



# Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

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www.berlinmd.gov



**Mayor**  
Wm. Gee Williams, III

**Vice President**  
Elroy Brittingham, Sr.

**Council Members**  
Dean Burrell, Sr.  
Lisa Hall  
Paula Lynch  
Troy Purnell

**Town Attorney**  
David Gaskill

**Town Administrator**  
Anthony J. Carson, Jr.

## BERLIN, MARYLAND

### MAYOR AND COUNCIL MEETING

**MONDAY, FEBRUARY 27, 2012**

**COUNCIL CHAMBERS – BERLIN TOWN HALL  
10 WILLIAM STREET  
BERLIN, MD 21811**

EXECUTIVE SESSION .....6:30 PM

REGULAR SESSION .....7:00 PM

*Anyone having questions about the meetings mentioned above or needing special accommodations should contact Tony Carson, Town Administrator at (410) 641-4144*

*TTY users dial 7-1-1 in the State of Maryland*

*TTY users outside Maryland dial 1-800-735-2258*

**BERLIN MAYOR AND COUNCIL  
COUNCIL MEETING  
AGENDA  
Monday, February 27, 2012**

**6:30 PM EXECUTIVE SESSION - Berlin Conference Room**

**7:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers**

1. Approval of the Minutes for:  
Executive Session of the Mayor and Council on February 13, 2012  
Statement of Closure for Mayor and Council on February 13, 2012  
Regular Session of the Mayor and Council on February 13, 2012
2. Special Event Request – Spring Cruisers  
Saturday, May 19, 2012; 10 a.m. to 2 p.m., Main Street
3. Special Event Request – May Day Play Day  
Friday, May 11, 2012, Main Street
  - a. Motion to approve event and closure of designated streets
  - b. Motion to Approve the sale of beer at event
  - c. Motion to Approve suspension of open container law for designated area and time.
4. Public Hearing – Ordinance 2012-01  
An ordinance providing for the issuance and sale of an aggregate principal amount not to exceed \$5,100,000.000 of bonds known as the “Town of Berlin Infrastructure Bonds, 2012 Series A”.
  - a. Public Hearing per DHCD guidelines
  - b. Public Hearing per Town of Berlin guidelines
5. Resolution 2012-02 A Resolution authorizing and empowering the Mayor and Council of Berlin to issue and sell two separate series of general obligation bonds in the respective aggregate principal amounts of \$3,207,000.00 and \$1,500,000.00 to be designated to the “Effluent Storage and Irrigation System Project”.
6. Water Use Agreement – Worcester County Commissioners and Town of Berlin regarding Briddletown Sanitary Service Area
7. Departmental Reports
  - a. Finance – Lynn Musgrave
  - b. Deputy Town Administrator – Mary Bohlen
  - c. Public Works – Mike Gibbons
  - d. Water Resources – Jane Kreiter
  - e. Electric – Tim Lawrence
  - f. Police – Arnold Downing

- h. Human Resources – Jeff Fleetwood
- i. Economic and Community Development – Michael Day

- 8. Town Administrator's Report
- 9. Comments from the Mayor
- 10. Comments from the Council
- 11. Comments from the Public
- 12. Comments from the Press
- 13. Adjournment

MAYOR AND COUNCIL OF BERLIN, MARYLAND  
Regular Session Council Minutes  
Monday, February 13, 2012

The meeting of the Mayor and Council for Monday, February 13, 2012 was called to order by Mayor Williams at approximately 7:00 p.m. Councilmembers Lynch, Burrell, Brittingham, Purnell and Hall were present, as well as Town Administrator Tony Carson, Human Resources Director Jeff Fleetwood, Finance Director Lynn Musgrave, Deputy Town Administrator Mary Bohlen, Economic and Community Development Director Michael Day, Water Resources Director Jane Kreiter, Police Chief Arnold Downing, Public Works Director Mike Gibbons, Planning and Zoning Director Chuck Ward and Administrative Assistant Sharon Timmons. Electric Utility Director Tim Lawrence was absent.

Following the recitation of the Lord's Prayer and the Pledge of Allegiance, Mayor Williams asked for a motion to approve the Executive Session Minutes of January 23, 2012. Councilmember Hall made a motion to approve the minutes and the council voted unanimously to approve 4-0 with Councilmember Purnell abstaining. Mayor Williams stated that the Executive Session was closed for the consideration of the contents of a contract or bid. Mayor Williams continued by requesting approval of the Regular Session Minutes of January 23, 2012. Councilmember Brittingham made a motion to approve the minutes and council voted unanimously to approve 4-0 with Councilmember Purnell abstaining.

Teresa Fields, Executive Director of Worcester Youth and Family Counseling and Stephanie Gordy came before the council to present a slide show on the services they have provided for the youth since the summer camp program ended. Currently WYFC has an afterschool program in place which serves children ages 6-12, Monday through Thursday from 2:45 p.m. to 5:30 p.m. at the Isaiah Fassett building. Ms. Gordy explained the various activities and field trips and thanked the community for the courtesy of local businesses and in-kind support. Ms. Fields stated that they hoped to provide more field trips and events in the future, especially on days when the schools were not in session and would be distributing a youth activities calendar. Discussion followed. She then introduced Melanie Windsor, the newly hired youth coordinator. Mayor Williams stated that he was extremely pleased with the performance and results and felt that the program had become an important asset to the community. Councilmember Burrell requested that he receive a report showing numbers associated with the activities.

Mayor Williams asked for a motion to approve the funding for the Youth Coordination Program from March 1, 2012 to June 30, 2013 at \$2,000 per month. Councilmember Brittingham made the motion to approve the funding and council voted unanimously to approve 5-0.

Mr. John Barrett of Renaissance Plaza Partnership came before the council requesting the approval of 3 EDU's for the upstairs property located at 113 North Main Street. The upstairs level of the building will be converted into six (6) one bedroom apartments, while the lower level of the building will remain retail. Town Administrator Tony Carson stated that historical data showed that each of the apartments should only require 125 gpd and that after 2 years the usage would be reviewed. Discussion continued on the changes that would be taking place on the exterior of the building. Mr. Barrett requested that he be allowed a payment plan on the balance of the EDU's for a period of 5 years. Councilmember Lynch made a motion to approve the allocation of 3 EDU's at the property located at 113 North Main Street and to offer a monthly payment plan for a maximum of 5 years for the balance of the EDU's once the certificate of occupancy was issued. Council voted unanimously to approve 5-0.

