

**FRANKLIN TOWNSHIP
RESOLUTION #2020-55**

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF
FRANKLIN, COUNTY OF HUNTERDON, AUTHORIZING EXECUTION OF A
SETTLEMENT AGREEMENT.**

WHEREAS, a claim related to the development of a cell tower on municipal property bearing docket number HNT-L-131-20 was filed in the Law Division of the Superior Court of New Jersey against the Township of Franklin and certain officials of the Town; and

WHEREAS, the Town of Franklin and its officials deny any wrongdoing or liability with respect to the claim; and

WHEREAS, given the time and expense of litigation, the Parties wish to fully and finally resolve all existing and potential claims and/or causes of action between them; and

WHEREAS, toward that end, the Parties have engaged in negotiations and, in the interests of avoiding delay and further cost, have decided to settle the litigation; and

WHEREAS, the Township of Franklin has agreed to certain terms which will be made part of a Settlement Agreement prepared by counsel for the Parties; and


WHEREAS, as part of the resolution of this matter, and as set forth in the Settlement Agreement, the Township of Franklin (through its insurance carrier) has agreed and shall contribute Ten Thousand Dollars and Zero Cents (\$10,000.00) toward the overall settlement amount negotiated by the Parties; and

WHEREAS, the Committee is now desirous to memorialize the approval of its obligation under the Settlement Agreement reached by the Parties.

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Franklin, in the County of Hunterdon, State of New Jersey as follows:


- 1). The Township hereby ratifies and agrees to the Settlement Agreement; and
- 2). The Mayor is hereby directed to execute the Settlement Agreement.
- 3). This resolution shall take effect immediately.

ADOPTED: 11/12/2020



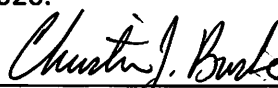
Philip Koury, Mayor
Township Committee

Attest and Affix Seal:



Christine J. Burke, RMC
Municipal Clerk

I, Christine J. Burke, Municipal Clerk of the Township of Franklin, County of Hunterdon, do hereby certify this to be a true copy of a resolution adopted by the Township Committee at a meeting held on November 12, 2020.



Christine Burke, RMC
Municipal Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made as of the ____ day of August, 2020, by and between

Atef Faragalla, and Christina Fam Faragalla, having an address at 205 Sidney Road, Pittstown, New Jersey; Walter Loftus and Carol Loftus, having an address at 7 Doe Run, Pittstown, New Jersey; Teriann Martin and Thomas Marinn, having an address at 6 Lower Landsdown, Annandale, New Jersey; Suzanne Sollner Figler and Michael Figler, having an address at 214 Sidney Road, Pittstown, New Jersey; and Brian Yavornitzki and Maria Yavornitzki, having an address at 215 Sidney Road, Pittstown, New Jersey;

(collectively, the “Plaintiffs”)

and

the Township of Franklin (the “Township”), a municipal corporation of the State of New Jersey, County of Hunterdon, with its municipal offices located at 202 Sidney Road, Pittstown New Jersey.

(the Plaintiffs and Township are collectively referred to as the “Parties”),

WITNESSETH

WHEREAS, on March 27, 2020 the Plaintiffs filed an Order to Show Cause and Verified Complaint against the Township and its Land Use Board captioned *Faragalla, et al. v. Franklin Township, et al.*, Docket No. HNT-131-20 (the “Lawsuit”), pending in the Law Division of the Superior Court, Hunterdon County, New Jersey;

WHEREAS, the Lawsuit stemmed from the Township’s approval of the construction of a cell tower by Cellco Partnership d/b/a Verizon Wireless (“Verizon”) on certain municipally-owned property (the “Property”) that was leased by Verizon; and

WHEREAS, Verizon was also named as a defendant in the Lawsuit, but did not file any pleadings responsive to Plaintiffs’ Complaint; and

WHEREAS, the Lawsuit sought to enjoin the Township and / or Verizon from constructing the proposed cell tower and attorneys’ fees; and

WHEREAS, subsequent to the filing of the Lawsuit, Verizon terminated its lease with the Township and abandoned its intent to construct a cell tower on municipally-owned property; and

WHEREAS, the Parties have reached an amicable settlement of all other outstanding issues.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Payment.** The Township shall pay to the Plaintiffs the sum of \$10,000 within thirty (30) days of full execution of this Agreement. Such payment shall be made by check payable to Herold Law, P.A. and mailed to the following address:

Herold Law, P.A.
Attn: Robert Simon, Esq.
25 Independence Blvd.
Warren, New Jersey 07059

2. **Mutual Release.** The Township and Plaintiffs release of all claims, counterclaims, cross-claims, and any other legal rights or privileges, known or unknown, that have been, or could have been, asserted against the other based on the allegations raised in the above-referenced Lawsuit. This Release is limited to the specific Lawsuit referenced herein. Notwithstanding the foregoing, this Release shall not apply to any claims arising from a cell tower that may be constructed on the Property in the future.

3. **Non-Admission of Liability.** This agreement does not in any way constitute an admission of liability or wrongdoing by either party concerning the allegations raised in the above-captioned litigation.

4. **Binding Effect.** This agreement shall bind the parties and their respective heirs, successors, assigns, officers, employees, officials, and agents.

5. **Proper Authority.** Both parties represent that this agreement has been voluntarily executed by the persons with the legal authority to do so. The undersigned counsel for Plaintiffs represents that he has the authority of Plaintiffs to enter into his agreement. Additionally, the Township represents that this agreement has been, or will be, formally approved by resolution of the Township of Franklin.

6. **Severability.** Should any part of this agreement be invalidated by a court of competent jurisdiction, that part shall be severed and the balance of the agreement shall remain in full force and effect.

7. **Counterparts.** This agreement may be signed in counterparts and shall be binding as if all parties executed the original thereof. A facsimile or electronically-transmitted signature shall have the same effect as an original signature.

8. **Governing Law.** This agreement shall be governed by the laws of the State of New Jersey. Any disputes arising out of or related to this agreement shall be venued in the Superior Court of New Jersey, Hunterdon County.

9. **Dismissal of the Lawsuit.** Within ten (10) business days of the Township's compliance with all obligations under this Settlement Agreement (i.e. payment by the Township to Plaintiffs as set forth in Paragraph 1 herein), Plaintiffs will file a Stipulation and Order of Dismissal in a form acceptable to the attorneys for both parties with prejudice and without costs.

10. **Representations and Warranties.** Each Party represents to the others that (i) it has the requisite power, authority, and legal capacity to make, execute, enter into, and deliver this Settlement Agreement and to fully perform its duties and obligations under this Settlement Agreement, and that neither this Settlement Agreement nor the performance by it of any duty or obligation hereunder will violate any other contract, agreement, covenant, or restriction by which it is bound; (ii) the execution and delivery by it of this Settlement Agreement, and the performance by it of its obligations hereunder, have been duly authorized by all necessary action and no other proceedings on its part which have not been taken are necessary to authorize this Settlement Agreement or the agreements contained herein; and (iii) this Settlement Agreement has been duly and voluntarily executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights or remedies generally.

11. **Entire Agreement.** This Settlement Agreement constitutes the entire and complete understanding and agreement between the Parties in regard to the subject matter of the Lawsuit described above and the terms hereof, and supersedes and replaces all prior negotiations, agreements, or understandings between the Parties, whether written or oral, concerning the subject matter of this Settlement Agreement.

12. **Amendments in Writing.** This Settlement Agreement may not be amended except through an instrument in writing signed by the Parties. No provision of or rights under this Settlement Agreement may be waived or modified unless in writing and signed by the Party whose rights are thereby waived or modified.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed and delivered by their duly authorized representatives as of the date first set forth above.

[SIGNATURE PAGES FOLLOW]

PLAINTIFFS

By: _____
Robert Simon, Esq.
Attorney for Plaintiffs
Dated

FRANKLIN TOWNSHIP

By: Philip Koury _____
Name: Philip Koury
Title: Mayor
Dated: November 12, 2020