

PRELIMINARY MEMORANDUM OF UNDERSTANDING BETWEEN THE
VILLAGE OF NYACK AND RIVERSPACE IN NYACK, INC. REGARDING THE
PRODUCTION OF A CONCEPTUAL REDEVELOPMENT PLAN FOR THE
SUPERBLOCK IN DOWNTOWN NYACK

This Memorandum of Understanding (“MOU”) dated May 2ND 2011, is by and between the VILLAGE OF NYACK, a municipality organized and existing under the laws of the State of New York, having its principal office at 9 North Broadway, Nyack, NY 10960 (the Board of Trustees of the Village of Nyack together with the Mayor of the Village of Nyack herein referred to collectively as the “Village”), and Riverspace in Nyack, Inc., a not-for-profit corporation in good standing in the State of New York, having its principal offices at 119 Main Street, Nyack, NY 10960, (“Riverspace”).

WHEREAS, the Village has determined, and hereby reaffirms its determination, that it is in the best interests of the Village of Nyack to facilitate redevelopment, enhance attractiveness, and advance economic interests in its downtown area through a mixture of residential, commercial, and other appropriate uses, with a cultural and/or performing arts facility as its centerpiece, in the vicinity of Main Street between Cedar Street and South Franklin Street, which property is identified on the Town of Orangetown tax rolls as (i) 66.38-1-65 (the “M&T Site), (ii) 66.38-1-117, 119, 121,123, 125 (the “Millbrook Site”), and 66.38-1-62, 63 (the “Village Sites”), together the aforementioned properties constituting the proposed “Project” and “Project Area”; and

WHEREAS, Riverspace, a private entity, has sought to partner with the Village to foster the concept of a redevelopment plan for the Project Area (the “Master Conceptual Redevelopment Plan” or the “Plan”), in which Riverspace and the Village envision the construction of a cultural and/or performing arts facility, subsidized by the residential and commercial part of the Project, as the centerpiece of the redevelopment of the Project Area; and

WHEREAS, the Village and Riverspace desire to enter into a preliminary non-binding agreement to commence the planning process for the Project, and to establish the general framework and scope of each of the respective parties expectations regarding process of producing the Plan for the Project Area; and

WHEREAS, the Village and Riverspace expect that the Plan for the Project Area will outline expected uses, building locations, height, scale, amenities, as well as the character and scope of the potential redevelopment of the Project Area; and

WHEREAS, the Village and Riverspace agree that that the inclusion of a cultural and/or performing arts facility, subsidized by the residential and commercial part of the project, is a requirement of any proposed redevelopment of the Project Area; and

WHEREAS, the Village and Riverspace understand and agree that both parties must be actively involved in the creation of the Plan, and endorse said Plan, for the Project Area in order for a Public/Private Partnership between the Village and Riverspace to proceed beyond the preliminary planning process; and

WHEREAS, the Village and Riverspace are entering into this MOU in order to set forth certain understandings between them with respect to: (1) the obligations of the parties to be performed during the Plan for the Project Area, and (2) to set forth the intention of the parties to enter into further and future agreement(s) should the project move forward; and

WHEREAS, the parties agree and acknowledge that although by this Agreement the Village covenants in good faith to diligently and reasonably seek to perform its obligations hereunder, the Village can not commit to any particular outcome regarding the Project, the Project Area or future related municipal approvals concerning the Project, and that the covenants, conditions and agreements set forth herein are preliminary in nature until such time as an acceptable Master Conceptual Redevelopment Plan is agreed to by the parties hereto as evinced by future written agreements to implement same; and

WHEREAS, the Village and Riverspace wish that the redevelopment of the Project Area take place in a timely and expeditious manner; and

WHEREAS, in furtherance of the above, the Village Board of Trustees has on this date approved this Agreement for execution by the Mayor on behalf of the Village; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agrees as follows:

A. Project Description and Anticipated Transaction

The Project Area comprises approximately 3.65 acres, consisting of the M&T Site, the Millbrook Site, and the Village Sites. Both the M&T and Millbrook Sites are privately owned properties. Generally, subject to the responses to planned developer solicitations by the Village, the parties agree that the project would include a mixture of residential, commercial, and other appropriate uses, with a cultural and/or performing arts facility as its centerpiece. Further, the parties agree that the cultural and/or performing arts facility would be subsidized to some degree by the residential and commercial parts of the redevelopment.

