

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement"), dated as of May- ..- ._, 2023 (the "Effective Date"), is made by and between **DIANE JOY REALTY, LLC**, its representatives, trustees, officers, directors, officials, volunteers, agents, members, employees, vendors, assigns, successors in interest, insurers, indemnitors, and attorneys (hereinafter "Diane Joy Realty" or "Settling Plaintiff"), and the **BOROUGH OF RED BANK**, its present and former elected officials, officers, directors, agents, attorneys, employees, volunteers, representatives, insurers, agencies, departments and reinsurers and all of their successors and assigns (hereinafter the "Borough" or "Settling Defendant"), (hereinafter collectively referred to as the "Parties").

RECITALS

WHEREAS, Diane Joy Realty owns property at Block 31, Lot 27 (formerly 26), located at 46 Monmouth Street, Red Bank, New Jersey ("Diane Joy's Property"). The Borough is the owner of Block 31, Lot 2.01 in Red Bank, New Jersey which consists of a public parking lot known as the White Street Parking Lot (the "Borough's Property"); and

WHEREAS, Diane Joy Realty's Property is situated between two adjacent buildings to its western and eastern sides with its storefront facing Monmouth Street to its south, and the Borough's Property to its North. North of the Borough's Property is White Street.

WHEREAS, Diane Joy Realty has utilized an easement existing on the Borough Property for access to White Street for the delivery of goods and services (the "Easement").

WHEREAS, in and around the summer of 2020, the Borough reconfigured the White Street Parking Lot which encumbered Diane Joy Realty's use of the Easement.

WHEREAS, on April 28, 2022, Diane Joy Realty filed suit against the Borough in the

New Jersey Superior Court, Chancery Division, Monmouth Vicinage, under Docket No. MON-C-53-24 (the "Action") seeking: (i) quiet title and settlement of its rights to the Easement; and (ii) declaratory judgment confirming its right to use the Easement across the Borough Property for the ingress and egress of vehicles and commercial vehicles for its business purposes (the "Action"); and

WHEREAS, the Parties desire to fully and finally settle all claims among them that were asserted or that could have been asserted in the Action, whether known and/or unknown; and

WHEREAS, the Parties have had an opportunity to confer with their legal counsel and have reached a voluntary resolution with respect to the disputed issues, with a full understanding of the terms of the Agreement and a desire to memorialize same herein; and

WHEREAS, the Borough does not admit liability or wrongdoing of any kind; and

NOW, IN CONSIDERATION, of the foregoing premises and releases, terms of settlement, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

TERMS

1. The Borough shall restore the Easement to its original configuration consistent with the plan attached hereto as **Exhibit "A"** ("Easement Restoration").

2. The Borough shall begin construction on the Easement Restoration on or after September 15, 2023.

3. The Borough shall remit payment to Diane Joy Realty in the amount of Fifteen Thousand (\$15,000.00) Dollars as reimbursement of Diane Joy Realty's attorney's fees related to the Action on or before

4. The Borough shall propose and adopt a resolution memorializing the terms of this Agreement.

5. Diane Joy Realty, its trustees, officers, officials, volunteers, agents, members, employees, vendors, assigns, successors in interest, insurers, indemnitors, attorneys and all persons acting by or through Settling Plaintiff (individually and collectively referred to herein as "Releasor") hereby releases, acquits and forever discharges the Borough, its present and former elected officials, officers, directors, agents, attorneys, employees, volunteers, representatives, insurers, agencies, departments and reinsurers and all of their successors, assigns and attorneys from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, executions, demands, and obligations in law or equity, whether known or unknown, which they ever had, now have, or hereafter can, shall, or may have, from the beginning of time through the Effective Date of this Agreement, related to or arising from the claims and allegations set forth in the Action.

6. The Parties acknowledge the settlement of the Action reflects a desire of the Parties to amicably resolve the issues disputed and the Parties expressly acknowledge this Agreement does not constitute and shall in no manner be construed as an admission of any wrongdoing or liability, or violation of any federal or state constitution, statute, or common law rights or of any other possible or claimed violation of law or rights on the part of the Borough, or as an admission by the Borough as to the validity of any of Diane Joy Realty's allegations asserted in Complaint filed in the Action and/or as supplemented during the course of discovery during the course of the

Action. The Borough continues to maintain the validity of any and all denials and affirmative defenses set forth in its Answer to the Complaint filed in the Action.

7. In the event any party breaches the terms and provisions set forth in the preceding paragraphs, then any other party shall be entitled to bring an action for breach of this Agreement. If any party seeks to enforce or rescind this Agreement as a result of a breach, the non-breaching party(ies) will be entitled to be restored to the status quo ante or an order of enforcement, plus attorney fees to the prevailing party.

8. By executing this Agreement, Diane Joy Realty represents and acknowledges that it does not rely, and has not relied, upon any representation or statement not set forth in this Agreement made by the Borough, or its respective counsel, with regard to the subject matter, basis, or effect of this Agreement or otherwise. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between the Parties.

9. This Agreement shall be binding upon and inure to the benefit of the Parties and any of their respective heirs, legal or personal representatives, or their agents, employees, officers, elected officials, successors or assigns.

