



**CITY OF SALISBURY
SPECIAL MEETING AGENDA**

MONDAY, FEBRUARY 6, 2023

5:05 p.m.

Government Office Building, Room 301, Salisbury, Maryland and Zoom Video Conferencing

Times shown for agenda items are estimates only.

5:05 p.m. CALL TO ORDER

5:06 p.m. ADOPTION OF SPECIAL MEETING AGENDA

5:07 p.m. RESOLUTION- presented by City Administrator Julia Glanz

- **Resolution No. 3212**- to authorize the Mayor to enter into, on behalf of the City of Salisbury, a contract of sale with Mentis Lot 10, LLC, setting forth the terms and conditions governing the sale of 111 Poplar Hill Avenue, Salisbury, MD

5:12 p.m. ADJOURNMENT

Copies of the agenda items are available for review in the City Clerk's Office, Room 305 – City/County Government Office Building, 410-548-3140 or on the City's website at www.salisbury.md. City Council meetings are conducted in Open session unless otherwise indicated. All or part of the Council's meetings can be held in Closed Session under the authority of the Maryland Open Meetings Law, Annotated Code of Maryland General Provisions Article § 3-305(b), by vote of the City Council.

Next Council Meeting – February 13, 2023

- Resolution No. __- to appoint David Thompson to the Youth Development Advisory Committee
- Resolution No. __- to appoint William Lowery to the Friends of Poplar Hill Board of Directors
- Resolution No. __- to re-appoint Amy Crouse to the Disability Advisory Committee
- Resolution No. __- accepting the CIP
- **PUBLIC HEARING**- Resolutions- Sharen Drive-Ocean Isle Annexation 2nd reading
- **PUBLIC HEARING**- Ordinance No. 2758- 2nd reading
- **PUBLIC HEARING**- Ordinance No. _- 2nd reading- amending code to combine Housing Bd of Adjustment and Appeals, Bldg Bd of Adjustment and Appeals, and Bd of Zoning Appeals into new "Board of Appeals"
- **Ordinance No. 2773**- 2nd reading- to appropriate funds for the Restore Paleo Well Field project
- **Ordinance No. 2774**- 2nd reading- to appropriate funds for the Town Square project and to purchase vehicles
- **Ordinance No. 2775**- 2nd reading- budget amendment for grant for the design of the Rail Trail, construction of Armstrong Parkway Rail Trail Connector and citywide pedestrian and bike counting program
- **Ordinance No. 2776**- 2nd reading- budget amendment to accept funds for the construction of the Truitt Community Center Expansion project

Join Zoom Meeting

<https://us02web.zoom.us/j/88186172560>

Meeting ID: 881 8617 2560

Phone: 1.301.715.8592



City of Salisbury

John "Jack" R. Heath, Mayor

To: Mayor and City Council
From: Jennifer Miller
Director of Procurement
Date: February 6, 2023
Subject: Award of Contract of Sale

Attached for Council approval, please find a Contract of Sale between the City of Salisbury and Mentis Lot 10, LLC, for Parking Lot 10, along with a Resolution authorizing the Mayor to enter into this agreement.

Parking Lot 10

- Brokered by KLN B via RFP A-21-103 Real Estate Advisory Services
- Lot 10 details:
 - Declaration of Surplus: 11/14/2016
 - Property land area: 124,727 SF
 - SDAT Value Assessment: \$1,702,900 as of 01/01/2023
- Real Estate Notice of Sale: 08/10/21
- Offer to Purchase Receipt Dates: 09/09/2021, 09/09/2021 and 09/15/2021
- Total offers received: 3
 - City Works Oz Fund \$500,000 contribution to the City
 - Mentis Capital Partners \$75,000
 - SVN-Miller Commercial Real Estate (offer withdrawn)
- Notes:
 - Exclusive Negotiating Period with Mentis Capital Partners began in March 2022

Enclosures

CC: Julia Glanz
Andy Kitzrow

38 Poplar Hill Avenue to Mentis Lot 10, LLC, and (ii) hereby authorizes the Mayor’s execution thereof on
39 behalf of the City; and,

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

42 **Section 1.** The Mayor is hereby authorized to execute, on behalf of the City of Salisbury, that
43 certain Contract of Sale, by and between the City of Salisbury and Mentis Lot 10, LLC, attached hereto and
44 incorporated herein as **Exhibit A**.

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

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

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

55 **THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the
56 Council of the City of Salisbury held on this 6th day of February 2023 and is to become effective
57 immediately upon adoption.

