

CITY COUNCIL

The City of Orange Township, New Jersey

DATE _____

NUMBER 25-2024

TITLE: AN ORDINANCE OF THE CITY OF ORANGE TOWNSHIP GRANTING MORROW STREET URBAN RENEWAL, LLC A NON-EXCLUSIVE PERPETUAL EASEMENT AND AUTHORIZING THE EXECUTION OF AN EASEMENT AGREEMENT

WHEREAS, the City of Orange Township (the "City") is the owner of a 30' public right-of-way known as Morrow Street within the City; and

WHEREAS, Morrow Street Urban Renewal LLC ("Morrow"), owns or intends to acquire the properties located at 566-588 Morrow Street, 567-585 Morrow Street and 507-515 S. Jefferson Street, and designated as Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 & 30 on the official tax map of the City ("Property"); and

WHEREAS, Morrow is developing the Property as a six-story mixed-use multifamily building, consisting of 202 residential units, 3,525 square feet of retail space, 202 off-street parking spaces and related amenities, all in accordance with a preliminary and final site plan approval granted by the City's Planning Board on September 27, 2023; and

WHEREAS, the Project contains two separate buildings, one located on the northern side of Morrow Street ("Building A") and the other located on the southern side of Morrow Street ("Building B"), which is proposed to be connected by a second floor skybridge that runs over and across a portion of Morrow Street (the "Bridge"); and


WHEREAS, the City desires to grant to Morrow a non-exclusive, perpetual easement over a portion of Morrow Street (the "Easement Area") for access, air rights, and encroachment allowances wherever necessary and appropriate within the Easement Area, being more particularly described in the Easement Agreement attached hereto as Exhibit "A" (the "Easement Agreement"); and

WHEREAS, the City is authorized pursuant to the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq. to grant such an easement to Morrow;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of Orange Township as follows:

SECTION I

That the City of Orange Township hereby grants to Morrow a non-exclusive, perpetual easement over a portion of Morrow Street (the "Easement Area") for access, air rights, and encroachment allowances wherever necessary and appropriate, subject to the terms and conditions of the attached Easement Agreement.


CITY ATTORNEY

SECTION II

That the Mayor and Clerk be and hereby are authorized and directed to execute the attached Easement Agreement and any and all other documents necessary to effectuate the intent and purposes hereof.

SECTION III

That said Easement Agreement shall be recorded in the Office of the Essex County Register.

SECTION IV

If any section or provision of this ordinance shall be invalid in any court the same shall not affect the other sections or provisions of this ordinance except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

SECTION V

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION VI

This ordinance shall take effect in accordance with applicable law.

Adopted:

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President

Approved:

Dwayne D. Warren, Esq.
Mayor

RECORD AND RETURN TO:

Connell Foley, LLP
One Newark Center
1085 Raymond Boulevard
19th Floor
Newark, New Jersey 07102
Attn.: Jodi M. Luciani, Esq.

Prepared By:

JODI M. LUCIANI, ESQ.

EASEMENT AGREEMENT

This Easement Agreement ("Easement") is entered into this _____ day of November 2023, between the **City of Orange Township**, as Grantor, a municipal corporation of the County of Essex and the State of New Jersey, having its offices at 29 North Day Street, Orange, New Jersey 07050 ("City" or "Grantor"); and

Morrow Street Urban Renewal LLC, as Grantee, with an address of 730 Garfield Avenue, Jersey City, New Jersey 07305 ("Morrow" or "Grantee").

WHEREAS, the City is the owner of a 30' public right-of-way known as Morrow Street within the City of Orange Township and more particularly described on the Survey at **Exhibit A** attached hereto; and

WHEREAS, Morrow owns or intends to acquire the properties located at 566-588 Morrow Street, 567-585 Morrow Street and 507-515 S. Jefferson Street, and designated as Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 & 30 on the official tax map of the City ("Property"); and

WHEREAS, Morrow is developing the Property as a six-story mixed-use multifamily building, consisting of 202 residential units, 2,000 square feet of retail space, a total capacity of 202 off-street parking spaces and related amenities, all in accordance with a preliminary and final site plan approval granted by the City of Orange Township Planning Board on September 27, 2023 and memorialized by Resolution dated October 25, 2023 ("Project"); and

WHEREAS, the Project contains two separate buildings, one located on the northern side of Morrow Street ("Building A") and the other located on the southern side of Morrow Street ("Building B"), which shall be connected by a second floor skybridge, where building amenities are located, that runs over and across a portion of Morrow Street (the "Bridge"), being more particularly described on the Bridge Easement Survey at **Exhibit B** attached hereto; and

WHEREAS, the City has determined it to be in the best interest of the parties to enter into this Easement Agreement wherein the City shall grant unto Grantee the right and easement to construct a bridge connecting Building A to Building B over and across Morrow Street, which

shall contain tenant amenities and a pedestrian walkway, and to maintain the Project; and