Mr. Dwight Davis of Booth and Associates came before the council to discuss their work regarding the filing of the application to lower electric rates for the non-residential accounts. Mr. Davis stated that the focus would be on (1) long range plans regarding capital projects, (2) the tariff, and (3) the cost of service study recommending a reduction in all classes. The smallest group which consisted of about 300 customers would be reduced by 10%, the group consisting of demand meters would be reduced by 15%

and the 4 largest customers would be reduced by 2-3%. Challenges would be depreciation and bond covenants related to debt service. Mr. Davis stated that the documents would be put together in March for filing in April with a July 1<sup>st</sup> effective date. He continued his presentation by explaining how the reduction of operating hours at the Power Plant has helped to reduce energy charges and Mr. Davis proposed to limit the operating hours even further concentrating on the summer months to help to reduce fuel costs, maintenance and repair costs. Environmental regulation charges are increasing and it would cost around \$160,000.00 to make the upgrades by May 2012 to reduce carbon monoxide. Councilmember Burrell made a motion to approve Booth & Associates to proceed with the filing of the rate case to reduce our non-residential rates to the Public Service Commission with an effective date of July 1, 2012. Council voted unanimously to approve the motion 5-0.

Mayor Williams explained the request for a motion to approve the 2 year contract extension with NextEra Energy for purchase power beginning June 1, 2013 through May 31, 2015. This reduction will lower the power portion about 10% which is about 1/3 of the cost. Councilmember Hall made a motion to approve the 2 year contract with NextEra Energy and council voted unanimously to approve 5-0.

Ordinance 2012-01, an ordinance providing for the issuance and sale of an aggregate principal amount not to exceed \$5,100,000.000 of bonds known as the Town of Berlin Infrastructure Bonds, 2012 Series A” was introduced. The public hearing will be held on February 27, 2012. Finance Director Lynn Musgrave explained that the Town is taking the current 5 bonds and reducing the interest rates. Projected savings on this action is \$700,000.00 over 17 years.

Departmental reports began with Finance Director Lynn Musgrave reporting that the Finance department was focusing on budget information for the department heads and was continuing their work on rental licensing. She reported that a check had been sent to Shore Up for around \$6,000.00 for the energy assistance program, \$3,000 from contributions and matched \$3,000 from the Town.

Water Resources Director Jane Kreiter announced that a pre-construction meeting had been held on the final phase of the upgrade and the contractors should be on-site next week.

Planning and Zoning Director Chuck Ward reported that his department had received 1400 phone calls, responded to 500 emails, had 1000 walk-ins, dealt with 300 code enforcement issues and issued 172 building permits. He continued by stating that he was working with D3 Corp on downloading his department’s forms on the website.

Human Resources Jeff Fleetwood reported that a representative from Nationwide would be here Wednesday to conduct a seminar on retirement.

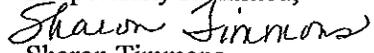
Economic and Community Development Director Michael Day reported that TA DA Home had closed, but a new business would be leasing the space within a day or two, Toy Town was moving across the street and 2 studio spaces had been leased at the Chamber.

Town Administrator Tony Carson asked for authorization to make revisions to the Allocation Ordinance due to modifications discovered during site plan reviews. Mr. Carson stated that he and Ms. Kreiter were hoping to be able to present the recommendations within the next 30 to 60 days. Discussion continued. Council agreed in consensus to approve. He then presented and requested approval of 9 purchase orders (201202033, 201302030, 201202014, 201202048, 201202029, 201202046, 201202103, 201202110 and 201202137). Councilmember Burrell made a motion to approve all 9 purchase orders and council voted unanimously to approve 5-0.

Mayor Williams asked for comments from the council. Councilmember Hall thanked Mr. Ward for the statistics from the Planning and Zoning department and Councilmember Burrell thanked Mr. Carson for reading to the children at Head Start. Mayor Williams asked for comments from the public or the press.

There being no further comments, Councilmember Burrell made a motion to adjourn and the meeting ended at 8:45p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sharon Timmons".

Sharon Timmons  
Administrative Assistant

ORDINANCE NO. 2012-01

TOWN OF BERLIN  
INFRASTRUCTURE BONDS, 2012 SERIES [A]

AN ORDINANCE OF THE TOWN OF BERLIN, A MUNICIPAL CORPORATION OF THE STATE OF MARYLAND, PROVIDING FOR THE ISSUANCE AND SALE OF AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED FIVE MILLION, ONE HUNDRED THOUSAND DOLLARS (\$5,100,000.00) OF BONDS OF TOWN OF BERLIN, MARYLAND, TO BE KNOWN AS "TOWN OF BERLIN, INFRASTRUCTURE BONDS, 2012 SERIES A", TO BE ISSUED AND SOLD PURSUANT TO THE AUTHORITY OF SECTIONS 4-101 THROUGH 4255 OF THE HOUSING AND COMMUNITY DEVELOPMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS AMENDED, FOR THE PURPOSE OF PROVIDING ALL OR A PORTION OF THE FUNDS NECESSARY FOR (I) FINANCING AND REFINANCING THE FOLLOWING PROJECTS: (1) ELECTRIC DISTRIBUTION SYSTEM 1988, (2) TOWN HALL 1998, (3) POWER PLANT GENERATOR NO. 2 AND 3 1999, (4) SPRAY IRRIGATION 1998, (5) POWER PLANT GENERATOR #1 1998 (II) FUNDING A PORTION OF A CAPITAL RESERVE FUND AND (III) PAYING ISSUANCE AND OTHER COSTS RELATED TO THE BONDS (AS HEREINAFTER DEFINED); PROVIDING THAT THE BONDS SHALL BE ISSUED UPON THE FULL FAITH AND CREDIT OF THE TOWN OF BERLIN; PROVIDING FOR THE DISBURSEMENT OF THE PROCEEDS OF THE SALE OF THE BONDS AND FOR THE LEVY OF ANNUAL TAXES UPON ALL ASSESSABLE PROPERTY WITHIN THE TOWN OF BERLIN FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THEY SHALL RESPECTIVELY MATURE; PROVIDING FOR THE FORM, TENOR, DENOMINATION, MATURITY DATE AND OTHER PROVISIONS OF THE BONDS; PROVIDING FOR THE SALE OF THE BONDS; AND PROVIDING FOR RELATED PURPOSES, INCLUDING THE METHOD OF FIXING THE INTEREST RATE TO BE BORNE BY THE BONDS.

