

#2009 - 127

COUNTY OF MORRIS

BOROUGH OF MOUNT ARLINGTON

**RESOLUTION AUTHORIZING EXECUTION OF
SETTLEMENT AND RELEASE AGREEMENT IN
MORRIS COUNTY CONSTRUCTION BOARD OF APPEAL
MATTER INVOLVING 86 ROGERINE WAY, MOUNT ARLINGTON**

WHEREAS, there is presently pending an appeal in the Morris County Construction Board of Appeals of a Notice of Violation issued by the former Mount Arlington Construction Official to a Mount Arlington Property owner, Askold Lozynskyj of 86 Rogerine Way, Mount Arlington, NJ, bearing docket number MC #2009-5; and

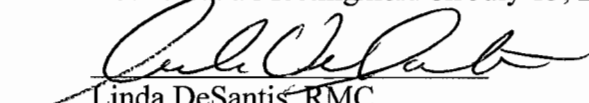
WHEREAS, the Borough Attorney has recommended that the matter be settled and has drafted an agreement resolving the issues; and

WHEREAS, the Construction Official and Zoning Officer has reviewed the terms of the agreement and have expressed no disagreement with same.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Mount Arlington as follows:

- 1) The Mayor, Construction Official and Municipal Clerk are hereby authorized and directed to take such ministerial actions as are necessary to effectuate the settlement of this matter including but not limited to executing the attached settlement agreement.
- 2) This Resolution shall take effect immediately.

I hereby certify this to be an accurate and true resolution as approved by the Mayor and Borough Council at a Meeting held on July 13, 2009.


Linda DeSantis, RMC
Borough.Clerk

AGREEMENT AND RELEASE

THIS AGREEMENT AND RELEASE (hereinafter referred to as "Agreement") made this day of May, ___ 2009, by and between Askold S. Lozynskyj and Roksolana Lozynskyj, 225 E. 11th Street, New York, New York, 10003 (hereinafter "property owner") and the Borough of Mount Arlington by and through its Construction Official (hereinafter referred to as "Borough").

WITNESSETH

WHEREAS, the Borough Construction Official issued a Notice of Violation (NOV) dated 2-23-09, regarding the alleged installation of gas piping without a permit for same in the premises known as 86 Rogerine Way, Mount Arlington NJ 07850, known on the tax maps of the Borough of Mount Arlington as Block 89, Lot 1 (hereinafter "premises"); and

WHEREAS, the property owner disputed the (hereinafter referred to as "NOV") and filed an appeal with the Morris County Construction Board of Appeals under case number MC#2009-05; and

WHEREAS, the Borough is willing to withdraw the NOV subject to the terms and conditions of this agreement and release.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

1. Release, Discharge and Indemnification. This Agreement shall constitute a full and final mutual release and discharge (the "Release") of any and all claims, rights or causes of action, known as of this date, that the parties may have had against the each

other as of this date. The Release shall apply to any and all claims, rights, demands, causes of action, obligations, damages, expenses, compensation, or action of any kind, nature, character or description that any party to this matter had based upon anything that was known to have happened up until the date of the execution of this Agreement. This Release includes, but is not limited to, any claim, demand, cause of action, obligation, damage, complaint, expenses, compensation, or action of any kind, nature, character, or description, whatsoever, arising out of or under any Federal, State, or municipal statute, ordinance or other law (whether common law, decisional law, or statute), rule, regulation, contract, executive order, policy, including any claim for attorneys' fees and costs and including any and all claims under 42 U.S.C. 1983 arising out of the fact and circumstances surrounding the NOV which is the subject of the MCCBOA appeal number MC-2009-05. The parties expressly agree that any issue relating to the structure's compliance with the Uniform Construction Code or any other applicable building code are not deemed grandfathered or exempted by this agreement. This agreement is intended to encompass the limited issue which is the subject of the Morris County Construction Board of Appeals under case number MC#2009-05 involving the alleged installation of gas piping without a permit for same in the premises. The parties hereby agree to mutually indemnify and save harmless each other with regard to the subject matter of the release and discharge.

2. Covenant as to use of premises. Property owner agrees that the portion of the premises identified as located on the ground floor and attached by ingress and egress to the second floor unit is not and shall not be a separate "dwelling unit"¹ as defined by

¹ "Dwelling unit" shall mean any room or group of rooms or any part thereof located within a building and forming a single habitable unit with facilities which are used, or designed to be used for living, sleeping,

the State Housing Code, N.J.A.C. 5:28-1.2.

3. Warranty of Capacity to Execute Agreement. Property Owner represents and warrants that no other person or entity has any interest in the Claims, or in any other demands, obligations, or causes of action referred to in this Agreement, and that they have the sole right and exclusive authority to execute this Agreement and receive the benefits specified. Each party further represents that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the Claims, or any other demands, obligations or causes of action referred to in this Agreement.

4. Entire Agreement. This Agreement contains the entire agreement among all parties concerning the matters set forth in this document, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

5. Representation of Comprehension of Document. In executing this Agreement, Property Owner represents that he has had the full opportunity to review this Agreement, that the terms of this Agreement have been completely read, and that those terms are fully understood and voluntarily accepted. One of the Property Owners is an attorney licensed to practice in the State of New York and they have appeared "pro se" throughout the negotiation of this agreement.

6. No Admission of Liability. It is agreed that in settling this matter, neither Property Owner nor the Borough and its officials are admitting to any liability or wrongdoing in any fashion.

7. Modification. This Agreement may not be modified except by an agreement in writing executed by all the parties hereto.

cooking, and eating.

8. Law. This Agreement shall be governed in all respects, including validity, interpretation, and effect by the laws of the State of New Jersey without giving effect to the conflicts of laws principle thereof.

9. Date of Agreement. This Agreement shall be dated as of the date it is last signed by any of the parties to the Agreement, which date shall be incorporated on the face page.

I hereby sign this Agreement in order to agree to the dismissal of claims, with prejudice, and release and discharge provisions as they may apply, as set forth in this Settlement Agreement and Release, it being my intention to release and discharge any and all claims I may have in and to the matters in dispute which are referenced in the Agreement.

<p>Askold S. Lozynskyj</p> <hr/> <p>Roksolana Lozynskyj</p> <hr/> <p>Dated:</p>	<p>Attest:</p> <hr/>
<p>Borough of Mount Arlington</p> <hr/> <p>Thomas Mahoney, Acting Construction Official</p> <p>Dated:</p>	<p>Attest:</p> <hr/>