Ordinance No. 972

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL PURSUANT TO THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND AND CITY CHARTER SECTION 34 AMENDING THE RB ZONING CLASSIFICATION FOR PUBLICALLY OWNED WATERFRONT PROPERTIES TO PROVIDE AND PRESERVE PUBLIC ACCESS TO THE WATERFRONT

WHEREAS, the Mayor and City Council of Havre de Grace have a municipal zoning code that provides and allows for the orderly development of real property; and

WHEREAS, the Mayor and City Council of Havre de Grace have a Comprehensive Plan that calls for the City to protect environmental resources; create opportunities for recreation; parks; open space; to conserve green space and open land; to retain scenic views; and develop a waterfront overlay to allow and preserve public access to the waterfront; and

WHEREAS, the Mayor and City Council entered into a Memorandum of Understanding with Harford County Government on October 17, 2014 ("2014 MOU"), a copy of which is attached as exhibit A, to have the remaining publically owned waterfront properties along Water Street in the City to be developed into a waterfront park extending from Jean Roberts Park towards the Havre de Grace Marina property; and

WHEREAS, the City seeks to preserve the available publically owned waterfront property for the proposed use as a waterfront park as set forth in the 2014 MOU; and

WHEREAS, the Mayor and City Council have determined that in order to accomplish the intentions of the City's Comprehensive Plan and the City and Harford County's 2014 MOU, that an amendment to the City's Zoning Code found in Chapter 205 be completed.

NOW THEREFORE, be it determined, decided and ordained by the Mayor and City Council that Chapter 205 of the City Zoning Code be amended as follows:

1. A new subsection as follows is added within Article VII RB Residential Business District Section 205-28.1 as follows:

   Section 205-28.1 Publically Owned Waterfront Parcels
   Any publically owned waterfront parcel of property may have the following principal permitted uses:

1. Marinas with public water access
2. Restaurant with public water access
3. Museum with public water access
4. Parking lot with public water access
5. Public Park with public water access

The Board of Appeals may permit the following conditional uses:

1. Hotel with public water access
2. Banquet Hall with public water access
3. Multifamily dwelling with public water access
4. Bed and Breakfast with public water access

The public water access required by this Section places as a condition of development that the property owner submit to the Mayor and City Council a concept plan for approval prior to the submission of any site plan to the Department of Planning or the City Planning Commission, showing direct access to the water for use by the public in a manner that is consistent with the public use of the City Yacht Basin; the Promenade; Hutchins Park, Jean Roberts Park, and David Craig Park.

The area used for public water access maybe used to satisfy any open space requirements.

The maximum height of any structure on the real property is thirty (30) feet.

2. This ordinance shall take effect 45 days after passage.

WITNESS/ATTEST:

MAYOR AND CITY COUNCIL OF
HAVRE DE GRACE, MARYLAND

_____
Patrick D. Sypolt,
Director of Administration

_____
William T. Martin, Mayor

Introduced: September 21, 2015 (two weeks publication)
Public Hearing: October 19, 2015
Second Reading/ Passage: November 2, 2015

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

220 S. MAIN STREET
BEL AIR, MD 21014

OFFICE OF THE COUNTY EXECUTIVE

October 17, 2014

The Honorable Wayne H. Dougherty
Mayor
City of Havre de Grace
711 Pennington Avenue
Havre de Grace, MD 21078

Dear Mayor Dougherty,

Enclosed please find an original Memorandum of Understanding between Harford County, Maryland and the City of Havre de Grace memorializing the terms of an agreement with respect to the fee simple purchase of Parcels 460, 461 and 472, also known as 649 Water Street, Havre de Grace, Maryland, 21078.

This MOU provides that the City will make a payment of $400,000.00 to the County toward the fee simple purchase of the property. In addition, the City and County shall apply for any and all federal and state grants for environmental remediation up to $200,000.00 each. If these terms accurately reflect our understanding, please sign this letter as indicated below.

Thank you for your attention to this matter.