**WHEREAS**, the Town of Berlin (the "Issuer") is a municipal corporation of the State of Maryland organized and operating under a charter (the "Charter") adopted in accordance with Article XI-E of the Constitution of Maryland and Article 23A of the Annotated Code of Maryland, as amended; and

**WHEREAS**, Sections 4-101 through 4255 of the Housing and Community Development Article of the Annotated Code of Maryland, as amended (the "Act"), authorizes the Community Development Administration (the "Administration"), an agency in the Division of Development Finance of the Department of Housing and Community Development, a principal department of the government of the State of Maryland, to provide financial assistance to political subdivisions and municipal corporations to finance, among other things, infrastructure projects and to establish a capital reserve fund in connection therewith; and

**WHEREAS**, pursuant to the authority of the Act, the Issuer has determined to issue its general obligation bonds in the aggregate principal amount not to exceed Five Million, One Hundred Thousand Dollars (\$5,100,000.00) (the "Bonds" as defined herein) for the purpose of financing and refinancing the costs of: (1) electric distribution system 1988, (2) town Hall 1998, (3) power plant generator no. 2 and 3 1999, (4) spray irrigation 1998, (5) power plant generator #1 1998 (collectively, the "Project"), funding a portion of a capital reserve fund and paying issuance costs related to the Bonds; and

**WHEREAS** , the Issuer proposes to issue and sell the Bonds to the Administration, in connection with the Local Government Infrastructure Financing Program of the Administration (the "Program"); and

**WHEREAS** , it is the intention of the Issuer by this Ordinance to provide for the issuance and sale of the aforementioned Bonds and to obtain a loan from the Administration pursuant to the Program (the "Loan"); and

**WHEREAS** , the Issuer intends to authorize the execution and delivery the Bonds and all other documents, certificates and other materials related to the issuance, sale and delivery of the Bonds and the Loan; and

**WHEREAS** , the Administration intends to issue one or more series of its Local Government Infrastructure Bonds to finance the Loan and other loans to be financed pursuant to the Program.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1. Authorization, Terms, Form of Bonds.**

(a) The Town of Berlin (the "Issuer") shall borrow upon its full faith and credit and shall issue and sell upon its full faith and credit an aggregate principal amount not to exceed Five Million, One Hundred Thousand Dollars (\$5,100,000.00) of its general obligation bonds, to be issued pursuant to the authority of Sections 4-101 through 4255 of the Housing and Community Development Article of the Annotated Code of Maryland, as amended (the "Act"), to be known as the Town of Berlin Infrastructure Bonds, 2012 Series A", as such designation may be modified prior to issuance (the "Bonds"). The proceeds from the sale of the Bonds shall be used for the purpose of providing a portion of the funds necessary for financing and refinancing: (1) electric distribution system 1988, (2) town hall 1998, (3) power plant generator no. 2 and 3 1999, (4) spray irrigation 1998 (5) power plant generator #1 1998 (collectively, the "Project"), funding a portion of a capital reserve fund and paying issuance costs related to the Bonds.

(b) The Bonds shall be issued as one or more fully registered bond certificate(s) in the aggregate principal amount not to exceed Five Million, One Hundred Thousand Dollars (\$5,100,000.00) payable to the Community Development Administration (the "Administration") as the registered owner thereof. The Bonds shall be issued in such amount or such lesser amount as determined by the Mayor pursuant to subsection (g) below, which shall be equal to the principal amount of the loan to the Issuer from the Administration (the "Loan") under the Local Government Infrastructure Financing Program of the Administration (the "Program").

(c) The Bonds shall be dated as of the date of issue, or as of such other date as is specified by the Administration; shall be numbered from R-1 upward; shall be initially registered in the name of the Administration or its designee; shall bear interest from the date of issuance of the Local Government Infrastructure Bonds issued by the Administration (the "Administration's Bonds"), payable semiannually on May 1 and November 1, at such annual rate or rates and be payable in annual principal installments at the designated office of the Administration.

(d) The Bonds shall bear interest at an annual rate or rates of interest for a true interest cost not to exceed 2.80 percent for a loan with a maturity of six years, 2.90 percent for a loan with a maturity of nine years, 3.80 percent for a loan with a maturity of sixteen years, 3.90

percent for a loan with a maturity of seventeen years, the actual rate or rates of interest to be borne by the Bonds to be determined and established by the Mayor of the Town of Berlin acting pursuant to Section 1(g) of this Ordinance.

(e) The Bonds shall be in substantially the form set forth on Exhibit A attached hereto and made a part hereof, which form, together with all of the covenants and conditions therein contained, is hereby adopted by the Issuer as and for the form of obligation to be incurred by the Issuer and such covenants and conditions are hereby made binding upon the Issuer, including the promise to pay therein contained.

(f) The Bonds are to be issued in connection with the Program to finance a portion of the Project and to pay costs of issuance, bond insurance premiums and other related costs. Under the Program, the Issuer will enter into a Repayment Agreement and a Pledge Agreement with the Administration (respectively, the "Repayment Agreement" and the "Pledge Agreement"). The Issuer also will execute and deliver in connection with the issuance of the Bonds and the Program any additional documents, agreements, instruments and certificates requested by the Administration (which, together with the Repayment Agreement and the Pledge Agreement are herein referred to as the "Program Documents"). The Program Documents shall be in such form and shall contain such terms and conditions as shall be approved by the Mayor of the Town of Berlin and acceptable to the Administration.

(g) Because this Ordinance is being adopted before the details have been finalized for the financing pursuant to which the Administration will issue the Administration's Bonds (the "Administration Financing") that will fund the Loan to the Issuer under the Program, the Mayor of the Town of Berlin is hereby authorized to make such changes to the amount and form of the Bonds, including insertions therein or additions or deletions thereto, as may be necessary or appropriate to conform the terms of the Bonds to the terms of the financing to be provided to the Issuer under the Program. Without limiting the foregoing, it is presently contemplated that the Loan will be in an amount not to exceed \$5,100,000.00 in aggregate principal amount hereby authorized, subject to final approval by the Administration; accordingly, the Mayor of the Town of Berlin is specifically authorized: (i) to make changes to the principal amount of the Bonds in order to reflect the final principal of the Loan not to exceed \$5,100,000.00 as approved by the Administration and accepted by the Issuer, (ii) to authorize and approve an interest rate or rates and payment schedule reflecting the principal and interest payments with respect to the Bonds but not to exceed the maximum total interest cost to be borne by the Bonds as set forth in subsection (d) above.

