

THIRD ADDENDUM TO LEASE AGREEMENT

Comment [CA1]: Significant changes to the draft lease agreement submitted by the Applicants on August 25, 2017 are incorporated and saved into this document. Please review thoroughly.

COUNTY OF HUDSON
TO
TOWNSHIP OF NORTH BERGEN
Braddock Park, North Bergen

This Third Addendum to the Lease Agreement made this first day of January 2018, by and between the **COUNTY OF HUDSON**, a body politic and corporate of the State of New Jersey (referred to hereafter as the “County”) having offices at 567 Pavonia Avenue, Jersey City, New Jersey and the **TOWNSHIP OF NORTH BERGEN** (referred to hereafter as “Township”) with offices located at 4233 Kennedy Boulevard, North Bergen, New Jersey (“Third Addendum”).

RECITALS

WHEREAS, James J. Braddock Park, a 167 +/- acre park owned by the County of Hudson (“the Park”), is Green Acres-funded parkland encumbered with Green Acres restrictions pursuant to *N.J.A.C. 7:36*; and

WHEREAS, the Township received Green Acres funding (Green Acres Project Agreement 0908-88-059, Hudson County Deed Book 4406 Page 064, recorded June 13, 1991)), through an arrangement with the County, for the construction of park improvements on a portion of the Park; and

WHEREAS, the County authorized the temporary placement of temporary classroom units (“TCUs”) for the education of public school pre-K students on a portion of Braddock Park, which TCUs were placed on the Park in September of 2001 without obtaining prior approval from

Comment [CA2]: Please confirm date or month when the TCUs were placed on the park.

the New Jersey Department of Environmental Protection (“NJDEP”) in accordance with *N.J.A.C.* 7:36; and

WHEREAS, the Green Acres Program discovered the TCUs during a routine inspection of the Park on November 15, 2010; and

WHEREAS, the Green Acres Program authorized a temporary lease agreement between the Parties in accordance with *N.J.A.C.* 7:36-25.14 to allow for the continued occupancy of a portion of Braddock Park by the TCUs with the understanding that if the TCUs were not removed from the Park within 2.5 years of the effective date of the Lease Agreement, the Parties would be required to file for approval of a diversion of parkland pursuant to *N.J.A.C.* 7:36; and

WHEREAS, the parties entered into the Lease Agreement dated October 19, 2011, for the period starting on July 1, 2011 and ending June 30, 2013, providing for the temporary placement of TCUs on a portion of the Park (the “Original Lease,” attached as Exhibit A); and

WHEREAS, the parties amended the Original Lease via an Addendum dated November 22, 2011 by modifying the terms and conditions to set forth a timeline for the Township’s completion of its use of the TCUs and restoration of the Premises to recreational and conservation use (“Lease Addendum,” attached as Exhibit B); and

WHEREAS, the parties amended the Original Lease again via a Second Addendum dated June 23, 2013 to extend the term of the Original Lease for an additional six months, (ending December 31, 2013) and to modify the timeline for the Township’s completion of its use of the TCUs and restoration of the Premises to recreational and conservation use (“Second Addendum,” attached as Exhibit C); and

WHEREAS, the Lease Agreement and subsequent Addenda were approved by the Green Acres Program in accordance with *N.J.A.C.* 7:36-25.14; and

WHEREAS, the parties entered into a Memorandum of Understanding dated October 28,

2014 (“MOU,” attached as Exhibit D) because the Township was not able to relocate the TCUs within the Township to a location suitable for the educational purposes, and as a result, the Premises could not be restored to recreational and conservation use by February 21, 2014, the deadline set forth in the Second Addendum; and

Comment [CA3]: Please submit executed copy of MOU for Green Acres review.

WHEREAS, the MOU set forth the rights and obligations of the parties in connection with obtaining from the Commissioner of the New Jersey Department of Environmental Protection (“Commissioner”) and the State House Commission an approval for a diversion of Green Acres-encumbered parkland (“Green Acres Diversion”) pursuant to *N.J.S.A. 13:8C-32* and *N.J.A.C. 7:36-26*; and

WHEREAS, in accordance with Green Acres statutes and regulations, including but not limited to *N.J.S.A. 13:8A-1 et seq.*, *N.J.S.A. 13:8A-20 et seq.*, *N.J.S.A. 13:8A-35 et seq.*, *N.J.S.A. 13:8C-1 et seq.* and *N.J.A.C. 7:36*, the Commissioner and State House Commission approved the diversion of a portion of Braddock Park under the terms and conditions set forth by the Commissioner on [date] and by the State House Commission on [date] (Addendum F); and

WHEREAS, the parties seek to amend further the terms and conditions of the Lease Agreement through this Third Addendum during the period of the parties’ application for and approval of the Green Acres Diversion up to and inclusive of the eventual removal of the TCUs and restoration of the Premises; and

WHEREAS, this Third Addendum does not alter the terms of the MOU; and

WHEREAS, this Third Addendum shall be subject to review and approval by Green Acres pursuant to the terms and conditions set forth by the Commissioner on (date) and the State House Commission on (date); and

WHEREAS, the capitalized terms used in this amendment shall have the meanings afforded them in the Lease Agreement, unless such capitalized terms are defined herein; and

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the sufficiency of which is hereby

acknowledges by the parties, the parties agree as follows.

