

## TOWNSHIP OF MAPLEWOOD



### RESOLUTION NO. 5-14

#### RESOLUTION

AUTHORIZING THE DESIGNATION OF A REDEVELOPER FOR THE "POST OFFICE" SITE FOR A PERIOD NOT TO EXCEED NINETY DAYS, AND AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT IN CONNECTION THEREWITH

WHEREAS, the Maplewood Township Committee (the "Township Committee"), pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), and based upon the report and recommendation of the Maplewood Planning Board (the "Planning Board"), has designated that certain property identified on the official tax maps of the Township as Block 13.09, Lots 180, 181 & 185 and commonly known as the former Post Office site located at Maplewood Avenue as an area in need of redevelopment (the "Redevelopment Area"); and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, the Township Committee, in accordance with the applicable provisions and requirements of the Redevelopment Law, oversaw the preparation of a redevelopment plan for the Redevelopment Area, and by Ordinance #2725-13 finally adopted on July 16, 2013 approved and adopted such redevelopment plan (the "Redevelopment Plan") for the Redevelopment Area, and as part of that approval directed that the Township's Zoning Map be amended and superseded to reflect the provisions of the Redevelopment Plan; and

WHEREAS, the Township Committee wishes to designate L&M Development Partners ("L&M") as redeveloper of the Redevelopment Area for a period not to exceed ninety (90) days, so that the Township and L&M may negotiate an agreement for the redevelopment of the Redevelopment Area (the "Redevelopment Agreement"); and

WHEREAS, the Township and L&M wish to establish a mechanism for the provision of sufficient funds so that the undertaking of negotiations and work in connection with the Redevelopment Agreement causes no financial hardship to the Township.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey that:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. EXECUTION OF AN ESCROW AGREEMENT

(a) The Township Committee hereby authorizes the execution of an escrow agreement with L&M in substantially the form attached hereto as Exhibit A, and by this reference incorporated herein (the "Escrow Agreement").

(b) The Mayor is hereby authorized to execute the Escrow Agreement in substantially the form attached hereto, with such additions, deletions and modifications as may be necessary in consultation with the Township Administrator, the Township Attorney and Special Counsel.

III. DESIGNATION OF REDEVELOPER; NEGOTIATION OF A REDEVELOPMENT AGREEMENT

(a) The Township Committee hereby designates L&M as redeveloper of the Redevelopment Area for a period not to exceed ninety (90) days from the date of execution and funding of the Escrow Agreement, and hereby further directs and authorizes the Township Administrator, together with the Township Attorney and Special Counsel, along with such other Township officials as may be necessary, to negotiate a Redevelopment Agreement with L&M during that time.

(b) If, at the expiration of ninety (90) days from the date of execution and funding of the Escrow Agreement, the Township Committee shall not have: (i) authorized the execution of the Redevelopment Agreement; or (ii) extended the period of the designation of L&M and the time for negotiations set forth in this Resolution, then the designation of L&M as redeveloper of the Redevelopment Area shall terminate without the need for any other action by the Township or the Township Committee to evidence same.

**IV. SEVERABILITY**

If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.

**V. AVAILABILITY OF THE RESOLUTION**

A copy of this resolution shall be available for public inspection at the offices of the Township.

**VI. EFFECTIVE DATE**

This Resolution shall take effect upon final passage.

I, Elizabeth J. Fritzen, Township Clerk of the Township of Maplewood, in the County of Essex and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey, at a regular meeting of said Committee held on January 7, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Township of Maplewood in the County of Essex and State of New Jersey, on this 7th day of January 2014.

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**ELIZABETH J. FRITZEN, R.M.C.**  
Township Clerk

**Exhibit A**

**Form of Escrow Agreement**

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is made as of the \_\_\_\_ day of January, 2014 by and between L&M GARDEN STATE ASSOCIATES LLC (the "Proposed Redeveloper"), with an address at 1865 Palmer Avenue, Larchmont, New York 10538, and THE TOWNSHIP OF MAPLEWOOD, a body corporate and politic of the State of New Jersey (the "Township"), with an address at 574 Valley Street, Maplewood, New Jersey 07040.

### WITNESSETH:

WHEREAS, the Proposed Redeveloper and the Township, in its capacity as redevelopment entity, intend to negotiate a Redevelopment Agreement (the "Redevelopment Agreement") designating the Proposed Redeveloper as "Redeveloper" and providing for the redevelopment of certain real property that has been designated by the Township Committee as an area in need of redevelopment pursuant to the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"), identified as Block 13.09, Lots 180, 181 & 185 on the Official Tax Maps of the Township and commonly known as the former Post Office site located at 160 Maplewood Avenue (the "Redevelopment Area"); and

WHEREAS, the Township Committee, acting by ordinance finally adopted on July 16, 2013, has duly adopted a redevelopment plan for the Redevelopment Area (the "Redevelopment Plan") pursuant to *N.J.S.A. 40A:12A-7* of the Redevelopment Law and in accordance with the procedures set forth therein; and

WHEREAS, as an inducement to the Township to engage in negotiations with respect to the Redevelopment Agreement, and as a precondition thereto, the Proposed Redeveloper has agreed to deposit with the Township the initial amount of **TWENTY-FIVE THOUSAND and 00/100 (\$25,000.00) DOLLARS** (the "Escrow Deposit"), to be deposited in an escrow account and disbursed in accordance with the provisions of this Agreement to defray certain costs incurred by or on behalf of the Township arising out of or in connection with the selection and designation of the Proposed Redeveloper as redeveloper and the negotiation and preparation of the Redevelopment Agreement,

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Escrow Deposit.** The initial Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Township pursuant to the terms of the Redevelopment Agreement, if the parties are successful in their negotiations and one is executed, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Agreement.

2. **Scope of Reimbursable Services.** (a) The Township shall be entitled to be reimbursed for all professional charges incurred in connection with the selection and designation of the Proposed Redeveloper as redeveloper, and the negotiation and preparation of the Redevelopment Agreement, including but not limited to correspondence, meetings and all communications (including by telephone and e-mail) with the Proposed Redeveloper, its professionals, Township staff or retained professional(s) in the negotiation and preparation of such Redevelopment Agreement but not with respect to the negotiation, preparation or execution of a contract of sale (collectively, the "Reimbursable Activities"). **Reimbursement may include charges incurred in connection with Reimbursable Activities prior to the date of this Agreement, and is not contingent upon the outcome of the negotiations or execution of a Redevelopment Agreement.**

(b) Properly reimbursable professional charges shall be reasonable and necessary and shall relate to Reimbursable Activities performed by the outside consultants and professionals identified at **Schedule 1** annexed hereto, which **Schedule 1** includes the schedule of rates to be charged. The rates to be charged shall not be modified without thirty days' written notice to Proposed Redeveloper, and the consent of Proposed Redeveloper, which shall not be unreasonably withheld. If the Proposed Redeveloper shall not have objected to the modification of rates within thirty days after receiving written notice, the Proposed Redeveloper shall be deemed to have consented to the rate modification.

(c) In addition to professional and consultant fees and expenses, properly reimbursable charges shall include a charge for each special meeting of a municipal board solely with respect to the proposed project held at the request of or with the consent of the Proposed Redeveloper, at a cost of **\$1,000.00 per meeting**.

3. **Deposit and Administration of Escrow Funds.** The Escrow Deposit and all additions thereto shall be held by the Township in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Agreement.

4. **Payments from the Escrow Funds.** (a) The Township shall use such funds to pay reimbursable professional charges or the charges for special meetings.

(b) Professional charges paid out of the escrow account shall include professional charges in connection with the Reimbursable Activities. The Proposed Redeveloper shall not be charged for any costs and expenses not associated with the Reimbursable Activities. The only costs that shall be added shall be actual out-of-pocket expenses of such professionals or outside consultants, including normal and typical expenses incurred in connection with such Reimbursable Activities.

(c) Each payment for professional services charged to the escrow account shall be pursuant to a voucher from the professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying properly reimbursable expenses. All professionals shall submit the required vouchers or statements to the Township on a periodic basis in accordance with the schedule and procedures established by the Township. If so requested by the Proposed Redeveloper the professional shall simultaneously send an informational copy of each voucher or statement submitted to the Township to the Proposed Redeveloper; *provided*, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters.

