

**INTERMUNICIPAL AGREEMENT BETWEEN THE COUNTY OF NASSAU,
NEW YORK, AND THE INCORPORATED VILLAGE OF MALVERNE IN
RELATION TO THE TRANSFER OF WHELEN PARK**

THIS AGREEMENT (the "**Agreement**"), made and entered as of the date on which this Agreement was last executed by the parties hereto, by and between the COUNTY OF NASSAU (hereinafter referred to as the "**County**"), a municipal corporation having its principal offices at 1550 Franklin Avenue, Mineola, New York 11501 and the INCORPORATED VILLAGE OF MALVERNE (hereinafter referred to as the "**Village**"), a municipal corporation, having offices at 99 Church Street, Malverne, New York 11565-1726 (the County and the Village are hereinafter referred to, together, as the "**Parties**", and individually, as a "**Party**").

WITNESSETH:

WHEREAS, the County periodically performs a review and assessment of County properties; and

WHEREAS, following that assessment, the County has identified Whelan Park (hereinafter referred to as "**Whelan**" or the "**Park**"), located within the Village, that is owned by the County; and

WHEREAS, Whelan had been previously licensed to the Village and the Village has been operating and maintaining Whelan as a park and playground since the 1950s (the "**License**"); and

WHEREAS, Whelan is predominately used by Village residents and the Village is in the best position to identify and serve the needs of those residents; and

WHEREAS, in the interest of consolidating services, improving efficiency, and creating new recreational opportunities for County and Village residents, the County desires to convey, and the Village wishes to acquire Whelan, as more particularly described in this Agreement; and

WHEREAS, the County and the Village are authorized, pursuant to both Article 9, § 1 of the State Constitution and Article 5-G of the General Municipal Law to enter into intergovernmental agreements; and

WHEREAS, the County and the Village, believing it to be in the best interest of the taxpayers of their respective municipalities, do hereby authorize intermunicipal cooperation with respect to the mutual covenants set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto do agree as follows:

I. Transfer of Whelan Park

1. Whelan Park Transfer. (a) The County agrees to convey to the Village, and the Village agrees to acquire from the County (the "**Park Transfer**"), upon the terms and conditions hereinafter contained and subject to all applicable Laws as that term is defined in Section 23 of this Agreement, (i) the parcels of land more particularly shown by the cross-hatched areas on the diagrams attached hereto and hereby made a part hereof as **Appendix "A"** (the "**Park Land**"), (ii) all buildings and improvements situated on the Park Land, if any (collectively, the "**Park Buildings**"), (iii) all right, title and interest, if any, of the County in and to any land lying in the bed of any street, road, highway or avenue, opened or proposed, in front of or adjoining the Park Land, to the center line thereof, and all right, title and interest of the County in and to any award made or to be made in lieu thereof and in and to any unpaid award for damages to the Park Land by reason of change of grade of any street or highway or any taking by condemnation; (iv) the appurtenances and all the estate and rights of the County in and to the Park Land and the Park Buildings, and (v) all right, title and interest of the County, if any, in and to the fixtures, equipment and other personal property (the "**Park Personal Property**") attached or appurtenant to the Park Land and Park Buildings, except as otherwise provided herein (the foregoing items (i) through (v) are, collectively, the "**Park**").

(b) Parkland Alienation Legislation. The conveyance of the Park may require alienation legislation from the State of New York (the "**Alienation Legislation**"). The Village hereby represents that it shall pay all costs relating to obtaining Alienation Legislation and shall perform all acts; including but not limited to drafting an alienation bill, obtaining a legislative sponsor, and completing and submitting all necessary forms and applications; that are necessary to obtain an alienation bill from the Legislature of the State of New York. The Village also shall undertake, at its own cost and expense, a process to survey the Park for obtaining the Alienation Legislation.

