

## AGREEMENT

This Agreement is made and entered into this 14<sup>th</sup> day of June, 2016, by and between MILLCREEK TOWNSHIP ("Township") and ASBURY WOODS PARTNERSHIP, INC. ("AWP").

## RECITALS

A. AWP has entered into an Asset Purchase Agreement dated June 29, 2015 with Millcreek Township School District, ("School District") under which AWP shall purchase from the School District various assets, including parcels of land in Millcreek Township bearing Erie County Tax Index Nos. (33) 086-376-010 and (33) 130-374-021), these commonly referred to as Brown's Farm and the Asbury Woods Nature Center.

B. The Township and AWP cooperate with one another and with the School District on various matters relating to the properties, Asbury Woods and certain other adjacent properties.

C. The parties and the School District, on October 29, 1993, entered into an agreement with Mercyhurst College with respect to use and maintenance of the Jean B. James and J. Douglas James Ecological and Wildlife Preserve, this located on land owned by Mercyhurst College, under which the School District, AWP and the Township agreed to provide certain services, certain of these being affected by virtue of AWP's purchase of lands from the School District.

D. AWP has requested that the Township provide to it financial assistance with respect to AWP's acquisition of the said real estate and other assets subject to its agreement with the School District.

E. The parties desire to set forth various representations, warranties and covenants with respect to AWP's purchase of said property, Township's financial assistance and the establishment of certain rights and duties as to future operations and arrangements that shall survive execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I DEFINITIONS

Section 1.01. For ease of reference, those terms defined in Article I of AWP's Asset Purchase Agreement with the School District, for purposes of this Agreement as well, shall have the meanings there specified.

Section 1.02. The following terms have the meanings specified or referred to in this Article:

**"Articles of Incorporation"/"Articles"** means the articles of incorporation of Asbury Woods Partnership, Inc., in their current form and/or as in the future amended subject to limitations imposed in this Agreement. The term shall also apply as to the articles of incorporation or equivalent of any successor in interest to Asbury Woods Partnership, Inc.

**"Asbury Barn Property"** means that parcel of land bearing Erie County Tax Index No. (33) 087-374.0-010.00, currently owned by the School District and leased to the Township, on which has been constructed a building known as Asbury Barn and other improvements.

**"Asset Purchase Agreement"** means the Asset Purchase Agreement between the School District and AWP dated June 29, 2015.

**"DCNR"** shall mean the Pennsylvania Department of Conservation and Natural Resources.

**"James Preserve"** means the Jean B. James and J. Douglas James Ecological and Wildlife Preserve, a parcel of land comprising approximately 35 acres, acquired by Mercyhurst College from Mr. and Mrs. James by deed recorded December 29, 1992 in Erie County Record Book 247, page 546 and bearing Erie County Tax Index No. (33) 087-374.0-007.01.

**"October 1993 Agreement"** means and refers to that written agreement dated October 29, 1993 between Asbury Woods Nature Center (then a part of the School District), Mercyhurst College and the Township, with respect to the James Preserve. Said agreement is incorporated in this Agreement by reference.

**"Option to Purchase"** means a contract or contract provision to purchase the right, for a certain or defined period of time and/or in defined circumstances or events, by election, to purchase property at a stated price or in accordance with an agreed means of establishing a price. The parties agree that references in AWP's agreement with the School District to a "right of first refusal" granted an option to purchase, not merely a right of first refusal.

**"School District"** shall mean the Millcreek Township School District.

**ARTICLE II  
TOWNSHIP GRANT TO AWP**

Section 2.01. Grant by Township. Subject to the covenants, agreements and understandings set forth in this Agreement, the Township agrees to contribute to AWP, at or prior to closing on AWP's purchase under the Asset Purchase Agreement, the sum of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00). Said grant funds shall be used by AWP solely for the acquisition of the assets under the Asset Purchase Agreement. None of such grant funds shall be used for operating expenses.

