

10/11/01

TOWN OF RIVERHEAD

Community Development Agency

COUNCILMAN KENT OFFERED THE
SOLUTION, WHICH WAS SECONDED
COUNCILMAN CARDINALE.

Resolution # 22

AUTHORIZES CHAIRMAN TO EXECUTE
GENERAL RELEASE IN CONNECTION
WITH CALVERTON CAMELOT, LLC CLOSING

WHEREAS, in June of 1999, the Town of Riverhead Community Development Agency (the "Agency") entered into an Agreement of Sale (the "Agreement") with Calverton Camelot, LLC (the "Buyer") for the sale of approximately 472 acres of property located at the former Naval Weapons Industrial Reserve Plant, now known as Calverton Enterprise Park (the "Property"), and

WHEREAS, in addition to identifying the total acreage to be sold as "approximate", as a definitive boundary description could not then be provided, it was a condition precedent of said Agreement that boundary of the property to be conveyed be shall be agreed upon prior to the closing; and

WHEREAS, the Agency shall retain an easement for the use and maintenance of the taxiway and tie down areas adjacent to the 10,000 foot runway for the purpose of maintaining the aviation buffer areas for possible future aviation use, and

WHEREAS, the Town of Riverhead subsequently adopted zoning of the subject premises on September 15, 1999, that required the Buyer's parcel to have access to a public highway, necessitating that the Agency convey an additional 7.5 acres of property not originally depicted in the Agreement (which 7.5 acres is located within the New York State Wild, Scenic and Recreational Rivers Boundary), and

WHEREAS, the Buyer shall acquire that portion of the Agency's electric distribution system within the subject premises and an easement for the non-exclusive use over that portion of the Agency's electric transmission system that lies outside the subject premises and the buyer shall agree to maintain the Agency's entire electric transmission system in perpetuity, and

WHEREAS, there is disagreement between the parties to the Agreement as to (a) whether certain conditions precedent for the Buyer to close the transaction have been satisfied, including, without limitation, the following items: (i) pursuant to Section 7(b)(ii) of the Agreement, the condition precedent

to the Buyer closing regarding the physical condition of the property, and (ii) pursuant to Section 7(b)(v) of the Agreement, the condition precedent to the Buyer closing regarding the initial assessed valuation of the Property, and (b) pursuant to Section 2(a) of the Agreement, the additional \$342,000.00 (as defined in the Agreement) beyond the \$17,000,000.00 Purchase Price that Buyer would have paid at the closing; and

WHEREAS, the aforementioned issues together with additional issues that arose during the context of pressing the matter toward closing, require the waiver of performance of certain provisions of the Agreement by both parties, including, without limitation, those items listed above, and

WHEREAS, the parties have reached an accord on all issues that have arisen during the pendency of the sale and now desire to complete the closing, and

WHEREAS, special counsel to the Agency has advised that a general release in the form attached as Exhibit A hereto should be executed by the Agency and the Buyer to address any provisions of the Agreement that the parties have waived the performance of to permit the closing;

NOW, THEREFORE, BE IT

RESOLVED, that for all of the foregoing reasons, the Agency hereby agrees to convey to the Buyer the premises depicted on a certain map entitled "Perimeter Description Map: Situate: Calverton, Town of Riverhead, Suffolk County, New York", which map was prepared by John C. Ehlers, land surveyor, and dated August 6, 2001, last revised, September 17, 2001, showing a parcel of land comprising of 491.04 acres, and be it further

RESOLVED, that the Board of the Town of Riverhead Community Development Agency hereby authorizes the Chairman to execute and deliver the attached general release upon receipt of same from Buyer, and be it further,

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to Robert F. Kozakiewicz, Chairman, Town of Riverhead Community Development Agency, Town of Riverhead Community Development Agency, Andrea Lohneiss, Director, Town of Riverhead Community Development Agency, Town Attorney, Willkie, Farr & Gallagher, Esqs., Berkman, Henoch, Pederson & Peddy, Esqs., Calverton Camelot, LLC.

Absent THE VOTE
Denslock Yes No Cardinals Yes No
Kent Yes No Lull Yes No
Kozakiewicz Yes No
THE RESOLUTION WAS WAS NOT
THEREUPON DULY ADOPTED

Exhibit A

GENERAL RELEASE

THIS GENERAL RELEASE, (this "General Release") is entered into as of the _____ day of _____, 2001, by THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, a New York public benefit corporation ("Seller"), having an address at 200 Howell Avenue, Riverhead, New York 11901 and M-GBC, LLC, a New York limited liability company (as successor in interest to Calverton LLC (as defined herein), the "Buyer"), having an address at _____.

WHEREAS, Buyer and Calverton/Camelot LLC, a New York limited liability company, ("Calverton LLC") have entered into that certain Agreement of Sale, dated as of June 15, 1999, (the "Agreement") for the purchase of certain land and related property (as defined in the Agreement, the "Property");

WHEREAS, pursuant to that certain Assignment and Assumption Agreement, dated _____, 2001, Calverton LLC assigned all of its rights and obligations relating to the Agreement and the Property to the Buyer;

NOW THEREFORE, in consideration of the promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Buyer hereby agree as follows (any capitalized term not defined herein shall have the meaning ascribed to such term in the Agreement):

1. Release. The Seller and the Buyer hereby unconditionally and without any reservation, jointly and severally irrevocably release, waive, relieve and forever discharge, each other including, but not limited to, their present and future direct or indirect affiliates, officers, agents, employees, successors and assigns of and from any and all duties, covenants, obligations, liabilities, indebtedness, claims, liens, damages, , demands, actions, suits, covenants, contracts, agreements, causes of action, offsets, and recoupments, whether known or unknown, suspected or unsuspected, choate or inchoate, in law, equity or otherwise (collectively "Claims"), that the Seller and the Buyer (and their respective affiliates) have asserted or could, in the future, assert against each other arising out of, based upon, or relating to the Agreement or the Property, from the beginning of the world to the day of the date of this General Release.

2. No Admissions. It is expressly understood and agreed that this General Release is not to be construed as an admission on the part of any party hereto of any liability whatsoever in connection with any Claims, and that to the contrary, each party to this Release has denied and continues to deny any Claims asserted or which may be asserted by any party hereto.

3. Exclusions. Notwithstanding anything contained in this General Release to the contrary, the following is hereby excluded from the provisions of this General Release and shall survive the execution and delivery of this General Release:

(i) Any covenants or obligations of either Seller or Buyer as set forth in the Agreement which are specifically stated to survive the consummation of the transactions set forth therein.

4. Accord and Satisfaction; Merger. Both Seller and Buyer acknowledge and agree that this General Release is an accord and satisfaction of all Claims relating to the matters being released hereunder, that all prior documents and all negotiations and stipulations by them or their agents are merged herein, and this General Release contains all the terms and conditions agreed upon by the Seller and the Buyer with reference to the subject matters hereof. No other agreements, oral or otherwise, shall be deemed to exist or to bind the Seller or the Buyer regarding the subject matter hereof.

5. Counterparts. This General Release may be executed in separate counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall be deemed to be but one agreement.

6. Governing Law. This General Release shall be interpreted and enforced in accordance with the internal laws of the State of New York as the same may from time to time exist, without giving affect to the principles of conflict of laws.

7. No Modifications. This General Release may not be altered, amended, changed, waived, terminated or modified in any respect unless the same is in writing and signed by the Buyer and the Seller.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this General Release has been duly executed by the parties hereto as of the day and year first above written.

SELLER:

TOWN OF RIVERHEAD

COMMUNITY DEVELOPMENT AGENCY

By: _____

Name:

Title:

BUYER:

M-GBC, LLC

By: _____

Name:

Title: