



TOWN OF BERLIN, MARYLAND

September 6, 2023

Councilmembers Burrell, Knerr, and Nichols:

We respectfully request that you reconsider your vote to end the negotiations with Coastal Ventures Properties (CVP) regarding the sale of Parcel 57 at Heron Park. During our Work Session meeting on Monday, August 28th, the majority of the Council reached a consensus on the draft contract. Following the meeting, at least one of you reached out to the Mayor's Office to express the items you would like to see in a future contract and stated that you would be interested in reexploring the potential sale of Parcel 57 to CVP. Attached to this letter is a draft contract with incorporated discussion points from our Work Session. We have also included a summary of the changes listed below:

- The sale price reflects the most recent appraised value of Parcel 57 (\$1,200,000.00)
- Item 2.c. indicates that Parcel 57 will have a rear setback in perpetuity to protect the feeling of the walking path around the lagoons. It also states that a residential component will be incorporated into the redevelopment of the property.
- Item 2.f. includes the transfer of two (2) sewer EDUs from Parcel 57 to Parcel 410 (one sewer EDU) and Parcel 191 (one sewer EDU).
- Item 2.g. states that thirty-four (34) sewer EDUs will convey with the sale and that the buyer will be responsible for the purchase of any additional EDUs.

We also ask you to re-evaluate the risk that the Town of Berlin is taking on by moving forward with the demolition ourselves. The engineers from DBF have been on-site to evaluate the building following our meeting on August 28th to begin preparing documents to take the demolition of the building to bid. DBF believes that it is "unlikely" that the Town will be able to demolish the entire building. DBF also believes that the Town "will have to spend money to secure and stabilize" the remaining portion of the building if the entire demolition cannot be accomplished with the available funding.

Additionally, it is difficult to pinpoint precisely where the demolition will end if the cost to demo exceeds the available grant funding. DBF will work with the awarded demolition contractor to try and maintain the "more robust buildings" so "collateral damage is minimized," however, there could be an additional cost to the Town if something does not go as planned.

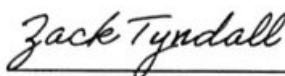
We believe that the Town of Berlin is not in a financial position to take on these potential additional costs and caution the Council that there may be unknown issues that arise during the

demolition that the Town would have to resolve immediately, potentially further eroding our available reserve funds.

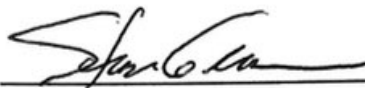
In addition to the attached draft contract, we have asked CVP to provide a conceptual drawing showing the items we discussed during our Work Session on Monday, August 28th. This information from CVP is included as an attachment to this letter.

We respect the decision of the Council. However, since at least one of you have expressed a willingness to reconsider your position to the Mayor, we would be remiss if we did not bring this information to your attention again.

Respectfully,



Zack Tyndall, Mayor



Steve Green, Councilmember



Jack Orris, Councilmember

CC: Mary Bohlen, Town Administrator

CONTRACT OF SALE

THIS CONTRACT OF SALE, made this ____ day of _____, 2023, by and between the Mayor and Council for the Town of Berlin, Maryland, hereinafter the Seller and Coastal Ventures Properties, LLC, hereinafter the Buyer.

IN CONSIDERATION of the premises and the mutual covenants herein contained, the Seller does hereby bargain and sell unto Buyer, and the Buyer does hereby purchase from the Seller the following property:

This contract is contingent upon the parties agreeing to a site plan delineating a perpetual easement granted to the Seller depicting a public access easement from Old Ocean City Boulevard the entire length of Parcel 57 on the east side to the rear of Parcel 57, a perpetual easement providing twenty (20) parking spaces on Parcel 57 for Seller's use at Heron Park , and appropriate utility easements to be accessed by the Seller. Parcel 57 is currently known as a portion of Heron Park.

1. Purchase Price.

The purchase price for the property shall be ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00). Buyer's good faith deposit of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), shall be held by Seller in a non-interest bearing account. Said deposit shall be applied to the purchase price.

