

CITY COUNCIL**The City of Orange Township, New Jersey**DATE April 18, 2023NUMBER 186-2023

TITLE: A RESOLUTION OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, APPROVING A MEMORANDUM OF UNDERSTANDING WITH SYMREC ORANGE JV LLC, ORANGE FLATS LLC, ORANGE NJ HOLDINGS LLC, 256 HENRY HOLDINGS LLC AND 184 MATTHEW HOLDING LLC REGARDING ACQUISITION AND REDEVELOPMENT OF THE FORMER SITES OF ORANGE MEMORIAL HOSPITAL AND IPPOLITO FUNERAL HOME LOCATED ON HENRY STREET, IVY COURT, MATTHEW STREET, SOUTH ESSEX AVENUE AND CENTRAL AVENUE.

WHEREAS, in August 2005, following closure of Orange Memorial Hospital, the almost 8.25-acre site, comprising 9 separate lots fronting Henry Street, South Essex Avenue and Central Avenue ("Hospital Site"), was acquired by Essex Orange Urban Renewal Company LLC f/k/a Essex Orange Equity LLC ("Essex Orange"), with the intent to redevelop same; and,

WHEREAS, Essex Orange's redevelopment efforts failed to materialize, and in November 2013, the Hospital Site was sold again to Orange Flats LLC ("Orange Flats"), also with the intent to redevelop same; and,

WHEREAS, in April 2015, following closure of the Ippolito Funeral Home, an entity affiliated with Orange Flats, 256 Henry Holdings LLC ("Henry Holdings"), acquired the almost 1.40-acre site, comprising 4 separate lots fronting Henry Street and Ivy Court ("Ippolito Site"), with the intent to incorporate same into redevelopment of the Hospital Site; and,

WHEREAS, also in April 2015, another entity affiliated with Orange Flats, 184 Matthew Holding LLC ("Matthew Holding", together with Orange Flats and Henry Holdings, "Flats Companies"), acquired an approximately 0.28-acre lot fronting Matthew Street and adjoining the Hospital Site ("Matthew Property", together with the Hospital and Ippolito Sites, "Hospital Redevelopment Site") alongside the former hospital parking lot on South Essex Avenue ("Hospital Parking Lot"), with the intent to incorporate same into redevelopment of the Hospital and Ippolito Sites; and,

WHEREAS, in late 2015, the New Jersey Department of Environmental Protection and the National Park Service listed 9 buildings located on the Hospital Site in the New Jersey and National Registers of Historic Places respectively—the North Building, the Boiler Plant & Power House, the Service Building, the Bingham Building, Mary Austen Hall, the Medical & Surgical Building, the Metcalf Foundation Institute Building, the Orthopedic Hospital, and the Professional Building; and,

WHEREAS, the Flats Companies' redevelopment efforts failed to materialize, and over the next 7 years, the Hospital Redevelopment Site fell into substantial disrepair, becoming an attractive nuisance and a risk to public health and safety; and,

WHEREAS, between 2017 and 2019, the City sold and issued Tax Sale Certificates against 13 of the parcels within the Hospital and Ippolito Sites, ultimately becoming holder



A. M. P. R. A. H.

of 10 of said Tax Sale Certificates (“City Tax Liens”), currently valued at approximately \$3,500,000.00; and,

WHEREAS, the Flats Companies acquired the Hospital Redevelopment Site using proceeds of a loan from CP Capital Fund I LLC, which was secured by a mortgage against all parcels except the Hospital Parking Lot; and,

WHEREAS, in January 2017, CP Capital Partners I LLC commenced foreclosure proceedings against the Flats Companies, which was assigned, along with the mortgage against the Hospital Redevelopment Site, to OHC Holdings LLC in October 2017, Century Orange Partners LLC in October 2017, and AHAF Investments LLC in January 2020; and,

WHEREAS, the City acquired ownership of said mortgage and foreclosure proceedings in January 2020 through assignment from AHAF Investments LLC, the value of which is currently approximately \$9,000,000.00 (“City Mortgage Lien”); and,

WHEREAS, in March 2022, the City commenced *in rem* tax foreclosure proceedings against 10 of the parcels located within the Hospital Redevelopment Site, seeking to enforce the City Tax Liens; and,

WHEREAS, in November 2022, Orange Flats transferred ownership of the Hospital Parking Lot to another affiliated entity, Orange NJ Holdings LLC (included in subsequent references to “Flats Companies”); and,

WHEREAS, while the City’s tax foreclosure action was pending, the Flats Companies entered into an agreement with SYMREC Orange JV LLC (“SYMREC”) for acquisition and development of the Hospital Redevelopment Site; and,

WHEREAS, SYMREC and the Flats Companies (together, “Project JV”) approached the City’s Administration to negotiate an arrangement under which the SYMREC will acquire and develop the Hospital Redevelopment Site in 3 phases, as well as redeem the City Tax Liens and pay off the City Mortgage Lien; and,

WHEREAS, the City and the Project JV reached consensus on the terms of an agreement regarding those issues, which have been set forth in the appended Memorandum of Understanding (“MOU”); and,

WHEREAS, the Municipal Council now wishes to approve the MOU as attached.

