



**BERLIN MAYOR AND COUNCIL**  
**Meeting Agenda**

**Berlin Town Hall**  
**10 William Street**

**Monday, December 12, 2016**

6:30 PM EXECUTIVE SESSION – Conference Room

- a. Pursuant to Section §3-305(b)(1) – To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals.

7:00 PM REGULAR SESSION – Council Chambers

1. Approval of the Minutes for:
  - a. Executive Session of 11/28/16
  - b. Statement of Closure for Executive Session of 11/28/16
  - c. Regular Session of 11/28/16
2. Review and acceptance of FY 2016 Audited Financial Statements – Leslie Michalik and Michael Kleger
3. Bay Club Development Presentation – Hugh Cropper
4. Ocean's East Development
  - a. EDU Agreement
  - b. Public Works Agreement
5. Departmental Reports:
  - a. Finance Director – Natalie Saleh
  - b. Administrative Services Director – Mary Bohlen
  - c. Water Resources/Public Works – Jane Kreiter
  - d. Electric – Tim Lawrence
  - e. Police – Arnold Downing
  - f. Planning – Dave Engelhart
6. Town Administrator's Report – Jeffrey Fleetwood acting on behalf of Laura Allen
7. Comments from the Mayor
8. Comments from the Council

9. Comments from the Public

10. Comments from the Press

11. Adjournment



**BERLIN MAYOR AND COUNCIL**  
**Meeting Minutes**  
**Monday, November 28, 2016**

**7:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers**

**Present:** Mayor Gee Williams, Councilmembers Zackery Tyndall, Elroy Brittingham, Dean Burrell, Troy Purnell.

**Absent:** Councilmember Thom Gulyas

**Staff Present:** Administrative Services Director Mary Bohlen, Managing Director Jeff Fleetwood, Town Attorney David Gaskill, Chief of Police Arnold Downing, Electric Utility Director Tim Lawrence, Planning Director Dave Engelhart, Economic and Community Development Director Ivy Wells and Administrative Assistant Kelsey Jensen.

Following the Lord’s Prayer and Pledge of Allegiance, Mayor Williams called the meeting to order at approximately 7:20 PM.

1. Approval of the Minutes for:

a. Executive Session of 11/14/16:

On the motion of Councilmember Brittingham, the Executive Session minutes of November 14, 2016 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas					X
Zackery Tyndall	X				
<i>Voting Tally</i>	4	0			1

b. Statement of Closure for Executive Session of 11/14/16:

Mayor Williams read the Statement of Closure.

c. Regular Session of 11/14/16:

On the motion of Councilmember Brittingham, the Regular Session Minutes of November 14, 2016 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas					X
Zackery Tyndall	X				
<i>Voting Tally</i>	4	0			1

2. Presentation: Cricket Center – Wendy Myers, Executive Director:

Wendy Myers, Executive Director of the Cricket Center, gave a presentation updating the Mayor and Council on the Cricket Center.

3. Arts and Entertainment Updates – Arts and Entertainment Committee:  
Heather Layton, Co-Chair and Patricia Gregorio, Executive Committee member present on behalf of the Arts and Entertainment Committee. They provided updates to the Mayor and Council on recent and upcoming events. They will have Ms. Wells present their event dates when she presents the rest of the events for next year.
4. Public Works Agreement – Oceans East (moved to the December 12<sup>th</sup> Mayor and Council meeting)
5. Community Development Block Grant (CDBG) Citizen Participation Public Hearing: Hudson Branch Stormwater Projects – Mary Bohlen:  
Mary Bohlen, Administrative Services Director, gave a Community Development Block Grant presentation on the Hudson Branch Stormwater Projects, reviewing the project as proposed, to-date and work remaining. Mayor Williams called to order a Public Hearing at approximately 8:08 PM. Ms. Bohlen was available to answer any questions the public may have; no questions were asked. Mayor Williams closed the public hearing at approximately 8:10 PM.
6. Motions to Approve:
  - a. Motion to approve a Proposal in the amount of \$90,200.00 from Green Flush Technologies for a Prefabricated Outdoor Restroom Building for Dr. William Henry Park. Motion 2016-39.  
Ms. Bohlen explained that they applied for a Community Parks and Playground Grant for Henry Park and Stephan Decatur Park, but only Henry Park was approved. Ms. Bohlen solicited six bids and only received two responses, one of which was incomplete because they were unable to secure a local contractor. Her recommendation is to go with the bid in the amount of \$90,200 with Green Flush Technologies. Mayor Williams asked how much the total grant was for; Ms. Bohlen stated it was \$95,895 and the town is required to match \$10,655 in cash or in kind services. After the Electric and Water Department assist, most of the services will be in kind.

On the motion of Councilmember Burrell, Motion 2016-39 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas					X
Zackery Tyndall	X				
<i>Voting Tally</i>	4	0			1

- b. Motion approving SonRise Church to finance three (3) EDU's for a period of 60 months/5years interest free at \$750.87 a month after an initial deposit of \$5,005.80. Motion 2016-40.

Mayor Williams stated that there is a policy in place that allows small projects on a case by case basis to apply for financing EDU's.

On the motion of Councilmember Burrell, Motion 2016-40 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		

Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas					X
Zackery Tyndall	X				
<i>Voting Tally</i>	4	0			1

## 7. Departmental Reports:

### a. Administrative Services Director – Mary Bohlen

Ms. Bohlen reported that Stephan Decatur Middle School worked with the Assateague Coastal Trust to prepare for winter in the Edible Forest. There is a survey out for Henry Park Basketball Courts Lighting to those who live on the same side as the park to get their opinion on installing lights. Lastly the Parks Commission will be meeting on Tuesday, December 6<sup>th</sup>.

### b. Electric Utility Director – Tim Lawrence

Mr. Lawrence reported that the Electric Department has all of the LED lights up in the trees and downtown area. The Christmas Tree was picked up and decorated. The contractor is installing the pumping system at the power plant, they are almost complete just waiting on the oil/water separator. The Department also assisted Public Works with the Bulk Pick-Up event on November 16<sup>th</sup> and will do it again on Thursday. Generator one is due to be back on December 12<sup>th</sup>. They have been preparing for the parade this week and performed meter reads and man reads. Mayor Williams stated that he received more compliments on the lights this year than compared to others and have had other municipalities inquire about them. Councilmember Burrell asked where they were purchased and what type of lights they are; Mr. Lawrence stated that they are from Musco Design and they are a cool bright C7.

### c. Police Chief – Arnold Downing

Chief Downing reported that last week was American Education Week, Worcester Prep had two tours and were able to meet the police dogs. The Police Department visited Buckingham, Berlin Intermediate and Stephan Decatur Middle. Tonight starts parade week, the department has two officers assisting in Pocomoke's parade tonight and will be in Snow Hill on Monday. They will have those Police Departments help with our parade on Thursday night as well. The Mayor thanked the Police Department for helping to keep people safe this Holiday Season.

### d. Planning Director – Dave Engelhart

Dave Engelhart reported that the Bikeways grant needs a schedule in by the 30<sup>th</sup> and they will send a commitment letter back to get things going. He also spoke with Mr. Sullivan with MD/DE railroad and he will be getting back to Mr. Engelhart about the details for the access agreement for the grant.

### e. Economic and Community Development Director – Ivy Wells

Ms. Wells reported that the tree lighting was a huge success and thanked the Electric Department, Patty Falck, Jamey Latchum, Dave Wheaton and Public Works. Small Business Saturday was also a success. The Christmas Parade will be this Thursday at 7:00 PM and dinner will be served in Town Hall at 4:30 PM; there are 83 floats and four carts selling glow sticks, but they will be off the streets when the parade starts. Saturday, December 10<sup>th</sup> Santa will be in the Visitors Center from 11:00 AM until 2:00 PM. Now until December 20<sup>th</sup> in the Welcome Center you can drop off a letter to Santa and if you include your address he will write you back and give you a coupon for a free cookie or ice cream. There will be free carriage

rides for the first three weekends in December from 11:00 AM until 3:00 PM. Jeff Auxer applied for a sign façade grant that will read “art” and be very generic to help bring traffic down Jefferson Street to the Art Studios. Ms. Wells also stated that she will be helping serve food tomorrow with the Arts and Entertainment Committee. Fathom Clothing will be opening in a few months and Island Creamery hopes to be open in approximately three weeks. Ms. Wells stated that she will be on vacation from December 7<sup>th</sup> to December 17<sup>th</sup>. Mayor Williams asked when they could expect the Welcome Center to be completed; Ms. Wells stated tomorrow.

f. Managing Director – Jeff Fleetwood:

Mr. Fleetwood advised that dinner for the parade will at 4:30 PM on Thursday and thanked Delmar Pizza for their food donation. He stated that this will be the sixth year that University of Maryland Eastern Shore’s Baseball team will be helping with the parade and next year Salisbury University will be helping. Mr. Fleetwood advised and invited the Mayor and Council to the Holiday Luncheon on December 15<sup>th</sup> from 11:30 PM until 2:00 PM.

8. Town Administrator’s Report –Laura Allen

Ms. Allen reported that will be completely closed beginning the 5<sup>th</sup> of December and last approximately two-three weeks, weather dependent, after that there will be partial road closures. Chief Downing is working with the Police and Fire Departments on the closure and CodeRed alerts will be sent out with more information; if you are not signed up you should sign up on the website.

9. Comments from the Mayor:

Mayor Williams made the recommendation to cancel the second Mayor and Council Meeting in December.

On the motion of Councilmember Purnell, cancelling the second December Mayor and Council Meeting was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas					X
Zackery Tyndall	X				
<i>Voting Tally</i>	4	0			1

10. Comments from the Council:

Councilmember Tyndall had no comments.

Councilmember Brittingham had no comments.

Councilmember Burrell had no comments.

Councilmember Purnell had no comments.

11. Comments from the Audience

Jack Orris asked if we could send a CodeRed alert out for the Broad Street road closure for the night of the parade. The Council thought that would be beneficial.

12. Comments from the Press – none

13. On the motion of Councilmember Burrell, Council meeting was adjourned at approximately 8:45 pm.

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas					X
Zackery Tyndall	X				
<i>Voting Tally</i>	4	0			1

Respectfully Submitted,

Kelsey Jensen

Administrative Assistant

## Presentation:

Leslie Michalick and Michael Kleger

Review and acceptance of FY 2016  
Audited Financial Statements



LAW OFFICES

**BOOTH BOOTH  
CROPPER & MARRINER P.C.**

CURTIS H. BOOTH  
BRYNJA MCDIVITT BOOTH  
HUGH CROPPER IV  
THOMAS C. MARRINER\*  
ELIZABETH ANN EVINS  
ROY B. COWDREY, JR. \*\*

\*ADMITTED IN MD & DC  
\*\* OF COUNSEL

9923 STEPHEN DECATUR HIGHWAY, #D-2

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November 11, 2016

The Honorable Gee Williams,  
Mayor, Town of Berlin  
10 Williams Street  
Berlin, Maryland 21811

RE: *Bay Club Property*

Dear Mayor Williams:

Congratulations on the election.

I just wanted to let you know that I have filed an application for a special exception to authorize a rental campground in an A-2, Agricultural District, on behalf of Carl M. Freeman Communities with respect to the Bay Club Golf Course properties. A copy of my application is attached.

I would like to meet with you, at your convenience, to discuss the application.

As per our previous discussion, I am happy to make a formal presentation before the Mayor and City Council of Berlin.

Thanks again for your consideration.

Very truly yours,



Hugh Cropper IV

HC/tgb  
Enclosure

APPLICATION TO:  
BOARD OF ZONING APPEALS  
WORCESTER COUNTY, MARYLAND  
ONE WEST MARKET STREET  
GOVERNMENT CENTER, ROOM 1201  
SNOW HILL, MARYLAND 21863-1070

**OFFICE USE ONLY**  
CASE NUMBER: \_\_\_\_\_  
DATE FILED: \_\_\_\_\_  
HEARING DATE: \_\_\_\_\_

**APPLICATION IS BEING MADE FOR:**

SPECIAL EXCEPTION  
 VARIANCE  
 EXPANSION OF NONCONFORMING USE/STRUCTURE  
 OTHER  
 AFTER THE FACT

FORESTRY  
 CRITICAL AREA  
 APPEAL

PROPOSED

ADMINISTRATIVE  
REVIEW

**TO THE BOARD OF ZONING APPEALS:**

Pursuant to Section ZS 1-116 of the Worcester County Zoning Ordinance, enacted or as amended, request is hereby made for: A special exception pursuant to Section ZS1-202 (c) (19) for a rental campground.

