



BERLIN MAYOR AND COUNCIL
Meeting Agenda

Berlin Town Hall
10 William Street
Monday, April 14, 2025

6:00 PM CALL TO ORDER, REGULAR SESSION – Council Chambers

- 1. 6:05 PM APPROVAL OF MINUTES: (Strategic Plan: DS1)**
 - a) Regular Session of 03.24.25
- 2. 6:10 PM PROCLAMATION(S):**
 - a) Proclamation 2025-08: Red Hat Society Day in Maryland – Mayor Zack Tyndall (Strategic Plan: DS1, AS1)
- 3. 6:20 PM SWEAR IN:** Town Administrator Mary Bohlen – Mayor Zack Tyndall (Strategic Plan: DS4)
- 4. 6:30 PM PRESENTATION:** Electric Utility AMP Award – Electric Utility Director Tim Lawrence & HR Director Kelsey Jensen (Strategic Plan: DS3)
- 5. 6:40 PM ITEM(S) FOR APPROVAL:**

A public comment period will now be offered after discussion by the Mayor and Council for each Item For Approval. Any person who may wish to speak will be given two (2) minutes or such time as may be deemed appropriate by the Mayor.

 - a) Motion 2025-21: Contract for Sale for Parcel 57 – Mayor Zack Tyndall (Strategic Plan: DS4)
 - b) Motion 2025-22: Renewals of Current Board, Commission, & Committee Members – Mayor Zack Tyndall (Strategic Plan: DS4)
- 6. 7:20 PM REPORTS:** Town Administrator's Report, Departmental Reports (Strategic Plan: DS3; DS4)
- 7. 7:40 PM COMMENTS FROM THE PUBLIC (Strategic Plan: DS4; DS5)**

Any person who may wish to speak on a matter at the Regular Session may be heard during COMMENTS FROM THE PUBLIC for a period of five (5) minutes or such time as may be deemed appropriate by the Mayor. Anyone wishing to be heard shall state their name, street name, and subject on which they wish to speak.
- 8. 7:45 PM COMMENTS FROM THE COUNCIL**
- 9. 7:50 PM COMMENTS FROM THE MAYOR**
 - a) Comments from the Mayor's Executive Assistant – Executive Assistant Sara Gorfinkel
 - b) Comments from the Mayor – Mayor Zack Tyndall
- 10. 7:55 PM COMMENTS FROM THE PRESS**
- 11. 8:00 PM ADJOURNMENT**

To access the Meeting via Facebook, please click the blue Facebook icon at the top of any page on www.berlinmd.gov, or type @townofberlinmd in the Facebook search bar. QR code links to online packet and Strategic Plan. Anyone having questions about the meetings mentioned above or needing special accommodations should contact Town Administrator Mary Bohlen at (410) 641-2770. Written materials in alternate formats for persons with disabilities are made available upon request. TTY users dial 7-1-1 in the State of Maryland/outside Maryland dial 1-800-735-2258.





BERLIN MAYOR AND COUNCIL

Meeting Minutes

Monday, March 24, 2025

6:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers

Present: Mayor Zackery Tyndall, Vice President Dean Burrell, Councilmembers Jay Knerr, Steve Green, Shaneka Nichols and Jack Orris.

Staff Present: Town Administrator Mary Bohlen, Town Attorney David Gaskill, Human Resources Director Kelsey Jensen, Finance Director Natalie Saleh, Electric Utility Director Tim Lawrence, Acting Planning Director Ryan Hardesty, Public Works Director Jimmy Charles, Director of Water Resources Jamey Latchum, Chief of Police Arnold Downing, Mayor’s Executive Assistant Sara Gorfinkel, Special Projects Coordinator Kate Daub, and Administrative Assistant Laura Brown.

This meeting was also broadcast live via Facebook. Following a moment of silence and the Pledge of Allegiance, Mayor Zackery Tyndall called the meeting to order at approximately 6:01 PM.

1. Approval of Minutes (*Strategic Plan: DS1*):

a. Regular Session of 03.10.2025

On the motion of Councilmember Orris, second by Councilmember Nichols, the Regular Session Minutes of 03.10.2025 were approved by the following vote:

Name	Counted toward Quorum				
	Aye	No	Abstain	Recused	Absent
Dean Burrell, VP	X				
Steve Green	X				
Jay Knerr	X				
Shaneka Nichols	X				
Jack Orris	X				
<i>Voting Tally</i>	5				

2. Proclamation(s):

a. Proclamation 2025-05: World Autism Awareness (*Strategic Plan: DS1, AS1*)

Mayor Tyndall proclaimed April as Autism Awareness Month and April 2nd as Autism Awareness Day. He called upon all citizens of the town of Berlin to make the observance, to learn more about the experiences of autistic people from autistic people, and to create a more welcoming and inclusive community to support people with autism and their communities of caregivers.

b. Proclamation 2025-06: Take Pride in Berlin Week (*Strategic Plan: DS1, AS1*)

Mayor Tyndall recognized the week of April 21, 2025 – April 27, 2025 as the 11th Annual Take Pride in Berlin Week. He proclaimed that the spirit of the Town's residents enabled lasting and effective partnerships of people, organizations, commercial ventures, and municipal government were what made the Town of Berlin a special place to live, work, and visit. The Town of Berlin is proud of its community, its neighborhoods, and its neighbors.

c. Proclamation 2025-07: Fair Housing Month (*Strategic Plan: DS1, AS1; DS4, AS3*)

Mayor Tyndall read a proclamation declaring April as Fair Housing Month in Berlin. Realtors, developers, financial institutions, landlords, tenants, and the public at large were reminded it was illegal to discriminate in housing based on age, race, religion, sex, or national origin. Mayor Tyndall stated equal housing opportunity was a condition of life that can and should be achieved.

3. Presentation: Dave Davis Utility Apprentice Program – Apprenticeship Navigator Alicia Dennis & Electric Utility Director Tim Lawrence (*Strategic Plan: DS3*)

Mayor Tyndall, Ms. Dennis, and Mr. Lawrence congratulated Meter Technician Dave Davis on graduating from the four-year apprenticeship program on January 31, 2025. Mayor Tyndall stated the Town could quite literally not do it without him. Mr. Lawrence noted the apprenticeship program was a tough program that consisted of 8,000 hours. Ms. Dennis acknowledged Mr. Davis was the first Meter Technician to graduate from the program. She noted he had set the bar high and emphasized what a special achievement it was. Mr. Davis was presented with a certificate and Challenge Coin from Northwest Lineman College as well as a certificate from the Virginia, Maryland, & Delaware Association of Electric Cooperatives for completing the eight-step Meter Technician Apprenticeship Program.

4. Items for Approval:

a. Motion 2025-19: Approve Special Event Permit for Lincoln Lodge #53 Cancer Awareness Event at Henry Park – Event Applicant Zsavelle Smack (*Strategic Plan: DS1, AS1; DS6, AS3*)

Mr. Smack introduced himself as a lifelong educator and the leader of the organization. He discussed the organization's goal to create inclusive outreach in the Berlin community. Mr. Smack disclosed his family had personally been affected by cancer, so this was an initiative he was deeply passionate about. He stated he wanted residents to know Lincoln Lodge #53 was there and present in the community. Mr. Smack sought approval for a Cancer Awareness Event on Saturday, May 3, 2025, with a rain date of May 17, 2025, and on Saturday, October 4, 2025. The events will prioritize signing a pledge, early detection screenings, mental health, accepting what is and letting go of what was, and more.

Mayor Tyndall thanked Mr. Smack for his service as an educator. Ms. Daub noted Mr. Smack was requesting the fees to be waived as well due to being a non-profit organization. Councilmember Orris asked if Mr. Smack would like to schedule a rain date for the October event as well. He stated he would, so Mr. Smack will be working with Ms. Daub to do so. Councilmember Nichols thanked him for his time and dedication, and Vice President Burrell thanked him for his splendid idea and leadership.

On the motion of Councilmember Knerr, second by Councilmember Nichols, Motion 2025-19: Approve Special Event Permit for Lincoln Lodge #53 Cancer Awareness Event at Henry Park received the following vote:

Name	Counted toward Quorum				
	Aye	No	Abstain	Recused	Absent
Dean Burrell, VP	X				
Steve Green	X				
Jay Knerr	X				
Shaneka Nichols	X				
Jack Orris	X				
<i>Voting Tally</i>	5				

- b. Motion 2025-20: Declare Surplus Property – Public Works Director Jimmy Charles (*Strategic Plan: DS3, AS5*)

Mr. Charles informed the Mayor and Council that after cleaning up Public Works' storage space, the department had a list of items they were seeking approval to dispose of through govdeals.com. The list consisted of an old truck, equipment, and former signage. Mr. Charles also confirmed that all the old street signs have been taken down.

On the motion of Councilmember Orris, second by Vice President Burrell, Motion 2025-20: Declare Surplus Property received the following vote:

Name	Counted toward Quorum				
	Aye	No	Abstain	Recused	Absent
Dean Burrell, VP	X				
Steve Green	X				
Jay Knerr	X				
Shaneka Nichols	X				
Jack Orris	X				
<i>Voting Tally</i>	5				

5. Overview: Mid-Year Financial Highlights FY25 – Finance Director Natalie Saleh (*Strategic Plan: DS4*)

Ms. Saleh presented the FY 2025 Mid-Year Financial Overview to the Mayor and Council. The FY 2025 General Fund budget was \$14,668,132, and as of December 31, 2024, the actual budget stood at 6,128,514. Ms. Saleh noted the Town was in a good spot to stay on track with the budget. Councilmember Orris asked for clarity regarding the 299% surcharges, and Ms. Saleh explained the increase was due to Police Department grants and speed camera revenue. Ms. Saleh informed the Mayor and Council the ARPA funds reporting deadline is April 30, 2025. She also noted the Town completed the last payment for the 30-year-old Graham Avenue bond.

Ms. Saleh stated the expenditures were in a good place as well. The capital outlay in the expenses by category was mainly for the new Public Works Facility. The non-spendable amount has continued to decrease, which was positive. General Fund projects and assets as of December 31, 2024, were Heron Park building demolition, Community Center Design, Police Department vehicles and

equipment, Public Works building design, Public Works equipment, flag poles, and trash cans and lids. Councilmember Orris inquired whether the Town had to report the Heron Park Building Demolition as a capital project since it was to be funded through grants, and Ms. Saleh confirmed yes, the Town would claim it as a capital project and then be refunded.

Ms. Saleh discussed the Electric, Water, and Sewer Funds. All three were deemed to be in good standing. The Electric Fund had a million dollars assigned from the bond for the AMI Meters project. The largest expenses were for service power and capital outlay. Electric has not utilized most of the capital outlay to date, but this will be utilized in FY26 for the AMI Meters project. The Water Fund was waiting on a grant for the Lead Service Replacement and Inventory. Ms. Saleh was not concerned about the funds' standing due to the capital outlay and Lead Service Replacement and Inventory funding, so she claimed it was performing as projected. The Sewer Fund was also performing as planned and was also waiting for the Lead Service Placement and Inventory funding. Ms. Saleh stated her only concern was the EDU budget, as 12 out of the allotted 50 EDUs had been sold. 50 EDUs sold would allow the Town to break even.