5. **Accounting and Additional Deposits.** Upon the execution of a Redevelopment Agreement, termination of negotiations, or as reasonably requested by the Proposed Redeveloper, the Township shall prepare and send to the Proposed Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the escrow account. If at any time the balance in the escrow account is less than **SEVEN THOUSAND, FIVE HUNDRED and 00/100 (\$7,500.00) DOLLARS**, or if the escrow account otherwise contains insufficient funds to enable the Township to continue with the negotiations or document preparation, the Township shall provide the Proposed Redeveloper with a notice of the insufficient escrow deposit balance. The Proposed Redeveloper shall deposit to the escrow account additional funds such that the total amount on deposit shall be not less than **TWENTY-FIVE THOUSAND and 00/100 (\$25,000.00) DOLLARS**, such deposit to be made within five (5) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to the Proposed Redeveloper.
6. **Close Out Procedures.** Upon termination of negotiations without a Redevelopment Agreement being executed, or upon the execution of a Redevelopment Agreement, and unless otherwise provided in the Redevelopment Agreement, the Proposed Redeveloper shall send written notice by certified mail to the Township, to the attention of the Township Attorney, requesting that the remaining balance of the Escrow Deposit be refunded, or otherwise applied as agreed to pursuant to the terms of the executed Redevelopment Agreement. After receipt of such notice, the professional(s) shall render a final bill to the Township within 30 days, and shall send an informational copy simultaneously to the Proposed Redeveloper. Within 30 days of receipt of the final bill the Township shall pay all outstanding bills in accordance with this Agreement and render a written final accounting to the Proposed Redeveloper detailing the uses to which the escrow funds were put. The Proposed Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Township in accordance with this section. If a Redevelopment Agreement is executed and the Proposed Redeveloper so requests, the Township agrees to apply any balance remaining in the Escrow Deposit towards

the funding of any escrow deposits that may be required to be posted pursuant to the terms of the executed Redevelopment Agreement.

7. **Disputed Charges.** (a) The Proposed Redeveloper may dispute the propriety or reasonableness of professional charges paid out of the Escrow Deposit by written notice to the Township. A copy of such notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written notice of a disputed charge shall be given within 30 days from the Proposed Redeveloper's receipt of the informational copy of the professional's voucher, except that if the professional has not supplied the Proposed Redeveloper with an informational copy of the voucher, then the Proposed Redeveloper shall send notice within 30 days from receipt of the first statement of activity against the escrow account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Proposed Redeveloper's acceptance of the charge and a waiver by the Proposed Redeveloper of all objections to the charge and to payment thereof out of the escrow account.

(b) During the pendency of a dispute the Township may continue to pay undisputed charges out of the escrow account. If a dispute over a charge is resolved in the Proposed Redeveloper's favor after having been paid, the Township shall reimburse the escrow account in the amount determined to be properly disputed.

8. **Governing Law.** This Escrow Agreement shall be governed, construed and enforced according to the laws of the State of New Jersey, without regard to its conflicts of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey, in either case sitting in Essex County, New Jersey, and the Proposed Redeveloper hereby waives all objections to such venue.

9. **Successors and Assigns.** This Escrow Agreement shall be binding upon, and inure to the benefit of, the parties hereto and upon each party's successors and assigns.

10. **Review by Counsel.** Interpretation of this Agreement shall be made without regard to or any presumption against or other rule requiring construction against the entity drawing or causing this Agreement to be drawn, as counsel for both the Proposed Redeveloper and the Township have combined in their review and approval of same.

11. **Entire Agreement; No Modification Unless in Writing.** This Escrow Agreement contains the entire agreement of the parties relative to the subject matter hereof. Any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the parties hereto.

12. **Counterparts.** This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**13. Effective Date.** This Agreement shall not become effective unless and until the initial Escrow Deposit is made.

**The balance of this page intentionally left blank; signatures appear on next page.**

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

Witness or Attest:

**TOWNSHIP OF MAPLEWOOD**

\_\_\_\_\_

By: \_\_\_\_\_

**L&M GARDEN STATE ASSOCIATES LLC,  
Proposed Redeveloper**

\_\_\_\_\_

By: \_\_\_\_\_  
Manager or Authorized Member

**SCHEDULE 1**

**Redevelopment Counsel – McManimon, Scotland & Baumann LLC**

“Blended” rate of three hundred twenty-five dollars (\$325) per hour for all attorneys.

The firm will also be entitled to reimbursement of all reasonable and customary out-of-pocket fees and disbursements, including but not limited to photocopying, travel, mail service, express mail/Federal Express, and messenger service.

**Redevelopment Planner – Phillips Preiss Grygiel LLC**

Principal – one hundred forty-five dollars (\$145) per hour

Planner – ninety five dollars (\$95) per hour

The firm will also be entitled to reimbursement of all reasonable and customary out-of-pocket fees and disbursements, including but not limited to photocopying, mail service, express mail/Federal Express, and messenger service.