Cordially,

David R. Craig

David R. Craig
Harford County Executive

Wayne H. Dougherty

Wayne H. Dougherty, Mayor
City of Havre de Grace

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "Memorandum"), made this _____ day of October, 2014, by and between HARFORD COUNTY, MARYLAND, a body corporate and politic in the State of Maryland, hereinafter referred to as ("the County") and the MAYOR AND CITY COUNCIL OF HAVRE DE GRACE, a Municipal Corporation of the State of Maryland, hereinafter referred to as ("the City").

RECITALS

WHEREAS, the County is in the process of purchasing various parcels known as all of the property situate, lying and being in the Third Election District of Harford County, Maryland described in and conveyed in a Deed dated August 17, 2005, and recorded among the Land Records of Harford County in Liber 06244, folio 0418, containing in the aggregate 2.06 acres +/- more or less of land, together with the improvements thereon, and all the rights and appurtenances thereto, including alleys, ways, water privileges, development rights, and advantages thereto belonging or in anywise appertaining, being more particularly described on Exhibit "A-1", attached hereto and incorporated by reference, being Parcels 406, 461 and 472 on Harford County Tax Map 0601, Tax I.D. 06-018874, 06-018866 and 06-018882. The improvements thereon being known as Water Street and 649 Water Street, Havre de Grace, Maryland; and

WHEREAS, it is agreed this Memorandum will survive settlement on the Property and will be binding on the parties herein; and

WHEREAS, the parties herein attest that they have entered into this Memorandum in order for the City to acknowledge their intention to participate more fully in the purchase and environmental clean-up of the Property; and

WHEREAS, the parties herein wish to enter into this Memorandum to confirm their agreement in this regard.

NOW, THEREFORE, for and in consideration of the sum of One Dollar ($1.00), which is consideration for the preparation of this Memorandum and Contract for Purchase of the Property, which is incorporated by reference herein, and the covenants, promises and acknowledgments contained herein, the parties, intending to be legally bound hereby, agree as follows:

1. The City hereby acknowledges that it shall pay to the County Four Hundred Thousand Dollars ($400,000.00) toward the fee simple purchase of the Property for use as a City park.

2. The County hereby agrees to apply for grants from various state and federal agencies for the clean-up required of the Property in an amount up to Two Hundred Thousand Dollars ($200,000.00).

3. The City hereby agrees to apply for grants from various state and federal agencies for the clean-up required of the Property in an amount up to Two Hundred Thousand Dollars ($200,000.00).

4. The parties hereby agree that if the required environmental clean-up exceeds Four Hundred Thousand ($400,000.00) they will split the remaining cost for clean-up.

5. The parties hereby agree that as soon as settlement takes place on the Property the parties shall apply for any and all grants available for clean-up.

6. The terms and provisions contained herein shall apply to and bind their heirs, successors, and assigns of the parties hereto and shall survive settlement on the Property which is scheduled to occur on or before November 26, 2014.

7. No covenant by any party to this Memorandum is intended to waive any rights, obligations or defenses that any party may already possess pursuant to law.

8. This Memorandum shall be governed by, and construed in accordance with, the laws of the State of Maryland.

SIGNATURES TO FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties have caused this Memorandum to be signed and sealed.

