

**RESOLUTION 203-12**

**RESOLUTION AUTHORIZING EXECUTION OF SETTLEMENT  
AGREEMENT IN THE MATTER OF BOROUGH OF CLAYTON VS.  
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,  
FERNMOOR PROPERTIES, LLC, NVR D/B/A RYAN HOMES AND  
EMERSON GREEN HOMEOWNERS ASSOCIATION,  
DOCKET NO.: GLO-L-1865-11**

*WHEREAS*, the Borough of Clayton is the Plaintiff in the lawsuit of Borough of Clayton vs. Travelers Casualty and Surety Company of America, Fernmoor Properties, LLC, NVR d/b/a Ryan Homes and Emerson Green Homeowners Association, Docket No.: GLO-L-1865-11; and

*WHEREAS*, the parties have agreed to enter into a Settlement Agreement for the purpose of resolving any and all disputes and/or issues between the parties; and

*WHEREAS*, the Borough of Clayton has determined that it is in the best interest of the government as well as the citizens of the Borough of Clayton to resolve the pending litigation; and

*WHEREAS*, neither party is hereby admitting to any liability and/or responsibility but that the settlement is being entered into for the sole purpose of resolving any and all pending issues between the parties; and

*WHEREAS*, the governing body is in agreement to settle this matter.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

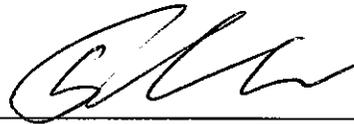
1. That the governing body does hereby authorize the settlement of the pending lawsuit titled Borough of Clayton vs. Travelers Casualty and Surety Company of America,

Fernmoor Properties, LLC, NVR d/b/a Ryan Homes and Emerson Green Homeowners Association, Docket No.: GLO-L-1865-11.

2. That the Mayor or Borough Administrator be and is hereby authorized to execute said Settlement Agreement on behalf of the Borough of Clayton.

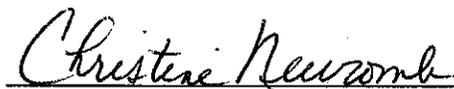
*ADOPTED*, at a regular meeting of the Mayor and Council of the Borough of Clayton on Thursday, September 27, 2012.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Municipal Clerk

**CERTIFICATION**

I, Christine Newcomb, Municipal Clerk, of the Borough of Clayton, in the County of Gloucester, and State of New Jersey do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton held on Thursday, September 27, 2012.



CHRISTINE NEWCOMB  
Municipal Clerk

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between Fernmoor Homes at Clayton, LLC, a New Jersey Limited Liability Company and Fernmoor Properties, LLC (collectively "Fernmoor"), the Emerson Green Homeowners Association ("HOA"), NVR, Inc., d/b/a Ryan Homes ("NVR"); Travelers Casualty and Surety Company of America ("Travelers") and the Borough of Clayton ("Borough").

### BACKGROUND

I. DeLuca Enterprises, Inc. ("DeLuca") was the original owner and developer of the Emerson Green Townhouses Subdivision ("Subdivision") as indicated on the recorded final plat and as such was responsible for the installation and completion of all Subdivision site and water and sewer improvements and the posting of performance guarantees and inspection fees pursuant to the terms of its subdivision and site plan approvals.

II. Fernmoor acquired certain rights and obligations relating to the Subdivision and became the owner of certain properties within the Subdivision shown on the Borough's Tax Map, and which are shown on a plan entitled "Final Plan of Lots For Emerson Green Townhouses" filed in the Gloucester County, NJ Clerk's Office on April 18, 2007 as Map #4226 ("Subdivision Plat"). Said properties are listed on Exhibit "A" attached hereto ("Fernmoor Lots").

III. DeLuca posted Bonds #104577894 (for Site Improvements; this bond is the "Travelers Site Improvement Performance Bond") and #104577899 (for Water and Sewer Improvements; this bond is the "Travelers Water and Sewer Improvements Performance Bond") with the Borough which were issued by Travelers (collectively, the "Travelers Bonds") naming DeLuca as the principal, Travelers as the surety and the Borough as the Obligee. DeLuca has ceased working on the Subdivision. Certain work within the original scope of the Travelers Bonds remain unfinished, and/or improperly constructed and/or improperly maintained.

IV. On June 13, 2007, certain areas and open spaces in the Subdivision were deeded by DeLuca to the HOA, including a basin.

