

**MEMORANDUM OF
UNDERSTANDING**

BETWEEN

THE COUNTY OF UNION

AND

**THE BOROUGH OF NEW
PROVIDENCE**

Prepared By:

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44 Whippany Road, Suite 210
Morristown, New Jersey 07962**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered on this _____ day _____, 2009, by and between the **BOROUGH OF NEW PROVIDENCE** a Body Politic of the State of New Jersey with an address of 360 Elkwood Avenue, New Providence, New Jersey 07974 (the "Owner") and **THE COUNTY OF UNION, A POLITICAL SUBDIVISION OF THE STATE OF NEW JERSEY** with an address of c/o Union County Open Space, Recreation & Historic Preservation Trust Fund, Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey 07207 (herein after referred to as the "Buyer") and sets forth the terms under which the parties hereto will proceed toward the execution of a contract of purchase and sale of property currently referred to as Oakwood Park and the River Walkway Property, both located in the Borough of New Providence (collectively, the "Property").

WHEREAS, the Union County Open Space Recreation and Historic Preservation Trust Fund is a legal entity and voter approved subsidiary of Buyer which came into existence on February 15, 2001, pursuant to a referendum presented to the voters of Union County establishing a vehicle within which the County acquires and preserves recreational lands and historic properties pursuant to N.J.S.A. 40:12-15.1 et. seq.

WHEREAS, Owner, pursuant to a duly adopted resolution dated _____, has proposed to sell for a nominal consideration Oakwood Park ("Oakwood") to Buyer for the specific purpose and condition of renovating, upgrading and using the park; and

WHEREAS, Owner has similarly proposed, pursuant to a duly adopted resolution of Owner dated _____ to sell for a nominal consideration the River Walkway Property (the "River Property") to Buyer for the specific purpose and condition of using the property as parkland; and

WHEREAS, Buyer, considering the nature and purpose of the conveyance, is inclined to proceed toward entering into an agreement of purchase and sale and for undertaking the necessary renovations and improvements to the Property, as well as their preservation as part of the Union County Register of Open Spaces Inventory;

NOW, THEREFORE, the Parties hereby memorialize their understanding of the terms and conditions of this purchase and sale (hereinafter the "MOU"):

1. **Statement of Facts.**

1.1. Owner is the owner in fee of (1) the Oakwood Property consisting of a parcel containing 15.61 plus or minus acres of property, and is referred to as Block 76, Lot 35.02, as designated on the tax map of the Borough of New Providence, Union County, New Jersey; and (2) the River Property consisting of a parcel containing approximately 13.79 acres of property and is all the property owned by Owner along the

Passaic River. Same is referred to as Block 85, Lots 32 & 34, and Block 90, Lot 14 as designated on the tax map of the Borough of New Providence, Union County, New Jersey.

2. **Due Diligence.**

2.1. For the ninety (90) day period commencing with the date of execution this MOU, and as may be extended by mutual consent, (the "Term"), the Parties hereto will proceed as follows:

- (i) Owner shall assign to Buyer, the approved grant for improvements to the River Property;
- (ii) Owner shall assign to Buyer, any and all work obtained by professionals, including but not limited to, Maser Consulting P.A., in connection with any proposed improvements to the Property, with all services rendered paid in part from a \$75,000.00 matching grant that was provided by the Buyer to the Owner prior to the negotiation of the within Memorandum of Understanding as well as the matching \$75,000.00 from Owner to fulfill the grant requirements. It is understood that any costs incurred by the Owner with respect to the implementation of the terms and conditions of this MOU as reduced to a contract or otherwise shall be limited to the \$75,000.00 matching grant and Owner's \$75,000.00 or a total of \$150,000.00. Should any monies remain after payment of obligations by the Owner as set forth herein, then said sum shall be transmitted back to the Buyer. However, should these costs exceed the \$150,000.00, it is understood that the Buyer will only be responsible for up to but not in excess of the grant amount plus Owner's matching contribution. This includes professional services provided to Owner by Maser Consulting and Engineering and as well as the preparation of any documents drawings, etc. by Owner's consultants.
- (iii) Owner shall authorize the preparation of the bid documents for the improvements to be completed on the Property, consistent with Local Public Contracts Law and subject to Paragraph 2.1(ii) above, as applicable and at its sole cost and expense;
- (iv) Buyer shall obtain and fund a Phase I Environmental Analysis for the River Property;
- (v) Buyer shall use its best efforts to proceed in good faith toward the execution of the proposed sale agreement;
- (vi) Buyer shall give to Owner, upon execution of the proposed sale agreement and simultaneously with closing of title, an easement to be used by Owner to discharge water from its Sewerage Treatment plant to the Passaic River. Buyer will, likewise, retain an easement that will be needed for it to access the River Property. The delineation of the easements will be more particular set forth in the

