



**Request for Proposals (RFP) for the redevelopment of
9770 and 9790 Washington Blvd, Laurel, MD 20723
(the “Hurst Property”)**

Due Date: 11 a.m. on Friday, September 30th, 2016



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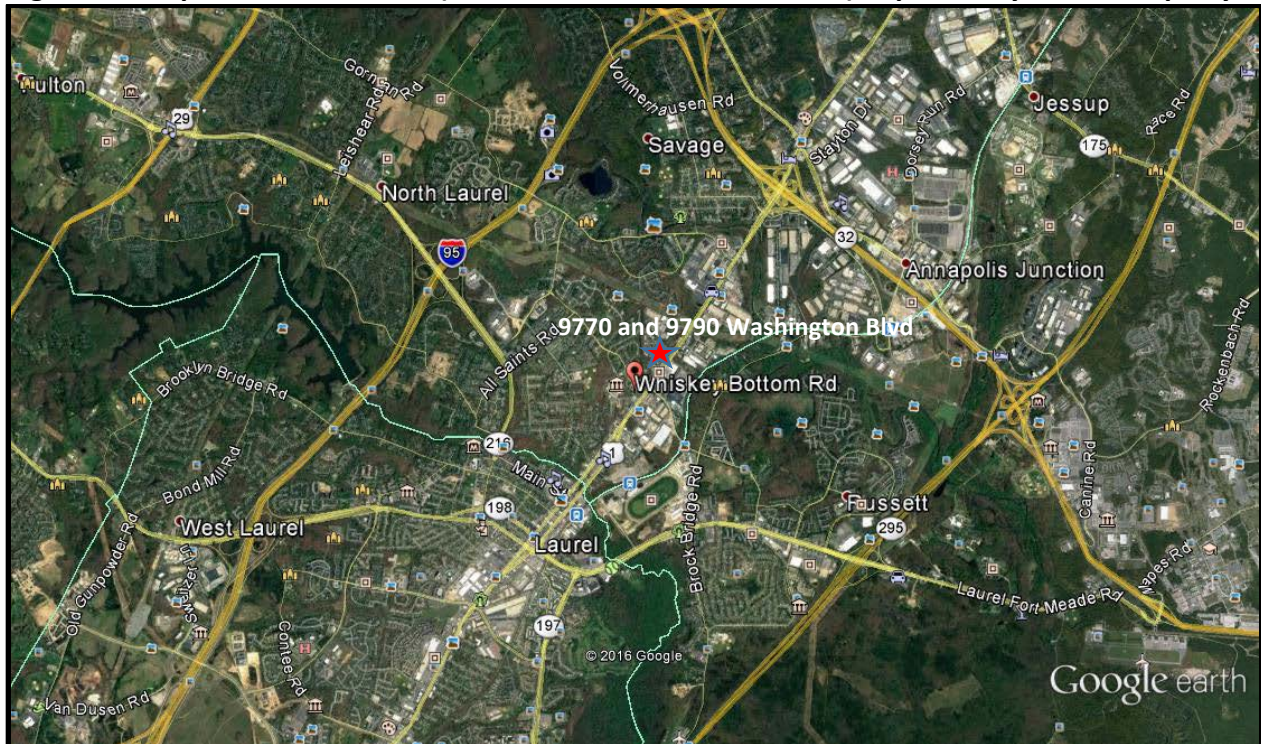
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I. Introduction

Howard County, Maryland (the “County”) is a thriving and growing county strategically located between Baltimore and Washington D.C., two of the nation’s largest metropolitan areas. The County has a population of approximately 310,000 residents and continues to grow annually primarily due to its vibrant and diverse employment base, highly-rated public school system, strategic location, and safe community. Furthermore, the County’s road transportation network significantly contributes to its economy and includes Interstate 95 (I-95) which runs north-south in the eastern portion of the County. In addition, there are other important corridors in the County which are significant employment, industrial and retail hubs to include US Route 1 (US 1 or Route 1) which is east of I-95, running parallel to I-95 and the Baltimore-Washington Parkway (I-295). US 1 is a major north-south commercial corridor and a focus of revitalization by the County which is being achieved through a deliberate and comprehensively planned redevelopment process.

Figure 1: Map of Road Network (US 1, Rt 32, Rt 29, I-95 & I-295) in proximity to the Property



Source: Google Earth



The County invites your participation in the Request for Proposals (RFP) for the redevelopment of the Hurst Property, a County-owned site, located in Howard County at 9770 Washington Boulevard and 9790 Washington Boulevard Laurel, Maryland 20723 (the “Property”). The County has retained the services of Chartwell Enterprises, a commercial real estate services firm, to advise the County during its developer selection process and sale of the Property in fee simple to the selected developer.

The Property, a 1.92 acres parcel, fronts US 1, also known as Washington Boulevard, in North Laurel about two miles south of the historic town of Savage. There are existing one-story structures on the Property one of which was used for an antique store and the other as a veterinary clinic and residence. The Property is located slightly north of the intersection of Whiskey Bottom Road and US 1, a highly visible and heavily traveled intersection. The Property is conveniently located within a few minutes-drive-time of Route 32 and a five minute drive-time from I-95 between Washington D.C. and Baltimore.

The following table provides a snapshot of the demographics of the surrounding area of the Property as compared to the State of Maryland:

Table 1: High-level snapshot of demographics surrounding the Property

Demographic	1 Mile Radius of Property	3 Mile Radius of Property	State of Maryland
Population	12,881	79,686	6,006,401
Population Growth (2010 to 2015)	+8.6%	+6.9%	+4.0%
Median Age	32.7	34.8	37.9
Median Household Income	\$81,278	\$83,505	\$74,149
% with Bachelor’s Degree or Higher	46.3%	43.3%	37.3%

Source: Esri Business Analyst Online (BAO)

Figure 2 below identifies the Property and its frontage along US 1. The Property is surrounded by commercial uses on two sides of the Property and east across US 1 and a residential use to the west of the Property. Revitalization along the Route 1 Corridor is a priority for the community and the County.