**LOCATION OF PROPERTY:**

Tax Map: 0024 Parcel: 114 Section: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_  
On South side of: Libertytown Road; (Feet/Miles), N/S/E/W of \_\_\_\_\_

**PROPERTY OWNER INFORMATION:**

Owner: Bay Club, LLC Telephone: 302-436-3000  
Address: 38017 Fenwick Shoals Blvd. Selbyville, DE 19975 E-mail: cgarland@cmfa.com

**APPLICANT INFORMATION:**

Applicant's Name: Hugh Cropper, IV Telephone: 410-213-2681  
Address: 9923 Stephen Decatur Hwy., D-2, Ocean City, MD 21842 E-Mail: hcropper@bbcmfaw.com


Has property in question ever been subject of previous appeal? (if yes, give case no. and date) \_\_\_\_\_  
Is property located in the Chesapeake Bay Critical Area or the Atlantic Coastal Bay Critical Area, or its tributaries?  
If so, has information been submitted in accordance with Worcester County's Critical Area Program  
Regulations? \_\_\_\_\_

**OFFICE USE ONLY: MINIMUM REQUIRED SETBACKS:**

FRONT: \_\_\_\_\_ FROM CENTERLINE OF ROAD  
\_\_\_\_\_ RIGHT OF WAY STATE ROAD  
\_\_\_\_\_ FROM PROPERTY LINE

REAR: \_\_\_\_\_ FT.  
SIDE: LEFT \_\_\_\_\_ FT.  
SIDE: RIGHT \_\_\_\_\_ FT.

ZONING DISTRICT \_\_\_\_\_ TAX DISTRICT \_\_\_\_\_

  
\_\_\_\_\_  
Signature of Owner or Legal Representative

  
\_\_\_\_\_  
Signature of Applicant

SEE NEXT PAGE FOR NOTARY - BOTH THE OWNER AND APPLICANT NEED TO BE NOTARIZED

*filed*  
*11/9/18*

BOARD OF ZONING APPEALS APPLICATION  
NOTARY PAGE FOR BOTH  
OWNER AND APPLICANT

STATE OF MARYLAND, WORCESTER COUNTY TO WIT: (OWNER)

I HEREBY CERTIFY, that on this 9th day of November, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared HUGH CROPPER, IV ON BEHALF OF OWNER, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged he executed the same for the purposes therein contained AND FURTHER MADE OATH that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS my hand and official seal.

Tammy G. Bradford  
Notary Public



My Commission Expires: 4/18/2017

STATE OF MARYLAND, WORCESTER COUNTY TO WIT: (APPLICANT)

I HEREBY CERTIFY, that on this 9th day of November, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared HUGH CROPPER, IV, APPLICANT, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged he executed the same for the purposes therein contained AND FURTHER MADE OATH that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS my hand and official seal.

Tammy G. Bradford  
Notary Public

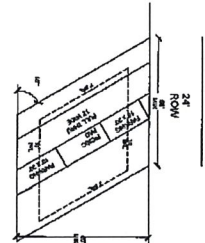
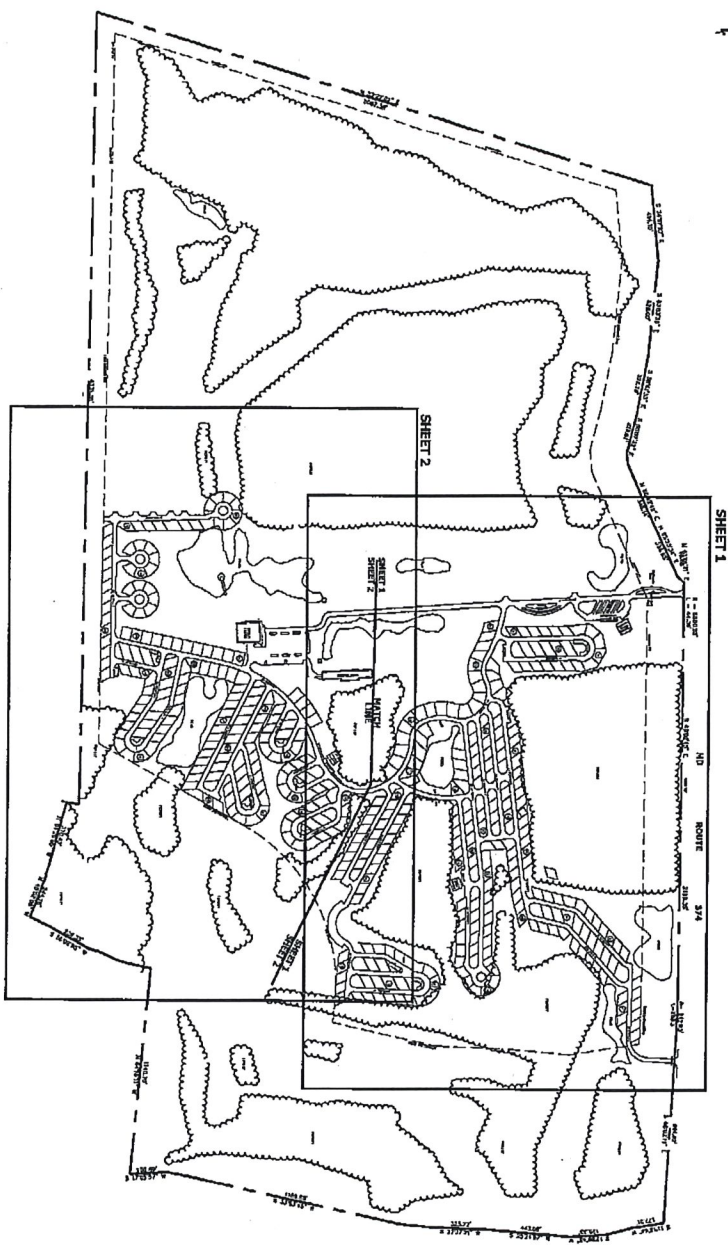