WITNESS/ATTEST

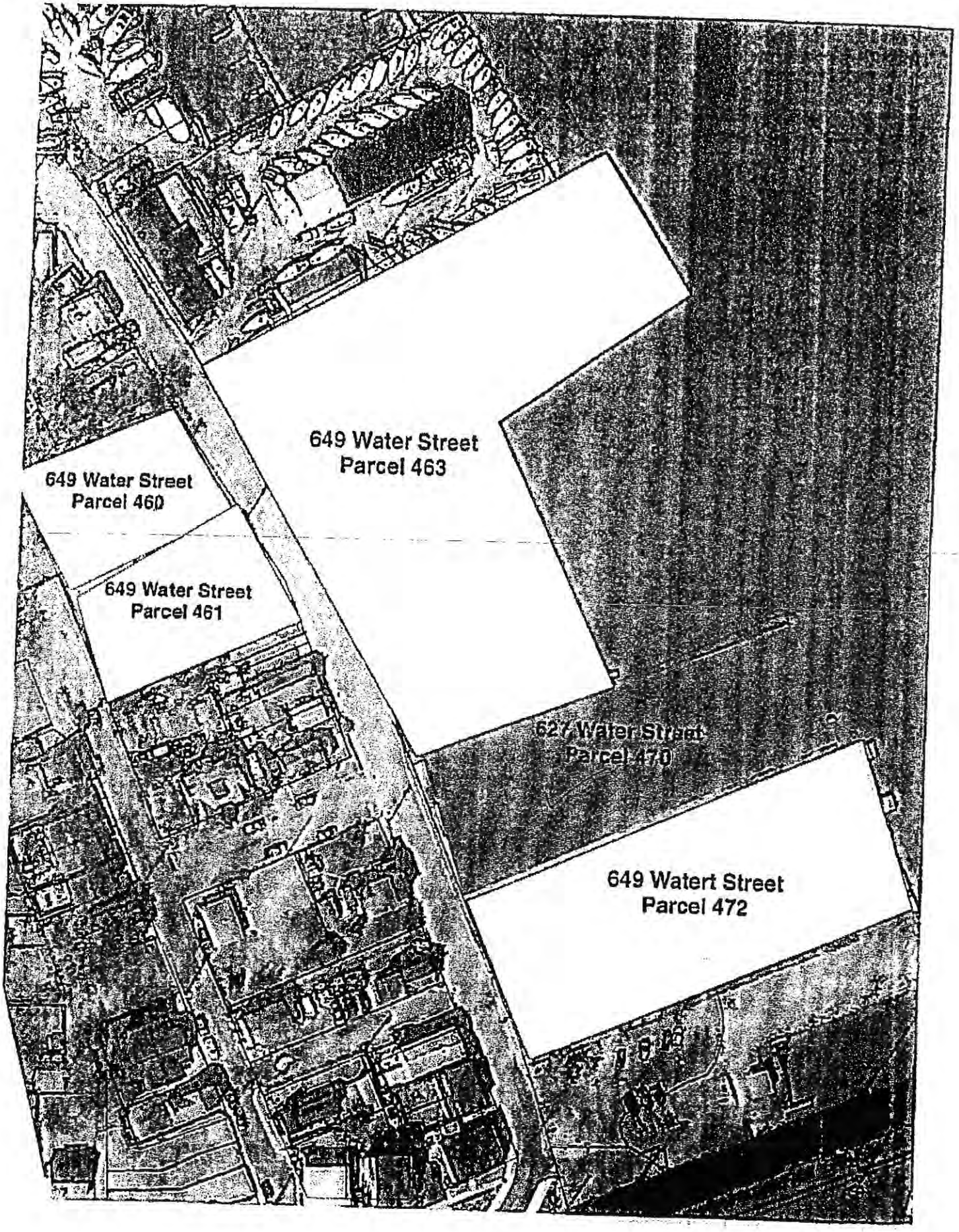
THE MAYOR AND CITY COUNCIL OF HAVRE DE GRACE

(SEAL)
By: Wayne H. Dougherty, Mayor

WITNESS/ATTEST

HARFORD COUNTY, MARYLAND,
A body corporate and politic
Of the State of Maryland

(SEAL)
By: David R. Craig, County Executive


649 Water Street
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Parcel 470
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Parcel 472

CONTRACT FOR PURCHASE

AND

SALE OF PROPERTY

BY AND BETWEEN

MTBR YACHT CLUB, LLC

AND

HARFORD COUNTY, MARYLAND

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CONTRACT FOR PURCHASE
AND
SALE OF PROPERTY

This contract for purchase and sale (This "Agreement"), made as of this _____ day of _____, 2014, by and between **MTBR YACHT CLUB, LLC**, a limited liability company of the State of Maryland (hereinafter referred to as ("Seller") and **HARFORD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (hereinafter referred to collectively as "Purchaser").

