

**O-17-53
10/18/17**

ORDINANCE AUTHORIZING THE EXECUTION OF AN ENCROACHMENT AGREEMENT WITH MHP 222 AVENUE E URBAN RENEWAL, LLC TO ALLOW CERTAIN ENCROACHMENTS INTO THE PUBLIC RIGHT OF WAY ADJACENT TO BLOCK 458, LOTS 12 AND 13 (206-220 AVENUE E)

WHEREAS, MHP 222 AVENUE E URBAN RENEWAL, LLC (hereinafter “Redeveloper”) is the owner of a certain parcel of property known as Tax Block 458, Lots 12 & 13 (which will be or have been consolidated into a single tax lot) (the “Property”) previously and more commonly known as the CJ Murphy Property; and

WHEREAS, the Property is located in the Urban Enterprise Zone and a rehabilitation area, and the redevelopment thereof is subject to the approved 206-222 Avenue E Rehabilitation Plan and Preliminary and Final Site Plan Approval for Application No. P-16-024 dated July 12, 2016 by the City’s Planning Board (“Approvals”); and

WHEREAS, the Property is presently being redeveloped in accordance with the Approvals to provide a multifamily apartment building containing 70 residential units and seventy-two (72) parking spaces; and

WHEREAS, Redeveloper has requested that the City permit certain physical encroachments within the public right of way to facilitate the residential uses of the new apartment building, including the installation of: (1) a steel canopy appended to the northern building corner, extending into the right of way for both Avenue E and East 21st Street; (2) a three (3) foot high iron fence around a planted area extending into the Avenue E right of way; and (3) double out-swinging lobby door extending into the Avenue E right of way; all such encroaching improvements depicted on the architectural plan prepared by architects Marchetto Higgins Stieve, which is appended hereto as Exhibit B (the “Encroachment Area”); and

WHEREAS, Redeveloper has agreed to enter into an Encroachment Agreement, the salient terms of which are set forth in the proposed Encroachment Agreement attached hereto as Exhibit A, setting forth the Redeveloper’s obligations regarding said encroachments; and

WHEREAS, the proposed encroachments within the public right of way are subject to approval by this Municipal Council; and

WHEREAS, the Redeveloper agrees to defend, indemnify, and hold harmless the City, its agents, employees, successors and assigns, from any and all claims, liabilities, actions, demands, personal injuries, death, or property damage resulting from or arising out of the use or presence of the easements granted herein, including all costs, counsel fees, expenses and liabilities incurred in connection with any such claim(s).

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF BAYONNE THAT:

1. The Mayor and City Clerk are hereby authorized to execute an Encroachment Agreement with MHP 222 Avenue E Urban Renewal, LLC .

DMR:nmi

**ENCROACHMENT
AGREEMENT**

This Agreement is entered into on the _____ day of _____ 2017, by and between the **CITY OF BAYONNE**, a municipal corporation of the State of New Jersey, located at 630 Avenue C, Bayonne, New Jersey 07002 (“City” or “Grantor”) and **MHP 222 Avenue E Urban Renewal, LLC**, 4 Brighton Road, Suite 200, Clifton, New Jersey 07012 (“Redeveloper” or “Grantee,” which expression shall include successors and assigns).

WITNESSETH:

WHEREAS, Redeveloper is the owner of a certain parcel of property known as Tax Block 458, Lots 12 & 13 (which will be or have been consolidated into a single tax lot) (the “Property”) previously and more commonly known as the CJ Murphy Property; and

WHEREAS, the Property is located in the Urban Enterprise Zone and a rehabilitation area, and the redevelopment thereof is subject to the approved 206-222 Avenue E Rehabilitation Plan and Preliminary and Final Site Plan Approval for Application No. P-16-024 dated July 12, 2016 by the City’s Planning Board (“Approvals”); and

WHEREAS, the Property is presently being redeveloped in accordance with the Approvals to provide a multifamily apartment building containing 70 residential units and seventy-two (72) parking spaces; and

WHEREAS, Redeveloper has requested that the City permit certain physical encroachments within the public right of way to facilitate the residential uses of the new apartment building, including the installation of: (1) a steel canopy appended to the northern building corner, extending into the right of way for both Avenue E and East 21st Street; (2) a three (3) foot high iron fence around a planted area extending into the Avenue E right of way; and (3) double out-swinging lobby door extending into the Avenue E right of way; all such encroaching improvements depicted on the architectural plan prepared by architects Marchetto Higgins Stieve, which is appended hereto as Exhibit A (the “Encroachment Area”); and

WHEREAS, the proposed encroachments within the public right of way are subject to approval by City Council; and

WHEREAS, Bayonne City Council has conducted a public hearing on _____, 2017 and has approved the terms of this Agreement by Resolution # _____ on _____, 2017.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantee agree as follows:

Grant of Encroachment Easement. The City grants to Redeveloper an easement to encroach within the Encroachment Area to allow for the installation of: (1) a steel canopy appended to the northern building corner, at an elevation of approximately fifteen (15) feet above grade; (2) a three (3) foot high iron fence around a planted area; and (3) double out-swinging lobby doors.