My Commission Expires: 4/18/2017

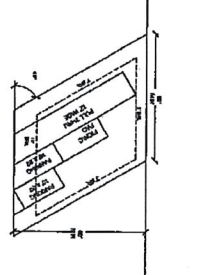
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# THE BAY CLUB

## CAMPING AND RV RESORT



TYPICAL PULL THRU RV SITE  
SCALE 1" = 50'



TYPICAL BACK IN RV SITE  
SCALE 1" = 50'

**CAMP SITE NOTE**

ALL CAMP SITE AREA MINIMUM OF 3,000 SF  
MINIMUM CAMP SITE AREA 40' X 90' RECTANGLE  
WITHIN THE SITE LINES

**SITE DATA**

- PARCEL DESCRIPTION**  
TAX MAP 24, PARCELS 114  
THIRD TAX DISTRICT  
WORCESTER COUNTY, MARYLAND
- OWNER/DEVELOPER**  
CARL M. REBEAN COMPANY  
3801 FERRIS SIGNALS BLDG  
BETHESDA, MD 20814
- SITE AREA**  
± 47 ACRES
- EXISTING ZONING**  
A-2, AGRICULTURAL
- EXISTING USE**  
36 HOLE GOLF COURSE
- PROPOSED USE**  
134 UNIT RENTAL CAMPGROUND



**Don d. Beard**  
Landscape Architect  
12302 Collins Road  
Baltimore, MD 21286  
410-582-5625

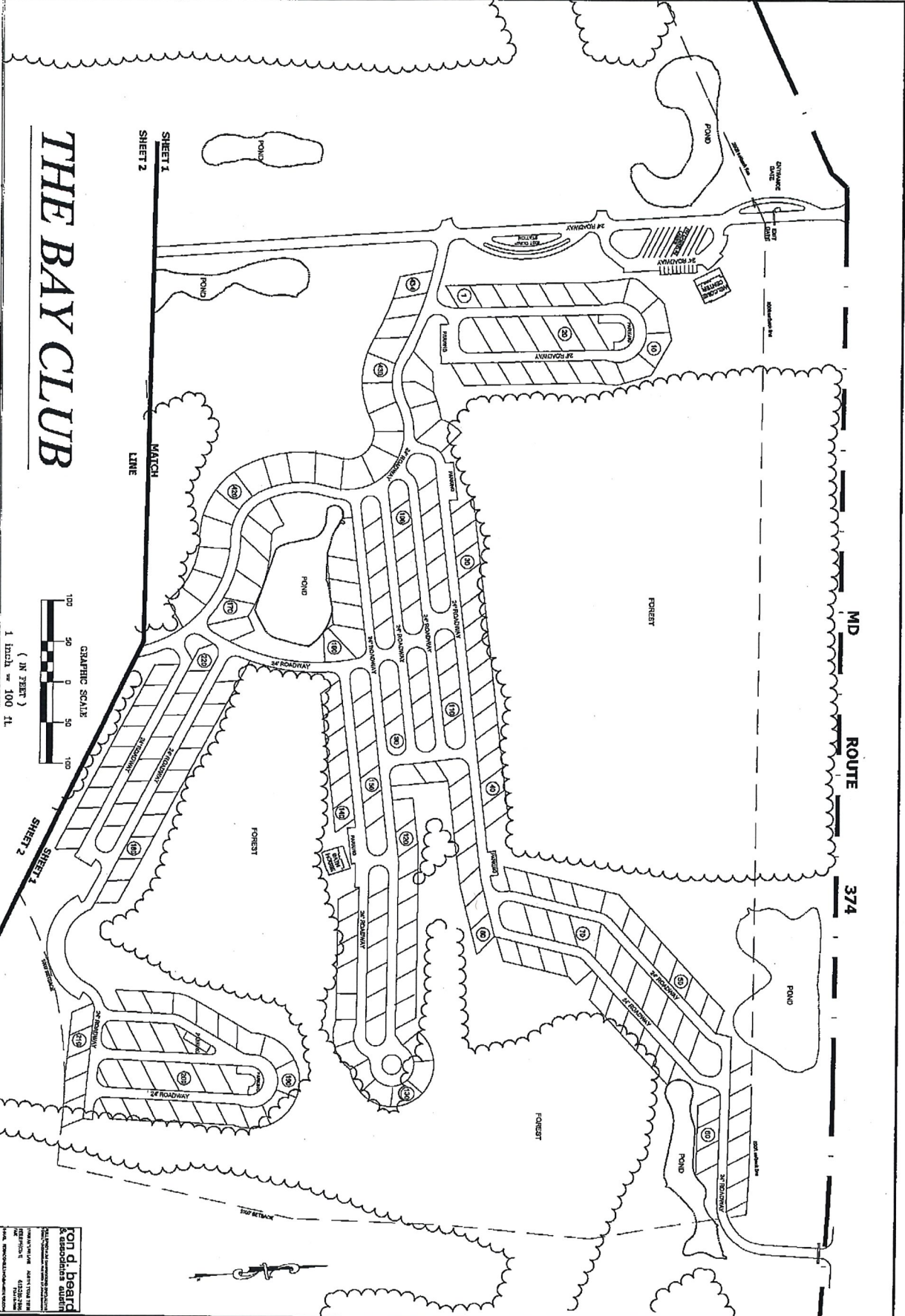
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12302 COLLINS ROAD BETHESDA, MD. 21286 410-582-5625

**THE BAY CLUB**  
TAX MAP 24, PARCELS 114  
WORCESTER COUNTY, MARYLAND

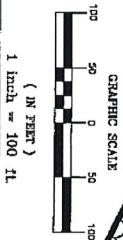
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SHEET 1 OF 3

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# THE BAY CLUB



SHEET 1  
SHEET 2

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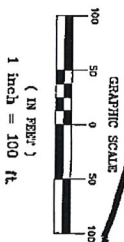
**THE BAY CLUB**  
TAX MAP 24, PARCELS 114  
WORCESTER COUNTY, MARYLAND