- survey to be obtained by Buyer and which will become a part of the final agreement;
- (vii) Buyer and Owner shall in good faith negotiate sale terms that shall, at a minimum, be in accordance with the terms of this MOU;
 - (viii) the New Jersey Department of Environmental Protection Green Acres Program shall approve any and all specifications as to the proposed use of the Property; and
 - (ix) upon the successful completion of these items, Buyer and Owner shall execute the proposed sale agreement in accordance with the terms hereof.

2.2. In the event that: (i) Buyer is not satisfied with the results of the Phase I Environmental Analysis; or (ii) Buyer determines that it is not economically feasible to renovate and purchase the Property; or (iii) Buyer determines that such a sale is not in Buyer's best interests; or (iv) the New Jersey Department of Environmental Protection Green Acres Program fails to approve any and all specifications as to the proposed use of the Property or if the title report obtained by Buyer indicates that title is unmarketable or uninsurable at ordinary rates; or (v) Buyer and Owner cannot reach an agreement on the sale terms within the Term of this MOU, then this MOU, if not previously terminated in accordance with the terms hereof and unless extended in writing by mutual consent of each of the Parties, shall automatically terminate.

2.3. In the event of the termination of this MOU, whether automatically or otherwise, no Party hereto shall have recourse against another Party for the recovery of monies spent pursuant to or in relation to this MOU, unless this MOU provides otherwise.

3. **Access.** During the Term of this MOU, Owner grants access to the Property to Buyer, its administration, agents, employees and consultants, in order to proceed with the design and due diligence required before undertaking renovation work or executing a sale agreement.

4. **Owner's Representations and Warranties.** Owner makes the following material representations and warranties upon which Buyer relies in proceeding with this transaction.

4.1. Owner represents the cost of the improvements to Oakwood Park and the River Property to not be in excess of \$3,500,000 which representation forms the basis of this Agreement and upon which Buyer has relied. Should Owner's representation not be in accordance with the final costs estimates provided by Owner's engineers and design professional, then in that event, Buyer shall have the unilateral right to terminate this transaction.

4.2. The title to the Property is held in fee by the Owner who is unaware of any liens, encumbrances, or judgments on the Property that would interfere with Buyer's proposed use;

4.3. Owner is unaware of the presence of any hazardous substances or pollutants on, in or under the Property and shall comply with all applicable Federal and State Environmental laws, statutes and regulations that may bear upon or be triggered by this MOU or the sale agreement contemplated hereby including, but not limited to, the New Jersey Department of Environmental Protection Green Acres Program Rules;

4.4. Owner shall cooperate fully with Buyer, post-closing of title, in obtaining all necessary permits and approvals as required by State or local authorities to implement the improvements to the Property;

4.5. Owner shall undertake, as a condition precedent to the execution of a sale agreement between Owner and Buyer, the following: (i) assigning to Buyer, the approved grant for improvements to the River Property and the approved loan in the amount of \$500,000 for improvements to the Oakwood Property, Owner arranging for assignment to Buyer of same at or before closing of title; (iii) assigning to Buyer, any and all work obtained by professionals, including but not limited to, Maser Consulting P.A., in connection with any proposed improvements to Oakwood Park, with all services rendered paid through the date of assignment to Buyer; and (iv) authorizing the preparation of the front-end bid documents for the improvements to be completed on the Property, consistent with Local Public Contracts Law, as applicable. All costs incurred by the Owner shall be paid to the extent as set forth in Paragraph 2.1(ii) and not to exceed \$150,000 as set forth therein.

5. **Buyer Responsibilities.** Buyer, acting in good faith, makes the following representations:

5.1. Buyer's intended use of the Property is consistent with the Borough's Zoning Ordinances;

5.2. Buyer shall complete plans for the renovation and improvement of the Property which shall be subject to the reasonable satisfaction of Owner in accordance with the direction of the assigned engineers as well as to take such steps as are necessary to obtain municipal and all governmental approvals, permits and/or waivers for the renovation work to proceed following the execution of sale agreement. A copy of the concept plan developed by Owner's professionals will be annexed to the final Agreement between the Parties.

5.3. Buyer shall undertake, as a condition precedent to the execution of a formal purchase and sale agreement between Owner and Buyer, obtaining and funding a Phase I Environmental Analysis for the River Property;

5.4. Buyer shall endeavor to obtain adequate funding from the Garden State Green Acres Preservation Trust Fund, pursuant to N.J.S.A. 13:8C-19 *et. seq.*, to be able to fund a portion of the costs associated with Buyer's renovation and use of the Property;

6. Purchase and Sale Agreement.

6.1. Buyer and Owner shall proceed during the Term of this MOU to negotiate the terms of the proposed sale agreement which shall contain the following specific terms and conditions:

- 6.1.1. The purchase price for the Oakwood and River properties shall be One Dollar (\$1.00);
- 6.1.2. A delineation of the improvements to be made to the River Property, paid for with funding obtained by Owner through a grant, which will be assigned to Buyer, and which shall include, without limitation, funds to upgrade the shelter area, walking trails and picnic grove;
- 6.1.3. A delineation of the improvements to be made to Oakwood Park, currently represented and estimated by Owners at \$3,000,000.00 to \$3,500,000.00, shall include, without limitation:
 - 6.1.3.1. two (2) football/soccer fields;
 - 6.1.3.2. two (2) baseball diamonds,
 - 6.1.3.3. a new parking area with space for fifty (50) parking spots;
 - 6.1.3.4. improvements to the existing parking lot including curbing and paving;
 - 6.1.3.5. relocation of current playground area; and
 - 6.1.3.6. construction of two (2) facilities including a field house/concession area and a restroom.
 - 6.1.3.7. should the cost of improvements exceed the current estimates as set forth above, and should Buyer then determine that it is economically unfeasible for them to proceed with the improvements, Buyer will then give written notice of termination of the Agreement to the Owner effective immediately. In addition, Buyer shall reconvey the Oakwood and River properties to Owner for a consideration of \$1.00, the original purchase price as set forth in 6.1.1 above.
- 6.1.4. Buyer will be responsible for all routine maintenance of the River Property, at or after closing of title, while Owner will be

responsible for all routine maintenance of Oakwood Park, at or after title has closed. Routine maintenance shall include but not be limited to grass cutting, painting, fertilizing, litter and trash collection, watering and related such work and does not include any capital repairs or improvement. All capital repairs or improvements shall be the sole responsibility of the Buyer. This provision shall survive closing of title. A formal maintenance schedule shall be affixed to the final Agreement between the parties.

It is understood and agreed by and between the parties that the Buyer shall be responsible for the clean-up of the Property subsequent to all Buyer sponsored events. All other clean-up and general maintenance will be the Owner's responsibility as set forth in this paragraph.

- 6.1.5. Buyer shall complete all renovations for Oakwood Park in accordance with the plans and specifications to be prepared by Owner and as approved by Buyer;
- 6.1.6. Buyer shall complete all renovations for the River Property in accordance with the plans and specifications to be prepared by the assigned engineering firm as approved by Buyer; and
- 6.1.7. Approval by the New Jersey Department of Environmental Protection Green Acres Program of the proposed River Property easement and any and all specifications as to the proposed use of the Property as may be applicable to their approval process.

6.2. In the event of (i) Buyer and Owner's failure to agree on sale terms; (ii) Owner's failure to comply with any of the conditions set forth herein; (iii) the Parties failure to obtain any of the above approvals, permits or waivers, or any other required governmental approvals, permits or waivers not herein listed, despite a good faith effort to do so; or (iv) Buyer's inability to obtain sufficient funding to satisfy its requirements; or (v) Buyer having received an adverse environmental report regarding the Property; then Buyer shall have no obligation to enter into the Proposed Sale Agreement with Owner and the terms set forth in this letter may be terminated by Buyer without any penalty, shifting of costs or any recourse against one another and none of the Parties, in the event of such termination, shall have any further obligation to another Party.

6.3 Owner and Buyer shall, through their respective Recreation Coordinators establish a Schedule of Events for the use of the Oakwood Park Facility. The Buyer recognizes that this facility is the focal point of much of the recreational activity of the Owner and, as such, agrees to allow priority of Owner's scheduling as much as possible. Owner shall not be charged any usage fees for its events scheduled at Oakwood Park.

