COUNTY COUNCIL

OF

TALBOT COUNTY

2016 Legislative Session, Legislative Day No.: April 26, 2016

Resolution No.: 224

Introduced by: Mr. Bartlett, Mr. Callahan, Mr. Pack, Ms. Price, Ms. Williams

A RESOLUTION TO APPROVE THE SALE OF SIX (6) UNIMPROVED LOTS LOCATED ON U.S. ROUTE 50 AND CLEARVIEW ROAD, EASTON, MARYLAND, CONSISTING OF APPROXIMATELY 1.395 ACRES IN TOTAL AREA, MORE OR LESS, FOR THE TOTAL SUM OF TWO HUNDRED AND FIFTY THOUSAND ($250,000) DOLLARS

By the Council: April 26, 2016

Introduced, read the first time, and ordered posted, with Public Hearing scheduled on Tuesday, May 24, 2016 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order: Susan W. Moran

Susan W. Moran, Secretary

A RESOLUTION TO APPROVE THE SALE OF SIX (6) UNIMPROVED LOTS LOCATED ON U.S. ROUTE 50 AND CLEARVIEW ROAD, EASTON, MARYLAND, CONSISTING OF APPROXIMATELY 1.395 ACRES IN TOTAL AREA, MORE OR LESS, FOR THE TOTAL SUM OF TWO HUNDRED AND FIFTY THOUSAND ($250,000) DOLLARS

WHEREAS, Talbot County, Maryland (the "County) is the owner of six (6) unimproved lots located on U.S. Route 50 and on Clearview Road, Easton, Maryland, consisting of approximately 1.395 acres in total, comprised of : (1) 29290 Clearview Road, Tax Map 25, Parcel 130; (2) 29298 Clearview Road, Tax Map 25, Parcel 131; (3) 29304 Clearview Road, Tax Map 25, Parcel 132; (4) 29310 Clearview Road, Tax Map 25, Parcel 133; (5) Lot 6, 70' x 130', Tax Map 25, Parcel 135; and (6) Lots 7-8, 105' x 130', Tax Map 25, Parcel 136 (hereinafter the "Property"); and,

WHEREAS, the Property was acquired with a grant from the Federal Aviation Administration ("FAA") for noise abatement in connection with operation of the Airport owned by Talbot County in Easton, Maryland; and,

WHEREAS, the FAA grant included a condition that any Property acquired for noise abatement would be subject to disposal and that if the FAA designated the Property for disposal the County would use its best efforts to dispose of the Property subject to retention or reservation of any interest or right therein necessary to insure that the Property is used only for purposes which are compatible with the noise levels resulting from operation of the Airport; and,

WHEREAS, the FAA has designated the Property for disposition pursuant to the terms and conditions of the grant; and,

WHEREAS, the County solicited offers to purchase the Property as required by the FAA grant and negotiated a proposed Contract of Sale to sell and convey the Property for the sum of Two Hundred Fifty Thousand ($250,000) Dollars.

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NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF TALBOT COUNTY, that

1. The Council finds that the Property is no longer needed for public use in accordance with Local Gov't § 10-312 (b) (2), Md. Ann. Code:

    a. On September 28, 1988, the County accepted an FAA grant to acquire the Property for noise abatement purposes in connection with ownership and operation of the Airport;

    b. That grant included the following terms:

        (i). "[Talbot County] agrees that land in this project purchased for noise compatibility purposes may be subject to disposal…the FAA may designate such land which must be sold by [Talbot County]. [Talbot

County] will use its best efforts to so dispose of such land subject to retention or reservation of any interest or right therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of operation of the airport."

(ii). "For land purchased under grant before, on, after (sic) December 30, 1987 for airport noise compatibility purposes, [Talbot County] will dispose of the land, when the land is no longer needed for such purposes, at fair market value at the earliest practicable time."

