

SETTLEMENT AGREEMENT

This Agreement is made by and between the Planning & Zoning Commission of the Town of Ridgefield, the Zoning Board of Appeals of the Town of Ridgefield, Paul N. Jaber, Suzanne Jaber, Pierandri Realty, LLC and The Giardini Limited Partnership.

WHEREAS, the Planning & Zoning Commission of the Town of Ridgefield is the duly designated zoning commission exercising powers delegated to the Town by General Statutes Section 8-1 *et seq.*, and has a principal address of Town Hall Annex, 66 Prospect Street, Ridgefield Connecticut (the “Commission”).

WHEREAS, the Zoning Board of Appeals of the Town of Ridgefield is the duly designated zoning board of appeals for the Town of Ridgefield, exercising powers delegated to the Town by Conn. Gen. Stat. §8-1 *et. seq.*, and has a principal address of Town Hall Annex, 66 Prospect Street, Ridgefield, Connecticut 06877 (the “ZBA”).

WHEREAS, Paul N. Jaber and Suzanne Jaber (the “Jabers”) are individuals residing at and owning the property located at 12 Sunset Lane, (a/k/a 73 Prospect Street) Ridgefield, Connecticut (the “Jabers’ Property”).

WHEREAS, Pierandri Realty, LLC is a Connecticut limited liability company with a principal place of business located at 3 Hillsdale Avenue, Ridgefield, Connecticut 06877 (hereinafter “Pierandri”).

WHEREAS, The Giardini Limited Partnership is a Connecticut limited partnership with a principal place of business located at 411 Candlewood Lake Road, Brookfield, Connecticut 06804 (hereinafter “Giardini”).

WHEREAS, Pierandri and Giardini are the owners of real property with the improvements thereon located at 63-67 Prospect Street in Ridgefield, Connecticut, which is the subject of this appeal (the “Property”) and the Property adjoins the Jabers’ Property.

WHEREAS, on May 15, 2007, on the application of Pierandri and Giardini and in accordance with the procedures in place on that date a site plan (#2007-038-SPA) was approved for the construction of 21 dwelling units with associated parking and site improvements on the Property (the “Site Plan Approval”). The Site Plan Approval was conditioned upon submission to the Commission of landscaping plans (“Condition #1”).

WHEREAS, Pierandri and Giardini asserted that the expiration date of the Site Plan Approval was automatically extended to May 15, 2016, pursuant to Public Act 11-5, and at its meeting on March 22, 2016, the Commission voted to approve Pierandri and Giardini’s request pursuant to Public Act 11-5 to extend the expiration date of the Site Plan Approval by an additional five (5) years to May 15, 2021.

WHEREAS, on March 9, 2021, the Commission approved a final landscape plan in connection with Condition #1 of the Site Plan Approval.

WHEREAS, on March 16, 2021, the Jabers appealed the approval of the final landscape plan to the Superior Court (Docket No. HHD-CV21-6148326-S) -S) (the “Jabers’ Commission Appeal”).

WHEREAS, on April 9, 2021 in connection with the Site Plan Approval, Zoning Enforcement Officer (“ZEO”) issued a zoning permit (Z-21-316) for “additions and renovations to existing residence to add an additional apartment in the rear” at the Property (the “Zoning Permit”).

WHEREAS, on April 20, 2021, the Jabers appealed the issuance of the Zoning Permit to the ZBA.

WHEREAS, the ZBA denied the Jabers’ appeal on September 13, 2021.

WHEREAS, by Complaint dated on September 24, 2021 the Jabers appealed the denial from the ZBA to the Connecticut Superior Court (Docket No HHD-CV-21-6148325S) (the “Jabers ZBA Appeal”).

WHEREAS, on May 17, 2021, the ZEO issued an order finding that the Site Plan Approval expired on May 15, 2021 and that the Zoning Permit was revoked and null and void (“May 17 ZEO Order”).

WHEREAS, on May 28, 2021, Pierandri and Giardini appealed the May 17 ZEO Order to the ZBA, appeal number 21-019.

WHEREAS, on August 17, 2021, the ZBA denied that appeal of the May 17 ZEO Order and determined the ZEO’s revocation of the Zoning Permit was valid as the Site Plan Approval expired on May 15, 2021.

