

**COUNCIL OF THE TOWN OF RIVERDALE PARK**

**ORDINANCE 2019-OR-04**

**Introduced By:** CM David Lingua

**Date Introduced:** April 1, 2019

**Date Adopted:** May 6, 2019

**Date Effective:** May 26, 2019

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**AN ORDINANCE** concerning

**Sale of 4603 East-West Highway**

**FOR** the purpose of approving a certain Contract of Sale with Werrlein Properties, LLC, for the sale of certain property at 4603 East-West Highway in the Town of Riverdale Park; determining that such property as described in the Purchase Agreement is not needed for public use and authorizing the conveyance of such property pursuant to such Contract of Sale; and all matters generally related to the disposition of certain Town-owned property.

**EXPLANATORY STATEMENT:** The Town owns certain property consisting of approximately 13,851 square feet located at 4603 East-West Highway and described in a Deed dated February 27, 2015, recorded among the Land Records of Prince George's County, Maryland in Liber 36731, page 134. The Town has determined that this property is not needed for public use. The Town has negotiated a Purchase Agreement with Werrlein Properties, LLC, for the sale and purchase of this property to assist Werrlein Properties, LLC, to develop and a project to construct a single-family residential dwelling. Pursuant to the Purchase Agreement, the Town will receive from Werrlein Properties, LLC, the sum of \$70,000.00 for the purchase of the property. The Town Council believes that the Purchase Agreement is in the interests of the Town and its residents.

**SECTION 1: BE IT ENACTED BY THE COUNCIL OF THE TOWN OF RIVERDALE PARK,** that a certain Purchase Agreement between the Town of Riverdale Park and Werrlein Properties, LLC, a copy of which is attached to this Ordinance, is ratified and approved, and the Town Manager is authorized to execute such Purchase Agreement on behalf of the Town.

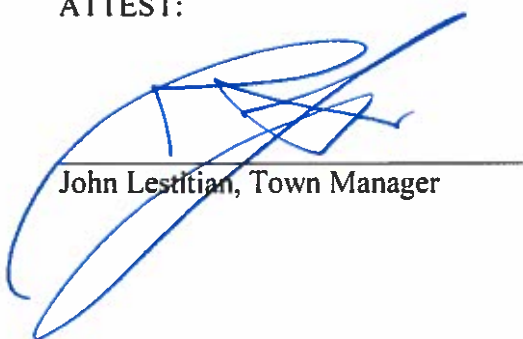
**SECTION 2. AND BE IT FURTHER ENACTED BY THE COUNCIL OF THE TOWN OF RIVERDALE PARK,** that the Mayor and Town Council hereby determines that the property described in the EXPLANATORY STATEMENT above is not needed for public

use, and authorizes the Town Manager to execute and deliver on behalf of the Town a Deed to the property and such other usual and customary documents required to effectuate to conveyance of such land, all in accordance with the terms and conditions set forth in the Purchase Agreement.

**SECTION 3: AND BE IT FURTHER ENACTED** that this Ordinance shall become effective twenty (20) calendar days after its passage by the Town Council.

ATTEST:

COUNCIL OF THE TOWN OF  
RIVERDALE PARK



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John Lestfian, Town Manager



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Alan K. Thompson, Mayor

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), Werrlein Properties LLC, or assigns, with any such assignee to be an entity in which Jonathan Werrlein, has a controlling interest (collectively, "Buyer") and the Town of Riverdale Park, a Maryland municipal corporation ("Seller").

### RECITALS

- A. Seller is the owner in fee simple of certain real property consisting of one and a half lots of land located in Riverdale Park, Maryland known as 4603 East West Highway (Tax Map 0042; Grid 00C3); further described as Lot 7 and the west one-half of Lot 8; and identified in a Deed to Seller dated January 28, 2015, and recorded at Liber 36731, Folio 00134 a copy of which is attached hereto and incorporated as **Exhibit A**. The land is improved by a 700 square foot storage shed. The foregoing real property and improvements are collectively referred to herein as the "Property".
- B. Seller has agreed to sell the Property to Buyer, and Buyer has agreed to purchase the Property from Seller, under all the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1 Incorporation of Recitals. The foregoing Recitals are hereby incorporated herein by reference as a substantive part of this Agreement.
- 2 Purchase and Sale of the Property. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property in accordance with the terms of this Agreement. Buyer and Seller agree that the Property shall be improved by Buyer, at the Buyer's sole cost and expense, consistent with the terms and conditions of the Development Plan and Application to the Town for the Competitive Negotiated Sale of the Property, attached hereto and incorporated as **Exhibit B**. Buyer's obligation to improve the Property at Buyer's sole cost and expense consistent with **Exhibit B** shall survive Closing and not be merged into the Deed.
- 3 Purchase Price: Terms of Payment.
  - 3.1 Purchase Price. The purchase price for the Property ("Purchase Price") shall be SEVENTY-THOUSAND DOLLARS and NO CENTS (\$ 70,000.00), subject to adjustments and prorations as set forth below and in Section 5.
  - 3.2 Terms of Payment. The Purchase Price shall be paid by Buyer as follows:
    - 3.2.1 On the Effective Date, Buyer shall deposit FIVE THOUSAND AND 00/100 DOLLARS (\$5,000) (the "Deposit") with [INSERT NAME] (the "Escrow Agent"),