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY that the appended MOU between the City and the Project JV is hereby approved; and,

BE IT FURTHER RESOLVED that the Mayor and/or other City Officials are hereby authorized to take whatever action is necessary to conclude the aforementioned action.

Adopted: April 18, 2023

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) entered into this ___ day of April, 2023, by and between the **City of Orange Township**, a Municipal Corporation in the State of New Jersey, County of Essex, with offices located at 29 North Day Street, City of Orange, New Jersey 07050 (hereinafter referred to as the “City”) and **SYMREC Orange JV, LLC** and/or its assigns, (hereinafter referred to as the “Redeveloper”) with offices located at 211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701, and **Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC** with offices located at 199 Lee Avenue, Suite 374, Brooklyn, New York, 11211 (collectively, the “Property Owner”).

WHEREAS, the Parties are desirous to enter into the MOU to redevelop the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the “Property”); and

WHEREAS, the Property is located in the Central Orange Redevelopment Plan Area, adopted initially as the Hope VI Redevelopment Plan, thereafter renamed and last amended by Ordinance 45-2020 on October 20, 2020, and is designated as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”); and

WHEREAS, the Redevelopment Law authorizes the City to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, the Redevelopment Law at Section 8(g) authorizes the City to lease or convey property or improvements to any other party, without public bidding and at such prices and upon such terms as it deems reasonable, provided that the lease or conveyance is made in conjunction with a redevelopment plan; and

WHEREAS, the City has not yet designated a developer with respect to the proposed redevelopment of the Property and the Redeveloper is desirous of redeveloping the Property as three (3) distinct development parcels identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 (“Site A”), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 (“Site B”), and Site C, consisting of Block 3702, Lots 4, 5, 6 (“Site C”); and

WHEREAS, there are existing tax liens on the Property that will be paid off in connection with the redevelopment of the Property as contemplated herein and, in consideration for the satisfaction and discharge of the tax lien, the Property Owner is desirous of entering into this MOU and of conveying the Property to the City for redevelopment by the Redeveloper; and

WHEREAS, portions of the Property are encumbered by a mortgage securing a promissory note for a loan originated by CP Capital (the “Mortgage”) having an accrued balance of [~\$9,000,000] that is presently held by the City; and

WHEREAS, Site A has multiple buildings that need to be demolished prior to commencing construction and Site A has known and unknown environmental remediation costs; and

WHEREAS, given the scope of the proposed redevelopment and various complications associated with redevelopment of the Property, the Parties desire to define the basic terms of the agreement between them with respect to the redevelopment of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, it is agreed as follows:

1. **Purpose.** The purpose of this binding MOU is to define the basic terms agreed to by the Parties with respect to the redevelopment of the Property.

2. **Property.** The Property Owner presently owns the Property to be identified as three (3) parcels for the purposes of this MOU as follows - Site A - identified on the City Tax Map as Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38; Site B - identified on the City Tax Map as Block 3601, Lots 2, 3, 4, 5 and 18, and Site C - identified on the City Tax Map as Block 3702, Lots 4, 5, 6. Site A, Site B, and Site C are referred herein collectively as the "Sites" or the "Property".

3. **Tax Liens.** The Parties acknowledge there are existing tax liens, penalties, and other charges totaling approximately \$3,500,000 (as of the date hereof), with the amount of the tax lien for each lot and block comprising the Property to be determined immediately prior to Initial Closing (the "Tax Lien Payment").

4. **Redevelopment Agreements and Approvals.**

(a) **Redeveloper Designation and Agreement.** Upon the Effective Date of this Agreement, the Redeveloper shall make application(s) to the City of Orange for designation as the "Redeveloper" of Site A, Site B, and Site C under the Redevelopment Law. The City shall approve the Redeveloper's application within sixty (60) days of the Effective Date hereof. If the City fails to approve the Redeveloper's application, the City will be obligated to provide explicit line item detail regarding the Redeveloper's application deficientness. The City shall have [30] days from the time of the Redeveloper's resubmission to approve its application. Following such approval and prior to the Initial Closing (as defined herein), the City and the Redeveloper shall enter into a Redevelopment Agreement for Site A, Site B, and Site C. In addition, the City shall amend the current Redevelopment Plan governing the Property, so that the Redevelopment Plan provides the City with condemnation/eminent domain power with respect to Site C.

(b) **Development Approval.** After the execution of the Redevelopment Agreement and the Initial Closing, the Redeveloper shall make application(s) to the City of Orange Township Planning Board for site plan approval, inclusive of any deviation, variance or design waiver relief for the phased development of the Property, whether it be as multiple distinct applications for Site A, Site B and/or Site C, or as a combined development application for multiple phases (the "Development Approvals"). The Parties acknowledge that it is anticipated that development will occur in phases and that Site B is anticipated to be the first site to be developed;

however, the Parties further acknowledge that the order of site development is subject to change and is subject to Redeveloper's discretion.

(c) **Financial Agreement.** The Parties acknowledge that redevelopment of the Sites is not financially feasible without the implementation of a long term tax exemption, and the City agrees to enter into financial agreement(s) with the Redeveloper providing for a payment in lieu of taxes pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq., as amended and supplemented (the "**Exemption Law**") and the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A – 64, et seq (the "**RAB Law**") for the Property, provided the Redeveloper submits an application (the "**Exemption Application**") pursuant to the Exemption Law and the City's ordinances regarding the same. The Exemption Application will provide such information as required by the Exemption Law, the RAB Law and the City's ordinances. The City will, upon adoption of appropriate ordinance(s) required under the Exemption Law and the RAB Law, enter into a financial agreement setting forth the terms of the payments in lieu of taxes consistent with the requested terms set forth in such financial agreement which shall be an exhibit to the Redeveloper's application (the "**Financial Agreement**"), and approving the issuance of Redevelopment Area Bonds (the "**RAB Bonds**") pursuant to the RAB Law to finance various infrastructure improvements to the Property, which RAB Bonds will be secured solely by payments made under the Financial Agreement. The RAB Bonds shall be issued in such principal amount as deemed necessary by the City and the payments under the Financial Agreement shall be increased to cover debt service on the RAB Bonds.

5. **Initial Closing.**

(a) **Transfer of Site A to City.** At the Initial Closing (defined herein), the Property Owner shall convey and transfer Site A to the City for nominal consideration (\$10.00). In addition, at the Initial Closing, the Redeveloper shall pay off all existing tax liens encumbering the Property (the "**Tax Lien Payment**"), and such tax liens shall be discharged of record by the City. In exchange for, and in consideration of, the deed to Site A and the Tax Lien Payment, the City shall forgive, release, and discharge the Mortgage encumbering the Property (i.e., Site A, Site B, and Site C), and discontinue and dismiss all legal proceedings, lawsuits and claims against the Property Owner, and the Property Owner shall discontinue and dismiss any and all legal proceedings, lawsuits, or claims against the City. Further, from and after the Initial Closing the Redeveloper will pay to the City an amount equal to debt service accrued or paid on and after Initial Closing on the City's obligations which were issued to finance the purchase of the judgement lien on the Property, and in consideration shall receive a credit toward the principal only of such debt service paid to the City against the Site A Purchase Price (the "**Principal Credit**").

(b) **Transfer of Site B to Redeveloper.** At the Initial Closing, the Property Owner shall convey and transfer Site B to the Redeveloper for nominal consideration (\$10.00). Site B shall be conveyed by the Property Owner to the Redeveloper free and clear of any monetary encumbrances or liens.

(c) **Retention of Site C by Property Owner.** At the Initial Closing, the Property Owner shall retain ownership of Site C and shall have the right to sell Site C to a qualified third-party developer, provided, however, the Property Owner shall grant the Redeveloper a continuous

non-terminating right of first refusal to purchase of any lots in Site C owned by the Property Owner (the "ROFR"), a memorandum of which shall be recorded in the County Clerk's office in connection with the Initial Closing.

(d) **Closing Obligations.** The Initial Closing of the transaction contemplated by this Agreement shall be subject to fulfillment, at or prior to the Closing, of the following conditions, any one or more of which may be waived in writing by the party benefiting therefrom: (a) all of the terms, covenants and conditions to be performed or complied with by each party under this Agreement on or before the Initial Closing shall have been performed or complied with in all material respects; and (b) each party shall have provided all documents and other items required as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement, including, but not limited to, (i) the delivery of bargain and sale deeds with covenant's against grantor's acts, executed by the Property Owner, conveying Site A to the City and Site B to the Redeveloper; (ii) the delivery of a recordable discharge, executed by the City, releasing and discharging the Mortgage currently held by the City and encumbering the Property; (iii) the payment of the Tax Lien Payment by the Redeveloper to the City, and (iv) the City shall forgive all property maintenance fines/violations on the Property, and to the extent such fines/violations are subject to summons, the City will appear in court to resolve the outstanding violations in such manner as in the best interest of the Property. The Property Owner shall convey good and marketable fee simple title to Site A to the City and Site B to the Redeveloper, insurable as such by a reputable title company licensed to do business in the State of New Jersey at regular rates with such endorsements as the City and the Redeveloper may reasonably require.

