

SUPREME COURT
STATE OF NEW YORK

COUNTY OF MONROE

PITTSFORD CANALSIDE PROPERTIES LLC,

Plaintiff/Petitioner,

SETTLEMENT
AGREEMENT
AND RELEASE

-vs-

VILLAGE OF PITTSFORD, NEW YORK,
BOARD OF TRUSTEES OF THE VILLAGE
OF PITTSFORD, NEW YORK, AND STEVEN
LAUTH in his capacity as BUILDING
INSPECTOR OF THE VILLAGE OF PITTSFORD

E2024006050

Defendants/Respondents.

This Settlement Agreement and Release is entered into by and between Plaintiff/Petitioner Pittsford Canalside Properties LLC (“PCP”), Defendant/Respondent Village of Pittsford New York, Defendant/Respondent Board of Trustees of the Village of Pittsford New York (“Board of Trustees”), and Defendant/Respondent Steven Lauth in his capacity as Building Inspector of the Village of Pittsford (“Building Inspector”) (together “Village” or “Defendants/Respondents”), as of the __ day of _____, 2024. PCP and the Village are sometimes collectively referred to as the “Settling Parties.”

WHEREAS, Plaintiff/Petitioner PCP commenced this hybrid proceeding against Defendants/Respondents by filing a Summons, Verified Petition/Complaint, and Notice of Petition on April 8, 2024 (the “Litigation”); and the Village answered and commenced counterclaims, which PCP has answered, and

WHEREAS, the Litigation (the “Dispute”); arises out of disagreement between PCP and the Village as to the fees and cost reimbursement for the building permit and related review for Phase I of the proposed construction of a 156 unit multi-family mixed-use community (the “Project”) located on the Erie Canal at 75 Monroe Avenue in the Village of Pittsford, County of Monroe, State of New York (the “Property”).

WHEREAS, the Historic Preservation Board (“HPB”) has issued a Certificate of Appropriateness for the Project and the HPB and the Settling Parties wish to confirm the

validity of such approval and the time within which PCP may commence work on the Project.

WHEREAS, the Planning Board has issued a Final Site Plan for the Project that has not expired and the Planning Board and the Settling Parties wish to extend the Final Site Plan approval for one year as of the date of termination of the Litigation.

WHEREAS, the Settling Parties mutually desire to fully resolve and settle the Dispute and the Litigation between them, it being the intention of the parties that this be the end of all litigation, or potential litigation, as between them arising out of the Project, the Dispute and/or any and all other, claims, counterclaims, disputes and/or controversies raised in the Litigation or which could have been raised in the Litigation; and

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

I. PERMIT ISSUANCE. All Village permits necessary to construct the improvements shall be issued by the Building Inspector upon the following terms and conditions:

A. Phase 1.

1. Required Submissions. The Phase 1 Required Submissions shall consist of the following: (i) Letter to Building Inspector Requesting Phase 1 Permits; (ii) Phase 1 Permit Fee.
2. Phase 1 Permits. Within thirty days of execution of the Settlement Agreement, PCP shall submit the Required Submissions to the Village. Upon receipt of the Phase 1 Required Submissions the Building Inspector shall issue all permits necessary to construct the Phase 1 improvements within 3 business days.

B. Phase 2.

1. Required Submissions. The Phase 2 Required Submissions shall consist of the following: (i) Application Form; (ii) Building Plans for Buildings 4, 5, and 6; (iii) Phase 2 Permit Fee; (iv) Phase 2 Escrow Agreement; and the (v) Phase 2 Escrow Deposit.
2. Phase 2 Plan Review.
 - a. Upon receipt of the Phase 2 Required Submissions the Building Inspector shall transmit the building plans to the Consultant within 3 business days.

- b. Consultant shall have 10 business days to review and respond to the initial submission, and 5 business days to review and respond to each backcheck.
3. Phase 2 Permits. Upon receipt of confirmation from the Consultant that the Building Plans conform to the requirements of NYS Uniform Code, the Certificate of Appropriateness and the Final Site Plan, the Building Inspector shall issue all permits necessary to construct the Phase 2 improvements within 3 business days.

