



August 7, 2017

Mark Schafale
Chief Financial and Administrative Officer
Felician Sisters or North America
871 Mercer Road
Beaver Falls, PA 15010

RE: Revised Non-binding Letter of Intent

Dear Mr. Schafale:

This letter confirms the intent of New Castle County ("County") to engage in negotiations with Felician Sisters of North America ("Owner") for the purchase of all of tax parcel number 09-028.00-009 and part of tax parcel number 11-003.30-049, as described herein. While we contemplate that requisite terms and conditions will be fully set forth in a formal agreement, this non-binding letter of intent is a guide for the negotiation and preparation of a formal agreement on terms and conditions satisfactory to the parties hereto. Nothing mentioned herein shall be held or construed to be binding, nor shall it preclude the inclusion of other provisions in a formal agreement or the removal or modification of provisions as stated herein. The following sets forth our understanding to date and the principal terms and conditions upon which we are prepared to proceed.

Property and the Pending Plan. Tax parcel numbers 09-028.00-009 and 11-003.30-049 consist of a total of 181.49± acres of land ("Property"). The Property is subject to a major land development plan known as Chestnut Hill Preserve, recorded at the Office of the Recorder of Deeds in and for New Castle County at instrument number 201707120034930 (the "Record Plan"). The Record Plan subdivides the Property into 201 lots. The Record Plan depicts an Apartment Lot consisting of 8.37± acres of land. The remaining land consists of 173.12± acres and includes:

- 30 single family detached lots,
- 56 twin lots,
- 114 townhouse lots,
- 9.77± acres of public right-of-way, and
- 140.99± acres of open space.

Proposed Purchase. County proposes to acquire all of the Property excluding the Apartment Lot. Thus, the formal agreement shall provide for County's fee simple purchase of 173.12± acres of land (the "County Land"). The purchase shall occur in five phases with each phase being a separate transaction. If all five transactions are closed, the total purchase price will be \$5,950,000.00 plus 2% interest on the balance remaining after the Phase I transaction.

Structure of Transactions and Settlement Deadlines. Settlement of each transaction shall occur on or before November 1 of successive calendar years but, at County's option settlement of any phase may occur at any time prior to the settlement deadline. At settlement, Owner shall deliver good and marketable title to all lots designated for conveyance in that phase. Payments shown include the 2% interest and shall be made as follows:

- **Phase I.** \$2,500,000.00 (this figure includes any earnest money deposit paid upon execution of the formal agreement). The payment shall include \$1,250,000.00 from County and \$1,250,000.00 from the State.
- **Phase II.** \$879,750.00. The payment shall include \$439,875.00 from County and \$439,875.00 from the State.
- **Phase III.** \$897,345.00. The payment shall include \$488,673.00 from County and \$488,673.00 from the State.
- **Phase IV.** \$915,292.00. The payment shall include \$457,646.00 from County and \$457,646.00 from the State.
- **Phase V.** \$933,598.00. The payment shall include \$466,799.00 from County and \$466,799.00 from the State.

Transactions Contingent upon Funding. Owner acknowledges that funding shall be provided by the State and County and possibly private sources. County's payment of funds shall be contingent upon the State providing matching funds in the amounts provided herein on a dollar per dollar match with the County. Receipt of funds from private sources or funds acquired by the conveyance of any conservation easement shall equally offset the State's and County's share of the purchase price. In the event that any of the five transactions cannot be closed for any reason, County shall have no liability or owe any damages to Owner, or its agents, assigns or successors in interest.