V. The Borough has demanded that the Site Improvements and the Water and Sewer Improvements be completed by Fernmoor and/or Travelers and/or HOA. Travelers, Fernmoor and HOA each contend, for different reasons, that they are not responsible for completion of the Site Improvements and the Water and Sewer Improvements.

VI. On or about October 31, 2011, the Borough filed an action against the Travelers, Fernmoor, NVR, Inc d/b/a Ryan Homes and the HOA indexed at Docket No. GLO-L-1865-11 (the "Lawsuit").

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

### TERMS

A. Subject to the conditions set forth below, Fernmoor agrees that it will be exclusively

responsible to complete the Site Improvements and the Water and Sewer Improvements for the Subdivision. The cost associated with such work, including escrow charges and fees in accordance with the NJ Municipal Land Use Law ("MLUL"), will be borne solely by Fernmoor. HOA hereby grants permission and authority to Fernmoor, or upon Fernmoor's default to the Borough, to enter upon, complete and/or maintain the Site Improvements and Water and Sewer Improvement as originally approved for this Subdivision which have been conveyed to HOA by deed from DeLuca Enterprises, Inc. on June 13, 2007, until such time as the maintenance bonds have been released on this Subdivision.

- B. Travelers shall pay Fernmoor \$275,000.00 within 15 days after this Agreement is signed by all parties. In exchange, Fernmoor accepts the responsibilities herein including to complete the Site Improvements and the Water and Sewer Improvements, agrees to post the replacement performance bonds as set forth below, and releases all claims against Travelers that relate in any way to the Subdivision and/or the Travelers Bonds.
- C. Within thirty (30) days after this Agreement is signed by all parties, and subject to the provisions set forth elsewhere in this Agreement, Fernmoor will deliver, at its sole cost, to the Borough, a replacement Site Improvement performance bond in the penal sum of \$474,552.00, which is the current value of Travelers' Site Improvement Performance Bond, and a replacement Water and Sewer performance bond in the penal sum of \$144,851.04, which is the current value of the Travelers' Water and Sewer Improvement Performance Bond ("Replacement Bonds"). Upon posting of Replacement Bonds satisfactory to the Borough and the Borough Solicitor, the Borough will agree to accept the Replacement Bonds and release and return the Travelers Bonds. In the event of any default regarding the Subdivision, the Borough agrees to make no further demand or claim against Travelers or the Travelers Bonds. The Borough expressly releases and discharges Travelers from any and all claims, rights, demands, and causes of action which the Borough has or may ever have against Travelers related to the Subdivision or to the Travelers Bonds.
- D. Within forty-five (45) days of this Settlement Agreement being signed by all parties, Fernmoor will complete the repairs and maintenance work necessary so that the basin located in Lot 13, Block 404 in the Subdivision will function as designed.
- E. Subject to the provisions of the MLUL and other applicable laws, the cost of future maintenance responsibilities, escrow fees and inspection fees will be borne by Fernmoor and not by Travelers.
- F. The terms hereof are meant to address the obligations to the Borough within the scope of the Travelers Bonds and the obligations of Fernmoor set forth in this Agreement. Nothing in this Agreement shall be deemed to create any rights in favor of, or inure to the benefit of any third party or parties or to waive or release any defense or limitation against third party claims.
- G. This Agreement shall be solely governed by and construed in accordance with the laws of the State of New Jersey. In the event of a dispute between the parties, the parties voluntarily agree that the Superior Court of New Jersey, Gloucester County, shall have jurisdiction of the dispute.

- H. Any notice which is provided for or required either by this Agreement or by the Travelers Bonds or pursuant to any contractual, statutory or regulatory requirement for any cure, default or termination notice must be in writing and must be delivered to the parties by a facsimile transmission (with confirmed delivery) or other forms of delivery whereby mailing and receipt can be confirmed. Email is not an acceptable communication. All such notices shall be sent to the persons and addresses listed below:

|                | BOROUGH   | TRAVELERS   |
|----------------|---|---|
|                | Borough of Clayton<br>125 North Delsea Drive<br>Clayton, NJ 08312<br>Attn: Christine Newcomb, Borough Clerk<br>Ph: 856-881-2882<br>Fax: 856-881-0153<br>Email: cnewcomb@claytonnj.com | Michael Burkhardt, Esq. 1500 Market Street<br>Suite 2900<br>West Tower<br>Philadelphia, PA 19102<br>Phone: 267-675-3081<br>Fax: 888-201-5476<br>Email mburkhar@travelers.com                        |
| With a copy to | Timothy D. Scaffidi, Solicitor<br>28 Cooper Street<br>Woodbury, NJ 08096<br>Ph: 856-848-2950<br>Fax: 856-848-8061<br>Email:<br>tdscaffidi.scaffidi.law@verizon.net                    | Patrick Kingsley, Esq.<br>Stradley Ronon Stevens & Young<br>2005 Market Street<br>Suite 2600<br>Philadelphia, PA 19103<br>Phone: 215-564-8029<br>Fax: 215-564-8120<br>Email: PKingsley@STRADLEY.COM |

