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The Trustees of The Stevens Institute of Technology

THE TRUSTEES OF THE STEVENS
INSTITUTE OF TECHNOLOGY,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.

Plaintiff,

Civil Action

v.

CITY OF HOBOKEN; and THE MAYOR
AND COUNCIL OF THE CITY OF
HOBOKEN

COMPLAINT
IN LIEU OF PREROGATIVE WRITS
AND FOR OTHER RELIEF

Defendants.

Plaintiff, The Trustees of the Stevens Institute of Technology (hereinafter, “Stevens”), by way of Complaint in Lieu of Prerogative Writs, alleges and says:

GENERAL ALLEGATIONS

Nature of Action

1. On March 20, 2019, the City Council of the City of Hoboken (the “Council”) passed Ordinance No. B-119, which set forth certain procedures and requirements for the sale and use of temporary no-parking (“TNP”) signs to persons or entities who require temporary use of metered parking spaces in support of their various activities (hereinafter, the “Original TNP Ordinance”). The Original TNP Ordinance explicitly exempted all nonprofit organizations from paying any fees to obtain TNP signs in recognition of their nonprofit status (the “Fee Exemption”). A true and accurate copy of the Original TNP Ordinance is annexed as Exhibit A.

2. Despite the existence of the Original TNP Ordinance and the Fee Exemption, the City of Hoboken (the “City”), through a memorandum from the Hoboken Director of Transportation and Parking dated May 7, 2019 (the “Demand Letter”), demanded that Stevens pay over \$110,000 per month for the use of sixty-two (62) public parking spaces along Sinatra Drive during construction of a three-story, 70,000-square-foot university center building with two residential towers (the “University Center”) on its campus. A true and accurate copy of the Demand Letter is annexed hereto as Exhibit B.

3. Stevens contacted the City’s Corporation Counsel to reiterate that Stevens is a nonprofit organization that is *exempt* from any TNP sign fees in accordance with the Original TNP Ordinance.

4. The City, in an effort to extract approximately \$4,000,000 from Stevens, sprang into action to amend the Original TNP Ordinance for the second time in six (6) months, this time to limit the Fee Exemption.

5. Before the amendment of the Original TNP Ordinance, and in an effort to be responsive to the public need for parking, Stevens, in good faith, engaged with the City to negotiate terms and conditions for the City’s use of parking spaces in Stevens’ parking lot along Sinatra Drive (the “Griffith Parking Lot License Agreement”). A true and accurate copy of the proposed Griffith Parking Lot License Agreement is annexed hereto as Exhibit C. The terms of the Griffith Parking Lot License Agreement can be summarized as follows:

- a. Stevens agreed to make sixty-two spaces in the Griffith Parking Lot available 24 hours a day, 7 days a week, during the construction of the University Center project, and to permit the City to install and charge meter fees;

- b. After construction of the University Center project has concluded, fifty (50) parking spaces would continue to be available to the public during extended hours for the remaining twenty-year term of the Agreement;
- c. Stevens agreed to pay \$40,000.00 to the City for costs associated with promotional and administrative activities associated with the Griffith Parking Lot spaces;
- d. Stevens agreed to install signage throughout the lot indicating which spaces were available for parking by City residents; and
- e. The City would be entitled to set meter fees, collect all associated revenues, and handle various administrative tasks.

(such terms shall collectively be referred to herein as the “Mitigation Efforts”).

6. The City represented that the it would approve the Griffith Parking Lot License Agreement before amending the Original TNP Ordinance, thereby ensuring that the University Center project would remain exempt from the imposition of TNP fees. Various City representatives worked towards that goal.

7. On July 10, 2019, the Council adopted a “RESOLUTION AUTHORIZING THE EXECUTION OF A GRIFFITH PARKING LOT LICENSE AGREEMENT TO MITIGATE PARKING IMPACTS RESULTING FROM CONSTRUCTION ON SINATRA DRIVE” (hereinafter, the “Stevens Resolution”), which approved the Griffith Parking Lot License Agreement and authorized the Mayor and City Clerk to execute it. A true and accurate copy of the Stevens Resolution is annexed as Exhibit D.

