

**COPY**

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Settlement Agreement") is made by and between the Plaintiff, The Matheny School and Hospital, Inc. (hereinafter known as the "Plaintiff") and the Borough of Peapack and Gladstone and the Land Use Board of the Borough of Peapack and Gladstone (collectively referred to as the "Defendants"). The Plaintiff and Defendants shall collectively be referred to as the "Parties".

**RECITALS**

**WHEREAS**, Plaintiff requested of the Defendant Land Use Board a conditional use approval and preliminary and final major site plan for Lot 26.0A, Block 26 for the expansion of Plaintiff's Healthcare Facility and School; and

**WHEREAS**, litigation subsequently arose because the Defendant Land Use Board, acting within their jurisdictional and statutory authority: (1) conducted a interlocutory hearing and made a determination that the Plaintiff no longer satisfied the permitted conditional use standard(s) as a "Residential Healthcare Facility in Conjunction with a School," thus compelling the Plaintiff to seek and obtain an approval via a Use Variance application for its requested expansion; and subsequently (2) denied the Plaintiff said approval for the requested preliminary and final major site plan to construct an approximately 50,000 square foot building addition to Lot 26.0A, Block 26 in the Borough that would inexorably and adversely accentuate the type and magnitude of related uses conducted at the site; and

**WHEREAS**, the Plaintiff then filed a Complaint in Lieu of Prerogative Writs bearing Docket Number SOM-L-161-12 and further alleged that the Defendant Land Use Board's interpretation of the applicable ordinances and its variance denial constituted a discriminatory

violation, and thereafter, the Defendants filed an Answer denying the allegations of the Plaintiff in its litigation; and

**WHEREAS**, the Plaintiff filed a Federal Court action bearing Docket No. 3:13-cv-6802 in the Federal District Court, and the Defendants thereafter filed an Answer; and

**WHEREAS**, the Parties have reached a settlement of the within litigation the terms of which are wholly memorialized in this Settlement Agreement;

**NOW THEREFORE**, be it stipulated and agreed by and between the undersigned Parties and in consideration of the promises, mutual covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, as follows:

1. **Definitions.** For purposes of this Agreement, the following terms are defined as indicated:

a. The "Property" is Lot 26.0A, Block 26 on the official tax map of the Borough, also known as 65 Highland Avenue, which is owned by Plaintiff. As used herein, the term "Property" shall also be synonymous with the term "Matheny site".

b. "Trip" means one (1) vehicular excursion either to or from the Matheny site utilizing any portion of Highland Avenue into the Matheny site. By way of illustration and not limitation, if a vehicle travels on Highland Avenue into the Matheny site, that shall constitute one (1) "Trip", and if that same vehicle thereafter leaves the Matheny site and travels again on Highland Avenue, that action shall constitute a second "Trip".

c. "Resident" means an individual who lives at the Matheny site. Any individual who is domiciled or otherwise sleeps regularly at the Matheny site shall be considered a resident.

d. "Non-Resident" means an individual who does not live at the Matheny site.

2. Terms.

a. The Borough shall adopt, within 120 days of the date hereof an amendment to the Master Plan in a form attached hereto as **Exhibit A**, and a corresponding amendment to the Land Use Ordinance in a form attached hereto as **Exhibit B**.

b. The terms of the amendment to the Master Plan and the amendment to the Land Use Ordinance shall authorize a Residential Healthcare Facility as licensed by the State of New Jersey as a Special Hospital and as a private school as recognized and approved by the New Jersey Department of Education for students with disabilities, limited to the following uses and related improvements:

(1) Residential Health Care Facility for individuals with developmental disabilities, providing for patient care, therapeutic, rehabilitative and pharmaceutical services in support of the needs of resident patients with chronic neurologic disabilities; rehabilitation technology and services focused principally on wheel chairs, seating systems and other equipment designed to assist resident patients with disabilities.

(2) Construction of two (2) onsite group homes with a maximum of five (5) beds each for developmentally disabled resident patients under the age of eighteen (18) years, as licensed by the State of New Jersey Department of Community Affairs. The total square footage of said group homes shall not exceed 8,000 sq. ft. and shall be compliant with the requirements for low and moderate income individuals as determined by the rules for low and moderate income housing (N.J.A.C. 5:93 et seq.).

