

THE EFFECTIVE DATE OF THIS RESOLUTION IS July 7, 2015

RESOLUTION NO. 15-11

RE: SALE OF SURPLUS REAL PROPERTY

Frederick County real property may be sold if it is determined, at public hearing, to be surplus to present and future County needs and upon acceptable terms and conditions, including purchase price; and

The Annotated Code of Maryland, Education Article, Section 4-115, provides that real property, acquired by the County from the Board of Education, that becomes surplus to County needs may be sold by the County Council; and

Pursuant to a County request for proposals to purchase County surplus real properties, an offer was received from Ausherman Development Corporation II ("Ausherman") to buy surplus real properties commonly known as 115 East Church Street, Frederick, Maryland, (the Board of Education's and Frederick County Public Schools' former administrative offices) and 117 East Church Street, Frederick, Maryland, (County's former Interagency Information Technologies Division offices); and

Ausherman's offer to purchase both the 115 and 117 East Church Street properties was the highest offer received that did not include financing contingencies for these properties and is for a total price and on terms and conditions acceptable to the County.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that County real properties commonly known as 115 and 117 East Church Street, Frederick, Maryland, are surplus to Frederick County, Maryland's present and future needs; and

BE IT FURTHER RESOLVED that County real properties commonly known as 115 and 117 East Church Street, Frederick, Maryland, should be sold to Ausherman for the purchase

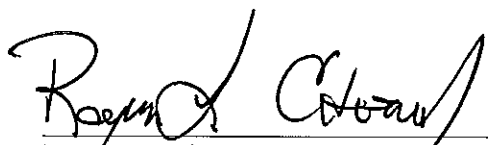
price amounts and under the terms and conditions set forth in that Agreement of Sale of Real Property between Frederick County, Maryland, and Ausherman attached as Exhibit A to this Resolution; and

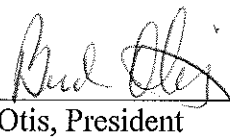
BE IT FURTHER RESOLVED that the County Executive and such other officers, officials and employees of the County as the County Executive may designate are authorized and empowered to execute all documents, instruments and certificates and otherwise to take all actions necessary to consummate the sale of these surplus properties to Ausherman.

The undersigned certifies that this Resolution was approved and adopted on the 7th day of July, 2015.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND


Ragen L. Cherney
Chief of Staff

By: 
Bud Otis, President

R.L.M.
7.8.15

**PROPOSAL FOR PURCHASE OF
117 & 115 EAST CHURCH STREET, FREDERICK, MARYLAND 21701**

(COUNTY REQUEST FOR PROPOSAL NO. 15-055)

AGREEMENT OF SALE OF REAL PROPERTY

THIS AGREEMENT OF SALE OF REAL PROPERTY ("**Agreement**"), dated the 8th day of October, 2015 is by and between AUSERMAN DEVELOPMENT CORPORATION II, a Maryland corporation or its assigns ("**Buyer**"), and FREDERICK COUNTY, MARYLAND, a body corporate and politic of the State of Maryland, 12 East Church Street, Frederick, Maryland 21701, ("**County**") (collectively "**Parties**").

WHEREAS, County owns two parcels of improved real property: the first parcel located at 115 East Church Street, consists of approximately 18,800 square feet, is improved with a three story office building, which has approximately 28,390 square feet of gross building area above and below grade, is currently zoned Downtown Business and is depicted on Frederick County Tax Map 0414, Grid 0004, Parcel 0333B, Account Number 02-020831 ("115"); the second parcel is located at 117 East Church Street, Frederick, Maryland 21701, consists of approximately 7,886 square feet, is improved with a three story office building, which has approximately 8,434 square feet of gross building area above and below grade, is currently zoned Downtown Business and is depicted on Frederick County Tax Map 0414, Grid 0004, Parcel 0332B, Account Number 02-043874 ("117") (115 and 117 are referred to herein, collective, as the "**Property**") which the County desires to sell; and

WHEREAS, Buyer desires to purchase the Property; and

WHEREAS, Buyer has prepared this proposal for County's review, setting forth the terms and conditions pursuant to which the Buyer wishes to purchase the Property.

NOW THEREFORE, for and in consideration of the amounts listed below, the other mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that:

1) Property: The County hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from County the Property, together with all appurtenances, rights, easements, rights-of-way, tenements and hereditaments incident thereto, and all buildings and improvements thereon.

2) Purchase Price and Consideration: County agrees to sell, and Buyer agrees to buy, the Property for a total purchase price of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) (the "**Purchase Price**") allocated between 115 and 117 as follows: \$1,100,000.00 for 115 and \$350,000.00 for 117. Buyer shall pay the Purchase Price to County at Settlement by wire, cashier's check or certified check or other form acceptable to County.