8. Also on July 10, 2019, the Council adopted on second reading an “ORDINANCE AMENDING CHAPTER 190-12.1 SALE AND USE OF TEMPORARY NO PARKING SIGNS” (hereinafter, the “Amended TNP Ordinance”). A true and accurate copy of the Amended TNP

Ordinance is annexed as Exhibit E. The Amended TNP Ordinance removes the Fee Exemption for nonprofit organizations; instead, it provides an extremely limited waiver of fees for nonprofit organizations for only ten cumulative days per calendar year.

9. The City introduced and passed the Amended TNP Ordinance as a direct result of the City's realization that Stevens qualified for the Fee Exemption.

10. The Mayor of the City of Hoboken (the "Mayor") signed the Amended TNP Ordinance on July 11, 2019.

11. On August 8, 2019, contrary to the City's prior representations and actions, the Mayor notified Stevens that he would not sign the Griffith Parking Lot License Agreement and would instead apply the Amended TNP Ordinance to the University Center project and require Stevens to pay millions of dollars in TNP fees.

12. This is an action in lieu of prerogative writs by which Stevens seeks an order (i) declaring the Amended TNP Ordinance to be improper, invalid, unlawful, arbitrary, capricious, null and void, unconstitutional, and of no force and effect; (ii) rescinding the Amended TNP Ordinance or in the alternative, estopping the City from applying it to Stevens' University Center project; and (iii) awarding injunctive and such other appropriate relief pursuant to N.J.S.A. 10:6-2.

13. Through this action, Stevens also seeks a declaration that the imposition of TNP fees pursuant to the Amended TNP Ordinance would violate the terms of an easement between Hoboken Railroad Warehouse and Steamship Connecting Company (Stevens' predecessor in title to Sinatra Drive) and the City, dated July 28, 1975, and recorded in the Hudson County Land Records at Book 3189, Page 316 ("Roadway Easement"). A true and accurate copy of the Easement is annexed as Exhibit F.

14. In the alternative, should the Amended TNP Ordinance be determined to be valid and enforceable against Stevens, then Stevens seeks an order requiring the City to implement the Stevens Resolution and to enforce and execute the Griffith Parking Lot License Agreement

The Parties

15. Stevens is a private, not-profit research university with its principal place of business at 1 Castle Point Terrace, Hoboken, New Jersey 07030. Stevens is a non-profit corporation existing under the laws of the State of New Jersey and has been recognized as a tax-exempt charitable organization by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. Stevens is registered to do business as Stevens Institute of Technology.

16. Defendant City, having its principal place of business at 94 Washington Street, Hoboken, New Jersey 07030, is a municipality organized under the laws of the State of New Jersey.

17. Defendants Mayor and Council, having their principal place of business at 94 Washington Street, Hoboken, New Jersey 07030, are the duly elected governing body for the City.

BACKGROUND

Facts Concerning Stevens' University Center Project and Sinatra Drive

18. Stevens Institute of Technology is a 501(c)(3) not-for-profit educational institution that has been providing higher education to residents of the City of Hoboken, New Jersey and beyond since 1870.

19. Stevens is currently constructing its University Center project, which includes a three-story, 70,000-square-foot university center building with two residential towers to accommodate almost 1,000 students.

20. The University Center project will assist Stevens in housing its student population, and is scheduled for completion in 2022.

21. On or about August 20, 2018, Stevens applied to the City of Hoboken Planning Board for preliminary and final site plan approval to construct the University Center project. The City of Hoboken Planning Board unanimously granted that application and memorialized its decision in a resolution dated November 29, 2018. A true and accurate copy of the resolution is annexed as Exhibit G.

22. The University Center project abuts Sinatra Drive, which is identified as a separate tax lot, specifically Block 257, Lot 2 on the City of Hoboken Tax Maps (“Roadway Property”).

