

Appendix 3

Stipulation; Amendment #1 to
Stipulation

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

X

ALVIN LUKASHOK, JOFLO OF NORTH SALEM,
INC. and JOFLO CORPORATION,

Plaintiffs,

-against-

TOWN OF NORTH SALEM; LOIS Q. LIPPMANN,
PETER C. BLISS, JOHN L. WHITE, PATRICK
J. MURPHY and WALTER JACOB, constituting
the TOWN BOARD of the TOWN OF NORTH
SALEM; LOIS Q. LIPPMANN, individually;
PETER C. BLISS, individually; JOHN L.
WHITE, individually, WALTER L. JACOB,
individually, and PATRICK J. MURPHY,
individually; SAMUEL WEINSTEIN,
CYNTHIA CURTIS, CHARLES VOELKL,
NANCY IMPERATO and EDWARD RINALDI,
constituting the PLANNING BOARD of the
TOWN OF NORTH SALEM; SAMUEL WEINSTEIN,
individually; CYNTHIA CURTIS, individually,
CHARLES VOELKL, individually, NANCY
IMPERATO, individually and EDWARD RINALDI,
individually,

Defendants.

STIPULATION OF
SETTLEMENT

Index No. 19771/87

Assigned to:
Hon. Matthew F.
Coppola, J.S.C.

X

WHEREAS, Plaintiffs have commenced the above entitled action to recover judgment against the Defendant, Town of North Salem, declaring, amongst other things, that the zoning ordinance adopted by the Defendant, Town of North Salem, on March 10, 1987, to be, so far as it effects the real property of the Plaintiffs, null, void and of no force and effect, and

WHEREAS, in and by said action, Plaintiffs have sought relief in the alternative and money damages against all of those persons and entities named in the caption of this action in their representative and individual capacities, and

WHEREAS, by Order of the within Court, the action against the Defendant, Walter L. Jacob, was dismissed, said Defendant no longer being a party hereto, and

WHEREAS, prior to the date hereof, the Plaintiffs have discontinued, with prejudice, the within action against all of the remaining individual Defendants herein, none of whom remain as parties hereto, and

WHEREAS, the Plaintiffs represent to the Defendants that Plaintiffs are the owners and in possession of three (3) contiguous parcels of unimproved real property comprising one hundred sixty (160) acres, more or less, located along the generally westerly side of Reed Road in the Town of North Salem, a more complete description of which is annexed hereto and made a part hereof, as Exhibit "A", and

WHEREAS, prior to the commencement of this action, Plaintiffs were in the process of seeking before the Defendant, Planning Board of the Town of North Salem, a two (2) lot subdivision approval and a site plan approval to utilize for hotel purposes that portion of their real property zoned for hotel use, and

WHEREAS, prior to the granting of Plaintiffs' final subdivision and site plan approvals, on March 10, 1987, the Defendant, Town Board of the Town of North Salem adopted the new and revised zoning ordinance referred to above, and

WHEREAS, during the past five (5) years, the parties hereto have been engaged in lengthy, protracted and costly litigation over the issues raised in the complaint herein, and

WHEREAS, the parties hereto, in an effort to resolve the disputes and claims of the parties hereto, are entering into this Stipulation,

IT IS NOW, THEREFORE,

STIPULATED AND AGREED, by and between 1) Plaintiff, 2) the Supervisor of the Defendant, Town of North Salem, on behalf of the Town Board of the Town of North Salem, 3) the Chairperson of the Planning Board of the Town of North Salem on behalf of the Planning Board of the Town of North Salem, and 4) the respective attorneys for each said person, entity and party, as follows:

I. Declaration and Findings:

That after lengthy negotiations, and deliberation, the parties hereto declare and find that:

A. It is in their best interests and in the best interests of the people of the Town of North Salem that the within action be settled and discontinued on the terms and conditions hereinafter set forth.

B. Each of the parties hereto has the power and authority to enter into this Stipulation, and upon the full and final execution thereof by the Supervisor of the Town of North Salem, on behalf of the Town Board of the Town of North Salem, the Chairperson of the Planning Board of the Town of North Salem on behalf of the Planning Board of the Town of North Salem and the respective attorneys for each said person, entity and party, this Stipulation shall be submitted to the Hon. Matthew F. Coppola, Justice of the Supreme Court of the State of New York, for approval, and shall thereafter constitute an Order in the within action.