2. Contingencies.

This Contract is expressly contingent upon the following:

- (a) The parties shall agree to a site plan delineating a public access easement, parking easement, and utility easement.
- (b) Seller has been awarded a grant of \$500,000.00 from the Maryland Department of Housing and Community Development (DHCD) for strategic demolition on the site of the former Tyson processing plant. This grant will be utilized by the

Seller to perform all aspects of a strategic demolition project within the scope of the grant, including, but not necessarily limited to, engineering, bidding, demolition management, and removal and disposal of waste materials. Funds must be expended by May 31, 2024, to ensure compliance with the grant terms. The Buyer shall be responsible for all further demolition costs over and above the DHCD grant.

- (c) Seller shall effectively re-zone Parcel 57 to B-2 zoning designation as determined by Seller's Planning Department to comply with Buyer's intended use of the property. The buyer agrees that Parcel 57 shall have a rear setback of 100 ft in perpetuity. Front and side setbacks shall comply with B-2 zoning. In the event that the Buyer files an application to the Town of Berlin's Board of Appeals seeking a variance for a conditional use to allow first-floor residential use on Parcel 57, the Seller agrees to send a letter to the Board of Appeals in support of the Buyer's application. The parties agree and acknowledge that the Board of Appeals is an independent, quasi-judicial body and that the Buyer will have the burden of proof in any proceeding before the Board of Appeals, and the parties further agree that the Board of Appeals decision to grant or deny any requested variance is not contingent on the validity of this contract.
- (d) Buyer shall build and maintain sidewalks for parcel 57 with road frontage on the north side of Old Ocean City Boulevard.
- (e) Buyer shall be responsible for all costs of development of Parcel 57, including impact fees, connection fees, traffic study, proportionate costs associated with running water, sewer and electric lines needed to connect to buyers facilities, etc.
- (f) The Seller shall transfer 2 (two) sewer EDU's from Parcel 57. One (1) sewer EDU shall transfer to Parcel 410, which is retained by the Seller, and one (1) sewer EDU shall transfer to Parcel 191, which is retained by the Seller.
- (g) The Seller shall convey 34 (thirty-four) sewer EDU's with the sale of Parcel 57.

Any additional sewer EDU's are the responsibility of the Buyer and will be assessed at the current market rate.

- (h) The Buyer is responsible for the cost of all necessary water EDU's for Parcel 57 at the current market rate based on town policy.
- (i) Buyer is responsible for obtaining necessary approvals for the development from the Maryland State Highway Administration.
- (j) Buyer is responsible for obtaining satisfactory financing for the purchase of the property.
- (k) Buyer may obtain, at its expense, a Phase 1 Environmental Assessment of Parcel 57 demonstrating that the property is suitable for public purposes pursuant to Maryland Department of the Environment regulations and standards. The Phase 1 Environmental Assessment shall be conducted within ninety (90) days and shall be performed by a firm chosen by the Buyer.
- (l) Buyer obtaining approval of its development plan from the Town of Berlin Planning and Zoning Commission.

3. Title.

- (a) Upon payment as aforesaid, the Seller shall execute and deliver a Deed for the Property containing the covenants of special warranty and further assurance, which shall convey the Property to the Buyer. Title to the Property shall be good and merchantable and free of liens and encumbrances, except the following: Use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the subdivision in which the Property is located, and publicly recorded easements for public utilities and other easements that could be observed by an inspection of the Property.
- (b) Notwithstanding anything in this Contract to the contrary, in the event Seller is unable to give good and marketable title and such as will be insured by a title company as set forth above, Buyer shall have the option (l) of taking such title as Seller can convey with Seller being obligated to pay and satisfy all liquidated liens

(as hereinafter defused) at settlement, or (ii) of being repaid the Deposit and in the latter event there shall be no further liability or obligation by either of the parties hereunder and this Contract shall become null and void. For purposes of this Contract, any matter(s) susceptible of satisfaction and removal at or prior to settlement by the payment of a sum of money which is explicitly set forth in said lien document, including, without limitation, unpaid mortgages, judgments, taxes, sewer and water charges, and assessments shall be considered a Liquidated Lien.