which Deposit shall be held by the Escrow Agent and paid, refunded, or otherwise applied to the Purchase Price in accordance with the terms of this Agreement.

3.2.2 Upon closing under this Agreement, the balance of the Purchase Price, after application of the Deposit, shall be paid to Seller in 100% available funds by cash, certified check or wire transfer.

4 Closing. The closing of the purchase and sale of the Property shall be held on or before July 8, 2019.

4.1 Seller's Closing Deliverables. At the closing, Seller shall deliver the following documents (collectively the "Closing Documents") and such other items described below:

4.1.1 a special warranty deed to the Real Property including a covenant of further assurances, duly executed and acknowledged by Seller and in proper form for recording, conveying fee simple title to the Real Property to Buyer or its designee subject to all conditions, restrictions, rights of way and easements of record and any Permitted Exceptions.

4.1.2 a certificate updating the representations and warranties made pursuant to Section 7

4.1.3 a FIRPTA affidavit;

4.1.4 any transfer tax statements, declarations, filings and other similar documents that may be necessary, to the extent the same are required to be executed by Seller;

4.1.5 a closing statement conforming to the proration and other relevant provisions of this Agreement; and

4.1.6 such other information as Buyer may reasonably require that demonstrates the Seller's due authorization and performance of this Agreement and the foregoing documents.

4.2 Buyer's Closing Deliverables. At the closing, Buyer shall deliver the following:

4.2.1 the balance of the Purchase Price as adjusted pursuant to the terms hereof;

4.2.2 a closing statement conforming to the proration and other relevant provisions of this Agreement; and

4.2.3 a certificate updating the representations and warranties made pursuant to Section 8.

## 5 Closing Adjustments/Costs.

5.1 Expense Adjustments. The following items of expense shall be adjusted as of 11 :59 p.m., of the day immediately preceding the Closing Date such that Seller shall be responsible for all days prior to the Closing Date and Purchaser shall be responsible for the Closing Date and all days thereafter:

5.1.1 Taxes. Real estate, personal property, ad valorem taxes, assessments payable in installments and front foot benefit charges payable in installments that are due and payable with respect to Seller and the Property, respectively, based on the most current bills or other current information available. Assessments payable in a lump sum and not in monthly installments, if any, for improvements completed prior to the Closing Date, whether assessment therefor has been levied or not, shall be paid by Seller or allowance therefor made at the closing.

5.1.2 Utilities. Fuel, water and sewer service charges, and charges for gas, electric, telephone, and all other public utilities. If there are meters on the Property measuring the consumption of water, gas or electric current, Seller shall cause such meters (for utilities for which Seller, and not tenants, are responsible) to be read not more than one (1) day prior to the Closing Date, and shall pay promptly all utility bills for which Seller is liable upon receipt of a statement therefor. Purchaser shall be liable for and shall pay all utility bills for services rendered after such meter readings.

5.1.3 Final Reconciliation. The adjustments described in this Section 5 shall be paid on the Closing Date. If the amount of any of the adjustments described in this Section 5 cannot be determined on the Closing Date, the adjustment therefor shall be made within thirty (30) days after the Closing Date by cashier's check. In making the adjustments required by this subsection, Seller shall be given credit for all amounts prepaid for the Closing Date and any period thereafter, and Seller shall be charged with any unpaid charges for the period prior to the Closing Date.

5.1.4 Closing Costs. Buyer shall pay all expenses of examination of title, title insurance commitment and title premiums. All state, county, Town, local, and municipal transfer and recordation taxes, if any, owing with respect to the sale of the Property, if any, shall be paid by Buyer. Each of Buyer and Seller shall pay their own attorneys' fees and expenses incurred in connection with this negotiation of this Agreement and the closing of the transactions contemplated hereby.