(3) Non-resident patient clinic services for developmentally disabled patients including those services provided by the Residential Health Care Facility for resident patients provided however that neurology and urology non-resident clinics shall not be authorized.

(4) Private school providing integrated educational programs for resident patients and not more than fifteen (15) non-resident students from local school districts ages three (3) through twenty-one (21) with a variety of neurologic disabilities.

(5) Adult day and educational services for resident patients twenty-one (21) years of age and older with developmental disabilities.

(6) Preexisting housing for the use of employees and visiting family members of residents, not to exceed 71 persons at any one time.

(7) Performing Arts Center limited to performances and/or exhibits by and for the benefit of resident and non-resident patients; fundraising events not to exceed a total of four (4) per year and conferences that are directly beneficial to the onsite staff of Matheny.

(8) Maintaining onsite wheelchair operations for resident patients. Wheelchair repair for non-resident patients shall be performed offsite.

(9) Gymnasium and therapeutic pool use for resident patients and their direct supervisors only.

(10) Maximum of 300 parking spaces on the Matheny site.

c. The Plaintiff Matheny has represented that applicable state licensing regulations that govern the specific health care services and operations conducted at the Matheny site will

require the Plaintiff to reduce and transfer the current bed count from the Health Care Facility, proper to remotely located group-home settings. In accordance with that mandate, the Plaintiff represents that the current bed count of 101 at the Health Care facility proper will be reduced to a maximum of 71 beds over a five (5) year period from the execution of the Settlement Agreement. In addition to the 71 beds, the Borough shall be agreeable to the addition of up to 10 more beds at the Matheny site, provided those beds are made available at either of the two onsite group homes in accordance with Section 2(b)(2) herein.

d. The uses as outlined in (b) above shall occur within the maximum number of trips which Matheny may generate in any particular quarterly year period as set forth in the Table below, subject to the following terms and conditions as set forth in this section:

(1) The Table for maximum number of trips per quarter is as follows:

1 <sup>st</sup> Quarter (January 1-March 31):	57,100
2 <sup>nd</sup> Quarter (April 1-June 30):	57,600
3 <sup>rd</sup> Quarter (July 1-September 30):	55,900
4 <sup>th</sup> Quarter (October 1-December 31):	57,400

(2) The trip count maximum number for all quarters shall be no greater than what is recorded above, and shall be subject to only a downward adjustment as predicated on the actual raw data collected for quarters three and four in 2017 and quarters one and two in 2018.

(3) Should the collection of future trip data be deficient in capturing specific day(s) within any month regardless of reason, then the agreed upon trip count value to be inserted shall be 763 for any missing weekday, and 279 for any missing weekend day or holiday as

derived by taking the current calculated daily average of 771 and 282 respectively for each day-type minus 1%.

e. In order to ensure compliance with the maximum number of trip counts on a quarterly basis, the following terms and conditions shall apply:

1. Two (2) permanent trip counters shall be installed to enforce the relevant provisions of this agreement. The trip counters shall provide to both Plaintiff and Defendant Borough real-time direct access to trip count information via the internet or other remote access. The trip counters shall be installed and exclusively operated by a third party vendor agreeable to both Plaintiff and the governing body of the Borough. The design and implementation of the trip counters shall be subject to approval by the governing body of the Borough. One (1) trip counter shall be installed at or immediately adjacent to the Highland Avenue entrance to the Matheny site and the other trip counter shall be installed at the driveway off Blair Drive leading into the Matheny site. The specific locations of each traffic counter shall be agreed upon by the engineers for the Parties prior to the inception of this Settlement Agreement. Other than emergency access for emergency vehicles, vehicular access to the Property shall be limited to the two designated access points monitored by the trip counters as set forth above. The use of any access route other than the two routes as designated herein shall constitute a violation of trip numbers and invoke the penalty provisions set forth below. (Section 2(e)(6) )

2. Thirty (30) days after the issuance of a certificate of occupancy for the proposed two (2) group homes at the Matheny site, as well as after Plaintiff's reduction in licensed beds from 101 to 71 beds is completed, or five (5) years from the date of this agreement, whichever shall come first, the governing body of the Borough shall reevaluate the traffic count numbers to determine whether a downward reduction in the number of trips per quarter is warranted. If the governing body of the Borough, after consultation with Plaintiff, determines that a downward reduction is warranted based upon the data generated by the trip counters, those trip count numbers as set forth in the table contained in (d) above shall be reduced accordingly. In no event shall the evaluations lead to an increase in any given quarter.