II. Town Board of the Town of North Salem:

In furtherance of the settlement of the within action, the Town Board of the Town of North Salem shall:

A. Designate itself the Lead Agency as required by SEQRA for the proposed rezoning amendment subdivision application and application for site plan approval and any additional approvals required in connection with the proposed development of the site and thereupon take a "hard look" at all of the factors required by SEQRA to be reviewed, in order to determine if the proposed development of the site as herein provided for will have a significant and/or detrimental impact upon the environment. It is specifically understood and agreed by and between the parties to this Stipulation that the rezoning of the premises described in Schedule "B," subdivision application and application for site plan approval as herein contemplated is subject to and conditioned upon completion of all of the requirements of SEQRA, none of the issues of which have been predetermined by the Town of North Salem or by any constituent member of the Town Board of the Town of North Salem.

B. Within six (6) months after the filing of an application for the approvals contemplated herein is received by the Town, take all steps required by law to complete an amendment to the zoning ordinance and land use regulations of the Town of North Salem by rezoning that portion of the Plaintiffs' real property more particularly and generally described in Exhibit "B" annexed hereto and made a part hereof, in a manner to permit as of right the construction and utilization upon such described real property of an office building or office buildings, having a total gross floor area of 250,000 square feet, in the aggregate, to be computed in the manner defined in Section 250-5 of the Zoning Ordinance of the Town of North Salem and a height not to exceed thirty-five (35') feet, to be measured in the manner defined in Section 250-5 of said Zoning Ordinance, upon the whole of the real property so rezoned. The foregoing rezoning amendment shall further provide for such ancillary structures, amenities, and accessory uses, as are normally and customarily associated with the use of real property for an office building complex. The Town Board in an effort to speed completion of the amendment process, avoid confusion and resolve issues in the shortest period of time, shall allow and encourage all of Plaintiffs' engineers, consultants and/or experts to meet directly with the Planning Consultant for the Town of North Salem, the North Salem Town Engineer and such other experts and/or consultants retained by the Town Board of the Town of North Salem, as often as the need therefor may appear. Plaintiff agrees that it shall reimburse the Town for the cost and expense of the Town's consultants in the review of this application.

C. Provide in the rezoning amendment that in the event there shall be intended to be constructed upon the real property so rezoned, more than one office building, the construction thereof may be done in phases or sections over a period of years, not exceeding five (5) years from the date the issuance of the first building permit for the first such building.

D. Not for a period of twelve (12) years from the adoption of the zoning amendment hereinabove referred to, except upon an application of the owner of the premises described in Exhibit "A" or any part thereof, rezone any part or portion of the Plaintiffs' real property, more particularly described in Exhibit "A" hereto deleting the uses approved herein.

III. Planning Board of the Town of North Salem:

That concurrent with the Town Board's completion of all of the requirements of SEQRA and its consideration of the adoption of the rezoning amendment as hereinbefore provided and in furtherance of the settlement of the within action, the Planning Board of the Town of North Salem shall:

A. 1) Accept from Plaintiffs, preliminary subdivision and site plan applications to the extent that:

a) the subdivision application shall seek the approval for a maximum forty-nine (49) lot residential subdivision upon the premises described in Exhibit "A" exclusive of the premises described in Exhibit "B"; a one (1), two (2) or three (3) lot commercial subdivision of the premises described on Exhibit "B", and such number of additional lots as may be required to operate and maintain each of the utilities, buffers and/or recreation areas which will serve all of the residential and office building lots forming a part of the integrated subdivision and plot plan, and

b) the site plan application shall seek the approval upon the premises described in Exhibit "B" of one (1), two (2) or three (3) free-standing office buildings containing in the aggregate 250,000 feet of interior space exclusive of mechanical and utility areas, and a height not exceeding thirty-five (35') feet, to be measured in the manner defined in Section 250-5 of the Zoning Ordinance, such ancillary structures, amenities, roadways, parking areas and landscaping ~~as~~ ~~the Plaintiffs~~, as the Planning Board in conformity with the zoning ordinance of the Town of North Salem shall deem necessary.

*RRB
JAB*

B. Expeditiously review and complete the subdivision and site plan review process. In an effort to speed the completion of the review process, avoid confusion and resolve issues in the shortest period of time, the Planning Board will allow and encourage all of the Plaintiffs' engineers, consultants and/or experts to meet directly with the Planning Consultant for the Town of North Salem, the North Salem Town Engineer and such other engineers, experts and/or consultants utilized by the Town of North Salem, as often as the need therefor may appear. Plaintiff agrees that it shall promptly reimburse the Town for the cost and expense of the town's consultants in the review of this application. In addition thereto, the Planning Board shall recommend acceptance of those portions of the Environmental Impact Statements (EIS), previously filed by Plaintiffs in connection with their application seeking site plan approval for a hotel use, and shall recommend to the Town Board that it request updates and revisions to those portions of the EIS which are necessitated by the modifications and amendments on the applications herein provided for and shall recommend to the Town Board that it request, as needed, updates and revisions to those portions of the EIS including but not limited to those portions which are necessitated by the passage of time, changed circumstances and the modifications and amendments on the applications herein provided for. It is specifically understood and agreed by and between the parties to this Stipulation that the subdivision and site-plan approvals of the premises described in Schedule "A" as herein contemplated are subject to and conditioned upon the completion of all of the requirements of SEQRA, none of the issues of which have been predetermined by the Planning Board of North Salem or by any constituent member of the Planning Board of the Town of North Salem. The Planning Board, as an involved agency, will endeavor to work with the Town Board, as Lead Agency, in this coordinated review of the actions contemplated hereunder and in accordance with the requirements of SEQRA.

IV. The Plaintiffs:

That in furtherance of the settlement herein provided for, the Plaintiffs agree, as follows:

A. The Plaintiffs shall pay to the Town of North Salem as and for a development fee to defray the cost to the Town of North Salem for those improvements required to be performed by the Town of North Salem in order to ameliorate the impact of the proposed development upon the Croton Falls shopping area, the sum of \$400,000.00 payable, \$120,000.00 upon the granting of the approvals herein contemplated and the approval of the first residential subdivision plat in the event it is accomplished in phases, and, a) if there shall be two (2) or more office buildings, \$140,000.00 after Plaintiffs have received a Building Permit for one (1) office building and the final sum of \$140,000.00 upon the receipt of a Building Permit for a second office building or, (b) if there shall be one (1) office building, \$280,000.00 after Plaintiffs have received a Building Permit therefor. Notwithstanding the foregoing, this development fee hereinabove provided for shall become immediately due and payable upon the transfer, sale or conveyance of the premises described in Exhibit "A" to any person, firm, corporation or other entity in which the Plaintiffs herein shall not retain a controlling interest. The development fee provided for herein is exclusive of any fees or charges payable under the zoning ordinance of the Town of North Salem which are chargeable on a per lot basis and commonly known as a recreation fee or otherwise, but in no event shall such recreation fee for the maximum forty-nine (49) lot residential subdivision be in a total amount in excess of \$171,500.00, or \$3,500.00 per lot, payable on a per lot basis, as each subdivision plat is approved, plus a land contribution of five (5) acres, in the aggregate. The land contribution shall be made simultaneously with the approval of the first residential subdivision plat. It is agreed that the land contribution shall not in any respect decrease the number of residential lots contemplated to be approved without the express consent of the Plaintiff therefor.

V. Miscellaneous:

A. The settlement and final discontinuance of this action against the parties hereto is subject to and conditioned upon the granting of final subdivision and site plan approval and the execution of all documents, maps and plats incidental thereto as herein contemplated within seventeen (17) months from the date of the filing of an application therefor except that in the event the Plaintiff shall determine to apply for residential subdivision plat approval in phases, this action shall be finally discontinued upon the office building site plan approval and the approval of the first residential subdivision plat. The parties by mutual agreement and for reasonable cause may extend the time for the granting of the approvals herein contemplated.

B. The Supreme Court of the State of New York, County of Westchester by the Hon. Matthew F. Coppola, J.S.C. or such other Justice as may from time to time be designated, shall continue to exercise jurisdiction over this action for the purposes of periodic review to determine the progress of the within settlement and to specifically enforce those provisions of this Stipulation which are capable of specific enforcement to the extent permitted by law and of making such other or further order or judgment as it finds appropriate under the circumstances existing at the time of such application.

C. Upon the final settlement and the discontinuance of this action, the parties hereto by their respective attorneys, shall file with the Court, formal "Stipulation of Discontinuance of Action" which shall provide that the action is discontinued, with prejudice and without costs, disbursements and/or attorneys fees to any party hereto. That upon the filing of the executed "Stipulation of Discontinuance of Action" with the Court, the parties hereto shall exchange General Releases, wherein and whereby each of the Plaintiffs herein shall release each and all of the remaining Defendants herein and each of the remaining Defendants herein shall release each and all of the Plaintiffs herein, their respective heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues,

sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against it, he, she or they ever had, now has or which it, he, she or they or the successors to them hereinafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the execution of such General Release.