6 Title. Buyer shall have the right to inspect the status of title to the Property. Promptly after execution hereof, Buyer may obtain at Buyer's expense a title report or title commitment ("Commitment") and, at Buyer's election, a UCC lien search for the Property. Buyer may also obtain, at Buyer's sole cost and expense, a current ALTA/ASCM survey of the Property. In the event the Commitment discloses, or Buyer becomes aware of any lien on the Property created by Seller that can be discharged or satisfied

by the payment of money ("Monetary Title Matters"), Seller shall discharge or satisfy such Monetary Title Matters on or prior to the Closing Date. If Seller fails to discharge or satisfy any such Monetary Title Matters as aforesaid, Buyer, at its sole option, and in addition to any other rights and remedies it may have under this Agreement, at law and/or in equity, shall have the right to discharge and satisfy the same from the proceeds of the Purchase Price to be paid to Seller at closing. Title to the Property shall be subject only to the following matters: (i) the lien of real estate taxes and sewer and water rents not yet due and payable; and (ii) such matters appearing on the Commitment to which Buyer shall fail to object during the Feasibility Period (defined below) (collectively, the "Permitted Exceptions"). Title to the Property shall be insurable, together with such title insurance endorsements as Buyer may reasonably request, at regular rates (including applicable rates for such endorsements) from a title insurance company licensed in the State of Maryland and selected by Buyer. In the event Buyer's review of title to the Property reveals any matters that are unacceptable to Buyer in its sole and absolute discretion (other than Monetary Title Matters which Seller is required to remedy as aforesaid), Buyer shall notify Seller thereof within twenty (20) days after the Effective Date (the "Objection Notice"). Within ten (10) days after receipt of the Objection Notice, Seller shall notify Buyer in writing, whether Seller shall undertake to cure such unacceptable exception(s). In the event Seller elects not to cure any unacceptable exception or is unable with the exercise of due diligence to satisfy said objection before the Closing Date, Buyer may, at its option, either (a) accept title subject to the objections raised by Buyer, without an adjustment of the Purchase Price, in which event each of said objections shall be deemed waived for all purposes and considered a Permitted Exception, or (b) terminate this Agreement. If Buyer shall terminate this Agreement, then (i) this Agreement shall be deemed to have terminated as of the date of Buyer's notice without need for any further action by either party, and (ii) neither Buyer nor Seller shall have any further obligations to one another hereunder, except for those which expressly survive termination of this Agreement.

7 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer, all of which are made as of the Effective Date and shall be true and correct in all material respects on and as of the Closing Date.

7.1 Enforceability: Authorization. This Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by Seller pursuant hereto are, or will be when executed and delivered by Seller, the legal, valid and binding obligations of Seller and enforceable against Seller in accordance with its terms. Seller has obtained all consents necessary for and possesses full authority and legal right to authorize Seller's entry into and performance of this Agreement, the documents, affidavits, certificates and other instruments to be executed and delivered by Seller pursuant hereto and/or the transactions contemplated hereby or thereby.

7.2 Ownership of the Property. Seller is the fee simple record and beneficial owner of the Property. No person or entity has an option, right of first refusal or other similar right to acquire all or any portion of the Property. Seller has performed all obligations under and is not in default in complying with the terms and provisions of any covenants, conditions, restrictions, rights-of-way or easements applicable to the Property.

- 7.3 No Conflicts. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will 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.
- 7.4 Third Party Consents. All consents required from any governmental authority or third party in connection with the execution and delivery of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby have been made or obtained or shall have been made or obtained by the Closing Date.
- 7.5 Leases. The following leases exist on the Property: none.
- 7.6 Other Agreements. Seller is not a party to, nor does Seller have knowledge of, any agreements relating to the Property.
- 7.7 Condemnation, Violation of Laws, Etc. Excepting Town Code violations which have been noted but not yet cited, Seller has not received notice of, and, to Seller's knowledge, there are no existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Property, including, without limitation, violations of housing, building, safety, health, environmental, fire or zoning ordinances, codes and regulations of the respective jurisdictions within which the Property is located or any certificate(s) of occupancy issued for the Property.
- 7.8 No Flood Hazard Area. To Seller's knowledge, no portion of the Property is located in an area designated by any governmental entity as a flood hazard area.
- 7.9 Hazardous Conditions.
- 7.9.1 During Seller's ownership of the Property there have been no, and there are no pending or, to Seller's knowledge, threatened: (A) claims, complaints, notices, or requests for information received by Seller with respect to any alleged violation of any Environmental Law with respect to the Property, or (B) claims, complaints, notices, or requests for information to Seller regarding potential or alleged liability under any Environmental Law with respect to the Property.
- 7.9.2 To Seller's knowledge, no conditions exist at, on, or under the Property that, with the passage of time or the giving of notice or both, would constitute a Hazardous Condition or give rise to liability under any Environmental Law.
- 7.9.3 Seller has not received notice of any violation of any orders, directives, requirements, permits, certificates, approvals, licenses, and other authorizations relating to Environmental Laws with respect to the Property.

7.9.4 To Seller's knowledge there are no aboveground tanks in excess of 275-gallon storage capacity or any underground storage tanks (collectively, "USTs") at the Property. Seller has not removed or abandoned any USTs at the Property and Seller has no knowledge of the existence, abandonment or removal of USTs at the Property.

7.9.5 To Seller's knowledge there are no polychlorinated biphenyls ("PCBs") or friable or damaged asbestos at the Property, and Seller has not removed (or required or requested the removal of) any PCBs or damaged or friable asbestos from the Property, and Seller has no knowledge of the previous existence of any PCBs or damaged or friable asbestos at the Property.

For purposes of this Agreement, the following terms shall have the meanings as indicated:

"Environmental Law" shall mean: (i) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq., as amended); (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq., as amended); (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. 11001 et seq., as amended); (iv) the Clean Air Act (42 U.S.C. 7401, et seq., as amended); (v) the Clean Water Act (33 U.S.C. 1251, et seq. as amended); (vi) the Toxic Substances Control Act (15 U.S.C. 2601 et seq., as amended); (vii) the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq., as amended); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq., as amended); (ix) the Safe Drinking Water Act (42 U.S.C. 300 et seq., as amended); any state, county, municipal or local statutes, laws or ordinances similar or analogous to the Buyer statutes listed in parts (i) -(ix) of this definition; (xi) any amendments to the statutes, laws or ordinances listed in parts (i) -(ix) of this definition, regardless of whether the same are in existence on the date hereof; (xii) any rules, regulations, guidelines, directives, orders or the like adopted pursuant to or to implement the statutes, laws, ordinances and amendments listed in parts (i) - (xi) of this definition; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, guideline, directive, order or the like relating to environmental or other matters covered by the foregoing.

"Governmental Authorities" shall mean any board, bureau, commission, department or body of any municipal, township, county, Town, state or federal governmental or any subdivision thereof, having or acquiring jurisdiction over any of the Property or the ownership, management, operation, use or improvement thereof.

"Hazardous Conditions" shall mean the presence on, in or about the Property (including ground water) of Hazardous Materials, the concentration, condition, quantity, location or other characteristic of which fails to comply with applicable Environmental Laws.

"Hazardous Material" shall mean any chemical, substance, waste, material, equipment or fixture defined as or deemed hazardous, toxic, a pollutant, a contaminant, or otherwise regulated under any



Environmental Law, including but not limited to, petroleum and petroleum products, waste oil, halogenated and non-halogenated solvents, PCBs, asbestos and asbestos containing materials.

- 7.10 Litigation. No proceeding, suit or litigation relating to Seller or the Property or any part thereof is pending or, to Seller's knowledge, threatened in any court or other tribunal or before any Governmental Authority. Seller is not the subject of, nor has Seller received any written notice of or threat that it has or will become the subject of, any actions or proceedings under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. ("Bankruptcy Code"), or under any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary, and including, without limitation, proceedings to set aside or avoid any transfer of any interest in property or obligations, whether denominated as a fraudulent conveyance, preferential transfer or otherwise, or to recover the value thereof or to charge, encumber or impose a lien thereon.
- 7.11 FIRPTA. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), and the sale of the Property is not subject to the federal income tax withholding requirements of such section of the Code.
- 7.12 Mechanic's Liens. There are no claims for labor performed, materials furnished, or services rendered in connection with the development, construction, improvement, renovation or repair of the Property with respect to which liens may or could be filed against the Property, either pending or threatened.
- 7.13 Tax Matters. No federal or other taxing authority (each, a "Taxing Authority" and collectively, the "Taxing Authorities") has asserted in writing any tax deficiency, lien, interest or penalty against Seller or the Property that has not been paid, and there is no pending audit or inquiry from any Taxing Authority relating to Seller or the Property, and to Seller's knowledge, no event has occurred and no condition or circumstance exists which presents a material risk that any tax deficiency, lien, interest, penalty or other assessment will be imposed against Seller or the Property.
- 7.14 Re-Zoning. Seller is not a party to, nor does Seller have any actual knowledge of, any threatened proceeding for the rezoning of the Property or any portion thereof, or the taking of any other action by governmental authorities that would have an adverse or material impact on the value of the Property or use thereof.
- 7.15 Condemnation. Seller has not received any written notice advising it of any pending or threatened condemnation or other governmental taking proceedings affecting all or any part of the Property.
- 7.16 Except as otherwise provided herein Seller is making no warranties as to the condition of the property and the property is being sold "AS IS".

8 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that: (i) Buyer is a limited liability company authorized to transact business in the State of Maryland; (ii) this Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by Buyer pursuant hereto are, or will be when executed and delivered by Buyer, legally binding on, and enforceable against, Buyer in accordance with their respective terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, receivership and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity (whether applied by a court of law or equity); and (iii) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will 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 Buyer is a party.