(h) This borrowing shall be exempt from the provisions of Sections 10 and 11 of Article 31 of the Annotated Code of Maryland, as amended.

(i) This borrowing is in conformance with and does not exceed any and all applicable debt limitations under the Charter.

**Section 2. Execution.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor of the Town of Berlin, and the seal of the Issuer shall be affixed thereto or reproduced thereon and attested by the manual signature of the Town Administrator of the Issuer. The Program Documents shall be executed on behalf of the Issuer by an authorized official of the Town of Berlin. In the event any official whose signature appears on any of the Bonds or the Program Documents shall cease to be an official prior to the delivery of the Bonds or the Program Documents, or, in the event any official whose signature appears

on any of the Bonds or the Program Documents becomes an officer after the date of the issue, the Bonds or Program Documents shall nevertheless be valid and binding obligations of the Issuer in accordance with their terms. The Mayor of the Issuer is hereby authorized, empowered and directed to complete the applicable form of the Bonds and to make modifications, deletions, corrections or other changes thereto in any manner which the Mayor, in the Mayor's discretion, shall deem necessary or appropriate to complete the issuance and sale of the Bonds, as will not alter the substance thereof. The Mayor or other duly authorized official of the Issuer is hereby authorized, empowered and directed to complete the applicable form of the Program Documents and to make modifications, deletions, corrections or other changes thereto in any manner which such official, in the discretion of such official, shall deem necessary or appropriate to complete the execution and delivery of the Program Documents in accordance with the provisions of this Ordinance, as will not alter the substance thereof. The execution and delivery of the Bonds and the Program Documents by the duly authorized official shall be conclusive evidence of such official's approval of the form and substance thereof.

**Section 3. Registration of Bonds.** The Town Administrator shall act as registrar for the Bonds and shall maintain registration books for the registration and registration of transfer of the Bonds. No security or bond shall be required of the Town Administrator in the performance of the duties of registrar for the Bonds.

The Issuer may deem and treat the person in whose name any Bond shall be registered upon the books of the Issuer as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, premium, if any, of and interest on such Bond and for all other purposes.

**Section 4. Prepayment.** The Bonds are being issued in connection with the Program and will secure payment of the Administration's Bonds, which are being issued by the Administration to provide funds to purchase the Bonds from the Issuer. The Repayment Agreement limits the right of the Issuer to prepay the Bonds in accordance with restrictions upon the right of the Administration to redeem the Administration's Bonds. Accordingly, the Issuer may prepay the Bonds only in accordance with the provisions of the Repayment Agreement and the terms governing prepayments as set forth in the Bonds.

**Section 5. Replacement of Mutilated, Lost, Stolen, or Destroyed Bonds.** In case any Bond (a "Bond" being, for purposes of this Section, any one of the Bonds) shall become mutilated or be destroyed, lost or stolen, the Issuer may cause to be executed and delivered a new Bond of like date and tenor and bearing the same or a different number, in exchange and substitution for each Bond mutilated, destroyed, lost or stolen, upon the owner paying the reasonable expenses and charges of the Issuer in connection therewith and, in the case of any Bond being destroyed, lost or stolen, upon the owner filing with the Issuer evidence satisfactory to it that such Bond was destroyed, lost or stolen, and furnishing the Issuer with indemnity satisfactory to it. Any Bond so issued in substitution for a Bond so mutilated, destroyed, lost or stolen: (i) may be typewritten, printed or otherwise reproduced in a manner acceptable to the Administration, and (ii) shall constitute an original contractual obligation on the part of the Issuer under this Ordinance whether or not the Bond in exchange for which said new Bond is issued shall at any later date be presented for payment and such payment shall be enforceable by anyone, and any such new Bond shall be equally and proportionately entitled to the benefits of this Ordinance with all other like Bonds, in the manner and to the extent provided herein.

**Section 6. Use of Proceeds.** The proceeds of the Bonds shall be held and invested by the Administration in its sole discretion and shall be:

(a) Administered and disbursed by the Administration pursuant to the Repayment Agreement. The proceeds of the Bonds shall be used, when and as required, to pay Development Costs (as defined in the Repayment Agreement).

(b) After the Project has been completed and all Development Costs in connection therewith have been paid, any balance of the proceeds of the sale of the Bonds held by the Administration under the Repayment Agreement may be applied to the next maturing principal installment or prepayment of the Bonds, as permitted by the Administration.

**Section 7. Covenants.** The Issuer covenants with the Administration and for the benefit of the owners from time to time of the Bonds, that so long as the Bonds or installments of principal thereunder shall remain outstanding and unpaid:

(a) The Issuer will duly and punctually pay, or cause to be paid, to the Administration the principal of the Bonds, premium (if any) and interest accruing thereon, at the dates and places and in the manner mentioned in the Bonds from unlimited ad valorem taxes in the event that available funds are inadequate to make such payment.

(b) The Issuer covenants that so long as any of the Bonds are outstanding and not paid, unless other funds are available for payment of principal of, premium, if any, and interest on the Bonds, it shall levy annually, in the manner prescribed by law, a tax on all real and tangible personal property within its corporate limits subject to assessment for unlimited taxation, ad valorem taxes in rate and amount and sufficient, to provide for the payment of the principal of and interest on the Bonds as the same become due and payable; and in the event that the revenues available from the taxes so levied in any fiscal year shall prove inadequate for the above purposes, the Issuer shall levy additional taxes in the succeeding fiscal year to make up such deficiency; and the full faith and credit and the unlimited taxing power of the Issuer are hereby irrevocably pledged to the punctual payment of the principal of and interest on the Bonds as the same become due.

(c) The Issuer will promptly provide to the Administration (or to any person designated by the Administration) all financial information and operating data concerning the Issuer as may be required by the Administration in its discretion in order to comply with the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission, as in effect from time to time, applicable to the Administration's Bonds.

**Section 8. Resolution a Contract.** The provisions of this Ordinance shall constitute a contract with the purchasers and owners from time to time of the Bonds, and this Ordinance shall not be repealed, modified or altered in any manner materially adverse to the Administration and interests of such purchasers or owners while the Bonds or any portion thereof remain outstanding and unpaid without the consent of the owners of the Bonds and the Administration.

**Section 9. Pledge of Local Government Payments.** As contemplated and authorized by Section 4-229(b) of the Act, the Issuer hereby pledges, assigns and grants a security interest to the Administration, its successors in trust and assigns, all right title and interest of the Issuer in and to the Local Government Payments (as defined in the Pledge

Agreement), now or hereafter acquired, (i) to secure payment of the principal of, premium, if any, and interest on the Bonds and any other Local Obligations (as defined in the Pledge Agreement) issued and to be issued from time to time by the Issuer under the Program and (ii) to provide for deposits to the capital reserve fund securing the Bonds the amount of the Issuer's portion of any deficiency in such capital reserve fund as the Administration shall require, all as more fully set forth and provided in the Pledge Agreement.

**Section 10. Purchase Price of Bonds.** The Bonds shall be sold for cash in accordance with the terms and provisions of this Ordinance at par, or if discount is permitted by law, at such discount as is agreed with the Administration in accordance with the terms and provisions of this Ordinance, and as authorized by Section 4-229(a) of the Act.

**Section 11. Sale of Bonds.** The Bonds shall be sold to the Administration under the Program at private sale, as authorized by Section 4-229(a) of the Act.

**Section 12. Authority to Take Action; Publication and Public Hearing.**

(a) The officers and employees of the Issuer are hereby authorized and directed to do all acts and things required of them by the provisions of this Ordinance, for the full, punctual and complete performance of all the terms, covenants and provisions of the Bonds, the Program Documents and this Ordinance and to do and perform all acts and to execute, seal and deliver all documents or instruments of writing which may be necessary or desirable to carry out the full intent and purpose of this Ordinance and the Program Documents.

(b) As required by the Act, prior to the issuance of the Bonds, the Issuer shall publish in a newspaper of general circulation in the jurisdiction of the Issuer a notice of the proposed issuance of the Bonds, which notice shall include the proposed amount of the issue, the nature of the project to be financed, the time and place of the public hearing, the name of the person(s) and address of the place where written comments may be sent, and the Issuer shall hold a public hearing on the proposed issuance of the Bonds. Such actions may be (or have been) taken prior to or simultaneously with the adoption of this Ordinance.

**Section 13. Tax Matters**

(a) The Mayor and/or the Finance Director shall be the officers of the Issuer responsible for the issuance of the Bonds within the meaning of the Arbitrage Regulations (defined herein). The Mayor and/or the Finance Director shall also be the officers of the Issuer responsible for the execution and delivery (on the date of issuance of the Bonds) of a certificate of the Issuer (the 'Section 148 Certificate') which complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended ("Section 148), and the applicable regulations thereunder (the "Arbitrage Regulations"), and such official is hereby directed to execute the Section 148 Certificate and to deliver the same to the Administration on the date of the issuance of the Bonds.

(b) The Issuer shall set forth in the Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bonds, or of any monies, securities or other obligations to the credit of any account of the Issuer which may be deemed to be proceeds of the Bonds pursuant to Section 148 or the Arbitrage

Regulations (collectively, "Bond Proceeds"). The Issuer covenants that the facts, estimates and circumstances set forth in the Section 148 Certificate will be based on the Issuer's reasonable expectations on the date of issuance of the Bonds and will be, to the best of the certifying officials, knowledge, true and correct as of that date.

(c) The Issuer covenants and agrees with each of the holders of any of the Bonds that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 and the regulations thereunder which are applicable to the Bonds on the date of issuance of the Bonds and which may subsequently lawfully be made applicable to the Bonds.

(d) The Issuer further covenants that it shall make such use of the proceeds of the Bonds, regulate the investment of the proceeds thereof; and take other and further actions as may be required to maintain the excludability from gross income for federal income tax purposes of interest on the Bonds. All officers, employees and agents of the Issuer are hereby authorized and directed to take such actions, and to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bonds, as may be necessary or appropriate from time to time to comply with, or to evidence the Issuer's compliance with, the covenants set forth in this Section.

(e) The Mayor and/or the Finance Director, on behalf of the Issuer, may make such covenants or agreements in connection with the issuance of Bonds issued hereunder as such officer(s) shall deem advisable in order to assure the registered owners of such Bonds that interest thereon shall be and remain excludable from gross income for federal income tax purposes, and such covenants or agreements shall be binding on the Issuer so long as the observance by the Issuer or any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on such Bonds from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the Issuer regarding compliance with the provisions of the Internal Revenue Code of 1986, as amended, as the Mayor or Finance Director shall deem advisable in order to assure the registered owners of such Bonds that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of the proceeds of such Bonds, the payment of rebate (or payments in lieu of rebate) to the United States, limitations on the times within which, and the purpose for which, such proceeds may be expended, or the use of specified procedures for accounting for and segregating such proceeds.

**Section 14. Effective Date; Miscellaneous.** This Ordinance shall take effect from the date of its adoption, and it is the intent hereof that the laws of the State of Maryland shall govern its construction and the construction of the Bonds. Any copy of this Ordinance duly certified by the Town Administrator or the Town Administrator's successor in office shall constitute evidence of the contents and provisions hereof.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ BY THE MAYOR AND  
COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF \_\_\_\_ TO  
\_\_\_\_ OPPOSED.