WHEREAS, the Grantor desires to grant to the Grantee a non-exclusive, perpetual easement over a portion of Morrow Street (the Easement Area”) for access, air rights, and encroachment allowances wherever necessary and appropriate within the Easement Area, being more particularly described in the Metes and Bounds Description at **Exhibit C** attached hereto; and

WHEREAS, the Grantor has such authority to grant to the Grantee such easement; and

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

Section 1. Grant of Access, Easement in Gross and Right of Way for Maintenance, Replacement, or Repair. Grantor hereby grants to Grantee, and Grantee hereby accepts from Grantor a non-exclusive and perpetual access easement and right of way to enter, ingress, egress and pass over and across the Easement Area, when necessary, so that Grantee can construct, maintain, repair, or replace the Bridge or any building, improvement, amenity, or landscaping as part of Grantee’s Project. Grantee shall have access to the Easement Area on a 24-hour, 7-day per week basis. Grantee shall make judicious use of this easement to minimize any disruption or inconvenience to the Grantor. In the event the Grantee causes damage to the Easement Area in exercising its rights under this easement, then Grantee shall restore the Easement Area to the condition it was in prior to such access at Grantee’s sole cost and expense. Grantee, at its sole expense, shall, prior to commencing construction of the Project, submit a complete set of construction drawings for the Bridge to the City for the City and its engineer(s) to review for approval, including approval of any requisite relocation of utilities within the Easement Area. The easement granted herein to Grantee includes a right by Grantee to use and bring any equipment and materials necessary and appropriate for Grantee to construct, maintain, repair, or replace Grantee’s improvements, buildings, amenities or landscaping.

Section 2. Grant of Easement for Encroachments on Land and Air Space. The Grantor hereby grants to the Grantee a non-exclusive and perpetual right and easement for the free and uninterrupted use, liberty, and privilege of enjoying any encroachments now existing or which may hereinafter exist over Grantor’s property line, whether such encroachment is underground, at ground level, or in Grantor’s air space so long as such encroachments occur and result only from improvements, buildings, and amenities now constructed or to be constructed pursuant to Grantee’s approved Project. Nothing herein shall give the Grantee the right to expand any encroachments beyond those that result from the construction of improvements, buildings or amenities pursuant to a Grantee’s approved Project.

Section 3. Grant of Easement for Light and Air. Grantor hereby grants to Grantee a non-exclusive easement for the free and uninterrupted use, liberty, privilege and enjoyment of light and air associated with the use and enjoyment of Grantee’s land and any of Grantee’s buildings or improvements now constructed or to be constructed pursuant to Grantee’s approved Project and Grantor covenants pursuant to such easement that Grantor will not make any improvements,

alterations or expansions to their own property which will reduce, impede, interfere with, or block any open space or light and air on Grantee's land or in Grantee's buildings, improvements or amenities located near the boundary lines of the Property. Nothing herein shall allow any Grantee to expand the light and air existing or that will exist from the improvements, buildings or amenities constructed pursuant to Grantee's approved Project.

Section 4. Term of Easement. The term of this Easement and all rights and obligations set forth herein shall commence as of the date written above and shall continue in perpetuity.

Section 5. Insurance. (a) From and after the date the Grantee first exercises the rights granted hereunder to use an Easement Area, Grantee shall maintain, commercial general liability insurance against claims for personal injury, death and property damage occurring upon, in or about such Easement Area, and on, in or about the adjoining property, naming the City as an additional insured. Such liability insurance shall, at a minimum, have limits of coverage and deductibles in not less than the following:

- (i) \$1,000,000 per occurrence with respect to personal injury (including death);
- (ii) \$1,000,000 per occurrence with respect to damage to property;
- (iii) \$1,000,000 per occurrence with respect to contractual liability; and
- (iv) \$3,000,000 umbrella liability with respect to the liability coverages required hereunder.

The limits required by (i) thru (iv) above may be satisfied and complied with by any combination of general liability insurance and umbrella liability.

(b) All insurance required to be maintained under this Easement Agreement shall provide that thirty (30) days' prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage (or ten (10) days prior written notice in the event of cancellation due to non-payment of a premium) shall be given to Grantor.

(c) In no event shall any insurance required hereunder be maintained with an insurer having a rating by Best Insurance Reports that is lower than "A-/VIII" (or if such rating is no longer published or is modified, then such rating or qualifications as shall be equivalent to the aforesaid rating as determined as of the date of this Agreement), without the approval of the other Party.

