

AGENDA
REGULAR MEETING OF THE MAYOR AND COUNCIL
September 26, 2017
SEAFORD CITY HALL - 414 HIGH STREET

- 7:00 P.M.** - Mayor David Genshaw calls the Regular Meeting to Order.
- Invocation
 - Pledge of Allegiance to the Flag of the United States of America.
 - Changes to agenda for this meeting.
 - Approval of minutes of the regular meeting on September 12, 2017.

CORRESPONDENCE:

- 1.

NEW BUSINESS:

1. Mr. Rick Stewart to make request on behalf of Mrs. Barbara Jones about 715 Poplar Street.
2. Trisha Newcomer, ED/IT Manager to present information on marketing Public Power Week in partnership with DEMEC.
3. Bill Bennett, Director of Electric to report on progress at Pine Street Substation and Distribution Improvements.
4. Discuss the Purchase and Sale Agreement with Seaford Development Associates, LLC advising that per Section 14 - Closing gives them until December 31, 2017 to settle on all the properties.

OLD BUSINESS:

1. None

REMINDER OF MEETINGS & SETTING NEW MEETINGS:

1. Delaware League of Local Govts, Duncan Center, September 28th; social 5:30 p.m. with dinner at 6:30 p.m.
2. SCAT dinner meeting, SVFD Banquet Hall, October 4th; 6:00 p.m.
3. Pink Ribbon Breast Cancer Awareness Walk to "Turn Sussex Pink" from Nanticoke Cancer Care Center to Gateway Park; Monday, October 2nd; 7:15 p.m.

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AGENDA

REGULAR MEETING OF THE MAYOR AND COUNCIL
September 26, 2017

COMMITTEE REPORTS:

1. **Police & Fire - Councilwoman Leanne Phillips-Lowe**
2. **Administration - Councilman Orlando Holland**
3. **Code, Parks and Recreation - Councilwoman Grace Peterson**
4. **Public Works & WWTF - Councilman William Mulvaney**
5. **Electric - Councilman Dan Henderson**

Mayor Genshaw solicits a motion to adjourn the regular council meeting.

NOTE: Agenda shall be subject to change to include or delete Additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))

Posted

TNT - Website 9/19/17 @ 4:53 p.m.

N.B. 1
9/26/17

To: The Mayor and Council of the City of Seaford

Sept. 2nd, 2017

Re: Vacant lot at 715 Poplar Street, Seaford

Mr. Mayor and Members of the Council,

The owner of the above mentioned property would like to propose that the City consider purchasing the property for the sum of \$1000.00, payable to Mrs. Barbara Jones of 715 King Street Seaford.

The property is currently listed with me and the asking price is \$12,000.00. It is a small building lot 0.1 acres in size immediately adjacent to the parking lot of Lofland Life Care, with water and sewer taps already in place as there was a structure on the property at one time (the City had it demolished, hence the \$8000.00 lean).

At present, there is a \$8000.00 lean against the property, plus City back taxes of over \$4000.00 owed.

Add to this the back taxes owed to Sussex County also totaling over \$4000.00, it is not feasible for Mrs. Jones to move forward with selling the property.

Mrs. Jones is willing to sign the property over to the City for the sum of \$1000.00. The taxes due to the County would have to be addressed by the City at settlement. To my knowledge, there are no other leans against the property, however I would advise the City to do a title search of the property before any contract is made as this is an inheritance and there may be issues I am not aware of.

My part in this is simply a facilitator, and there is no fee owed to me or my Brokerage.

Thank you for your time and efforts. I can be reached through the City Manager for any questions.

Rick Stewart
Rick Stewart REALTOR

SRES e-PRO

Barbara Jones
Mrs. Barbara Jones

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this 23 day of Oct, 2015, by and between CITY OF SEAFORD ("Seller") and SEAFORD DEVELOPMENT ASSOCIATES, LLC ("Purchaser").