DATE: 12/14/11  
PROJECT: THE BAY CLUB  
DRAWN BY: J. H. HANCOCK  
CHECKED BY: J. H. HANCOCK  
SCALE: AS SHOWN

20F3  
SHEET

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# THE BAY CLUB

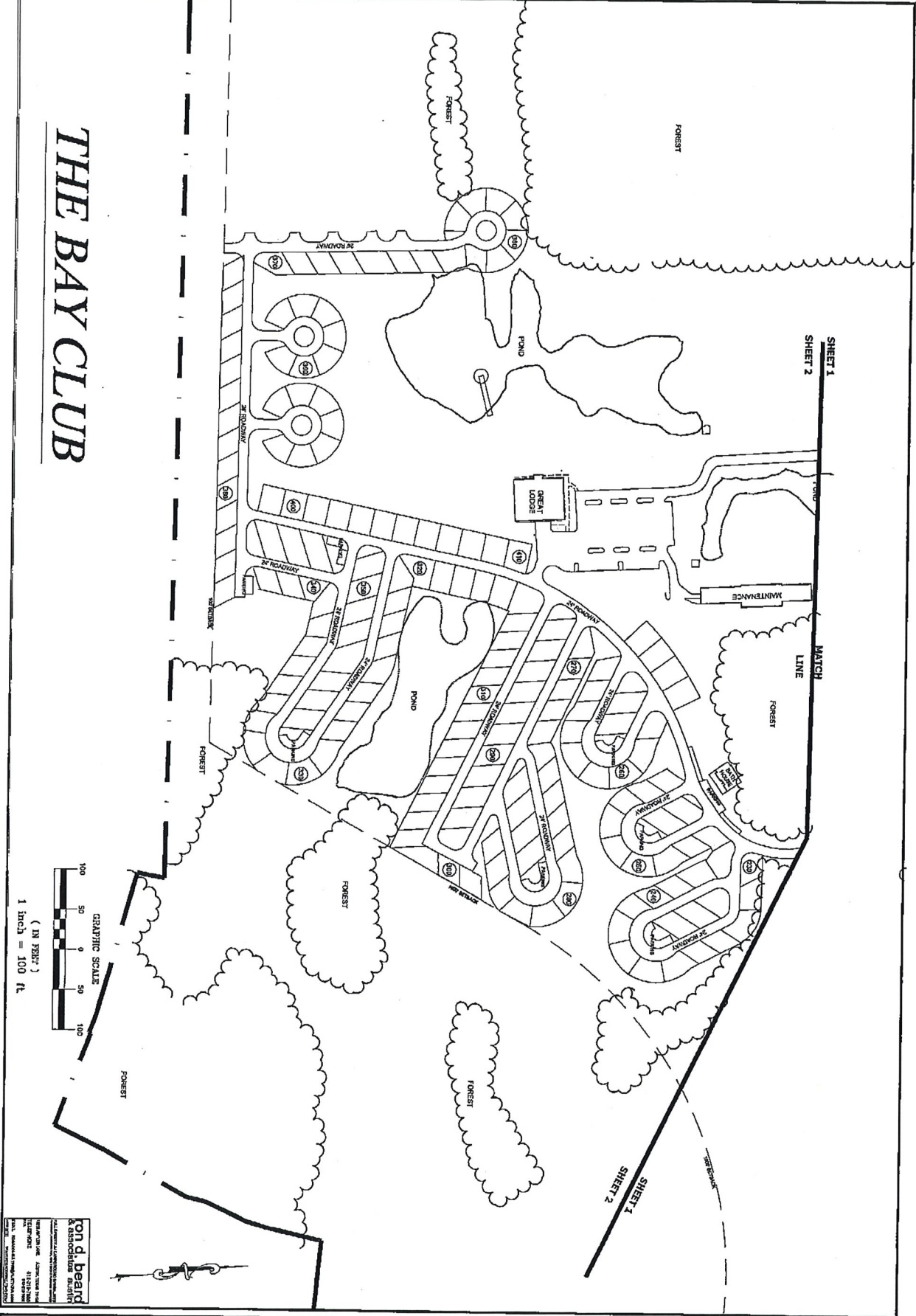


**on d. beard**  
LANDSCAPE ARCHITECT  
11212 WINDY HILL  
DUMFRIES, MD 21046  
TEL: 410-281-1111  
FAX: 410-281-1112

**30F3**  
SHEET

**RD. HAND AND ASSOCIATES, INC.**  
LANDSCAPE ARCHITECTURE, SITE PLANNING AND FEASIBILITY  
18302 COLLINS ROAD DIXIEVILLE, MD. 21813 410-352-6623

**THE BAY CLUB**  
TAX MAP 24, PARCELS 114  
WORCESTER COUNTY, MARYLAND



TOWN OF BERLIN

WATER & SEWER ALLOCATION APPLICATION

The undersigned hereby makes application under the provisions of Ordinance 2009-02 Water and Sewer Allocation for the Town of Berlin. Fill in all applicable blanks.

APPLICANT DATA

Name \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_

Telephone: \_\_\_\_\_ (home) \_\_\_\_\_ (office)

Name of Agent/Engineer: \_\_\_\_\_ Phone: \_\_\_\_\_

PROPERTY DATA

Project Name \_\_\_\_\_

Street Address: \_\_\_\_\_ Town \_\_\_\_\_

Tax Map: \_\_\_\_\_ Parcel \_\_\_\_\_ Lot \_\_\_\_\_ Other \_\_\_\_\_

Acreage: \_\_\_\_\_ Zoning \_\_\_\_\_ Account No. \_\_\_\_\_

Current Master Water and Sewerage Plan Designation: W- \_\_\_\_\_ S- \_\_\_\_\_

Existing Use: \_\_\_\_\_

Existing Allocation: sewer \_\_\_\_\_ gpd water \_\_\_\_\_ gpd

Zoning: \_\_\_\_\_

PROJECT DATA

Description 9828 Seahawk Road, LLC Berlin, MD

A 24 Apartment Community

Application is for: sewerage 24 water 24

Total EDU's Required: 24

Amount Due: \$ 400,464

Balance Due \$ 400,464

(Balance of EDU charge must be paid in full prior to the issuance of a Building Permit for structures that are being built.)