1. **TERM OF LEASE AGREEMENT.** The Lease Agreement shall expire no later than August 31, 2021, in accordance with the lease termination provisions set forth in Section 5.
2. **PREMISES.** In accordance with the Third Addendum, the County leases to the Township an approximate 1.25-acre portion of the 167-acre James J. Braddock Park in the Township of North Bergen, commonly known as the North Bergen pre-K TCUs which is inclusive of the TCUs, a tot lot serving the pre-K students, and the access way immediately adjacent to the TCUs and tot lot. (herein collectively referred to as the “Premises”) (Addendum E). The James J. Braddock Park is subject to Green Acres regulations. Accordingly, it shall be a material breach of this Lease if the Township encroaches in any way onto the adjacent Braddock Park property for a use which is contrary to Green Acres regulations. Further, the Township shall be solely liable for all costs of said encroachment.
3. **SUBLEASE.** The County and the Township acknowledge that the Township subleases the Premises to the Township of North Bergen Board of Education. The Township may not assign or sublease the Premises to any other party.
4. **RENT.**
 - a. Retroactive Rent – July 1, 2011 through December 31, 2013 (in connection with the term of the Original Lease through the Second Addendum). If any rental payments collected during this time frame were used for other than operating, maintenance or capital expenses related to the County’s funded parklands or to its recreation program as a whole, equivalent payments must be set aside in a dedicated account specifically for these purposes.

Comment [CA4]: Addendum E: GAP-approved survey of the Premises

Comment [CA5]: Please submit a copy of the existing sublease, or in the absence of an existing lease, of a draft sublease. Our principle concern is ensuring adequate public parking and access.

b. Retroactive Rent - January 1, 2014 through December 31, 2017. The Township shall pay to the County annual rent for the period since the expiration of the Second Addendum, with lease payments based on a percentage of fair market value of the Premises, as determined by appraisals reviewed and accepted by Green Acres, as follows:

- i. \$ _____ for the period January 1, 2014 to December 31, 2014, owing and due by _____, 2017.
- ii. \$ _____ for the period January 1, 2015 to December 31, 2015, owing and due by _____, 2017.
- iii. \$ _____ for the period January 1, 2016 to December 31, 2016, owing and due by _____, 2017.
- iv. \$ _____ for the period January 1, 2017 to December 31, 2017, owing and due by _____, 2017.

c. Rent for 2018 through August 31, 2020. Beginning January 1, 2018, the Township shall pay to the County the annual sum of \$ _____, which represents an increase in the fair market value as calculated by the Consumer Price Index. The lease payment shall be made through quarterly payments and due the first day of the beginning of each quarter.

d. Rent after August 31, 2020. If the TCUs have not been relocated and the area of the premises restored in accordance with the requirements of Green Acres by August 31, 2020, then the Township shall pay to the County the sum of \$ _____, which sum being payable in quarterly payments and due the first day of the beginning of each quarter until August 31, 2021.

e. Use of Lease Payments. The County shall apply all lease payments associated with Paragraphs 4a. through 4d. toward operating, maintenance or

other capital expenses related to the County's funded parklands or its recreation program as a whole.

5. **TERMINATION OF LEASE AGREEMENT.** In no event shall the Lease Agreement continue after August 31, 2021 without the mutual consent of the parties and the approval of the NJDEP Commissioner and State House Commission.
6. **RESTORATION OF PREMISES.** Prior to the Lease Agreement termination, the Township shall remove the TCUs and restore the Premises to recreational and conservation use. The restoration shall include reestablishment of the former softball practice field or reasonably equivalent recreational facility at Braddock Park or at another Green Acres-encumbered park located in the County. A restoration plan shall be submitted to Green Acres for approval at least sixty (60) days prior to commencing restoration activities.
7. This Third Addendum may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all which counterparts, taken together, shall constitute but one and the same instrument.
8. This Third Addendum shall be governed by and constructed and interpreted in accordance with the internal laws of the State of New Jersey but excluding any principles of conflicts of laws or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New Jersey.
9. Any provisions of this Third Addendum which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity of enforceability of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals, or caused

these present to be signed by their proper corporate officers and their proper corporate seal to be affixed hereto, the day and year first above written.

TOWNSHIP OF NORTH BERGEN:

Name: NICHOLAS J. SACCO
Title: MAYOR, TOWNSHIP OF NORTH BERGEN

COUNTY OF HUDSON:

Name: ABRAHAM ANTUN
Title: ADMINISTRATOR, HUDSON COUNTY

STATE OF NEW JERSEY)

:SS

COUNTY OF HUDSON)

BE IT REMEMBERED, that on this ____ day of _____ Two Thousand and Seventeen before me, the subscriber, personally appeared ERIN BARILLAS, who being by me duly sworn according to law, on her oath says that she is the clerk of the TOWNSHIP OF NORTH BERGEN and that NICHOLAS J. SACCO is the Mayor of the TOWNSHIP OF NORTH BERGEN, that she knows the corporate seal of said TOWNSHIP OF NORTH BERGEN and that the seal affixed to the foregoing instrument is the seal of said township, and that the said NICHOLAS J. SACCO as Mayor of the TOWNSHIP OF NORTH BERGEN signed said instrument and affixed said seal thereto as his voluntary act and deed for the uses and purposes therein expressed, in attestation whereof, she the said ERIN BARILLAS, as Clerk, subscribed her name thereto.

ERIN BARILLAS, CLERK
TOWNSHIP OF NORTH BERGEN

Sworn to and subscribed before me
this ____ day of _____ 2017

Notary public