2. Permitted Encumbrances. (a) The Park is to be transferred subject to (i) any state of facts an accurate survey may show and any variations between the location of records lines (ii) covenants, restrictions, reservations, easements and agreements of record, (iii) laws and governmental regulations that affect the use and maintenance of the Park, (iv) consents for the erection of any structures on, under or above any streets on which the Park abuts, (v) encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway, (vi) all licenses and easements, if any, for public utilities and the rights of any utility company to maintain and operate lines, poles, cables and distribution boxes in, over and upon the Park, (vii) any laws, codes, regulations or ordinances, requirements and construction preconditions (including, but not limited to zoning, building and environmental matters) as to the use, occupancy, subdivision or improvement of the Park adopted or imposed by any governmental agency having jurisdiction, and all amendments and additions thereto now or which at closing will be in force and effect, (viii) the standard preprinted exceptions, stipulations and exclusions from coverage contained in any certificate of title or title policy issued to the Village by any title company authorized to issue title insurance in the State of New York, and (ix) the County's reservation of a

non-exclusive, perpetual access easement for ingress and egress over, across, and upon the Park to access to certain drainage infrastructure servicing Pine Brook (the "Drainage Infrastructure") relating to the maintenance, repair, and operation of the Drainage Infrastructure

(b) Title Defects. If The County shall be unable to convey title to the Park at the closing in accordance with the provision of this Agreement or if the Village shall have any other grounds under this Agreement for refusing to consummate the Park Transfer provided for herein, the Village, nevertheless, may elect to accept such title as the County may be able to convey but without any liability on the part of the County. If the Village shall not so elect, the Village, as its sole and exclusive remedy, may terminate this Agreement with respect to the Park. The County shall not be required to bring any action or proceeding or to incur any expense to cure any title defects or violations or to enable the County otherwise to comply with the provisions of this Agreement.

3. Payment. The Village shall pay to the County for the Park the sum of One Dollar 00/100 (\$1.00).

4. Park Closing Date. Subject to the conditions set forth herein, the Park Transfer shall occur on the "Park Closing Date", such date to be on or about the thirtieth (30th) day after the securing of all required governmental approvals for the Park Transfer (the "Park Transfer Approvals"), including, without limitation, the passage of appropriate Alienation Legislation approving the Park Transfer by the State, if required. As stated in Paragraph 1(b), in the event Alienation Legislation is required for the Park Transfer, the Village shall be responsible for obtaining the Alienation Legislation. The County will assist the Village in obtaining the State approval for Alienation Legislation, including providing a "Home Rule Message" in support of the Village taking title to the Park.

5. Covenants in Deeds. The Deed for the Park shall contain clauses that state:

(a) The Grantee, by the acceptance of the Deed, covenants and agrees for itself and its successors and assigns as follows: (i) the above described premises shall be forever used and maintained as and for public recreational purposes and for those purposes only, except that the Grantee, its successors and assigns, may provide parking or erect ancillary structures on the said premises as are necessary for operations consistent with the public recreational purposes of the said premises; (ii) all Nassau County residents shall be allowed to use and enjoy the said Park on the same terms and conditions as shall residents of the Grantee or its successors and assigns; (iii) Grantee shall honor all current permits and its permittees, and will endeavor to provide similar usage for current permittees at the Park; (iv) the Grantee and its successors and assigns shall display and maintain, at the main entrance to the Park, a sign, acceptable to the County in all respects,

including, without limitation, design, size and location, that states, “*Whelan Park is open to all Nassau County residents*”, (v) in the event that there is a breach of any of the conditions or covenants herein by Grantee or its successors and assigns, at the option of the County, all right, title and interest in and to all of the said premises shall revert to the County of Nassau and the County shall have the right to enter upon said premises ninety (90) days (“**Cure Period**”) following written notice from the County to the Grantee, its successors and assigns, of said breach, provided, however, that Grantee, its successors and assigns, do not cure said breach within the Cure Period, and (vi) in the event that any of the conditions or covenants herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining conditions or covenants shall not in any way be affected or impaired thereby.

(b) County reserves a non-exclusive, perpetual access easement for ingress and egress over, across, and upon the Park granting County and its agents, heirs, and assigns the right of access to the Park to access the Drainage Infrastructure servicing Pine Brook TOGETHER with an easement for the installation, construction, maintenance, repair, replacement, relocation and patrol of the Drainage Infrastructure (the “**Easement**”).

(c) FURTHER SUBJECT, to the restriction that Grantee shall only use the Park for public recreational purposes, and for no other use. These covenants and restrictions shall run with the land and shall be binding upon Grantee, its successors and assigns.