10. This Agreement shall be construed in accordance with the laws of the State of New Jersey, without regard to the conflicts of laws or choice of law provisions thereof.

11. The Parties agree that the language of this Agreement has been negotiated, is a product of the draftsmanship of all of the Parties and the usual rule that the provisions of a document are to be construed against the drafter shall not apply to the interpretation of any provision hereof.

12. The signature of the Parties hereinbelow indicates such Parties have had an opportunity to review this Agreement with their respective attorney(s), that they have read and

understood the provisions, and that they have executed it voluntarily with full knowledge of the significance of all provisions.

13. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original. Scanned, facsimile copies, and copies signed via DocuSign of this Agreement shall be deemed the same as originals and shall not delay the timing of payment.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement is executed.

DIANE JOY REALTY, LLC

By: _____
Name:
Its:

Dated: _____

BOROUGH OF RED BANK

By: _____
Name:
Its:

Dated: _____

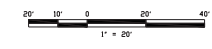
EXHIBIT "A"


PROJECT INFORMATION:
 DRAWING NO: 230201-0001
 FILE NAME: 230201-0001.dwg
 DATE: 08 FEB 2023, 2:08PM
 LAST SAVE BY: C:\Users\jmcginn

DESIGNED BY: JMC
 CHECKED BY: JMC
 DRAWN BY: JMC
 DATE: 02/08/23
 SCALE: AS SHOWN
 PROJECT NO: 230201-0001



© 2023 Microsoft Corporation. © 2022 Maxar. ©CNES (2022) Distribution Airbus DS.



	NO. OF SHEETS: 10 SHEET NO.: 10 DATE: 02/08/23
***** LICENSED PROFESSIONAL ENGINEER STATE OF OH LICENSE No. 94999	
##### ##### ##### #####	##### ##### ##### #####
 <p>YOUR GOALS. OUR MISSION.</p> <p>11 TRIGALL ROAD MIDDLETOWN, OH 43042 TEL: 732-671-0400 FAX: 732-671-7365</p> <p><small>NEW JERSEY BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS CERTIFICATE OF REGISTRATION REQUIRED</small></p> <p>OFFICES LOCATED IN: CALIFORNIA, INDIANA, KENTUCKY, MASSACHUSETTS, MICHIGAN, NEW JERSEY, OHIO AND PENNSYLVANIA</p>	
DESIGNED BY: JMC CHECKED BY: JMC DRAWN BY: JMC DATE: 02/08/23 SCALE: AS SHOWN PROJECT NO: 230201-0001	SHEET NO.: 10 SHEET: 10 DATE: 02/08/23 SCALE: AS SHOWN PROJECT NO: 230201-0001

[FILED]

MAY 2 2023

Joseph P. Quinn, P.J.Ch.

PREPARED BY THE COURT

DIANE JOY, LLC.,

Plaintiff(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: MONMOUTH COUNTY
POCKET NO. MON-C-\$3-22

vs.

DISPOSITION ORDER

BOROUGH OF RED BANK,

Defendant(s)

It is on this day of May, 2023 ORDERED that this matter is hereby dismissed and/or disposed due to the follo

- 004 Partially Tried
- DOS Tried to Completion w/jury
- 007 Tried to Completion w/o jury
- DOS Pefault
- 009 Summa,ry Judgment
- D10 Dismissed w/prejudice
- 012 Dismissed w/o prejudice
- D17 Settled by Statutory Arb 50/day Dismissal
- 018 Reinstated
- D Voluntary Dismissal (Y)
- 023 Settled before t'lial
- 024 Settled while scheduled fo1· trial·
- 025 Settled while scheduled for Arbitration
- 026 Settled while scheduled for CMC Track 2 Initial QTrack 2 Follow up
- 027 Settled Friendly Hearing Completed
- 028 Settled by other CDR
- 029 Settled by Conference by Judge
- 082 Default Judgment/Proof Hearing completed

- 0 Plaintiff Attorney failed to appeal, Dismissed by Court
- 0 Plaintiff failed to Appear. Dismissed by Court.
- D Defendant failed to Appear. Default Entered.
- D Plaintiff and Defendant failed to Appear, I>dismissed by Court.

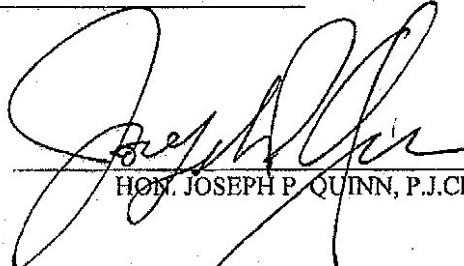
0 It is further ORI;>ERED that the plaintiff/defendant shall s rve a copy of this Order on the plaintiff/defendant within 10 days ofthe above date. **AC** -j;b.e,

COMMENTS/OTHER: C.t.,5£ A- f/4.7i/J .fl),,, S-, z- i:i .

ATTORNEYS ARE TO SIGN ON THE LINES PROVIDES BELOW: .

----- FOR -----

_____ FOR _____



HON. JOSEPH P. QUINN, P.J.Ch.