

RESOLUTION NO. 3192

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY TO AUTHORIZE THE MAYOR TO ENTER INTO, ON BEHALF OF THE CITY OF SALISBURY, A LAND DISPOSITION AGREEMENT WITH AVERY W. HALL INSURANCE AGENCY, INC., SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE SALE OF 322-328 EAST MAIN STREET, SALISBURY, MD.

WHEREAS, the Mayor and Council of the City of Salisbury (the “**Council**”) determined there is surplus real property owned by the City of Salisbury (the “**City**”) that should be sold; and,

WHEREAS, the City is the owner of all that certain real property identified as Map 0107, Parcel 0869 (Maryland Tax Account No. 05-007178), having a premises address of 322-328 East Main Street, Salisbury, by C. Stanley Morris, Don E. Richardson and Grant’s Transmission Service, Inc. to the City, by Deed dated June 7, 1989, and recorded among the Land Records of Wicomico County, Maryland in Liber 01182, Folio 00777 (the said real property described as aforesaid is hereinafter referred to as the “**Property**”), and all improvements located thereon; and,

WHEREAS, the Property of 6,556 SF is improved by an asphalt public parking lot consisting of 15 permit-only spaces; and,

WHEREAS, on December 13, 2021, the City declared 322-328 East Main Street surplus property; and,

WHEREAS, pursuant to § 16-8 *et seq.* of the Salisbury City Charter (the “**Charter**”) and Chapter 2.36 of the Salisbury City Code (the “**City Code**”), the City has the right to offer at public sale property declared surplus and to make awards thereof in the best interest of the City; and,

WHEREAS, the City, through its partnership with the KLNB Commercial Real Estate Services via RFP A-21-103 Real Estate Advisory Services, first published a Real Estate Notice of Sale on January 5, 2022, and sought offers from qualified buyers to purchase this parcel; and,

WHEREAS, the City received two offers, one from Avery W. Hall Insurance Agency, Inc. and another from Salisbury Town Center Apartments, LLC; and,

WHEREAS, the City has determined Avery W. Hall Insurance Agency, Inc. is a qualified buyer and that the sale of 322-328 East Main Street to Avery W. Hall Insurance Agency, Inc. is in the best interest of the citizens of the City because the offer presented by Avery W. Hall Insurance Agency, Inc. to the City was the highest and best value; and,

WHEREAS, by this Resolution, the Council **(i)** hereby approves the Contract of Sale (“**Contract**”) (attached hereto and incorporated herein as **Exhibit A**) authorizing the sale of 322-328 East Main Street to Avery W. Hall Insurance Agency, Inc. and **(ii)** hereby authorizes the Mayor’s execution thereof on behalf of the City; and,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. The Mayor is hereby authorized to execute, on behalf of the City of Salisbury, that certain Contract of Sale, by and between the City of Salisbury and Avery W. Hall Insurance Agency Inc., attached hereto and incorporated herein as **Exhibit A**.

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Resolution shall be deemed independent of all other provisions herein.

Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Resolution shall remain and shall be deemed valid and enforceable.

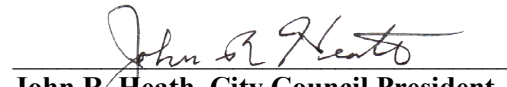
Section 4. The recitals set forth hereinabove and **Exhibit A** attached hereto, and all exhibits attached thereto and incorporated therein, are incorporated into this section of the Resolution as if such recitals and **Exhibit A** were specifically set forth at length in this Section 4.

THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 10th day of October 2022 and is to become effective immediately upon adoption.

ATTEST:



Kimberly R. Nichols, City Clerk



John R. Heath, City Council President

Approved by me, this 13th day of October, 2022.



Jacob R. Day, Mayor



City of
Salisbury
Jacob R. Day, Mayor

To: Mayor and City Council
From: Jennifer Miller
Director of Procurement
Date: October 3, 2022
Subject: Award of Contract of Sale

Attached for Council review and discussion, please find the draft Contract of Sale between the City of Salisbury and Avery Hall Insurance Company, Inc. for Parking Lot 5. The Department of Procurement intends to present this Contract of Sale, along with a Resolution authorizing the Mayor to enter into this agreement, at the next Legislative meeting on October 10, 2022, if Council so approves.