B. Project and Master Conceptual Redevelopment Plan

The parties agree that a Master Conceptual Redevelopment Plan shall be prepared and submitted to the Village for review and endorsement as a suitable land use planning vision for the Project and the Project Area. The parties anticipate that the Plan will be developed after a Request for Expression of Interest (“RFEI”) is issued by the Village, the results of which would be analyzed by the Village, Riverspace, and appropriate planning consultants. It is envisioned that the RFEI process and Plan development likely will be followed by a Request for Proposal (“RFP”) being issued by the Village, the ultimate result of which would be to designate a commercial developer to work with the

Village and Riverspace on the implementation of the Plan. The Master Conceptual Redevelopment Plan would then be generated by retained planning consultants to reflect expected uses, building locations, height, scale, amenities, as well as the character and scope of the potential redevelopment of the Project Area. The Master Conceptual Redevelopment Plan must be consistent with the Village's Comprehensive Master Plan, and the Village's overall goals and visions for the redevelopment and sustainability of the Project Area.

It is the intention of the Village and Riverspace that the implementation of the Master Conceptual Redevelopment Plan would be made pursuant to a second, more detailed Redevelopment Project Memorandum of Understanding between the Village and Riverspace.

C. The Obligations of Riverspace

- (1) Riverspace shall be liable for all costs to prepare the Master Conceptual Redevelopment Plan. Upon execution of this Agreement, Riverspace shall establish a "Predevelopment Fund Escrow Account" with the Village of Nyack, in the initial amount of \$200,000.00 to facilitate the Village retaining a mutually acceptable Planning Consultant who will generate the RFEI, conduct the analysis of responses, and develop the Master Conceptual Redevelopment Plan in consultation with the Village and Riverspace (see Paragraph J, below, for additional anticipated Municipal Expenses to be funded by the Predevelopment Fund Escrow Account). The parties do not anticipate that the Municipal Expenses associated with the development of the Plan incurred during the term of this Agreement will exceed \$200,000.00, however, Riverspace agrees to fund the Predevelopment Fund Escrow Account as provided for herein. The parties recognize that the Village or Riverspace may unilaterally seek to make minor modifications to the Master Conceptual Redevelopment

Plan from time to time prior to its being submitted to the Village for approval, provided, however, that any material changes to the program, design, market, construction standards, or phasing of the Project, must be agreed on by the parties, such consent not to be unreasonably withheld, delayed or conditioned, unless such material modification is required by a governmental agency having jurisdiction over the Project.

- (2) As a material inducement for the Village to enter into this MOU, and recognizing that the RFEI will be dependant on the demonstration of site control, to the extent that any of the properties related to the Project are privately owned as of the date of the MOU, acquiring the said private properties and/or obtaining site access or site control agreements shall be the sole responsibility of Riverspace. It is acknowledged that Riverspace has secured a purchase option on the Millbrook property, and that Riverspace is actively negotiating to secure the disposition of the M&T property for inclusion into the overall development Plan. Riverspace shall, on a monthly basis, report to the Village Board, in writing, as to the status of its efforts to secure site control agreements with the owners of the Millbrook and M&T properties. Such report shall include a written description of the purchase option or other site control agreement(s), together with copies of all written communications between Riverspace and the owners of the respective properties. Additionally, Riverspace shall provide the Village with written proof that the private properties have been acquired (or that valid and subsisting site control agreements have been reached) within five (5) days of a written demand or same (copies of the deeds or fully executed site control agreements shall constitute sufficient proof of same). No such demand shall be made until the Master Conceptual Redevelopment Plan has been generated and approved by the Village.

- (3) Riverspace shall launch a capital campaign to build and/or support the financing of the new cultural and/or performing arts facility. The campaign shall be funded in an amount not below \$2,000,000.00 within 180 days of the approval of the Master Conceptual Redevelopment Plan by the Village. Evidence that the campaign is sufficiently funded shall consist of written proof of actual funds, or written and acknowledged pledges, submitted to the Village Board. **The minimum amount set forth in this paragraph shall be subject to adjustment based upon an analysis of the Village's contribution to the Project, and such adjusted amount shall be reflected in the contemplated Redevelopment Project Memorandum of Understanding between the Village and Riverspace to be negotiated at a future date.** Riverspace shall, in connection with its capital campaign engage local business owners and stakeholders in its efforts, and coordinate with other local not-for-profit entities to assist its efforts.