## WATER AND SEWER USE AND ALLOCATION AGREEMENT

Made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between 9828 Seahawk Road, LLC. hereinafter referred to as "Owner", and the Town of Berlin, hereinafter referred to as "Berlin or "Town of Berlin".

### WITNESSETH:

**Whereas**, the Owner is the owner in fee simple of certain property located in Worcester County, Maryland and known as 9828 Seahawk Road, LLC., Berlin, MD., Tax Map 25, Parcel 91; hereinafter referred to as the "Property"; and

**Whereas**, the Property consists of an Apartment Community. The Building contains 24 units ("Unit"); and

**Whereas**, Berlin Standards and Specifications require the following:

**Whereas**, the Property is allocated under policies and procedures of Berlin a Water and Sewer allocation of twenty-four (24) Equivalent Dwelling Unit ("EDU) equal to 6,000 gpd; and

**Whereas**, the Owner may in the future desire to subdivide the Property, or divide the Property by metes and bounds or by other means for the purpose of sale or otherwise change the permitted uses or intensify or increase a previously permitted use on the Property so as to modify the water and sewer usage attributable to the Property; and

**Whereas**, this Agreement is not intended and shall not be construed as authorizing any EDU's in addition to the twenty-four (24) EDU(s) allocated to the Property; and

**Whereas**, this Agreement is intended only to authorize the specific uses so as to assure the Town of Berlin that the use of the Property does not utilize in excess of twenty-four (24) EDU(s), not to exceed 6,000 gpd.

**Now, Therefore**, inconsideration of permission granted by the Town of Berlin to allow Owner of Owner's successors, personal representatives and assigns, a water and sewer allocation from the Town of Berlin equal to twenty-four (24) EDU(s) or 6,000 gpd for the Project, the Owner does hereby covenant and agree for itself, and for all its purchasers, lessees, successors and assigns, to and with the Town of Berlin, as follows:

1. Historical metered flows were determined by the master meter on the Property from 24 months of continuous usage immediately prior to the



- approval date of this agreement and these flows were used in the allocation of twenty-four (24) EDU(s) or 6,000 gpd.
2. Owner specifically acknowledges and agrees that any changes to the approved use including any increase to or enhancement of a previously approved use may not be made without the prior express written approval of the Town of Berlin.
  3. The Property is only approved for twenty-four (24) EDU(s), Owner is to notify the Town of Berlin for approval of any change in use or ownership. The Owner further agrees and understands that a Zoning Permit shall be required for any change of use.
  4. The Town shall monitor water consumption as an indication of actual sewer flow to a non-residential unit or project for a period of twenty-four months following completion of the entire project. If the flow exceeds the established EDU's allocated to the property, the owner of the non-residential unit or project will be assessed additional Special Connection Charges as appropriate, at the rate previously paid by the owner to reflect the additional flow in excess of the previously allocated number of EDU's. Any fractional portion shall be rounded to the next highest whole number. The owner agrees that it is required to purchase additional EDU'S if the actual flow exceeds the established EDU'S allocated to the property, and understands and agrees that the failure to purchase additional EDU'S may result in the termination of water and sewer service to the property at the discretion of the Town of Berlin.
  5. Flow projections for the Property shall be calculated by the Town utilizing the flow projections provided in the Guidance Document, titled Wastewater Capacity Management Plans, 2006, published by the State of Maryland Department of the Environment, as amended, ("Guideline") except for medical office use.
  6. Effective December 31, 2006, when the proposed use is for medical office space, flow projections for such use shall be calculated by the Town by multiplying the gross square footage of such medical office space times 0.10 to determine the projected flow in gallons per day ("Medical Office Guideline".)
  7. Effective February 25, 2008, when the proposed use is for carry-out only, flow projection for such use shall be calculated by the Town by multiplying the gross square footage, to include all seating and food preparation area, including non-public space behind the counter but not a walk in refrigerated space if within the footprint of the building, times 0.5 gpd to determine the projected flow in gallons per day. If seating is planned the numbers of seats are multiplied by 25 gpd and the greater flow of the seating or square foot flow will be used. ("Carry -out Guideline".)
  8. The Town shall review each request for a change in use, expansion of the use, or intensification of the use and, within 45 days of submission, calculate the projected flow pursuant to the Guidelines and Medical Office Guideline. Uses, which result in projected or actual flows in excess of the EDU allocated hereunder, shall not be permitted. The Town may extend

the 45 day period provided that it notifies the Owner in writing that it requires additional time to calculate the projected flow.

- 9. The foregoing covenants shall be deemed to run with and bind the Property and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. Enforcement by the Town may include but not be limited to injunctive relief, the application of use surcharges or other fees or any other remedy deemed appropriate by the Town.

IN WITNESS WHEREOF, the parties hereto set their hands and seals as of the day and year first above written.

ATTEST:

**OWNER's Name**

\_\_\_\_\_

\_\_\_\_\_(Seal)  
Type name & title if any

STATE OF MARYLAND, WORCESTER COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ and acknowledged the foregoing agreement to be his/her respective act.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My commission expires:

ATTEST:

**OWNER's Name**

\_\_\_\_\_

\_\_\_\_\_(Seal)  
Type name & title if any

STATE OF MARYLAND, WORCESTER COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ and acknowledged the foregoing agreement to be his/her respective act.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**Lien Holder Consent**

The undersigned is joining in the execution of this Water and Sewer Allocation Agreement, solely for the purposes of (a) consenting to the terms hereof, and (b) agreeing that this Agreement shall not be terminated or affected in any manner by a foreclosure or other transfer of the Property under the Deed of Trust recorded in Liber \_\_\_\_\_ Folio \_\_\_\_\_.

WITNESS

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Town of Berlin**

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_

STATE OF MARYLAND, WORCESTER COUNTY, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ and acknowledged himself to be the \_\_\_\_\_ of the Town of Berlin, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing agreement for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My commission expires:

12/8/2016

**TOWN OF BERLIN  
PUBLIC WORKS AGREEMENT**

**THIS PUBLIC WORKS AGREEMENT** ("Agreement") made and executed this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, by and between the Mayor and Council of Berlin, Maryland, a municipal corporation of the State of Maryland, (hereinafter "Town") and Oceans East I, LLC, a limited liability company (hereinafter "Developer").