Designation of Lots in each Phase. Prior to execution of a formal agreement and for the sole purpose of phasing the purchase, Owner shall assign a value to each lot that will be conveyed to County. The value shall be consistent for each dwelling unit type and the value of the lots shall total \$5,950,000.00. County shall then prepare an exhibit depicting the lots that will be conveyed to County in each phase. The exhibit shall be included in the formal agreement and shall clearly delineate each lot by tax parcel number. Open space parcels shall be conveyed to County simultaneously with the adjacent lots where feasible. Each phase shall be designed to provide for the contiguous acquisition of land. Owner shall convey good and marketable title to lots comprising the County Land in proportion to the payment received as follows:

- **Phase I.** The value of the lots shall equal no less than \$2,500,000.00. Upon closing, no less than 42% of lot value shall be transferred to County.
- **Phase II.** The value of the lots shall equal no less than \$879,750.00. Upon closing, no less than 56% of overall lot value shall be transferred to County.
- **Phase III.** The value of lots shall equal no less than \$897,345.00. Upon closing, no less than 71% of overall lot value shall be transferred to County.

- **Phase IV.** The value of the lots shall equal no less than \$915,292.00. Upon closing, no less than 85% of overall lot value shall be transferred to County.
- **Phase V.** Title to all remaining lots and other land shall be transferred to County.

Lease of County Land Pending Purchase. In consideration of the interest payments, Owner shall lease to County those portions of the County Land not yet purchased. The lease agreement shall become effective upon closing of the Phase I transaction. A default in payment by a settlement deadline shall result in the lease agreement being voidable at Owner’s option.

Shared Facilities. County does not intend to complete the site improvements as depicted on the Record Plan. However, certain site improvements shown on County Land are designed to serve both the Apartment Lot and the County Land (“Shared Facilities”). It shall be within County’s sole discretion to redesign and re-engineer any Shared Facility so long as such redesign does not materially affect the intended use of the Shared Facility by the Apartment Lot. County will construct those site improvements located on the County Land that are essential for the use of the Apartment Lot as follows:

- ***Shared Access.*** County shall provide permanent site access to the Apartment Lot across the County Land in a location to be decided by County and subject to DelDOT approval.
- ***Stormwater Facilities.*** There are locations shown on the Record Plan where stormwater runoff from the Apartment Lot is directed to stormwater management facilities located on the County Land. County shall provide stormwater facilities to manage the stormwater flow from the Apartment Lot to the County Land to the extent County determines necessary pursuant to sound engineering practices and pursuant to chapters 12 and 40 of the *New Castle County Code*.

Owner will cooperate in any County redesign and re-engineering of any Shared Facility. County and Owner each shall provide the other party necessary cross-access and construction easements. County shall use its best efforts to construct any Shared Facility to coincide with its anticipated use by Apartment Lot. County, however, shall not be responsible for providing any construction-related facilities.

Construction controls and construction-related facilities. Owner shall be responsible for constructing all improvements shown on the Apartment Lot. Additionally, Owner shall be responsible for constructing and maintaining all Apartment Lot construction-related site facilities, regardless of whether such features are located on the Apartment Lot or the County Land. These features include but are not limited to construction entrances and erosion and sediment control features.

Maintenance of Shared Access. A maintenance declaration recorded at the Office of the Recorder of Deeds in and for New Castle County at instrument number 220170627-0032067 provides that the Apartment Lot shall not be responsible for any common facility located on the County Land but shall contribute to the costs of snow removal for the Property. County has no

active plan to develop the County Land and providing snow removal service to the Apartment Lot does not serve a public purpose. Thus, Owner shall agree to be responsible for snow removal of the Shared Access shown on the Record Plan or as that area may be redesigned or relocated by County. The formal agreement shall contain provisions addressing amendment or termination of the maintenance declaration.

Execution of Formal Agreement. New Castle County Council approval is needed prior to the County Executive's execution of a formal agreement. County agrees to provide a resolution and a formal agreement for New Castle County Council review and take action no later than September 30, 2017. Parties shall use their best efforts to execute a formal agreement within seven (7) days of New Castle County Council approval. An earnest money deposit of \$200,000.00 shall be paid to Owner upon execution of the formal agreement. The payment shall include \$100,000.00 from County and \$100,000.00 from the State. The earnest money deposit shall be credited toward the Phase I payment. The money shall be nonrefundable only upon the expiration of the due diligence period and if County fails to satisfy its conditions to closing as provided herein.

