

RESOLUTION NO. 3212

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 CONTRACT OF SALE WITH MENTIS LOT 10, LLC, SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE SALE OF 111 POPLAR HILL AVENUE, 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, Grid 08, Parcel 0829, having a premises address of 111 Poplar Hill Avenue, Salisbury, MD, 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, (the said real property described as aforesaid is hereinafter referred to as the “**Property**”), and all improvements located thereon; and,

WHEREAS, the Property of 124,747 SF is improved by an asphalt public parking lot consisting of 217 public parking spaces; and,

WHEREAS, on November 14, 2016, the City declared 111 Poplar Hill Avenue 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 to 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 August 10, 2021, and sought offers from qualified buyers to purchase this parcel; and,

WHEREAS, the City received three offers, one from City Works Oz Fund (Long Branch, NJ), Mentis Capital Partners (Salisbury, MD) and another from SVN–Miller Commercial Real Estate (Salisbury, MD); and,

WHEREAS, the offer from SVN-Miller Commercial Real Estate was withdrawn on December 16, 2021; and,

WHEREAS, the City, through an evaluation process, has determined Mentis Capital Partners’ proposal as that which offers the highest and best value to the City of Salisbury, and Mentis Lot 10, LLC having been formed as the purchasing entity, is a qualified buyer, and that the sale of 111 Poplar Hill Avenue to Mentis Lot 10, LLC is in the best interest of the citizens of the City; and,

WHEREAS, by this Resolution, the Council (**i**) hereby approves the Contract of Sale (“**Contract**”) (draft attached hereto and incorporated herein as **Exhibit A**) authorizing the sale of 111

Poplar Hill Avenue to Mentis Lot 10, LLC, 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 Mentis Lot 10, LLC, 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 6th day of February 2023 and is to become effective immediately upon adoption.

ATTEST:




Kimberly R. Nichols, City Clerk



Muir W. Boda, City Council President

Approved by me, this 9th day of February, 2023.



John R. Heath, Acting Mayor

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

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

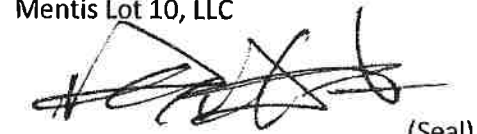

By: City of Salisbury
Name: John R Heath
Its: Acting Mayor


WITNESS

BUYER

 (SEAL)
BY: Nick Simpson, Member

Mentis Lot 10, LLC

 (Seal)

By: David Harkins, Member

Mentis Lot 10, LLC



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 KLNBS 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