RECITALS

WHEREAS, Seller is the owner in fee simple of that certain property consisting of the following properties in Seaford Hundred, Sussex County, State of Delaware (the "Property"), see attached tax map:

- SCTP No. 4-31-5.00-291.00 (Power Plant);
- SCTP No. 4-31-5.00-294.01 (Power Plant);
- SCTP No. 4-31-5.00-301.00 (Power Plant);
- SCTP No. 4-31-5.00-296.00 (vacant); and
- SCTP No. 4-31-5.00-297.00 (vacant).

WHEREAS, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the Property from Seller, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated by reference herein, and the mutual promises herein contained and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties agree as follows:

1. **Property.** Seller does hereby bargain and sell unto Purchaser and Purchaser does hereby purchase from Seller all of Seller's right, title and interest in and to the Property.
2. **Purchase Price and Payment.** The purchase price (the "Purchase Price") for the Property shall be ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00).

The Purchase Price shall be payable by Purchaser to Seller as follows:

a. Within five (5) Business Days after the execution of this Agreement by both Seller and Purchaser, a deposit of TEN THOUSAND DOLLARS (\$10,000.00) (the "Deposit") shall be remitted by Purchaser to Morris James Wilson Halbrook & Bayard, LLP., as escrow agent ("Escrow Agent"), to be held by Escrow Agent in escrow as set forth in Section 12. The Deposit shall be applied toward the Purchase Price at Closing or as otherwise provided in this Agreement.

b. At Closing, the Deposit and ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000.00) for a total of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) shall be due and payable to Seller, subject to any adjustments contained in this Agreement, including but not limited to, the adjustments described in

Section 15 hereof, shall be payable by wire transfer at the time of Closing to an account or qualified intermediary designated by Seller.

3. Effective Date; Delivery of Materials to Purchaser. The "Effective Date" of this Agreement shall be the date upon which the materials described in this paragraph are delivered to Purchaser from Seller. Promptly, but in no event later than seven (7) days following the execution of this Agreement, Seller shall deliver to Purchaser the following (to the extent not previously delivered to Purchaser and to the extent within the possession or control of the Seller):

- a. A true and complete copy of all owner's policies of title insurance, if any, previously obtained by or in possession of Seller with respect to the Property.
- b. All surveys and engineering or similar reports in Seller's possession or control relating to the Property.
- c. All information, studies, proposals, notices regarding the Property, including, but not limited to, land planning notices/reports, soil reports, wetlands reports, environmental notices/reports, and similar notices/reports.

In addition to the foregoing, Purchaser shall receive any documentation with regard to the Property and/or the subdivision process within Seller's possession or control. Further, Seller hereby assigns, consents to and approves the inclusion of Purchaser as a third party that can rely upon any documents delivered to Purchaser pursuant to this section. Seller shall cooperate with all requests to the producers of documents delivered under this section to allow Purchaser to be able to rely upon the documents.

4. Property Requirements. The parties agree to the following conditions and requirements regarding the purchase and sale of the Property:

- a. Purchaser shall bear all the costs of environmental clean-up of the Property and the demolition of all buildings, including the cooling tower and the tank retaining area. If, in the sole discretion of the Purchaser, the cost is excessive, Purchaser may terminate this agreement.
- b. Immediately upon the execution of this Agreement, Seller shall, at its expense, undertake the process of changing the circuits from the Central Substation to the Pine Station and demolish the Central Substation. Seller shall endeavor to complete this process as soon as possible.
- c. Seller shall, at its expense, subdivide the Riverwalk from the Property to retain title to the Riverwalk and shall provide Purchaser with an easement for the Riverwalk.

d. Purchaser shall provide Seller with easements for water, sanitary sewer, interceptor sewer and storm water facilities as part of the approval of the final site plan.

e. Purchaser shall, if required to accommodate the contemplated improvements on the site, pay for all the costs of utility relocations or realignments, which improvements or utility relocations may require bulkhead repairs, replacement or other provisions (Purchaser will not be required to pay for the changing of the circuits from the Central Substation to the Pine Station or the demolition of the Central Substation). Seller and Purchaser shall cooperate in determining the most economical means of accomplishing this work. If, in the sole discretion of the Purchaser, the cost is excessive, Purchaser may terminate this agreement.

