

Appendix 1

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT**

July 8, 2009

Honorable Kenneth D. Runion  
Supervisor  
Town of Guilderland  
PO Box 339  
Guilderland, NY 12084-0339

Re: McKownville Improvement Project, Lands along Fuller Road, Western Avenue  
and Stuyvesant Plaza, Inc., Town of Guilderland, New York

Dear Supervisor Runion:

Stuyvesant Plaza, Inc. is pleased to participate in the plan for improvements (hereinafter "Project") for the storm water management, drainage and park along the area of the existing McKownville Reservoir along Western Avenue and Fuller Road in the Town of Guilderland. Through this process, Stuyvesant Plaza, Inc. will contribute an amount of up to one hundred twenty-three thousand three hundred seventeen dollars (\$123,317.00) toward the improvements contemplated by this Project. This contribution will be made subject to, and in accordance with, the terms and conditions as outlined in this Memorandum of Understanding and Agreement.

**PROJECT BUDGET**

The engineer designated by the Town of Guilderland to develop the Project, Delaware Engineering, has submitted and received bids for the Scope of Services (the "Scope") to which this Memorandum of Understanding and Agreement relates. A copy of the Scope is annexed hereto and marked Exhibit A. When the Project was originally formulated, Delaware Engineering had estimated the total cost of the Project at six hundred thousand dollars (\$600,000.00) (**including** engineering fees and a contingency for cost overruns). The Project was to be paid for with contributions from the New York State Department of Parks and Recreation (one hundred thousand dollars (\$100,000.00)); the New York State Department of Transportation (one hundred and fifty thousand dollars (\$150,000.00)); a New York State Assembly Legislative Member Item (two hundred and fifty thousand dollars (\$250,000.00)); and the private contribution from Stuyvesant Plaza, Inc. (one hundred thousand dollars (\$100,000.00)).

When the bids were received by the Town of Guilderland on July 6, 2009, the lowest bidder was M. Sullivan Construction, Inc. at a bid of five hundred eighty-nine thousand six



hundred thirty-three and 75/100 dollars (\$589,633.75), with **excluded** engineering fees and a contingency for cost overruns. When adding such additional charges to the overall cost of the Project, the Project cost becomes six hundred eighty-six thousand six hundred thirty-four dollars (\$686,634.00).

It is our understanding that, due to the increase over the original estimate of the Project, the erection and placement of the gazebo, and a portion of construction materials will be eliminated from the Project, thereby realizing a savings of forty thousand dollars (\$40,000.00). This would reduce the overall Project cost to six hundred forty-six thousand six hundred thirty-four dollars (\$646,634.00).

In order to pay for the Project costs above the original estimate of six hundred thousand dollars (\$600,000.00), Stuyvesant Plaza, Inc. will contribute additional monies beyond its one hundred thousand dollar (\$100,000) contribution equal to 50 cents for each dollar spent above the estimated amount to a maximum contribution of twenty-three thousand three hundred seventeen dollars (\$23,317.00). This is being done with the express understanding and agreement that the balance of the excess monies will be paid by the Town of Guilderland.

We understand that there remains a possibility that additional monies may become available to pay such excess costs through another New York State Assembly Legislative Member Item. While we acknowledge there is no guaranty of this potentially-available money, we understand that the Town of Guilderland will use its best efforts to secure such funding. If received, Stuyvesant Plaza, Inc. will receive a credit of equal to 50 percent of the additional funding up to the maximum sum of twenty three thousand three hundred seventeen dollars (\$23,317.00). In no event will Stuyvesant Plaza, Inc.'s contribution be less one hundred thousand dollars (\$100,000.00).

An enhancement to the overall development and success of the Project includes the development of an access way behind Stuyvesant Plaza over the lands of the Town of Guilderland for purposes of ingress and egress, enclosed storage of trash, and for parking purposes. This area is depicted on the map of Hershberg & Hershberg dated April 22, 2009, a copy of which is annexed hereto and marked Exhibit B. In further consideration of the agreements contained herein, and as a condition to the private contribution to be paid by Stuyvesant Plaza, Inc., the Town of Guilderland agrees to provide Stuyvesant Plaza, Inc. with a non-exclusive easement over these lands for such ordinary rights of ingress and egress, trash storage, and a public parking area for the shared benefit of customers, employees and patrons of Stuyvesant Plaza, Inc. as well as members of the general public. In further consideration for the grant of this easement to Stuyvesant Plaza, Inc., Stuyvesant Plaza, Inc. shall improve this area with a suitable asphalt service on or before October 1, 2010.

Upon completion of the Project, it is our understanding and expectation that the Town of Guilderland will continue with its past practice to control and maintain the storm water



management and drainage systems, as well as the overall park area

**PAYMENTS BY STUYVESANT PLAZA, INC.**

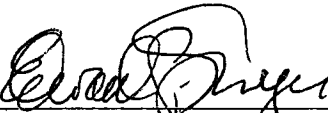
Subject to the terms set forth in, and upon complete execution of, this Memorandum of Understanding and Agreement, Stuyvesant Plaza, Inc. will make an initial payment of forty-seven thousand dollars (\$47,000.00) to be applied toward costs and fees associated with the services performed by Delaware Engineering in preparation for the Project. Such payment will be made directly to the Town on or before August 7, 2009 and upon receipt of a copy of an approved invoice from the Town. The Town of Guilderland bears full responsibility to review and approve the services performed by Delaware Engineering.

If this Understanding and Agreement is acceptable to the Town of Guilderland, we respectfully ask that a resolution be given by the Town Board to authorize you to sign this correspondence where indicated. When accomplished, Stuyvesant Plaza, Inc. will tender a check in the amount of \$47,000.00 by the stated date, and will proceed immediately to fulfill all of its other obligations hereunder.

Thank you.

Very truly yours,

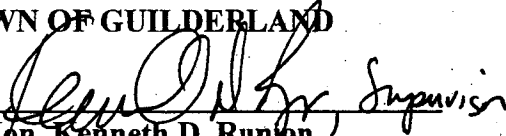
STUYVESANT PLAZA, INC.

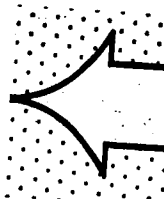
By:   
Edward P. Swyer, President

EPS/dtc/mrf:379558  
Attachments

ACCEPTED AND AGREED TO this 9<sup>th</sup>  
day of July, 2009

TOWN OF GUILDERLAND

By:   
Hon. Kenneth D. Runion  
Supervisor



7,000

SEE MAP 52.01



SEE MAP 52.15

SEE MAP

SEE

SEE MAP 52.19