WHEREAS, by Complaint dated September 2, 2021, Pierandri and Giardini appealed the decision of the ZBA sustaining the May 17 ZEO Order to the Connecticut Superior Court (Docket No HHD-CV-21-6148330S) (the “Pierandri ZBA Appeal”).

WHEREAS, the parties desire to avoid the time, expense and risk associated with litigation of the Jabers’ Commission Appeal, the Jabers ZBA Appeal, and the Pierandri ZBA Appeal.

WHEREAS, the parties desire to allow Pierandri and Giardini to proceed with a development of the Property in a manner which reduces impact on the adjoining Jabers’ Property; and,

WHEREAS, to facilitate a resolution of this matter, Pierandri and Giardini have prepared and circulated for the parties’ review a revised development plan for the Property, which constitute modifications to the site plan (#2007-038-SPA) which was the subject of the Site Plan Approval on May 15, 2007, as reflected in the attached Site Development Plans, Sheets N1, C1, C2, C3,

C3a, C4, C5, C6, N2-N7, ES1, SL-1A, dated February 18, 2021, revised to December 12, 2022, with Landscape Plan (sheet C6) revised to February 2, 2023 (collectively the “Attached Plan”) and the attached two-story rendering titled “Four Unit Building Front Elevation,” prepared by John K. Kinnear, Architect (“Kinnear Rendering”), which have incorporated the following modifications:

1. Concerning the two buildings (8 units) closest to Sunset Lane:
 - a. The height has been reduced by removing the garage level. (Note there will be no basement in these buildings.)
 - b. These now two-story buildings, as exhibited in the Kinnear Rendering, now have an attic with no dormers and no windows and no walk-up stairs, but they can have pull-down stairs inside, such that such attics shall not be residential space.
 - c. The westerly side yard setback has been reduced from 30 feet to 23 feet.
2. The remaining buildings have garages at the lower level. Such lower levels may be finished to allow residential use; provided, however, that garage areas may only be used as a garage and cannot be converted to an additional residential bedroom unit.
3. Additional landscape screening has been added along Jabers’ Property line by showing the planting of Thuja Green Giant arbor vitae, 10-12 feet in height, entirely on the Property. These are to be planted 4 feet on center and shall be of good quality.
4. The subsurface pipe discharging on Jabers Property is to be removed and replaced with catch basins
5. A note has been added to state: “Individual Unit Pickup” for refuse collection.
6. The Retaining wall on/near the Jabers Property is removed.
7. No parking will be allowed on easterly side of driveway with signage to this effect.
8. Any disturbed areas on the Jabers Property will be finished with sod, not seed/hay.
9. Plantings identified as “Thuja Green Giants” have been added along all property lines in accordance with the Attached Plan. The size of the Thuja Green Giants to be installed along the property line with Wisteria Gardens, as reflected on the Attached Plan, shall be of the same height as those to be installed along the Jabers Property line.
10. The driveway to the Property has been relocated so that the curvature of the apron is solely within the property lines of the Property if they were extended to the centerline of the street.

NOW THEREFORE, for good and valuable consideration, the Commission, the ZBA, the Jabers, Pierandri and Giardini hereby agree as follows:

1. All parties accept the modifications to site plan (#2007-038-SPA) which was the subject of the Site Plan Approval on May 15, 2007 and the additional terms and conditions submitted by Pierandri and Giardini with this Settlement Agreement.

2. Judgment may enter, and Pierandri and Giardini shall file a motion therefor together with a proposed order stating the terms of this Paragraph, in the Jabers' Commission Appeal (Docket No. HHD-CV21-6148326-S) for the Commission, Pierandri and Giardini, and in the Jabers' ZBA Appeal (Docket No. HHD-CV-21-6148325S) for the Board, Pierandri and Giardini, confirming that the Site Plan Approval of May 15, 2007, on #2007-038-SPA, as modified hereunder, shall continue in effect and the Condition #1 to such Site Plan Approval for submission of a final landscape plan is satisfied under the terms of this Settlement Agreement. The parties intend and agree that no further approvals are required from the Commission for Pierandri and Giardini, for themselves, their successors and assigns, in order to make application to obtain a building permit to construct the Property improvements depicted on the approved May 15, 2007 Site Plan, as amended and modified herein and to then occupy said improved Property.