4. Apportionments.

Rent, ground rent, taxes, sanitary district assessments, homeowner association assessments, condominium assessments, and all other public charges and assessments payable on an annual basis imposed against the Property shall be apportioned as of the date of settlement and assumed thereafter by the Buyer.

5. Possession.

Possession shall be given by deed at the time of settlement, free of all leases and other occupancy. Buyer agrees that the construction/redevelopment of each parcel will be completed within 24 months of Buyer taking possession of the property.

6. Settlement.

Settlement shall be held _____, 2023, but in no event later than _____.

7. Settlement costs.

Title examination charges, the costs of the preparation of all necessary documents, notary fees, points and other loan fees, and other customary settlement charges, including but not limited to, recordation tax, state or local transfer tax, agricultural transfer tax or roll back tax shall be paid by Buyer.

8. Default.

In the event that settlement is not held through no fault of the Seller, then the Seller may retain all sums deposited hereunder and/or specifically enforce this contract against Buyer. Should Seller violate or fail to fulfill and perform any of the terms or conditions of this Contract at or prior to settlement, and if as a result thereof settlement hereunder shall not occur, then Buyer shall be entitled: (1) to specifically enforce this Contract against Seller or, (2) to terminate this Contract in which case this Contract shall become null and void and the Deposit shall be returned to Buyer and neither the Buyer nor Seller shall be liable to one another for any reason, at law or at equity. Should either party retain the services of an attorney to enforce or interpret this Contract, the non-prevailing party shall reimburse the prevailing party with any and all court costs or other expenses incurred in such action, including but not limited to, reasonable attorney's fees.

9. Condemnation: Casualty

- (a) All risk of loss or damage to the Property by casualty of any nature prior to settlement shall be borne by Seller. If, prior to the time legal title has passed or possession has been given, the Property or a substantial part of it is destroyed or damaged without fault of the Buyer, then this Contract, at the option of the Buyer, may be rescinded and all monies paid hereunder refunded to Buyer.
- (b) If, prior to settlement, any portion of the Property is condemned, Buyer shall have the option of (i) terminating this Contract, in which event the Contract shall be null and void and Buyer shall be paid the Deposit, or (ii) proceeding with settlement, in which even the entire condemnation or insurance proceeds shall be delivered to Buyer at settlement hereunder (and, in connection with the foregoing, Seller expressly acknowledges and agrees that the foregoing insurance or condemnation proceeds shall not be applied to restoration of the Property without Buyer's prior written consent, in Buyer's sole discretion), or, if they have not yet been paid, the right to receive such proceeds shall be assigned by Buyer at settlement hereunder by instrument acceptable to Buyer. Buyer shall exercise its option within fifteen (15) days after it receives notice from Seller of any such

condemnation or casualty. This section shall not apply if Buyer is the condemning authority. Should Buyer initiate condemnation proceedings against Seller with regard to the Property, this contract shall immediately be deemed null and void.

10. Compliance with Notices, Ordinances.

Seller shall comply with any notices given or ordinances enacted by any governing authority prior to the date of settlement for which a lien could be filed against the Property.

11. Survival.

Any covenant, promise or obligation in this Contract which is not by expressed language intended to be fulfilled or performed at settlement shall not merge into the deed of conveyance but shall remain in full force and effect and be binding on the parties hereto until fully performed or fulfilled.

12. Notices.

Any notice required to be given hereunder shall be given in writing and either (i) sent by United States registered or certified mail, with postage prepaid, return receipt requested, (ii) sent by Federal Express or another nationally recognized overnight courier, (iii) hand delivered, or (iv) sent by facsimile transmission with a hard copy sent on the same day by a nationally recognized overnight courier. All notices shall be deemed to have been given 48 hours following deposit in the United States Postal Service, or upon delivery if sent by overnight courier service, facsimile, courier or hand delivery. All notices shall be addressed to the following address or at such other address as may hereafter be substituted by notice in writing thereof.