STATEMENT OF INTENT. That the Seller does hereby sell unto the Purchaser, and the Purchaser does hereby agree to purchase from the Seller all of the property situate, lying and being in the Third Election District of Harford County, Maryland described in and conveyed to Seller by Deed dated August 17, 2005, and recorded among the Land Records of Harford County, Maryland, in Liber 06244, folio 0418, containing in the aggregate 2.06 acres+/-, more or less, together with the improvements thereon, if any and all the rights and appurtenances thereto, including alleys, ways, water privileges, development rights, and advantages thereto belonging or in anywise appertaining, being more particularly described on Exhibit "A", attached hereto and incorporated by reference, being Parcels 460, 461 and 472 found on Harford County Tax Map 0601, Tax I.D. 06-018874, 09-018866, 06-018882. The improvements thereon, if any collectively known as Water Street and 649 Water Street, Havre de Grace, Maryland 21078 (the "Property").

NOW THEREFORE, in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, hereby promise, covenant and agree as follows:

1. Agreement for Purchase.

Seller hereby agrees to sell and Purchaser hereby agrees to purchase the Property in its "As Is" condition at the price and on the terms hereinafter set forth.

2. Purchase Price.

The total purchase price for the Property shall be One Million Dollars and Zero Cents ($1,000,000.00) (the "Purchase Price"), U.S. Funds payable in the form of a certified or cashier's check. wired funds or check issued from the Title Company.

3. Closing Date.

The sale and purchase of the Properties (the "Closing") shall occur on or before November 26, 2014. Closing shall occur at the offices of Purchaser. Purchaser and Seller may elect to close on an earlier date provided Purchaser and Seller mutually agree in writing to do so. Seller agrees not to unreasonably withhold its consent to the election by the Purchaser to close on an earlier date.

4. Escrow Account and Agreement. · See attached rider

The Seller shall deposit One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00) at the time of settlement into an Escrow Account (the "Escrow Account"). The Seller and Purchaser shall enter into an Escrow Agreement at the time of settlement for the benefit of the County. The County shall be able to access the Escrow Account to enter the Land into the Maryland Department of Environment Voluntary Cleanup Program (the "VCP") and execute the approved Response Action Plan.

5. Title.

Purchaser will promptly cause a commitment for title insurance for the Property to be examined and shall notify Seller of any material defects discovered in the title of the Property. Seller, at its sole discretion, may cure such material defects at its own expense within fifteen (15) days after receipt of Purchaser's notice. In the event Seller elects not to cure any such defects within fifteen (15) (or such period as Purchaser may agree to in writing), Purchaser may (a) accept title with its defects, or (b) rescind this Agreement. All monetary defects shall be paid by Seller at the time of Closing.

6. Conveyance.

On the Closing Date, Seller agrees to execute and deliver a deed in fee simple for the Property containing covenants of special warranty and further assurances conveying to Purchaser good and marketable title free of liens and encumbrances except for the matters set forth in Purchaser's title commitment and to which Purchaser makes no objection pursuant to Paragraph 4 above.

7. Closing Costs.

All rent, taxes, general or special, and all other public or governmental charges or assessments or utility charges against the Property which are payable on an annual or other basis (including assessments for water and sewer) shall be adjusted and apportioned as of the Closing Date. The costs of all recordation taxes, transfer taxes and documentary stamps imposed in connection with the recordation of the deed shall be borne by the Purchaser. All other settlement costs including, but not limited to, lien sheets, document preparation, title search, title insurance, and any fee imposed in connection with the recordation of a deed of trust or a mortgage in connection with Purchaser's financing shall be borne solely by Purchaser. Seller shall pay for any cost associated with the recordation of a release of mortgage. Each party shall bear its own legal expenses incurred in connection with this Agreement and settlement.