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
Town Administrator

Exhibit A. – Form of Bond

RESOLUTION NO. 2012-02

A RESOLUTION OF THE COUNCIL OF BERLIN (THE "COUNCIL") AUTHORIZING AND EMPOWERING MAYOR AND COUNCIL OF BERLIN (THE "TOWN"), PURSUANT TO THE AUTHORITY OF SECTIONS 31 TO 37, INCLUSIVE, OF ARTICLE 23A OF THE ANNOTATED CODE OF MARYLAND, SECTIONS 9-1601 TO 9-1622, INCLUSIVE, OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, SECTIONS C7-19, C7-19.1 AND C7-21 OF THE CHARTER OF THE TOWN OF BERLIN, AND ORDINANCE NO. 2011-01, PASSED BY THE COUNCIL ON JANUARY 24, 2011, APPROVED BY THE MAYOR OF THE TOWN (THE "MAYOR") ON JANUARY 24, 2011 AND EFFECTIVE ON FEBRUARY 14, 2011, TO AUTHORIZE AND EMPOWER THE TOWN TO ISSUE AND SELL, UPON ITS FULL FAITH AND CREDIT, TWO SEPARATE SERIES OF GENERAL OBLIGATION BONDS IN THE RESPECTIVE AGGREGATE PRINCIPAL AMOUNTS OF THREE MILLION TWO HUNDRED SEVEN THOUSAND DOLLARS (\$3,207,000.00) AND ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), TO BE DESIGNATED, RESPECTIVELY, "MAYOR AND COUNCIL OF BERLIN WATER QUALITY BOND, SERIES 2012A" AND "MAYOR AND COUNCIL OF BERLIN WATER QUALITY BOND, SERIES 2012B" OR AS OTHERWISE REQUIRED AS PROVIDED HEREIN, THE BONDS TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED FOR AND APPLIED TO THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING A PORTION OF THE COSTS INCURRED IN CONNECTION WITH UPGRADING THE TOWN'S WASTEWATER TREATMENT SYSTEM BY UNDERTAKING A PROJECT REFERRED TO AS THE "EFFLUENT STORAGE AND IRRIGATION SYSTEM PROJECT", TOGETHER WITH RELATED COSTS AND COSTS OF ISSUANCE AS PROVIDED HEREIN; PRESCRIBING, APPROVING AND ADOPTING THE FORMS AND TENOR OF THE BONDS, THE TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE OF THE BONDS BY PRIVATE SALE, WITHOUT PUBLIC BIDDING, TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION (THE "ADMINISTRATION"), AND ALL OTHER DETAILS INCIDENT THERETO, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE TOWN, TO ADJUST AND FIX CERTAIN DETAILS OF THE BONDS; PROVIDING FOR THE POTENTIAL FORGIVENESS OF THE SERIES 2012B BOND IDENTIFIED HEREIN; APPROVING, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF, TWO LOAN AGREEMENTS WITH THE ADMINISTRATION PURSUANT TO WHICH ADVANCES WILL BE MADE UNDER THE BONDS; PLEDGING ANY MONEYS THAT THE TOWN IS ENTITLED TO RECEIVE FROM THE STATE OF MARYLAND, INCLUDING THE TOWN'S SHARE OF THE STATE INCOME TAX, TO SECURE ITS OBLIGATIONS UNDER THE LOAN AGREEMENTS; AUTHORIZING AND DIRECTING THE PAYMENT OF ANY FEES OR COSTS PROVIDED FOR IN THE LOAN AGREEMENTS WHICH ARE NOT PAYABLE FROM BOND PROCEEDS AND PROVIDING THAT THE TOWN'S OBLIGATION TO PAY SUCH AMOUNTS SHALL BE ABSOLUTE AND UNCONDITIONAL AS PROVIDED IN THE LOAN AGREEMENTS; AUTHORIZING EACH OF THE MAYOR AND THE TOWN ADMINISTRATOR OF THE TOWN (THE "TOWN ADMINISTRATOR") TO TAKE CERTAIN ACTIONS WITH RESPECT TO

THE LOAN AGREEMENTS AND DESIGNATING EACH OF THE MAYOR AND THE TOWN ADMINISTRATOR AS AN "AUTHORIZED OFFICER" FOR PURPOSES OF THE LOAN AGREEMENTS; PROVIDING FOR THE DISBURSEMENT OF ADVANCES OF THE BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE TOWN TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BONDS WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE TOWN IN CONNECTION WITH THE OPERATION OF THE WASTEWATER SYSTEM SERVING THE TOWN; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BONDS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE TOWN FOR SUCH PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE TOWN TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BONDS; MAKING OR PROVIDING FOR CERTAIN REPRESENTATIONS AND COVENANTS REGARDING TAX MATTERS; PROVIDING THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE ORDINANCE AUTHORIZING THE BONDS OR THIS RESOLUTION, THE TOWN SHALL USE AND APPLY PROCEEDS OF THE BONDS ONLY AS PERMITTED BY THE LOAN AGREEMENTS, THE CLEAN WATER ACT (AS DEFINED IN THE LOAN AGREEMENTS) AND THE ACT (AS DEFINED IN THE LOAN AGREEMENTS); AUTHORIZING AND DIRECTING CERTAIN OFFICIALS TO APPROVE AND TO AMEND, MODIFY AND REPLACE FROM TIME TO TIME WRITTEN POST-ISSUANCE TAX COMPLIANCE PROCEDURES PERTAINING TO THE SERIES 2012A BOND IDENTIFIED HEREIN AND OTHER NON-CONDUIT TAX-EXEMPT OBLIGATIONS OF THE TOWN; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE BONDS.

#### RECITALS

WHEREAS, Mayor and Council of Berlin, a municipal corporation of the State of Maryland (the "Town"), is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), and Sections C7-19, C7-19.1 and C7-21 of the Charter of the Town of Berlin, as published in Municipal Charters of Maryland, Volume 1, 2008 Replacement Edition, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, pursuant to Ordinance No. 2011-01, passed pursuant to the authority of the Enabling Act, the Charter and other applicable law by the Council of the Town (the "Council") on January 24, 2011, approved by the Mayor of the Town (the "Mayor") on January 24, 2011 and effective on February 14, 2011 (the "Ordinance"), the Town authorized the issuance and sale from time to time, upon its full faith and credit, of one or more series of its general obligation bonds in an aggregate principal amount not to exceed Ten Million Dollars (\$10,000,000.00) (the "Authorized

Bonds”), and the Ordinance provides that any such series may consist of one or more bonds and that any bond may be issued in installment form and/or draw-down form; and

WHEREAS, the Ordinance provides that the proceeds of the Authorized Bonds are to be used and applied for the public purpose of financing, reimbursing or refinancing all or a portion of the cost of any one or more activities relating to upgrading the Town’s wastewater treatment system by undertaking a project referred to as the “Effluent Storage and Irrigation System Project”, which includes, without limitation, acquiring certain property, extending a line or lines from an existing spray site to the new property, constructing and equipping a spray irrigation and disposal system on such new property, and undertaking related activities, together with the acquisition of necessary property rights and equipment, related site and utility improvements and related planning, design, engineering, construction, installation, improvement, equipping, financial, and legal expenses and costs of issuance and, if the Council so determines by resolution, interest during construction and for a reasonable period thereafter (collectively, the “Project”); and

WHEREAS, pursuant to the authority of the Enabling Act, the Charter, the Ordinance and Resolution No. 2011-07, adopted by the Council on August 8, 2011, approved by the Mayor on August 8, 2011 and effective on August 8, 2011, the Town, on August 24, 2011, issued and delivered to the United States of America, acting through the Rural Utilities Service, U.S. Department of Agriculture, a series of the Authorized Bonds in the principal amount of \$2,462,000.00 and captioned “Mayor and Council of Berlin Wastewater System Improvements Bond of 2011” (the “2011 Bond”), in order to finance or reimburse a portion of the costs of the Project; and