D. Pending the final discontinuance of this action as hereinabove provided, all further proceedings in this action shall be stayed. In the event the final settlement and discontinuance of this action shall not have occurred, through no fault of the Plaintiffs, within seventeen (17) months from the date applications for the approvals contemplated herein are received by the Town, or any later date should the same have been extended by the Parties, then and in such event the Plaintiffs herein shall have the right to apply to Justice Coppola or such other Justice of the within Court having control of this action to obtain a "Trial Readiness Order", to be issued ninety (90) days after each of the parties hereto have had an opportunity to complete any and all further disclosure herein and thereupon, this action may be calendared for trial. Upon the filing of a Note of Issue and Statement of readiness, all obligations of the parties hereto set forth in this Stipulation shall be of no further force and effect.

Dated: Mt. Kisco, New York
8th, 1992


Alvin Lukashok, Plaintiff

JOFLO OF NORTH SALEM, INC.
and JOFLO CORPORATION

By *Alvin Lukashok*
Alvin Lukashok, Secretary
Plaintiffs

Dated: North Salem, New York
Dec. 8th, 1992

TOWN OF NORTH SALEM

By *Sy Globerman*
Sy Globerman, Supervisor, by
Authorization and Resolution
the North Salem Town Board

Dated: North Salem, New York
Dec. 8, 1992

PLANNING BOARD OF THE
TOWN OF NORTH SALEM

By *Sue Ellen Gettens*
Sue Ellen Gettens, Chairperson *12/8/92*
by Authorization and Resolution
of the North Salem Planning Board

STEPHENS, BUDERWITZ & BARONI, ESQS.

Roland A. Baroni, Jr. *12/8/92*
Roland A. Baroni, Jr., Esq.
Attorneys for the Town of North Salem

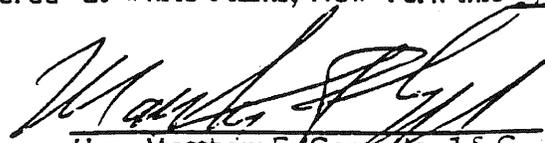
SCHEFFLER, KING & CASPER, ESQS.

By *Martin J. King*
Martin J. King, Esq.
Attorney for Plaintiffs

FARRELL, FRITZ, CAEMMERER,
CLEARY, BARNOSKY &
ARMENTANO, P.C.

By *James A. Bradley*
~~John Armentano, Esq.~~
Attorneys for Defendants
James A. Bradley, Esq.

This Stipulation of Settlement is "So Ordered" at White Plains, New York this 27th day
of December, 1992.



Hon. Matthew F. Coppola, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Hon. LINDA S. JAMIESON x
ALVIN LUKASHOK, JOFLO OF NORTH SALEM,
INC. and JOFLO CORPORATION,

Plaintiffs,

- against -

TOWN OF NORTH SALEM; LOIS Q. LIPPMANN,
PETER C. BLISS, JOHN L. WHITE, PATRICK J.
MURPHY and WALTER JACOB, constituting the
TOWN BOARD OF THE TOWN OF NORTH SALEM;
LOIS Q. LIPPMAN, individually; PETER C. BLISS,
individually; JOHN L. WHITE, individually, WALTER L.
JACOB, individually, and PATRICK J. MURPHY,
individually; SAMUEL WEINSTEIN, CYNTHIS CURTIS,
CHARLES VOEKL, NANCY IMPERATO and
EDWARD RINALDI, constituting the PLANNING BOARD
of the TOWN OF NORTH SALEM; SAMUEL WEINSTEIN,
individually; CYNTHIA CURTIS, individually, CHARLES
VOELKL, individually, NANCY IMPERATO, individually
and EDWARD RINALDI, individually,

Defendants.

AMENDMENT #1
TO STIPULATION
OF SETTLEMENT
Index No. 19771/87

Assigned to:
Hon.

J.S.C.