To Seller: Mayor and Council of
Berlin c/o Zackery Tyndall,
Mayor 10 William Street
Berlin, MD 21811

With Copy to: David C. Gaskill, Esquire
5700 Coastal Highway
Suite 201

Ocean City, MD 21842

To Buyer: Palmer Gillis
150 W. Market Street
Suite 200
Salisbury, MD 21801

13. Entire Agreement.

This Contract contains the entire agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise of any kind whatsoever. This Contract may be amended only by a writing signed by both parties.

14. Assignment.

This Contract may not be assigned or transferred by Buyer without the prior written consent of Seller. This Contract shall extend to and bind the heirs, personal representatives, executors, administrators, successors and assigns of the respective parties hereto.

15. Miscellaneous.

- (a) As used herein, the phrases "the date hereof" and "the date of this Contract" shall mean the date of execution (and delivery of the fully executed Contract to the first party to sign by the last party to sign this Contract.
- (b) This Contract may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Contract and shall be considered a signed document. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature to this Contract. In such event, the parties hereto shall promptly thereafter deliver to each other executed counterpart originals of this Contract.
- (c) Buyer and Seller agree to cooperate with each other and to take such further actions as may be requested by the other in order to facilitate the timely purchase and sale of the Property.
- (d) If any date on which a time period scheduled to expire herein is a Saturday, Sunday

or holiday, the subject date shall be extended to the next business day.

- (e) This Contract has been drafted by counsel for both the Seller and the Buyer, and accordingly, any ambiguities contained herein shall not be interpreted in favor of or against either party.
- (f) If any term or provision of this Contract or application thereof shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each other term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.
- (g) This Contract shall be construed in accordance with the laws of Maryland.

16. Time is of the essence with this Contract.

NOTICE TO BUYER

SECTION 14-104 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND PROVIDES THAT, UNLESS OTHERWISE NEGOTIATED IN THE CONTRACT OR PROVIDED BY LOCAL LAW, THE COST OF ANY RECORDATION TAX OR ANY STATE OR LOCAL TRANSFER TAX SALE BE SHARED EQUALLY BETWEEN THE BUYER AND SELLER.

This contract obligates Buyer to pay these taxes.

BUYER IS ENTITLED TO SELECT THEIR OWN TITLE ATTORNEY, SETTLEMENT ATTORNEY OR ESCROW COMPANY.

AS WITNESS the hands and seals of the parties hereto the day and year first written above.

TEST/ATTEST

Seller: Mayor and Council of the Town of Berlin

As to Seller

_____(SEAL)
Zackery Tyndall, Mayor

Buyer: Coastal Ventures Properties, LLC

As to Buyer

_____(SEAL)
Palmer Gillis

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September 5, 2023

Town of Berlin – Heron Park. Conceptual uses.

BUILDING A :