Cooperation with Record Plan Modifications. Upon acquisition of the County Land, or any portion of the County Land, County may redesign or re-engineer aspects of the Property, file major or minor land development plans, amend, modify or terminate Record Plan related documents or plans, or take any other action necessary to reflect County's intended use of the County Land. The formal agreement shall provide that Owner, and any assign or successor in interest, shall fully cooperate in the execution of plans and documents, as requested by County, so long as such requests do not materially and substantially affect the intended use of the Apartment Lot.

Due Diligence. The formal agreement shall provide a due diligence period. County and its attorneys, agents and other representatives will have reasonable access, upon reasonable notice and during normal business hours, to the Property to complete inspections and appraisals, conduct surveys, and perform studies during this period. Owner, management, and other personnel of Owner shall provide full cooperation to County, its attorneys, agents and representatives, to complete its due diligence. Within ten (10) days of executing this letter of intent, Owner shall provide to County all agreements, documents and plans that relate to construction as depicted on the Record Plan, that are not otherwise submitted to or maintained by County including, but not limited to, agreements with State agencies.

Permits, Licenses and Approvals. Owner, and any assign or successor in interest, at its sole expense, shall be responsible for securing and obtaining all necessary approvals and permits to develop the Apartment Lot.

Representations and Warranties; Indemnity. The parties will make customary representations and warranties in the formal agreement.

Conditions to Closing. The closing of each transaction will be subject to customary closing conditions, receipt of all necessary government, corporate and third party approvals, satisfactory due diligence and other matters customary for transactions of this nature. Each settlement is

subject to and conditioned upon County obtaining financing, the State contributing funds in an amount equal to the County's payment, and required government approvals. Title to the County Land must be transferred free and clear of any and all liens, judgments, and encumbrances unless specifically accepted by County prior to, or at, settlement. Title shall be insurable and warranted against defects.

Timing of Settlement for Phase I. The parties agree that settlement of the Phase I transaction shall occur at a date, time and place mutually agreed upon by the parties and, in any event, no later than November 1, 2017. The settlement date may be changed for good cause and with the consent of both parties. Such consent shall not be unreasonably withheld.

Expenses. Each party will be responsible for its own transaction-related costs whether or not a transaction is consummated, including, without limitation: expenses and charges related to legal, engineering, surveying, testing, monitoring, or any other professional service; taxes; and fees associated with any submission, review, or recordation of plans or documents. Any and all debts encumbering the County Land will be paid off prior to settlement or by the closing agent from the proceeds of the purchase price prior to closing.

Effect of this Letter and Related Discussions. This letter supersedes any and all prior letters, discussions, e-mails, agreements, proposals and any other communications of the parties relating to the subject matter hereof. The terms hereof may be amended only by a writing executed by authorized representatives of both parties. Neither this letter nor any related discussions, statements or any other communications create any liability or obligation on the part of County or Owner. Neither party has any obligation to consummate the proposed purchase or any other obligation whatsoever. By providing written notice to the other party, either party may abandon negotiations toward a formal agreement at any time for any reason or for no reason, in such party's sole and absolute discretion, notwithstanding anything in this letter or any negotiations or understanding prior to the execution of a formal agreement.

Intent to Apply to other Parties. It is County's intent that this proposal and any formal agreement apply to and bind Owner, and Owner's agents, assigns or successors in interest to the Property or any part of the Property.

Governing Law and Jurisdiction. This letter shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the conflicts of laws principles thereof that would result in the application of the laws of any other jurisdiction.

If this letter accurately sets forth our understanding, please sign below so that we may continue our remaining negotiations.

Very truly yours,

By: 
Matthew Meyer, New Castle County Executive

The foregoing letter is agreed to and accepted effective as of the date set forth below:

By: _____

Name: _____

Title: _____

Date: _____

cc: The Honorable Elisa Diller, New Castle County Council
Carol J. Dulin, New Castle County Attorney
Tracy N. Surles, General Manager, New Castle County Department of Special Services
Richard E. Hall, General Manager, New Castle County Department of Land Use
Marcus Henry, General Manager, New Castle County Department of Community Services