3. Judgment may enter, and Pierandri and Giardini shall file a motion therefor together with a proposed order stating the terms of this Paragraph, in the Pierandri ZBA Appeal (Docket No HHD-CV-21-6148330S) that (1) the May 17, 2021 decision of the ZEO revoking the Zoning Permit is hereby rescinded; (2) the ZBA decision confirming said revocation is reversed; and (3) that the April 9, 2021 Zoning Permit (Z-21-316), shall remain in effect for a period of thirty-six (36) months after the effective date of this Settlement Agreement in order to commence construction. "Commence construction" shall be the issuance of a building permit and the commencement of demolition, excavation, or construction. All work shall be completed in accordance with the provisions of General Statutes § 8-3(i).

4. Within 3 days of the execution of this Agreement, the Jabers shall file a motion to withdraw the Jabers' ZBA Appeal (Docket No. HHD CV 216148325S) as against Richard Baldelli, Zoning Enforcement Officer of the Town of Ridgefield. Pierandri and Giardini, for themselves,

their successors and assigns, shall have thirty-six (36) months from the effective date of this Settlement Agreement to commence construction of the approved development. “Commence construction” shall be the issuance of a building permit and the commencement of demolition, excavation or construction. All work shall be completed in accordance with the provisions of General Statutes § 8-3(i).

5. Pierandri and Giardini, for themselves, their successors and assigns, hereby agree as follows:

- a) All plantings which are to be installed along the Property line, as reflected on the Attached Plan, shall be of good quality and shall be maintained and replaced in accordance with standard commercial practices as necessary for five (5) years from issuance of the final Certificate of Occupancy issued in connection with the Attached Plan.
- b) Construction progress shall be monitored by a landscape architect. Installation of all vegetation shall be done as soon as such landscape architect determines feasible, in any event no later than issuance of the first Certificate of Occupancy.
- c) In connection with this provision, the Jabers hereby agree to provide a written license agreement at no cost to permit grading as required by the Attached Plan. Any existing vegetation on the Jabers’ Property which is damaged during construction shall be replaced with similar Thuja Green Giant arbor vitae. Disturbed lawn areas on the Jabers’ Property shall be replaced with sod. Mulch shall be placed at the base of each tree along the Jabers’ Property line.
- d.) The project will be constructed at the density level shown on the Site Development Plans (that is, twenty-one (21) two-bedroom residential units) and no increase in density will be sought through any new or additional application, and agree that in the event of a sale or

transfer of the Property, they will make the buyer(s)/transferees aware of the existence of this Agreement and that it binds the successors and assigns of Pierandri and Giardini, including provision of a written copy of this Settlement Agreement. Any such buyer(s)/transferee(s) of a controlling interest in the ownership of the Property shall provide written notice to all parties hereto of the acquisition of the Property and the receipt of this Settlement Agreement. No further modifications of the Site Development Plans may be sought, except minor field modifications during construction, without the consent of the remaining parties.

- e.) Except for on pickup days, refuse and recycling containers shall be stored indoors or screened from view from the main site driveway.

6. In the event that Pierandri or Giardini transfer all of their respective interest in the Property to any person other than an entity or partnership partially owned by Pierandri or Giardini, respectively, Pierandri and/or Giardini, as may apply, shall be released from the agreements provided for in t Paragraph 5 and shall have no liability for the breach thereof by their heirs, successors and assigns, provided that this shall not release Pierandri and/or Giardini from any actions which breach such agreements up until the effective date and time of such transfer, nor shall it release the other if only one of them shall have transferred the Property.

7. The Commission and the ZBA have considered this Settlement Agreement. The terms of this Settlement Agreement were approved at a public meeting of the Commission held on February 7, 2023, and at a public meeting of the ZBA held on **DATE**. This proposed Settlement Agreement was identified on the agenda of such meeting, and the agenda was posted in accordance with the applicable requirements of General Statutes §§ 1-210, *et seq.* The reasons for such approval were stated on the record during such meeting of the Commission and the ZBA.