Section 2.02. No Assumption of Liabilities. Township is not assuming or agreeing to pay or discharge any liabilities of AWP or of Asbury Woods, and nothing in this Agreement or otherwise shall be construed to the contrary.

**ARTICLE III  
DECLARATION OF RESTRICTIONS**

Section 3.01. In addition to the restrictions which AWP is required to declare on the Brown's Farm and Asbury Woods Nature Center parcels by virtue of the grant of funds by the Pennsylvania DCNR and by virtue of any bridge loan financing provided by the Western Pennsylvania Conservancy, AWP, in the deed of the School District conveying title in the parcels to AWP or in a corrective deed to be recorded within fifteen (15) days after closing on said acquisition, shall impose on both parcels, in perpetuity, a restriction that said parcels be held and used solely for park, recreational and educational purposes open to and accessible by the public in the same general manner as it presently is held and used, which restriction shall run with the land and bind AWP, its grantees, successors, personal representatives and assigns. AWP shall provide to the Township a copy of the deed imposing such restrictions, as recorded. These restrictions may not be altered or amended without the prior written approval of Township's Board of Supervisors.

**ARTICLE IV  
OPTIONS/RIGHTS OF FIRST REFUSAL**

Section 4.01. Option(s) to Purchase Subject Parcels. AWP, in Section 11.01 of the Asset Purchase Agreement, has granted to the School District an option (there referred to as a right of first refusal) to purchase either or both of the subject parcels if AWP seeks to sell either of them to a third party or if Buyer intends to dissolve its corporate existence, the price to be paid therefor being the then appraised fair market value as provided by an appraiser mutually agreed upon by the parties. In consideration of the Township's grant, AWP agrees that it shall not sell one or less than all of the subject parcels without the prior written consent of the Township. AWP hereby grants to the Township an option, second in priority only to that granted to the School District, to purchase one or both of the subject parcels if either of the events set forth above should occur. In that event of any sale of the parcels or, upon the Township's consent, one or portions of the two parcels, whether it be to the School District, the Township or a third party, the amount of Township's grant, with interest imputed from the date of closing on AWP's purchase of the subject parcels at the rate of three percent (3%) per year to the date of closing on such sale and purchase, shall be paid over or, in a purchase by Township, credited to the Township at closing from proceeds of sale, in same manner as a secured lien would be paid.

Section 4.02. Option to Purchase Asbury Barn Property. AWP hereby assigns, transfers and sets over to the Township its option/right of first refusal to purchase from the School District at its then appraised fair market value as determined pursuant to Section 11.02 of the Asset Purchase Agreement the Asbury Barn Property now leased to the Township. In the event of such purchase, the Township would allow AWP's continued use of a workshop located in a garage on said parcel and would allow, in accord with then current practice, overflow parking for AWP events when practicable. The Township recognizes that such assignment is, under Section 13.05 of the Asset Purchase Agreement, subject to approval by the School District. AWP shall use its best efforts to secure such approval. If such approval is not secured, AWP agrees that, upon request by the Township, it would exercise such option or right of first refusal in the event of the School District's desire to sell, and then assign to the Township AWP's rights and obligations under such agreement as to retention of an appraiser, fixing of a price and purchase.

## **ARTICLE V EASEMENTS, COOPERATION**

Section 5.01. James Preserve. The Township, the School District, for the Asbury Woods Nature Center, and Mercyhurst College entered into a written agreement on October 29, 1993 with respect to access to and enjoyment of the Jean B. James and J. Douglas James Ecological and Wildlife Preserve owned by the College. AWP has advised the Township that it intends to ask that the School District assign to AWP its rights and obligations under said Agreement. The Township has no objection to that assignment and agrees to enter into a mutually agreeable document confirming such assignment. The parties agree to continue their cooperation as to use and enjoyment of and access to the James Preserve.

Section 5.02. General Cooperation. The parties intend to continue their past cooperation and assistance as to operations, enjoyment and access of and to the parcels known as Asbury Woods and those adjacent to it.