3) Deposit. Within five (5) business days of the Effective Date of this Agreement, Buyer shall deposit in escrow with the law offices of Miles & Stockbridge P.C., 30 West Patrick Street, Suite 600, Frederick, Maryland 21701 (the "**Escrow Agent**") the sum of

 Buyer
_____/ County

FIFTY THOUSAND DOLLARS (\$50,000.00) (the “**Deposit**”). The Deposit shall be distributed as provided herein, or applied against the Purchase Price at Settlement.

4) Disposal of Public Property Contingency: To the extent any further approvals and/or public hearings are required under the law and any or all such approvals are not obtained and/or hearings are not held, then the County agrees to undertake all of the required procedures, notices and hearings that are required in order to consummate this transaction set forth in this Agreement. County agrees, at the time of Settlement, to provide to Buyer such reasonable written evidence and/or certifications as the Buyer shall request that can be recorded with the deed which will establish, as a matter of record, satisfaction of the applicable notice, advertisement and public hearing requirements to sell the Property to the Buyer. The Parties recognize that this Agreement must be approved at public hearing by the Frederick County Council. This Agreement shall be effective as of the date that all requirements are fulfilled and approvals obtained by County, including approval by the Frederick County Council, (the “Effective Date”).

5) Buyer’s Investigation of the Property. Commencing upon the Effective Date and for a period of sixty (60) days thereafter, Buyer shall have a study period (the “**Study Period**”) to enter upon the Property and to make and perform such studies and analysis as it deems advisable and to make all inspections and investigations of the condition of the Property which it may deem necessary, including, but not limited to, soil borings, environmental tests and studies (including a so-called “**Phase II**” inspection), engineering and topographical studies, site and building engineering, defining storm water requirements and the availability of utilities, all of which studies, analysis and inspections shall be undertaken at Buyer’s sole cost and expense.

In the event, Buyer is not satisfied with the Property, or the transaction for any reason or for no reason at all, Buyer may as a matter of right, declare this Agreement terminated by notifying the County in writing prior to the end of the Study Period, whereupon the Deposit shall be returned to Buyer within twenty (20) business days of such termination and thereafter the parties shall have no further obligation to the other hereunder. It is further understood that Buyer shall properly identify and mark any and all disruptions to the surface of the Property and the soil thereon so as to avoid any hazard which may result from open holes or other obstructions caused as a result of such inspections and investigations, and Buyer shall not allow to remain on the Property any open holes or disruptions to the surface of the Property which would endanger or jeopardize, or otherwise injure any persons who may be present on the Property.

Upon the completion of any studies, analysis, inspections and investigations performed hereunder, Buyer shall return the Property to substantially the same condition as it was prior to the performance of thereof, except for any damage caused by the County, its agents, employees, or contractors. Before entering upon the Property to perform the examinations and studies, above, and at all times during the performance of any tests or studies, Buyer must provide County with a copy of (or a certificate evidencing) a paid, comprehensive public liability insurance policy with aggregate bodily injury and property damage limits of at least Two Million Dollars (\$2,000,000.00). In the event Buyer elects to enter upon the Property or otherwise authorizes an agent or employee of Buyer to enter upon the Property for the purpose of making any tests, studies, analysis, inspections, audits, investigations and/or surveys as described above, Buyer shall indemnify, defend and hold County harmless from any cost, liability, damages,

claims or the like which may arise as a result of the same, including reasonable attorney fees and other costs of defense associated therewith. Such obligation of indemnification shall survive the termination of this Agreement and is herein sometimes referred to as an indemnification obligation.

6) Condition and Title: The Property shall be sold at Settlement in its then physical, AS-IS condition. Title to the Property shall be good and marketable, free and clear of all liens, leases, encumbrances and other matters unacceptable to Buyer. Title shall be insurable at standard rates on the standard form of the latest edition of ALTA Owner's Insurance Policy, with only those exceptions acceptable to the Buyer. Buyer shall cause a reputable title insurance attorney or company to examine the title to the Property and to issue a written preliminary title report based upon such examination. If such title search and report shall disclose defects in title such that title does not comply with the provisions of this paragraph (hereinafter a "**Title Defect**"), then Buyer shall so notify County by written notice of this situation provided to County prior to the end of the Study Period (the "Title Defect Notice"). If such Title Defect is one which can be remedied by County, then County may at its election take such action as may be necessary, to correct such Title Defect. If such Title Defect is corrected and remedied by County within forty-five (45) days of the Title Default Notice then this Agreement shall continue in full force and effect in the same manner and for all intents and purposes as if such Title Defect has never existed. If such Title Defect is not one which County remedies within such forty-five (45) days following the date of the Title Default Notice, then Buyer, at Buyer's election, shall (i) waive such uncured Title Defect, in which case this Agreement shall continue in full force and effect in the same manner and for all intents and purposes as if such Title Defect has never existed without reduction in the Purchase Price for the Property; (ii) extend the time within which the County has to remedy such title defect; or (iii) cancel and rescind this Contract, in which event any portion of the purchase price paid to the County shall be promptly refunded to Buyer. Thereupon all parties hereto shall be released from all further liability hereunder, at law and in equity. County agrees to execute any reasonable affidavits and/or certifications as requested by Buyer's title insurance company to remove any Title Defects and/or exceptions to title from the title insurance policy. In no event shall County have any obligation to take any action, or incur any expense, to remedy any actual or perceived title defect.