23. Stevens owns the Roadway Property, over which Sinatra Drive has been constructed. A true and accurate copy of the deed vesting title to the Roadway Property in Stevens, which is dated June 28, 2001, and which was recorded in the Hudson County Land Records at Book 5838, Page 80, is annexed as Exhibit H.

24. The Roadway Property is subject to the Easement, which was granted by the Hoboken Railroad Warehouse and Steamship Connecting Company (“Grantor”) to the City. See Exhibit F.

25. Grantor subsequently transferred the Roadway Property to Anthony Dell’Aquila, who later sold the Roadway Property to Stevens.

26. In the Easement, Grantor granted to the City the “full liberty and privilege of laying down, paving, constructing and forever establishing, operating and maintaining a road through over and upon” the Roadway Property.

27. The grant of the Easement to the City was made “subject to the rights of the Grantor to continue to operate and maintain its railroad operations over said land, the easement herein

granted *to exist contemporaneously* with the right and privilege of the Grantor to operate its railroad, and will not interfere with said operation.” (emphasis added).

Facts Concerning the Demand Letter and Mitigation Efforts

28. On March 20, 2019, the Council passed the Original TNP Ordinance.

29. Paragraph G of the Original TNP Ordinance provided for the Fee Exemption, and specifically states:

G. TNP sign fees shall be waived by the Department Director, or his or her designee, for registered nonprofit organizations or approved special community events organized by noncorporate entities, such as block parties, festivals and 5K races.

30. As Stevens prepared to start construction on the University Center project, on or around April 23, 2019, representatives of Stevens met with representatives of the City to review a maintenance and protection of traffic plan (“MPT”) for the University Center project.

31. The MPT called for the temporary removal of a total of sixty-two (62) parking spaces on Sinatra Drive for the duration of construction to allow for construction staging activities.

32. Following the meeting on April 23, 2019, on May 7, 2019, the City Director of Transportation and Parking issued the Demand Letter to Stevens. See Exhibit B.

33. In the Demand Letter, the City summarized the requirements of the Original TNP Ordinance and calculated that Stevens was required to pay \$3,720 per day for the use of sixty two (62) parking spaces during the construction of the University Center project.

34. In the Demand Letter, the City then calculated that Stevens would be required to pay the City \$111,600 per month for months with thirty (30) days and \$115,320 per month for months with thirty-one (31) days, with the payment due in full at the beginning of each month.

35. Along with the Demand Letter, the City included an invoice for the TNP signs for the period of May 13, 2019 to May 31, 2019, for a total of \$70,680.

36. The Demand Letter failed to acknowledge the Fee Exemption in the Original TNP Ordinance, which unequivocally exempted Stevens from the payment of any TNP fees.

37. Shortly after receiving the Demand Letter, Stevens contacted the City to correct the error in sending the Demand Letter and to confirm that the City would not seek payment from Stevens under the Original TNP Ordinance for the University Center project.

38. The City subsequently acknowledged that Stevens was exempt from payment of fees under the Original TNP Ordinance.

39. Stevens began implementing the MPT to facilitate construction of the University Center project and, working closely with City officials, implemented the reconfiguration of traffic on Sinatra Drive, the use of signs and other safety devices to notify the public and provide for their safety, and the establishment of construction trailers and other items necessary to facilitate the construction of the project.

40. Although Stevens was exempt from the Original TNP Ordinance, on or around June 12, 2019, in the interests of the public and comity in its relationship with the City, Stevens agreed to meet with the City, through various municipal officials, to discuss Stevens' proposed Mitigation Efforts.

41. Over the course of the next several weeks, Stevens and representatives of the City continued to discuss the Mitigation Efforts and to negotiate the terms and conditions of what would become the Griffith Parking Lot License Agreement.

42. The Griffith Parking Lot License Agreement would result in the City having more metered parking spaces than currently exist, as approximately half of the existing spaces on Sinatra Drive are not currently metered.