FILED
AND
ENTERED
ON 11/29/04
WESTCHESTER
COUNTY CLERK

RECEIVED

NOV 22 2004

WESTCHESTER COUNTY CLERK

WHEREAS, Plaintiffs commenced the above entitled action to recover
judgment against the Defendant, Town of North Salem, declaring, amongst other things,
that the zoning ordinance adopted by the Defendant, Town of North Salem, on March 10,
1987, to be, so far as it effects the real property of the Plaintiffs, null, void and of no
force and effect, and

RECEIVED
JUDGE JAMIESON'S PART
NOV 22 2004

WHEREAS, in and by said action, Plaintiffs have sought relief in the alternative and money damages against all of those persons and entities named in the caption of this action in their representative and individual capacities, and

WHEREAS, the Plaintiffs have discontinued, with prejudice, the within action against all of the individual defendants herein, none of whom remain as parties herein, and

WHEREAS, the Plaintiffs represent to the Defendants that Plaintiffs are the owners and in possession of three (3) contiguous parcels of unimproved real property comprising one hundred sixty (160) acres, more or less, located along the generally westerly side of Reed Road in the Town of North Salem, a more complete description of which is annexed hereto and made a part hereof, as Exhibit "A", and

WHEREAS, prior to the commencement of this action, Plaintiffs were in the process of seeking before the Defendant, Planning Board of the Town of North Salem, a two (2) lot subdivision approval and a site plan approval to utilize for hotel purposes that portion of their real property zoned for hotel use, and

WHEREAS, prior to the granting of Plaintiffs' final subdivision and site plan approvals, on March 10, 1987, the Defendant, Town Board of the Town of North Salem adopted a new and revised zoning ordinance referred to above, and

WHEREAS, the parties hereto have engaged in a lengthy, protracted and costly litigation over the issues raised in the complaint herein, and

WHEREAS, the parties, in an effort to resolve the disputes and claims of the parties hereto, entered into a Stipulation of Settlement, a copy of which is annexed herewith as Exhibit "C", which was ultimately submitted and signed by the Honorable

Matthew F. Coppola, Justice of the Supreme Court of the State of New York, which Stipulation of Settlement thereafter, constituted an Order of the within action. The Stipulation of Settlement dated and signed by the parties and the respective attorneys and "so-ordered" by the Hon. Matthew F. Coppola on December 8, 1992 then provided for, among other things, that a portion of the Plaintiffs' real property, particularly and generally described in Exhibit "B" and annexed hereto and made a part hereof, consisting of some forty (40) acres was to permit, subject to a complete and thorough site specific planning, engineering and environmental review, the construction and utilization of an office building or office buildings, having a total gross floor area of 250,000 sq. ft. in the aggregate; providing for the construction of forty-nine (49) one-family residences, on the approximately remaining 120 acres, and

WHEREAS, it is the parties intention to amend the original Stipulation of Settlement relating to the so-called forty (40) acre Commercial Parcel described in Exhibit "B", to permit residential uses as hereinafter described instead of and in place of the office building (s), and

WHEREAS, the Stipulation of Settlement which was so ordered by the Hon. Matthew F. Coppola, on December 8, 1992 is to remain in all respects as stated originally therein, except as modified by this amendment, and

WHEREAS, the parties have continuously agreed between themselves to extend the Stipulation which required a period of six-months after the filing of an application seeking the approvals contemplated within said Stipulation, now extended by agreement of the parties for a period up to and including December 31, 2003, to be further extended to December 31, 2004. The parties agree that the forty (40) acre Parcel, as described in

Exhibit "B", is now to be amended by this Amended Stipulation of Settlement to now permit an active adult, multi-family residential community of ~~seventy-six~~ (76) residential dwellings specifically intended for occupancy by persons 55 years or older.

IT IS NOW, THEREFORE,

STIPULATED AND AGREED, by and between 1) Plaintiffs, 2) the Supervisor of the Defendant, Town of North Salem, on behalf of the Town Board of the Town of North Salem, 3) the Chairperson of the Planning Board of the Town of North Salem on behalf of the Planning Board of the Town of North Salem, and 4) the respective attorneys for each said person, entity and party, are amending the original Stipulation of Settlement "as ordered" on December 8, 1992, as follows:

1. The original Stipulation of Settlement, so-ordered on December 8, 1992, is re-affirmed by the parties and shall remain in full force and effect as to all of the items contained therein, except as modified by this amendment, as follows:

A. Amend Paragraphs II B. and C., III A.1) a) and b), IV A. and 3. to permit, subject to a complete a thorough site specific engineering, planning, and environmental review, an amendment to the zoning code and land use regulations of the Town of North Salem by re-zoning that portion of the Plaintiffs' real property, more particularly and generally described in Exhibit "B" annexed hereto and made a part hereof, in a manner to permit, the construction and utilization upon such designated real property of an active adult, multi-family residential community, specifically intended for occupancy by persons 55 years of age or older, for at least but not more than seventy-six (76) such residential dwellings.

B. The parties agree that the Stipulation of Settlement as modified by this amendment is extended from its present extended expiration date of December 31, 2003 to and including December 31, 2004.

4. That the parties agree that Paragraphs II B and C, III A. 1) a) and b), IV A. and 3. are to be amended in accordance with this Amended Stipulation of Settlement to the extent as referenced herein, to wit, to permit the forty (40) acre parcel, previously known as the Commercial Parcel to be utilized for the construction of an active adult, multi-family residential community specifically intended for use and occupancy by persons 55 years of age or older, replacing the 250,000 square foot commercial structures originally contemplated. Said sections are amended as set forth hereafter:

a) II. Town Board of the Town of North Salem:

In furtherance of the settlement of the within action, the Town Board of the Town of North Salem shall:

B. Not later than the extended expiration date referred to above the Town shall take all steps required by law to complete an amendment to the zoning code and land use regulations of the Town of North Salem by rezoning that portion of the Plaintiffs' real property more particularly and generally described in Exhibit "B" annexed hereto and made a part hereof, in a manner to permit as of right the construction and utilization upon such described real property of an active, adult, multi-family, residential community, of at least but not more than seventy-six (76) residential dwellings specifically intended for occupancy by persons 55 years or older, upon the Exhibit "B" portion of the real property so rezoned. The foregoing rezoning amendment shall further provide for such ancillary

structures, amenities, and accessory uses, as are normally and customarily associated with the use of real property for a multi-family complex. The Town Board in an effort to speed completion of the amendment process, avoid confusion and resolve issues in the shortest period of time, shall allow and encourage all of Plaintiffs' engineers, consultants and/or experts to meet directly with the Planning Consultant for the Town of North Salem, the North Salem Town Engineer and such other experts and/or consultants retained by the Town Board of the Town of North Salem, as often as the need therefor may appear. Plaintiffs agree that they shall reimburse the Town for the cost and expense of the Town's consultants in the review of this application.

C. Not for a period of seven (7) years from the adoption of the zoning amendments above referred to, except upon an application of the owner of the premises described in Exhibit "A" or "B", or any part thereof, rezone any part or portion of the Plaintiffs' real property, more particularly described in Exhibits "A" and "B", hereto deleting the uses approved herein.

b. III. Planning Board of the Town of North Salem:

That concurrent with the Town Board's completion of all of the requirements of SEQRA and its consideration of the adoption of the rezoning amendment as hereinbefore provided and in furtherance of the settlement of the within action, the Planning Board of the Town of North Salem shall:

A. 1) Accept from Plaintiffs, preliminary subdivision and site plan applications to the extent that:

a) the subdivision application shall seek the approval for a maximum

forty-nine (49) lot residential subdivision upon the premises described in Exhibit "A" exclusive of the premises described in Exhibit "B"; and multi-family residential subdivision(s) to permit at least , but not more than, seventy-six (76) dwelling units in an active, adult, multi-family community to be utilized by persons 55 years of age or over on the premises described in Exhibit "B"; and such number of additional lots as may be required to operate and maintain each of the utilities, buffers and/or recreation areas which will serve all of the 49 residential lots and all of the active, adult multi-family residential lots to be utilized for persons 55 years of age or over forming a part of the integrated subdivision and plot plan, and

b) the ⁵site plan application shall seek the approval upon the premises described in Exhibit "B" of at least but not more than seventy-six (76) dwellings in an active, adult, multi-family, residential community, specifically intended for occupancy for persons 55 years or older; and such ancillary structures, amenities, roadways, parking areas and landscaping, as the Planning Board in conformity with the zoning ordinance of the Town of North Salem shall deem necessary.

c) IV A.