|                | HOA  | FERNMOOR  |
|----------------|--|---|
|                | Emerson Green Homeowners Association<br>c/o Target Property Management<br>2215 Old Marlton Pike<br>Marlton, NJ 08053<br>Ph: 856-988-8000<br>Fax: 856-988-8661                                  | Jeffrey Fernbach<br>Fernmoor Homes at Clayton, LLC<br>1 Kathleen Drive<br>Jackson, NJ 08527<br>Phone: 732-886-2900 (ext 13)<br>Fax: 732-886-0330<br>Email: jfernbach@fernmoorhomes.com      |
| With a copy to | Lewis S. Kurland, Esq.<br>Fernmoor Homes at Clayton, LLC<br>1 Kathleen Drive<br>Jackson, NJ 08527<br>Phone: 732-886-2900 (ext 40)<br>Fax: 732-886-0330<br>Email:<br>lkurland@fernmoorhomes.com | Lewis S. Kurland, Esq.<br>Fernmoor Homes at Clayton, LLC<br>1 Kathleen Drive<br>Jackson, NJ 08527<br>Phone: 732-886-2900 (ext 40)<br>Fax: 732-886-0330<br>Email: lkurland@fernmoorhomes.com |

The addresses and persons listed above may be changed at any time by giving written notice in accordance with this paragraph.

- I. Except to the extent expressly provided to the contrary in this Agreement, neither this Agreement nor any provision hereof shall be deemed or construed to be an admission or concession of liability of any kind or nature by any party hereto.
- J. This Agreement was written jointly by the parties. The undersigned have been represented by counsel who have materially participated in the authorship of this Agreement. The parties agree that any rule of construction providing that a written agreement is construed,

against one party drafting or preparing such an agreement shall not apply to the interpretation of this Agreement. This Agreement is fully integrated and constitutes the complete agreement between the parties. No prior statements, oral or written, nor any course of dealing or usage of trade, shall supplement or alter the terms of this Agreement. All discussions and prior agreements are merged herein.

- K. This Agreement shall be binding upon the successors and assigns of all parties hereto.
- L. This Agreement cannot be modified except in writing signed by all parties hereto.
- M. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed an original with all other counterparts constituting but one and the same Agreement. The execution of this Agreement by any parties hereto will not become effective until all of the counterparts hereof have been executed by all of the parties, although the signatures do not all need to appear on the same page. Facsimile signatures shall have the same force and effect as original signatures
- N. The parties and their signatories warrant that each has the power and authority to execute this Agreement and the signatures of no other individuals or entities are necessary to render this Agreement fully binding and enforceable.
- O. Upon the full and complete execution of this Agreement, and the acceptance of the Replacement Bonds by the Borough, the Borough will dismiss the Lawsuit with prejudice as to all defendants thereto.
- P. By signing below, NVR and the HOA release all claims against Travelers that relate in any way to the Subdivision and/or the Travelers Bonds.

WHEREFORE, the undersigned have executed this Agreement by their authorized representatives intending to be legally bound.

SIGNATURES ON NEXT PAGE

FERNMOOR HOMES AT CLAYTON, LLC &  
FERNMOOR PROPERTIES, LLC

By: \_\_\_\_\_  
Jeffrey Fernbach, Manager

Date: \_\_\_\_\_

TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE BOROUGH OF CLAYTON

By: \_\_\_\_\_

Print: Thomas Bianco

Title: Mayor

Date: 9-27-12

THE EMERSON GREEN HOMEOWNERS  
ASSOCIATION

By: \_\_\_\_\_

Jeffrey Fernbach, Trustee

Date: \_\_\_\_\_

NVR, INC.

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**

**FERNMOOR LOTS**

**[BACKGROUND PARAGRAPH II]**

Block 404, Lots 13.01 through 13.33, inclusive, and 13.46 through 13.51, inclusive.

Block 404.02, Lots 15, 16 and 17, and COAH Lots 13 and 14.

Block 404.01, Lots 5 through 11, inclusive, 16 through 25, inclusive and COAH Lots 12, 13, 14, 15, 27 and 28.