43. These terms were formulated and agreed to through representations of the City and its officials.

44. On or around June 26, 2019, representatives of Stevens met with City officials and finalized the material terms of the Griffith Parking Lot License Agreement in advance of the next regular meeting of the Council, scheduled for July 10, 2019.

45. The Mayor knew or should have known that the parties were negotiating final terms of the Griffith Parking Lot License Agreement, based on the actions and representations of City officials, acting under the authority of the Mayor.

46. On July 10, 2019, the Council adopted the Stevens Resolution, which authorized the execution of the Griffith Parking Lot License Agreement.

47. The Stevens Resolution specifically authorized the Mayor and Clerk to execute the Griffith Parking Lot License Agreement.

48. The Mayor knew or should have known of the Stevens Resolution prior to its adoption, based on the actions and representations of City officials, acting under the authority of the Mayor.

49. The Stevens Resolution was signed by the City's Business Administrator and the City's Corporation Counsel.

50. On or around July 12, 2019, Stevens' President called and left a message with the Mayor to thank him for his leadership in facilitating the Stevens Resolution. The call was not returned.

Facts Concerning the Adoption of the Amended TNP Ordinance

51. At the same Council Meeting at which the Stevens Resolution was passed, the Council adopted the Amended TNP Ordinance on second reading.

52. The Amended TNP Ordinance modifies the City's Code §190-12.1(G) to place a limitation on the Fee Exemption afforded to nonprofit organizations. The Amended TNP Ordinance specifically amends this section as follows (new language underlined):

G. [Temporary No Parking] sign fees shall be waived by the Department Director, or his or her designee, for registered nonprofit organizations or approved special community events organized by noncorporate entities, such as block parties, festivals, and 5k races. However, each nonprofit organization shall only be entitled to have the fee waived for signs for no more than 10 cumulative days per calendar year.

53. The Amended TNP Ordinance was introduced by the City Council on first reading on June 5, 2019, less than a month after the issuance of the Demand Letter.

54. The Amended TNP Ordinance was listed on the City Council's agenda for second reading and public hearing on June 19, 2019, but was tabled. True and accurate copies of the agenda and minutes of the City Council's June 19, 2019, meeting are annexed as Exhibit I.

55. The City represented to Stevens that the consideration of the Amended TNP Ordinance was tabled to allow time for Stevens and the City to finalize the Griffith Parking Lot License Agreement.

56. The City represented to Stevens that the Amended TNP Ordinance would not apply to the University Center project, and the Mayor knew or should have known of that representation.

57. The Mayor approved and signed the Amended TNP Ordinance on July 11, 2019.

Facts Concerning the Mayor's Failure to Execute the Griffith Parking Lot License Agreement

58. To date, the Mayor has not executed the Griffith Parking Lot License Agreement.

59. On or around August 8, 2019, the Mayor sent a letter to Stevens' President (the "Mayor's Letter"). A true and accurate copy of the Mayor's Letter is annexed hereto as Exhibit J.

60. The Mayor's Letter stated that the Mayor refused to execute the Griffith Parking Lot License Agreement.

61. Instead, the Mayor indicated that the Amended TNP Ordinance – adopted the same day as the Stevens Resolution – applied to Stevens' University Center project.

62. In the Mayor's Letter, the Mayor further asserted that the Griffith Parking Lot License Agreement ran counter to the public policy interests of the residents of the City because, in the Mayor's view, the City would receive a greater benefit (i.e., revenue) through strict application of the Amended TNP Ordinance than it would under the Griffith Parking Lot License Agreement.

63. The Mayor also denied any contemporaneous knowledge of the Griffith Parking Lot License Agreement, despite the fact that negotiations took place over the course of several weeks and involved several City officials.

64. The Mayor's Letter was the first time that the City indicated that it would be enforcing the Amended TNP Ordinance against Stevens for the University Center project and that

the City would not be executing the extensively negotiated and City-approved Griffith Parking Lot License Agreement.