9 Seller Covenants.

9.1 Inspection. Seller shall make available to Buyer during normal business hours prior to the Closing Date all information in Seller's possession or control concerning the Property.

9.2 Operation and Maintenance. Seller agrees that from the date of this Agreement to the Closing Date, Seller will, at its sole cost and expense: (i) maintain the Property in its current condition (ii) comply with and perform all material provisions and obligations to be complied with and/or performed by Seller; (iii) not mortgage or otherwise encumber all or any part of the Property; and (iv) maintain in full force and effect its current all-risk casualty insurance policy for the Property.

9.3 Contracts. Seller shall not enter into any Contracts of any kind with respect to the Property or any portion thereof.

9.4 Leases. Seller shall not enter into any leases or other occupancy agreements of any kind with respect to the Property or any portion thereof.

9.5 Correspondence. Promptly upon receipt, Seller shall provide Buyer with copies of any notices (including all written notices and summaries), and sales reports and correspondence received from neighboring property owners, any insurance company which carries insurance on the Property or Board of Fire Underwriters, from any Governmental Authorities or from any other person or entity with respect to the Property or any portion thereof.

9.6 Title and Encumbrances. Seller hereby agrees that, after the date of this Agreement, it shall not take any action affecting title to the Property or encumbering the Property (except for actions effectuating the release of liens or encumbrances in accordance with the terms of this Agreement) unless consented to by Buyer, which consent may be withheld in Buyer's sole and absolute discretion. In all events, Seller will cause to be removed, paid off, released and/or discharged at closing any mortgage, judgment, deed of trust, lien or other evidence of a monetary

charge against the Property and any lien or other encumbrance affecting title to the Property and arising subsequent to the Effective Date.

9.7 Real Estate Tax Assessments. Prior to the Closing Date, Seller shall not institute any proceeding or application for a reduction in the real estate tax assessment of the Real Property for any tax year without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion.

9.8 Payment of Taxes. Seller shall pay all federal, state, county, local and foreign income, excise, real and personal property, sales and other taxes, if any, which first become due and payable prior to or on the Closing Date.

9.9 Claims. Seller hereby agrees to cooperate with Buyer in connection with the pursuit of any claims resulting from or based on an event that occurred prior to closing that are covered under the liability insurance policies for the Property that were in effect prior to closing to assist Buyer in filing a claim under such insurance policies, including, but not limited to executing any assignment of such policy or proceeds to Buyer. The obligations of Seller under this Section shall survive Closing for a period of three (3) years after Closing.

10 Conditions Precedent to Buyer's Obligation to Purchase. The obligation of Buyer to purchase the Property and to perform the other covenants and obligations to be performed by it on the Closing Date shall be subject to the following conditions precedent (which conditions precedent shall inure solely to the benefit of Buyer and no other person or entity, including, without limitation, Seller, shall have any right to waive or defer any of such conditions in whole or in part):

10.1 Seller shall have performed in all material respects its covenants and obligations required by this Agreement to be performed or complied with by it on or before the Closing Date.

10.2 All of Seller's representations and warranties in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such date and Seller shall have executed and delivered to Buyer, upon written Request by Buyer, a certificate, dated as of the Closing Date, to the foregoing effect.

10.3 Delivery of possession of the Property to Buyer at Closing, which shall be in substantially the same condition it is in on the date of this Agreement, subject to casualty and/or condemnation and the provisions of this Agreement relating thereto. The improvements on the Property shall be in broom-clean condition at Closing.

10.4 Title to the Property on the Closing Date shall be in accordance with Section 6, above.

10.5 Buyer shall have a period of thirty (30) days, known as the "Feasibility Period," commencing

on the date on which an Ordinance authorizing the sale of the Property is introduced by the Mayor and Town Council and terminating at 5:00 p.m. Eastern Standard Time on the expiration of the Thirty (30) days after the introduction (the "Expiration Date"), within which to conduct any and all examinations, verifications and studies, including without limitation, environmental, engineering, surveying and economic feasibility studies of the Property which Buyer may, at Buyer's sole and absolute discretion, deem necessary. If Buyer notifies Seller in writing on or before the Expiration Date of the Feasibility Period that, as the result of the studies and/or tests conducted by Buyer, Buyer does not desire to purchase the Property, then this Agreement shall be deemed terminated, whereupon the parties hereto shall have no further obligations one to the other hereunder. Seller shall permit Buyer and Buyer's contractors, agents and employees to enter upon the Property at all times during the Feasibility Period for the purpose of conducting such studies and/or tests as Buyer shall deem appropriate. Seller shall provide to Buyer any and all information which Seller possesses also relating to the condition of the Property. Buyer shall indemnify and hold Seller harmless from and against any damages which Seller may incur as a result of Buyer's activities on the Property. Buyer shall undertake any such all examinations, verifications and studies, at Buyer's own risk.