**RECITALS**

**WHEREAS**, Developer is the owner of the property located on Map 25, Parcel 91 situated in the Town of Berlin, Worcester County, Maryland (hereinafter "Subject Property"); and

**WHEREAS**, the Developer and the Town entered into an Annexation and Development Agreement dated March 23, 2014, which binds both parties to certain requirements; and

**WHEREAS**, such agreement was adopted by the Mayor and Council through Resolution No. 2014-06; and

**WHEREAS**, the Subject Property is proposed to be developed into a multi-family apartment community, as set forth on the construction plans for Phase 1 (consisting of six five-car garage buildings, six 24-unit apartment buildings, and one 36-unit apartment building) accepted by the Town on August 12, 2016, and prepared by Parker & Associates registered engineers and/or surveyors, which have been reviewed by the Town Engineer and Town Staff and approved by the Mayor and Council, (hereinafter "Construction Plans"). The Construction Plans and site plans together with all subsequent amendments and revisions thereto duly approved by all proper governmental authorities are attached hereto and made a part hereof as Exhibit A; and

**WHEREAS**, the Developer and Town have also agreed that other off-site work and improvements will be required of the Developer in connection with development of the Subject Property. The terms and requirements of any such off-site work are set forth in the approved construction plans prepared by Parker & Associates, and

**WHEREAS**, all work to be dedicated to the Town shall be performed in accordance with the documents contained in Exhibit A and shall include:

The construction of roadway systems, stormwater systems, curbs, gutters, sidewalks, street lights, water mains, water services, sewer mains, sewer laterals and other related work, and in each instance public not private in nature (hereinafter "Improvements") in accordance with the Town's specifications contained in the document titled "Town of Berlin, Maryland Construction Standards and Specifications for Water, Sewer and Streets," latest edition (hereinafter "Town Standards"); and

**WHEREAS**, prior to plat recordation, and subject to the other provisions herein, the Developer will provide the Town with an acceptable performance, payment and guarantee bond or irrevocable letter of credit, or other satisfactory form of financial guarantee to ensure completion of the Improvements and other obligations herein described. The required bonds may be submitted based on phased development; and

**NOW, THEREFORE**, in consideration of the mutual understandings and agreements contained herein, which all parties to this Agreement recognize as sufficient consideration, the parties covenant and agree as follows:

**I. RESPONSIBILITIES SPECIFIC TO PORTIONS OF THE WORK.**

**A. DEVELOPER SHALL:**

1. Secure a:
  - a. performance bond, or irrevocable letter of credit, subject to the Town's approval, naming the Town as payee in the amount of 150% of the contractor's construction estimate of the Improvements. The performance bond shall be approved by the Mayor and Council subject to review recommendation of the Town Engineer and Town Staff.
  - b. separate performance bond or irrevocable letter of credit, subject to the Town's approval for stormwater improvements and pay for stormwater review and inspection fees consistent with Section 26-157 of the Berlin Town Code.
  - c. payment bond, or irrevocable letter of credit, subject to the Town's approval, naming the Town as payee in the amount of 100% of the

contractor's labor cost estimate of the Improvements. The payment bond shall be approved by the Mayor and Council subject to review and recommendation of the Town Engineer and Town Staff.

2. Pay to the Town, and prior to any construction of the Improvements, a construction inspection fee for the approved Improvements (hereinafter "Fee"). This fee shall be used by the Town to reimburse it for all engineering and construction administration costs including, but not limited to, reviewing shop drawings and construction documents, performing construction inspections, and the testing and administration of the construction of the Improvements. Amount of the Fee shall be estimated by the Town and paid into an escrow account established by the Town. If the Town determines that the amount of the Fee paid by the Developer is insufficient to pay all of the Town's expenses, the Developer shall pay additional amounts as required by the Town. The Town shall return to the Developer any unused amount of the Fee no later than 90 days after the completion of all inspections and reviews. Complete construction of all Improvements required under this Agreement on or before June 1, 2019. Secure and record in the Land Records all required easements, rights of way, land dedications, etc., prior to execution of this Agreement.
3. Comply with all of the general responsibilities of Developer described in Section II.
4. Prepare as-built plans of public roads, public storm water management, public water and public sewer systems.
5. Apply for and receive a water and sewer allocation for any subsequent uncompleted phase pursuant to the Town's Allocation Ordinance prior to commencing any uncompleted phase, if development on the Subject Property has been previously approved but not completed prior to the complete execution of this Agreement.
6. Agree to Town requirement, prior to initiating future phases of Oceans East, to provide an evaluation of Town conveyance, distribution and transmission infrastructure to determine what, if any, upgrades will be necessary to meet the needs of the proposed development. This evaluation will include: Town water supply, treatment, storage and distribution systems; Town sewer collection, transmission and treatment systems. In addition, provide revised Traffic Study if the

proposed development changes significantly (number of units, use, increased commercial).

7. Ensure no construction vehicles travel on Flower St. within the Town limits.

**B. TOWN MAY:**

Upon acceptance by the Town of the (1) Improvements, (2) approved as-built plans, and (3) a two year guarantee bond to cover the required improvements (as required by Section II.E), surrender appropriate portions of the original performance and payments bonds. The original amount of the performance and payment bonds may be reduced from time to time as entire phases, including Improvements, of the development on the Subject Property are completed, and are recommended for approval by the Town's Engineer and approved by the Town.

**II. DEVELOPER'S GENERAL RESPONSIBILITIES.** In addition to the specific responsibilities contained herein, the **DEVELOPER SHALL** have the following additional responsibilities.

A. Where applicable, prepare and record Subdivision Plats as required by Town Code.

The owners of the Subject Property shall be responsible for repair and maintenance of all onsite public or private open space, including but not limited to stormwater management systems, piping, swales, landscaping, etc. that are not located on property owned or dedicated to the Town.