65. If upheld, the Amended TNP Ordinance will have a severely detrimental impact on Stevens and subject Stevens to the payment of over \$4 million dollars in fees to the City over the next three years.

66. As a nonprofit organization, this unforeseen and exorbitant expense creates an undue burden on Stevens' charitable mission to provide higher education and conduct scientific research.

67. Thus, Stevens timely files this complaint in lieu of prerogative writs ("Complaint") to challenge the adoption of the Amended TNP Ordinance, to seek an order declaring that the amended TNP Ordinance cannot be applied to Stevens, and, in the alternative, to compel the Mayor to execute the duly negotiated Griffith Parking Lot License Agreement, as directed by the Stevens Resolution.

COUNT ONE

(The Amended TNP Ordinance is arbitrary, capricious and unreasonable)

68. Stevens repeats each and every allegation contained above as if fully set forth at length herein.

69. On or around March 20, 2019, the Council adopted the Original TNP Ordinance that included the unlimited Fee Exemption for nonprofit organizations. The Fee Exemption did not contain any restrictions as to the length of the exemption or any other limitations whatsoever.

70. The Amended TNP Ordinance adds the following sentence to the Original TNP Ordinance: "However, each nonprofit organization shall only be entitled to have the fee waived for signs for no more than 10 cumulative days per calendar year."

71. The Amended TNP Ordinance provides no explanation as to why the Council chose to add this restriction on nonprofit organizations.

72. The Amended TNP Ordinance was introduced for first reading less than a month after Stevens alerted the City that Stevens was exempt from paying TNP Fees.

73. The Mayor and Council are targeting Stevens specifically through the Amended TNP Ordinance in an effort to extract over \$4 million in fees for the University Center project and potentially additional fees for future projects.

74. This exorbitant fee amount is grossly disproportionate to the harm the City may face through the temporary displacement of the parking spaces related to the University Center project.

75. The Amended TNP Ordinance does not contain any rationale for why ten days is the maximum number of days a registered nonprofit organization can benefit from the Fee Exemption.

76. The Amended TNP Ordinance similarly does not contain any rationale for the amount of the fees to be charged for the purchase of TNP signs.

77. The Amended TNP Ordinance provides no basis for how the required fees are related to the use of the TNP signs and does not contemplate a situation in which the TNP signs are required for an extended period of time.

78. The Amended TNP Ordinance does not recognize or explicitly grandfather ongoing projects commenced under and exempt from the Original TNP Ordinance.

79. The Amended TNP Ordinance is overbroad, vague, and not calculated to benefit the public health, morals, safety, or general welfare.

80. The Amended TNP Ordinance imposes restrictions that are unnecessary, unreasonable, arbitrary, and have no relation to the public interest.

81. Accordingly, the Amended TNP Ordinance is arbitrary, capricious, and unreasonable, and must be declared null and void.

WHEREFORE, Stevens demands judgment against the Defendants as follows:

- A. Declaring the Amended TNP Ordinance arbitrary, capricious, unreasonable, invalid, illegal, null, void and of no force or effect;
- B. Declaring that the Amended TNP Ordinance does not apply to Stevens;
- C. Enjoining all Defendants from applying or enforcing the Amended TNP Ordinance;
- D. Awarding attorney fees and costs of suit to Stevens; and
- E. Awarding such further relief as the Court deems just and proper.

COUNT TWO

(The Adoption of the Amended TNP Ordinance Was an Ad Hoc Decision Made for an Improper Purpose)

82. Stevens repeats each and every allegation contained above as if fully set forth at length herein.

83. The Original TNP Ordinance that passed with Mayor and Council approval in March 2019 included the Fee Exemption for nonprofit organizations.

84. The Amended TNP Ordinance adopted in July 2019 includes a restriction on the number of days a nonprofit organization can be afforded the Fee Exemption.