3. For the purpose of enforcing the provisions of this Agreement, the calculation of trip numbers shall be based solely upon the permanent trip counters as set forth above and shall be calculated as an aggregate combined number from both trip counters for each quarter. However, if it is determined that trips to or from the Matheny site are not being captured on the trip counters, then an adjustment for those extra trips shall be added to the quarterly totals by the governing body of the Borough, if the Borough is able to demonstrate by a preponderance of evidence that additional trips were made that were not captured on the trip counters.

4. For purposes of enforcement, Plaintiff shall have the affirmative obligation to advise the governing body of the Borough of the accurate number

of licensed beds on a monthly basis until said bed licensed number is reduced to seventy-one (71) beds.

5. All costs associated with the design, implementation, installation, use, regular maintenance, repair and replacement of the trip counters to insure accurate and uninterrupted function shall be borne solely and exclusively by the Plaintiff.

6. In the event that the Plaintiff shall exceed the maximum number of Trips for any quarterly year period as set forth in 2(c) above, Plaintiff shall be assessed a fine of five thousand dollars (\$5,000) for the first violation. Should Plaintiff incur a second violation for the maximum Trip number for any quarter within twenty-four (24) months of the first violation, Plaintiff shall be assessed a fine of ten thousand dollars (\$10,000.) Should Plaintiff incur a third violation of the maximum Trip number for any quarter within thirty-six (36) months of the second violation, Plaintiff shall be assessed a fine of twenty thousand dollars (\$20,000) AND the Municipal Attorney of the Borough shall be authorized to apply to the Superior Court, Somerset County, in a summary manner to obtain an Order of Enforcement of this Settlement Agreement. Plaintiff shall be responsible for all attorney's fees and costs incurred by the Defendants in seeking to obtain the Order of Enforcement. Should thirty-six (36) or more months lapse after the second violation without Plaintiff incurring a third violation, then the next violation shall be treated as a first violation for enforcement purposes. Payment of any fines, fees and costs as set forth in this



section shall be made within thirty (30) days service of written notice upon the designated Plaintiff's representative by the Defendants.

7. In connection with: (1) the construction phase of each of the two group homes on the Matheny site, or (2) the construction phase of any other construction or work done at the Matheny site which requires the procurement of a construction permit, the Plaintiff and Borough shall agree to adjust the quarterly traffic count numbers based upon a calculation as determined by the Borough Engineer, in consultation with the Plaintiff's project engineer or representative. In connection with construction projects, the Borough Engineer after consultation with Plaintiff's project engineer or representative shall determine the reasonable length of time for the construction phase period during which the traffic count numbers shall be modified in accordance with this section. The construction phase for each group home shall conclude upon the issuance of a Certificate of Occupancy for said group home.

f. Plaintiff shall agree to a Conservation Easement prohibiting development in the areas of the Property identified in **Exhibit C** attached hereto. A Deed of Easement shall be filed and recorded by Plaintiff within sixty (60) days of the effective date of this Agreement.

g. Any change in use of the Matheny property shall require a continuing certificate of occupancy prior to the change in occupancy and no certificate of occupancy may be issued by the Borough without the new occupant first obtaining preliminary and final site plan approval by the Borough of Peapack and Gladstone Land Use Board.

h. Plaintiff and Defendants agree that this Agreement is in the best interest of the Parties, furthers the public interest objectives of the Parties, as well as the purposes of the Zone Plan and the Ordinance.

i. The terms of this Agreement shall supersede the terms of any and all prior actions taken by the Defendants which are inconsistent with the terms hereof.