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59 **ATTEST:**

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63 Kimberly R. Nichols, City Clerk

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67 Muir W. Boda, City Council President

68 Approved by me, this _____ day of _____, 2023.

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72 John R. Heath, Acting Mayor

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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 Mentis Lot 10, LLC. (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, 101-111 Poplar Hill Avenue, Salisbury, Wicomico County, Maryland 21801, Map 0107, Grid 08, Parcel 0829, with all improvements and all the rights and appurtenances thereto. All land beginning for the same at a point on bounded on the East by U.S. Route 13, the West by Poplar Avenue, the North by East Church Street and the South by Calvert Street and place of beginning, being more particularly described in an Inquisition Deed to the City of Salisbury dated July 10, 1964 and Recorded among the Land Records of Wicomico County, Maryland in Liber J. W. T. S. No. 588, folio 281, 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 Seventy-Five Thousand Dollars (\$75,000.00). 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 the Buyer's Title Company or Settlement Attorney. 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 to implement and construct the Buyer's Development Plan, that will be finalized as feasibility studies are completed after settlement. The buyer's intended development plan shall either include multifamily apartment housing, office space, hotels, restaurants, ground level retail, storm water management facilities, parking structures, or other code compliment uses, or a combination of the aforementioned development types.
- B. The Seller will have right to operate the Property as a Municipal Parking Lot until such time as Buyer gives notice pursuant to Paragraph 15 to Seller of its intent to proceed with demolition and excavation of the Property thirty (30) days from the date of the notice ("Buyer's Commencement Notice"). Seller shall have forty-five (45) days from the date of Buyer's Commencement Notice to terminate its use of the Property as a Municipal Parking Lot ("Use Termination Date").

[] BUYER [] SELLER INITIALS

MS *DSH*

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. Except to the extent set forth in Paragraph 3.b., Seller hereby certifies to Buyer that there is no tenant with any right to possession of the property.
- C. Except to the extent specifically set forth herein, 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.
- 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 its approval.
- H. Seller covenants that it is the fees simple owner of the Property, and further, Seller covenants to convey the Property to Buyer with good and marketable fee simple title to the Property by deed of Special Warranty of title, free of all liens, defects, tenancies and encumbrances, except as otherwise indicated herein. If a defect of title is found, Buyer shall notify Seller of such defect promptly after its discovery. Seller shall promptly take such action as is necessary to cure the defect. If Seller is unable to remove such defect, and absent an agreement between the parties, then this Agreement may be terminated by Buyer upon written notice to Seller. Upon notice of the option to terminate this Agreement to the other party, this Agreement shall be terminated

and shall be deemed to be null and void; neither Seller nor Purchaser shall have any claim against the other by reason of this Agreement. Purchaser may, at its sole option, extend the day of Settlement to the extent necessary for Seller to comply with this paragraph.

5. DELIVERY OF CERTAIN MATERIALS TO SELLER AND BUYER

Promptly, but in no event later than ten (10) days prior to the settlement date as set forth in Paragraph 9, 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 Commencement of Construction, 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. The Seller shall be liable for repairs until receipt of Buyer's Commencement Notice and the Buyer shall not be entitled to revenue from operations at 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 and construction commences. Buyer's remedy in the event of loss is limited to return of the deposit.
 - d. Maintain, at its expense, all utilities (electric, water, etc.), lighting, snow removal, and other routine expenses necessary to operate the parking lot in substantially the same manner as before the sale of the property.
 - e. The Seller will maintain full insurance coverage of the Property until the Use Termination Date.

- f. From Settlement until the Use Termination Date, Seller shall indemnify, defend, save harmless Buyer from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney's fees, in any way connected with any injury or damage to any property arising from the Seller's use of the Property. Whenever Buyer has incurred costs described in this section, Seller shall, within ten (10) days of receipt of notice thereof, reimburse Buyer for all such expenses."
- C. All utilities shall be adjusted and apportioned as of the Use Termination 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 (property taxes), 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 Use Termination Date and shall be assumed and paid thereafter by the Buyer, whether assessments have been levied or not as of the Use Termination Date
- E. The cost of all State and local recordation and transfer taxes shall be paid by the Buyer.
- F. If Buyer intends to seek closure of Calvert Street from Salisbury Boulevard (Route 13) to Poplar Hill Avenue, the City will require the Buyer to purchase and own both ways (two-ways) on Calvert Street, with the exception of the Office of the State's Attorney, located at 309 E. Main Street, Salisbury, MD 21801.
- G. The right and obligations of the Parties as stated herein with respect to the post-closing operation of the Parking Lot by Seller shall be memorialized by the Parties in a separate agreement executed at Closing. Such agreement shall confirm and restate the rights and obligations as stated herein.

7. 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. 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 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 by the negligent or intentional activities of Buyer before, during or after Buyer's acquisition of the property.

8. SETTLEMENT ATTORNEY/TITLE COMPANY:

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

9. SETTLEMENT:

Settlement shall be held in Salisbury, Wicomico County, Maryland, within Thirty (30) days of the full execution of this contract (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.

10. POSSESSION:

Possession of the Property shall be given to Buyer at the time of Settlement subject to the provisions of 3.b. and 6.B.

At the time of settlement (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.

- 11. 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.

12. 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.

13. 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 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.

14. BROKERAGE COMMISSION

- a. KLNB, which represents the Seller in this transaction will receive a 2.75% of the Purchase Price commission fee from the Seller, per a separate agreement.

15. 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:
Nick Simpson, Member
Mentis Lot 10, LLC
31400 Winterplace Parkway, Suite 300
Salisbury, MD 21804

16. **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

By: _____
Name: _____
Its: Acting Mayor

BUYER

Megan Marks

WITNESS

Nick Simpson (SEAL)

BY: Nick Simpson, Member
Mentis Lot 10, LLC

David Harkins (Seal)

By: David Harkins, Member
Mentis Lot 10, LLC