85. The Mayor and Council only passed the Amended TNP Ordinance after learning that the University Center project would result in the displacement of sixty-two parking spaces and that the City would not be able to exact money from Stevens under the Original TNP Ordinance.

86. There is no other justification or basis included in the Amended TNP Ordinance for why the Original TNP Ordinance needed to be amended to add the ten-day restriction.

87. The Mayor and Council passed the Amended TNP Ordinance solely to target Stevens and force Stevens to pay an exorbitant amount of fees over the length of the University Center project.

88. The City sent the Demand Letter and an invoice to Stevens in the amount of \$70,680 for the month of May and projected that Stevens was required to pay approximately \$115,000 per month thereafter to the City.

89. The Amended TNP Ordinance was therefore only passed so that the City could extract these monthly lump sum payments from Stevens.

90. New Jersey courts require government officials to act solely in the public interest and “turn square corners” in dealing with the public.

91. The Council and Mayor failed to turn square corners by (i) confirming Stevens’ exemption under the Original TNP Ordinance, (ii) negotiating the Griffith Parking Lot License Agreement, (iii) adopting the Stevens Resolution, (iv) representing that the Amended TNP Ordinance would not apply to the Stevens University Center project, (v) allowing the MPT to be implemented, and then (v) waiting almost a month to repudiate the Griffith Parking Lot License Agreement and to announce that the Amended TNP Ordinance would apply to Stevens’ University Center project.

92. The Amended TNP Ordinance was enacted for an improper purpose under false pretenses and must be declared null and void as a matter of law.

WHEREFORE, Stevens demands judgment against the Defendants as follows:

- A. Declaring the Amended TNP Ordinance invalid, illegal, null, void and of no force or effect;
- B. Declaring that the Amended TNP Ordinance does not apply to Stevens;
- C. Enjoining all Defendants from applying or enforcing the Amended TNP Ordinance;
- D. Awarding attorney fees and costs of suit to Stevens; and
- E. Awarding such further relief as the Court deems just and proper.

COUNT THREE

(Violation of Stevens’s Constitutional Rights to Substantive Due Process and the New Jersey Civil Rights Act)

93. Stevens repeats each and every allegation contained above as if fully set forth at length herein.

94. Stevens and other similarly situated entities have constitutionally protected private property rights to improve their property without the government unreasonably and arbitrarily imposing restraints on such improvements or use of property.

95. The New Jersey Constitution’s rights to due process ordain that the exertion of the City’s authority should not go beyond the public need.

96. The Amended TNP Ordinance imposes restrictions that are so unreasonable, unnecessary, and excessive as to be confiscatory, arbitrary, and oppressive.

97. Defendants’ means to achieve their governmental objectives do not bear a rational relationship to these objectives.

98. Enforcement of the Amended TNP Ordinance is unduly burdensome, particularly when there are less restrictive means for accomplishing the same purpose, as contemplated by the parties in the Griffith Parking Lot License Agreement.

99. For all of the reasons set forth above and others, by adopting the Amended TNP Ordinance, the City acted under the color of law to deprive Stevens of its constitutional right to substantive due process under the New Jersey Constitution.

100. Accordingly, the Amended TNP Ordinance must be declared unconstitutional, null, and void and Stevens is entitled to relief pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

WHEREFORE, Stevens demands judgment against the Defendants as follows:

- A. Declaring the Amended TNP Ordinance unconstitutional, invalid, illegal, null, void and of no force or effect;
- B. Enjoining all Defendants from applying or enforcing the Amended TNP Ordinance;
- C. Awarding attorney fees and costs of suit to Stevens pursuant to New Jersey Civil Rights Act, N.J.S.A. 10:6-2, or such other applicable laws; and
- D. Awarding such further relief as the Court deems just and proper.

COUNT FOUR

(Issuance of An Order Declaring that Enforcement of the Amended TNP Ordinance as to the Roadway Property Would Violate the Easement)

101. Stevens repeats each and every allegation contained above as if fully set forth at length herein.

102. The sixty-two parking spaces that are necessary for construction staging and associated with the University Center project are on the Roadway Property.