7) County Representations: At Buyer's request, the County makes the following representations with respect to the Property each of which shall be deemed a substantial and material term of this Agreement, and which shall be valid thru Settlement and which representations are being relied upon by Buyer:

A. The County now or at Settlement will be the fee simple owner of the Property, and has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof, subject to such laws and regulations as needed to be followed in order to dispose of the Property all of with which the County shall have complied.

B. County has not received notice of the violation of (i) any law, ordinance, resolution, statute, rule or regulation of any governmental agency or any quasi-governmental agency with respect to the Property or any part thereof, or (ii) any unrecorded right-of-way, easement or other encumbrance affecting the Property, either as the servient or dominant estate.

C. County is not a party to any litigation affecting the Property or any part thereof or interest therein, or affecting County's right to sell the Property and County has no knowledge of any threatened litigation affecting the Property or any part thereof or interest therein. County shall give Buyer prompt notice of any such litigation of which the County becomes aware prior to Settlement.

D. Upon completion of all legal requirements necessary for the County's sale of public property, including public hearing and finding that no further public need exists for the Property, the execution of this Agreement and the consummation of the transactions contemplated hereby will not: (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 the County is a party; (ii) violate any restrictions to which the County is subject; or (iii) constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree or order.

E. There are no leases, tenancies or occupancy agreements affecting the Property or any part thereof and there are no parties in possession of any portion of the Property as lessees, or tenants at sufferance.

F. County has no knowledge of any unrecorded rights-of-way, easements, liens or encumbrances affecting the Property or any part thereof.

G. No contractual or donative commitments relating to the Property have been made by County to any governmental authority, quasi-governmental authority, utility company, community association, homeowner's association or to any other organization, group, or individual.

8) Buyer's Representations: At the County's request, Buyer makes the following representations with respect to the Property each of which shall be deemed a substantial and material term of this Agreement and which shall be valid thru Settlement and which representations are being relied upon by the County.

A. Buyer is a corporation validly existing under the laws of the State of Maryland.

B. Buyer has the authority to enter into this Agreement and to purchase the Property, and the person executing this Agreement has the authority to do so on behalf of Buyer.

C. Buyer will have, at time of Settlement, made all investigations and determinations necessary to fully satisfy itself that the Property is acceptable, including from an environmental standpoint, for Buyer to purchase.

D. Buyer recognizes that it is purchasing the Property in its physical, AS-IS condition which Buyer has determined is acceptable for Buyer's purposes.

9) Settlement. The purchase and sale contemplated by this Agreement shall be consummated at Settlement (the "**Settlement**"), which shall take place on or before thirty (30) days after the end of the Study Period, except to the extent the County is entitled to additional

time within which to cure Title Defects pursuant to Section 6, above ("Outside Settlement Date"). Settlement shall be held at such date, time and place as shall be designated by Buyer in a written notice to County at least five (5) days prior to the date set for Settlement, which must occur on or before the Outside Settlement Date. Buyer shall pay half of all recordation and transfer, and settlement costs associated with transferring the Property. Each party shall be responsible for its own attorneys' and broker's fees.

10) Deliveries at Settlement. In addition to satisfaction of other conditions precedent and/or contingencies set forth in this Contract, the County shall deliver to Buyer at the Settlement all of the following, the delivery of which shall be a condition precedent to Buyer's obligation to consummate the purchase of the Property.

A. A special warranty deed, signed, sealed and acknowledged by County, in recordable form, which shall convey fee simple title to the Property to Buyer, free and clear of all liens, leases, encumbrances and other matters unacceptable to Buyer, all in accordance with paragraph 6 hereof.

11) Technical Submission Requirements.

A. DESIGN. Subject to final feasibility, the Buyer intends to create a live & work space for local artists in the Frederick, Maryland community. The living space will accommodate, at least, twelve separate units. This is Buyer's current plan (the "Project"). However, Buyer's actual use of the Property will depend, entirely, on market demand at the time of project commencement and Buyer reserves all rights to change the proposed Project. Buyer represents and warrants that regardless of market demand, it will not use the Property in a way which would be incongruous with the County's and/or Frederick City's "family friendly" theme for a downtown environment.

B. SCHEDULE. Following Settlement, it is the intent of Buyer to conduct and complete, in six to eight months, the first phase of construction preparation during which market studies will be conducted and architectural drawings and other technical drawings are made in preparation for construction. Following this initial period, Buyer intends to seek and obtain any and all necessary permits and approvals needed from the County and/or the City for construction on the Property. Buyer intends that the approval process will last approximately eight months and welcomes any help the County can provide to expedite this process. Buyer intends for actual construction to begin between fifteen and eighteen months following the Settlement date. Buyer expects actual construction to take twelve to fifteen months to complete.

C. IMPEDIMENTS. Buyer expects the following impediments:

a. Environmental – Environmental conditions are not fully known as of the date of this Proposal. However, it is anticipated that Buyer will have to cure or treat some environmental conditions.

b. Historic Preservation Commission – It is already known that there are limitations to Buyer's ability to modify the exterior of the building due its status as an historic building.

c. Elevator – An elevator must be installed. Buyer anticipates having to work around the limitations placed on exterior modifications to install the elevator.

d. Parking on-site – On-site parking is limited and presents significant challenges for lease of the final live/work units.

e. ADA compliance – Buyer anticipates that the Property will require substantial modification to ensure compliance with the Americans with Disabilities Act of 1990, which will be expensive and challenging in an Historical Building.

f. Building structure allows for renovation that is limited in terms of the number of separate, rental areas that can be created, and this will make the, post-renovated cost high on a per unit basis, thus making it difficult to get a proper investment return from the rent it will generate.

g. Cost of total refit to modern systems – Builder anticipates that substantial efforts will be required to update the Property with modern HVAC and other mechanical systems and the Historical Nature of the building will limit the number of available options.

h. Cost of sprinkler system fit-out – Buyer anticipates that substantial efforts and the expenditure of a significant amount of money will be required to fit the Property with an operating and compliant sprinkler system.

D. REQUESTS. Buyer requests the following accommodations from the County: Any assistance that the County can provide in expediting any approvals and/or permits necessary to construct the Project.

E. PRIOR EXPERIENCE. Ausherman Development Corporation and its owner, Marvin E. Ausherman, has constructed approximately six thousand residential homes and over two hundred fifty thousand total square feet of commercial property over the past forty years. Buyer is one of the area's leading residential and commercial developers and maintains a solid reputation for improving the lifestyle and culture in the Frederick, Maryland area.

F. CONFIDENTIALITY. Except to the extent required to be released pursuant to Maryland's Public Information Act or other law, Buyer requires that any financial information, except for Property Purchase Price, disclosed herein remain confidential and not subject to public dissemination, orally or in writing.

12) Miscellaneous. Each party agrees to execute such further and other instruments and to perform such acts as may be reasonably required to effectuate the purposes of this Agreement.

A. This Agreement shall be construed in accordance with the Laws of the State of Maryland.

B. If a court of competent jurisdiction shall declare any portion or provision of this Agreement invalid or unenforceable, the remainder thereof (or the application of such provision to persons or circumstances) shall not be affected thereby, and shall continue in full force and effect.

C. Each and every term of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

D. This Agreement contains the final and entire agreement between the parties hereto. No party is liable to any other party or bound in any manner by express or implied warranties, guarantees, promises, statements or representations, pertaining to the Property that is the subject matter of this Agreement unless such warranties, guarantees, promises, statements or representations are expressly set forth herein.

E. Any subsequent amendment to this Agreement shall not be valid unless reduced to writing and signed by all parties hereto or their successors or assigns.

F. All notices, statements, demands, approvals and other communications given pursuant to this Agreement will be in writing and will be deemed given when delivered in person, or one day after deposit with a national overnight courier service, or three days after deposit in the U.S. Mail by certified or registered mail, first class, postage prepaid at the address set forth below until such addresses are changed by notice in accordance with this paragraph:

If Buyer to: Ausherman Development Corporation II
7420 Hayward Road, Suite 203
Frederick, Maryland 217023
Attn: Marvin E. Ausherman

If County to: Frederick County, Maryland
Winchester Hall
12 East Church Street
Frederick, Maryland 21701
Attention: County Attorney

G. Nothing contained in this Agreement and no actions by the parties will be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture or any association between or among any of the parties.

H. The Recitals set forth above in the Whereas clauses of this Agreement are incorporated herein and made a part of this Agreement.

IN WITNESS WHEREOF, the said parties hereto have hereunder set their hands and seals the day and year first above written.

Witness:

Laura Lebo

AUSERMAN DEVELOPMENT
CORPORATION II
By: (Signature) (Seal)
Marvin E. Ausherman
President

FREDERICK COUNTY, MARYLAND

Patti Morrow

By: (Signature) (Seal)
Jan H. Gardner
County Executive

R.F.M.