Councilmember Orris asked why stormwater did not have a capital fee, and Mayor Tyndall explained stormwater did not have a billable metric like water and electric. Councilmember Orris told Ms. Saleh he would like to touch base on the contributions to the reserve and walk through them for clarity. Councilmember Knerr inquired if an EDU cost the same for both personal and commercial purposes, and Ms. Saleh clarified it was the same cost regardless. Ms. Marie Velong, 400 West St, asked for further clarification on the annual sales needed for EDUs. Ms. Saleh explained the Town hoped to receive 50 EDU sales per year to support the Debt Service Fund, but it was not necessary to sell 50 every year.

6. Discussion: EDU Financing Policy – Mayor Zack Tyndall (*Strategic Plan: DS4, AS1*)

Mayor Tyndall opened the discussion by explaining what an EDU is and the utilization process. Councilmember Nichols stated she did not believe the Town needed to be financing anything and the Town should not do this any further. Councilmember Orris believed the policy did well at the time, but he did not believe the Town needed to offer incentives anymore, especially seeing as EDUs were a valuable town resource. He also clarified he hadn't heard anything as of yet to sway his opinion.

Councilmember Green stated he was in favor of the Financing EDUs vote during the Mayor and Council meeting on February 24 because the policy was poor. He understood the policy was written because this matter kept being brought forth at Mayor and Council meetings. However, Councilmember Green had a different proposition in mind as he liked the idea of being flexible and would like to offer financing as an incentive when it was the right kind of developer. He discussed mixed-use facilities and how they should be able to utilize the financing. Ms. Bohlen asked if Councilmember Green thought the policy should be on a case-by-case basis, and Mayor Tyndall stepped in to say he did not want to have one-off situations. He also agreed that the policy was poorly written, and if it was decided to create a new EDU financing policy, he wanted some constraints added.

Councilmember Knerr stated if the Town wanted to offer financing as an incentive, it should be included in the Design Guidelines and Standards as this has worked well for other municipalities. He also mentioned he supported the vote during the Mayor and Council meeting on February 24 because

he thought it was fair and reasonable. However, he believed the policy was archaic and needed to be rewritten.

Vice President Burrell discussed the two reasons he voted no during the Mayor and Council meeting on February 24. The first reason being the developer was adding multifamily dwelling units in an already exhausted area, and East Berlin should not be further impacted. The second reason was he believed this policy should be used to facilitate affordable housing and not the pockets of big developers. He also did not want taxpayer dollars going towards big developers. Mayor Tyndall and Ms. Bohlen explained that the taxpayer dollars were not going toward those who financed EDUs. EDUs were previously been paid for by a bond, and taxpayers were paying an EDU fee regardless of how many EDUs were sold. Vice President Burrell said it put a bad taste in his mouth when developers did not pay upfront.

Councilmember Nichols stated the Mayor and Council needed to reframe the conversation around affordable housing because housing in Berlin was not affordable, including the Bay Street Estates complex. Councilmember Green suggested “attainable housing” as a more appropriate term. Councilmember Nichols said if mixed-use facilities were implemented, they would not be affordable, and it would continue to outprice Berlin and push residents out of Berlin.

Ms. Saleh suggested two EDU financing options. Either do not finance at all, or water cannot be utilized until EDUs have been paid for in full, meaning the EDUs would be paid throughout the planning process and would not be turned on until payment was complete. Councilmember Orris asked the Town Attorney, Mr. Gaskill, if the policy were to be abolished, would those currently utilizing it be grandfathered in, and Mr. Gaskill confirmed they would. Mayor Tyndall proceeded to ask the Council if they thought the policy should be abolished, and the Council collectively agreed yes, it should. However, they were not in agreement on whether a new policy should be created in its place. Mayor Tyndall asked the Council to do homework and pull examples of what they deem to be good EDU financing policies, and then he opened the discussion up to the public.

Mr. Gabriel Purnell was the first resident to speak. He asked the Mayor and Council how he would be treated versus the big developers when requesting EDU financing. Who were the Mayor and Council here to represent? Where were the concessions for them? Mr. Purnell believed Councilmember Nichols was not speaking to the people in her district, and she emphatically disagreed with him and stated otherwise. Councilmember Nichols expressed she believed the projects receiving EDU financing were going to push people out of Berlin. She asked who was going to be able to run the businesses if there was nowhere for people to live. She explained people wanted something of their own, but they could not afford it. Mayor Tyndall agreed that affordable housing was a current challenge, and the 2017 EDU financing policy did not meet the objectives.

Ms. Gina Velong said Berlin did not need an incentive anymore and believed the Town had turned into one giant Airbnb. She told the Mayor and Council if they wanted to help a resident with EDUs, then she supported it, but she was annoyed the Town could have added approximately \$66,000 to the reserve and the Town did not. Ms. Velong did not understand why the Town was doing this when it had not worked in the past. She believed if the Town was going to finance EDUs, then the Town should charge interest, which Ms. Saleh explained the Town could not do. Ms. Marie Velong added the Town should make it simple and just say no. She believed the Town should abolish the EDU financing altogether.

Mr. Ron Casio asked if the Town had multiple years in a row of low EDU sales, what would happen. Would EDU costs need to increase? Mayor Tyndall stated if there were a series of years with low EDU sales, something else would need to be figured out, but the Debt Reduction Fund did not depend on this policy alone. Ms. Casio inquired where the ready-to-serve fees go. Mayor Tyndall explained the ready-to-serve fee locked in your EDU rate to avoid future increases, and it paid for the line that runs in front of residents' houses that has not been tapped yet. Residents were paying to keep their EDU in reserve. Ms. Casio also asked where the EDU payments go, and Mayor Tyndall said Debt Service and Capital Projects.

Mayor Tyndall inquired if the Council would like to move forward with a motion to rescind Resolution 2017-01, and the Council agreed.

On the motion of Councilmember Nichols, second by Councilmember Orris, to abolish Resolution 2017-01 received the following vote:

Name	Counted toward Quorum				
	Aye	No	Abstain	Recused	Absent
Dean Burrell, VP	X				
Steve Green	X				
Jay Knerr	X				
Shaneka Nichols	X				
Jack Orris	X				
<i>Voting Tally</i>	5				

Effective today, March 24, 2025, no applications will be brought forth in front of the Mayor and Council. Councilmember Green expressed interest in rewriting an EDU financing policy. Councilmember Orris believed it was worth a discussion on the Town staff level with one or two Councilmembers in attendance. Councilmember Nichols noted she wanted to discuss residents who were experiencing, or will be experiencing, septic tank and water issues and how the Town will handle the EDU process when the time comes. She did not want them to eventually be without water.

In the course of the above discussion, Water Resources Director Jamey Latchum responded to a question indicating that he believed there were approximately 13 properties still on septic within the Town.

7. Reports: Town Administrator's Report, Departmental Reports (*Strategic Plan: DS3; DS4*)

Ms. Bohlen stated the only update she had was a reminder of the upcoming budget season meeting dates and it had been previously coordinated who from the council would attend.

8. Comments from the Public (*Strategic Plan: DS4; DS5*)

Mr. Casio suggested if the EDU payment was a cause for concern for developers, the cost should be included at the end of the planning process before permits were released.

9. Comments from the Council

Vice President Burrell mentioned the passing of David Lockwood, Sr., who was the first Black Police Officer to be sworn in with the Town of Berlin. Councilmember Knerr told Ms. Marie Velong it was good

to see her back in the council chambers. Councilmember Nichols congratulated Mr. Lawrence on the vision he has had for the Electric Utility Department and thanked him for bringing the apprenticeship program to the Town. Councilmember Orris informed the Mayor and Council that the Coastal Bays Foundation did receive the grant, although not the entire 17 million the foundation asked for, and offered his services as liaison for stormwater if needed. Councilmember Green thanked and shared his appreciation for the Town in their support regarding Autism Awareness Day and Month as he and other Councilmembers are impacted by it.

10. Comments from the Office of the Mayor

Ms. Gorfinkel reminded the public that town flags are still available.

Mayor Tyndall received paperwork from American Legion Post 123 for a bingo event. He stated if it was alcohol-related, he would sign it but wanted to do his due diligence first. Mayor Tyndall discussed Ms. Bohlen's newly restructured Town Administrator contract. He expressed his gratitude for Ms. Bohlen taking over the job, all she does, and how much he has enjoyed working with her. Ms. Bohlen's swearing-in will happen during the next Mayor and Council meeting on Monday, April 14.

Mayor Tyndall reminded the public of Berlin's upcoming birthday on March 30th and one way to celebrate is by purchasing a town flag to support the community. A little bit goes a long way. He also congratulated fourth-grader Isla Pipin, Worchester Preparatory School, on being named one of the MML's annual "If I Were Mayor, I Would..." essay contest winners. She will travel with Mayor Tyndall to meet Governor Moore and the other essay winners.

11. Comments from the Press – None.

12. Adjournment:

On the motion of Vice President Burrell, second by Councilmember Nichols, the Mayor and Council meeting was adjourned at approximately 7:30 PM.

Name	Counted toward Quorum				
	Aye	No	Abstain	Recused	Absent
Dean Burrell, VP	X				
Steve Green	X				
Jay Knerr	X				
Shaneka Nichols	X				
Jack Orris	X				
<i>Voting Tally</i>	5				

Respectfully Submitted,



Laura Brown
Administrative Assistant



MOTION OF THE MAYOR AND COUNCIL 2025-21

A motion of the Mayor and Council of the Town of Berlin to APPROVE THE CONTRACT FOR SALE FOR PARCEL 57 as per the attached documents.

APPROVED THIS _____ DAY OF _____, 2025 BY THE COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF _____ TO _____ OPPOSED, WITH _____ ABSTAINING AND _____ ABSENT.

Dean Burrell, Sr. Vice President of the Council

APPROVED THIS _____ DAY OF _____, 2025 BY THE MAYOR OF THE TOWN OF BERLIN.

Zackery Tyndall, Mayor, President of the Council

ATTEST: _____
Mary Bohlen, Town Administrator

TERM SHEET

Disposition of Parcel 57

Heron Park

Date	April __, 2025
Seller	Town of Berlin , a municipal corporation, acting by and through its Mayor, Zackery Tyndall
Buyer	Coastal Ventures Properties LLC , a State of Maryland limited liability company, or an affiliate entity, controlled by Palmer and Sandy Gillis
Real Property	"Property" means that portion of the Parcel 57 (less and except any portion of Parcel 57 required for the Access Road as identified by the Town pursuant to Section 3.2 of the Disposition Agreement).
Purchase Price	\$1,200,000
Deposit	\$100,000 (with \$50,000 to be held as post-closing security to ensure Developer's development of the Property).
EDUs	The Purchase Price includes the allocation of 15 Sewer Equivalent Dwelling Units (EDUs) to the Property pursuant to the Motion of the Mayor and Council 2024-43 approved by the Council and Mayor on July 22, 2024.
Authority of Disposition	Berlin, MD Code of Ordinances Article XIII § C31-1
Development Plan	Developer agrees to construct of at least one office or retail building on the Property within twenty-four (24) months of Closing. Developer shall be responsible for all development costs associated with Property.
AS-IS	<p>The Property will conveyed AS-IS, including being subject to, the No Further Requirement Determination issued by the Maryland Department of the Environment, Waste Management Administration, Voluntary Cleanup Program, dated November 3, 2005, and recorded among the land records of Worcester County, Maryland at Liber 4594, Folio 728.</p> <p>Developer (and its successors and assigns) shall be prohibited from constructing any vertical structures (buildings) within 75 feet of the northern boundary of Parcel 57, such area shall be reserved for landscaping, storm water management, parking, or other such uses that qualify generally as open space as approved by the Mayor with Council approval.</p>
Schedule of Performance	Attached as Attachment 1 is the estimated Schedule of Performance, which may be amended and extended with the approval of the Mayor.
Post Closing Requirements	The Property is subject restrictive use covenant prohibiting the operation of pawn shops, gun shops, tanning salons, massage parlors, adult video/bookshops, adult entertainment facilities, check cashing facilities, gambling facilities, tattoo parlors, or liquor stores, for the benefit of Maryland Department of Housing and Community Development (DHCD) as a condition of DHCD Strategic Demolition Fund Grant Agreement (SDF-2022-Berlin-00379).

INTENTION AND LIMITATIONS OF THIS TERM SHEET.

1. Developer acknowledges that all approvals required of Council will be granted or withheld in the sole and absolute discretion of Council and that, absent Council approval, the Mayor has no authority to convey the Property to Developer. The failure to receive all required approvals of the Council shall not constitute a breach by the Mayor under this Term Sheet. Developer acknowledges that it is entering into this Term Sheet prior to obtaining all necessary Council approvals. In the absence of such approvals, Developer proceeds at its sole risk and expense with no recourse whatsoever against the Mayor.

2. Developer and the Mayor agree that upon receipt of all necessary Council approvals, the Developer and Mayor shall execute a Land Disposition Agreement governing all of the terms and conditions of the purchase and sale of the Property. Until the Developer and the Mayor enter into the binding Land Disposition Agreement, both Developer and the Mayor reserve the right to proceed with the purchase and sale at each's sole and absolute discretion. Upon the execution of the Land Disposition Agreement, the Developer and the Mayor shall proceed in accordance with the terms of the Land Disposition Agreement; provided, however, the Developer and the Mayor acknowledge and agree that any substantial change in the terms set forth in this Term Sheet shall be subject to further Council review and approval.

IN WITNESS WHEREOF, DMPED and Developer have caused the Term Sheet dated April ____, 2025 to be executed and attested by their respective duly authorized representatives.

TOWN OF BERLIN:

By: _____

Name: Zackery Tyndall

Title: Mayor

Date: _____

DEVELOPER:

Coastal Ventures Properties LLC, a State of Maryland limited liability company

By: _____

Name: _____

Title: _____

Date: _____

Attachments:

Attachment 1 Estimated Schedule of Performance

Schedule of Performance

Task	Completion Date or Duration	Party Responsible
Developer shall deliver \$100,000 (Combined Deposit and Penalty Funds)	On or before the Effective Date	Developer
Preliminary Considerations Period (i.e. zoning modification, access road location, and Cropper Agreement (if applicable))	180 days from Initial Study Period	Developer and Town (see Section 3.2 for details)
Initial Study Period	180 days from the expiration of the Preliminary Considerations Period (in all events, within 365 days of the Effective Date)	Developer
MDOT Approval of Ocean City Boulevard to Parcel 57 Curb cut	Prior to Commencement of Construction of Phase I	Developer
Submission of Phase I Site Plan to Town Planning Committee	No Later than 10-days after Expiration of Initial Study Period	Developer
Subdivision of Road from Parcel 57	Prior to Closing	Town
Evidence of Financing for Phase 1 of Project	Prior to Closing	Developer
Closing	No later than 90 days after the expiration of the Initial Study Period (in all events, within 455 days of the Effective Date)	Developer and Town
Commencement of Construction of Phase 1 of Project	180 days after Closing	Developer

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this “**Agreement**”) is made effective for all purposes as of the _____ day of _____, 2025, (“**Execution Date**”) between (i) **Town of Berlin**, a municipal corporation (“**Town**”), and (ii) **Coastal Ventures Properties LLC**, a State of Maryland limited liability company, or its assigns (“**Developer**”).

RECITALS:

R-1. The town owns the parcels of land located in Berlin, Maryland., known as Parcel 57 and consisting of approximately 9.35 acres of land area as described on **Map 0025, Grid 0009** (the “**Parcel 57**”). The Town acquired Parcel 57 from Berlin Properties North, LLC, a Maryland limited liability company by Deed dated February 12, 2016 and recorded with the Land Records (as further defined herein) at Book 6717 at Page 453.

R-2. The Town has agreed sell to Developer a portion of Parcel 57 less any area required for the Access Road (the “**Property**”) as determined accordance and Section 3.2.

R-3. Finding that the Property was no longer required by the Town for public purposes as required by the Town Charter, the Council of the Town (“**Council**”) approved the disposition of the Property to Developer on _____, pursuant to the _____, and _____ Resolution No. _____ and _____, respectively, (the collectively, the “**Resolution**”), subject to the terms and conditions set forth therein.

R-4. The Project (hereinafter defined) to be developed on the Property is not a public building or public work, but rather is a private development intended to stimulate the Town’s economy and growth of the neighborhood and community. However, the Property has a unique and special importance to the Town. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and timely construction of the Project necessary and appropriate for a historic small town, its residents and the public at large. The Town shall have a continuing oversight role in the development and construction of the Project for the purposes of assuring the excellence and integrity of the design, construction, and management of the Project in accordance with the plans approved by the Town and enforcing the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, Town and Developer do hereby agree as follows, to wit:

ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“**Access Road**” is defined in Section 3.2.

“Affiliate” means with respect to any Person (“first Person”) (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

“Business Day” means Monday through Friday, inclusive, other than holidays recognized by the Town.

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Project or any portion thereof.

“Closing” is the consummation of the purchase and sale of the Property as contemplated by this Agreement.

“Closing Date” is the date of Closing, which shall occur no later than 90 days after the expiration of the Initial Study Period.

“Commencement of Construction” means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence excavation, and (iv) obtained the Permits required to commence construction of Phase 1 of the Project. For purposes of this Agreement, the term “Commencement of Construction” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Project thereon or the investigations of environmental conditions.

“Concept Plans” are Developer’s phased plans and uses for the Project, which serve the purpose of establishing the major direction of the design of the Project, and any modifications thereto permitted pursuant to this Agreement. The Concept Plans for the Project are attached hereto as **Exhibit D**.

“Contaminant Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers, and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

“Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day operations or the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person. The terms **“Control,” “Controlling,” “Controlled by”** or **“under common Control with”** shall have meanings correlative thereto.

“**Deed**” shall mean the Deed in the forms of Exhibit B attached hereto and incorporated herein by reference.

“**Deposit**” is defined in Section 2.2.1.

“**Developer Default**” is defined in Section 9.1.1.

“**Developer’s Agents**” means Developer’s agents, employees, consultants, contractors, and representatives.

“**Town Default**” is defined in Section 9.1.2.

“**Effective Date**” is the date first written above, which shall be the date of the last Party to sign this Agreement as set forth on the signature pages attached hereto, provided that all Parties to this Agreement shall have executed and delivered this Agreement to one another.

“**Environmental Claims**” is defined in Section 8.1.3(a).

“**Environmental Law**” means any federal, Maryland State, Worcester County, and Town Code, law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their Town analogs, and any other federal or Town statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

“**Final Completion**” means Developer’s completion of the Project, which shall be evidenced by (i) the issuance of a Certificate of Occupancy for Phase 1 of the Project and, (ii) if Phase II is not developed with Phase I, the improvement of the Phase II area with landscaping, lighting, or other activating features pending the construction on Phase II.

“**Force Majeure**” is an act or event, including, as applicable, an act of God, acts of terror or terrorism, pandemic (such as, but not limited to, Covid), fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders or acts or failures to act of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of Developer, Developer’s Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer’s Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by Developer, Developer’s Agents, or its Members or Town in the event Town’s claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Developer or Town, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the Project

as contemplated by this Agreement and the Final Project Plans and Specifications is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

"Hazardous Materials" means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), any pollutants, contaminants, or other hazardous, dangerous, or toxic chemicals, materials, or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel, and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, medical waste, and any other material or substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic materials," "contamination," or "pollution" within the meaning of any Environmental Law.

"Indemnified Parties" are defined in Section 8.1.3(a).

"Initial Study Period" is defined in Section 2.3.1.

"Invasive Studies" means geotechnical testing (such as drilling bore holes assess soil stability and load bearing capacity); environmental site assessments (Phase II, including collecting soil and groundwater samples to check for contaminations); structural investigations; or utility locating and testing; or any other type of investigating or engineering studies that involve disturbances in the structures or soils located on the Property.

"Land Records" means the property records maintained by the Recorder of Deeds for Worcester County, Maryland.

"Laws" means all applicable Town, State of Maryland, and federal laws, codes, regulations, and orders, including, without limitation, Zoning Regulations, the Environmental Law, and laws relating to historical preservation.

"Member" means any Person with a direct ownership interest in Developer.

"Open Space" means the rear setback area of Parcel 57 as further described in Section 8.5.

"Party" when used in the singular, shall mean either Town or Developer; when used in the plural, **Parties** shall mean both Town and Developer.

"Penalty Funds" is defined in Section 2.2.

"Permits" means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the Town or other authority having jurisdiction over the Property (including, without limitation, the federal government, State of Maryland, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project, in accordance with this Agreement.

"Permitted Exceptions" has the meaning given it in Section 2.4.1.

"Person" means any individual, corporation, limited liability company, trust, partnership, association, or other entity.

“Phase 1” means the construction of an office or retail building and associated parking on the portion of the Property demarked as Phase I on Exhibit D and enhancement of the visual appeal of the area demarked as Phase II on Exhibit D through landscaping, lighting, or other activating features.

“Preliminary Considerations”; **“Preliminary Considerations Period”** are defined Section 2.3.1.

“Prohibited Person” shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or Controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Laws concerning organized crime; or

(B) Any Person organized in or Controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or

(C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(E) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

“Prohibited Uses” means the uses prohibited pursuant to Section 8.3.

“Project” means the office or retail improvements and associated parking to be constructed on the Property in two phases.

“Project Covenants” means the covenants contained in the Deed.

“Property” means that portion of the Parcel 57 (less and except any portion of Parcel 57 required for the Access Road as identified pursuant to Section 3.2) to be conveyed by the Town to Developer pursuant to this Agreement.

“Purchase Price” has the meaning set forth in Section 2.1.2 hereof.

“Parcel 57” is defined in the Recitals.

“Resolution” is defined in the Recitals.

“Schedule of Performance” means that schedule of performance attached hereto as Exhibit C setting forth the timelines for milestones in the design, development, construction, and completion of the Project.

“Settlement Agent” means Mark Spencer Cropper and the Law Offices of Ayres, Jenkins, Gordy and Almand, P.A. the title agent selected by Developer. The Settlement Agent shall not be an Affiliate of the Developer or have any interest (financial or otherwise) in the Project.

“Settlement Statement” is the statement prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

“Sewer EDU Fees” means the sewer allocation (but not the water allocation) fees required to connect to the Town’s public sewer system.

“Studies” is defined in Section 2.3.1(a).

“Subdivision” shall have the meaning set forth in Section 3.5

“Town Code” means the Code of Ordinances for the Town of Berlin, as may be amended from time to time.

“Transfer” means the conveyance of title, interest, or rights in Property or transfer of control of the Developer to a non-Affiliate party. The term “Transfer” does not include changes in ownership or interest resulting from bankruptcy proceedings, foreclosure actions, or other involuntary transfers arising by operation of law.

“Water EDU Fees” means the water allocation fees required to connect to the Town’s public water system.

ARTICLE 2

CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE; DEVELOPMENT

2.1.1 Subject to and in accordance with the terms of this Agreement, Town shall sell to Developer, and Developer shall purchase from Town, all of Town’s right, title, and interest in and to the Property.

2.1.2 The purchase price of the Property is **One Million Town Hundred Thousand Dollars (\$1,200,000)** (the “**Purchase Price**”), payable at Closing, subject to closing costs and adjustments as provided in Section 6.3.2.

2.1.3 The Purchase Price includes the waiver of fifteen (15) Sewer EDU fees meaning that fifteen (15) Sewer EDUs are being allocated to the Property at no expense to the Developer. The Developer is, however, responsible for the Water EDU fees and any additional Sewer EDU fees that the Developer requires for the Project. Additionally, the Developer shall be responsible for any costs associated with the construction of water and sewer lines and connection to the existing public water and sewer facilities.

2.1.4 Developer shall pay the Purchase Price at Closing in immediately available funds through a closing escrow established with the Settlement Agent.

2.1.5 As inducement to the Town’s entering into this Agreement, the Developer has agreed to activate the Property upon its purchase of the Property through the construction of at least one office or retail building on the Property within twenty-four (24) months of Closing. It is understood that the Developer intends, but is not obligated to, construct the buildings in two phases, with Phase I building (likely a professional office building) on rear area demarked on Exhibit D and Phase II building (likely a retail, such as a restaurant) on the portion of the property directly adjacent to Ocean City Boulevard as demarked on Exhibit D. If the Developer elects to commence develop of only Phase I, the Developer has agreed to visually enhance the Phase II area with landscaping, lighting, or other activating features pending the construction of a building on Phase II. It is understood that the Developer will present and obtain the requisite approval of the design and uses of the structures on the Property as a part of the Town Code permitting process.

2.2 DEPOSIT

2.2.1 On or before the Effective Date, Developer shall deliver to Settlement Agent the amount of **One Hundred Thousand Dollars (\$100,000)** which may be in the form of cash or a Letter of Credit, of which **Fifty Thousand Dollars (\$50,000.00)** shall be credited toward the Purchase Price at Closing (the “**Deposit**”) and the balance of **Fifty Thousand Dollars (\$50,000.00)** may be drawn by Town in accordance with this Agreement (the “**Penalty Funds**”).

2.2.2 The Deposit is a payment on account of and shall be credited against the Purchase Price. The Penalty Funds shall be held by Town to be used as security to ensure Developer’s compliance with this Agreement and may be drawn on by the Town in accordance with the terms of this Agreement. Notwithstanding any provision herein to the contrary, if Closing occurs hereunder, Town shall return the Penalty Funds to Developer on Final Completion.

2.3 CONDITION OF PROPERTY

2.3.1 Preliminary Determinations; Feasibility Studies; Access to Property.

(a) After the full execution of this Agreement, the Parties agree to immediately proceed with Zoning Modification (as defined in Section 3.1); Access Road Location (pursuant to Section 3.2); and, if determined to be necessary under Section 3.2, the “Cropper” Agreement (pursuant to Section 3.3), collectively, the “**Preliminary Considerations**”. The Parties agree that, if Developer

is not satisfied with the resolution of the Preliminary Considerations within **One Hundred Eighty Days (180) days of the execution of this Agreement (“Preliminary Considerations Period”)**, it may notify the Town in writing in accordance with Section 12.1 its intent to terminate this Agreement, whereupon, the Deposit and Penalty Funds will be returned to the Developer and this Agreement will become null and void. If the Developer does not deliver the foregoing notice prior to the expiration of the Preliminary Consideration Period, the Developer shall have the option to terminate during the Initial Study Period under Section 2.3.1(b), but the Preliminary Considerations Period combined with the Initial Study Period shall not be longer than Three Hundred and Sixty-Five (365) days.

(b) So long as the Developer has not delivered notice of its election to terminate this Agreement on or before the expiration of the Preliminary Determination Period, the Developer will have an additional **One Hundred Eighty Days (180) days** to conduct any studies or inspections it needs to determine that the Property is suitable for its intended use (the **“Initial Study Period”**). The Developer is solely responsible for the payment of such studies and/or inspections. If the Developer determines, for any reason, that the Property is not suitable on or before 6:00 pm EST on the final date of the Initial Study Period, it may notify the Town in writing in accordance with Section 12.1 its intent to terminate this Agreement, whereupon, the Deposit and Penalty Funds will be returned to the Developer and this Agreement will become null and void.

(c) From time to time prior to Closing, provided this Agreement is in full force and effect and that Developer is not then in default hereunder, Developer and Developer’s Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter **“Studies”**) as Developer deems necessary or desirable to evaluate the Property; provided, Developer or Developer’s Agents shall not conduct any Invasive Studies without the prior written consent of Town, which consent shall not be unreasonably withheld, conditioned or delayed, and, if approved, shall permit a representative of Town to accompany Developer or Developer’s Agents during the conduct of any such invasive Studies. Prior to conducting Invasive Studies, Developer shall give Town at least twenty-four (24) hours’ advance notice during Business Days prior to any entry by it or one of Developer’s Agents onto the Property to ensure that Town is aware of the studies and to restrict public access to Property.

(d) After the expiration of the Initial Study Period, and except as otherwise set forth in this Agreement, the Developer shall not have the right to object to any condition that may be discovered or to terminate this Agreement as a result of its Studies.

(e) Developer hereby indemnifies and holds Town harmless and shall defend Town (with counsel reasonably satisfactory to Town) from and against any and all losses, costs, liabilities, damages, expenses, mechanic’s liens, claims and judgments, including, without limitation, reasonable attorneys’ fees and court costs, incurred or suffered by Town as a result of any Studies or other activities at the Property conducted by Developer or Developer’s Agents; provided, however, in no event shall Developer be responsible for (x) any damage, loss or liability resulting from Town’s gross negligence or willful misconduct, or (y) any indirect or consequential damages (other than indirect or consequential damages incurred by third parties and for which

Town is held liable). Developer's obligations under this Section 2.3.1(c) shall survive Closing or the earlier termination of this Agreement.

(f) Developer covenants and keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors, attorneys, consultants, Settlement Agent, and potential lenders and potential equity investors so long as Developer directs such parties to maintain such information as confidential and (ii) Developer may disclose such information as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature, necessarily available to the general public. This provision shall survive the termination of this Agreement.

(g) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11, and Developer shall restore the Property after such tests are completed.

(h) In the event that, prior to Closing, Developer or any of Developer's Agents disturb, remove or discover on the Property any materials or waste while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials, Developer shall notify Town and the Town within three (3) Business Days after its discovery of such Hazardous Materials. Thereafter, within ten (10) Business Days after its discovery of such Hazardous Materials, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to Town. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials discovered and a detailed account of the proposed removal and disposal of such Hazardous Materials, including the name and location of the hazardous waste disposal site. The Town may, at its own cost and expense without any obligation to do so, conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of the Town's investigation, if any, Town shall notify Developer of its findings, and, whether or not the Town performs its own investigation, Town shall notify Developer by written notice of its approval or disapproval of the Developer's proposed Disposal Plan. Except for the proper disposal of Hazardous Materials disturbed during Invasive Studies, the Developer shall not be responsible for any clean-up, reclamation, remediation or restoration of any Hazardous Materials discovered on the Property during the Invasive Studies unless and until the Developer acquires the Property.

2.3.4 AS-IS. THE TOWN SHALL CONVEY THE PROPERTY TO DEVELOPER IN "AS IS" CONDITION AND, EXCEPT AS EXPRESSLY SET OUT IN SECTION 4.1, TOWN MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR AS TO ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS EXPRESSLY SET OUT IN SECTION 4.1, AS TO ANY OTHER MATTER WHATSOEVER. EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, TOWN SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT, EXCEPT AS

EXPRESSLY SET OUT IN SECTION 4.1, NEITHER TOWN NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF TOWN HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 At Closing, Town shall convey its fee simple title to the Property to Developer subject only to the Permitted Exceptions. The “**Permitted Exceptions**” shall be the following collectively: (i) all title matters, encumbrances, easements, rights-of-way or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded against the Property in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer’s Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer’s Agents; (v) all building, zoning, and other Laws affecting the Property as of the Effective Date; and (vi) any easements, rights-of-way, exceptions, and other matters created by Developer and required in order to obtain necessary governmental approval of the development of the Project in accordance with this Agreement.

2.4.2 From and after the Effective Date through Closing, Town agrees not to take any action that would cause any change to the status of title to the Property existing as of the Effective Date, except as expressly permitted by this Agreement or as otherwise approved by Developer in writing, which approval may be granted or withheld in Developer’s sole and absolute discretion.

2.5 RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by the Town.

2.6 CONDEMNATION

2.6.1 Notice. If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, Town shall promptly give Developer written notice thereof.

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, (a) Town shall return the Deposit and Penalty Funds to Developer, (b) all of the rights, obligations, and liabilities of the Parties under this Agreement shall be extinguished and forever discharged (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement), and (c) Town shall have the right to receive any and all condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking of the Property prior to Closing, Town and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this

Agreement shall terminate, the Town will return the Deposit and Penalty Funds to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and Town shall have the right to collect all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall either be paid to Developer at Closing or, if paid to Town, such amount shall be credited against the Purchase Price and treated as part of the Purchase Price already paid; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, Town shall assign to Developer at Closing all interest of Town in and to the condemnation proceeds that may otherwise be payable to Town. In either event, Town (as the seller hereunder, as opposed to as the condemning authority) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event that within forty-five (45) days after the date of receipt by Town of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement, and the termination provisions of this Section 2.6.3 shall apply.

ARTICLE 3: AGREEMENTS PRECEDENT TO OBLIGATION TO CLOSE

3.1 ZONING MODIFICATION. During the Preliminary Consideration Period, the Developer shall seek and obtain the Planning and Zoning Commission's recommendation of a zoning modification of Property from Residential to B-2 (excluding any residential uses) as required under Section 108-214 of the Town Code. The Developer is required to submit all required applications, attend any public hearings, and address any conditions or requirements set forth by Chapter 108 of the Town Code. The Developer shall bear all costs associated with the zoning modification process. The Town agrees to cooperate with the Developer's rezoning efforts that are consistent with the Concept Plans, including forwarding any requested modification to the Planning and Zoning Commission and enacting the recommended rezoning if it is recommended, but shall not be responsible for ensuring the Developer's desired modification will be recommended by the Planning and Zoning Commission and approved by the Council, which may be granted or withheld in the Council's sole and absolute discretion.

3.2.1 ACCESS ROAD LOCATION.

3.2.2 During the Preliminary Considerations Period, the Town, in consultation with the Developer, will design and finalize the location of the access road, associated sidewalks, and curb cuts from Old Ocean City Boulevard to Parcels 57, 191, and 410 and any other space required by State of Maryland Highway Administration for the construction of a public road (collectively "**Access Road**"). The Town retains the sole discretion to determine the design and final location of the Access Road, if Developer does not agree with such design and location, Developer shall have the absolute right to terminate this Agreement and receive a return of the Deposit and Penalty Funds.

3.2.3 Developer will be responsible for typical costs and permit fees associated with constructing or designing the curb cuts from the Access Road to Parcel 57 as if the Access Road

were a dedicated public right-of-way. Upon the Access Road's dedication as a public-right-of-way, the Developer (and its contractors, patrons, and guests) shall have access to Parcel 57 from the public right-of-way at all times.

3.2.4 If the Developer wishes to utilize the Access Road before it is dedicated as a public right-of-way, it shall provide the Town with evidence that the Town is listed as an additional insured pursuant to Section 11.1.2 below. Notwithstanding the foregoing, while the Town will endeavor to make the Access Road accessible should the Developer (or its contractors and invitees) require it during or after completion of Phase I, in no event shall the Town be obligated to provide fully constructed public road (i.e. inclusive of base/subgrade and asphalt surfacing, line markings, curbs, drainage, and sidewalks) and dedicated public right-of-way to Developer for access to the Property. To minimize damage and ordinary wear/tear on the fully constructed Access Road, once the Access Road is fully constructed, the Developer and Town will work provide direct access from Parcel 57 to Ocean City Boulevard for heavy construction vehicles and equipment during the construction of Phase I and Phase II.

3.3 “CROPPER” AGREEMENT. During the Preliminary Considerations Period, the Developer may, but is not required to, reach an agreement with Park Oak-Kwang and Soon-AE (the “**Cropper Parcel Owners**”), the owners of 10013 Ocean City Blvd, Berlin, MD, District 03, Account Number 016827 (the “**Cropper Parcel**”) to allow the Access Road as a dedicated public road to be located on a portion of the Cropper Parcel. The Town will cooperate in the discussions with the Cropper Parcel Owners, but the Developer shall be responsible for any payments required under any agreement with the Cropper Parcel Owners, including a payment to the Town for the fair market value of any land “swapped” by the Town as agreed between the Parties (in each sole and absolute discretion) to enable a portion of the Access Road to be located on the Cropper Parcel. Unless and until a mutually acceptable agreement is entered into by and between the Town, the Copper Parcel Owners, and the Developer, it is understood that the Access Road shall be located and subdivided from Parcel 57.

3.5 STORMWATER FACILITIES. On or before the expiration of the Initial Study Period, and to the extent that Developer wishes to locate legally required stormwater facilities on the adjacent parcels owned by the Town, the Town and Developer will work together to identify the mutually acceptable location and terms of the shared stormwater facilities servicing Parcels 57, 191, and 410. It is expressly understood that the Developer will be solely responsible for constructing and paying for the construction of any stormwater facilities required for the Developer's use and occupancy of the Property, including any construction, maintenance, and replacement costs attributable to Parcel 57, regardless of whether they are located on Parcel 191 or 410. If Parties are unable to reach mutually acceptable location and terms for the shared stormwater facilities within the Initial Study Period, the Developer may elect to construct the facilities solely on Parcel 57. If it is determined that the stormwater facilities cannot be located solely on Parcel 57 and the parties cannot reach an agreement as to the terms of the shared facilities, either party may terminate this Agreement by delivering notice to the other Party in accordance with Section 12.1, whereupon this Agreement will be deemed null and void and the Deposit and Penalty Funds will be returned to Developer.

3.6 SUBDIVISION. Prior to Closing, the Town will subdivide the Access Road from Parcel 57, which shall remain in the Town's ownership. Prior to the finalization of the subdivision plat, the Town will provide the Developer a copy of the subdivision plat so that the Developer may confirm that any portion of Parcel 57 to be dedicated to Access Road is properly subdivided from Parcel 57. If the Developer fails to respond within ten (10) business days to the Town's request for comment under this Section 3.6, it shall be deemed to have no comments to the subdivision plat.

3.7 PARCEL 57 CURBCUT ACCESS TO OCEAN CITY BOULEVARD. The Developer shall be responsible for paying for and securing any and all approvals of the Maryland Department of Transportation (MDOT) or any other governmental authority required for installation and utilization of the curb cut access point to Ocean City Boulevard from Parcel 57 (adjacent to the train tracks) prior to commencement of construction on the Property. Additionally, the Town will not be responsible for any costs associated with constructing any curbcuts from Ocean City Boulevard to Parcel 57. It is expressly understood that the Developer will utilize the Parcel 57 curbcut for its (and its contractors (including construction), guests, and customers) access to Parcel 57 until the Town completes the construction of the Access Road and it is dedicated as public right-of-way.

3.8 PLANNING COMMITTEE APPROVAL OF PHASE I. On or before the (10th) day after the Initial Study Period, the Developer shall submit a site plan for Phase I of the project to the Town's Planning Commission for approval and shall promptly respond to requests for additional information from the Planning Commission.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 REPRESENTATIONS AND WARRANTIES OF TOWN

4.1.1 Town hereby represents and warrants to Developer as follows:

- (a) The execution, delivery, and performance of this Agreement by the Town and the transactions contemplated hereby between Town and Developer have been approved by all necessary parties, and Town has the authority to dispose of the Property, pending expiration of the authority granted in the Resolution, unless extended. Upon the due execution and delivery of the Agreement by Town, this Agreement constitutes the valid and binding obligation of the Town, enforceable in accordance with its terms.
- (b) No agent, broker, or other Person acting pursuant to express or implied authority of Town is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. Town has not dealt with any agent or broker in connection with the sale of the Property.
- (c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the knowledge of Town threatened, against Town which

relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against Town which, if decided adversely to Town, would impair Town's ability to perform its obligations under this Agreement.

- (d) The execution, delivery, and performance of this Agreement by Town and the transactions contemplated hereby between Town and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which Town is subject, or any agreement, contract or Laws to which Town is a Party or to which it is subject.
- (e) Town has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing.
- (f) To the best of the Town's knowledge, there are no Hazardous Materials on the Property other than the Hazardous Materials disclosed in the materials provided to the Developer during the Initial Study Period. The Town's knowledge shall be limited to the knowledge of Mayor Zach Tyndall and Administrator Mary Bohlen without any independent duty of investigation.

4.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for three (3) years. Town shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Town's control. Town agrees to disclose any such change to Developer promptly after Town becomes aware thereof.

4.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

4.2.1 Developer hereby covenants, represents, and warrants to Town as follows:

- (a) Developer is a Maryland limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Maryland to conduct the business in which it is now engaged. Palmer Gillis is the sole Member of Developer and is the only Persons with an ownership interest in Developer. To the best of Developer's knowledge, no Member or any Person owning directly or indirectly any interest in Developer or any Member is a Prohibited Person. However, Developer shall be creating a new legal entity to take title to the Property at Closing and it is possible that there may be additional members other than Palmer Gillis, including his wife, Sandy Gillis.
- (b) The execution and delivery of this Agreement has been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.
- (c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions,

or provisions of (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Laws to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.

- (d) No agent, broker, or other Person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Town for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its purchase of the Property.
- (e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to the knowledge of Developer threatened against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of Developer.
- (f) Developer's purchase of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Concept Plan within the timelines set forth in the Schedule of Performance and not for speculation in land holding.
- (g) Neither Developer nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

4.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall survive Closing for a period of three (3) years. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control. Developer agrees to disclose any such change to Town promptly after Developer becomes aware thereof.

ARTICLE 5 CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

5.1.1 The obligations of Developer to consummate the Closing on the Closing Date shall be subject to the following conditions precedent:

- (a) The Property shall have been rezoned from Residential to B-2.
- (b) The location of the Access Road shall have been approved by the Maryland State Highway Administration, and its location is acceptable to the Developer.
- (c) The Parties shall have agreed upon the mutually acceptable location and terms of the shared stormwater facilities servicing Parcels 57, 191, and 410.
- (d) The Town shall have completed the subdivision of the Property and adjacent parcels (if any) in accordance with Section 3.5 and the Developer is satisfied that

the subdivision of Access Road from Parcel 57 accurately reflects the location of the Access Road as determined during the During the Preliminary Considerations Period under Section 3.2.

- (e) Developer shall have delivered documentation that it has the funds or financing to complete the construction of Phase 1 of the Project.
- (f) The representations and warranties made by Town in Section 4.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (g) Town shall have performed in all material respects all obligations hereunder required to be performed by Town prior to the Closing Date.
- (h) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (i) Title to the Property shall be in the condition required under Section 2.4.1, subject only to the Permitted Exceptions.
- (j) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.
- (k) Town shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein.
- (l) Developer shall have received from the Town Planning Commission site plan approval for Phase 1 of the Project.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to Town, whereupon (1) Town will return the Deposit and Penalty Funds to Developer, and (2) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to three (3) months to permit the conditions to Closing set forth in Section 5.1.1 to be satisfied. In the event such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. Notwithstanding anything set forth above to the contrary, if any such failed condition is a default by the Town hereunder and the Developer is not otherwise in default, then Developer shall be entitled to a return of the Deposit and Penalty Funds as well as its remedies set forth in Article 9.

5.2 CONDITIONS PRECEDENT TO TOWN'S OBLIGATION TO CLOSE

5.2.1 The obligation of Town to convey the Property and perform the other obligations it is required to perform on the Closing Date shall be subject to the following conditions precedent:

- (a) The Property shall have been rezoned from Residential to B-2.
- (b) The location of the Access Road shall have been approved by the Maryland State Highway Administration, and its location is acceptable to the Developer.
- (c) The Parties shall have agreed upon the mutually acceptable location and terms of the shared stormwater facilities servicing Parcels 57, 191, and 410.

- (d) The Town shall have completed the subdivision of the Property and adjacent parcels (if any) in accordance with Section 3.5 and the Developer is satisfied that the subdivision of Access Road from Parcel 57 accurately reflects the location of the Access Road as determined during the Preliminary Considerations Period under Section 3.2.
- (e) Developer shall have delivered documentation that it has the funds or financing to complete Phase 1 of the construction of the Project within 24 months of Closing in accordance with Section 7.2.1.
- (f) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (g) Town's authority, pursuant to the Resolution (as it may have been extended), to proceed with the disposition, as contemplated in this Agreement, shall have not expired.
- (h) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the development of the Project in accordance with the Concept Plans.
- (i) Developer shall have certified in writing to Town that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement, to achieve Commencement of Construction by the time set forth in the Schedule of Performance.
- (j) Developer shall have furnished to Town certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.
- (k) Developer shall have provided reasonably satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement.
- (l) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.
- (m) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of Town's failure to perform any obligation of Town hereunder, Town shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to Developer, whereupon (1) Town shall return the Deposit and Penalty Funds to Developer, and (2) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to three (3) months, to permit the conditions to Closing set forth in Section 5.2.1 to be satisfied. In the event such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of Town's failure to perform any obligation of Town hereunder, Town may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. Notwithstanding anything set forth above to the contrary, if any such failed condition is a default by Developer hereunder, then Town shall be entitled to its remedies set forth in Article 9.

