

SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is made as of this 2d day of August, 2016 by and between **McCarter Highway Properties, LLC** (“**MHP**”) and **PLANewark** (“**PLANewark**”), an unincorporated member organization, which is a project of **NJ Applesed Public Interest Law Center, Inc.**, a New Jersey not-for-profit 510(c)(3) corporation. MHP and PLANewark are sometimes referred to herein together as the “**Parties**”.

Recitals

WHEREAS, MHP submitted an application to the Board of Adjustment of the City of Newark (the “**Board**”) for property located at 22-26 Central Avenue, Newark, New Jersey 07102, and designated on the tax maps of the City of Newark as Block 18, Lots 3 and 5 (the “**Property**”) for: (i) variances pursuant to *N.J.S.A. 40:55D-70.d(2)* for the expansion of the adjacent preexisting, legal non-conforming surface parking lot by the addition of Lot 3, and confirming the inclusion of Lot 5 as part of the existing surface parking lot; (ii) bulk variances pursuant to *N.J.S.A. 40:55D-70.c.* to permit an eight-foot high wooden fence to be installed along a portion of the westerly boundary of Lot 3; and (iii) preliminary and final site plan approval (collectively, the “**Approvals**”); and

WHEREAS, the Board granted the Approvals on March 24, 2015, and adopted a resolution memorializing its decision on April 14, 2016 (the “**Resolution**”); and

WHEREAS, PLANewark has filed an appeal to the Newark Municipal Council challenging the Board’s grant of the Approvals (the “**Appeal**”); and

WHEREAS, MHP and PLANewark have resolved their issues regarding the Approvals and have agreed to the terms of this Agreement to settle and conclude the Appeal.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, for good and valuable consideration, the sufficiency of which is acknowledged, and intending to be legally bound, MHP and PLANewark hereby agree as follows:

1. Dismissal of Appeal and Covenant Not to Sue. In consideration for MHP agreeing to the terms and conditions of this agreement, PLANewark agrees to withdraw its Appeal to the Newark Municipal Council, with prejudice, and covenants and agrees not to file any other appeals challenging the Board’s grant of the Approvals.
2. Design Elements. In consideration for PLANewark’s withdraw of the Appeal and agreement not to further contest the approvals, MHP agrees as follows:
 - a) Lighting. MHP shall shield the existing lighting and utilize LED light bulbs at the Property.
 - b) Buffering and Screening.

i) The planting buffer along the perimeter of Central Avenue shall remain three (3') feet wide as approved. The plantings in the three-foot buffer shall be allowed to grow to the height of the tubular metal decorative fence to be installed at the Property.

ii) MHP shall increase the height of the decorative fence along the perimeter from four (4') feet to five (5') feet. The Parties believe that such change can be accomplished administratively – *i.e.*, without the requirement for further applications to either the City of Newark Landmarks and Historic Preservation Commission (“LHPC”) or the Board. The applicable provisions of the Broad Street Station Redevelopment Plan permit the fence to be “a minimum of 4’ tall and a maximum of 6’ tall”, so no variance would be required to increase the height from 4’ to 5’. MHP shall inquire of the zoning officer, municipal planner and municipal engineer as to whether such change can be accomplished administratively, and, if so, will install a 5’ fence. PLANewark agrees to support MHP’s efforts to get such change accomplished administratively.

iii) MHP agrees to seek permission from the City to install a “green fence” along the Halsey Street frontage of the Property, in lieu of the proposed decorative fence, and not to exceed five (5') feet in height. The Parties believe that such change can be accomplished administratively. MHP shall inquire of the zoning officer, municipal planner and municipal engineer as to whether such change can be accomplished administratively, and, if so, will install the “green fence”, and thereafter shall maintain it. PLANewark agrees to support MHP’s efforts to get such change accomplished administratively. MHP shall coordinate with PLANewark regarding the design and location of the planter boxes or other infrastructure needed to support the “green fence”, to keep to a minimum, if any, any intrusion onto the public right of way while at the same time not resulting in a reduction in parking area for the parking lot of which the Property is now a part as a result of the Approvals.

iv) If any of the foregoing cannot be accomplished administratively, then MHP will make a separate application or applications for such design elements only, not an amended application, it being the intention of the Parties that the use variances granted as part of the Approvals shall remain in full force and effect and not be subject to reconsideration or further challenges. The Release and Covenant Not to Sue contained herein expressly extend to any such applications or amendments of the existing Approvals provided they are consistent with the terms of this Agreement.