6. Park Due Diligence Review. (a) Commencing on the date hereof and expiring ninety (90) days thereafter (the “**Park Inspection Expiration Date**”) or such other date as mutually agreed to by the Parties in writing, the Village and its authorized representatives and agents shall be entitled to enter upon the Park at reasonable hours upon notice to the County in order to conduct such reasonable and customary inspections, studies, tests and reviews with respect to the Park which the Village deems necessary or desirable in connection with an assessment of (i) the structural integrity and physical condition of the Park (the “**Park Engineering Review**”), and (ii) the environmental condition of the Park, including, without limitation, a Phase I environmental assessment of the Park (the “**Park Environmental Review**”; which, together with the Engineering Review, is hereinafter collectively referred to as the “**Park Due Diligence Review**”), at the Village’s sole cost and expense. Prior to performing any sampling or testing that disturbs the Park, any so-called “Phase II” environmental assessment, the Village must obtain the County’s prior written consent based on the County’s review of Village’s proposed plans. The County shall cooperate with Village and its authorized representatives and agents in every reasonable way, at the Village’s sole cost and expense, in connection with the Park Due Diligence Review.

(b) In the event that the Village and/or its agents, employees or representatives shall cause any damage to the Park by reason of work conducted during the Park Due Diligence Review, the Village shall repair any such damage to the Park and restore the Park to the same condition that it was in prior to such work being done.

(c) The Village hereby agrees to conduct its activities upon the Park and adjacent property so as not to endanger any person thereon and to indemnify, defend and hold the County free and harmless from and against (i) all physical damage to the Park caused by work done in connection with the Park Due Diligence Review, (ii) all loss, liability or damage suffered or incurred by the County arising out of Village's breach of the terms and conditions of this section, or resulting from injury or death to individuals or damage to property sustained on the Park and caused by the work in connection with the Park Due Diligence Review conducted by, or at the direction of, the Village and/or its agents, employees and representatives, and (iii) all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the County in connection with any action, suit, proceeding, demand, assessment or judgment incident to the foregoing. The Village's indemnification obligations contained in this Section shall survive the termination or expiration of this Agreement.

(d) The Village agrees to treat all information received with respect to the Park and not otherwise in the public domain, whether such information is obtained from the County or from the Park Due Diligence Review, in a confidential manner, unless otherwise required by law. The Village shall not disclose any such information to any third parties other than such disclosure to the Village's counsel, consultants, accountants and advisers as may be required in connection with the Village's potential acquisition of the Park (any such disclosure to be made expressly subject to this confidentiality requirement). The Village's confidentiality obligations contained in this Section shall survive the termination or expiration of this Agreement.

(e) The Village shall have the right to terminate this Agreement for any reason whatsoever in connection with the Park Due Diligence Review (except as expressly set forth otherwise in the immediately following sentence) at any time prior to the Park Inspection Expiration Date upon written notice to the County, which notice must be delivered to the County in accordance with the notice provisions of this Agreement on or before the Park Inspection Expiration Date, with **TIME BEING OF THE ESSENCE**. Without limiting the foregoing, the Village may terminate this Agreement at any time prior to the Park Inspection Expiration Date in accordance with the provisions of this Section if the Village determines that the Park Engineering Review and/or the Park Environmental Review are not satisfactory to the Village, as determined by the Village in its reasonable discretion. The Village's failure to timely deliver such notice on or before the Park Inspection Expiration Date shall be deemed a waiver by the Village of its right to terminate this Agreement pursuant to the provisions of this section, in which event this Agreement shall continue in full force and effect.

7. Delivery and Acceptance of Quitclaim Deeds. At the closing, the County shall deliver executed and acknowledged quitclaim deeds for the Park (the "**Park Deed**") in statutory form for recording, sufficient to convey the fee simple title to the Park. The delivery and acceptance of the Park Deed at the closing, without the simultaneous execution and delivery of a specific agreement which by its terms shall survive the Park Transfer, shall be deemed to constitute full compliance by the County with all of the terms, conditions and covenants of this Agreement on the County's part to be performed, except as to those obligations specifically stated herein that shall survive the Park Transfer.