ARTICLE 6 CLOSING

6.1 CLOSING DATE

6.1.1 Provided the conditions to Closing in Sections 5.1.1 and 5.1.2 have been satisfied or waived, Closing on the Property shall be held on the “**Closing Date**,” as referenced in the Schedule of Performance, but in no event later than 90 days after expiration of the Initial Study Period. Closing shall occur at 10:00 a.m. at the Law Offices of Ayres, Jenkins, Gordy and Almand, P.A. located at 6200 Coastal Highway, Suite 200, Ocean City, Maryland or another location acceptable to the Parties.

6.2 DELIVERIES AT CLOSING

6.2.1 Town’s Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, Town shall execute, notarize, and deliver, as applicable, to Settlement Agent:

- (a) the Deeds, in recordable form;
- (b) a certificate, duly executed by Town, stating that all of Town’s representations and warranties set forth herein are true and correct in all material respects as of and as if made on the Closing Date;
- (c) the Settlement Statement; and
- (d) any and all other deliveries required from Town on the Closing Date under this Agreement, and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to Town, to effectuate the transactions contemplated by this Agreement.

6.2.2 Developer’s Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, and/or deliver, as applicable, to Settlement Agent:

- (a) the Purchase Price (by delivery of same to the Settlement Agent) in full, and any additional funds, if so required by the Settlement Statement to be executed at Closing;
- (b) a certification of Developer’s representations and warranties executed by Developer stating that all of Developer’s representations and warranties set forth herein are true and correct in all material respects as of and as if made on the Closing Date;
- (c) the Settlement Statement;

- (d) the following documents evidencing the due organization and authority of Developer to enter into and consummate this Agreement and the transactions contemplated herein:
 - (i) Developer's organizational documents and a current certificate of good standing issued by the jurisdiction of formation of Developer and the State of Maryland
 - (ii) Authorizing resolutions, in form and content reasonably satisfactory to Town, demonstrating the authority of the entity and of the Person or Persons executing this Agreement and the documents contemplated hereby on behalf of such entity in connection with this Agreement and development of the Project;
 - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement; and
 - (iv) If requested by Town, an opinion of counsel that Developer is validly existing and in good standing in its jurisdiction of formation and is authorized to do business in the State of Maryland, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded against the Property in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to such counsel's knowledge any contract or agreement to which Developer is a party or by which it is bound; and
- (e) Any and all other deliveries required from Developer on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Town or Settlement Agent to effectuate the transactions contemplated by this Agreement.

6.2.3 On the Closing Date, Settlement Agent shall record and distribute documents and funds in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement.

6.3 CLOSING COSTS. Except as otherwise agreed upon in this Agreement, at Closing, the Developer shall pay the costs pertaining to the transfer and financing of the Property, including, without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs required by Developer's title company or lender, (4) Maryland real property deed recordation tax imposed pursuant to Maryland Department of Assessment and Taxation, (5) all Settlement Agent's fees and costs customarily charged to purchasers of real property and (6) costs of recording such other documents required to be recorded by this Agreement. The Parties acknowledge that the Town is legally exempt from transfer taxes pursuant to MD. Code, Tax-

Property Article § 13.-207. The Town agrees to pay any reasonable and customary settlement fees typical attributed to sellers of real property.

ARTICLE 7

CONSTRUCTION COVENANTS AND DEVELOPMENT OF PROJECT

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with this Agreement and the covenants contained in the Deed. The Project shall be constructed in compliance with all applicable laws and in a diligent manner in accordance with industry standards. The cost of developing and constructing the Project shall be borne solely by the Developer.

7.2 CONSTRUCTION CONVENANTS.

7.2.1 Financing. As a condition of Closing, the Developer shall deliver documentation to the Town for the Town's reasonable approval that the Developer has the funds or financing necessary to achieve Commencement of Construction of Phase 1 of the Project within the timelines set forth in the Schedule of Performance.

7.2.2 Commencement of Construction. Developer shall achieve Commencement of Construction of Phase 1 of the Project on or before the 180th day following Closing. If the Developer fails to achieve Commencement of Construction of Phase 1 of the Project on or before the 180th day following Closing, the Town may draw down upon the Penalty Funds in the amount of \$5,000 per month until Commencement of Construction of Phase 1 of the Project is achieved.

7.2.3 Final Completion. Developer shall achieve Final Completion of Phase 1 of the Project on or before the 720th day of Closing. If the Developer fails to achieve Final Completion of Phase 1 of the Project on or before the 720th day following Closing, the Town may draw down upon the Penalty Funds in the amount of \$5,000 per month until Final Completion of Phase 1 of the Project occurs..

7.2.4 Intentionally deleted.

7.2.5 Post-Closing Transfers. Developer acknowledges the Town is relying on the Developer and its principal, Palmer Gillis, expertise in construction and development as a consideration in the sale of the Property. The Town is further relying on the Developer construction and development of the Property within the time frames contained in the Schedule of Performance. Other than to a legal entity of which Developer owns a controlling interest, Developer agrees not to sell or otherwise Transfer the Property prior to completing Phase 1 of the Project. This Section 7.2.5 shall survive until Phase I has received its certificate of occupancy or for a period of five (5) years following the Closing, whichever occurs first.

7.3 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits to construct improvements on the Property and shall make application therefor directly to the applicable agency within the Town, County or State authority. To the extent that the Developer's applications for Permits comply with all applicable laws, rules and regulations of the Town, the Town shall act in timely reviewing any applications for such Permits, in all events within thirty (30) days from the Developer (or its agents) submission of application (or any subsequent revisions). In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. After approval by Town of all Construction Drawings for the Project, Developer agrees to diligently pursue obtaining all Permits. Notwithstanding the foregoing, except as expressly agreed in this Agreement, the Town entering into this Agreement is not intended to, nor shall it be, deemed to bind the Town to issue permits required for the development and construction of the Property. In the event that the Town fails to substantively respond to a Developer submission within thirty (30) days of its submission, the Developer shall have a day for day extension of its obligations until the Town responds.

7.4 SITE PREPARATION

Except as otherwise expressly provided in this Agreement, Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Concept Plans, including costs associated with excavation, construction of the Project, and construction of the Stormwater Facilities, utilities, curb cuts and other customary costs for constructing improvements on the Property. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate Town, County, and State departments approvals and government standards, and Laws.

ARTICLE 8 RESTRICTIVE COVENANTS

8.1 Nondiscrimination Covenants. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the Maryland Fair Employment Practices Act or any other Laws, in the development and construction of the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the Maryland Fair Employment Practices Act or other Laws. Developer will take affirmative action to ensure that employees are treated equally during employment without regard to their race, color, religion, sex, national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by Maryland Commission of Civil Rights (MCCR) setting forth the provisions of this non-discrimination clause. In all solicitations or advertisements for employees placed by or on behalf of Developer, Developer

shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the Maryland Fair Employment Practices Act or other Laws. In the event of Developer's non-compliance with the nondiscrimination clause of this Article or with any applicable rule, regulation, or order, the Town may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Laws.

8.3 Prohibited Uses. The Property shall not be used, in whole or in part, for any of the following uses ("**Prohibited Uses**"): pawn shops, gun shops, tanning salons, massage parlors, adult video/bookshops, adult entertainment facilities, check cashing facilities, gambling facilities, tattoo parlors, or liquor stores.

8.4 Environmental Claims and Indemnification. Upon the conveyance of the Property to the Developer, the Developer covenants and agrees as follows, which covenants and agreements in perpetuity that:::

- (a) Developer hereby covenants that, at its sole cost and expense (as between Town and Developer), provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and Town and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold Town harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Closing Date and during Developer's ownership of the Property, or (iii) any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Property subsequent to the Closing Date and during Developer's ownership of the Property ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify Town or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by Town or any of Town's agents, officers, directors, contractors or employees.
- (b) Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former and future parent, subsidiary and related entities and all of its and their respective present, former and future officers, directors, agents and

employees, and each of its and their heirs, personal representatives, successors, and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims relating to the Property, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law by Town or any of Town's agents, officers, directors, contractors or employees.

8.5 Open Space. Developer (and its successors and assigns) shall be prohibited from constructing any vertical structures (buildings) within 75 feet of the northern boundary of Parcel 57, and shall be reserved for landscaping, storm water management, parking, or other such uses that qualify generally as open space as approved by the Mayor with Council approval "**Open Space**".

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 DEFAULT.

9.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Town (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional ninety (90) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day cure period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, but subject to Force Majeure, no cure period shall apply to extend Developer's deadlines for submissions or notices required under Article 4, and in the event of a pre-Closing default by Developer, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.1.2 Default by Town. It shall be deemed a default by Town if Town fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Developer (except no notice shall be necessary nor shall any cure period apply to Town's obligation to close on its sale of the Property to Developer, time being of the essence) (any such uncured default, a "**Town Default**"). Notwithstanding the foregoing, if a default cannot be reasonably cured within thirty (30) days, Town shall have such additional time as is reasonably necessary, not to exceed an additional ninety (90) days, to cure such failure; provided, however, Town must commence the cure within the initial thirty (30) day cure period

and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, but subject to Force Majeure, no cure period shall apply to extend Town's review periods or to abrogate or extend any deemed approval provisions herein, and in the event of a pre-Closing default, the cure periods provided herein shall not extend the Closing Date and shall terminate on the Closing Date.

9.2 TOWN REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

(a) Pre-Closing Developer Default. In the event of a Developer Default under this Agreement, Town may at its option (i) waive Developer's Default and close, or (ii) terminate this Agreement whereupon (1) Town will be entitled to draw on the Deposit and Penalty Funds in its full amount; and (2) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement. Upon such termination, Developer shall assign to Town, to the extent assignable, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings for the Project produced to date and any Permits for the Project obtained, without representation or warranty, but free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement). Subject to Section 2.3.1(c) and subclause (ii) of this Section 9.2(a), in no event shall Developer be liable for any damages whatsoever, including consequential, indirect, or punitive damages.

(b) Post-Closing Developer Default. Town's remedies for a Developer Default under this Agreement after Closing will be the Town's right to draw down upon the Penalty Funds in accordance with Section 7.2.

(c) Post-Termination Developer Default. Town shall have all rights and remedies availability at law or in equity to enforce any obligations of Developer that expressly survive termination of this Agreement, subject to the last sentence of Section 9.2(a) above.

9.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY TOWN

In the event of a Town Default, Developer may at its option either (i) waive the Town Default and close, (ii) pursue specific performance, or (iii) terminate this Agreement whereupon the Town shall return the Deposit and Penalty Funds to Developer, and thereafter the Parties hereto shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement. In no event shall Town be liable for any damages whatsoever (including, without limitation, consequential, indirect, or punitive damages).

9.4 NO WAIVER BY DELAY; WAIVER

Notwithstanding anything to the contrary contained herein, any delay by either Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article shall not operate as a waiver of such rights or to deprive such Party of, or limit, such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Section shall not

be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

9.5 RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth in this Article are the sole and exclusive remedies of the Parties for a default hereunder (but subject to any additional rights and remedies the Parties may have under the Deed Covenants).

ARTICLE 10 TRANSFER AND ASSIGNMENT

10.1 ASSIGNMENT

Developer covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without Town's prior written approval, which may be granted or denied in Town's sole discretion. Notwithstanding the foregoing, Developer shall be permitted to assign this Agreement to an Affiliate of Developer without Town's prior consent, upon written notice to Town, provided that the Affiliate is not a Prohibited Person. Developer shall be creating a separate legal entity to take title to the Property at Closing in which Palmer Gillis (individually or together with his wife, Sandy Gillis) shall have a controlling interest (i.e. 51% or more) and the Town agrees to an assignment to such entity as stated in the foregoing sentence.

10.2 NO UNREASONABLE RESTRAINT

Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or its rights under this Agreement. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

ARTICLE 11 INSURANCE OBLIGATIONS; CASUALTY; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below and as may be set forth in the Schedule of Performance, Developer shall carry and maintain or cause to be carried and maintained in full force and effect the following insurance policies:

- (a) Property Insurance - After achieving Final Completion, Developer shall maintain property insurance insuring the Project to its satisfaction and shall provide proof of same to the Town.
- (b) Builder's Risk Insurance - During construction of the Project, if not otherwise provided in the Property insurance program, Developer shall maintain builder's risk

insurance for the amount required by Developer's lender and shall provide a Certificate of Insurance to the Town evidencing same. .

- (c) (i) Automobile Liability and Commercial General Liability Insurance (Pre-Commencement of Construction) – After the Effective Date and prior to Commencement of Construction, Developer shall maintain and/or cause its contractors to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than two million dollars (\$2,000,000.00) per occurrence and in the aggregate; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement.
- (ii) Automobile Liability and Commercial General Liability Insurance (Post-Commencement of Construction) - After Commencement of Construction (or, if earlier, after commencement of excavation, sheeting and shoring), until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than two million dollars (\$2,000,000.00) per occurrence and in the aggregate, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by Town from time to time, in its reasonable discretion.
- (d) Workers' Compensation Insurance - After the Effective Date, until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Laws.
- (e) Professional Liability Insurance – Intentionally deleted.
- (f) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer, or its subcontractors, shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its subcontractors to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other

irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. At any time that the Developer requires access to the Property owned by the Town (including, without limitation, prior to Closing and any time it requires utilization of Access Road prior to its dedication as a public right-of-way), prior to such access, it shall deliver evidence that Developer has named the Town as an additional insured under all policies of liability insurance, property insurance, and builder's risk insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section shall be written as primary policies, not contributing with or in excess of any coverage that Town may carry. Such insurance shall be obtained through recognized insurance companies authorized to do business in the State of Maryland and rated by A.M. BEST as A-VIII or above. Prior to Developer's first entry onto the Property pursuant to this Agreement with respect to the insurance required pursuant to Section 11.1.1(c)(i), and prior to the dates upon which Developer must obtain the other insurance described above, Developer shall furnish to Town certificates of insurance (or copies of the policies if requested by Town) reflecting the issuance of such insurance together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying Town in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

11.2 ASSUMPTION OF LIABILITY/INDEMNIFICATION

11.2.1 The Developer shall be solely responsible for all actions, decisions, omissions, and consequences related to Developer's design, construction, maintenance, and operation of the Property. The Developer assumes full liability for any claims, damages, losses, costs, or expenses related to its development of the Property, including but not limited to those arising from property damage, personal injury, regulatory violations, or contractual disputes, whether caused directly or indirectly by their actions or the actions of Developer's employees, contractors, agents, or representatives. After Closing, the Town shall bear no legal and financial responsibility associated with any third-party claims, governmental enforcement actions, or other liabilities related to the Property, and the Developer shall not shift such responsibility to the Town under this Agreement. Nothing in this Section 11.2.1 shall be interpreted as (i) making Developer liable or responsible for damages, claims or causes of action against the Town (it's agents, servants or employees acting on behalf of the Town) not related to this Agreement or attributed to the negligence or willful misconduct of Town (or its agents or employees acting on behalf of the Town) for which the Town may be liable for in the absence of this Agreement, or (ii) limiting any defenses or other causes action that Developer may have against third parties.

11.2.2 At any time the Developer (or its Agents) enters onto real property owned by the Town, including without limitation to, the Property prior to Closing or the Access Road, the Developer shall indemnify, defend, and hold harmless Town from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent Property owned by the Town and directly or indirectly caused by any acts done thereon

or any acts or omissions of Developer, its Members, agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due to the negligence or willful misconduct of Town or its agents or employees, and provided further, however, that in no event shall Developer be responsible for any indirect or consequential damages other than indirect or consequential damages incurred by third parties and for which Town is held liable. The obligations of the Developer under this Section shall survive the Closing or the earlier termination of this Agreement and completion of Phase I.

ARTICLE 12 NOTICES

12.1 TO TOWN

Any notices given under this Agreement shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Town at the following addresses:

Zackery Tyndall

Mayor

Town of Berlin

10 William Street

Berlin, MD 21811

ztyndall@berlinmd.gov

Mary Bohlen

Town Administrator

Town of Berlin

10 William Street

Berlin, MD 21811

mbohlen@berlinmd.gov

With a copy to:

Emily K Morris

EKM Law, PLLC

(202) 350-4910 [office]

(202) 352-8718 [cell]

emily.morris@ekmlawfirm.com

12.2 TO DEVELOPER

Any notices given under this Agreement shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses:

Palmer Gillis
Gillis Gilkerson
150 W Market Street, Suite 200
Salisbury, MD 21801
pgillis@GGIBuilds.com

With a copy to:

Mark Cropper
Partner
Ayres, Jenkins, Gordy & Almand, P.A.
6200 Coastal Highway, Suite 200
Ocean City, MD 21842
mcropper@ajgalaw.com

12.3 NOTICES DEEMED RECEIVED; CHANGE OF NOTICE ADDRESS

Notices served upon Developer or Town in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. Any Party may change its address for notices by giving notice to the other Parties hereunder in the manner specified herein.

ARTICLE 13 MISCELLANEOUS

13.1 FORCE MAJEURE

Neither Town nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, convey the Property, or commence and complete construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of Town or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.1 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expeditor reasonably acceptable to Town to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially

reasonable actions to minimize the delay. If either Party requests any extension of the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not apply to any obligation to pay money.

13.2 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No official or employee of Town shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any Town agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of Town shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by Town or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, Member or shareholder of Developer shall be personally liable to Town in the event of any default or breach by Developer or for any amount which may become due to Town or on account of any obligations hereunder.

13.3 SURVIVAL

The provisions of this Agreement are intended to and shall merge with the Deeds transferring title to the Property from Town to Developer, except to the extent of any provisions explicitly surviving the expiration or termination of this Agreement, which shall not merge.

13.4 TITLES OF ARTICLES AND SECTIONS

Titles and captions of the several parts, articles, and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

13.5 SINGULAR AND PLURAL USAGE; GENDER

Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

13.6 LAW APPLICABLE; FORUM FOR DISPUTES

This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the State of Maryland, without reference to the conflicts of laws provisions thereof. Town and Developer irrevocably submit to the jurisdiction of the Circuit Court for Worcester County. Town and Developer irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in Circuit Court for Worcester County and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof. The Recitals of this Agreement are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties. All Exhibits are incorporated herein by this reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement, this Agreement shall control.

13.9 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.10 TIME OF PERFORMANCE

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or Town holiday is automatically extended to the next Business Day.

13.11 SUCCESSORS AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of Town and Developer, and where the term “Developer” or “Town” is used in this Agreement, it shall mean and include their respective successors and assigns.

13.12 THIRD PARTY BENEFICIARY

No Person shall be a third party beneficiary of this Agreement.

13.13 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.14 FURTHER ASSURANCES

Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Laws, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.17 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

13.18 NO PARTNERSHIP

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and Town.

13.19 PATRIOT ACT

Neither Developer nor any Person owning directly or indirectly any interest in Developer has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or (b) is a person described in Section 1 of the Anti-Terrorism Order.

[signatures on following pages]

IN WITNESS WHEREOF, Town has caused these presents to be signed, acknowledged and delivered in its name by the Zackery Tyndall , the Mayor of Berlin, its duly authorized representative, as of the date set forth below his signature.

TOWN OF BERLIN:

By: _____

Name: Zackery Tyndall

Title: Mayor

Date: _____

IN WITNESS WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name as of the date set forth below its signature.

DEVELOPER:

Coastal Ventures Properties LLC, a State of Maryland limited liability company

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

DEPICTION OF PROPERTY



Exhibit B

Form of DEED

AFTER RECORDING, RETURN TO:
[insert name and address]

Tax ID No: TAX ID#03-_____

Property Address: _____ Berlin, MD 21811

DEED

This Deed, made this _____ day of _____ 2025, by and between **MAYOR AND COUNCIL OF BERLIN, a Maryland municipal corporation**, party of the first part, **GRANTOR**, and **COASTAL VENTURES PROPERTIES LLC**, a State of Maryland limited liability company and any amendments thereto, as party of the second part, **GRANTEE**.

- Witnesseth -

That for and in consideration of the sum of **One Million Two Hundred Thousand Dollars (\$1,200,000)**, the receipt whereof is hereby acknowledged, the said GRANTOR does grant and convey to the said GRANTEE, its successors and assigns in fee simple, all that lot of ground situate in the Worcester County in State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as all that certain lot, piece or parcel of land, situate, lying and being in Berlin, in the Worcester County, and State of Maryland as follows:

[insert legal description]

SUBJECT TO, the No Further Requirement Determination issued by the Maryland Department of the Environment, Waste Management Administration, Voluntary Cleanup Program, dated November 3, 2005, and recorded among the land records of Worcester County, Maryland at Liber 4594, Folio 728.

SUBJECT TO, that restrictive covenant contained in the Deed dated December 22, 2005, and recorded among the Land Records of Worcester County, Maryland, in Liber S.V.H. No. 4611, folio, *et. seq.*

SUBJECT TO, a restrictive use covenant prohibiting the operation of pawn shops, gun shops, tanning salons, massage parlors, adult video/bookshops, adult entertainment facilities, check cashing facilities, gambling facilities, tattoo parlors, or liquor stores, for the benefit of Maryland Department of Housing and Community Development (DHCD).

SUBJECT TO RESERVATION of the seventy-five (75) feet along the northern boundary of the Property which shall not be used for constructing any vertical structures (buildings), but may be used for landscaping, storm water management, parking or other such uses that qualify generally as open space as approved by the Mayor with Town Council approval ("**Open Space**"). GRANTEE (and its successors and assigns) shall not construct any vertical structures (buildings) within the Open Space without GRANTOR'S prior approval, which may be granted or withheld in GRANTOR's sole and absolute discretion.

GRANTOR CONVEYS THE PROPERTY TO GRANTEE IN "AS-IS" CONDITION AND GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE ENVIRONMENTAL LAW, OTHER LAW, OR OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER.

TOGETHER WITH the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said **GRANTEE** and its successors and assigns, in fee simple, forever.

[SIGNATURES AND ACKNOWLEDGEMENTS BEGIN ON NEXT PAGE]

Witness the hand and seal of said **GRANTOR**, the day and year first above written.