3. **Mutual Releases.** The Matheny School and Hospital, Inc. and the Borough of Peapack and Gladstone and the Land Use Board of the Borough of Peapack and Gladstone, on behalf of themselves and their respective successors and assigns, hereby release one another and their respective past and present shareholders, members, managers, partners, lenders, officers, directors, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, predecessors, successors, heirs, transfers, assigns and related entities thereof, and all past and present shareholders, members, managers, partners, lenders, officers, directors, agents, employees, elected and appointed officials, representatives and attorneys of any of said persons and entities from and against any and all liabilities, claims, demands, causes of action and obligations, known or unknown, which they now have against the others arising out of any and all facts and circumstances involving the Released Claims as set forth herein.

a. "Released Claims" mean, *inter alia*, and without limitation any and all known or unknown claims arising out of, or in connection with, the Litigations at issue in actions: (1) originally instituted in the Superior Court of New Jersey, Law Division, Somerset County, captioned *The Matheny School and Hospital, Inc. v. The Land Use Board of the Borough of Peapack and Gladstone et al.*, bearing Docket No. SOM-L-161-12, and the related appeal

before the Superior Court of New Jersey, Appellate Division, bearing Docket No. A-5008-13T1, and (2) *The Matheny School and Hospital, Inc. v. Borough of Peapack and Gladstone, et al.*, which is currently pending in the United States District Court for the District of New Jersey, bearing Civil Action No. 3:13-CV-06802-MAS-TJB.

b. "Released Claims" include any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys' fees, costs, torts, suits, debts, sums of money, accounting, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, extents and executions whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the releasing parties now own or hold, or have at any time heretofore owned or held, or may in the future own or hold, against the persons and entities they are releasing or any of them, in any capacity, which are or may be based upon any facts, acts, omissions, conduct, purchases, representations, contracts, agreements, claims, events, causes or matters of any kind occurring or existing at any time on or before the date of this Agreement, in connection with the Released Claims defined above.

c. These releases shall not extend to any claims that arise out of this Agreement or out of any of the other documents executed or delivered pursuant to this Agreement.

d. These releases extend to and inure to the benefit of the Parties hereto and the following Additional Released Parties: all of the Parties' past and present shareholders, members, managers, partners, lenders, officers, directors, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, predecessors, successors, heirs, transfers, assigns and related entities thereof, and all past and present shareholders,

members, managers, partners, lenders, officers, directors, agents, employees, elected and appointed officials, representatives and attorneys of any of said persons and entities.

e. The Parties represent and warrant that they have full right, power and authority to enter into these releases, that they own or have the right to release each and all of the Released Claims that they purport to release, and that they have not transferred or pledged any interest in any Released Claims to any third party.

f. The Parties represent, warrant and agree: (i) that they understand they are releasing potentially unknown claims; (ii) that these releases are fairly and knowingly made; (iii) that they are aware that they have limited knowledge with respect to certain of the Released Claims; and (iv) that the Parties specifically allocate the risk of any unilateral mistake by and party in entering into this Agreement to the party or parties who later claim they were mistaken.

g. In return for the releases the Parties have paid good and valuable consideration and have given up or foregone valuable rights and interest. The Parties agree that they will not seek anything further including any other payment from the other Parties as to any matter arising through the date hereof.

4. **No Reliance on Anything Other Than as set forth in This Agreement.** The Parties represent and warrant that, in executing and entering into this Settlement Agreement, they are not relying and have not relied upon any representation, promise or statement made by anyone which is not recited, contained or embodied in this Settlement Agreement. The Parties understand and expressly assume the risk that any fact not recited, contained or embodied herein may turn out hereafter to be other than, different from, or contrary to the

facts now known to them or believed by them to be true. Nevertheless, the Parties intend by the Settlement Agreement, and with the advice of their own, independently selected counsel, to release finally, fully and forever all released matters and agree that the Settlement Agreement shall be effective in all respects notwithstanding any such differences in facts, and shall not be subject to termination, modification or rescission by reason of any such difference.

5. **Entire Agreement.** This Settlement Agreement, including all Exhibits, constitutes the entire understanding and agreement between the Parties respecting the settlement of this litigation, and hereby supersedes any and all prior understanding, whether oral or written, formal or informal. This Settlement Agreement may not be changed or modified, except by way of a writing signed by all of the Parties.