Parking Lot 5

- Brokered by KLN B via RFP A-21-103 Real Estate Advisory Services
- Lot 5 details:
 - Declaration of Surplus: 12/13/2021
 - Property land area: 6,566 SF
 - SDAT Value Assessment: \$71,267
- Real Estate Notice of Sale: 01/05/22
- Offer to Purchase Receipt Dates: 02/01/22 and 02/09/22
- Total offers received: 2
 - Avery Hall Insurance Company, Inc. \$30,000
 - Salisbury Town Center Apartments, LLC \$20,000
- Notes:
 - Exclusive Negotiating Period was granted February 28, 2022

cc Julia Glanz
Andy Kitzrow

EXHIBIT A

CONTRACT FOR SALE OF REAL PROPERTY: CITY OF SALISBURY

THIS CONTRACT FOR SALE OF REAL PROPERTY (the "Contract") is made and entered into by and between the City of Salisbury, Maryland (the "Seller"), and between Avery W. Hall, Insurance Agency, Inc. (the "Buyer"). The effective date of this Contract shall be the latest date of a party's execution of this Contract ("Effective Date").

1. DESCRIPTION OF PROPERTY

1. The Seller proposes to sell to the Buyer, and the Buyer hereby purchases from the Seller, the real property described as, 322 East Main Street, Salisbury, Wicomico County, Maryland 21801, Map 0107, Grid 0015, Parcel 0869, Neighborhood: 11002.23, with all improvements and all the rights and appurtenances thereto. The property was acquired by the Seller by the deed dated 7th of June, 1989. All land beginning for the same at a point on the southerly side of East Main Street, 61 feet wide, 250 feet easterly from Poplar Hill Avenue; (1) thence along the southerly side of East Main Street, North 84 degree 34 minutes East, 45 feet to a point; (2) thence by a curve to the right with the following curve data: R-627.5 feet, 1-8 degrees 30 minutes, 63.5 feet to a point at the southwesterly intersection of East Main Street and Salisbury Boulevard; (3) thence along Salisbury Boulevard, South 38 degrees 00 minutes East, 25 feet to a point; (4) thence continuing along Salisbury Boulevard, South 15 degrees 8 minutes West, 19 feet to a point; (5) thence South 56 degrees 7 minutes West 19 feet to a point on the northerly side of Market Street, 42 feet wide; (6) thence along the northerly line of Market Street, South 71 degrees 2 minutes West, 101.43 feet to a point; (7) thence North 5 degrees 26 minutes West, 75.7 feet to the point and place of beginning and is hereinafter referred to the "Property".

2. PURCHASE PRICE AND METHOD OF PAYMENT:

The purchase price (the "Purchase Price") to be paid by Buyer for the Property shall be Forty Thousand Dollars (\$40,000.00). The Purchase Price shall be payable in certified U.S. funds as follows:

- a. A good faith earnest money deposit and partial down payment of Five Thousand Dollars or \$5,000.00 (the "Deposit"), which must be made payable to the Seller and will be held in escrow by SVN Miller Commercial Real Estate. The Deposit must be paid within three (3) business days of the Effective Date, will be applied to the Purchase Price at Settlement Date.
- b. The balance of the Purchase Price shall be payable by wire transfer at Closing.

3. PROPOSED USE

- A. The Buyer will use the Property for existing parking needs, future construction and expansion of their work facility to accommodate future growth and business activities.
- B. The Seller will have right to operate the Property until the Settlement Date.

[] BUYER [] SELLER INITIALS

4. 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.
- B. Seller hereby certifies to Buyer that there is no tenant with any right to possession of the property.
- C. At the Settlement, 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. In the event that Seller has collected any parking permit fees that extend past settlement, such fees will be prorated and credited to Buyer as of the date of Settlement.
- D. The Seller has no knowledge of any actions, suits, investigations or proceedings which have been instituted or threatened against or affecting the Property, including but not limited to environmental matters, 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 Agreement, and neither the execution and delivery of this Agreement 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 notwithstanding 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 legal description to the City Solicitor prior to settlement for his approval.

5. DELIVERY OF CERTAIN MATERIALS TO SELLER AND BUYER

Promptly, but in no event later than ten (10) days following the end of the Inspection and Study Period, Buyer shall deliver to the City Solicitor its legal description of the property to be conveyed pursuant to this Agreement; and a deed will be executed, as approved by the City Solicitor.

Additionally, within ten (10) days of the Effective Date, Seller shall provide to Buyer copies of All Environmental reports, including but not limited to Phase 1 and Phase 2 on the Property and any adjoining properties along with any surveys of the Property.

6. 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 Agreement to the Settlement Date, it will:
 - a. 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.
 - b. 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.
 - c. 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 split equally among the Buyer and the Seller.

7. INSPECTION AND STUDY PERIOD

Buyer shall have Sixty (60) days from the Effective Date to undertake any inspections, market studies and other studies related to the Property (the **"Inspection and Study Period"**) desired by Buyer. Seller agrees to provide Buyer and its agents, employees and representatives full access to the Property and to cooperate with Buyer in connection with such inspections.