WHEREAS, after giving effect to the issuance of the 2011 Bond, there remains \$7,538,000.00 of bonding authority available with respect to the Authorized Bonds under the Ordinance; and

WHEREAS, Title VI of the Federal Water Pollution Control Act (commonly known as the “Clean Water Act”), as amended by the Water Quality Act of 1987 (“Title VI”), authorizes the Environmental Protection Agency to award grants to qualifying states to establish and capitalize state water pollution control revolving funds (“SRFs”) for the purpose of providing loans and other forms of financial assistance to finance, among other things, the construction of publicly-owned wastewater treatment facilities, and the implementation of estuary conservation management plans and nonpoint source management programs; and

WHEREAS, as contemplated by Title VI, the General Assembly of Maryland at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland (as amended to date, the “MWQFA Act”), establishing the Maryland Water Quality Financing Administration (the “Administration”) and establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the “SRF Fund”) to be maintained and administered by the Administration; and

WHEREAS, the MWQFA Act authorizes the Administration, among other things, to make a loan from the SRF Fund to a “local government” (as defined in the MWQFA Act) for the

purpose of financing or refinancing all or a portion of the cost of a “wastewater facility” project (as defined in the MWQFA Act); and

WHEREAS, the Town is a “local government” within the meaning of the MWQFA Act and the Project is a “wastewater facility” project within the meaning of the MWQFA Act, and the Town has applied to the Administration for a loan or loans from the SRF Fund for Project purposes; and

WHEREAS, the MWQFA Act authorizes a local government to issue a bond, note or other evidence of obligation (a “loan obligation” as defined in the MWQFA Act) to evidence its indebtedness under a loan agreement with respect to a loan from the Administration, to sell any such bond, note or other evidence of obligation to the Administration at private sale, without public bidding, and to establish a dedicated source of revenues for repayment of such loan; and

WHEREAS, Section 7 of the Ordinance contemplates that the Town may sell one or more series of the Authorized Bonds to the Administration, and the Town has determined to borrow money from the Administration for the public purpose of financing, reimbursing or refinancing a portion of the costs of the Project; and

WHEREAS, the Administration has advised that it will make two separate loans to the Town for Project purposes, one of which will be evidenced by the issuance of a series of bonds in the principal amount of \$1,500,000.00 that will be subject to principal forgiveness and, accordingly such series of bonds shall not bear interest unless principal of such series of bonds becomes due and payable as provided herein and in accordance with the terms thereof, and the other of which will be evidenced by the issuance of a series of tax-exempt bonds in the principal amount of \$3,207,000.00; and

WHEREAS, in connection with the issuance and sale of the general obligation bonds contemplated hereby, and pursuant to the MWQFA Act, the Town will enter into two separate loan agreements with the Administration; and

WHEREAS, the Town, as authorized by the MWQFA Act, has determined to pledge any moneys that the Town is entitled to receive from the State of Maryland, including the Town’s share of the State income tax, to secure its obligations under any loan agreements with the Administration; and

WHEREAS, the Town has determined that it is in the best interest of the Town and its citizens to issue and sell to the Administration at this time two series of general obligation bonds, each consisting of a single bond, in order to finance, reimburse or refinance a portion of the costs of the Project in accordance with, and pursuant to, the authority contained in the Enabling Act, the MWQFA Act, the Charter and the Ordinance, and upon the terms and conditions set forth in this Resolution, the proceeds of which general obligation bonds are to be used and applied as herein set forth; and

WHEREAS, after giving effect to the issuance and delivery of the two general obligation bonds provided for herein, there will remain \$2,831,000.00 of unused bonding authority available for Project purposes under the Ordinance.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF MAYOR AND COUNCIL OF BERLIN that the Recitals to this Resolution are incorporated by reference herein and are deemed a substantive part of this Resolution, and capitalized terms defined in the Recitals to this Resolution and used in the Sections of this Resolution will have the meanings given to such terms in the Recitals hereto.

SECTION 2. BE IT FURTHER RESOLVED that (a) pursuant to the authority of the Enabling Act, the MWQFA Act, the Charter and the Ordinance, the Town hereby determines to issue and sell, upon its full faith and credit, two separate series of general obligation bonds for the public purpose of financing, reimbursing or refinancing a portion of the costs of the Project. One such bond shall be issued in the principal amount of Three Million Two Hundred Seven Thousand Dollars (\$3,207,000.00) and shall be designated as "Mayor and Council of Berlin Water Quality Bond, Series 2012A" or by such additional or different designation as may be required by the Administration (the "Series 2012A Bond"). The other such bond shall be issued in the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) and shall be designated as "Mayor and Council of Berlin Water Quality Bond, Series 2012B" or by such additional or different designation as may be required by the Administration (the "Series 2012B Bond" and, together with the Series 2012A Bond, the "Bonds", or, individually, a "Bond"). Payment of the Series 2012B Bond shall be subject to forgiveness by the Administration in accordance with the provisions of Section 3(j) hereof and the terms of the Series 2012B Bond.

(b) Proceeds of the Bonds shall be applied only to costs of components of the Project as permitted by the Administration.

SECTION 3. BE IT FURTHER RESOLVED that (a) the Bonds shall be issued and sold upon the full faith and credit of the Town, shall be dated the date of their delivery, shall be numbered RA-1 and RB-1, respectively, and shall be issued in the form of single, fully-registered bonds, without coupons attached. The Series 2012A Bond shall be issued in installment form as authorized pursuant to the Ordinance.

(b) Subject to the provisions of subsections (d) and (e) below, the principal advanced under the Series 2012A Loan Agreement (as defined in Section 8 hereof) shall be paid in one installment of One Thousand Dollars (\$1,000.00) on August 1, 2014 and thereafter in installments on the dates and in the amounts as set forth in the following schedule, as such schedule may be amended in accordance with the terms of the Series 2012A Bond and the Series 2012A Loan Agreement:

<u>Due</u> <u>February 1</u>	<u>Principal</u> <u>Amount</u>	<u>Due</u> <u>February 1</u>	<u>Principal</u> <u>Amount</u>
2015		2025	
2016		2026	
2017		2027	
2018		2028	
2019		2029	
2020		2030	
2021		2031	
2022		2032	
2023		2033	
2024			

(c) The Series 2012A Bond, or so much of the principal amount thereof as shall have been advanced from time to time under the terms of the Series 2012A Loan Agreement, shall bear interest from its dated date at an annual rate of interest equal to 25% of the average of the weekly Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Series 2012A Bond is issued, provided that the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Interest due on the unpaid principal amounts advanced under the Series 2012A Loan Agreement shall accrue on the basis of a 30-day month, 360-day year from the dates of the respective advances of such principal amount, and shall be paid on August 1, 2012, and semiannually thereafter on the 1<sup>st</sup> day of February and August in each year until the principal amount of the Series 2012A Bond has been paid.