5. Inspections; Study Period.

a. **Inspections.** During the Study Period defined below, Purchaser, its agents, servants, employees, engineers, invitees and/or designees, at their own risk and expense, shall have the full right from and after the Effective Date: (i) to enter upon the Property upon permission from the Seller, which permission shall not be unreasonably withheld, conditioned or delayed for purposes of conducting studies, structural tests, environmental audits, investigations and the like with respect to the Property, any component thereof or any system contained therein and (ii) to review any site plans, surveys or reports in Seller's possession.

b. **Study Period.** For a period of sixty (60) days from the effective date of this Agreement (the "Study Period"), Purchaser shall have the right to terminate this Agreement by written notice to Seller sent prior to the expiration of the Study Period, in its sole and absolute discretion, for any reason whatsoever, including, by way of example and not of limitation, (i) if Purchaser is dissatisfied with the results of any inspections conducted in connection with this Agreement, or (ii) if Purchaser is dissatisfied with any materials furnished to it pursuant to the terms of this Agreement. In the event that Purchaser terminates this Agreement pursuant to the provisions of this paragraph, the Deposit shall be immediately returned to Purchaser by Escrow Agent and neither party hereto shall have any further obligations or liabilities hereunder to the other, except to the extent the same survive otherwise under the express terms hereof, and this Agreement shall be and become null and void and of no further force and effect, either at law or in equity. Purchaser's right to terminate this Agreement pursuant to the terms of this paragraph is in addition to such other rights set forth elsewhere herein; and this paragraph and any election hereunder shall not be deemed a waiver or election against such other rights. Further, if Purchaser terminates this Agreement during the Study Period, it shall provide copies of all reports, studies, surveys, plots and any other materials it assembled during the Study Period to Seller.



c. During the Study Period, Seller shall use its reasonable efforts to cooperate with Purchaser and/or Purchaser's agents with respect to the Purchaser's investigations permitted in Section 5(a) above.

d. If Purchaser enters the Property prior to Closing, Purchaser shall; (i) keep the Property free and clear of any and all liens or claims resulting therefrom; (ii) defend, indemnify and hold harmless Seller against and from any claim or liability imposed or sought to be imposed upon Seller as a result of actions by Purchaser, its employees, agents, architects and engineers on the Property; (iii) agree not to damage or harm the Property; and (iv) promptly after such entry, restore the Property to substantially the same condition as existed prior to such entry.

6. Title; Title Insurance; Survey.

a. At Closing, Seller shall convey good and marketable title to the Property, free and clear of all liens and encumbrances except for only such easements and other title matters as Purchaser shall have approved, in writing, after receiving a title report for the Property (the "Permitted Exceptions"), and insurable as such at regular commercial rates by a national title insurer duly authorized to transact title insurance in the State of Delaware and reasonably acceptable to Purchaser. Purchaser may, at Purchaser's expense, seek a commitment (the "Title Commitment") from a title insurance company of Purchaser's choice and which is licensed to do business in the State of Delaware for an owner's title insurance policy. Such policy shall issue using the most recent Standard ALTA Policy form and at regular rates. Further, Purchaser may, at Purchaser's expense, obtain an updated survey of the Property (the "Survey"). If the title commitment shows exceptions to title (a "Title Defect") or if the Survey shows encroachments or that the improvements, if any, are not located within the boundary of the Premises or other matters which would prevent the removal of the survey exception from the Title Commitment (a "Survey Defect"), then, Purchaser shall give Seller notice thereof. Unless Seller gives Purchaser written notice within five (5) calendar days from receipt of said notice from Purchaser that Seller will cure the Title Defects or Survey Defects at or prior to Closing, Purchaser may, at Purchaser's written election:

(i) Terminate this Agreement, in which event the Deposit shall be promptly returned to Purchaser and neither party hereto shall have any further obligations or liabilities hereunder to the other, except to the extent the same survive otherwise under the express terms hereof, and this Agreement shall be and become null and void and of no further force and effect, either at law or in equity; or

(ii) Waive all those Title Defects and Survey Defects and proceed with Closing hereunder;



Provided, however, that Seller shall be obligated to cure any of Purchaser's objections within forty-five (45) days of receipt of Purchaser's provided that the cure of each objection can be achieved by the payment of funds by Seller not to exceed Fifty Thousand Dollars (\$50,000.00).

b. Any lien or encumbrance which attaches to the Property between the Effective Date and the date of Closing, as well as any existing monetary lien or encumbrance (including, without limitation, any existing mortgage, deed of trust, judgment lien or similar lien against the Property) which can be discharged by the payment of money, shall be discharged by Seller at or prior to Closing.

7. **Covenants, Representations and Warranties of Seller.** Seller represents and warrants to Purchaser, which representations and warranties are true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date, that to the best of its knowledge and belief;

a. Seller has the full right, power and authority to enter into this Agreement and to perform its covenants and obligations hereunder.

b. Seller is aware of the following regarding the Property and its use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity on or about the Property in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Environmental Act, 7 Del. C. Chapter 60, the Delaware Hazardous Waste Management Agreement, 7 Del. C. Chapter 63, the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., any other environmental laws, as any of the same may have been or may be amended, and the regulations promulgated under any of said laws:

➤ Draft Remedial Investigation Report prepared by EA Engineering, Science & Technology, Inc., PBC for DNREC date July 2015 regarding the Power Plant Site;

➤ _____;

➤ _____.

c. Other than the disclosures found in Section 7.b, Seller is not aware of, and Seller has not caused or allowed the use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity on or about the Property in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Environmental Act, 7 Del. C. Chapter 60, the Delaware Hazardous Waste Management Agreement, 7 Del. C.

(u)

Chapter 63, the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., any other environmental laws, as any of the same may have been or may be amended, and the regulations promulgated under any of said laws.

d. Other than a notice(s) described in this Agreement, Seller has no outstanding written notices of any violations of any federal, state, county or municipal law, code, ordinance, order, regulation or requirement affecting the Property.

e. There are no persons with any rights to occupy or use the Property as tenant and the Property is currently occupied by Seller.

f. There is no pending or threatened litigation affecting the Property.

g. There is no pending or threatened condemnation or similar proceedings affecting the Property.

h. Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act under Section 1445 of the Internal Revenue Code of 1986, as amended.

i. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party or (ii) violate any restriction to which Seller is subject.

j. All covenants, representations and warranties contained in this Agreement shall merge with the Deed and shall survive Closing for a period of twenty-four (24) months.

k. Adequate utilities and facilities, including but not limited to water, sewer, storm sewer and electric, exist for the attached Site Plan (project presented to the City at the August 25, 2015 meeting).

8. Condition of Property. Purchaser acknowledges and agrees that Seller makes no covenant, representation or warranty as to the suitability of the Property or as to the physical condition thereof for any purpose whatsoever, except as expressly provided in Sections 4 and 7 above, Purchaser further acknowledges and agrees that the Property is to be sold and conveyed to, and purchased and accepted by Purchaser in its present condition on the date hereof, "AS IS" and "WHERE IS" with all known or unknown faults and hereby assumes the risk that adverse past, present or future physical characteristics and conditions may have not been revealed by any inspection or investigation of the Property, subject in all respect to the representations made by



Seller in this Agreement. Purchaser, for itself and its successors and assigns, hereby releases and waives all claims, suits, actions, causes of action, liabilities, losses, damages, rights of contribution or indemnification and all costs and expenses in connection therewith, against Seller, its predecessors, successors and assigns, and its subsidiaries, and their respective directors, members, officers, employees and stockholders, which Purchaser has, may or could have, now or hereafter, against any one or more of them arising from or in connection with the physical characteristics and condition(s) existing under, on or above the Property as aforesaid, now or hereafter arising, whether at common law or by federal, state, county or municipal law or ordinance including, without limitation, any conditions existing prior to or subsequent to Settlement. Purchaser covenants and agrees that the obligations contained in this Paragraph shall survive the Settlement and delivery of the deed hereunder.