The Buyer recognizes that Oakwood Park is located within a residential area and agrees to consult with Owner before scheduling any county-wide event at this location. Buyer shall consider the following factors before scheduling such an event: Number of participants, parking requirements, safety and security, hours of operation and target audience - youth, teens, young adults, senior citizens, and similar type issues, in order to minimize any neighborhood disruption.

6.4 Re-acquisition/Reverter

6.4.1 Owner shall have the right, on due notice to the Buyer, to reacquire ONLY the Oakwood Park Property. This provision shall apply only when there are 2 or more demonstrated instances within a 12-month period of time, where scheduling conflicts could not be resolved and the Owner's activities were not accommodated by the Buyer. The "reacquisition cost" by the Owner shall be at the original cost of acquisition of Buyer plus the cost of all improvements but excluding soft costs incurred by the Buyer in the ordinary course of project development. If additional soft costs are incurred due to the insufficiency of the bid documents provided by Owner to Buyer, same will NOT be exempted from the reacquisition costs but shall be included as part of same. By way of example, and not by way of limitation, soft costs include professional fees incurred by Buyer in the development of the improvements.

The re-acquisition amount, once determined and verified, shall be paid within ninety (90) days of notice on the part of Owner to Buyer of their intention to reacquire the property.

6.4.2 The parties agree that the ultimate Deed(s) of Conveyance from Owner to Buyer shall contain a Right of Reversion in favor of Owner. Should Buyer fail to commence and complete the refurbishment of the Property within thirty-six (36) months of taking title, unless extended by mutual agreement of the parties or under circumstances which are beyond the control of the Buyer, including but not limited to contractor delay/default issues, labor disputes, environmental issues, or project permitting. Owner may exercise its right of reverter and title to the Property shall vest in the Owner.

The Buyer will allow Owner a \$500,000.00 credit in the event of their exercising the reverter. The condition, however, is that were New Jersey Green Acres to now consider the \$500,000.00 a loan as opposed to a grant, Owner will agree to be fully responsible for the re-payment and will indemnify and hold the Buyer harmless from any re-payment obligation.

Further, in the event that Buyer abandons the use described in the Owner's plans and in this memorandum and/or its obligation to maintain the Property in terms of capital maintenance as set forth in Paragraph 6.1.4, Owner shall likewise have the right to exercise its reverter with title ultimately returning to the Owner.

6.4.3 It is understood and agreed that in all instances delineated in this Section 6.4, and as a condition precedent to the exercising of Owner's right to reversion, Owner shall give at least thirty (30) days written notice to Buyer of its intentions to exercise said right, setting forth in detail the specific event(s) which Owner believes gives Owner the right to seek a reversion of the Property, but giving Buyer a thirty (30) day opportunity to cure. The Seller, upon exercising of the right of Reverter set forth above, shall pay to Buyer the reacquisition costs set forth in 6.3 above.

6.5 Any fees generated by Buyer as "user fees" charged to third parties for the use of the Property shall belong solely to Buyer.

7. Applicable Law

The provisions of this Memorandum of Understanding as well as any subsequent formalization of the terms contained herein by way of agreement or otherwise shall be subject to all applicable New Jersey Law and Regulations including but not limited to New Jersey Green Acres Land Acquisition Act of 1961, New Jersey Green Acres Land Acquisition Act of 1971 and New Jersey Green Acres Land Acquisition and Recreation Opportunities Act including all amendments thereto. It is understood and agreed by all parties that should any provision of this Memorandum of Understanding or future agreement contain provisions which are contrary to any of the above cited laws, then in such event that provision shall be considered stricken from the agreement and shall be deemed void. All other terms and provisions of this Memorandum of Understanding and any future agreements shall remain in full force and effect.

8. Non-Waiver of Remedies

Failure on the part of either Owner or Buyer to exercise any remedies set forth in this Agreement shall not constitute a waiver for any future claims made by either party which pursuant to those remedies.

WHEREFORE, the Parties have signed this Memorandum of Understanding effective as of the date last set forth below.

**BOROUGH OF NEW
PROVIDENCE:**

John Thoms, Mayor
Dated:

ATTEST:

Douglas Marvin
Borough Bus. Admin/Bd. Secty.

**THE COUNTY OF UNION,
A POLITICAL SUBDIVISION
OF THE STATE OF NEW JERSEY**

George Devanney, County Manager
Dated:

ATTEST:

Robert E. Barry
Union County Counsel