8. In return for the consideration described in this Agreement, the sufficiency of which is expressly acknowledged, **Pierandri** and **Giardini** do, for themselves, and their limited partners and general partners, members, managers, officers, directors and employees, and their successors, and assigns, hereby generally release and forever discharge the **Commission** and the **ZBA**, their members, staff, consultants and attorneys, and their successors and assigns and the **Jabers** and their consultants and attorneys, and their successors and assigns and the **Jabers** and their consultants and attorneys, and their successors and assigns of all causes of action, demands, damages, entitlements or claims for relief or remuneration of any kind whatsoever, whether known or unknown, or whether previously asserted or unasserted, stated or unstated, from the beginning of the world to the date of this Settlement Agreement. This release does not apply to the rights arising from the terms of this Settlement Agreement or the performance called for herein or to any future claims that may arise after the effective date of this Settlement Agreement. . This release shall specifically apply, *inter alia*, to any claims related to any conduct alleged during any applications or appeals identified in this Agreement.

9. In return for the consideration described in this Agreement, the sufficiency of which is expressly acknowledged, the **Commission** and the **ZBA** do, for themselves and their members, staff, consultants and attorneys and for its successors and assigns, hereby generally release and forever discharge **Pierandri** and **Giardini**, their limited partners and general partners, members, managers, officers, directors and employees, consultants and attorneys and their successors, and assigns and the **Jabers** and their consultants and attorneys, and their successors and assigns of all causes of action, demands, damages, entitlements or claims for relief or remuneration of any kind whatsoever, whether known or unknown, or whether previously asserted or unasserted, stated or unstated, from the beginning of the world to the date of this Settlement Agreement. This release

does not apply to the rights arising from the terms of this Settlement Agreement or the performance called for herein or to any future claims that may arise after the effective date of this Settlement Agreement. This release shall specifically apply, *inter alia*, to any claims related to any conduct alleged during any applications or appeals identified in this Agreement.

10. In return for the consideration described in this Agreement, the sufficiency of which they expressly acknowledged, the **Jabers** do, for themselves and their successors and assigns, hereby generally release and forever discharge the **Commission** and the **ZBA**, their members, staff, consultants and attorneys, and their successors and assigns and the Jabers and their consultants and attorneys, and their successors and assigns and **Pierandri** and **Giardini**, their limited partners and general partners, members, managers officers, directors and employees, and its successors, and assigns of all causes of action, demands, damages, entitlements or claims for relief or remuneration of any kind whatsoever, whether known or unknown, or whether previously asserted or unasserted, stated or unstated, from the beginning of the world to the date of this Settlement Agreement. This release does not apply to the rights arising from the terms of this Settlement Agreement or the performance called for herein or to any future claims that may arise after the effective date of this Settlement Agreement. This release shall specifically apply, *inter alia*, to any claims related to any conduct alleged during any applications or appeals identified in this Agreement.

11. All parties to this Agreement shall bear their own costs and attorneys' fees in connection with the Jabers' Commission Appeal, the Jabers ZBA Appeal, and the Pierandri ZBA Appeal, and no party shall seek a Bill of Costs or other recovery of any monetary amount in any of these the Appeals.

12. Nothing contained herein shall constitute an admission or confession by any of the parties of any wrongdoing, nor of any material fact.

13. This Settlement Agreement may not be amended, changed, modified, released or discharged except by a writing signed by a duly authorized representative of each of the parties hereto or their successors or permitted assigns. This Agreement shall not be varied by any oral communication either before or after its execution.

14. This Settlement Agreement shall be governed and construed in accordance with laws of the State of Connecticut.

15. The provisions of this Settlement Agreement may be enforced by the Zoning Enforcement Officer or by the Court in a motion filed in any of the three appeals identified herein.

16. This Settlement Agreement may be executed multiple counterparts each which once are executed and delivered shall be an original.

17. This Settlement Agreement shall be effective if has been executed by all parties hereto, provided that the obligations of all parties hereto are subject to the approval of the this Settlement Agreement and the Judgment to be entered hereunder, by the appropriate Court at a hearing held in conformance with the terms of Practice Book § 14-7B and Connecticut General Statutes § 8-8 (n) and the date of such Court approval shall be the effective date of this Settlement Agreement.

18. The terms and conditions of this Settlement Agreement shall inure to the benefit of, and be binding up, the respective successors and assigns of the parties hereto. This Agreement, once approved by the Court, shall be recorded on the Town of Ridgefield Land Records.