**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_ day of June 2019, by and among **\_\_\_\_\_\_\_\_\_\_\_\_** (hereinafter **“BLUE JAY PARTIES”**), together with their respective successors and assigns and **PATRICIA INGERGSOL, TRUSTEE** together with it’s successors and assigns (hereinafter **“INGERGSOL”**).

**RECITALS:**

**WHEREAS**, INGERSOLL is the owner of property in Wakefield, Massachusetts having street addresses of 84 Preston Street as evidenced by deed recorded at Middlesex South Registry of Deeds in Book 67952, Page 92 (hereinafter collectively, the “**Property**”) and INGERSOLL plans to acquire from Ryan Peiffer, Meredith Peiffer, Krishan Aneja and Rakhee Wagal, a portion of land shown as “Lot B” approximately 1,060 square feet and shown on plan entitled “Plan of Land of 5 Blue Jay Circle and 84 Preston Street, Wakefield MA”, by P.J.F. and Associates, dated December 26, 2018, a copy of which is attached hereto in order to develop thereon two 2-family dwellings (hereinafter the “**PLANS**”);

**WHEREAS**, in connection with the development of the PLANS, the parties hereto acknowledge that a certain “Declaration of Covenants and Restrictions” (“Covenant”), dated May 18, 2011, and recorded in said Deeds in Book 56873, page 255 (copy attached hereto) prohibits, for a period of ten (10) years the subdivision of any lot on Blue Jay Circle, including, the lot which includes Lot B as above-described. The parties also acknowledge that the restriction expires on May 19, 2021.

**WHEREAS**, BLUE JAY PARTIES are the current owners of all of property subject to the Covenant and desire to allow the sale of Lot B as above described on certain conditions (hereinafter described) but to otherwise maintain the said Covenant,

**NOW, THEREFORE**, in consideration of the mutual premises contained herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Recitals.** The Recitals set forth above are hereby incorporated by reference and made a part of this Agreement.

2. **INGERSOLL Settlement Requirements, Conditions, and/or Terms**.

1. INGERSOLL shall pay the costs of counsel to the BLUE JAY PARTIES to review this Agreement, the Covenant and the Plans;
2. The parties will execute an acknowledgement that other than the sale of said Lot B, the Covenant remains in full force;
3. The Plans shall not include any curb cuts on Blue Jay Circle;
4. That the five (5) existing trees along Blue Jay Circle and bordering 84 Preston Street shall not be uprooted or removed;
5. All construction/utility work to be performed in connection with the Plans shall be performed from Preston Street or within the confines of 84 Preston Street and/or Lot B and, in no event, shall involve or include Blue Jay Circle;
6. No utilities shall be installed in or under Blue Jay Circle;
7. No construction vehicles involved in the Plans shall park on Blue Jay Circle;

3. **BLUE JAY PARTIES Settlement Requirements, Conditions, and/or Terms.**

* + - * 1. BLUE JAY PARTIES shall not Appeal (or assist or support any other party to object or appeal) the Plans.
        2. BLUE JAY PARTIES shall not object to or file an appeal (or assist or support any other party to object or appeal) with respect to any other approval or permit of any sort that INGERSOLL may seek in order to construct and/or develop the PLANS so long as it is consistent with the terms of this Agreement.

4. **Miscellaneous Provisions.**

This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts. Jurisdiction and venue of any claim related to this Agreement shall be brought in the courts for the Commonwealth of Massachusetts.

The parties acknowledge that with respect to the negotiation, preparation, and execution of this Agreement, each has been represented by and advised by competent legal counsel. The parties do not intend this Agreement to be construed against any party merely because such party or such party’s counsel drafted this Agreement or any portion hereof, and the parties agree that any and all ambiguities that may exist in this Agreement shall not be construed against the party that drafted or whose counsel drafted the ambiguous language, if any.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Except as expressly stated otherwise herein, in the event of any litigation, including, but not limited to, an action for specific performance arising out of or in connection with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including reasonable attorney’s fees and expenses actually incurred in connection therewith.

Any notice, request or other communication or document to be provided hereunder to any party shall be in writing and, shall be deemed to have been provided (i) three (3) days following the date sent by certified mail in the United States mail, postage prepaid, return receipt requested, (ii) on the day following the date it is deposited prior to the close of business with a national courier service for next day delivery, or (iii) on the date of hand delivery if such party’s receipt thereof is acknowledged in writing, in each case to the address of such party set forth below or to such other address as such party may designate from time to time by notice to each other party hereto:

If to BLUE JAY PARTIES:

Copy to:

If to INGERSOLL:

Copy to: Attorney Michael P. McCarthy

One Centre Street

Wakefield, MA 01880

This Agreement represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, promises, statements and agreements, either written or oral, between the parties hereto as to the same.

This Agreement may be amended by and only by an instrument executed and delivered by each party hereto.

This Agreement shall run with the land and be binding and beneficial to all successors in title.

In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[Signatures appear on the following pages.]