9. Maintenance of Property Until Closing. Seller agrees that, from the Effective Date to the date of Closing, it will, at its sole cost and expense, keep the Property in as good of a condition and repair as exists as of the date hereof, and shall keep the Property in compliance with all common law or by federal, state, county or municipal laws and ordinances.

10. Possession; Risk of Loss; Insurance, Condemnation.

a. **Possession.** Subject to other specific provisions herein, possession of the Property shall be given to Purchaser as of the date of Closing.

b. **Risk of Loss.** Seller shall bear the risk of all loss, destruction or damage to the Property or any portion thereof from any and all causes whatsoever until Closing.

c. **Condemnation.** If, on or before Closing, any portion of the Property is condemned or taken pursuant to any governmental or other power of eminent domain, any notice of such a condemnation or taking is issued with respect to any portion of the Property, or any proceeding is instituted against any portion of the Property by any governmental or other authority having the power of eminent domain (any such action, notice or proceeding being hereinafter referred to as a "Taking"), then Purchaser shall (a) proceed to the Closing and accept the Property subject to the Taking, without any reduction in the Purchase Price, in which event Seller shall assign to Purchaser all awards attributable to the Taking; or (b) terminate this Agreement.

11. Seller's Deliveries and Conditions Precedent to Purchaser's Obligations. In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to Purchaser at the Closing all of the following, the delivery of which shall be a condition to Purchaser's obligation to consummate the purchase of the Property:

a. **Special Warranty Deed.**

b. **Additional Documents.** Such additional documents as may be requested by



Purchaser's title company to consummate the transactions described herein and to cause the title company to issue and deliver its title policy subject only to the Permitted Exceptions and such other exceptions to which Purchaser consents in writing.

12. Default.

a. **Default by Seller.** In the event that all conditions precedent to Seller's obligation to consummate the transactions contemplated by this Agreement have been satisfied or waived and Seller is not entitled to terminate this Agreement under any provisions hereof, then in the event of default by Seller under this Agreement, Purchaser shall have the option of either (i) giving Escrow Agent and Seller written notice of Seller's default, in which event Escrow Agent shall return the Deposit to Purchaser as liquidated damages for Seller's default hereunder, or (ii) pursue any and all legal rights or remedies at law or in equity available to Purchaser against Seller, including, but not limited to, any right to specific performance, injunction or damages, including, but not limited to, reasonable attorneys' fees and costs.

b. **Default by Purchaser.** If all conditions and other events precedent to Purchaser's obligations to consummate the transactions contemplated by this Agreement have been satisfied or waived, but Purchaser fails, refuses or is unable to consummate the purchase and sale contemplated by this Agreement, or to perform any other obligation required by this Agreement, then Seller, in addition to any other right or remedy at law or equity (including, but not limited to, actions for specific performance and/or damages), shall have the right to give Escrow Agent and Purchaser written notice of Purchaser's default, in which event Escrow Agent shall deliver the Deposit to Seller.

c. **Notice.** Neither party shall be deemed to be in default hereunder, unless and until, it shall have been sent written Notice of such default by the other party, and shall have failed to cure the default within ten (10) business days following receipt of such notice.