A. The Plaintiffs shall pay to the Town of North Salem as and for a development fee to defray the cost of the Town of North Salem for those improvements required to be performed by the Town of North Salem in order to ameliorate the impact of the proposed development upon the Croton Falls shopping area, the sum of

\$400,000.00 payable, \$120,000.00 upon the granting of the approvals herein contemplated and the approval of the first residential subdivision plat in the event it is accomplished in phases, and \$140,000.00 after Plaintiffs have received a Building Permit for at least forty (40) of the multi-family dwellings and the final sum of \$140,000.00 upon the receipt of Building Permits for the remaining thirty-six (36) multi-family dwellings. Notwithstanding the foregoing, this development fee hereinabove provided for shall become immediately due and payable upon the transfer, sale or conveyance of the premises described in Exhibit "A" to any person, firm, corporation or other entity in which the Plaintiffs herein shall not retain a controlling interest. The development fee provided for herein is exclusive of any fees or charges payable under the zoning ordinance of the Town of North Salem which are chargeable on a per lot basis and commonly known as a recreation fee or otherwise, but in no event shall such recreation fee for the maximum forty-nine (49) lot residential subdivision be in a total amount in excess of \$171,500.00, or \$3,500.00 per lot, payable on a per lot basis, as each subdivision plat is approved, and \$380,000.00 for the recreation fees for the active adult multi-family residential community (Exhibit B), at \$5,000.00 per unit, on a per unit basis, payable \$3,500.00 per unit upon application for a Building Permit for the unit and \$1,500.00 per unit upon issuance of the Certificate of Occupancy for the unit, plus a land contribution of five (5) acres, in the aggregate. The application(s) for Building Permits will be (two (2) four (4) unit clusters) at a time. The land contribution shall be made simultaneously with the approval of the first residential subdivision plat. It is agreed that the land contribution shall not in any respect decrease the number of residential lots contemplated to be approved without the express consent of the Plaintiffs therefor.

3. ADDITIONAL AND FURTHER AMENDMENTS TO THE STIPULATION
OF SETTLEMENT

1. All interior roads, including those indicated on the 49 single family homes parcel, as well as those indicated on the 76 active, adult multi-family residential dwellings parcel, are to be private roads.

2. There shall be a community pool for onsite recreation for the residents of the 49 single family residential development and a separate community pool for the residents of the 76 active, adult multi-family dwellings. Both the 49 single family residential development and the multi-family residential community, shall additionally each contain a community structure/facility for recreation and social purposes.

a) With respect to the forty-nine (49) single family homes, Plaintiffs agree that at least twelve (12) of said homes will be designed and marketed with a first floor master bedroom.

3. The Plaintiffs shall acquire from the Town of North Salem, off-site parcels of land, formerly known as Dino & Arties, consisting of some .9 acres on State Highway, Block 11727, Lots 9,3,4,5,6 in the Town of North Salem, subject to the right of permissive referendum, upon which Plaintiffs agree to have constructed, no more than five (5) moderate income housing units, as that phrase is defined in The Town of North Salem Zoning Code. Said moderate income housing units shall not be more than five (5) and may be at any lesser number below five (5) as the land engineering and Board of Health allows and permits for Plaintiffs' compliance with this paragraph. The purchase price for said land shall be \$400,000.00. The Town of North Salem agrees that it shall convey to the Plaintiffs suitable land (Dino & Arties five parcels) for the construction of

up to five (5) moderate income housing units, which land will be of marketable title and such that any reputable title company will approve and insure, and, that said land shall be environmentally clean and clear and environmentally remediated so that the land would be reasonably acceptable to any lender or governmental agency whose approval is required. If approvals are granted by all governmental agencies, construction of two (2) of the moderate income housing units, or whatever lesser number is allowed and approved, are to be completed, and certificates of occupancy issued, before the twentieth (20th) building permit is issued for the one family residential dwellings or the active adult multi-family units in total, and, the remaining moderate income housing units, or whatever lesser number of units are permitted and approved, shall be built and have their certificates of occupancy issued, before the fortieth (40th) building permit is issued for the active adult multi-family units or one family residential dwellings in total.

4. Said purchase price of \$400,000.00 is to be paid by Plaintiffs within sixty (60) days of receipt of all approvals from the Town Board and Planning Board of the Town of North Salem relating to the terms and conditions of this Stipulation of Settlement. In the event the parcels and the project for moderate income housing are not approved by all governmental agencies whose approvals are required without further remediation and additional construction, Plaintiffs shall be relieved of its obligations to construct any moderate income housing units as stated in the Stipulation of Settlement, but Plaintiffs shall nonetheless make the payments referenced in Paragraph 4 d) as stated hereafter.

a) Plaintiffs agree to utilize an architect of The Town of North Salem's choosing at the Town of North Salem's expense, for the moderate income housing project, who shall consult and work in conjunction with the Plaintiffs, to finalize a reasonable plan to

construct said moderate income housing units. In the event that any of the multiple housing units, or its sites, are transferred to any affordable housing group, such as, but not limited to, A-Home or the Housing Partnership, the Town of North Salem is to be reimbursed for its architect's fee so expended herein.

b) The Plaintiffs agree to pay to the Croton Falls Water District an impact fee of \$200,000.00 simultaneously with its Closing of Title to acquire the Dino & Arties parcels. The moderate income housing units shall be in the Croton Falls Water District and become member users of said water district.

c) Updated FEIS reports shall be completed by Plaintiffs for all parcels referenced herein including the Dino & Arties parcels, subject to the terms of this Stipulation of Settlement.

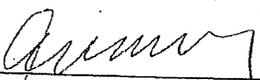
d) In the event a permissive referendum is scheduled and the necessary approval seeking the sale of the aforesaid parcels of land for \$400,000.00 is not obtained, or the Town of North Salem is unable to deliver marketable title to Plaintiffs of the aforesaid parcels of land, any and all obligations of the Plaintiffs to provide for or construct any moderate income housing units shall cease and be of no further force and effect, except in that event, Plaintiffs shall nonetheless pay the sum of \$400,000.00 directly to the Town of North Salem who shall receive said funds in trust for the Town of North Salem and said Town shall directly construct and provide for moderate income housing units at its own expense. The sum of \$400,000.00 which is to be made payable to the Town of North Salem and the sum of \$200,000.00 which is to be paid to the Croton Falls Water District as an impact fee, is to be paid within sixty (60) days of receipt of all approvals from the Town Board and Planning Board of the Town of North Salem relating to the terms

and conditions of the Stipulation of Settlement.

5. That in all other respects, the original Stipulation of Settlement, except as amended herein, shall remain as originally written and shall continue to be binding upon the parties thereto, their successors and/or assigns.

Dated: White Plains, New York

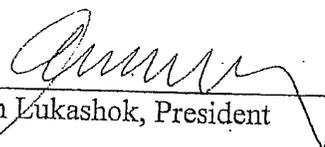
May 28, 2004



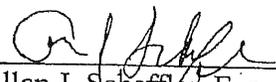
Alvin Lukashok, Plaintiff

JOFLO OF NORTH SALEM, INC.

ALLAN J. SCHEFFLER, ESQ.

By: 

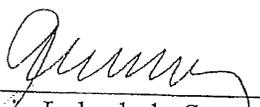
Alvin Lukashok, President

By: 

Allan J. Scheffler, Esq.
Attorney for Plaintiffs

Dated: White Plains, New York
May 28, 2004

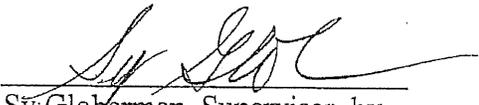
JOFLO CORPORATION

By: 

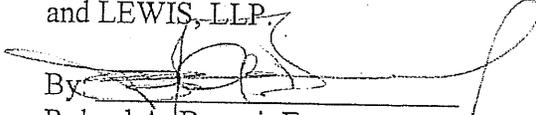
Alvin Lukashok, Secretary

Dated: White Plains, New York
May 28, 2004

TOWN OF NORTH SALEM

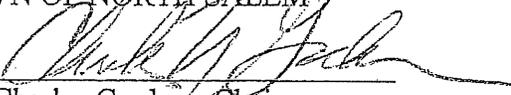
By: 
Sy Gopherman, Supervisor, by
Authorization and Resolution of
the North Salem Town Board

STEPHENS, BARONI, REILLY
and LEWIS, LLP.

By: 
Roland A. Baroni, Esq.
Town Attorneys for the
Town of North Salem and
Attorneys for Defendants

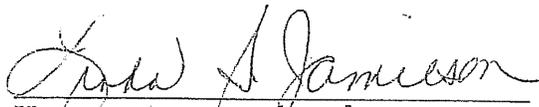
Dated: North Salem, New York
6/2, 2004

PLANNING BOARD OF THE
TOWN OF NORTH SALEM

By: 
Charles Gardner, Chairman
by Authorization and Resolution
of the North Salem Planning Board

Dated: North Salem, New York
6/2, 2004

This Amended Stipulation is "so ordered" at White Plains, New York,
this 23 day of November, 2004.


Hon. LINDA S. JAMIESON
J.S.C.