D. The obligations of the Village

- (1) The Village shall, in good faith, diligently and reasonably:
- (i) Work to advance the project without unnecessary delay and incurring excess cost, and to develop a multiyear budget for the Municipal Expenses anticipated in connection with the development of the project.
 - (ii) Seek Federal, State and County funding for supporting infrastructure ,and/or other available public funding, once the Master Conceptual Redevelopment Plan has been approved by the Village Board of Trustees.
 - (iii) Support the fundraising efforts of Riverspace.
 - (iv) Prepare a statement of the value of the public assets to be contributed to the project for inclusion in the eventual RFP

relating to the approved Master Conceptual Redevelopment Plan.

- (v) Consider, in good faith, during the development of the Master Conceptual Redevelopment Plan, other potential municipal contributions to the Project, including but not limited to tax abatements or incentives, and zoning incentives.

E. Good Faith Commitments

The Village and Riverspace shall, in good faith, diligently and reasonably perform its obligations under the MOU, provided, that the Village can not commit to any particular outcome regarding the Project or Project Area, under any future SEQRA or other land use board review. As such, the Village makes no representations as to any approvals with respect to the project. Based upon SEQRA findings and other governmental findings and determinations required in connection with the project, the Project may be modified, reduced in scope, or rejected in whole or in part, and any covenants, conditions and agreements set forth in this or future MOU agreements are subject to and conditioned upon compliance with each of such findings and determinations.

F. Anticipated Future Agreements

It is anticipated that, and the parties shall make all commercially reasonable efforts to enter into an additional MOU(s) which shall, inter alia, further define the Project and Project Area once the Master Conceptual Redevelopment Plan is approved by the Village; further define the anticipated Land Acquisition and Development Agreements once the Master Conceptual Redevelopment Plan is approved by the Village; address potential IDA financing and PILOT agreements should same become

part of the Project financing; address Project Phasing; address demolition and temporary use threshold dates to protect the public health, safety and welfare; address local community benefit programs associated with the Project (if any), Affordable housing provisions, educational programs within the Project) (if any), public parks (including community center(s) and facilities within the Project (if any); further address public financing sources associated with the Project; and to clearly define the operation of the cultural and/or performing arts facility to be included in the project.

G. Zoning Review

The parties agree that the proposed Project shall be subject to binding review by the land use boards of the Village of Nyack.

H. Exclusivity

The Village shall not enter into or offer or agree to enter into any agreement with any other firm, person or entity with respect to the Plan proposed to be undertaken in the Project Area until the termination of this MOU. Nothing herein shall, however, diminish the ability of the members of the Board of Trustees from discussing the Plan with interested third parties.

I. Milestones

Village and Riverspace shall use commercially reasonable efforts to meet the following milestones, subject to Unavoidable Delay and notice and opportunity to cure, as set forth in paragraph K, below:

- (i) .Upon execution of this MOU, Riverspace shall deposit the sum of \$200,000.00 into the Predevelopment Fund Escrow Account.

- (ii) Village shall, within a commercially reasonable time from the receipt of such escrow funds, retain the agreed upon planning consultant to develop and publish the RFEI. The Village intends to solicit responses to the RFEI no later than July 15, 2011.
- (iii) The Village intends to use its best and reasonable efforts to develop the Master Conceptual Redevelopment Plan and prepare an RFP seeking a third party developer within ninety (90) days from receipt of the responses to the RFEI.
- (iv) Both parties shall undertake to perform their obligations as set forth herein.

J. Escrow Funds

- (1) Riverspace shall be liable for the reasonable costs and expenses paid or invoiced to the Village for consultants who are reasonably required to develop or review the Project, and for all other reasonable expenses incurred by or invoiced to the Village in furtherance of the project, including but not limited to, SEQRA review, expenses incurred preparing or negotiating various legal and other documents, including budgets, appraisals, and agreements, and defending any lawsuits, any demands or judgments against the Village arising from or related to the project (except to the extent attributable to the Village's own negligence or misconduct), environmental and SEQRA consultant costs, reasonable costs of architectural review, financial and planning review (including review of any Project financials), public relations costs (as approved by Riverspace), together known as the "Municipal Expenses", subject to periodic review and approval by Riverspace of such Municipal Expenses.

- (2) Upon signing of the MOU, Riverspace shall deposit a certified check payable to the “Village of Nyack” in the amount of \$200,000.00 Dollars, which funds shall be held in a separate escrow account maintained by the Village (the “Predevelopment Fund Account” described in paragraph C (1) above), and applied solely to the payment of Municipal Expenses. The Village hereby appoints the Village Administrator to act as Escrow Agent in accordance with the provisions of this Agreement, and hereby designates him with the authority to receive, deposit and approve payment of said funds from the escrow in order to pay all Municipal Expenses as set forth herein. The Predevelopment Fund Account shall be used only to pay for the Municipal Expenses and/or to reimburse the Village for such Municipal Expenses incurred hereunder. Riverspace shall have seven (7) days from receipt of invoices from the Village to make any objections, in writing, to the Escrow Agent, who shall make such determination as the Escrow Agent reasonably deems fit, respond to Riverspace, and authorize whatever payment from the escrow as he deems appropriate. In the event of a dispute concerning Municipal Expenses, Village and Riverspace shall promptly confer in a good faith effort to resolve the dispute, provided, that such dispute shall not be cause for non-performance by either party of any of its obligations under the MOU.
- (3) When the Predevelopment Fund Account is reduced below \$20,000.00, Riverspace shall deposit an additional sum of money so as to maintain the Fund at a level necessary to fund the next six (6) months of municipal expenses that advance the project (see D(1)(i) above).. Such additional deposit shall be made by Riverspace with the escrow Agent within five (5) days after written request for same is made by Escrow Agent.
- (4) Upon termination of this Agreement, any balance remaining in the Escrow Fund after all payment of Municipal Expenses shall promptly be remitted

to Riverspace, or, if there is a deficiency in the Escrow Fund, Riverspace shall promptly pay to the Village any outstanding Municipal Expenses due.

K. Default

(1) Riverspace:

(a) In the event that Riverspace fails to materially comply with any of the material terms and conditions of the MOU and fails to cure such default within thirty (30) days after written notice to cure from the Village, or, with respect to defaults not reasonably capable of cure within thirty (30) days fails to commence to cure such default within thirty (30) days thereafter or fails to diligently prosecute such cure, then the Village may in its sole discretion terminate this MOU, in which event the Escrow Agent shall promptly pay to Village any unpaid Municipal Expenses from the Predevelopment Escrow Fund and promptly remit the balance to Riverspace, or, if there is a deficiency in the Escrow Fund, Riverspace shall promptly pay to Village any outstanding Municipal Expenses due under the Escrow provisions herein, and thereafter neither party shall have any obligations or liabilities to the other.

(2) Village Default:

In the event that the Village fails to materially comply with any of the terms and conditions of the MOU, and fails to cure such default within thirty (30) days after written notice to cure from the Riverspace, or, with respect to defaults not reasonably capable of cure within thirty (30) days fails to commence to cure such default within thirty (30) days thereafter or fails to diligently prosecute such cure, then Riverspace may in its discretion (i) terminate this MOU, and the Escrow Agent shall promptly refund to Riverspace the balance in the Predevelopment Fund or, if there is a deficiency in the Escrow Fund, Riverspace shall promptly pay to Village any outstanding Municipal Expenses due under the Escrow provisions herein, and thereafter neither party shall have any obligations or

liabilities to the other. Due to the preliminary nature of this MOU, Riverspace agrees that other than the termination right referenced herein, in no event shall the Village be liable for, nor shall Riverspace seek, any other equitable or legal relief (including but not limited to injunctive relief or any and all claims for consequential damages).