B. The Developer agrees that construction on the Subject Property shall not commence until the Town gives written authorization to the Developer. Prior to starting construction work on the Improvements, Developer shall have:

1. Caused the contractor to furnish certificates of insurance naming the Town as an additional insured under terms and dollar limits established by the Town;
2. Conducted one or more pre-construction meetings, as may be required by the Town and which are attended by the Town Engineer, Town Staff and relevant agencies and utilities; and
3. Caused its contractor to have obtained proper permits from all appropriate agencies and notified the Miss Utility program.

C. Provide all testing to assure, as necessary, that construction is consistent with approved Construction Plans and the Town Standards.



- D. Cooperate with the Town Engineer and Town Staff in accordance with any stop work order issued by the Town for unacceptable work conducted by the Developer or its contractor.
- E. Provide to the Town a two year guarantee bond in the amount of 10% of the approved construction cost estimate for all Improvements, with the term of such bond to commence upon acceptance by the Town of the dedicated Improvements.
- F. Secure all necessary permits from the Town and other applicable agencies, including, but not limited to the Maryland Department of the Environment, Maryland Department of Natural Resources, Critical Area Commission, State Highway Administration, Worcester County Department of Development Review and Permitting, Worcester County Fire Marshall, and the Worcester Soil Conservation District.
- G. Permit the Town Engineer and Town Staff to: (1) inspect any Improvements to be dedicated to the Town; and (2) provide guidance and/or recommendations to the Developer and its contractor regarding construction materials, construction equipment and method of construction in order to assure such work is performed in compliance with the Town Standards and the approved Construction Plan.
- H. Submit revised estimates and justification to the Town and Town Engineer for review and modification of any Bonds if required by the Town when there is a change to the anticipated construction cost of greater than 10%.
- I. Submit as-built plans of all Improvements to ensure compliance with approved Construction Plans after construction is complete. The as-built plans shall also show the location of all non-Town utilities such as, but not limited to, electric, gas and all communications lines. The as-built plans must be sealed by a professional land surveyor, property line surveyor or engineer registered in Maryland. Performance and payment bonds will not be released until these as-built plans are submitted to and accepted by the Town.
- J. Dedicate to the Town all Improvements located on property owned by or dedicated to the Town by easement and/or Record Plat.

**III. TOWN'S GENERAL RESPONSIBILITIES:** In addition to the specific responsibilities described in Section I, the **TOWN SHALL:**

- A. Provide Developer's design engineers with Town Standards upon payment of any and all fees therefor;

- B. Review and accept or present exception to any changes required to plans for work covered by this Agreement within a reasonable time period; and
- C. Provide municipal services to the Subject Property after final acceptance of all Improvements and receipt of the guarantee bond and all required fees.
- D. Reserve the right to re-evaluate the traffic impacts of future phases of the development if they represent a significant change over the initial proposal.

#### **IV. MISCELLANEOUS PROVISIONS**

- A. Developer shall use a contractor previously approved by the Town for construction of the particular type of Improvements. Payment to the contractor shall be the Developer's responsibility. The Town may suspend or cancel construction when the construction method or materials supplied are less than the standard set forth in the Town Standards. The type and quantity of material testing will be determined by the Town and Town Engineer during construction, as described in the Town Standards. Testing costs shall be the responsibility of the Developer.
- B. Developer shall require its contractor to obtain the latest version of the Town Standards. The contractor shall have a copy of this manual, in addition to Construction Plans, and other pertinent construction information at the construction site until completion of construction.
- C. The Developer shall be responsible for all costs associated with construction above and beyond the estimated preconstruction costs which the Town deems necessary to meet current Town construction requirements as of the date of the approved Construction Plans.
- D. Developer acknowledges that work completed by its contractor subsequent to a stop work order may not be accepted for final dedication by the Town unless the Town determines, in its discretion, to do so. In the event work completed by the Developer's contractor subsequent to the issuance of a stop work order is included in a completed system, such system will not be connected to the Town system unless the Town, in its sole discretion, decided to connect such system.
- E. Developer acknowledges that all snow removal, refuse collection and disposal are the sole responsibility of the Developer.
- F. Developer agrees that, notwithstanding written acceptance of Improvements by the Town, Developer shall be responsible for repairs, maintenance and/or deficiencies

which are required, discovered, or determined to be required, for a period of two years after the date of acceptance by the Town.

- G. Developer agrees that the Town will not accept or activate any utility which has not been constructed in accordance with the Town Standards.
- H. Developer agrees that in case of conflict or discrepancy between Construction Plans and applicable Town Standards, the Town reserves the right to issue instructions to the contractor, as deemed necessary to assure compliance with the Town Standards. The Developer shall be responsible for any change in cost associated with achieving compliance with the Town Standards.
- I. As used in this Agreement and those which may follow here from, the terms, "bond" and "letter of credit" shall be understood to include alternative means or vehicles by which Developer may post security as may be approved by the Town.
- J. This Agreement is, and shall be, binding upon the Developer, its successors and assigns, and is intended to burden and run with the land upon which the Subject Property is located. This Agreement contains the entire agreement between the Parties and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement and signed by the Parties prior to the effective date of any such modification, amendment or termination. The recitals set forth above on Pages 1 and 2 are incorporated herein and made a part of this Agreement.

ATTEST:

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

DEVELOPER:

BY: \_\_\_\_\_  
BY: \_\_\_\_\_  
BY: \_\_\_\_\_

12/8/2016

**STATE OF MARYLAND, COUNTY OF WORCESTER**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned officer, personally appeared, \_\_\_\_\_, and on his/her behalf did acknowledge the foregoing instrument to be the act and deed of

\_\_\_\_\_.

As witness, I set my hand and official seal.

(SEAL)

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

TOWN:

**MAYOR AND COUNCIL OF BERLIN,**  
a municipal corporation of The State of  
Maryland

BY: \_\_\_\_\_

12/8/2016

**STATE OF MARYLAND, COUNTY OF WORCESTER**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me, the undersigned officer, personally appeared, \_\_\_\_\_, \_\_\_\_\_ of the Town of Berlin, a municipal corporation of the State of Maryland, and on his/her behalf did acknowledge the foregoing instrument to be the act deed of said corporation.

As witness, I set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_