C. Phase 3.

1. Required Submissions. The Phase 3 Required Submissions shall consist of the following: (i) Application Form; (ii) Building Plans for Building 7 and clubhouse/restaurant; (iii) Phase 3 Permit Fee; (iv) Phase 3 Escrow Agreement; and the (v) Phase 3 Escrow Deposit.
2. Phase 3 Plan Review.
 - a. Upon receipt of the Phase 3 Required Submissions the Building Inspector shall transmit the building plans to the Consultant within 3 business days.
 - b. Consultant shall have 10 business days to review and respond to the initial submission, and 5 business days to review and respond to each backcheck.
3. Phase 3 Permits. Upon confirmation from the Consultant that the Phase 3 Building Plans conform to the requirements of NYS Uniform Code, the Certificate of Appropriateness and the Final Site Plan, the Building Inspector shall issue all permits necessary to construct the Phase 3 improvements within 3 business days.

II. PERMIT FEES

- A. Phase 1. The Phase 1 Permit Fees shall consist of a one-time payment of \$50,809.60 from PCP to the Village of Pittsford, which consists of the following items:

FEE	PHASE 1
Residential New Construction	\$0.00
Residential Plumbing (\$40/unit)	\$2,240.00
Consultant Review Reimbursement	\$45,900.00
Inspections (to be paid directly by PCP)	N/A
Sewer Connection Fee	\$1,900.00
Residential – Garage	\$769.60
TOTAL	\$50,809.60

- B. Phase 2. The Phase 2 Permit Fees shall consist of a one-time payment of \$15,669.60 from PCP to the Village of Pittsford, which consists of the following items:

FEE	PHASE 2
Residential New Construction	\$0.00
Residential Plumbing (\$40/unit)	\$2,240.00
Consultant Review Cap (Escrow Deposit)	\$12,660.00
Inspections (to be paid directly by PCP)	N/A
Sewer Connection Fee	\$0.00
Residential – Garage	\$769.60
TOTAL	\$15,669.60

- C. Phase 3. The Phase 3 Permit Fees shall consist of a one-time payment of \$15,304.80 from PCP to the Village of Pittsford, which consists of the following items:

FEE	PHASE 3
Residential New Construction	\$0.00
Residential Plumbing (\$40/unit)	\$1,760.00
Consultant Review Cap (Escrow Deposit)	\$13,160.00
Consultant Inspections (to be paid directly)	N/A
Sewer Connection Fee	\$0.00
Residential – Garage	\$384.80
TOTAL	\$15,304.80

- D. The sewer connection fee for the entire development assumes that PCP will make one connection to the Village sewer system and that PCP will own the new piping. The Village will be responsible for the maintenance and operation of the force main from the pump station to the connection at the entry way along Monroe Avenue and will be granted an easement as approved by the Planning Board and drafted on the approved site plan drawing #54F. All other sanitary sewer piping on the site will be the maintenance responsibility of PCP.
- E. Right of Way Permit. Prior to commencing any work in the Village right-of-way PCP shall obtain a right-of-way permit for either \$100 per occurrence or \$500 per year, at PCP's discretion. Nothing in this Agreement shall authorize work in the right-of-way nor amend any approved plans for such work. PCP shall comply with all Village requirements prior to commencing work in the right-of-way we're coming. The Village and PCP agree to coordinate work in the right-of-way to minimize disruption.

- III. Plan Review Consultant. Within 60 days of the date of this Settlement Agreement the Village shall retain such Plan Review Consultant as it deems appropriate subject to the terms contained in this Settlement Agreement, including the following maximum fees:
- A. Phase 2. Maximum consultant review fee shall be \$12,660, which is the amount quoted by Bero/Bergman for Phase 2 Plan Review, subject to inflation at CPI after 6 months from the date of this Settlement Agreement. PCP shall make an Escrow Deposit of this amount prior to the issuance of Phase 2 Permits.
 - B. Phase 3. Maximum consultant review fee shall be \$13,160, which is the amount quoted by Bero/Bergman for Phase 3 Plan Review, subject to inflation at CPI after 6 months from the date of this Settlement Agreement. PCP shall make an Escrow Deposit of this amount prior to the issuance of Phase 3 Permits.
- IV. Certified Code Enforcement Official / Inspector
- A. Selection and Appointment. PCP shall select an independent New York State Certified Code Enforcement Official to conduct all inspections required by NYS Uniform Code and/or Pittsford Village Code (“Inspector”), and shall transmit the name and qualifications of such Inspector to the Village to obtain approval from Village Board of Trustees, which approval shall not be unreasonably withheld.
 - 1. The Board of Trustees shall appoint the Inspector as an inspector pursuant to Pittsford Village Code § 105-3(D) within 15 days following PCP’s transmittal or enter into an agreement with the selected Inspector for the services under this Agreement.
 - 2. The Village shall authorize the Inspector to inspect and accept work pursuant to Pittsford Village Code § 105-5(A) within 15 days following PCP’s transmittal.
 - B. Payment. PCP shall pay the Inspector directly for all work performed related to 75 Monroe Avenue. PCP shall provide proof of payment to the Village. Nothing in this Settlement Agreement shall be read as creating an employment relationship between the Village and the Inspector.
 - C. Reports. The Inspector shall transmit such records and reports to the Building Inspector as are required by NYS Uniform Code and Pittsford Village Code.