13. Escrow Agent. The duties of the Escrow Agent shall be as follows:

a. **Duties.** During the term of this Agreement, Escrow Agent shall hold and disburse the Deposit in accordance with the terms and provisions of this Agreement. Purchaser simultaneously with the execution of this Agreement shall provide Escrow Agent with Purchaser's Federal Tax Identification number for use by Escrow Agent in establishing the escrow account and any interest thereon shall be reported as income by Purchaser on its tax returns.

b. **Dispute or Termination.** If this Agreement shall be terminated by the mutual written agreement of Seller and Purchaser, or if Escrow Agent shall be unable to determine at any time to whom the Deposit should be paid, or if a dispute shall develop



between Seller and Purchaser concerning to whom the Deposit shall be paid, then Escrow Agent shall pay the Deposit in accordance with the joint written instructions of Seller and Purchaser. In the event that such written instructions shall not have been received by Escrow Agent within ten (10) days after Escrow Agent has served a written request for instructions upon Seller and Purchaser, or if either party notifies Escrow Agent that the dispute has not been resolved then Escrow Agent shall by bill of interpleader pay the Deposit, less the reasonable expenses of Escrow Agent, as hereinafter set forth, into a court of competent jurisdiction and interplead Seller and Purchaser in respect thereof, and thereafter Escrow Agent shall be discharged of any obligations in connection with this Agreement.

c. **Expenses.** If costs or expenses are incurred by Escrow Agent because of litigation or a dispute between Seller and Purchaser arising out of the holding of the Deposit in escrow, the party held not to be entitled to the Deposit shall pay Escrow Agent such reasonable costs and expenses. Except for such costs or expenses, no fee or charge shall be due or payable to Escrow Agent for its services as escrow holder.

d. **Limitation on Duty.** Seller and Purchaser acknowledge that Escrow Agent hereunder is required only to perform the duties and obligations imposed upon Escrow Agent under the terms of this Agreement and expressly does not undertake to perform any of the other covenants, terms and provisions incumbent upon Seller and Purchaser hereunder.

e. **Limitation on Liability.** Purchaser and Seller hereby agree and acknowledge that Escrow Agent assumes no liability in connection herewith except for gross negligence or willful misconduct; that Escrow Agent shall never be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement; and that in the event of any dispute under this Agreement, Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken by it in good faith in accordance with the opinion of such counsel.

14. **Closing.** Subject to the satisfaction of all of the terms, covenants and conditions contained herein, Closing shall occur upon the earlier of (1) thirty (30) days of Purchaser receiving site plan approval or a building permit for one of the following: The Shoppes at Riverwalk, The Marketplace at Riverwalk, the Hotel or the Galleria, or (2) December 31, 2016 (the "Closing" or "Closing Date"), at a time and place designated by Purchaser in Sussex County, Delaware. Subject to the provisions of Section 11 above, and upon payment of the Purchase Price as provided for in Section 2, at the time of Closing, Seller shall convey good and marketable title to the Property to Purchaser as provided for in Section 6. The Closing Date is subject to a one (1) year extension if requested by Purchaser ninety (90) days prior to December 31, 2016.

15. Adjustments, Prorations and Closing Costs.

a. Any taxes, general or special, and all other public or governmental charges or assessments against the Property which are, or may be, payable with respect to the Property (including assessments, liens or encumbrances for sewer, water, drainage or other public improvements, completed or commenced, on or prior to the date hereof, or subsequent thereto), shall be adjusted and apportioned as of the date of Closing and are to be assumed and paid thereafter by Purchaser, said adjustment apportionment to be on the basis of the fiscal year for which assessed, whether or not such assessments have been levied as of the date of Closing.

b. All other charges, if any and fees customarily pro-rated and adjusted in similar transactions shall be pro-rated at Closing and thereafter assumed by Purchaser. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable, the parties shall pro-rate on the best available information, subject to adjustment upon receipt of the final bill or statement.

c. The parties shall equally divide the cost of all transfer taxes. Seller shall be responsible for the cost of deed preparation. All recording costs shall be borne by the Purchaser. Fees for owner's and lender's title insurance shall be borne by Purchaser. Each party shall be responsible for the fees of its respective legal counsel, except as otherwise specified herein.