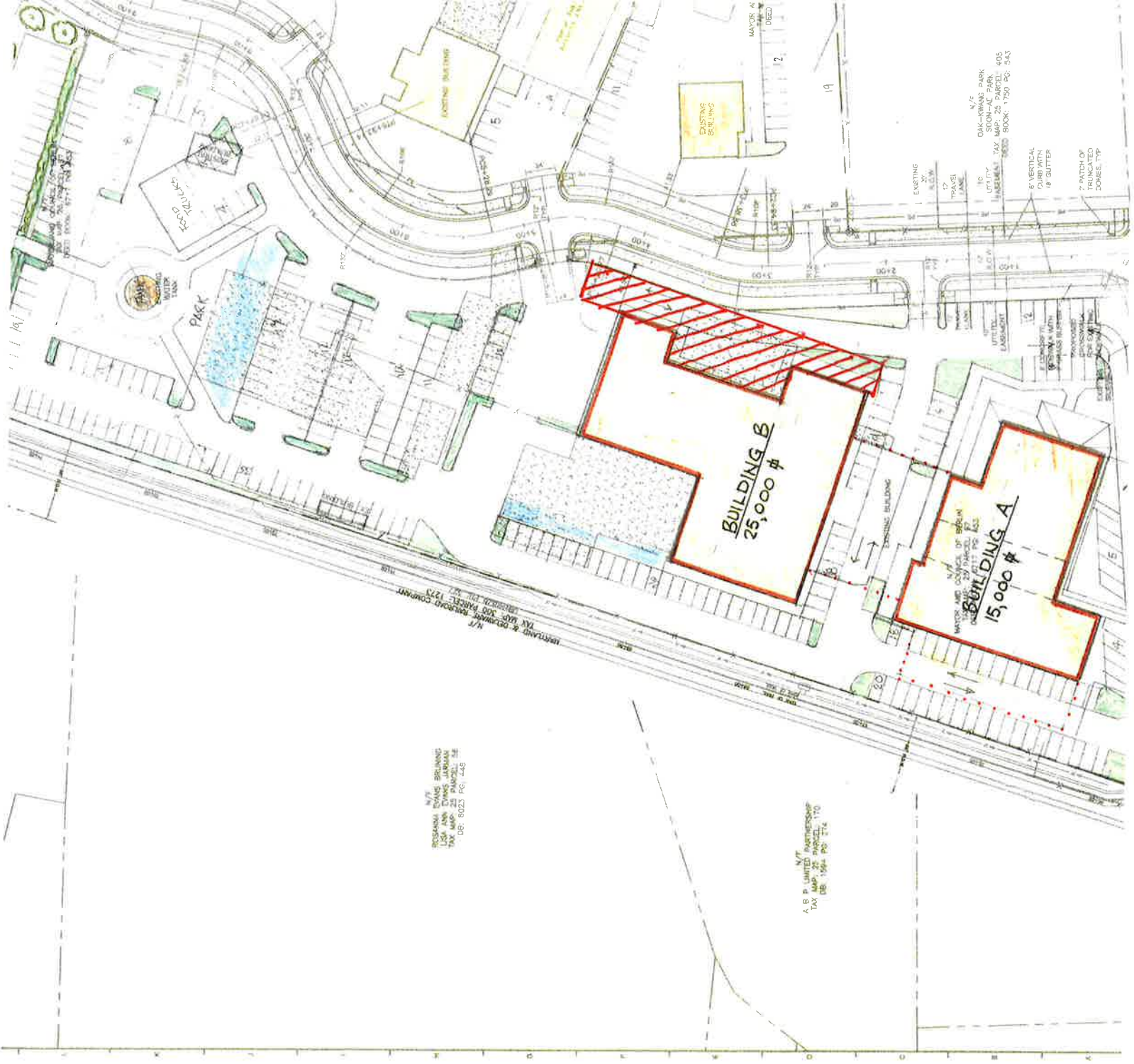
1. Up to 7,500 square feet of restaurant(s) eateries.
2. Professional offices. Medical offices.,
3. Retail is mostly limited to ancillary use. Such as tee shirts for restaurants or skin care products for an Estheticians office.
4. Other retail users that are not competing with the Downtown Merchants. Skate shop, bike shop, garden center (could be in B). Made in Worcester County/Berlin.

BUILDING B:

1. Large scale users
2. Warehouse/storage/ministorage.
3. Central kitchen/event space/activities space.
4. Brewery, but not included in the restaurant square footage.
5. Light residential. Considering 2 to 10 units with first floor entrance. (First floor is raised due to the building being loading dock height). This is shown in red hash marked area on the east side of building B.

NOTE:

1. Please understand that these are conceptual uses.
2. We will provide a right of way and parking for the Lagoon/Heron Park area for community use.



N/7
ROSAHIA EVANS BRIDGEMAN
TAX MAP 25, PARCEL 170
DB: 8023 PG. 445

N/8
A.S. B. LAMBERT
TAX MAP 25, PARCEL 170
DB: 1964 PG. 274

BUILDING B
25,000 sq ft

N/9
WATSON & SONS OF BERLIN
TAX MAP 25, PARCEL 170
DB: 8023 PG. 445
BUILDING A
15,000 sq ft

N/10
DAN-NWANE PARK
TAX MAP 25, PARCEL 170
DB: 8023 PG. 445

N/11
EXISTING BUILDING
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