- V. Certificates of Occupancy. The Building Inspector shall issue a Certificate of Occupancy within 5 business days following transmittal of payment in the amount of \$75.00, and (a) a statement from the Inspector attesting that the work was completed in accordance with all applicable provisions of the Uniform Code, the Energy Code and NY Stretch Energy Code; (b) a statement from the Inspector indicating that the final inspection required by Pittsford Village Code § 105-7(B) has been completed; (c) a written statement of structural observations and/or a final report of special inspections; and (d) flood hazard certifications if applicable. Nothing in this provision shall prevent the issuance of a Temporary Certificate of Occupancy, as deemed appropriate by the Building Inspector, if requested by PCP.
- VI. Validity of Approvals. Any approvals that were valid as of September 4, 2023 shall be valid as of the date of this Settlement Agreement, and shall remain valid according to their terms as if obtained as of the date of this Settlement Agreement, including the Special Permit, Final Site Plan, LWRP Determination of Consistency, and Certificate of Appropriateness. The Village and HPB acknowledge and agree that the time between October 18, 2023 and the date of issuance of the building permit for Phase I of the Project (which shall be not later than the date by which the building permit must be issued under paragraph I.A.2) shall not be included in calculating the one (1) year time frame for commencing work in furtherance of the Certificate of Appropriateness under Section 112-7(E) of the Village Code.
- VII. Construction. No work shall commence pursuant to the Permits until current certificates of insurance as required by Village Code § 105-3(c)(5)(b) are on file in the office of the Village Clerk. Nothing in this Agreement authorizes any work to commence on Village-owned property or any deviation from the approved Final Site Plan, the Certificate of Appropriateness, and previously submitted building plans. Nothing in this Agreement waives the requirement for any notices, easements, public improvement, or other permits.
- VIII. Escrow Agreement. The Escrow Agreement referencing this Agreement is attached as Exhibit A, and is approved by the parties.
- IX. Certificate of Appropriateness. This Agreement has been presented to the HPB solely for the purpose of approving Paragraph VI of this Settlement Agreement.
- X. Final Site Plan. This Agreement has been presented to the Planning Board for the purpose of extending the Final Site Approval for one year effective with the termination of the Litigation, and the Planning Board has approved the execution of this Agreement solely as to this clause.

XI Release of Claims and Dismissal.

- A. The Village, and its officers, employees, successors, assigns and representatives, hereby release and forever discharge PCP, and his heirs, successors, assigns and representatives, from any and all demands, claims, counterclaims, causes of action, violations, charges, obligations, expenses, fees, lawsuits and liabilities, including, without limitation, claims for recovery of actual damages, general or special, punitive damages, statutory damages or penalties, fines, attorneys' fees, costs and equitable relief, arising from the beginning of time through the date of execution of this Settlement Agreement, whether known or unknown, matured or not matured, that the Village may have or may claim to have against PCP relating to or arising out of the Project, including but not limited to the Dispute, or that were or could have been asserted in the Litigation. Nothing herein shall be construed as prohibiting, precluding, or otherwise barring the Village from pursuing any and all legal remedies under this Settlement Agreement.
- B. PCP, and its officers, employees, successors, assigns and representatives, hereby releases and forever discharges the Village, and their officers, employees, successors, assigns and representatives, from any and all demands, claims, counterclaims, causes of action, obligations, expenses, fees, lawsuits and liabilities, including, without limitation, claims for recovery of actual damages, general or special, punitive damages, statutory damages or penalties, attorneys' fees, costs and equitable relief, arising from the beginning of time through the date of execution of this Agreement, whether known or unknown, matured or not matured, that PCP may have or may claim to have against the Village relating to or arising out of the Project, including but not limited to the Dispute, or that were or could have been asserted in the Litigation. Nothing herein shall be construed as prohibiting, precluding, or otherwise barring PCP from pursuing any and all legal remedies under this Settlement Agreement.
- C. Nothing in these mutual releases shall be read as limiting the right of any party to: (i) commence an action or special proceeding concerning any cause of action that accrues after the effective date of this settlement; (ii) commence an action or special proceeding concerning any cause of action arising out of, under, or involving the New York State Constitution or United States Constitution, including without limitation any cause of action alleging a claim pursuant to 42 U.S.C. §§ 1983, 1985, or 1988; or (iii) commence an action or special proceeding concerning any cause of action arising out of the Village's rezoning of the Property or any amendments to the Village Code that apply to the Property. Nothing in these mutual releases will limit the right of any party to rely on any fact, conduct, or action occurring prior to the effective date of this settlement as evidence in any post-settlement action.

