

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made this ____ day of _____, 2012 by and between the Lexington-Fayette Urban County Government ("LFUCG"), an urban county government organized pursuant to KRS Chapter 67A, 200 East Main Street, Lexington, Kentucky, 40507, and Burlington Heights, LLC ("Burlington"), a foreign limited liability company with offices located at 1047 Wil-Rose Lane, Versailles, Kentucky 40383.

WHEREAS, Burlington desires to develop housing on multiple lots on Burley Avenue, including one property owned by the LFUCG located at 301 Burley Avenue ("Property"); and

WHEREAS, Burlington has financing approved if he obtains the property; and

WHEREAS, the Property owned by the LFUCG has been used as a neighborhood park but which is in need of improvements; and

WHEREAS, the LFUCG desires to operate and maintain a neighborhood park for area residents with new amenities; and

WHEREAS, Burlington has an option to purchase three (3) properties located at 300, 302 and 306 Burley Avenue, a site that is better for park purposes; and

WHEREAS, Burlington and the LFUCG desire to swap properties as a mutually beneficial means for the LFUCG and Burlington to achieve their respective goals; and

WHEREAS, the property swap will enhance the public health, safety and welfare by allowing the establishment of a new park with all the desired improvements at a location that will better meet the needs of area residents, and without cost to the LFUCG;

NOW THEREFORE, the Parties agree as follows:

1. Burlington agrees to purchase, then convey to the LFUCG, at no cost to the LFUCG, property located at 300, 302 and 306 Burley Avenue for the creation of a neighborhood park.

2. Burlington shall have a Phase I environmental assessment performed at his expense on 300, 302 and 306 Burley Avenue, which he shall provide to the LFUCG. The LFUCG shall have the right to reject the property swap if the Phase I indicates the presence of hazardous substances or conditions that are incompatible with the intended use of the property as a park and which would be prohibitive to remediate.

3. Burlington shall provide appraisals to the LFUCG performed by a qualified appraiser for the LFUCG's 301 Burley Avenue property and for 300, 302 and 306 Burley Avenue, in order to document that 300, 302 and 306 Burley Avenue, the property to be acquired by the LFUCG, exceeds the value of 301 Burley Avenue, the property Burlington desires to obtain from the LFUCG.

4. As an express condition of this agreement, Burlington shall demolish and remove the houses located at 300, 302 and 306 Burley Avenue, prepare these lots for use as a park as referenced herein and install or cause to be installed, at his sole expense, the itemized improvements listed on Exhibit A attached to this agreement, all subject to the LFUCG's final inspection and approval. The parties agree that Burlington may construct and/or install any of the improvements listed on Exhibit A subject to the approval of LFUCG, which said approval shall not be unreasonably withheld. The Parties agree that Burlington's total costs for construction, labor and materials related to the park improvements shall not exceed \$117,000 dollars.

5. LFUCG authorizes Burlington to apply for a variance on LFUCG's property located at 301 Burley Avenue subject to the condition that should the "property swap" referenced herein not be consummated, then such variance shall be set aside as void with both executing whatever documents are needed to effectuate this purpose.

6. The existing Burley Park shall remain open for use by the public until time as LFUCG opens the new park for use by the public. During the time period in which the new park is being developed and until it is opened for public use, LFUCG shall lease the existing Burley Park from Burlington at a cost of \$1 dollar per year. During this lease term there shall be no modifications to the park. Said lease shall contain provisions which provide that LFUCG shall assume any and all liability as regards the existing Burley Park property; LFUCG shall maintain and control the use of the existing Burley Park until such time as the new park is declared open by LFUCG. Further, the lease shall include a hold harmless and indemnification provision which provides that LFUCG shall hold harmless and indemnify Burlington from any and all claims and damages that might arise during the lease term.

7. Burlington, shall prior to transfer of the existing Burley Park, post a surety bond in such amount as is necessary to pay for any of the remaining improvements identified in Exhibit A for which it has not already purchased or installed. There shall be no tenants or residents in any of the houses located at 300, 302 or 306 Burley Avenue. These houses shall be vacant at the time of transfer.

8. The Parties agree that this Agreement shall be null and void and have no effect if:

- a. Burlington does not obtain title to 300, 302 and 306 Burley Avenue;

b. The appraisals fail to show that the combined lots located at 300, 302 and 306 Burley Avenue with the improvements referenced in Exhibit A are more valuable than the LFUCG's property at 301 Burley Avenue.

9. Time is of the essence. This Agreement must be executed by no later than April 30, 2012.

10. Burlington and LFUCG agree to simultaneously exchange general warranty deeds for the respective properties within 30 days of execution of this Agreement, each party to pay its respective closing costs, recording fees and related expenses.

11. This Agreement may not be amended without the written agreement of both Parties.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

By: _____
Jim Gray, Mayor

BURLINGTON HEIGHTS, LLC

By: _____

Its: _____

Pursuant to Resolution No. _____
Approved on _____