8. Park Transfer Costs. The Village shall pay all recording fees, title premiums, transfer taxes and reasonable and customary closing expenses relating to the Park Transfer.

9. No Representations or Warranties Made by County. (a) The County makes no representations or warranties, express or implied, regarding the Park. The Village has conducted or may conduct its own independent investigation of the Park, at its sole cost and expense. The determination of the Village to acquire the Park has been or will be made in the sole discretion of the Village. The Village has not and shall not rely on any representations or warranties by the County in making its decision to acquire the Park.

(b) Condition of the Park at Time of Conveyance. The Village acknowledges and represents to the County that neither the County nor any agent or representative of the County has made any statements or representations regarding the physical condition of the Park, its zoning, its compliance with any environmental or occupational protection, pollution, subdivision or land use laws, rules, regulations or requirements, the state of title, the uses which can be made of the same, or the rents, income, expenses, operation or any other matter or thing affecting or relating to the Park, or to any buildings or improvements thereon erected, except as expressly set forth in this Agreement. The Village is acquiring the Park in their "**AS IS, WHERE IS, WITH ALL FAULTS**" condition as of the Park Closing Date, subject to ordinary wear and tear and natural deterioration and obsolescence between the date of this Agreement and the Park Closing Date. All understandings and agreements heretofore had between the Parties or their respective agents or representatives are merged in this Agreement which alone fully and completely expresses their agreement. Without limiting the provisions of this Section, and notwithstanding anything to the contrary contained in this Agreement, the Village hereby releases the County and (as the case may be) the County's officers, employees, and agents from any and all claims, demands, causes of actions, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees), whether known or unknown, liquidated or contingent, arising from or relating to the existence of any conditions, including environmental and other physical conditions, affecting the Park, except for those arising out of the County's gross negligence or willful misconduct, and claims accruing prior to the License Commencement Date (as defined in this Agreement).

10. No Broker Involved. The County and the Village each represent that they have not negotiated with any brokers in connection with this transaction.

11. Cooperation by Parties. The Parties agree to work cooperatively and use their best efforts to complete the Park Transfer, including but not limited to: (i) the preparation, undertaking and filing of any and all required environmental analyses, reviews or reports, all at the Village's sole cost and expense; (ii) the passage of any required local law or home rule message; and (iii) taking additional efforts, if necessary, to secure the passage of Alienation Legislation by the State Legislature, its signing by the State Governor and any other necessary approvals. The Village shall conduct all negotiations to secure the necessary approvals, with the cooperation of the County, when necessary.

12. Park Operation by Village. As of the Park Closing Date, the Village shall operate the Park as part of its Village system, and accept all responsibility for staffing, management, maintenance, improvements, operation and related activities. The Village shall honor any permits issued by the County with respect to the Park. The provisions of this Section shall survive the termination of this Agreement.

13. Whelan Open to County Residents. As of the date on which the Park Transfers, the Village shall (i) continue to operate Whelan for public recreation and Countywide recreational purposes; (ii) ensure that all County residents shall be allowed to use and enjoy Whelan on such terms and conditions as shall residents of the Village and (iii) display and maintain, at the main entrance to Whelan, a sign, acceptable to the County in all respects, including, without limitation, design, size and location, that states, "*Whelan Park is open to all Nassau County residents*". The provisions of this Section shall survive termination of this Agreement.

14. Required Approvals. (a) If the Park Transfer is not approved by the New York State Legislature within two (2) years after the Park Inspection Expiration Date, all right, title and interest in and to shall remain with the County and the validity, legality and enforceability of the remaining conditions or covenants contained in this Agreement shall not in any way be affected or impaired thereby.

