

## SETTLEMENT AGREEMENT

WHEREAS the Institution for Savings in Newburyport and its Vicinity (the "INSTITUTION"), the City of Newburyport (the "CITY") and the City of Newburyport Planning Board and its Members (the "PLANNING BOARD") (together with the CITY, the "CITY DEFENDANTS") (collectively, the "PARTIES") are parties to that certain action captioned Institution for Savings in Newburyport and its Vicinity v. City of Newburyport, et al., Land Court Docket No. 21 MISC 000237 (HPS), (the "LAWSUIT") wherein the INSTITUTION seeks to overturn the PLANNING BOARD's denials of a special permit and site plan approval for an addition to the INSTITUTION's banking headquarters in downtown Newburyport, but also including a challenge to the CITY's Downtown Overlay District; and

WHEREAS the INSTITUTION and the undersigned CITY officials (the "CITY PARTIES"), on behalf of the CITY DEFENDANTS, duly-authorized, have engaged in mediation with the Honorable Mitchell H. Kaplan (Ret.), serving as mediator, and now agree to resolve the LAWSUIT, pending PLANNING BOARD approvals on remand, on the following terms and conditions, which are the product of negotiation and compromise, deemed by the PARTIES to be in their mutual interest;

NOW, THEREFORE, the PARTIES hereby agree as follows:

1. That, upon joint Motion submitted by the PARTIES by and through their respective counsel-of-record, the LAWSUIT shall be remanded to the PLANNING BOARD for a further consolidated public hearing on the INSTITUTION's special permit and site plan approval applications; and the PLANNING BOARD shall use best efforts to conclude its review in one (1) meeting if reasonably possible. The PLANNING BOARD shall reconsider its votes on said applications; it being anticipated that the PLANNING BOARD will vote to approve the same based on the materials and plans last before the PLANNING BOARD before it voted to deny, i.e. on March 17, 2021, see Exhibit I to the Complaint filed in the LAWSUIT, but subject to the following negotiated revisions thereto and other commitments:

- (a) The INSTITUTION has committed to, and will, incorporate the design changes shown on the renderings annexed hereto as **Exhibit 1**, to give the appearance of height reductions for both the addition and its connector to the existing Bank building. These changes include a lowering of the addition's cornice height; as well as continuance of said cornice height through the aforesaid connector, replacing the exterior treatment above said cornice with copper.<sup>1</sup> The INSTITUTION's architect shall present the PLANNING BOARD with two (2) options for copper detailing.
- (b) Along the addition's Prospect Street façade, the so-called central bay

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<sup>1</sup> During and between mediation sessions, the INSTITUTION did establish, and support by statements from its engineer and architect, that any further reduction in the (eave) height of the addition and/or connector presents numerous challenges implicating means of egress, stormwater management, site grading and emergency access. The cost and uncertainty associated with such an attempted reduction outweighs any *de minimus* height reduction that might be achieved, which would be imperceptible to the average person.

will be given a recessed appearance by extending the building facades toward Prospect Street to provide an 18-inch return, as shown on the rendering annexed hereto as **Exhibit 1**.

- (c) The INSTITUTION confirms that the façade of the addition will utilize brick of a different color variation than that comprising the existing, i.e. circa-1980, addition to the Bank, so as to distinguish it visually; provided, however, that the brick façade of the connector shall be consistent with the brick of the 1980s addition.
- (d) First-floor, i.e on-grade, windows on the addition's Prospect Street façade will be comprised of spandrel glass. Spandrel glass is opaque glass that is often used to conceal structural building components such as columns, floors, HVAC systems, vents, electrical wiring and plumbing, preventing these from being visible from the exterior of the building. It will also function to prevent the spill of light from vehicles (or other sources) onto Prospect Street. The INSTITUTION will provide a sample of the glass to be used.
- (e) The INSTITUTION will present to the PLANNING BOARD, on remand, a comprehensive planting plan prepared by its landscape consultant including the areas immediately adjacent to the addition along both Prospect Street and Otis Place; it being understood the the PLANNING BOARD is expected to request dense plantings to soften the appearance of the addition.
- (f) The INSTITUTION will also present the PLANNING BOARD, on remand, as a part of the aforesaid planting plan, a proposal for separating the aforementioned planting beds from the adjacent sidewalks, e.g. by raising them by approximately six (6) inches above the grade of the sidewalk.
- (g) A noise and exhaust study will be provided as requested, to verify no meaningful impact(s) on the neighborhood or the City. Specifically, the INSTITUTION will measure pre- and post-developpment noise and exhaust, using a professional qualified to complete the same, and will submit the results thereof to the CITY.<sup>2</sup> Should mitigation be required, the INSTITUTION will work with the CITY DEFENDANTS in good faith to effectuate the same.