103. The Roadway Property is owned by Stevens.

104. The City constructed and maintains Sinatra Drive on the Roadway Property pursuant to the terms of the Easement granted to it.

105. Nothing in the Easement grants the City the right to construct metered parking spaces on the Roadway Property.

106. Nothing in the Easement grants the City the right to charge TNP fees to Grantor, Grantor's successor-in-interest, Stevens, or anyone else for the use of parking spaces on the Roadway Property.

107. The Grantor, which was a railroad company, granted the Easement to the City "subject to the rights of the Grantor to continue to operate and maintain its railroad operations over said land, the easement herein granted to exist contemporaneously with the right and privilege of the Grantor to operate its railroad, and will not interfere with said operation."

108. Stevens is the successor-in-interest to the Grantor.

109. Pursuant to the Easement, Stevens has the contemporaneous right to operate within the Roadway Property, without the City interfering with its operations.

110. Stevens' use of the Roadway Property still allows ample room for the free flow of traffic, as evidenced by the City-approved MPT.

111. The temporary use of a portion the Roadway Property for construction vehicle parking and staging in connection with the construction of the University Center project is consistent with Stevens' operations and its charitable mission to provide higher education.

112. Stevens has legal and equitable rights to use the Roadway Property to facilitate the operation and construction of the University Center project.

113. The Easement prohibits the City from interfering with Stevens' legal and equitable rights to use the Roadway Property to facilitate the construction of the University Center project or to engage in any other operations.

114. The Easement prohibits the City from charging Stevens over \$4 million to use property that Stevens already owns and over which Stevens has retained rights pursuant to the Easement.

WHEREFORE, Stevens demands judgment against the Defendants as follows:

- A. Declaring that the Easement prohibits the City from enforcing the Amended TNP Ordinance as to the Roadway Property;
- B. Enjoining the City from enforcing the Amended TNP Ordinance to impose any TNP fees upon Stevens for the use of the Roadway Property for construction staging and parking;
- C. Awarding attorney fees and costs of suit to Stevens; and
- D. Awarding such further relief as the Court deems just and proper.

COUNT FIVE

(The City is Estopped from Repudiating and Refusing to Sign the Griffith Parking Lot License Agreement)

115. Stevens repeats each and every allegation contained above as if fully set forth herein.

116. Stevens, which was not required under the Original TNP Ordinance to provide any compensation for parking spaces, nevertheless wanted to strengthen its community ties and be a good neighbor by reducing the inconvenience associated with the temporary displacement of parking spaces.

117. Thus, after Stevens pointed out to City officials that it qualified for the Fee Exemption, Stevens negotiated with City officials to find a way to mitigate the loss of parking for City residents.

118. The result of those negotiations was the Griffith Parking Lot License Agreement, which described the Mitigation Efforts in detail.

119. The City, through its officials, represented, impliedly or expressly, that the Griffith Parking Lot License Agreement would be fully executed before the Amended TNP Ordinance went into effect, and that the Amended TNP Ordinance would not be applied to Stevens for the University Center project.

120. The City, through its officials, represented, impliedly or expressly, that the amendments to the Original TNP Ordinance, as adopted through the Amended TNP Ordinance, would have no effect upon the validity of the Stevens Resolution and Griffith Parking Lot License Agreement.

121. The Griffith Parking Lot License Agreement and the associated representations made by the City constitute a clear and definite promise, which the City made knowing that Stevens would rely on it.

122. To its detriment, Stevens reasonably relied upon the representations of the City and its officials in agreeing to the terms of the Griffith Parking Lot License Agreement, implementing the MPT, commencing construction, and not vigorously objecting on July 10, 2019, to the adoption of the Amended TNP Ordinance.