11 Condemnation and Casualty. If prior to the Closing Date Seller receives written notice of any pending or threatened condemnation proceedings or actions or if there occurs any damage, destruction or casualty with respect to all or any portion of the Property, Seller shall promptly notify Buyer thereof in writing. In the event there occurs: (i) any actual or pending condemnation of any portion of the Property; or (ii) any casualty, Buyer shall have the right to terminate this Agreement by giving notice to Seller within thirty (30) days after receipt of Seller's notice advising Buyer of the occurrence of any casualty or condemnation. If: (i) Buyer fails to notify Seller of Buyer's election to terminate this Agreement within such 30-day period; or (ii) Buyer elects to proceed to closing and not terminate this Agreement, then Buyer shall proceed to closing, without adjustment of the Purchase Price, subject to such condemnation or casualty, in which event at closing, Seller shall, as applicable: (A) assign to Buyer any condemnation award or rights thereto paid or payable or otherwise accruing to Seller on account of such condemnation; or (B) assign to Buyer all of Seller's right, title and interest in and to the proceeds of any casualty insurance payable to Seller on account of such casualty and pay to Buyer an amount equal to any deductible or coinsurance applicable to the casualty insurance under such insurance policies. If Buyer timely elects to terminate this Agreement as aforesaid, neither Buyer nor Seller shall have any further rights or liability under this Agreement except for such rights and liabilities as expressly survive termination hereof.

12 Breach/Termination.

12.1 Breach by Seller. If Seller shall fail to perform its covenants or agreements hereunder and such failure shall continue for five (5) days after written notice from Buyer, or if any of Seller's representations and warranties set forth in this Agreement are not true and correct in all material respects on the date hereof or on the Closing Date, Buyer shall have the right, at its sole option, to:

- 12.1.1 terminate this Agreement with neither party having any further rights or obligations to the other under this Agreement except such rights and obligations as expressly survive termination of this Agreement; or
- 12.1.2 pursue any legal or equitable remedies to which Buyer may be entitled on account of the foregoing, including, without limitation, specific performance and recovery of actual third-party costs and expenses incurred by Buyer with respect to this Agreement, the Property and the Inspections, up to a maximum of Ten Thousand Dollars (\$10,000.00).
- 12.2 **Breach by Buyer.** If Buyer shall fail to perform any of the covenants or agreements to be performed by it hereunder and such failure shall continue for five (5) days after written notice from Seller (except there shall be no notice requirement for a failure to terminate this Agreement prior to the expiration of the Feasibility Period), or if any of Buyer's representations and warranties set forth herein shall not be true and correct in all material respects as of the date made or deemed made, Seller may terminate this Agreement and pursue any legal or equitable remedies to which Seller may be entitled on account of the foregoing.
- 12.3 **Litigation Costs.** In the event of any litigation between the parties with respect to this Agreement, including any action for specific performance that may be brought by Buyer as provided above, the prevailing party shall be entitled to recover reasonable attorney fees and expenses.
- 13 **Brokers.** Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction. Each of the parties hereto hereby represents and warrants that neither has authorized any real estate broker, agent or finder to act on its/their behalf in connection with the transaction contemplated by this Agreement, nor does it have any knowledge of any other broker, agent or finder purporting to act on its behalf in respect to this Agreement and the sale of the Property to be made pursuant hereto, and that the other party hereto shall have no liability to any broker for compensation, commission or otherwise. Each party agrees that it shall indemnify, defend and save the other harmless from and against any cost, expense, claim, loss, liability or damages, including reasonable attorneys' fees, and court costs, resulting from a breach of the foregoing representation and warranty by such party. The provisions of this Section shall survive Closing or termination of this Agreement.
- 14 **Entire Agreement/Modification.** This Agreement, including any exhibits attached hereto, and the Closing Documents contain the entire agreement between the parties relating to the conveyance of the Property, all prior negotiations between the parties are merged into this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them other than as set forth in this Agreement, including the exhibits attached hereto, and the Closing Documents. No change or modification of this Agreement or any of the Closing Documents shall be valid unless the same is in writing and signed by each of the parties hereto or thereto.