2. All CITY PARTIES agree to recommend and support the approval of the special permit and site plan upon the terms set forth herein.

3. That the within Agreement (the "AGREEMENT") and the PARTIES'

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<sup>2</sup> The INSTITUTION expects a reduction in noise and exhaust, where the Bank's generator, presently outdoors, will be relocated to the interior of the strucutre; where vehicle parking will likewise be moved inside; and where a new mechanical exhaust system will be installed.



respective obligations hereunder are expressly contingent upon the PLANNING BOARD issuing a special permit and site plan approval to the INSTITUTION on the terms described above, and none other. The PARTIES further agree that, if the special permit and site plan approval have not been filed with the City Clerk by December 16, 2021, this AGREEMENT shall become null and void unless extended by agreement of the PARTIES.

4. That, upon the PLANNING BOARD's approvals and passage of the appeal periods without appeals, and the subsequent and immediate recording of the PLANNING BOARD's decisions with the Essex South District Registry of Deeds, the PARTIES shall forthwith file with the Land Court a Stipulation of Dismissal of the LAWSUIT, with prejudice and with all rights of appeal waived, each PARTY to be responsible for its own costs, expenses and attorney's fees incurred in connection with the LAWSUIT, whether in advance thereof, during the litigation or otherwise associated therewith, including for mediation.

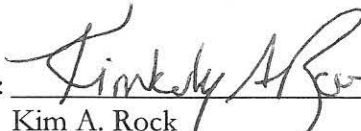
IN WITNESS WHEREOF, the PARTIES execute this AGREEMENT, under seal, as of and effective on the date indicated below.

INSTITUTION


Date: October 4, 2021

By:   
Michael J. Jones  
President and Chief Executive Officer

Date: October 4, 2021

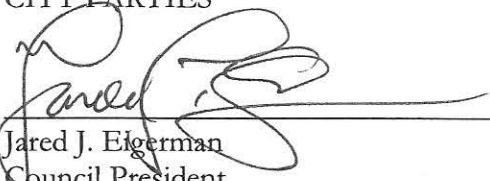
By:   
Kim A. Rock  
Executive Vice-President and Chief  
Operating Officer

Date: October 4, 2021


  
Adam J. Costa, Esq.  
Counsel

CITY PARTIES

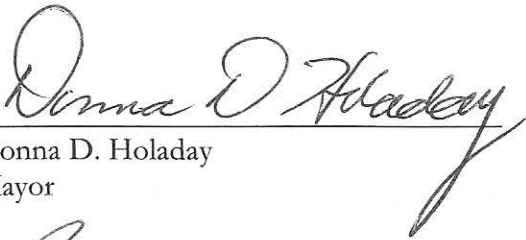
Date: October 4, 2021

  
Jared J. Eigerman  
Council President

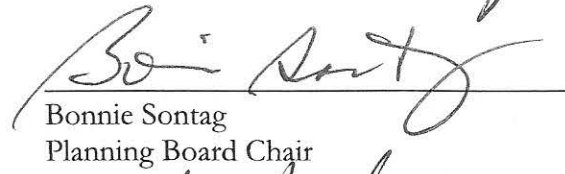
Date: October 4, 2021

  
Heather L. Shand  
Councilor

Date: October 4, 2021

  
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Donna D. Holaday  
Mayor

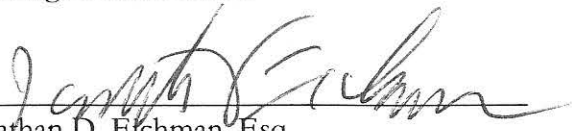
Date: October 4, 2021

  
\_\_\_\_\_  
Bonnie Sontag  
Planning Board Chair

Date: October 4, 2021

  
\_\_\_\_\_  
M.J. Verde  
Planning Board Member

Date: October 4, 2021

  
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Jonathan D. Eichman, Esq.  
City Solicitor

MEDIATOR

Date: October 4, 2021

  
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Honorable Mitchell H. Kaplan (Ret.)