123. Due to Defendants' actions, Stevens has suffered substantial detriment as a result of Defendants' actions.

WHEREFORE, Stevens demands judgment against the Defendants as follows:

- A. Estopping the City from enforcing the Amended TNP Ordinance as to Stevens' University Center project;
- B. In the alternative, declaring the Mayor is required to execute the Griffith Parking Lot License Agreement;
- C. Awarding attorney fees and costs of suit to Stevens; and
- D. Awarding such further relief as the Court deems just and proper.

COUNT SIX

(Issuance of An Order to Compel the City to Enforce the Stevens Resolution and to Require Execution of the Griffith Parking Lot License Agreement)

124. Stevens repeats each and every allegation contained above as if fully set forth herein.

125. The Stevens Resolution was approved by all members of the Council (except for one abstention) on July 10, 2019.

126. The Stevens Resolution specifically authorized the Mayor and Clerk to execute the Griffith Parking Lot License Agreement.

127. The Stevens Resolution was signed by the City's Business Administrator and the City's Corporation Counsel.

128. The Stevens Resolution became effective once it was passed by the Council, and the Mayor knew or should have known of the legal effect of the Stevens Resolution upon passage.

129. Based on the City's actions, through its officials acting under the authority of the Mayor, the Mayor knew or should have known about the Griffith Parking Lot License Agreement prior to the inclusion of the Stevens Resolution on the City Council's agenda and adoption of the Stevens Resolution by the City Council.

130. The Mayor refused to execute the Griffith Parking Lot License Agreement, despite the fact that the Council authorized the execution of the Griffith Parking Lot License Agreement and in contravention of the City's representations (of which the Mayor was aware or should have been aware).

131. The Mayor's refusal to execute the Griffith Parking Lot License Agreement effectively subjects Stevens to the restrictions of the Amended TNP Ordinance.

132. The Council and Mayor failed to take any steps to enforce or carry out the terms of the Stevens Resolution.

133. If the Amended TNP Ordinance is found to be valid and enforceable, other than the issuance of an order by way of a writ mandamus, Stevens has no other means of compelling the City to enforce the Stevens Resolution and execute the Griffith Parking License Lot Agreement.

WHEREFORE, if the Amended TNP Ordinance is found to be valid and enforceable, Stevens, in the alternative, demands judgment against the Defendants as follows:

- A. Compelling the City to enforce the Stevens Resolution and to execute the Griffith Parking Lot License Agreement;
- B. Awarding attorney fees and costs of suit to Stevens; and
- C. Awarding such further relief as the Court deems just and proper.

GIBBONS P.C.
Attorneys for Plaintiff,
The Trustees of the Stevens Institute of
Technology

By: /s/ Jennifer Phillips Smith
Frederick W. Alworth, Esq.
Jennifer Phillips Smith, Esq.

Dated: August 23, 2019

TRIAL ATTORNEY DESIGNATION PURSUANT TO R. 4:5-1

Pursuant to R. 4:5-1, the undersigned are hereby designated as trial counsel for Stevens in this matter.

GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
The Trustees of The Stevens Institute of
Technology

By: /s/ Jennifer Phillips Smith
Frederick W. Alworth, Esq.
Jennifer Phillips Smith, Esq.

Dated: August 23, 2019

CERTIFICATION PURSUANT TO R. 4:69-4

Pursuant to Rule 4:69-4, I hereby certify that I ordered or caused to be ordered all necessary transcripts of local agency proceedings in this matter to the extent audio recordings have been or will be made available.

GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
The Trustees of The Stevens Institute of
Technology

By: /s/ Jennifer Phillips Smith
Frederick W. Alworth, Esq.
Jennifer Phillips Smith, Esq.

Dated: August 23, 2019

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge, the above-captioned action is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated by Stevens. I further certify that I know of no other non-parties who should be joined in this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
The Trustees of The Stevens Institute of
Technology

By: /s/ Jennifer Phillips Smith
Frederick W. Alworth, Esq.
Jennifer Phillips Smith, Esq.

Dated: August 23, 2019

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)
PURSUANT TO RULE 4:5-1(b)(3)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

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