- D. The Settling Parties agree that within five (5) days of full execution of this Settlement Agreement the Settling Parties through their attorney will execute and file a stipulation of discontinuance in the form of Exhibit B in the Monroe County Clerk's Office so that the Litigation will be terminated and discontinued with prejudice as provided herein. .
- XII. Binding Effect. This Settlement Agreement shall be final and binding on, and shall inure to the benefit of all parties and upon their respective heirs, executors, administrators, successors, and/or assigns.
- XIII. No Admissions. It is understood and agreed among the Settling Parties that this Agreement is in compromise of the Dispute Nothing contained herein shall be construed as an admission of liability or wrongdoing on the part of any party.
- XIV. Whereas Clauses. Each of the Whereas Clauses in this Settlement Agreement are incorporated by reference and are part of this Settlement Agreement.
- XV. Governing Law and Venue. It is understood and agreed that this Settlement Agreement shall be governed by, construed, and enforced in accordance with, and subject to the laws of the State of New York, without regard to conflict of law provisions. Any litigation concerning this Agreement shall be brought exclusively in Monroe County, New York, and in no other jurisdiction.
- XVI. Execution. It is understood and agreed that this Settlement Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- XVII. No Waiver. No waiver of any of the terms of this Settlement Agreement shall be valid unless in writing and signed by all parties to this Settlement Agreement. No waiver of default of any term of this Settlement Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- XVIII. Partial Invalidity. If any provision of the Settlement Agreement is or may be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.
- XIX. Entire Agreement. The Settling Parties warrant that they have read this Agreement and fully understand it to be a compromise and settlement and release of all claims, known or unknown, present or future, that they have or may have against the party or parties released, arising out of the Litigation and the claims described, and that they have had an opportunity to have this Settlement Agreement reviewed by an attorney acting on their behalf. Each signatory warrants that he or she is of legal age and is legally competent to execute this Settlement Agreement, and that he or she executes this Settlement Agreement of his or her own free will and accord without reliance on any representation of any

kind or character not expressly set forth herein. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Settlement Agreement exist. This Settlement Agreement cannot be changed or terminated orally.

- XX. Representations and Warranties. Each signatory hereto warrants and represents that they have authority to bind the parties for whom the signatory acts and that the claims, suits, rights, and/or interests which are the subject matter hereto are owned by the party asserting same, have not been conveyed, assigned, transferred or sold, in whole or in part, and are free of encumbrance; and that they have carefully read and fully understand the terms of this Settlement Agreement, including the releases and obligations contained herein; and that they enter into this Settlement Agreement voluntarily.
- XXI. Construction. This Settlement Agreement is the product of negotiations and discussions among the parties and their respective attorneys. The parties hereto therefore expressly acknowledge and agree that this Settlement Agreement shall be deemed jointly prepared by and drafted by both parties and their attorneys, and that it shall be construed accordingly. This Settlement Agreement shall not be construed or interpreted for or against any party hereto because that party drafted or caused the party's legal representative to draft any of its provisions but shall be construed equally as to each party hereto.
- XXII. Amendment. Nothing in this Settlement Agreement shall limit the right of PCP to seek modification of the Plans for any Phase of the Project, which modification shall be reviewed by the Village in accordance with the Village Code in effect (and as it may be amended) at the time of the modification. None of the provisions related to cost of review or required permit fees shall apply to any portions of the Project which are modified by PCP.

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IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Stipulation of Settlement as of the date first written above.

VILLAGE OF PITTSFORD, NEW YORK

By: _____
Alysa Plummer, Mayor

BOARD OF TRUSTEES OF THE
VILLAGE OF PITTSFORD, NEW YORK

By: _____
Alysa Plummer, Mayor

STEVEN LAUTH IN HIS CAPACITY AS
BUILDING INSPECTOR OF THE
VILLAGE OF PITTSFORD

By: _____
Steven Lauth, Building Inspector

PITTSFORD CANALSIDE PROPERTIES LLC

By: _____
Christopher A. DiMarzo, Member

VILLAGE OF PITTSFORD HISTORIC PRSERVATION BOARD

By _____
_____, Chair

VILLAGE OF PITTSFORD PLANNING BOARD

By _____
_____, Chair