Zackery Tyndall

Mayor of the Town of Berlin Maryland

STATE OF MARYLAND)
) ss.
WORCESTER COUNTY)

I HEREBY CERTIFY that on this _____, before me, the subscriber, a Notary Public of the aforesaid State, personally appeared **ZACKERY TYNDALL, the Mayor of the Town of Berlin**, known to me or satisfactorily proven to be the individuals whose names are subscribed to the within instrument, and acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]

_____, Notary Public
My commission expires: _____

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

, Esquire

Exhibit C

Schedule of Performance

Task	Completion Date or Duration	Party Responsible
Developer shall deliver \$100,000 (Combined Deposit and Penalty Funds)	On or before the Effective Date	Developer
Preliminary Considerations Period (i.e. zoning modification, access road location, and Cropper Agreement (if applicable))	180 days from Initial Study Period	Developer and Town (see Section 3.2 for details)
Initial Study Period	180 days from the expiration of the Preliminary Considerations Period (in all events, within 365 days of the Effective Date)	Developer
MDOT Approval of Ocean City Boulevard to Parcel 57 Curb cut	Prior to Commencement of Construction of Phase I	Developer
Submission of Phase I Site Plan to Town Planning Committee	No Later than 10-days after Expiration of Initial Study Period	Developer
Subdivision of Road from Parcel 57	Prior to Closing	Town
Evidence of Financing for Phase 1 of Project	Prior to Closing	Developer
Closing	No later than 90 days after the expiration of the Initial Study Period (in all events, within 455 days of the Effective Date)	Developer and Town
Commencement of Construction of Phase 1 of Project	180 days after Closing	Developer
Final Completion of Phase 1 of Project	720 days (2 years) after Closing	Developer

Exhibit D

Developer's Phase Concept Plans for the Project





MOTION OF THE MAYOR AND COUNCIL 2025-22

A motion of the Mayor and Council of the Town of Berlin to APPROVE THE FOLLOWING NOMINATIONS TO THE TOWN OF BERLIN'S BOARDS, COMMISSIONS, AND COMMITTEES:

Board of Supervisors of Zoning Appeals (3-Year Term)

- Joe Moore (Re-Appointment)
- Woody Bunting (Re-Appointment)
- Bob Paladino (Re-Appointment)

Historic District Commission (3-Year Term)

- John Holloway (Re-Appointment)
- Mary Moore (Re-Appointment)

Planning Commission (5-Year Term)

- Matt Stoehr (Re-Appointment)
- Austin Purnell (Re-Appointment)
- Pete Cosby (Re-Appointment)

Housing Board of Review (3-Year Term)

- Mary Moore (Re-Appointment)

APPROVED THIS ____ DAY OF _____, 2025 BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF ____ TO ____ OPPOSED, WITH ____ ABSTAINING AND ____ ABSENT.

Dean Burrell, Sr. Vice President of the Council

Approved this ____ day of _____, 2025 by the Mayor of the Town of Berlin.

Zackery Tyndall, Mayor, President of the Council

ATTEST: _____
Mary Bohlen, Town Administrator



TOWN OF BERLIN, MARYLAND

Office of the Mayor

April 9, 2025

Councilmembers Burrell, Knerr, Nichols, Orris, and Green,

As Mayor, I am honored to make the following nominations:

Board of Supervisors of Zoning Appeals (3-Year Term)

- Joe Moore (Re-Appointment)
- Woody Bunting (Re-Appointment)
- Bob Paladino (Re-Appointment)

Historic District Commission (3-Year Term)

- John Holloway (Re-Appointment)
- Mary Moore (Re-Appointment)

Planning Commission (5-Year Term)

- Matt Stoeher (Re-Appointment)
- Austin Purnell (Re-Appointment)
- Pete Cosby (Re-Appointment)

Housing Board of Review (3-Year Term)

- Mary Moore (Re-Appointment)

Please let me know if you have any questions regarding the nomination. I respectfully request your support in appointing the above member during the Mayor and Council Meeting on Monday, April 14, 2025.

Respectfully,

Zack Tyndall, Mayor



**April 14, 2025
Weekly Report**

Departments This Week:

Town Administrator

SAVE THE DATE:

- Monday, April 14, 6:00 PM: Mayor & Council.
- Friday, April 18: Most offices closed in observance of Good Friday.
- Saturday, April 19: Spring Celebration.
- Monday, April 21, 5:00 PM: Enterprise Funds Budget Work Session.
- Monday, April 28, 6:00 PM: Mayor & Council; Introduction/1st Reading of Tax Rate/Constant Yield Rate.
- Friday, May 2 and May 16: Town Hall and Planning will be closed after 12:00 PM so that staff can begin cataloging and sorting paper records in preparation for Town Hall Renovations and digitization of those paper records. Additional dates and times may be added throughout the summer.
- Interviews for various openings on Boards and Commissions will be held in April and May. There are still vacancies to be filled and interested persons can submit their information at <https://berlinmd.gov/mayor/become-involved/>.
- The budget schedule can be found at: <https://media.berlinmd.gov/wp-content/uploads/2019/03/28162447/FY-2026-Budget-Schedule-for-web.pdf>.
- Working on RFPs for a number of projects including Comprehensive Plan Update, Impact Fee Study, Digitizing of Records, Engineering RFQ's, and Demolition of the Multi-purpose Building. DBF is also releasing RFP's for the Lee Road Spray Site roadway paving, and the Rt. 346 Test Well Project, as well as getting SDP Comfort Station project ready for bid.
- I will be taking vacation April 22-25 and June 24-30.

Economic and Community Development

- Attending the National Main Street Conference in Philadelphia.
- Saturday, April 5 was the Town of Berlin community yard sale. The list of addresses were published online Friday; it was also Vintage & Vinyl in the parking lot of the Berlin Welcome Center. The rain date for both was Sunday, April 6th.
- During the Community Yard Sale and Vintage & Vinyl, Mike Wiley volunteered at the Welcome Center and said he had the most visitors ever in one day; many locals who had never been in before.
- Awarded 7 Facade Grants to the following: The Ghost Museum, BAY 4 LLC, Decatur Investments, Roadie Joes Berlin, The Atlantic Hotel, Salon 16, and Cafè Berlin.
- Completed the Arts and Entertainment District Redesignation application.
- Completed the Arts and Entertainment District Grant application.

Electric

- Stephen Decatur Park, Planning & Zoning, West & Baker-Installed flagpoles & uplighting.
- Planning & Zoning-Assisted Public Works with gutter installation.
- Harrison Ave-Removed overhead service.
- Branch Street-Removed overhead service.
- Burley Street-Energized service and removed temporary construction service.
- Power Plant-Removed reclosures for shipping & repairs.
- Maple Ave-Pole top maintenance & tree trimming.
- North Main Street-Set utility pole for relocation.

Finance Director

Continues to work on:

- FY 2026 Budget preparation, projections, meetings, reports.
- FY 2025 mid-year performance. Review actual vs budgeted, purchase orders and encumbrances.
- Meetings with departments to overview the current year and compile projections for FY 2026.
- FY 2026 capital projects and funding.
- Grants, water loans, public works bond, electric AMI meters bond.
- Opioid settlements, outstanding plan and questions.
- Bank accounts review, collateral coverage, interest rates.
- CDA Bond paperwork, closing paperwork, first expenditures and draws.
- Delinquent accounts review.
- Public Service Commissioner's reports and submissions, PCA calculations – Melissa.
- ARPA Grant reports and reconciliations due April 30.
- DBF invoices review and processing.
- EA invoices review and processing.
- RE tax paperwork, exempt accounts, appeals and reductions in assessments.
- Credit card payments and processing – Shirley.
- Bank reconciliations and journal entries – Melissa.
- Electric rate study paperwork and necessary reports for evaluation.
 - Working with Booth and Assoc-in process.
- Water and electric meter readings – Michelle.
- Smart metering project planning and Tyler integration.
- Check processing and credit card payments, review registers, checks, and Town's card payments – Shirley
- Department meetings scheduled, projects, and planning.
- New department position job duties and responsibilities, planning, and draft for job description.

Human Resources Director

- Still working on several insurance claims: a street sweeper hit in February, three utility pole claims since January, and one Victorian light pole.
- Still working on the FY26 budget figures for personnel – waiting on insurance figures.
- Ran payroll and all related reports on 03/34/25 & 04/07/25.
- Distributed Vacation buyback information and sent all quarterly leave balances to department heads.
- Updating the Job description for Economic Development's Administrative Assistant/Event Coordinator to include some changes to job functions starting in FY2026.
- Updating/creating two job descriptions for some departmental changes in Water Resources.
- Setting up times to do facilities tours with each department for our newer staff members. This used to be done more regularly but has gone to the wayside and we would like to bring them back.
- Set up interviews for the Distribution and Collection Technician position for Wednesday, April 16th.
- Attended the following meetings/events:
 - James Lockwood's retirement gathering on 03/20/25.
 - SHRM Eastern Shore monthly meeting 'AI in HR' on 03/25/25.
 - General Fund Internal Budget Meeting on 03/26/25.
 - LGIT annual renewal meeting on 03/27/25.
 - Town Hall Renovation meeting on 03/31/25.
 - Utility Fund Internal Budget Meeting on 04/02/25.
 - Lt. Fisher and I went to the MVA to sort out various issues with tags, titles, and insurance on 04/04/25. Also working with LGIT on this.
- SAVE THE DATES:
 - 07/19/25 – Town Staff Shorebirds Night – more information to follow.
 - 08/23/25 – Town Staff Jolly Rogers Day – more information to follow.

- Job openings: Police Communications Officer (full & part-time) and Code Enforcement and Zoning Official. Coming soon: Water Resources Administrative Assistant I.

Planning Department

Permits Received:

- 310 S. Main St. – Fence
- 10103 Old Ocean City Blvd. – Fence
- 103 N. Main St. – Sign
- 314 Franklin Ave. – Interior
- 12 Vine St. – Roof
- 3 Harrison Ave. – Demolition
- 309 William St. – Building – Town project
- 309 William St. – Demo of well house
- 205 Branch St. – Excavation
- 205 Branch St. – New SFD
- 406 S. Main St. – Garage alteration

Permits released:

- 10137 Old Ocean City Blvd. – Sign
- 10137 Old Ocean City Blvd. – Replace fascia, gutter system, and canopy
- 110 Purnell Ave. – Fence
- 482 Dueling Way – Fence
- 12 Vine St. – Repair

Public Works

- All new flag poles are up and new concrete pads around them have been poured. They are located at Planning and Zoning, Stephen Decatur Park, and the War Memorial.
- Bulk pickup is underway, with the last collection day for Thurs. trash is on 4/16. On 4/9's pickup, we made approximately 50 stops, picking up 3.5 tons of trash and .8 tons of scrap metal.
- The Jesse Klump River of Kindness stone garden will have a ribbon cutting on 4/10. We have been prepping the site at SDP to ensure a tidy appearance for the event.
- We continue to work with the HAC to prep town planters and gardens for the fast-approaching planting season. We have been adding soil, weeding, and cutting back around town where needed.
- Grass-cutting season is upon us. We are working hard to ensure that town parks and town-owned properties look their best through the spring and summer.

Water Resources

- Attended rural water conference.
- Hauled sludge.
- Had budget meeting.
- Fixed chemical lines in well.
- Held 2 pre-bid meetings/ test well 346 East/ Lee road paving spray site A.
- Valve failure at the plant.
- Installing irrigation meters.
- Clean UV bulbs.
- Servicing equipment at the plant.
- Cleaning out well #1 for new building and demo the old one.



Check Run Report
will be posted when available.