No waiver of any of the provisions of this Agreement or any of the Closing Documents executed or to be executed in connection herewith shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

15 Miscellaneous.

- 15.1 Binding. This Agreement shall be binding upon and inure to the benefit of and be enforceable by, the respective personal representatives, successors and permitted assigns of the parties hereto.
- 15.2 Governing Law. Venue. The provisions of this Agreement shall be governed by the laws of the State of Maryland, without regard to the conflicts of laws provisions thereof. Any suit involving any dispute or matter arising under this Agreement may only be brought the Circuit Court for Prince George's County, Maryland. All parties hereto consent to such jurisdiction.
- 15.3 Notices. Any notice, demand, consent/election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and delivered (i) personally, or (ii) sent by certified or registered mail, postage prepaid, return receipt requested, or (iii) by a nationally recognized overnight courier. A notice must be addressed to a party as indicated below. Any notice hereunder shall be deemed duly delivered (x) when delivered, with written receipt, if personally delivered or delivered by nationally recognized overnight courier, or (y) three (3) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid. Any party may designate a change of address by written notice to the other in accordance with the provisions set forth above, which notice shall be given at least ten (10) days before such change of address is to become effective.

Seller's notice address:

Town of Riverdale Park  
ATTN: John N. Lestitian, Town Manager  
5008 Queensbury Road  
Riverdale Park, Maryland 20737

With a copy to:

Frederick C. Sussman, Esquire  
125 West Street, Fourth Floor  
Annapolis, Maryland 21401

Buyer's notice address:

Werrlein Properties LLC  
ATTN: Jonathan Werrlein  
522 Defense Highway  
Annapolis, Maryland 21401

15.4 Incorporation. Each and all of the exhibits and schedules attached hereto are hereby incorporated into this Agreement by reference.

15.5 Further Assurances. Seller agrees that it will, at any time and from time to time after the Closing Date, upon reasonable request of Buyer, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the assigning, transferring, granting, assuring and confirming to Buyer, or to its successors and assigns of, or for aiding and assisting in collecting and reducing to possession, any or all of the assets or property being transferred to Buyer pursuant to this Agreement; provided, however, that any instruments to be executed by Seller shall be in form and substance reasonably acceptable to Seller and in no event shall Seller be required to incur any liability or obligation in addition to that which it is obligated to incur under this Agreement. The provisions of this Section shall survive the closing of the transactions contemplated by this Agreement.

15.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; provided, however, in no event shall this Agreement be effective unless and until signed by all parties hereto. Fax or email copies of this Agreement shall be sufficient for all purposes.

16 Risk of Loss. Risk of loss or damage from fire or other casualty until Closing is assumed by Seller.

17 Rules of Construction. Section captions used in this Agreement are for convenience only and shall not affect the construction of the Agreement. All references to "Sections", without reference to a document other than this Agreement are intended to designate articles and sections of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, unless specifically designated otherwise. The use of the term "including" shall mean in all cases "including but not limited to," unless specifically designated otherwise. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

18 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday in Maryland, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday.

19 Time of the Essence. Time shall be of the essence under this Agreement.

20 No Third-Party Beneficiaries. None of the rights or obligations provided hereunder shall inure to the benefit of any third party.

21 Waiver of Trial by Jury. THE PARTIES HERETO HEREBY AGREE TO WAIVE ANY RIGHTS THEY MIGHT OTHERWISE HAVE TO A TRIAL BY JURY UNDER ANY PROVISION OF ANY APPLICABLE LAW.

22 Any approvals required under the provisions of this Agreement by Town shall be as duly authorized by the Mayor and Council as its duly constituted legislative body.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

WITNESS:

SELLER:

Town of Riverdale Park  
A Maryland Municipal Corporation

\_\_\_\_\_  
Name:

By: \_\_\_\_\_  
John N. Lestitian, Town Manager

WITNESS:

BUYER:

Werrlein Properties LLC

\_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Jonathan Werrlein



**Exhibit A**

**[DEED: PLEASE SEE ATTACHED DOCUMENT]**

36731 134

3

Clerk of the Circuit Court

2015 FEB 27 PM 12: 20

PR GEO CO MD #89

Crown Title Corporation  
Property: 4603 East West Highway, Riverdale, MD 20737  
Tax ID: 19-2149334  
File No: 86424-14SS  
Prism: N01400419

Transferor claims exemption from the tax withholding requirements of Section 10-912 of Maryland's Tax General Article because this is a transfer of property acquired by the grantor in a foreclosure action and conveyed herein to a third party as pursuant to Section 10-912 (D) (3). \*

This Deed, made this 28<sup>th</sup> day of JANUARY, 2015, by and between HSBC Bank USA, National Association, as trustee for benefit of the holders of the Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2007 SHL1, GRANTOR, and Town of Riverdale Park, a Maryland municipal corporation GRANTEE.

- Witnesseth -

That in consideration of the sum of FORTY-NINE THOUSAND NINE HUNDRED AND 00/100 DOLLARS (\$49,900.00), which includes the amount of any outstanding Mortgage Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said Grantor does grant and convey to the said Town of Riverdale Park, its successors and/or assigns, in fee simple, all that lot of ground situate in the County of Prince George's, State of Maryland, and described as follows, that is to say:

Lot numbered seven and the west one-half of lot numbered eight (8), in Block numbered thirty four (34) in the subdivision known as "Riverdale Park", as per plat thereof recorded in Plat Book JWB 5 at Plat 688, re-recorded in Plat Book A at Plat 39, among the Land Records of Prince George's County, Maryland.