L. Miscellaneous

1. Unavoidable delay, for purposes of the MOU shall mean any delay, obstruction, or interference resulting from any act or event which has a material adverse effect on a party's ability to perform under the MOU, provided that such act is beyond the reasonable control of such party, including without limitation, approvals from Federal, State or County agencies, force majeure and legal proceedings filed seeking to prevent or otherwise delay the Project, and which are not separately, concurrently, or partially caused by any negligent or willful act or omission of such party.

2. All performance dates and milestone dates shall be subject to tolling for periods of Unavoidable Delay.

3. Each of the parties agree not to make or issue, or cause to be made, press releases or other publicity concerning this MOU or the Project without the prior consent of the other party

4. The MOU shall not be effective until this MOU is signed and delivered by Riverspace and approved by the Village Board of Trustees, and signed the Mayor or his designee. Moreover, (i) until the Village and Riverspace approve a Land Acquisition and Development Agreement, no property interest or development rights shall arise under this MOU unless specifically provided for herein; and (ii) Riverspace and the Village may terminate the MOU upon notice to each other, whereupon the Escrow Agent shall promptly pay to Village any unpaid Municipal Expenses from the Predevelopment Escrow Fund and promptly remit the balance to Riverspace, or, if there is a deficiency in

the Escrow Fund, Riverspace shall promptly pay to Village any outstanding Municipal Expenses due under the Escrow provisions herein, and thereafter neither party shall have any obligations or liabilities to the other.

5. The parties agree to take all reasonable actions to expedite and review the Project, and the development of the Master Conceptual Redevelopment Plan, including, but not limited to the scheduling of special Village meetings where appropriate.

6. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to any conflicts hereunder.

7. This Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute the Agreement by signing any such counterpart.

8. Except as may be expressly provided to the contrary in this Agreement, nothing contained herein shall or shall not be construed to confer upon any person other than the parties hereto any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

9. Each party hereto shall do all acts and things to make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

10. This Agreement and any provisions hereof may only be changed, modified, amended, supplemented, altered, waived, discharged or terminated orally, except by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, supplement, alteration, waiver, discharge or termination is sought.

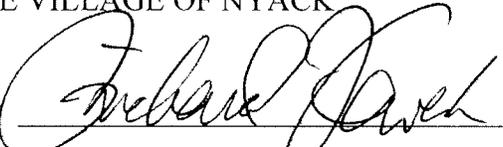
M. Termination.

- (1) Unless terminated earlier pursuant to the terms hereof, this Agreement shall terminate when the Master Conceptual Redevelopment Plan is approved by the Village Board of Trustees. It is the parties present intent to enter into an Redevelopment Project Memorandum of Understanding between the Village and Riverspace subsequent to the termination of this Agreement, which new agreement shall reflect the parties rights and obligations regarding the implementation of the Master Conceptual Redevelopment Plan (see paragraph F, above).

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IN WITNESS WHEREOF, the parties have executed the Agreement as of the date first written above.

THE VILLAGE OF NYACK

By: 

Mayor Richard Kavesh

Dated: May 2, 2011

RIVERSPACE IN NYACK, INC.

By: 

Board President, Riverspace

Dated: 5/12/11

11. This Agreement constitutes all of the present promises, agreements, conditions, inducements and understandings between the parties hereto concerning the Project, and there are no promises, agreements, conditions, inducements or understandings, oral or written, express or implied, between them other than as expressly set forth herein.

12. Any notice, demand, request or other communication which under the terms of this Agreement must or may be given or made or served by any of the parties hereto shall be in writing and shall be given or made by mailing the same registered or certified mail, express courier, or by hand delivery, addressed as set forth below:

If to the Village:

Hon. Richard Kavesh, Mayor
Village Hall
9 North Broadway
Nyack, NY 10960

With a copy to:

Village Attorney
Village Hall
9 North Broadway
Nyack, NY 10960

If to Riverspace:

Riverspace in Nyack, Inc.
119 Main Street, Nyack, NY 10960

With a copy to:

n/a

Notices sent by mail shall be deemed given three business days after mailing. Notices sent by express courier shall be deemed given the next business day. Notices delivered by hand shall be deemed given the day delivered. Any of the parties hereto or their counsel may designate by notice in writing a new or other address to which such notice or demand shall thereafter be given, made or mailed. Refusal of acceptance of notice shall be deemed given on the date of refusal.