8. Failure to Complete Closing.

Subject to the contingencies set forth in Paragraph 9, if for any reason other than the Seller's material breach of this Agreement, Purchaser is unable or unwilling to take title to the Property on the Closing Date, this Agreement shall terminate.

9. Contingencies.

Purchaser shall be entitled, at its option, to ~~rescind~~ terminate this Agreement and to be relieved of any further obligations under this Agreement in the event of any of the following contingencies:

(a) If at any time prior to the Closing Date the Property is acquired by authority of any governmental agency in the exercise of its power of eminent domain or by purchase in lieu thereof. Seller agrees not to solicit condemnation;
(b) If, after receiving notice of material defects in its title to the Property, Seller fails within fifteen (15) days of such notice to cure all such material defects;
(c) If any of the warranties and covenants set forth in Paragraph 9 are found to be materially untrue;
(d) If, on or before November 26, 2014 Purchaser shall have failed to receive approval from the Harford County Board of Estimates to acquire the Property; and
(e) If Purchaser has not received acceptance into the VCP and/or been granted Incapable Person Status.

10. Seller Covenants and Warranties.

The Seller covenants, represents and warrants and will as of the Closing Date, represent, warrant and covenant to Purchaser that:

(a) Seller owns good and marketable title to the Property and has the requisite authority to convey such title to Purchaser.
(b) Seller has not entered into and will not, while this Agreement is in effect, enter into any other contract of sale or otherwise encumber the Property (except as indicated in this Agreement) in any fashion without the prior written permission of the Purchaser;
(c) There is no litigation or proceeding pending or to Seller's knowledge threatened against the Property or against the Seller and relating to the Property;
(d) Seller has received no notice of taking, condemnation or assessment, actual or proposed, with respect to the Property; and
(e) Seller is not a "foreign person" within the meaning of the Internal Revenue Code, and agrees to execute an affidavit to this effect at the time of Closing.
(f) The Property shall be held at the sole risk of Seller until legal title has passed to Purchaser, and Seller assumes all loss or damage to the property until closing. At Closing, Seller shall deliver possession of the Property in substantially the same condition as existed on the date this Agreement is fully executed. So long as this Agreement is in full force and effect, Seller shall not cause or permit any new lien or encumbrance on the Property.

11. Representation and Warranties of Purchaser.

Purchaser represents and warrants to Seller that the following are true, accurate and complete as of the Effective Date and will be true, accurate and complete as of Closing:

(a) Organization. Purchaser is a duly organized, validly existing entity in good standing under the laws of the State of Maryland;

(b) Authority. Purchaser and any individual executing this Agreement on Purchaser's behalf, has the power to execute, deliver and perform this Agreement and has taken all actions required to authorize the due execution and delivery of this Agreement. The execution, delivery and performance of this Agreement does not, and the consummation of the transactions contemplated hereby will not, violate any provision of the Charter of Purchaser, not any provision of any agreement, instrument, order, judgment or decree to which Purchaser is either a party or by which any of its assets are bound.

12. Brokerage.

Each of the parties hereto warrants and represents to the other that (a) it has employed no real estate agencies or brokers in relation to this Agreement and (b) no broker's commission will be payable at the time of Closing. Each party shall indemnify and hold harmless the other party from any damage or inquiry resulting from a breach of a party's warranty or representations under this paragraph.

13. Notices.

All notices and communications hereunder, including change of address, shall be in writing and shall be deemed to have been duly given when personally delivered to the party to whom it is directed or, in lieu of personal delivery, on the second business day after same is deposited in the United States mail, postage prepaid, sent certified mail, return receipt requested addressed as follows:

(a) If to Seller to:

MTBR Yacht Club, LLC
c/o Manekin, LLC
8601 Robert Fulton Drive, Suite 200
Columbia, Maryland 21046-2278

(b) If to Purchaser to:

Harford County, Maryland
Department of Procurement
c/o Deborah L. Henderson
220 South Main Street, 3rd Floor
Bel Air, Maryland 21014