Figure 2: Aerial View of 9770 & 9790 Washington Blvd (yellow boundary is an approximation)



Source: Google Earth

In October of 2015, the County Council adopted a resolution (Resolution No. 69-2015) authorizing the County Executive to dispose of the Property. The resolution allows for a streamlined disposition process of the Property. A principal objective for the County in its sale of the Property is to identify and select a developer who will complete a development on the Property that achieves the following County goals:

1. Benefits the Community
2. Promotes the goals of the Route 1 revitalization
3. Comports with the General Plan (PlanHoward 2030)
4. Furthers the objectives of the North Laurel-Savage Sustainable Community Plan and any other relevant plans

The County will sell the Property to the selected developer in fee simple. It will be the developer's risk and responsibility to take its proposed development plan through the zoning and planning process, as required, following its purchase of the Property. In summary, the County will select a developer and sell the Property to that developer who best meets the County's requirements and offers a purchase proposal that contains minimal or no contingencies.



II. Zoning and Planning Overview – Route 1 Revitalization

The Property is located in the Route 1 Corridor where revitalization is important to the County and the surrounding communities. The Property is zoned CE-CLI-CR (Corridor Employment-Continuing Light Industrial-Commercial Redevelopment). The Corridor Employment (CE) zoning is one of three corridor-specific zoning districts established to promote more efficient use of vacant or underutilized land adjacent to Route 1. The other two specific zoning districts are the Transit Oriented Development (TOD) and Corridor Activity Center (CAC). The CLI and CR are overlay zones to the CE zoning district.

The Land Use Goals and Design Concepts for the CE District are outlined in the Route 1 Manual. The development of the Property is subject to the design requirements and recommendations of the Route 1 Manual which provides direction for preparing site development plans for properties in the corridor districts such as the CE District. The purpose of the Route 1 Manual is to present requirements and recommendations to:

1. improve the visual appearance of the corridor's streetscape,
2. enhance the appearance and value of developments in the corridor,
3. establish the desired design character for new developments in the Corridor Employment (CE), Transit Oriented Development (TOD), and Corridor Activity Center (CAC) Districts,
4. clarify how the Route 1 design requirements and recommendations affect the renovation and expansion of existing uses,
5. achieve better land use and function by using land more intensively and efficiently,
6. increase the safety of pedestrians and vehicular traffic, enhance pedestrian accommodations and connectivity, and improve pedestrian and vehicular access to shopping, services, housing and employment; and
7. promote the use of transit and alternative modes of transportation such as bicycles.

For reference, the links below provide access to the Route 1 Manual and Corridor Employment (CE) District Zoning Regulations. The Manual is available under the Route 1 Corridor link on the County's webpage:

<https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Community-Planning/Corridor-Plans>

https://www2.municode.com/library/md/howard_county/codes/zoning?nodeId=HOWARD_CO_ZONING_REGULATIONS_S127.2CECOEMDI



The following are just a few items from the Route 1 Manual which the Property is subject to and must be met in the development plans:

1. The development plans must show the ultimate US 1 right-of-way, which is 67 feet from center line at this location. See figure 3.5 in the Route 1 Manual.
2. The development plans must show the applicable streetscape improvements, such as the street trees and sidewalk along the US 1 frontage. See Figure 3.5 in the Route 1 Manual.
3. The proposed development is subject to the Design Advisory Panel's (DAP) review because it fronts on US 1 and because of its CE zoning. DAP review precedes the normal plan review process to allow the Panel's recommendation to influence the design of the development project at the earliest opportunity. The following link <https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Boards-and-Commissions/Design-Advisory-Panel> provides information on the DAP review.

Continuing Industrial Light (CLI) Overlay District

The intent of the CLI Overlay District is to encourage new land use patterns while still accommodating the existing industrial developments on properties in the CE Districts. To qualify for the CLI overlay, certain historical use criteria must be met. Based on a review of the history of uses on this property, it is unlikely that the CLI Overlay District would apply.

Commercial Redevelopment (CR) Overlay District

The developer may choose to use the CR (Commercial Redevelopment) Overlay District. The CR Overlay District is a flexible voluntary alternative zoning district that encourages commercial redevelopment of specifically designated properties on or near US 1. The CR Overlay District is intended to promote the following:

1. Redevelopment that benefits the surrounding residential and business areas by creating and enhancing well designed centers that help create a vibrant marketplace.
2. The encouragement of the most favorable arrangement of building, parking, vehicle circulation, pedestrian circulation, public areas, landscaped areas and other site features based on the physical site characteristics and the character of the surrounding developments. This arrangement is subject to and required to meet the design standards of the Route 1 Manual.
3. The provision of creative high-quality architectural and site design that minimizes isolated buildings or pad sites and presents a positive image along or near the Route 1 corridor.



4. The development of a mixture of commercial land uses based on market conditions, the site characteristics, and the current or intended future character of the surrounding developments.
5. The encouragement of projects which involve the assembly and redevelopment of the greatest number of adjoining properties, and the discouragement of smaller projects that obstruct the assembly and redevelopment of adjoining properties.

The goals of the CR Overlay District will be accomplished with high-quality, new Optional Design Projects (similar in nature to a Planned Unit Development) that are pre-planned and approved through a deliberative process, as outlined in Section 121.1 of the Howard County's Zoning Regulations.

https://www2.municode.com/library/md/howard_county/codes/zoning?nodeId=HOWARD_CO_ZONING_REGULATIONS_S121.1CRCOREOVDI

Appropriate locations near major US 1 intersections, for the CR Overlay District depend on various factors for specific targeted properties which have been determined to have high visibility, good access, or other advantages for furthering US 1 redevelopment and Howard County economic development. Therefore, the CR Overlay District is a mapped district which only may be proposed during the Comprehensive Zoning Plan process.

For reference, the following links provide access to the plans referenced in the RFP:

Route 1 Manual:

<https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Community-Planning/Corridor-Plans>

PlanHoward 2030 General Plan:

<https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Community-Planning/General-Plan>

North Laurel-Savage Sustainable Community Plan:

<https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Community-Planning/Community-Plans>



III. RFP Process

The RFP responses will guide the County in its developer selection and disposition process. The key drivers in this selection process will include the following criteria, which should be addressed in detail in the RFP response:

1. A development plan (land use and design concept) that benefits the community and promotes the goals of the Route 1 revitalization, comports with the General Plan (PlanHoward 2030) and furthers the objectives of the North-Laurel Savage Sustainable Community Plan and any other relevant plans.
2. An experienced and integrated development team capable of delivering a successful and sustainable development on this Property.
3. A deliberate process and timeline to achieve closing (i.e. certainty of close) and development of the Property as proposed.
4. A value proposition that includes a competitive market price for the Property, with minimal to no contingencies.
5. Financial capacity to close and redevelop the Property.

Following its evaluation of the responses received, the County will short-list respondents which best meet the RFP requirements. The County will invite a short-list of respondents to present their proposals to include their land use and design concept plans. Following negotiations, as required, an evaluation committee will make a recommendation to the County Executive as to the proposal which best meets the requirements of the County for the disposal and redevelopment of the Property.



IV. Timeline

The responses to the RFP are due Friday, September 30th, 2016 by 11 a.m. EST. The County anticipates having a buyer identified in Q4 of 2016, with a Purchase and Sale Agreement executed by the end of the year. Please see the County's Purchase and Sale Agreement in **Appendix A**. Closing shall take place in Q1 of 2017 following a due diligence period. The sale shall be fee simple and with minimal to no contingencies. The sale of the Property will be "as is." The sale of the Property has received County Council approval through its resolution, providing for a streamlined disposition process.



V. Required Information

The County is requesting a technical and price proposal. Please submit the technical proposal and price proposal in two separate documents. The technical proposal shall **not** contain any price information. Please limit responses to 15 pages or less.

a. Technical Proposal Requirement:

1. Please provide a narrative and visual representation of your development plan (i.e. site plan and design concept) for the Property and how the plan meets the requirements and goals of the County for a development that:
 - a. Benefits the Community
 - b. Promotes the goals of the Route 1 revitalization
 - c. Comports with the General Plan (PlanHoward 2030)
 - d. Furthers the objectives of the North Laurel-Savage Sustainable Community Plan and any other relevant plans
2. Please provide an overview of your team/firm(s) to include team-members, expertise and roles in the redevelopment of the Property. Please identify a lead point-of-contact for your team.
3. Please provide examples of similar developments, you are proposing for the Property, completed by your team. In your response, provide type of development, location, development value, dates and current status of development.
4. Please provide a timeline for your development of the Property following the purchase of the Property, to include the planning requirements.
5. Please review **Appendix A**, a draft Purchase and Sale Agreement (P&SA). Please indicate whether there are any items/sections which you differ on and if so, provide tracked changes and/or comments that provide your position and alternative language. Comments and/or tracked changes to the P&SA is not included in the page limit.
6. Please provide a summary statement that synthesizes your team's proposed development concept (use and density) and approach and demonstrates that your proposal meets the criteria specified by the County. If your team plans to develop adjoining parcels to the Property, as part of a total development, include the intended use for the other parcel(s) and development plans. Indicate how the entire development plan is integrated and meets the goals of the community and County.



b. Price Proposal Requirement:

1. Please provide your offer price for the fee simple purchase of the Property. The County will require a deposit of 5% of the purchase price within five (5) business days following the execution of the Purchase and Sale Agreement. The deposit will go “at risk” (i.e. will be non-refundable) at the completion of the due diligence period. The deposit will be credited toward the purchase price at closing.
2. Please provide your proposed funding structure and source(s) of funds to demonstrate ability to close and redevelop the Property. Please provide any letters of commitment by banks and/or investors.



VI. Proposal Submission Information

Hard copy responses must be provided in two separate submissions: a technical proposal in one submission and a price proposal in another submission. Hard copy proposals shall be received no later than 11 a.m. EST on Friday, September 30th, 2016, and the proposals shall be clearly labeled. Do not include price information in the technical proposal.

Please provide fourteen (14) hard copies each of the technical and price proposal to:

Howard County Government
Attn: Holger Serrano, P.E.
Department of Public Works (DPW)
3430 Courthouse Drive
Ellicott City, MD 21043

If you have any questions or comments regarding the RFP submission and/or process, please email Patricia Restrepo of Chartwell Enterprises at patricia.restrepo@chartwellenterprises.com.

This document is not an offer to enter into an agreement with any party. No agreements or understandings between Howard County and the selected developer shall be binding until after Howard County has authorized binding documents that will be executed by all appropriate parties. Howard County reserves the right to reject any and all proposals at any time in its sole discretion and to waive what it determines to be any immaterial defect and irregularity in proposals. Should you feel it is necessary in preparing your response to contact individuals at Howard County, please request this contact through Chartwell Enterprises prior to taking action.

Howard County will not reimburse any party for costs incurred in responding to the RFP, including the development of architectural or planning documents or drawings. Howard County will also not pay any commissions to brokers representing development teams.

The information in the RFP is deemed to be accurate; however, it is the responsibility of the respondent to confirm all relevant information and facts provided in the RFP.



Appendix A – Purchase and Sale Agreement (P&SA)

PURCHASE AND SALE AGREEMENT
for
9770 WASHINGTON BOULEVARD
and
9790 WASHINGTON BOULEVARD, LAUREL, MARYLAND
by and between

HOWARD COUNTY, MARYLAND

a body corporate and politic

("Seller")

and

("Purchaser")

Dated: _____, 201__

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this _____ day of _____, 2016, (the "Effective Date"), by and between **HOWARD COUNTY, MARYLAND** (the "Seller"), a body corporate and politic, and _____ (the "Purchaser"), a _____.

Recitals

WHEREAS, pursuant to Howard County Council Resolution Number 69-2015, as amended, Seller issued a Request for Proposal for the Redevelopment of 9770 and 9790 Washington Boulevard, Laurel, Maryland (the "Property"), dated _____, 2016 (the "RFP").

WHEREAS, Purchaser, in response to the RFP, submitted an offer to purchase and re-develop the Property titled " _____ " and dated _____, 2016, (the "Proposal"), which Proposal was selected.

WHEREAS, this Agreement sets forth the terms and conditions of the sale, purchase, and re-development of the Property pursuant to the RFP and the Proposal.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. In addition to other words and terms defined in this Agreement, the following words and terms shall have the following meanings unless otherwise indicated:

"Closing" shall mean the consummation of the purchase and sale of the Property in accordance with the terms of this Agreement.

"Council" shall mean the Howard County Council of Howard County, Maryland.

"County" shall mean Howard County, Maryland.

"Deposit" shall mean the Deposit as defined in Section 3(a) below, including without limitation all interest accrued thereon.

"Effective Date" shall mean the date set forth on the first page of this Agreement, which shall be the date upon which both parties have fully executed this Agreement.

"Escrow Agent" and "Title Company" shall mean _____, with an address at _____.

"Improvements" shall mean collectively, all of the buildings and structures now or at Closing erected or situated upon the property described in Exhibit A.

"Property" shall mean (a) the real property described in Exhibit A, together with all of the tenements, hereditaments, privileges and appurtenances subject to the public rights-of-way and public utility easements on, over, and through the Property; and (b) the Improvements.

2. **Purchase and Sale of the Property.** The Purchaser has been selected to purchase and re-develop the Property based on its Proposal. Purchaser shall comply with the terms and conditions of the RFP and the Proposal when developing the Property, including without limitation complying with and incorporating into the development of the Property all of the development criteria (the "Development Criteria") set forth in Exhibit B, attached hereto and made a part hereof. If there is a conflict between the terms, covenants and conditions of this Agreement and those of the RFP and/or Proposal, then the terms, covenants and conditions of this Agreement shall control. The Purchaser's obligation to develop the Property in accordance with the Development Criteria shall survive the closing on the sale of the Property.

3. **Purchase Price for the Property.** The Purchase Price for the Property is _____ (_____), payable to Seller by Purchaser in the following manner:

(a) **Deposit.** Within five (5) business days after the Effective Date, Purchaser shall deliver to Escrow Agent an earnest money deposit in the amount of _____ Dollars (\$_____) (the "Deposit"). The Deposit shall be delivered to Escrow Agent by certified check or wire transfer of immediately available funds and deposited into an interest bearing account of a federally insured bank. The Deposit shall be credited against the Purchase Price and non-refundable, except as provided herein. At Closing, the Deposit shall be delivered by the Escrow Agent to Seller. In the event Closing does not occur on or prior to the Closing Date, the Deposit shall be disbursed in accordance with the terms of this Agreement.

(b) **Balance of Purchase Price.** The balance of the Purchase Price shall be paid in full by Purchaser to Seller at the Closing by wire transfer of immediately available federal funds, subject to the adjustments provided for herein.

(c) **Accrued Interest.** Interest earned on the Deposit shall be applied to the Purchase Price if Closing occurs, or shall be delivered with the Deposit to the party entitled to same if Closing does not occur hereunder.

4. **Due Diligence Period.** From the Effective Date until 5:00 p.m. (local time at the Property) on the date that is seventy (70) days thereafter, (the "Due Diligence Period"), Purchaser shall have the right to inspect the Property upon twenty-four (24) hours prior notice to Seller. Notwithstanding the foregoing, Purchaser shall notify Seller of Purchaser's plans to conduct any boring, drilling or other invasive tests or procedures on or about the Property at least two (2) business days prior to Purchaser's entry onto the Property and provide details of the process to be followed. Purchaser shall not perform any boring, drilling or other invasive tests or procedures without the described prior written notice to Seller and without an agent of Seller being present to supervise all such inspection and testing. In connection with any boring, drilling, or other invasive tests, Purchaser agrees (i) to promptly restore, at Purchaser's sole cost and expense, the Property to its condition prior to any such inspections or tests, and (ii) to provide Seller with evidence of insurance acceptable to Seller to cover possible damage to the Property.

At any time prior to 5:00 p.m. (local time at the Property) on the last day of the Due Diligence Period, Purchaser, in its sole and absolute discretion, may elect to terminate this Agreement for any reason by written notice to Seller, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further liability to the other hereunder (other than rights and obligations arising under this Agreement which by their terms are to survive such termination).

(a) **Title.** Within forty five (45) days from the Effective Date, (i) Purchaser shall obtain a current preliminary title report (the "Title Commitment") with respect to the Property prepared by the Title Company, and (ii) Purchaser shall deliver a copy to Seller and notify Seller in writing of any exceptions to title or survey matters appearing in the Title Commitment or a survey, if prepared, which Purchaser finds unacceptable (the "Title Notice"). Seller may, but shall not be obligated to, attempt to cure any objections to title or survey matters, provided, however, that Seller shall notify Purchaser in writing within seven (7) days following Seller's receipt of the Title Notice as to which of Purchaser's objections Seller has elected to cure. In the event Seller fails to notify Purchaser within such seven (7) day period, Seller shall be deemed to have elected not to cure or attempt to cure any of Purchaser's title or survey objections contained in the Title Notice. In the event Seller notifies Purchaser that Seller is unable or unwilling to cure any such objections or fails to notify Purchaser of Seller's election to cure, Purchaser shall within seven (7) days following Seller's notice (or the tenth (10th) day following delivery of the Title Notice to Seller if Seller has not responded) either (i) terminate this Agreement by written notice to Seller, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further obligations hereunder (other than rights and obligations arising under this Agreement which by their terms are to survive such termination), or (ii) waive any such objections and the transaction contemplated hereby shall be consummated as provided herein, without any reduction in the Purchase Price. In the event Seller notifies Purchaser that it will cure any of Purchaser's title objections, Seller shall be entitled to a reasonable postponement of the Closing during which Seller may attempt to cure such objections. Notwithstanding anything to the contrary contained herein, Purchaser's right to terminate this Agreement pursuant to this Section 4(a) shall expressly terminate upon the expiration of the Due Diligence Period, whereupon among other things, Purchaser's approval of the Title Commitment and any survey shall become absolute and the Deposit shall become non-refundable, except as otherwise provided in this Agreement.

(b) **Indemnity.** Purchaser shall promptly and at Purchaser's expense restore the Property and repair any damage resulting from Purchaser's entry on to the Property to the condition the Property was in prior to such entry. Purchaser will indemnify, defend and hold Seller harmless from and against all loss, cost, damage, claim and liability which Seller sustains arising out of Purchaser's or Purchaser's agents', employees' or contractors' entry upon the Property and conducting Purchaser's due diligence. Purchaser's obligations set forth in this Section 4(b) shall survive the Closing or earlier termination of this Agreement.

5. Purchase "As Is"/No Seller Representations or Warranties.

(a) Purchaser acknowledges and confirms that Purchaser is acquiring the Property in its "AS IS" condition, WITH ALL FAULTS AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, and further acknowledges and confirms that Seller explicitly disclaims any representations and warranties relating to the Property and that neither Seller nor any officials, agents, representatives, or employees of Seller have made any representations or warranties, direct or indirect, oral or written, express or implied, to Purchaser or any agents, representatives, or employees of Purchaser with respect to the condition of the Property, its fitness for any particular purpose, or its compliance with laws. Further, Purchaser is not aware of and is not relying upon any representation or warranty either in its decisions to enter into this Agreement or to purchase the Property. Purchaser acknowledges that the Due Diligence Period, will afford Purchaser the opportunity to make such inspections (or have such inspections made by consultants) of the Property, the title to the Property, and all factors relevant to the Property's redevelopment and use, including,

without limitation, the condition of the physical and environmental condition of the Property. Purchaser represents that it is knowledgeable in real estate matters and that upon completing of the inspections contemplated or permitted by this Agreement, Purchaser will have made all of the investigations and inspections Purchaser deems necessary in connection with its purchase and development of the Property, including but not limited to those pertaining to the physical and environmental condition of the Property.

(b) Purchaser acknowledges and confirms that it is Purchaser's sole responsibility to undertake a thorough independent evaluation of the Property. Purchaser acknowledges that Purchaser is solely responsible for completing its own due diligence to determine the condition of the Property and the feasibility of developing the Property pursuant to the Proposal and the Development Criteria and that Seller has not made any representations or warranties regarding the same.

(c) Purchaser acknowledges and confirms that (i) Purchaser shall be fully responsible, at its sole cost and expense, to comply with and obtain all permits, approvals and/or waivers and make all submissions required under federal, state and local laws, codes, regulations, ordinances, orders and requirements and the design, policy, and procedural manuals of Howard County, Maryland (collectively the "Legal Requirements") to develop the Property in accordance with the Proposal and the Development Criteria, and (ii) Seller has made no guarantees, promises or representations that any permits, approvals and/or waivers will be made or submissions accepted by the United States Government, the State of Maryland, and/or Howard County Government. Purchaser shall pursue such governmental approvals and/or waivers and comply with the Legal Requirements with all due diligence and dispatch, good faith and best efforts to obtain the same.

6. Representations and Warranties.

(a) Seller's Representations and Warranties. Notwithstanding that Purchaser is purchasing the Property in its "**AS IS, WHERE IS CONDITION**", Seller makes the following representations and warranties solely for the purpose of expediting Purchaser's completion of its due diligence review.

(i) Seller is a body corporate and politic of the State of Maryland, and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly and validly authorized by Council Resolution No. 69-2015, as amended, and approved on October 5, 2015. When signed by the County Executive, and delivered by Seller, and this Agreement constitutes the valid and binding obligation of Seller.

(ii) Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code ("FIRPTA").

(b) Purchaser's Representations And Warranties. Purchaser represents and warrants to Seller that the following matters are true as of the Effective Date and shall be true and correct as of the Closing Date:

(i) Purchaser is a _____, duly organized, validly existing and in good standing under the laws of the State of Maryland.

(ii) Purchaser has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by the signatory hereto, is the binding obligation of the Purchaser and duly authorized as required by Purchaser's organizational documents.

(iii) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Purchaser do not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of Purchaser by reason of the terms of any contract, mortgage, lien, lease agreement, indenture, instrument or judgment to which Purchaser is a party or which is or purports to be binding upon Purchaser or which otherwise affects Purchaser, which will not be discharged, assumed or released at Closing.

(iv) There is no claim, action, suit or proceeding pending, or, to the knowledge of Purchaser, threatened, before any court, arbitrator or administrative or governmental body which could adversely affect any action taken or to be taken by Purchaser under this Agreement, or which could adversely affect the business, operations, financial condition or properties of Purchaser.

(v) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Purchaser.

Purchaser shall inform Seller promptly in writing if it discovers that any representation or warranty made to Seller is inaccurate in any material respect. If, prior to Closing, Seller discovers that any representation or warranty of Purchaser is inaccurate in any material respect, Seller may consummate the sale of the Property subject thereto, or Seller may terminate this Agreement upon written notice within five (5) business days after Seller learns of such inaccuracy.

All representations and warranties of Purchaser made in this Agreement shall survive the Closing and the delivery of the deed to Purchaser, and Purchaser shall sign a certification of representations and warranties on the Closing Date certifying that all representations and warranties made by Purchaser in this Agreement are true and accurate as of the Closing Date.

7. Conditions Precedent to Closing. Seller's obligation to complete Closing shall be conditioned upon the satisfaction of each of the following conditions precedent, the failure of any which shall entitle Seller either to waive such condition or to terminate this Agreement and retain the Deposit, unless otherwise provided for herein, without any further obligations, liabilities or duties under the Agreement:

(a) Each of the representations and warranties made by Purchaser in this Agreement and in the Proposal shall be true and accurate as of Closing.

(b) Purchaser shall revise its "Redevelopment Timetable" included in the Proposal to show current dates acceptable to the Seller for the redevelopment of the Property.

8. Closing. The Closing shall take place on the date that is twenty-one (21) days after the expiration of the Due Diligence Period (the "Closing Date"). Time is of the essence with respect to closing no later than the Closing Date. The Closing shall occur at such time and location as is mutually acceptable to Purchaser and Seller, or via escrow if elected by Purchaser or Seller. Notwithstanding any other provision of this Agreement, in the event that Closing has not occurred by November 30, 2018 due to reasons not caused by Seller's or Purchaser's breach hereof, then either party may, upon written notice to the other, terminate this Agreement, whereupon, the Deposit shall be returned to Purchaser and this Agreement shall be null, void and of no effect.

9. Prorations and Allocation of Expenses.

(a) **Prorations.** All (i) real property taxes or payments in lieu thereof, ad valorem and personal property taxes, and all other state, county and municipal taxes, charges and assessments (including Metropolitan District, Sanitary Commission or other such benefit charges, special or otherwise), assessed against the Property (collectively the "Taxes") (ii) utility charges, and (iii) all operating costs that Seller has actually paid or pre-paid shall be prorated between Seller and Purchaser as of the date of Closing. Purchaser acknowledges that the Taxes for the balance of the fiscal year shall be collected from the Purchaser at Closing as estimated by the Seller as of the date of Closing.

(b) **Purchaser's Costs and Expenses.** Purchaser shall pay the following costs and expenses: (i) the escrow fee, if any, which may be charged by Escrow Agent, (ii) the fee for the title commitment and the premium for the owner's title policy, as well as any endorsements to such policy, (iii) the fees for recording the Deed, (iv) survey costs, (v) all transfer tax, sales tax, documentary tax, stamp tax or recordation tax or similar tax which is payable by reason of the transfer of the Property, and (vi) all other due diligence costs of Purchaser.

(c) **Other Costs and Expenses.** All other costs and expenses incidental to this transaction and the closing thereof not specifically described above shall be paid by the party incurring same.

10. Remedies Upon Default. In the event Purchaser breaches or defaults under any of the terms of this Agreement prior to Closing, the sole and exclusive remedy of Seller shall be to terminate this Agreement and receive from Escrow Agent the full amount of the Deposit as liquidated damages and Purchaser shall have no rights therein. Purchaser and Seller acknowledge that the damages to Seller resulting from Purchaser's breach would be difficult, if not impossible, to ascertain with any accuracy, and that the liquidated damage amount set forth in this Section represents both parties' efforts to approximate such potential damages. Upon termination neither party shall have any further rights or obligations hereunder (except for any rights and obligations arising under this Agreement which by their terms survive such termination).

In the event Seller fails to close in accordance with the terms of this Agreement, Purchaser as its sole and exclusive remedy, waiving all other remedies at law or in equity, shall be entitled to terminate this Agreement, upon which termination neither party shall have any further rights or obligations hereunder except that Purchaser shall receive a refund of the Deposit and except for any other rights and obligations arising under this Agreement which by their terms survive such termination.

11. Risk of Loss. Risk of loss to the Property or any part thereof from damage or destruction by fire or other casualty shall remain upon Seller until the Closing. If, between the date hereof and the Closing, any portion of the Property shall be substantially damaged or destroyed by fire or other casualty (i) Purchaser or Seller shall have the option, exercisable by notice to the other given on or before the tenth (10th) day following its receipt of notice of such casualty to terminate this Agreement, whereupon Seller shall promptly refund the Deposit to Purchaser and upon such refund this Agreement shall terminate and neither party shall have any further liability to the other hereunder (except for any rights and obligations arising under this Agreement which by their terms survive such termination), or (ii) Purchaser may elect to proceed with this Agreement and pay the full Purchase Price.

12. Contingencies. The Purchaser's obligation to consummate Closing shall be conditioned upon the satisfaction of each of the following conditions precedent, and the failure of any to be satisfied shall entitle Purchaser either to waive such condition or to terminate this Agreement and be refunded the Deposit without any further obligations, liabilities or duties under the Agreement.

(a) **Representations.** Each of the Seller's representations and warranties in this Agreement shall be true and accurate as of Closing.

(b) **Title.** Good and marketable fee simple title to the Property shall be vested in the Seller, free and clear of any mortgages, liens, encumbrances, assessments, easements, leases, and taxes, except for the Permitted Exceptions.

(c) **Possession.** The Seller shall tender delivery of full possession of the Property to the Purchaser at the Closing free of all tenancies, leases and occupancy agreements, except for the License Agreement.

(d) **Condition of Property.** The Property shall be in the same condition at the Closing as it is on the date of this Agreement, unless otherwise agreed to in writing by the parties.

13. Miscellaneous Provisions.

(a) **Brokers.** Purchaser hereby represents to Seller that Purchaser has not entered into any brokerage agreement obligating Purchaser to pay any commission in connection with the purchase and sale of the Property. Purchaser shall defend, indemnify, and hold Seller harmless against any claims of any person or entity involving a breach by the Purchaser of the representation contained in this Section 13(a). The indemnification obligation set forth herein shall survive delivery of the Deed and Closing hereunder or the earlier termination of this Agreement. Seller represents that it has retained Chartwell Enterprises as its broker concerning this transaction and that Chartwell Enterprises is entitled to a brokerage fee outlined under a separate contract.

(b) **Assignment/Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser. This Agreement shall not be assigned by the Purchaser.

(c) **Captions.** The several headings and captions of the Sections and subsections used herein are for convenience of reference only and shall in no way be deemed to limit, define or restrict the substantive provisions of this Agreement.

(d) **Entire Agreement; Amendment; Waiver; and Recording.** This Agreement constitutes the entire agreement of Purchaser and Seller with respect to the

purchase and sale of the Property, and supersedes any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both Seller and Purchaser. This Agreement shall not be recorded by any party and, if recorded by any party, the other party hereto may immediately terminate all of its obligations under this Agreement, and the party which recorded this Agreement shall pay the other party's reasonable costs and attorneys' fees incurred in removing this Agreement of record, provided that the Seller's obligation to pay such costs shall be subject to the availability of appropriations. No provision of this Agreement may be waived except by a waiver in writing signed by the party against which the waiver is asserted.

(e) **Time of Essence.** Time is of the essence with respect to the performance of all of the terms, conditions and covenants of this Agreement.

(f) **Cooperation.** Purchaser and Seller shall cooperate fully and in good faith with each other to carry out effectively the purchase and sale of the Property in accordance herewith and the satisfaction and compliance with all of the conditions and requirements set forth herein, and shall execute such instruments and perform such acts as may be reasonably requested by either party hereto.

(g) **Governing Law and Venue.** This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the domestic laws of the State of Maryland, without reference to any conflict of law provisions. Purchaser and Seller agree that the Circuit Court for Howard County, Maryland or the Maryland District Court for Howard County, Maryland shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by applicable law. Each party waives to the fullest extent permitted by applicable law any objection it may have to the laying of venue of any action or proceeding under this Agreement in any courts described in this Section 13(g).

(h) **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Any counterpart transmitted via facsimile or email in portable document format (pdf) shall be treated as originals for all purposes as to the parties so transmitting.

(i) **Notices and Disclosures.** All notices and disclosures under this Agreement shall be in writing and shall be deemed to have been properly given if sent by (i) overnight courier or hand delivered, (ii) United States registered or certified mail, postage prepaid, or (iii) facsimile or e-mail transmission, each addressed to the party for whom intended at the address set forth below (as such address may be changed from time to time in writing), provided the same is promptly followed by a copy of such notice sent by method (i) or (ii) above (unless the recipient has acknowledged receipt of the transmission). All notices and disclosures hereunder sent by overnight courier shall be deemed effective when sent and there is a verification of receipt, all notices and disclosures hereunder delivered by hand shall be deemed effective when delivered and there is verification of receipt, all notices and disclosures hereunder sent by registered or certified mail shall be deemed effective when duly deposited in any post office or branch post office maintained by the United States government and there is verification of receipt, and all notices and disclosures hereunder sent by facsimile or e-mail transmission shall be deemed effective as of the date of the facsimile or e-mail transmission provided that an original of such facsimile or e-mail also is sent to the intended addressee by means described in clauses (i) or (ii) above, unless the

recipient has acknowledged receipt of the transmission). Unless changed as provided for herein, the addresses for notices given pursuant to this Agreement shall be as follows:

To Seller:

James M. Irvin, Director
Department of Public Works
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043
E-mail: jirvin@howardcountymd.gov
Fax: 410-313-3408
With a copy to:

Howard County, Maryland
County Solicitor
3450 Court House Drive
Ellicott City, Maryland, 21043
Fax: (410) 313-3292

To Purchaser:

E-Mail: _____
Fax: _____

To Escrow Agent:

(j) **Severability.** Each covenant, agreement, term or condition of this Agreement shall be construed so as to be valid and enforceable to the fullest extent permitted by law. If any portion of this Agreement or the application thereof in any circumstance or to any person shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such portion to circumstances or persons other than those as to which it is invalid or unenforceable shall be and remain in full force and effect. If fulfillment of any provision of this Agreement, or performance of any transaction related hereto, at the time such fulfillment or performance shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity; and if any non-material clause or provision contained in this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect. In the event that any material provision (or any material part of any provision) contained in this Agreement shall for any reason be held to be invalid, unlawful or unenforceable in any respect, Seller and Purchaser shall amend this Agreement so as to render every provision hereby fully valid, lawful and enforceable in all respects, and so as to result in a revised contract with equivalent economic and legal substance as if no provision or portion of this Agreement had been declared invalid, unlawful or unenforceable.

14. Escrow Agent. By its execution hereof, the Escrow Agent shall accept the Deposit contemplated herein. The Deposit shall be held by the Escrow Agent, pursuant to the terms hereinafter set forth. Escrow Agent shall not commingle the Deposit with any funds of the Escrow Agent or others; and shall promptly advise Seller and Purchaser that the required account has been established, and of the bank name and account number.

(a) **Deposit.** Escrow Agent shall deposit the Deposit in an interest-bearing account at a nationally recognized commercial bank that is federally insured.

(b) **Disbursement.** Escrow Agent shall deliver the Deposit to Seller or to Purchaser, as the case may be, as follows:

(i) If the Closing shall occur pursuant to this Agreement, the Deposit shall be delivered to Seller on the Closing Date, as a credit reflected on the settlement statement.

(ii) The Deposit shall be delivered to Seller upon receipt of written demand therefor ("Seller's Demand for Deposit") stating that Purchaser has defaulted in the performance of Purchaser's obligation to close under this Agreement and the facts and circumstances underlying such default; provided, however, that Escrow Agent shall not honor such demand until more than five (5) business days after Escrow Agent shall have sent a copy of such demand to Purchaser in accordance with the provisions of Section 14(i) of this Agreement nor thereafter, if Escrow Agent shall have received a "Notice of Objection" (as hereinafter defined) from Purchaser within such five (5) business day period. Notwithstanding the foregoing, Escrow Agent shall refund the Deposit to Purchaser without notice to Seller or compliance with the procedures described in this Section if Purchaser terminates this Agreement, for any reason, prior to the Due Diligence Date.

(iii) The Deposit shall be delivered to Purchaser upon receipt of written demand therefor ("Purchaser's Demand for Deposit") stating that this Agreement has been terminated in accordance with this Agreement, or that Seller has failed to close in accordance with the terms of this Agreement and the facts and circumstances underlying the same; provided, however, that Escrow Agent shall not honor such demand until more than five (5) business days after Escrow Agent shall have sent a copy of such demand to Seller in accordance with the provisions of this Agreement nor thereafter, if Escrow Agent shall have received a Notice of Objection from Seller within such five (5) business day period.

(c) **Notice of Objection.** Within two (2) business days of the receipt by Escrow Agent of a Seller's Demand for Deposit or a Purchaser's Demand for Deposit Escrow Agent shall send a copy thereof to the other party in accordance with Section 13(i) of this Agreement. The other party shall have the right to object to the delivery of the Deposit by sending written notice (the "Notice of Objection") of such objection to Escrow Agent in accordance with Section 13(i) of this Agreement, which Notice of Objection shall be deemed null and void and ineffective if such Notice of Objection is not received by Escrow Agent within the time periods prescribed in this Agreement. Such notice shall set forth the basis

for objecting to the delivery of the Deposit. Upon receipt of a Notice of Objection, Escrow Agent shall promptly send a copy thereof to the party who sent the written demand.

(d) **Escrow Agent Actions.** In the event Escrow Agent shall have received the Notice of Objection within the time periods prescribed in this Section 15 of this Agreement, Escrow Agent shall continue to hold the Deposit unless (i) Escrow Agent receives joint written notice from Seller and Purchaser directing the disbursement of the Deposit in which case Escrow Agent shall then disburse the Deposit in accordance with such joint direction, (ii) in the event of litigation between Seller and Purchaser, Escrow Agent elects to deliver the Deposit to the clerk of the court in which said litigation is pending, (iii) there is an order of court or arbitrator directing Escrow Agent as to the party to whom the Deposit is payable. The Escrow Agent may take such affirmative steps as Escrow Agent may elect, at Escrow Agent's option, in order to terminate Escrow Agent's duties including, but not limited to, depositing the Deposit in a court of appropriate jurisdiction in the State of Maryland, and bringing an action for interpleader, the costs thereof to be borne by whichever of Seller or Purchaser is the losing party.

(e) **Liability.** Escrow Agent shall have no duties or responsibilities except those set forth herein, which the parties hereto agree are ministerial in nature. Seller and Purchaser acknowledge that Escrow Agent is serving without compensation, solely as an accommodation to the parties hereto, and except for the gross negligence or willful misconduct or willful misappropriation of or by the Escrow Agent, Escrow Agent shall have no liability of any kind whatsoever arising out of or in connection with its activity as Escrow Agent. Seller and Purchaser jointly and severally agree to and do hereby indemnify and hold harmless Escrow Agent from all suits, actions, loss, costs, claims, damages, liabilities, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Liabilities") which may be incurred by reason of its acting as Escrow Agent. In no event shall the Escrow Agent be liable for any lost profits or for any incidental, special, consequential or punitive damages whether or not the Escrow Agent knew of the possibility or likelihood of such damages. Escrow Agent's substantial compliance with its standard procedures for provision of the services required pursuant to this Agreement shall be deemed to constitute the exercise of ordinary and due care. Purchaser and Seller hereby agree jointly and severally to indemnify and hold harmless the Escrow Agent, and its successors and assigns, from and against any and all Liabilities asserted against them in connection with this Agreement, other than those Liabilities caused by their gross negligence or willful misconduct of the Escrow Agent. Escrow Agent may charge against the Deposit any amounts owed to it under the foregoing indemnity. Seller's aforesaid indemnification obligation shall be subject to the Maryland Local Government Tort Claims Act as set forth in Section 5-301 et seq. of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as amended from time to time, other applicable law, and the appropriation of funds. As a condition of Seller's agreement to indemnify, Escrow Agent shall notify Seller of any suits, claims or potential claims within thirty (30) days of receiving notice of such suits, claims or potential claims. The agreement to indemnify is not to be deemed a waiver of any immunity or defense that may exist in any action against Seller or its officers, agents, volunteers and employees.

In its capacity as Escrow Agent, Escrow Agent shall not be responsible for the genuineness or validity of any instrument, document or item deposited with it, and shall have no responsibility other than to faithfully follow the instructions contained herein. The parties hereto agree that Escrow Agent is fully protected in acting in accordance with any written instrument given to it hereunder by any of the parties hereto believed by Escrow Agent to have been signed by the proper person. Escrow Agent may assume that any person purporting to give any notice hereunder has been duly authorized to do so. Escrow Agent shall have no obligation to review or confirm that actions taken pursuant to such notice in accordance with this Agreement comply with any other agreement or document.

Upon making delivery of the Deposit in the manner herein provided, Escrow Agent shall have no further liability hereunder.

Escrow Agent shall either execute this Agreement or indicate in writing that it has accepted the role of Escrow Agent pursuant to this Agreement which in either case will confirm that Escrow Agent is holding and will hold the Deposit in escrow, pursuant to the provisions of this Agreement.

15. OFAC Representation. Purchaser and Seller hereby represent and warrant to the other (which representation and warranty shall expressly survive any assignment of this Agreement and the Closing) that: (a) neither the party nor any designee or assignee of the party is, nor will any of them become, prior to any Closing contemplated hereunder, an entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and none of them has engaged in any dealings or transactions or be otherwise associated with such persons or entities; (b) none of the funds or other assets of the party constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in the party (whether directly or indirectly), is prohibited by law (“Embargoed Person”); (c) no Embargoed Person has any interest of any nature whatsoever in the party or its successors or assigns, as applicable, with the result that the investment in the party (whether directly or indirectly), is prohibited by law; and (d) none of the funds of the party have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in the party (whether directly or indirectly), is prohibited by law. Purchaser and any assignee or designee of Purchaser each hereby agree to indemnify, defend and hold harmless Seller with respect to any loss, claim or expense incurred in the event any representation or warranty set forth in this Section 15 is or prior to Closing becomes untrue.

16. Certification. Purchaser certifies that the officer of the corporation who is executing this Agreement has read and understands Exhibit “C”, entitled Howard County Charter and Code References to Ethics, which contains the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code dealing with conflicts of interest.

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement on the date first above written with the intent that it be a sealed instrument.

ATTEST:

**SELLER:
HOWARD COUNTY, MARYLAND**

Lonnie R. Robbins
Chief Administrative Officer

BY: _____ (SEAL)
Allan H. Kittleman
County Executive
Date: _____

APPROVED:

James M. Irvin, Director
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Stanley J. Milesky, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY
this ____ day of _____, 2016.

Gary W. Kuc
County Solicitor

Reviewing Attorney:

Lisa S. O'Brien,
Sr. Assistant County Solicitor

(Signatures continue on next page.)

PURCHASER:
WITNESS/ATTEST:

By: _____ (SEAL)

(Signatures continue on the next page.)

The undersigned joins in this Agreement as Escrow Agent for the purpose of agreeing to its obligations hereunder as Escrow Agent.

ESCROW AGENT

By: _____ (SEAL)

PURCHASE AND SALE AGREEMENT

EXHIBIT "A"

DESCRIPTION OF THE REAL PROPERTY

PURCHASE AND SALE AGREEMENT

EXHIBIT "B"

REDEVELOPMENT CRITERIA

PURCHASE AND SALE AGREEMENT

EXHIBIT "C"

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by

resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Howard County Code

Section 22.204. Prohibited Conduct and Interests.

(a) Participation Prohibitions.

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

- (i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.
- (ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:
 - a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;
 - b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;
 - c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;
 - d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;
 - e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial

interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

- f. A business entity that:
 - 1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and
 - 2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

- (i) The disqualification leaves a body with less than a quorum capable of acting;
- (ii) The disqualified official or employee is required by law to act; or
- (iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) Employment and Financial Interest Restrictions.

(1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

- (i) Be employed by or have a financial interest in any entity:
 - a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or
 - b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

- (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

- (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
- (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
- (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or
- (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) **Post-Employment Limitations and Restrictions.**

(1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) **Contingent Compensation.** Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

(e) **Use of Prestige of Office.**

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) **Solicitation and Acceptance of Gifts.**

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

- (i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;
- (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
- (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
- (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) (i) Subsection (4)(ii) does not apply to a gift:

- a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;
- b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
- c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

- a. Meals and beverages consumed in the presence of the donor or sponsoring entity;
- b. Ceremonial gifts or awards that have insignificant monetary value;
- c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;
- d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;
- e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;
- f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;
- g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee;
or
- h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.

(g) **Disclosure of Confidential Information.** Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) **Participation in Procurement.**

(1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.