Buyer shall indemnify and hold the Seller harmless from any damage to the extent caused by the Buyer, its agents, contractors or invitees. Buyer will repair any damages caused by it or its agents, contractors or invitees to said Property. The Buyer may extend the Inspection and Study Period by an additional Thirty (30) days if a Phase 2 Study is required. The Buyer will need to

provide the notice for a Phase 2 study in writing to the Seller. If the results of any studies done during the Inspection and Study Period require additional testing or investigation, in Buyer's sole discretion, Buyer may extend the Inspection and Study Period for an additional forty-five (45) days.

8. BUYER PURCHASES THE "PROPERTY AS IS"

- A. The obligation of the Buyer to purchase the Property pursuant to the provisions of this Agreement 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 have Forty-Five (45) days following execution of this contract to 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, except that Buyer may terminate this Disposition Contract and receive a return of Buyer's deposit.
- 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 arising out of the inspections and tests set forth in Paragraph 6B above or any loss to Seller occasioned in any way by hazardous substances originating on the property or 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.

9. SETTLEMENT ATTORNEY/TITLE COMPANY:

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

10. SETTLEMENT:

Settlement shall be held in Salisbury, Wicomico County, Maryland, within Thirty (30) days of the end of the Inspection and Study Period (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 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 publicly 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.
- B. Any other documentation reasonably required to consummate the Buyer's purchase of the Property.

11. POSSESSION:

Possession of the Property shall be given to Buyer at the time of Settlement.

At the time of settlement or occupancy (whichever occurs first), Seller makes no warranties with regard to the condition of the Property included in this Agreement, 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.

- 12. 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 Agreement shall not be satisfied within the time period specified, then, as its sole recourse pursuant to this agreement the Buyer shall be entitled to cancel this Agreement and to receive the immediate return of the deposit referred to in this Agreement. 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 agreement 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 Agreement or to any enforcement of the terms of this Agreement, after settlement, for damages or injunctive relief, in any claim made by Seller.

13. MISCELLANEOUS:

- A. The parties hereto agree that this entire agreement shall be binding upon their respective heirs, Personal Representatives, administrators, successors and assigns. **THE PARTIES ALSO**

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.

14. USE OF THE PROPERTY:

- A. Speculation Forbidden. Buyer covenants that the purpose of this purchase is not for speculation.
- B. Covenants. The deed conveying the property shall expressly provide in a format acceptable to the attorney for the City and the attorney for Buyer that the agreements and covenants provided for in 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.
- C. 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.
- D. Code Covenant. Buyer agrees that all final plans for structures, site improvements, landscaping, etc. on the Property shall be in accordance with the City Code and approved by all appropriate City and other government agencies.
- E. Default. Buyer agrees that if, subsequent to the conveyance of the property to Buyer, Buyer shall default in or violate the Disposition Contract, and such violation is not cured within sixty (60) days after written demand by the Seller, then the Seller shall have the right, but not the obligation, to enforce the terms of this Disposition Contract by seeking damages, injunctive relief or reversion of the Property to Seller. Seller's rights under this Contract, including Seller's right to reversion, shall be superior to any subsequent sale, lease, mortgage or lien against the Property as a result of any action by Buyer. Seller's rights shall only be subordinated by the written agreement of Seller. In the event of the bankruptcy or insolvency of Buyer, or its assignee, equitable title to of the Property shall immediately revert to the Seller.

15. BROKERAGE COMMISSION

- a. SVN Miller Commercial Real Estate, which represents the Buyer in this transaction will receive from the Seller, a 3% of the Purchase Price commission fee for the procurement of this transaction. KLNb, which represents the Seller in this transaction will receive a 2.75% of the Purchase Price commission fee from the Seller.
- b. The Buyer and Seller shall indemnify and hold each other harmless from and against any claim, damage, cost, or liability for brokerage or other commission arising from or out of any breach of the Contract.

16. NOTICE

Any notice to be given to a party under this Agreement 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:

Jennifer Miller

Department of Procurement

125 N Division Street

Salisbury, MD 21801

Addressed to the Buyer at:

Joseph Gast, President

Avery W. Hall Insurance Agency, Inc.

308 East Main Street

Salisbury, MD 21801

17. TIME OF THE ESSENCE. Time shall be of the essence in the Agreement.

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

ATTEST:

CITY OF SALISBURY

City Clerk

Mayor

BUYER

WITNESS

_____ (SEAL)

BY: Joseph Gast, President

Avery W. Hall Insurance Agency, Inc.