16. Agency. Seller and Purchaser each warrant and represent to the other that it has not used the services of any real estate broker, agent or finder in connection with this Agreement,

17. Notices. Any notice or demand under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid, or by recognized overnight courier service such as Federal Express, as follows:

If to Seller:

The City of Seaford
Attn: City Manager
P.O. Box 1100
414 High Street
Seaford, DE 19973

With a copy to:

James A. Fuqua, Esquire
Fuqua, Yori and Willard, P.A.
26 The Circle



P.O. Box 250
Georgetown, DE 19947

If to Purchaser:

Seaford Development Associates, LLC
656 Quince Road
Suite 720
Gaithersburg, MD 20878

With a copy to:

David C. Hutt, Esquire
Morris James Wilson, Halbrook & Bayard, LLP
107 West Market Street
P.O. Box 690
Georgetown, DE 19947.

Any such notice or demand shall be deemed given three (3) days after same has been deposited in the United States mail as aforesaid, or the next business day after deposited with a recognized overnight courier. Either party by notice to the other in accordance with the above, may designate a substitute address for such notice or demand and thereafter such substitute address shall be used for the giving of notice or demand.

18. Miscellaneous.

a. This Agreement shall inure to the benefit of and be binding upon Seller and Purchaser and their respective heirs, personal representatives, successors and assigns. Seller specifically reserves the right at any time prior to or at Closing to assign this Agreement to a person or entity selected by it in its sole and absolute discretion, in which event such assignee shall be entitled to all benefits of and be subject to obligations of Seller hereunder; provided, however, that Seller shall remain liable for its assignee's performance hereunder. Purchaser may not assign this Agreement without the written consent of Seller, which consent may be given or withheld in Seller's sole and absolute discretion; provided, however, Purchaser may assign this Agreement to an entity within which Purchaser and/or its principals exercise operational control.

b. This Agreement contains the final and entire agreement between the parties hereto and supersedes all prior oral representations, negotiations and agreements, and neither the parties, nor their agents, shall be bound by any terms, conditions and representations not herein written. This Agreement may not be modified or changed orally, but only by agreement in writing signed by the party against whom enforcement of any such change is sought.



c. All covenants, representations, warranties and undertakings on the part of Seller contained in this Agreement shall be merged into the Deed and extinguished by any settlement, closing, payment of the Purchase Price or by execution and delivery of any deed or bill of sale.

d. The interpretation, construction and performance of this Agreement shall be governed by Delaware law, the Property described in this Agreement being located in Delaware and this Agreement being executed in Delaware.

e. The titles of the sections and paragraphs are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

f. This Agreement is the result of the combined draftsmanship and/or review of Seller and Purchaser and/or their respective agents, accordingly, there shall be no presumption or interpretation of this Agreement based on its having been drafted by one or the other.

g. Each party shall reasonably cooperate with the other in connection with the satisfaction of any condition or obligation which must be satisfied by Closing pursuant to the terms of this Agreement, and in connection therewith each party agrees to execute any document contemplated by the terms of this Agreement, which may be reasonably requested by the other party.

h. This Agreement may be executed in one or more counterparts by facsimile signatures and/or original signatures. The signatures of the parties who sign different counterparts of this Agreement or any of the instruments executed to effectuate the purposes of this Agreement shall have the same effect as if those parties had signed the same counterparts of this Agreement or of any such instrument.

i. 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 (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

j. No determination by any court, governmental or administrative entity or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision or (ii) such provision in any circumstance not controlled by such



determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

k. Nothing in the provisions of this Agreement shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year shown.

SELLER:

CITY OF SEAFORD

ATTEST/WITNESS:



By:  {SEAL}

Date: 12-04-15

PURCHASER:

SEAFORD DEVELOPMENT ASSOCIATES, LLC

ATTEST/WITNESS:

By:  {SEAL}
Warren Diamond, Managing Member

Date: 10/23/15

CONSENT OF ESCROW AGENT

The undersigned hereby agrees to act as Escrow Agent in accordance with the terms and conditions of the foregoing Purchase and Sale Agreement, and hereby agrees to be bound thereby.

WITNESS:

Morris James Wilson Halbrook & Bayard, LLP



By:  {SEAL}

Name: David C. Hutt
Title: Partner

Date: 10/26/2015