(e) **Time and Place of Initial Closing.** The consummation of the transactions contemplated by this Agreement (the "Initial Closing") shall take place within fifteen (15) calendar days after the later of (i) the City's approval of the Redeveloper as the "redeveloper" for Site A and Site B, and (ii) the approval of this MOU by the City (the "Initial Closing Date"). The Closing shall take place at the office of the Redeveloper's attorney, or may be administered by the Redeveloper's title company, acting as settlement agent, pursuant to written instructions from the Redeveloper, the City, and the Property Owner.

6. **Redevelopment and Transfer of Site A.**

(a) **Purchase Price.** Subject to the "phasing" of the development of Site A (as set forth below), at the Site A Closing (defined herein), the City shall convey and transfer Site A to the Redeveloper for the Site A Purchase Price (as defined herein). For purposes of this MOU the "Site A Purchase Price" shall be \$15,000,000, provided, however, that the Redeveloper shall receive closing cost credit against the Site A Purchase Price in the amount of the Site A Remediation Costs (defined herein) up to \$6,000,000 (the "Environmental Closing Credit") and a credit for the Principal Credit.

(b) **Demolition and Environmental Remediation.** The City and the Redeveloper understand and agree that Site A has multiple buildings that need to be demolished prior to commencing construction, and certain known and unknown environmental conditions and

remediation costs (the "Environmental Conditions"). The parties further agree that the Redeveloper shall be responsible for the remediation of the Environmental Conditions at its sole cost subject to the Environmental Closing Credit defined above. To that end, from and after the Effective Date hereof and continuing through the Site A Closing, the City hereby grants the Redeveloper the right to conduct any and all demolition, environmental testing and remediation necessary to remediate Site A in accordance with all applicable environmental laws and regulations. The actual cost incurred by the Redeveloper in connection with the demolition and remediation of Site A, and any additional costs of environmental remediation of Site B or Site C required due to environmental contamination that originated at Site A, shall be referred to as the "Site A Remediation Costs". The Redeveloper shall provide the City with a copy of all environmental reports and any Site A Remediation Costs estimates.

(c) Approvals. After the execution of the Redevelopment Agreement and the Initial Closing, the Redeveloper shall make application(s) to the City of Orange Township Planning Board for site plan and/or subdivision approvals, inclusive of any deviation, variance or design waiver relief for the development of Site A, whether it be as multiple distinct applications or as a combined development application for multiple phases (the "Site A Development Approvals").

(d) Site A Closing. The consummation of sale of Site A from the City to the Redeveloper (the "Site A Closing") shall take place within thirty-six (36) months of the Initial Closing Date, upon 30-day notice from the Redeveloper of its intent to close on Site A; provided however that, so long as the Redeveloper is diligently and in good faith pursuing the approvals and/or financing for the development and acquisition of Site A, the City will consider any reasonable request(s) by the Redeveloper extensions ("Extension Request"), the timeframe of which will be determined by the at the time of such Extension Request. The Redeveloper shall provide the reasons for the extension in the Extension Request and the City in good faith will consider the same. Notwithstanding the foregoing, the Redeveloper shall have the right, in its sole discretion, to "phase" the development of Site A into no more than three (3) "phases". In the event that the Redeveloper elects phase the development of Site A, the Redeveloper shall have the right to acquire only such portion of Site A as necessary for such phase of the development and at a prorated purchase price, subject to the Environmental Closing Credit. By way of example and not limitation, in the event that the first phase of the development of Site A consists of forty percent (40%) of the acreage of Site A, the purchase price for the portion of Site A necessary for such first phase shall be equal to forty percent (40%) of the Site A Purchase Price, subject to the Environmental Closing Credit. The Site A Closing shall take place at the office of the Redeveloper's attorney, or may be administered by the Redeveloper's title company, acting as settlement agent, pursuant to written instructions from the Redeveloper, the City, and the Property Owner. Each party shall have provided all documents and other items required as may be reasonably necessary or appropriate to effectuate the consummation of the Sale of Site A to the Redeveloper.

7. Miscellaneous.

(a) Force Majeure. For purposes of this MOU, "Force Majeure" shall mean and include all those situations beyond the control of the party claiming Force Majeure, including but not limited to, acts of God; pandemics, epidemics or other public health emergencies; order or

IN WITNESS WHEREOF, the City, the Redeveloper and the Property Owner have caused these presents to be executed by their duly authorized representatives, as of the day and year first written above.

ATTEST:

Joyce L. Lanier
City Clerk

Dwayne D. Warren
Mayor, City of Orange Township

ATTEST

SYMREC Orange JV, LLC


By: Yosef Magid
Title: Authorized Representative

ATTEST

**Orange Flats, LLC, Orange NJ
Holdings, LLC, 256 Henry Holding,
LLC & 184 Matthew Holding, LLC**


By:
Title: