies on any subsequent occasion, and no waiver of any provision of this Agreement shall be binding unless it is in a writing signed by the party against whom enforcement thereof is sought. No course of dealing, custom or usage between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend, or discharge any part of this Agreement or any rights or obligations of any party under or by reason of this Agreement.

15. **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes and cancels all prior agreements and understandings, oral and written, among the Parties with respect to such subject matter. No Party has made any representation of or warranty to any other party except as expressly set forth in this Agreement.

16. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, but without giving effect to any New Jersey choice of law provisions that might otherwise make the law of a different jurisdiction control or apply.

17. **Interpretation.** The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and shall be construed as if drafted jointly by the Parties. No provision of this Agreement or any related document shall be construed against or interpreted to the disadvantage of any party to this Agreement because such party did, or is deemed to have, structured or drafted such provision.

18. **Headings.** The headings of the paragraphs and sections of this Agreement are not part of this Agreement; they are for convenience of reference only and shall not be used to interpret the provisions of this Agreement.

19. **Number and Gender References.** In this Agreement, words of single or plural number, and words of the masculine, feminine, or neutral gender, shall be read as if written in the single or plural, or in the male, female, or neutral gender, as the context may cause to be appropriate.

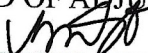
20. **Electronic Signatures.** The Parties agree that electronic signatures in the form of handwritten signatures on a facsimile transmittal, scanned and digitized images of a handwritten signature (e.g., scanned document in pdf format), and typed signatures on email transmissions, shall have the same force and effect as original manual signatures.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and all of which together shall constitute one and the same document. Any signature page to any counterpart may be detached from the original counterpart to which it was attached, and then attached to another counterpart that is identical to the original, without impairing the legal effect of the signatures.

22. **Representation by Counsel.** The Neptune Zoning Board and College Achieve were represented in the settlement process by counsel of their choice.

23. **Agreement Binding and Enforceable.** Upon execution, this Litigation Settlement Agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns. This Litigation Settlement Agreement shall be enforceable in the Law Division of the Superior Court and jurisdiction shall be retained by the Hon. David A. Nitti, JSC..

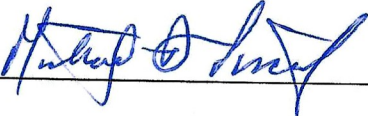
NEPTUNE TOWNSHIP ZONING
BOARD OF ADJUSTMENT

By: 
WILLIAM A. FRANTZ, BOARD CHAIR

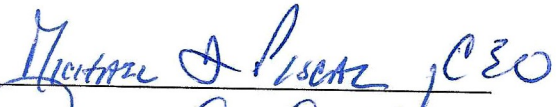
ATTEST:

By: Gina M. LaPlaca
GINA LAPLACA,
Neptune Zoning Board of Adjustment
Land Use Administrator

COLLEGE ACHIEVE

By: 

WITNESS:

By: 
James C. Cullen, COC