## **ARTICLE VI AWP ORGANIZATION AND ARTICLES**

Section 6.01. Articles of Incorporation. Within thirty (30) days after closing on its purchase of the parcels from the School District, and in consideration of the Township's financial assistance, AWP, in accordance with its bylaws, shall cause its articles of incorporation to be amended, so as to provide that, in event of its dissolution, all assets of AWP upon its dissolution would be distributed to the Township, subject to the restriction that such assets be maintained in a fund dedicated to future upkeep and maintenance of Asbury Woods. AWP shall cause such amendment to be filed with the Pennsylvania Department of State and shall provide to the Township a copy of said amendment, including confirmation of its registration. Such amendment thereafter shall not be modified, amended or revoked except after written consent thereto by Township's Board of Supervisors.

Section 6.02. Board Representation. In consideration of Township's grant and the parties' ongoing cooperation, AWP shall amend its bylaws as required to ensure that one position on its board of directors shall be filled by Township's then serving director of parks and recreation, in such manner as ensures that in the event such director cannot attend a meeting, an alternate, being a person elected by Township's Parks and Recreation Commission's members exclusive of those members appointed by the School District, would attend in the director's place and stead.



Section 8.02. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.03. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights under this Agreement without the prior consent of the other party, which consent shall not be reasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder; provided, that if, subject to the Township's prior written consent, AWP shall merge with one or more like nonprofit organizations which would be the acknowledged successor in interest for purposes of the Asset Purchase Agreement and this Agreement, obligations under this Agreement would be assumed by the successor entity.

Section 8.04. No Third-Party Beneficiaries. Except as provided otherwise in this Agreement, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, whether express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.05. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party to this Agreement. No waiver of any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.06. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

Section 8.07. Survival of the Agreement. By its terms, this Agreement and the rights and obligations set forth herein are intended to and shall be deemed to survive closing on AWP's purchase of the subject parcel and to remain in effect in perpetuity until and unless such properties are acquired by the Township.

Section 8.08. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with its terms and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.09. Entire Agreement. This Agreement, and the other agreements required by this Agreement, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous agreements and understandings, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other documents necessary for the transaction, the exhibits and disclosure schedules, the statements in the body of this Agreement shall control.

Section 8.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as the delivery of an original copy of this Agreement.

IN WITNESS WHEREOF, the parties have duly approved the foregoing Agreement and have caused this Agreement to be executed as of the date first written above by their duly authorized officers.

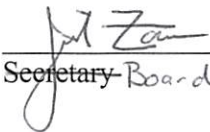
ATTEST:

  
Assistant Township Secretary

TOWNSHIP OF MILLCREEK

By:  (L.S.)  
John H. Groh, Chair  
Board of Supervisors

ATTEST:

  
Secretary Board Representative

ASBURY WOODS PARTNERSHIP, INC.

By:  (L.S.)  
Larry Berrin, President/CEO

**ACKNOWLEDGMENT**

STATE OF PENNSYLVANIA :  
: SS.  
COUNTY OF ERIE :

On this, the 14<sup>th</sup> day of June, 2016, before me, a Notary Public in and for said County and State, the undersigned officer, personally appeared JOHN H. GROH, Chair of the Board of Supervisors of MILLCREEK TOWNSHIP, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained, being duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

E E A  
Notary Public  
COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Evan E. Adair, Notary Public  
City of Erie, Erie County  
My Commission Expires Oct. 19, 2016  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

**ACKNOWLEDGMENT**

STATE OF PENNSYLVANIA :  
: SS.  
COUNTY OF ERIE :

On this, the 14<sup>th</sup> day of June, 2016, before me, a Notary Public in and for said County and State, the undersigned officer, personally appeared LARRY BERRIN, President and CEO of ASBURY WOODS PARTNERSHIP, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained, being duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

E E A  
Notary Public  
COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Evan E. Adair, Notary Public  
City of Erie, Erie County  
My Commission Expires Oct. 19, 2016  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES