

RESOLUTION NO. 2849

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND, FOR THE PURPOSE OF SURPLUSING THE CITY-OWNED PROPERTY KNOWN AS THE SALISBURY GREEN AND FOR THE PURPOSE OF ACCEPTING THE SUBMISSION OF RFP 15-17 BID FROM R. MILLER PROPERTIES, LLC FOR THE REDEVELOPMENT OF THE SALISBURY GREEN.

WHEREAS, the Mayor and City Council have determined that there is unused City-owned property that should be surplus and redeveloped, and that there is a strong public need for increased infill development in the City; and

WHEREAS, the City of Salisbury hereby declares the Salisbury Green as surplus property; and

WHEREAS, the City of Salisbury, pursuant to SC 16-8 et seq. and Chapter 2.36 of the City Code, has the right to offer at public sale surplus property and make awards in the best interest of the City; and

WHEREAS, City-owned surplus or unused property should be developed, not only in consideration of the highest bid price but in consideration of the type of development proposed, and such development should require a commitment from the purchaser to develop such property in a manner which will raise the City's tax base and be in the best interest of the citizens of the City of Salisbury; and

WHEREAS, the City has determined that it is in the best interest of the citizens of the City to sell the City's surplus property known as the Salisbury Green; and

WHEREAS, the City of Salisbury advertised for proposals for the purchase of and redevelopment of the Salisbury Green three times from July 24, 2017 to July 28, 2017, and responses were due by September 7, 2017; and

WHEREAS, the City of Salisbury received two (2) proposals for the redevelopment purchase of the Salisbury Green on September 7, 2017 and is now selecting R. Miller Properties, LLC's proposal as the winning proposal; and

WHEREAS, the City of Salisbury has negotiated with R. Miller Properties, LLC to accept a portion of their original proposal dated September 6, 2017, the portion that is for the Salisbury Green only, for the redevelopment purchase of the Salisbury Green and is now selecting R. Miller Properties, LLC's proposal, only with respect to the Salisbury Green, as the winning proposal; and

WHEREAS, the City of Salisbury is in agreement to sell the Salisbury Green for Five Thousand Dollars (\$5,000) to R. Miller Properties, LLC following the negotiation and execution of a Disposition Contract with terms acceptable to the City on or before July 30, 2018, as finally approved by the City Solicitor.


NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Salisbury, in regular session on the 26 day of June 2018, that the proposal for the redevelopment of the Salisbury Green, submitted by R. Miller Properties, LLC dated September 6, 2017, for RFP 15-17 Bid Disposition and Development of Parking Lot 16 and Salisbury Green is selected as the winning proposal, only for the sale and development of the Salisbury Green, on the condition that the parties, on or before July 30, 2018, negotiate and execute a Disposition Contract, similar to the one attached herewith, with such terms and conditions as may be approved by the City Solicitor; the purchase price shall be Five Thousand Dollars (\$5,000).


BE IT FURTHER ENACTED AND RESOLVED that this Resolution does not create a Disposition Contract, that the award shall be conditional upon the successful execution of a Disposition Contract, and that the Mayor is hereby authorized to execute the said Disposition Contract.

AND BE IT FURTHER ENACTED AND RESOLVED that this Resolution will take effect from and after its passage.

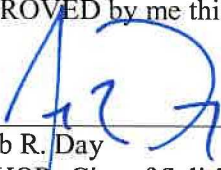
THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 25<sup>th</sup> day of June 2018 and is to become effective immediately upon adoption.

ATTEST:

  
\_\_\_\_\_  
Kimberly R. Nichols  
CITY CLERK

  
\_\_\_\_\_  
John R. Heath  
PRESIDENT, City Council

APPROVED by me this 26<sup>th</sup> day of JUNE, 2018.

  
\_\_\_\_\_  
Jacob R. Day  
MAYOR, City of Salisbury



City of  
**Salisbury**  
Jacob R. Day, Mayor

**To:** City Council  
**From:** Jennifer Miller  
Director of Procurement  
**Date:** June 25, 2018  
**Subject:** Salisbury Green and Lot 16 Land Disposition Contracts and Resolutions

Attached please find a Resolution that will allow the Mayor to execute a Disposition Contract with R. Miller Properties, LLC, for the purchase and redevelopment of the Salisbury Green, and another Resolution and Land Disposition Contract with Davis Simpson Holdings, LLC, for Parking Lot 16.

cc Jacob Day  
Andy Kitzrow  
Julia Glanz

## Disposition Contract

**THIS DISPOSITION CONTRACT** is made this 26 day of June, 2018, between the City of Salisbury, Maryland, ("Seller"), and R. Miller Properties, LLC, a Limited Liability Company located in Salisbury, Wicomico County, Maryland, ("Buyer").

The Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described property, situated in Salisbury, Wicomico County, State of Maryland:

A. A portion of the land, together with all appurtenances thereto belonging which are located at 206 E. Market Street, Salisbury, Maryland, being more particularly described as a portion of that lot or parcel of land designated and located at 206 E. Market Street, binding upon the southerly side of East Market Street and binding upon the northerly side of the East Prong of the Wicomico River, shown on Maryland tax map 0107 grid 0015, parcel 0901, and shown as Lot 3 on the Plat entitled "Resubdivision Lands of City of Salisbury, MD" dated June 23, 2017, also known as the Salisbury Green, an accurate legal description of which is to be provided to the Seller by the Buyer; the land shall be subdivided with the Riverwalk portion of the property to be retained by the Seller; the Land and the structure, together with all appliances and fixtures, are hereinafter collectively referred to as the "Property."

B. Buyer hereby agrees that Seller will reserve all appropriate easements for sidewalks and for installation and maintenance of utilities and roadways, including but not limited to fire hydrants and the corresponding water supply. In addition to the City's normal and customary easements, it is specifically noted that there shall be an easement for access to the Riverwalk. There shall also be an easement for access and maintenance of the existing stormwater infrastructure.

**1. PURCHASE PRICE AND METHOD OF PAYMENT:** The purchase price shall be FIVE THOUSAND DOLLARS - - - - - (\$ 5,000.00) of which ONE THOUSAND DOLLARS - - - - - (\$ 1,000.00) shall have been paid prior to the signing of this contract. The deposit shall be held in a non-interest bearing escrow account of the City with the deposit to be applied to the purchase price and closing costs at settlement, and any remaining deposit to be refunded to the Buyer after settlement.

**2. TO BE PAID IN THE FOLLOWING MANNER:**

Buyer shall pay unto Seller cash at the time of settlement.

**3. REPRESENTATIONS OF SELLER.**

The Seller makes the following representations and warranties to the Buyer:

A. The Seller is the fee simple owner of the property described above, the outlines of which are to be formally established at the expense of Buyer who will prepare a survey, at its expense, to be used in the preparation of the deed from Seller to Buyer.

B. Seller hereby certifies to Buyer that there is no tenant with any right to possession of the property.

C. At Settlement, excepting this Contract and its attachments, there will be no contracts affecting the Property or any part thereof, no contracts or agreements for the management of the Property, or any part

thereof, and there will be no commission due or owing in connection with any lease or on account of any tenancy or sale of the Property.

D. The Seller has no knowledge of any actions, suits or proceedings which have been instituted or threatened against or affecting the Property, at law or in equity, before any federal, state or municipal governmental commission, board, bureau, agency or instrumentality which will materially adversely affect the value, occupancy, use or operation of the Property. The Seller will give the Buyer prompt written notice of any such action, suit or proceeding arising subsequent to the date hereof and prior to the Settlement Date to the extent Seller acquires knowledge thereof.

E. The Seller has duly and validly authorized, executed and delivered this Contract, and neither the execution and delivery of this Contract nor its performance are restricted by or violate any legal, contractual or other obligation of the Seller.

F. There are no assessments for public improvements against the Property which remain unpaid, including, without limitation, those for construction of sewer or water lines or mains, streets, sidewalks and/or curbs.

G. To the best of the Seller's knowledge, all improvements on the Property lie within the boundaries of the property, but not withstanding this assertion, Buyer purchases this Property, as is, and, prior to settlement will, at its expense, satisfy itself of the legal boundaries of the Property and will provide a proposed plat and proposed legal description to the City Solicitor prior to settlement for his approval.

#### **4. DELIVERY OF CERTAIN MATERIALS TO SELLER AND BUYER.**

Promptly, but in no event later than \_\_\_\_\_ (\_\_\_\_) days following the date hereof, Buyer shall deliver to the City Solicitor its proposed survey and legal description of the property to be conveyed pursuant to this Contract and said legal description must be acceptable to the City Solicitor.

#### **5. ADDITIONAL UNDERTAKINGS.**

A. Seller shall give to the Buyer and its agents, engineers, and other representatives full access to the Property during normal business hours, upon reasonable notice, during the period prior to the Settlement Date. During such period, the Seller shall furnish to Buyer all information concerning the Property which the Buyer may reasonably request. Buyer may, at its sole expense, make such engineering and other studies of the Property prior to the Settlement Date as it may deem necessary.

B. The Seller agrees that, from the date of this Contract to the Settlement Date, it will:

(i) Operate the Property only in the ordinary course and usual manner and that it will not enter into any new lease or enter into any agreement that will encumber the Property.

(ii) Not become a party to any service contract or similar agreement with respect to or affecting the Property without the prior written consent of the Buyer.

(iii) Maintain, at its expense, all existing fire and extended coverage policies covering the Property. The herein described Property is to be held at the risk of Seller until legal title has passed. Buyer's remedy in the event of loss is limited to return of the deposit.

C. All utilities shall be adjusted and apportioned as of the Settlement Date.

D. All public or governmental charges or assessments against the premises, which are or may be payable on an annual basis (including all assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the date hereof, or subsequent thereto, shall be adjusted and apportioned as of the Settlement Date and shall be assumed and paid thereafter by the Buyer, whether assessments have been levied or not as of the Settlement Date.

E. The cost of all State and local recordation and transfer taxes shall be paid by the Buyer.

**6. BUYER PURCHASES THE PROPERTY "AS IS."**

A. The obligation of the Buyer to purchase the Property pursuant to the provisions of this Contract is not contingent upon the condition of the Property or any inspection of the property which has or will be conducted by the Buyer prior to the Settlement Date. During the bid process, Buyer has conducted a thorough inspection of all aspects, and potential hazards present on the Property and agrees to accept the Property in its current condition. Seller has made no warranties or representations to Buyer regarding the condition of the said property and Buyer has not relied upon any statements regarding the condition of the Property made by Seller, its agents or contractors. Buyer agrees that the Seller shall not be obligated to perform any environmental assessment and Seller will not be held liable and assumes no responsibility for any remedies, costs or procedures.

B. Buyer may perform any reasonably required preconstruction engineering tests and environmental assessments. If these tests reveal any environmental or other defects, Buyer shall have no recourse against Seller and Buyer must proceed under the terms of this Disposition Contract.

C. Buyer shall indemnify, defend and save harmless Seller from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorneys' fees, in any way connected with any injury to any person or damage to any property or any loss to Seller occasioned in any way by hazardous substances originating on the property by the negligent or intentional activities of Buyer before, during or after Buyer's acquisition of the property.

D. This indemnity specifically includes the obligation of Buyer to perform any remedial or other activities required or ordered by any properly empowered government official, or otherwise reasonably necessary to avoid injury or liability to any person or to prevent the spread of pollution, originating thereon (hereinafter the "remedial work"). Buyer shall perform all such work in its own name in accordance with applicable law, as herein defined.

E. Whenever Seller has incurred costs described in this section, Buyer shall, within ten (10) days of receipt of notice thereof, reimburse Seller for all such expenses.

**7. SETTLEMENT ATTORNEY/TITLE COMPANY:**

Buyer shall have the option of selecting its own Title Insurance company or Title Attorney.

**8. SETTLEMENT:**

Settlement shall be held in Salisbury, Wicomico County, Maryland, on or before \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Settlement Date"). At Settlement, the Seller shall execute:



A. A deed to the Property, containing a covenant of special warranty and further assurances, which shall convey to Buyer a good and merchantable fee simple title to the Property subject, however, to zoning and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the subdivision in which the Property is located, and publically recorded easements for public utilities and any other easements which may be observed by inspection of the Property. The deed shall be recorded at the expense of the Buyer. In addition, the deed shall be subject to a right of reversion to be held by Seller, and enforceable by the Circuit Court for Wicomico County, Maryland, to return ownership of the entire Property to the City if the conditions required in Sections 12.A. and C. are not fulfilled and completed in a timely manner.

B. Any other documentation reasonably required to consummate the Buyer's purchase of the Property.

**9. POSSESSION:** Possession of the Property shall be given to Buyer at the time of Settlement.

A. At the time of settlement or occupancy (whichever occurs first) Seller will leave premises free and clear of trash and debris and broom clean. Seller makes no warranties with regard to the condition of the electrical, plumbing, heating, air conditioning and any other mechanical systems and related equipment included in this Contract, as Buyer has agreed to accept the property as is. SELLER WILL DELIVER THE PREMISES IN SUBSTANTIALLY THE SAME PHYSICAL CONDITION AS OF THE DATE OF RATIFICATION OF THIS CONTRACT AND BUYER, AT ITS EXPENSE, HAS THE PRIVILEGE OF INSPECTION OF ALL OF THE PREMISES PRIOR TO THE SETTLEMENT OR OCCUPANCY (WHICHEVER OCCURS FIRST) TO VERIFY THE SAME. Except as expressly contained herein no other warranties have been made by the Seller.

**10. A. BUYERS' REMEDIES.** In the event the Seller should be in default of any obligation on its part to be performed hereunder, or in the event any representation or warranty of Seller should be incorrect, or in the event any condition or obligation referred to in Contract shall not be satisfied within the time period specified, then, as its sole recourse pursuant to this Contract the Buyer shall be entitled to cancel this Contract and to receive the immediate return of the deposit referred to in this Contract. Notice of such default shall be given, in writing, by the injured party within thirty (30) days after the default has occurred. If the party defaulting on this contract fails or refuses to release monies, the holder of the deposit may deliver the deposit by way of interpleader to the appropriate Court to determine ownership thereof and have all costs and expenses in connection therewith deducted from said deposit.

**B. SELLER'S REMEDIES.** In the event the Buyer should be in default of any obligation to be performed hereunder prior to settlement, Seller shall be entitled to the deposit as liquidated damages. This limitation shall not, however, apply to the indemnity provision of the Contract or to any enforcement of the terms of this Contract, after settlement, for damages or injunctive relief, in any claim made by Seller.

**11. MISCELLANEOUS:**

A. The parties hereto agree that this entire contract shall be binding upon their respective heirs, Personal Representatives, administrators, successors and assigns. **ALSO THE PARTIES RECOGNIZE THAT THIS CONTRACT IS LEGALLY ENFORCEABLE AND ARE HEREBY ADVISED TO SEEK LEGAL ADVICE IF NOT UNDERSTOOD.**

B. This contract contains the entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions or representations not herein written.

## **12. USE OF THE PROPERTY:**

A. Completion. Buyer hereby covenants that it will complete the construction of improvements as set forth in the Scope of Development, attached hereto as Exhibit A, and operate the property as a Beer Garden and restaurant for no less than five (5) years following the issuance of the Certificate of Occupancy discussed in Section 12 (k) of this agreement. Any change of ownership or use, or change in the scope of development, prior to the expiration of the five (5) years described herein will require the written permission of the Mayor of Salisbury. Buyer's Contract to complete the Scope of Development shall survive Settlement. There shall, however, be no additional restrictions on the use of the Property other than those required by Federal, State or local law, or contained herein.

B. Deed Covenant. The deed from the Seller to Buyer for the property described in this contract will contain a covenant that the property will be developed as set forth in Exhibit A.

C. Construction Completion. Buyer hereby agrees, for itself, its successors and assigns and every successor in interest to the property, or any part thereof, that Buyer or its successors and assigns, shall have the proposed development completed no later than August 20, 2018. Buyer and Seller agree that completed as the construction is finished, occupancy permit(s) issued, liquor license(s) acquired and the premises is open for business to the public.

D. Covenants. The deed conveying the property shall expressly provide in an abbreviated format acceptable to the attorney for the Seller and the attorney for Buyer that the agreements and covenants provided for in the Scope of Development for the Property and this Disposition Contract shall be included therein as covenants running with the land and shall be binding upon the land for the benefit and in favor of the Seller. Failure complete construction and the requirements of the Scope of Development within the time for performance set forth herein shall result in a reversion of title to the Property back to Seller and Seller shall be entitled to both equitable enforcement of its reversion and damages, including attorney's fees for the enforcement of this Disposition Contract.

E. Speculation Forbidden. Buyer hereby represents and agrees that its purchase of the property and other agreements pursuant to the Scope of Development for the Property and this Disposition Contract are for the purpose of development of the property in accordance with the Scope of Development for the Property and not for speculation in landholding. Buyer covenants that the purpose of this purchase is not for speculation.

F. Non-Merger. Buyer agrees that none of the provisions of this Disposition Contract are intended to or shall be merged by reason of any deed transferring title to the property to Buyers or to any successor in interest.

G. Code Covenant. Buyer agrees that all final plans for structures, site improvements, landscaping, etc. shall be in accordance with the City Code and approved by all appropriate City and other government agencies.

H. Transfer. Buyer hereby agrees to retain the interest acquired in such property until construction is completed.

I. Completion. The term "completed construction" shall be defined for the purposes of this contract to mean when the construction is finished, occupancy permit(s) issued, liquor license(s) acquired, food service facility license acquired, and the premises is open for business to the public.



J. Default. Buyer agrees that if, subsequent to the conveyance of the property to Buyer, Buyer shall default in or violate the Disposition Contract, prior to completed construction as certified by the City, including, but not limited to, failure to construct the improvements, abandonment or substantial suspension of construction work, failure to complete the project in the period specified in this Disposition Contract, failure to pay real estate taxes, if any, or suffer any levy or attachment, or any unauthorized change in ownership, and such violation is not cured within sixty (60) days after written demand by the Seller, but not the obligation, to enforce the terms of this Disposition Contract by seeking damages and, in addition, injunctive relief or reversion of the Property from the Buyer to the Seller. Buyer shall not be in default for failure to complete the project if such failure is caused by delay due to unforeseen causes beyond his control and without his fault or negligence provided Buyer, within ten (10) days of the start of any such delay, has notified the Seller in writing and requested an extension for the period of the delay.

K. Certificate of Occupancy, Liquor License, and Open For Business Completion. Buyer hereby agrees, for itself, its successors and assigns and every successor in interest to the Property, or any part thereof, that Buyer or its successors and assigns, shall secure a Certificate of Occupancy for the building referenced in Exhibit A (as approved by the City of Salisbury Building, Permits & Inspections Department), shall secure a Liquor License from the Wicomico County Board of License Commissioners, and shall be open for business to the public no later than August 30, 2018. If the Buyer has not secured a Certificate of Occupancy from the City of Salisbury Building, Permits & Inspections Department, a Liquor License from Wicomico County Board of License Commissioners, and is not open for business to the public by August 30, 2018, the City shall have the right to i) seek reversion of the property and take back ownership or ii) negotiate an extension for the requirement, so long as the Buyer has shown good faith efforts in fulfilling the requirements associated with the scope of development and the covenants contained herein, at the sole discretion of the City of Salisbury.

L. Fees. All fees for construction, permits, connections, EDUs, licenses and other fees related to the construction, development and operation of the Property shall be the responsibility of the Buyer.

M. Easements. There will be City easements for access and maintenance of the existing stormwater drains located at the end of the property. There will also be a City easement for access and maintenance of the water pipe leading to a hydrant.

13. **NOTICE**. Any notice to be given to a party under this Contract shall be deemed to be given on the date hand-delivered to the party, or on the second business day following the date when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Seller at:

S. Mark Tilghman  
City Solicitor  
110 N. Division Street  
Salisbury, MD 21801

addressed to the Buyer at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. **TIME OF THE ESSENCE**. Time shall be of the essence in this Contract.

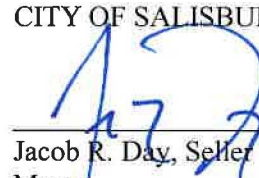
AS WITNESS the hands and seals of the parties hereto, the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
Kimberly R. Nichols  
City Clerk

\_\_\_\_\_  
WITNESS

CITY OF SALISBURY

  
\_\_\_\_\_  
Jacob R. Day, Seller  
Mayor

BUYER

\_\_\_\_\_  
BY:  
R. Miller Properties, LLC, Buyer

Exhibit “A”

**SCOPE OF DEVELOPMENT**

- A beer garden and restaurant which shall be comprised of a pavilion, cold storage, counters, seating, restrooms, and such other structures and improvements as are necessary to support the proposed scope of development.
- The Pavilion shall consist of a roof, storage for non-cold items, cold storage for the beer, serving counters with all necessary taps, sinks, etc., covered seating under the pavilion roof, restrooms, and food preparation facilities.
- The area outside of the pavilion shall consist of green space, tables and seating, fire pits, a gated fence with access from East Market Street and the Riverwalk, and a stage for live performances. There shall be a clear connection from East Market Street to the Riverwalk.
- The scope of improvements to the green space shall include benches and complementary landscaping and pathways.
- Buyer shall develop the Property in a manner which will best promote and support the City and which will promote development.
- Restore and maintain environmental quality – reduce the amount of runoff pollution, increase the amount of green space, plant trees, utilization of sustainable materials and incorporation of water and energy efficient site design/construction.
- Develop the property in accordance with all local zoning codes and ordinances consistent with uses permitted within the Central Business District of the City of Salisbury; and
- The property shall remain in active use, maintain a valid liquor license and a valid food service facility license for a minimum of five (5) years.