6. **Governing Law.** This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

7. **Further Actions and Instruments.** Each Party shall use reasonable and diligent efforts to proceed promptly with the transactions contemplated herein, to fulfill the conditions precedent, and to execute such other and further documents and perform such other and further acts as may reasonable be required or appropriate to effectuate the provisions of this Settlement Agreement.

8. **Legal Representation.** The Parties hereby acknowledge that each of them has been represented by independent counsel of their own selection throughout all negotiations preceding the execution of this Agreement, that they are satisfied with advice they each have received from their respective counsel, and that they have executed the Agreement with the benefit of having received the advice of such counsel. The Parties and their respective counsel

cooperated in the drafting and preparation of this Settlement Agreement such that it shall be deemed to be their joint work product and may not be construed against any of the Parties by reason of its preparation.

9. **Severability.** If any provision of the Settlement Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and any partially invalid or unenforceable provisions, the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

10. **Modification, Termination or Waiver.** This Settlement Agreement may not be modified or amended orally and no modification, termination or waiver shall be valid unless in writing and signed by all of the Parties.

11. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of all Parties hereto and their respective heirs, representatives, assigns, successors, successors in interest, subsequent purchasers or occupiers of the Matheny site. This Settlement Agreement shall be binding, enforceable, discoverable and admissible to establish the rights, obligations and duties of the Parties hereunder in any action brought to enforce this Agreement.

12. **Counterpart, Facsimile or Email Transmission of Signatures Acceptable.** This Settlement Agreement may be executed in multiple counterparts, each of which may be an original, but all of which together shall constitute one and the same Agreement. Facsimile or email transmissions of signatures shall be deemed to constitute original signatures.

13. **Waiver.** Failure by a party to insist upon the strict performance of any of the obligations, terms, provisions or conditions of this Agreement by another party or parties, or the

failure of a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to demand and enforce strict compliance by the other parties with the obligations, terms, provisions and conditions of this Agreement.

14. **Dismissal of Federal and State Litigation.** Within ten (10) calendar days of execution of this Agreement by all parties, Plaintiff shall dismiss with prejudice the action bearing Docket No. 3:13-cv-6802 now pending in the Federal District Court. As well, to the extent any litigation remains pending in State Court in connection with the complaint in lieu of prerogative writs or any other claims filed by Plaintiff bearing Docket Number SOM-L-161-12 and / or the related appeal before the Superior Court of New Jersey, Appellate Division, bearing Docket No. A-5008-13T1, or any other related litigation, Plaintiff shall likewise dismiss same with prejudice within ten (10) calendar days of execution of this Agreement by all parties.

15. **Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given: (i) when personally delivered to a person over the age of eighteen (18) years at the address listed below, or (ii) by next day express courier, or (iii) upon delivery or refusal of same after having been mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

For Plaintiff:

Thomas J. Malman, Esq.  
Day Pitney LLP  
1 Jefferson Road  
Parsippany, NJ 07054

With a copy to:

Dr. Kendall R. Sprott, MD, JD, President  
Matheny School and Hospital, Inc.  
65 Highland Avenue

Peapack, NJ 07977

For the Defendant Borough:

John E. Bruder, Esq.  
2 West Union Avenue  
PO Box 750  
Bound Brook, NJ 08805

For the Defendant Board:

Roger W. Thomas, Esq.  
Dolan and Dolan  
1 Legal Lane  
PO Box D  
Newton, NJ 07860

With a copy to:

Clerk, Borough of Peapack and Gladstone  
Borough Municipal Building  
1 School Street  
Peapack, NJ 07977

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the  
date first above mentioned.

By Plaintiff:

Matheny School and Hospital, Inc.

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

By: \_\_\_\_\_  
Name: Dr. Kendall R. Sprott, MD, JD  
Title: President

By Defendants:

Borough of Peapack and Gladstone



By: \_\_\_\_\_  
Borough Clerk

By: \_\_\_\_\_  
Mayor William Muller

Land Use Board of the Borough of Peapack  
and Gladstone

By: \_\_\_\_\_  
Board Clerk

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