Saving and excepting 2,031<sup>10</sup> square feet conveyed to the State Roads Commission of Maryland by Deed dated August 16, 1966 recorded in Liber 3410 at Folio 440.

(ADDRESS REFERENCE IS FOR INFORMATIONAL PURPOSES ONLY)  
The improvements thereon being known as 4603 East West Highway, Riverdale, MD 20737.

BEING all and the same lot of ground which by Substitute Trustees Deed dated January 12, 2010 intended to be recorded among the Land Records of Prince George's County, Maryland and to be granted and conveyed from John E. Driscoll, Esquire et al., Substitute Trustees unto HSBC Bank USA, National Association, as trustee for benefit of the holders of the Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2007 SHL1.

BEING all and the same lot of ground which by Deed dated October 17, 1995, and recorded October 1995 among the Land Records of Prince George's County, Maryland, in Liber 10413, Folio 104 granted and conveyed by Daniel S. Duvall, Jr. and Carrie D. Duvall unto Daniel Duvall, Jr., sole owner.

Tax Account No. 19-2149334

And under penalties of perjury, transferor claims exemption from the tax withholding requirements of Section 10-912 of Maryland's Tax General Article because this is a transfer of property acquired by the grantor in a foreclosure action and conveyed herein to a third party as pursuant to Section 10-912 (D) (3).

See Power of Attorney dated 09-22-2010 intended to be recorded immediately prior hereto among the aforesaid Land Records appointing Regions Bank.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

IMP FD SURE	48.00
RECORDING FEE	28.00
TOTAL	60.00
Rest PG86	Rcpt # 88538
AM	Blk # 6135
FEB 27, 2015	12:19 PM

\*EXEMPT FROM RECORDATION AND TRANSFER TAXES, GRANTEE IS A MUNICIPALITY OF THE STATE OF MARYLAND.

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) SJH 36731, p. 0134, MSA\_CE64\_37040. Date available 03/24/2015. Printed 03/26/2019.

RETURN TO:  
BAY TITLE COMPANY

P. O. Box 2289

125 West Street, 4th Floor

Annapolis, Maryland 21404-2289

9967.49

## Exhibit B

### **Development Plan:**

Buyer agrees to improve 4603 East West Highway as follows:

1. Expend approximately FOUR-HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$450,000.00), which includes the acquisition cost of the Property, for architectural, engineering, permitting, impact fees, and all other costs and expenses for construction of a single-family residential dwelling of approximately two thousand square feet (2,000), and related site improvements as follows:
  - a. A wood framed structure consisting of fiber cement exterior siding and the following components:
    - i. At least four bedrooms; and
    - ii. At least three and a half bathrooms; and
    - iii. Containing amenities including but not limited to:
      1. Central energy efficient HVAC; and
      2. Solid surface countertops; and
      3. Upgraded energy efficient appliances; and
      4. Professional landscaping; and
  - b. Includes a garage; and
  - c. Provides a driveway area that allows for a mid-sized sedan to be turned around on-site; and
  - d. Provides for a 5' wide sidewalk extending across the entire frontage of the Property along East West Highway; and
  - e. Provides improvements for privacy purposes in the form of a fence or similar accessory structure in or on the unimproved land near the western edge of the property boundary line.
2. Plans and specifications for the single-family residential structure and site improvements are subject to prior approval of Seller, which approval shall not be withheld, delayed or conditioned unreasonably. Buyer shall provide such plans and specifications to Seller before Buyer makes application for grading permits and building permits (from both Prince George's County and Seller) for the work.
3. Complete satisfactorily all of the above improvements, and obtain necessary permits from Prince George's County and Seller, along with a County certificate of a use and occupancy, allowing residential occupancy of the dwelling, within two-hundred ten (210) days following the date of Closing on Buyer's purchase of the Property from Seller; and
4. All work is funded with no finance contingency; and

5. All improvements shall be made in accordance with all State, County, and Local laws and relevant regulations.

Buyer further agrees that in the event the Buyer fails to complete the Development Plan as stipulated above, the Buyer shall pay to the Seller, as liquidated damages and not as a penalty, the amount of TEN-THOUSAND DOLLARS AND 00/100 each month beyond the two-hundred ten (210) days that the Development Plan is not completed unless the Seller agrees to an extension, which shall not unreasonably be withheld. Any required payment due the Seller that is unpaid for more than thirty (30) days after written demand shall become a lien on the Property.

**Application to the Town for the Competitive Negotiated Sale of the Property**

(See attached Application)