15. Notices. (a) Any demand, request, consent or other notice given or required to be given under this Agreement shall be deemed to have been duly and sufficiently given only if in writing and sent as follows:

- (i) by personal delivery with proof of delivery (any notice so delivered shall be deemed to have been received at the time so delivered);
- (ii) by Federal Express (or other similar overnight courier) designating priority delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier);
- (iii) by United States registered or certified mail, return receipt requested, postage prepaid (any notice so delivered shall be deemed to have been received on the third (3rd) business day after the delivery of any such notice to the United States Postal Registry Clerk); or

(b) All notices shall be addressed to the Parties at the following addresses:

To the County:

County of Nassau
Attn: DCE for Parks and DPW
1550 Franklin Avenue
Mineola, New York 11501

with a copy to:

Nassau County Attorney's Office
Attn: Municipal Transaction Chief
One West Street
Mineola, New York 11501

To the Village:

Incorporated Village of Malverne
99 Church Street
Malverne, NY 11565-1726

with a copy to

Walsh, Marcus, McDougal, & DeBellis LLP
Attn: Kevin Walsh, Esq.
1600 Calebs Path
Hauppauge, NY 11788

(c) Either Party may, by notice given pursuant to the provisions of this Paragraph, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt.

16. All Legal Provisions Deemed Included; Severability; Supremacy; Construction. (a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either Party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either Party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

(d) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either Party as drafter.

17. No Arrears or Default. The Village is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

18. Bond Status. The Village shall not take any action, or omit to take any action, the result of which act or omission shall have an adverse impact on the tax-exempt status of any bond issued by, or on behalf of, the County, specifically including but not limited to, Federal laws, rules and regulations regarding private activity and arbitrage. The Village shall consult with the County and the County's bond counsel when appropriate to ensure compliance with such laws, rules and regulations.

19. Assignment. Neither Party hereto may assign its rights and/or obligations hereunder without the prior written consent of the other Party and any purported assignment without such consent shall be of no force and effect.

20. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

21. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the Parties relating to the subject matter of this Agreement.

22. Consent to Jurisdiction, Governing Law, Jury Trial Waiver. (a) Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. (b) This Agreement shall be (i) governed by and construed in accordance with the laws of the State of New York, and (ii) given a fair and reasonable construction in accordance with the intentions of the Parties.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO

TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

23. Compliance With Law. (a) Generally. The Parties shall comply with any and all applicable Federal, State and local Laws (as hereinafter defined), including, but not limited to, the State Environmental Quality Review Act and those laws relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The Parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the Agreement or as required by law. The Village acknowledges that Village Information in the County's possession may be subject to disclosure under Section 87 of the State Public Officer's Law. In the event that such a request for disclosure is made, the Village shall make reasonable efforts to notify the Village of such request prior to disclosure of the Information so that the Village may take such action as it deems appropriate.

24. Third Party Claims. Nothing in this Agreement shall create or give to third parties any claim or right of action against either Party beyond such as may legally exist irrespective of this Agreement.

25. Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. Neither Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County and Village approvals have been obtained, including approval by the County Legislature, (ii) approval by the Village Board (iii) this Agreement has been executed by the County Executive or a duly authorized Deputy County Executive and the Village Mayor.

(b) Availability of Funds. Neither Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the State and/or federal governments, then beyond funds available to either Party from the State and/or federal governments.

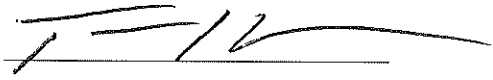
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IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date this Agreement is last executed by the Parties.

COUNTY OF NASSAU

By: _____
Name: _____
Title: _____
Date: _____

VILLAGE OF MALVERNE

By: 
Name: **TIMOTHY H. SULLIVAN**
Title: **MAYOR**
Date: **9/10/24**

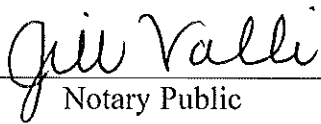
STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the .__ day of _____ in the year 2024 before me personally came ARTHUR T. WALSH to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Nassau; that he or she is Chief Deputy County Executive of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto.

Notary Public

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the 10 day of September in the year 2024, before me personally came Hon. Timothy H. Sullivan to me personally known, who, being by me duly sworn, did depose and say that he resides in the County of Nassau; that he is the Mayor of the Village of Malverne, the municipal corporation described herein and which executed the above instrument; and that he signed his name pursuant to the authority of New York State Law.



Notary Public

JILL VALLI
Notary Public-State of New York
No. 01VA6410981
Qualified in Nassau County
Commission Expires 11/09/2024

APPENDIX A

PREMISES