14. Hazardous Substances.

The term "Hazardous Substances", as used in this Agreement shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law", which term shall mean any federal, state or local law or ordinance relating to pollution or protection of the environment. Seller hereby agrees that after the date of this Agreement, (i) no activity will be conducted on premises by Seller, or to Seller's knowledge, by any other person, that will produce any Hazardous Substance; (ii) the premises will not be used in any manner for the storage of any Hazardous Substances by Seller, or to Seller's knowledge, by any other person; (iii) no portion of the premises will be used as a landfill or a dump by the Seller, or to Sellers' knowledge, by any other person; (iv) Seller will not install any underground tanks of any type; and (v) Seller will not knowingly allow any surface or subsurface conditions to come into existence that constitute, or with the passage of time may constitute, a public or private nuisance. Purchaser's sole right with respect to a violation of this section shall be to terminate this Agreement of Sale prior to Closing.

15. Miscellaneous.

(a) This Agreement contains the entire agreement among the parties. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, expressed or implied, among them, other than as herein set forth. This Agreement is intended by the parties hereto to be an integration of all prior contemporaneous promise, agreements, conditions, negotiations and undertakings between the parties hereto. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by all the parties hereto or their respective successors in interest.

(b) The paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. Wherever herein the singular number is used the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. Wherever herein reference is made to "days" the same shall mean "calendar days" unless otherwise indicated. Time is of the essence in this Agreement. Each party acknowledges that it has had the benefit of legal counsel and that each party's counsel has reviewed and commented upon this Agreement. Accordingly, the parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibit which is attached or incorporated herein.

(c) If any term, covenant or condition of this Agreement or the application thereof to any person on circumstances shall be invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

(d) It is the intention of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of Maryland.

(e) All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of Seller and Purchaser.

(f) Purchaser has executed this Agreement first and then offered this Agreement for acceptance to the Seller. Accordingly, the terms "Effective Date", "date of this Contract", "date of this Agreement" or the "date hereof", wherever used herein, shall mean the date on which this Agreement is fully executed and signed by the Seller, said date to be evidenced by Seller's insertion thereof in the space provided in the last page of this Agreement

(g) No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing. No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other instance, or other such right.

(h) This Agreement may be amended by and only by a document and executed and delivered by each party hereto.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed this Agreement as of the day and year first above written.

WITNESS:

SELLER:
MTBR Yacht Club, LLC, a limited liability Company of State of Maryland

By: _____ (SEAL)
Name: ~~George Philippou~~
Title: ~~Authorized Person~~
Date: November 6, 2014

COUNTY:
HARFORD COUNTY, MARYLAND

By: _____ (SEAL)
Deborah L. Henderson, Director
Department of Procurement
Secretary, Board of Estimates

Approved as to form and legal Sufficiency this 10th day of November, 2014.

~~Deborah S. Duvall~~ ROBERT S. MYERS
~~Senior Assistant~~ County Attorney

Approved as to financial sufficiency this 10th day of November, 2014.

Kathryn L. Hewitt, CPA
County Treasurer

EXHIBIT A

Intentionally Omitted

Rider

4. Escrow Account and Agreement

The Seller shall deposit One Hundred Fifty Thousand Dollars and Zero Cents ($150,000) at the time of settlement into an Escrow Account (the "Escrow Account"). The Seller and Purchaser shall enter into an Escrow Agreement at the settlement for the benefit of the Purchaser (which shall provide, among other things, that any amounts unused within 60 months of Closing be disbursed promptly to Seller.) The County shall be able to access the Escrow Account for the sole purpose of paying actual costs of entering the Land into the Maryland Department of Environment's ("MDE") Voluntary Cleanup Program (the "VCP") and executing the approved Response Action Plan.

Except as set forth above with respect to the Escrow Account, the Seller shall have no liability to Purchaser for any claims, costs, expenses, demands or losses relating to the environmental or geotechnical conditions of the land, it being understood that the Purchaser is purchasing the Land "AS IS" "WHERE IS" with all faults. The provisions of this Section 4 shall survive Closing.