(iii). "Disposition of such land...will be subject to the retention or reservation on (sic) any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport."

c. Under the grant the FAA has designated the Property as land that must be sold by the County.

d. The Property is no longer needed for public use because the grant agreement obligates the County to dispose of the Property when required to do so by the FAA. The County is retaining an avigation easement on the Property that restricts use of the Property only for purposes that are compatible with noise levels resulting from operation of the Airport. The Property is no longer needed for the public purpose for which it was acquired, namely Airport noise abatement.

e. The Property is declared to be surplus property no longer needed for public use pursuant to Local Gov't. Art. § 10-312 (b) (2), Md. Ann. Code, and is therefore subject to disposition pursuant to the terms of the FAA grant and the requirements of law set forth in Local Gov't. Art. § 10-312 (f), Md. Ann. Code.

2. Adoption of this Resolution authorizes the County to enter into the proposed Contract of Sale, which is attached hereto as Exhibit "A" and incorporated by reference herein, and to sell and convey the Property for a purchase price of Two Hundred and Fifty Thousand ($250,000) Dollars, to execute and deliver a Deed to the Purchaser substantially in the form attached hereto as Exhibit "B," which is incorporated by reference herein, and to do and perform such other, additional, and further acts and things as may be necessary and proper to fully perform the said Contract of Sale according to its terms.

3. Additional terms of the proposed disposition include the following: the Property will be sold in fee simple subject to an avigation easement reserved in favor of the County, and subject to certain covenants that will run with and bind the land as required by the FAA. These covenants include a restriction that the Property shall not be used for purposes that are not compatible with noise levels associated with operation of the Airport. These include residential purposes, including single-family, multifamily, or mobile home development; nor shall the Property be used for educational facilities or other noise-sensitive land use not compatible with airport noise as described in 14 Code of Federal

Regulations, part 150, as amended from time to time. Settlement is to occur within 30 days of the County's adoption of this Resolution to ratify of the proposed disposition.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its date of passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Resolution No. _____ having been published, a public hearing was held on _____, _____, 2016 at _____ p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

ADOPTED

By the Council, _____

Certified _____, Secretary
Susan W. Moran

By Order_____
Susan W. Moran, Secretary

Pack -

Williams -

Bartlett -

Price -

Callahan -

CONTRACT OF SALE

THIS CONTRACT OF SALE ("**Contract**"), made this _____ day of _____ 2016, by and between TALBOT COUNTY, MARYLAND, (the **"Seller"**) a political subdivision of the State of Maryland and THOMAS C. MITCHELL, (the **"Buyer"**).

WITNESSETH:

IN CONSIDERATION OF the mutual covenants and promises set forth herein, the parties agree as follows:

1. **CONTRACT OF SALE AND PURCHASE.** Subject to the terms and conditions set forth in this Contract, Seller hereby agrees to sell and Buyer hereby agrees to purchase from Seller all that real property (the **"Property"**) more particularly described as follows:

   PROPERTY IS DESCRIBED ON THE ATTACHED EXHIBIT "A," WHICH IS INCORPORATED BY REFERENCE HEREIN.

2. **PURCHASE PRICE AND DEPOSIT.** The purchase price for the Property is TWO HUNDRED AND FIFTY THOUSAND ($250,000) DOLLARS. Buyer has delivered to the Seller a deposit in the amount of Five Thousand Dollars ($5,000) to be held by Seller in a non-interest bearing account and applied to the purchase price at settlement and closing on the Property.

3. **PAYMENT OF PURCHASE PRICE.** The purchase price shall be paid by Buyer to Seller at the closing by Buyer's delivery of a cashier's or certified check payable to Seller in an amount equal to the balance due on the purchase price.

4. **CONDITION OF THE PROPERTY.** The Property shall be conveyed by Seller to Buyer in "AS IS" condition and without representation or warranties of any type.

5. **DEED AND TITLE.** Upon payment of the purchase price, Seller shall, at Buyer's expense, execute and deliver to Buyer, a deed (the **"Deed"**) in recordable form containing covenants of special warranty, further assurances and against encumbrances, which shall convey the Property to Buyer by a good and merchantable title of record, free of liens and encumbrances, subject, however, to zoning and subdivision control ordinances, building codes, State and County Health Department regulations, rights relating to public utilities, and other licenses, all recorded rights-of-way and easements, all unrecorded easements and rights which may be observed by an inspection of the Property, and subject to all public charges, taxes, assessments, and all other laws, regulations and ordinances, and subject also to the covenants, restrictions, and a reserved Avigation and Clearance Easement acceptable in form and content to the Seller and to the Federal Aviation Administration ("FAA"), substantially as set forth in the deed attached hereto and incorporated by reference herein.

6. **PRELIMINARY TITLE REPORT.** Not later than thirty (30) days after execution of this Contract, Buyer shall, at Buyer's expense, obtain a preliminary title report covering the Property. Buyer's failure to obtain the preliminary title report within such time shall operate as a waiver of any title defects or other encumbrances as would have been disclosed by such preliminary title report. If the preliminary title report shows that Seller is unable to convey a good and merchantable title to the Property as set forth herein, Buyer shall notify Seller within ten (10) days of the receipt of the report and the Seller shall refund the Deposit to Buyer and thereupon this Contract shall become null and void with no further obligations, rights, duties or liabilities surviving hereunder between the parties. Seller shall not be required to take any action to render title merchantable. Buyer may, nevertheless, accept such title as Seller may be able to convey, without reduction of the purchase price or any allowance against the same and without any other liability to Seller. The acceptance of a Deed by Buyer shall be deemed to be full performance by Seller of all obligations hereunder.

7. **CLOSING.** Buyer shall select the settlement agent. The consummation of the transactions contemplated by this Contract ("**Closing**") shall be held on or before sixty (60) days following execution of this Contract by the parties and compliance with all applicable laws regarding disposition of public property, whichever is later, at a time and place acceptable to both Buyer and Seller ("Closing Date").

8. **SELLER'S OBLIGATIONS AT CLOSING.** At Closing, Seller shall do the following:

   (a) **Deed**. Execute, acknowledge and deliver the Deed conveying the Property to Buyer.

   (b) **FIRPTA Certification.** Execute and deliver to Buyer a certification as to Seller's non-foreign status which complies with the provisions of Section 1445(b)(2) of the Internal Revenue Code and the regulations issued thereunder.

   (c) **Other Documents.** Execute, acknowledge and deliver to Seller any and all other documents reasonably necessary or advisable to consummate the transactions contemplated hereby.

9. **BUYER'S OBLIGATIONS AT CLOSING.** At Closing, Buyer shall do the following:

   (a) **Deposit.** Authorize Seller to apply the Deposit as a credit against the purchase price paid by Buyer.

   (b) **Cash.** Deliver to Seller its cashier's or certified check in an amount equal to the balance due on the purchase price.

   (c) **Other Documents**. For the purpose of acknowledging Buyer's consent to the covenants, restrictions, and the Seller's reservation and grant of the Avigation and Clearance Easement, Buyer shall, at closing and from time to time thereafter as may reasonably be required, execute and acknowledge the Deed and any all other

documents reasonably necessary or advisable to consummate or confirm the transactions contemplated hereby.

10. **ADJUSTMENTS AT CLOSING**. All rents and all taxes, general or special, and other public or governmental charges or assessments against the Property which are payable on an annual, semi-annual, or quarterly basis shall be adjusted and apportioned as of the Closing Date and shall be assumed and paid thereafter by Buyer.

11. **CLOSING COSTS**. Buyer shall pay all costs and expenses incurred or payable in connection with the closing.

12. **POSSSESSION**. Seller shall give Possession of the Property to Buyer upon completion of the Closing.

13. **DEFAULT BY SELLER.** In the event that Seller shall fail to consummate the transactions required by this Contract to be performed by it prior to or as of the Closing for any reason, except default by Buyer, Buyer shall have the right to specifically enforce this Contract and to exercise all other rights and remedies available by law.

14. **DEFAULT BY BUYER.** In the event Buyer fails to consummate the transactions required by this Contract to be performed by it prior to or as of the Closing for any reason, except default by Seller, Seller shall have the right to retain the deposit in full as liquidated damages and not as a penalty, in which case this contract shall be terminated, or to specifically enforce this Contract and to exercise all other rights and remedies available by law.

15. **WAIVER.** No delay or omission in the exercise of any right or remedy accruing to Seller upon any breach by Buyer under this Contract shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller of any condition or the breach of any terms, covenant or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein contained.

16. **ASSIGNMENT.** Buyer shall have the right and authority to assign this Contract in whole or in part and any of its rights hereunder to any person, form, corporation or other entity without the prior consent of Seller.

17. **REALTOR'S COMMISSIONS.** Seller and Buyer both represent that the sale of the Property has been negotiated solely between the parties without the intervention of any realtor, and if any commissions shall be found to be due and payable in connection with this transaction, the party whose action created such liability shall indemnify and hold harmless the other party from and against any losses, damages or expenses, including reasonable attorneys' fees with regard thereto.

18. **NOTICES.** Any notice to be given or to be served upon any party in connection with this Contract must be in writing, and may be given by certified or registered mail and

shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed, with postage prepaid is deposited in the United States mail. If given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it was addressed. Such notice shall be given to the parties at the following addresses:

SELLER: R. Andrew Hollis, County Manager,
11 N. Washington Street
Easton, Maryland 21601

BUYER: Thomas C. Mitchell
6120 Jeffries Rd.
Easton, MD 21601

Either party may, at any time by giving five (5) days' written notice to the other party, designate any other address in substitution of the foregoing address to which such notice shall be given or other parties to whom copies of all notices hereunder shall be sent.

19. **SURVIVAL.** The provisions of Paragraph 9 (c) of this Contract shall survive the Closing and shall not merge with the Deed conveying the Property to Buyer.

20. **OTHER PROVISIONS.**

a. **Applicable Law.** All questions with respect to the construction of the Contract and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Maryland.

b. **Entire Contract.** This Contract embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Contract.

c. **Modification.** Neither this Contract nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

d. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Contract.

e. **Binding Effect.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, legal representatives, successors and assigns, provided that no assignment shall be made except in accordance with the terms of this Contract.

f. **Counterparts/Facsimile Signatures.** This Contract may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Contract. Seller and Buyer agree that this Contract may be transmitted between them by facsimile and the parties intend that fax signatures shall constitute original signatures and that a faxed Contract containing the signatures (original or faxed) of all the parties shall be binding on the parties hereto.

g. **Interpretation.** Whenever the context hereof shall so require, the singular shall include the plural, the neuter gender shall include the female gender and the male gender, and vice versa.

h. **Severability.** If in case any one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be constructed as if such invalid, illegal or unenforceable provision had never been contained herein.

i. **Time of Essence.** Time is of the essence of this Contract.

j. **Execution.** Buyer's execution and delivery of this Contract shall be irrevocable and shall remain effective as a continuing offer to purchase the Property on the terms and conditions contained herein pending the County's compliance with all requirements of Local Gov't §10-312, Md. Ann. Code. Upon Buyer's execution of this Contract, Seller shall promptly introduce a Resolution to authorize the sale and conveyance of the Property to Buyer upon the terms and conditions contained herein, shall duly advertise said terms as required by law and shall promptly pursue such proceedings to completion and perform all other acts or things required by Local Gov't § 10-312, Md. Ann. Code, on or before July 1, 2016, unless extended by written agreement of the Parties. Upon Seller's default, at Buyer's sole option, the Buyer's continuing offer to purchase the Property shall lapse upon Buyer's delivery of written "Notice of Lapse and Withdrawal" and, in that event, Buyer's continuing offer shall thereafter be of no further force or effect, and Seller shall return Buyer's deposit in full.

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IN WITNESS WHEREOF, the parties hereto have executed and sealed this Contract; provided, however, that for the purposes of determining "the date hereof" as used in this Contract, such date shall be the last date any of the parties hereto executes this Contract.

WITNESS:

SELLER
TALBOT COUNTY MARYLAND

_____

_____(SEAL)
By: Corey W. Pack, President
Talbot County Council
Date of Execution: _____

ATTEST:

Maria M. Mitchell

BUYER:

Thomas C. Mitchell (SEAL)
Thomas C. Mitchell
Date of Execution: 4/29/2016