(d) Grantee shall not commit or permit to occur any violation of the insurance policies required to be maintained pursuant to this Agreement, nor permit any action or keep or permit to be kept in any portion of the Easement Area any substances or materials that (a) would result in termination of any such policies, (b) could result in the loss of the right of recovery under any of such policies, or (c) could result in reputable, independent insurance companies refusing to insure the property covered thereby in the amounts required by this Easement Agreement.

Section 6. Indemnification. [Except to the extent caused solely by the negligence or intentional misconduct of the Grantor or its Permittees, or the failure of the Grantor or its Permittees to comply with the terms of this Easement Agreement, Grantee hereby covenants to indemnify, defend, and hold harmless Grantor, its partners, officers, directors, trustees, shareholders, members, managers, employees, and agents (each, an “Indemnified Party”) from and against any and all Claims incurred or asserted, including those for loss of life, personal injury and property damage on the Easement Area, occasioned by or arising directly or indirectly, out of or in connection with Grantee’s or such Grantee’s Permittees’ exercise of any rights, or performance of any obligations, under this Easement Agreement, or the failure of Grantee or its Permittees to comply with Applicable Laws in connection therewith.

Section 7. Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, by personal delivery against receipt or by overnight delivery by a nationally recognized carrier, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

As to the City:

The City of Orange Township
29 North Day Street
Orange, New Jersey 07050
Attention: Christopher Hartwyk, Business Administrator

with copies to:

The City of Orange Township
29 North Day Street
Orange, New Jersey 07050
Attention: Joyce L. Lanier, City Clerk

As to the Grantee:

Morrow Street Urban Renewal LLC
c/o Scotland Ventures LLC
730 Garfield Avenue
Jersey City, New Jersey 07305

with copies to:

Elnardo J. Webster, II, Esq.
Connell Foley LLP
1085 Raymond Boulevard

19th Floor
Newark, New Jersey 07102

Section 8. Miscellaneous.

- (a) In addition to the obligations required to be performed hereunder by Grantor, Grantor agrees to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the entering into of this Easement Agreement, such other instruments, documents, and rights-of-way as Grantee may reasonably require in order to fully use and to perfect Grantor's grant of this Easement Agreement.
- (b) Each of the individuals executing this Easement Agreement on behalf of the Grantor or the Grantee represent to the other party that such individual is authorized to do so by requisite action of the party to this Easement Agreement.
- (c) This Easement Agreement constitutes the entire Easement Agreement and understanding of the parties with respect to the subject matter hereof. Any modification of or amendment to this Easement Agreement must be in writing and executed by both parties hereto.
- (d) This Easement shall be construed in accordance with the laws of the State of New Jersey.
- (e) If any term of this Easement Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Easement Agreement, which shall continue in full force and effect.
- (f) The Grantor and the Grantee agree that this grant of easement shall be and is in gross, and non-exclusive and that the terms, covenants and obligations hereof shall be binding upon all successors in interest and in title of any kind or type to the lands listed on Exhibits A, B, and C attached hereto and such easement shall run with such lands in perpetuity.

IN WITNESS WHEREOF, the Parties hereto have caused this Easement Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

ATTEST:

**MORROW STREET URBAN
RENEWAL LLC**

Witness

By: _____
Solomon Goldberger, Managing Member

ATTEST:

THE CITY OF ORANGE TOWNSHIP

Clerk

By: _____
Dwayne D. Warren, Esq., Mayor

APPROVED AS TO FORM

City Attorney

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

BE IT REMEMBERED, that on _____, 2023, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared DWAYNE D. WARREN, ESQ., who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Mayor of THE CITY OF ORANGE TOWNSHIP, a body corporate and politic, and the body corporate and politic named in the within instrument; that the execution, as well as the making of this instrument, has been duly authorized by a proper resolution of the City Council; that deponent well knows the seal of the body corporate and politic; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument signed and delivered by DWAYNE D. WARREN, ESQ., the Mayor as and for the voluntary act and deed of said body corporate and politic, in her presence, who thereupon subscribed her name thereto as attesting witness.

Sworn and subscribed to before me this ___ day
of _____, 2023.

Notary Public of the State of NJ
My Commission Expires _____
(Affix Notarial Seal)

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

BE IT REMEMBERED, that on _____, 2023, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Solomon Goldberger, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is a Managing Member of MORROW STREET URBAN RENEWAL, LLC, a limited liability company under the laws of New Jersey, and the company named in the within instrument; that the execution, as well as the making of this instrument, has been duly authorized by this limited liability company; that deponent well knows the seal of the body corporate and politic; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument signed and delivered by the deponent as and for the voluntary act and deed of said body corporate and politic, in his presence, who thereupon subscribed his name thereto as attesting witness.

Sworn and subscribed to before me this ___ day
of _____, 2023.

Notary Public of the State of NJ
My Commission Expires _____
(Affix Notarial Seal)

EXHIBIT A

EXHIBIT B

EXHIBIT C