1. *Maintenance.* Grantee shall maintain the Encroachment Area in a good, safe and sanitary condition at the sole cost, risk and responsibility of Grantee.

2. *Indemnity.* Grantee shall defend, indemnify, and hold harmless the City, its agents, employees, successors and assigns, from any and all claims, liabilities, actions, demands, personal injuries, death, or property damage resulting from or arising out of the use or presence of the easements granted herein, including all costs, counsel fees, expenses and liabilities incurred in connection with any such claim(s). If any such action or proceeding is brought against the City by reason of any such claim, Grantee agrees upon notice from the City to resist or defend such action or proceeding at the Grantee's sole expense. Grantee further agrees to pay any and all costs incurred by the City to enforce this indemnity and defense provision.

3. *Use of Right of Way.* In the event the City finds it necessary to place, replace or maintain a public improvement over, through or under the Encroachment Area for any reason, and it is determined by the City that it is necessary for the Grantee to suspend the use of the Encroachment Area on Avenue E and East 21st Street for any period of time, the City will notify the Grantee. To the extent practical, the City will notify the Grantee of same in writing at least thirty (30) calendar days in advance of the work. In the event of an urgent condition arises, as determined by the City, the City may unilaterally declare that the easement be suspended immediately or within any time period less than thirty (30) calendar days. In either event, the Grantee shall at its sole expense remove any or all property, improvements or other material from the Avenue E and East 21st Street right of way and conduct any other necessary preparations advisable to protect property and persons within the building. If Grantee fails to begin comply with the direction of the City in this regard within ninety (90) days of the City's notice to perform said work, the City may cause the work to be done and Grantee shall be responsible for payment of all reasonable costs to perform said work. If the Grantee fails to pay said costs, the City is authorized to place a lien in the amount of said costs upon the Property.

4. *City Right of Way.* The City's rights and obligations with respect to the Avenue E and East 21st Street right of way shall remain and continue in full force and effect. The City's right to use its right of way shall in no way be diminished by the City's grant of the easement herein. Grantee acknowledges that the City has no responsibility to maintain the Avenue E and East 21st Street right of way in a manner or condition acceptable to Grantee or conducive to Grantee's use of the easement herein granted to the Grantee.

5. *Damages to Right of Way.* The Grantee will be responsible for any and all damages that may be sustained to the Avenue E and East 21st Street right of way arising out of its use of the easement herein, and upon request, must immediately restore any damage caused by the Redeveloper to the Avenue E and East 21st Street right of way. The Grantee expressly

acknowledges its understanding that no modification, adjustment, or defacement of the right of way will be permitted other than as set forth in the "Grant of Easement" clause contained in this Agreement.

6. *Damages to Property.* The City shall not be responsible or liable for any property damages to the area of the easement nor any damage(s) to any personal property placed in the Encroachment Area or any injury(ies) to any persons permitted to occupy any part of the Encroachment Area.

7. *Binding Effect.* The rights granted herein shall be appurtenant to and run with the Property and remain in full force and effect with respect to and bind any subsequent owner or assignee of the Property, subject to the limitations on such rights as are herein set forth.

8. *Notices.* All notices, requests, demands and other communications permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when actually delivered personally, or as of the postmarked date that such written notice is deposited in the United States Mail, by certified mail, postage prepaid, return receipt requested and addressed as follows:

To City: Clerk, City of Bayonne
630 Avenue C
Bayonne, New Jersey 07002

To Grantee: MHP 222 Avenue E Urban Renewal, LLC
4 Brighton Road, Suite 200
Clifton, New Jersey 07012

9. *Entire Agreement.* This Agreement embodies all of the terms and conditions of the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral discussions of the subject matter hereof, if any. There are no statements, representations or warranties which have not been included in this Agreement.

10. *Applicable Law.* This Agreement shall be construed in accordance with the laws of the State of New Jersey.

11. *Provisions Separable.* The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or enforceable if any other provision(s) is declared invalid or unenforceable in whole or in part.

[REMAINDER OF PAGE LEFT BLANK – SIGNATURE PAGE FOLLOWS]

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)

) **SS:**

COUNTY OF _____)

BE IT REMEMBERED, that on this __ day of _____, 2017 before me, the subscriber, personally appeared **Tzvi Goder** personally appeared before me, and this person acknowledged under oath, to my satisfaction that:(a) he is the Managing Member of MHP 222 Avenue E Urban Renewal, LLC, the Grantee in the attached Easement Agreement;(b)he is authorized to execute the attached Easement Agreement on behalf of the Grantee; (c) he executed the attached Easement Agreement on behalf of and as the act of the Grantee; and (d) the attached Easement Agreement was signed and made by the Grantee as its duly authorized and voluntary act.

EXHIBIT A

N=665727.7832
E=598169.1664