c) Signage. MHP shall lower and reduce the size of the existing signage at the lot to a height and width comparable to the signage currently located at Edison’s parking lot at 386 Market Street, Newark, NJ, and separate the site sign from the rate board; *provided, however*, that if approvals are required to alter the signage from the Newark Planning Board, the Board, or LHPC, then MHP shall submit a new application, not an amendment to the existing Approvals.

d) Air Pump. MHP shall provide an air pump at the parking lot of which the Property is now a part as a result of the Approvals.

e) Electric Vehicle Charging Station. MHP shall provide an electric vehicle charging station at the parking lot of which the Property is now a part as a result of the Approvals.

f) Battery Charger. MHP shall provide a battery charger at the parking lot of which the Property is now a part as a result of the Approvals.

3. Compliance With Laws and Regulations. MHP will abide by all historic preservation laws and regulations applicable to the future development of the Property (including the parking lot of which the Property is now a part as a result of the Approvals).
4. Mutual Releases. a) MHP agrees to reimburse PLANewark \$1,300 representing the cost of the transcript it was required to purchase when filing its appeal with the City of Newark. Except for this itemized expense, PLANewark hereby unconditionally and irrevocably releases and discharges MHP from all past, present or future actions, causes of action, claims, liabilities, damages of any kind, and costs and expenses (including attorneys' fees and costs), whether known or unknown, resulting from, arising under, or relating to the Appeal or the Approvals. Nothing herein shall be construed to release any of MHP's obligations under this Agreement.

b) MHP hereby unconditionally and irrevocably releases and discharges PLANewark from all past, present or future actions, causes of action, claims, liabilities, damages of any kind, and costs and expenses (including attorneys' fees and costs), whether known or unknown, resulting from, arising under, or relating to the Appeal or the Approvals. Nothing herein shall be construed to release any of PLANewark's obligations under this Agreement.
5. No Construction Against Draftsperson. This Agreement shall be deemed to have been drafted jointly by counsel for the respective Parties, and there shall be no inference drawn against any Party as a result of their participation in the drafting of this Agreement.
6. Successors and Assigns. This Agreement is binding on the Parties hereto and their respective successors and/or assigns.
7. Confidentiality. The Parties agree that during the negotiation process, their discussions and the proposed terms of this Agreement were and remain confidential. However, the agreement itself is a public document and its terms will be shared with City officials, as specifically provided for and as necessary to carry out the intent of this Agreement.
8. General. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of New Jersey applicable to contracts to be performed wholly within the State of New Jersey. The headings used herein are for reference only and shall not affect the construction of this Agreement. This Agreement represents the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations and discussions between the Parties hereto, and their respective counsel. Any amendment to this Agreement must be in writing signed by duly authorized representatives of the Parties hereto and stating the intent of the Parties to amend the Agreement. This

Agreement may be executed by each Party in separate counterparts, each of which shall be deemed an original and constitute one document.

9. Severability. If any term or condition of this Agreement or any application of this Agreement shall be determined to be contrary to the laws of the State of New Jersey or the United States, then such term or condition or application shall not be deemed valid except to the extent permitted by law, but all other terms or conditions or applications shall continue in full force or effect.
10. Informed and Voluntary. The Parties acknowledge that each of them has consulted with legal counsel of their own selection about this Agreement. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

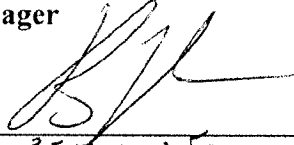
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SIGNATURE PAGE FOLLOWS

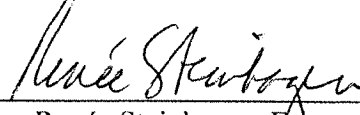
IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and have caused these presents to be signed by their proper corporate officers and members the day and year first above written.

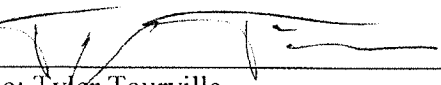
McCarter Highway Properties, LLC

By: Edison Parking Corporation,
Manager

By: 
Name: BENJAMIN FEGEUSAM
Title: EXECUTIVE VICE PRESIDENT

NJ Applesed Public Interest Law Center,
Inc., on behalf of PLANewark,

By: 
Name: Renée Steinhagen, Esq.
Title: Executive Director

By: 
Name: Tyler Tourville
Title: Chair of PLANewark