(d) The payment dates and principal installments provided for in the foregoing subsections (b) and (c) are based on an anticipated date of issuance for the Series 2012A Bond in March 2012, an interest rate payable on the Series 2012A Bond if the Series 2012A Bond is issued in March 2012, as determined pursuant to subsection (c) above, of \_\_\_\_\_ per centum ( \_\_\_\_\_ %) per annum, and an estimated completion date for the Project in August 2013. Notwithstanding the foregoing, in the event the Series 2012A Bond, for whatever reason, is issued later than March 2012 or the estimated completion date for the Project is determined prior to the issuance of the Series 2012A Bond to be earlier or later than August 2013, the Mayor, on behalf of the Town, is hereby authorized and directed to adjust and change such principal and interest payment dates and principal installment amounts (including, without limitation, by adjusting the dates on which principal and/or interest will commence and otherwise be due and by adjusting the principal amounts set forth in subsection (b) above to reflect the change in the payment dates and the interest rate determined in accordance with subsection (c) above, including, without limitation, to provide for a first minimum principal payment on a date different than August 1, 2014 or to provide for no minimum first principal payment) as required by the Administration in order to meet the requirements of Section 9-1605(d)(1)(ii) of the MWQFA Act or to meet other requirements of the Administration, such approval and adjustment to be evidenced conclusively by the Mayor's execution and delivery of the Series 2012A Bond in accordance with the provisions of Sections 5 and 7 of this Resolution.

(e) If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Series 2012A Loan Agreement) relating to the Series 2012A Bond in accordance with Section 3.08 of the Series 2012A Loan Agreement, the Maximum Principal Amount (as defined in the Series 2012A Bond) of the Series 2012A Bond shall be reduced accordingly and such Maximum Principal Amount as so reduced shall be amortized as provided in the Series 2012A Loan Agreement. In such event, as determined by the Administration, the Town may execute and deliver (in the manner provided in Section 5 hereof for the original delivery of the Bonds) a new Series 2012A Bond evidencing such reduction in the Loan Commitment or the Administration may deliver, and the Mayor, on behalf of the Town, shall acknowledge in writing, a certificate setting forth such reamortized payment schedule, which shall be attached to the Series 2012A Bond and shall replace and supersede for all purposes the foregoing payment schedule. The Mayor, on behalf of the Town, is hereby authorized and directed to approve, execute and deliver any such certificate relating to a reamortized payment schedule and any other certificates, documents or evidence required by the Administration under Section 3.08 of the Series 2012A Loan Agreement.

(f) The Town shall pay (i) a late charge for any payment of principal of or interest on the Series 2012A Bond that is received later than the tenth (10th) day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at the Default Rate provided for in the Series 2012A Loan Agreement, which Default Rate shall be equal to 100% of the average of the weekly Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Series 2012A Bond is issued. Amounts payable pursuant to this subsection (f) shall be immediately due and payable to the Administration and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full. If the Series 2012A Bond is issued in March 2012, the Default Rate, according to such formula, shall be \_\_\_\_\_ per centum (\_\_\_\_%) per annum.

(g) The principal advanced under the Series 2012B Loan Agreement (as defined in Section 8 hereof) shall be payable upon demand by the Administration in accordance with the Series 2012B Loan Agreement, together with interest at an annual rate equal to one hundred percent (100%) of the average of the weekly Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Series 2012B Bond is delivered accruing from the date on which such demand is made by the Administration, which demand may be made at any time prior to that date which is the ten (10) year anniversary of the date of delivery of the Series 2012B Bond.

(h) The Town shall pay a late charge for any payment of principal of or interest on the Series 2012B Bond that is received later than the thirtieth (30th) day following the date of demand for payment of the Series 2012B Bond, in an amount equal to 5% of such payment.

(i) If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Series 2012B Loan Agreement) relating to the Series 2012B Bond in accordance with Section 3.08 of the Series 2012B Loan Agreement, the Maximum Principal Amount (as defined in the Series 2012B Bond) of the Series 2012B Bond shall be reduced accordingly. In such event, as determined by the Administration, the Town may execute and deliver (in the manner provided in Section 5 hereof for the original delivery of the Bonds) a new Series 2012B Bond evidencing such reduction in the Loan Commitment and/or the Mayor, on behalf of the

Town, may execute and deliver any certificates, documents or instruments acknowledging and providing for such reduction, as required by the Administration.

(j) PURSUANT TO THE CLEAN WATER ACT, AS AMENDED BY H.R. 2996, 111<sup>TH</sup> CONG. (2009-2010) (PUB. L. NO. 111-8) AND SECTION 9-1605(d)(9) OF THE MWQFA ACT, THE ADMINISTRATION SHALL FORGIVE REPAYMENT OF THE PRINCIPAL AMOUNT OF THE LOAN (AS DEFINED IN THE SERIES 2012B LOAN AGREEMENT) AND THE INTEREST PAYABLE THEREON UNDER ARTICLE III OF THE SERIES 2012B LOAN AGREEMENT AND THE SERIES 2012B BOND SO LONG AS THE TOWN PERFORMS ALL OF ITS OTHER OBLIGATIONS UNDER THE SERIES 2012B LOAN AGREEMENT. UPON DETERMINATION BY THE ADMINISTRATION THAT ANY SUCH OTHER OBLIGATIONS UNDER THE SERIES 2012B LOAN AGREEMENT HAVE NOT BEEN PERFORMED BY THE TOWN, PAYMENT OF THE PRINCIPAL OF THE LOAN EVIDENCED BY THE SERIES 2012B BOND AND THE INTEREST THEREON FROM THE DATE OF DEMAND AT THE RATE DETERMINED IN ACCORDANCE WITH SUBSECTION (g) ABOVE WILL BE DUE AND PAYABLE UPON DEMAND. IF THE ADMINISTRATION HAS NOT DEMANDED PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE SERIES 2012B BOND BY THAT DATE WHICH IS THE TEN (10) YEAR ANNIVERSARY OF THE DATE OF DELIVERY OF THE SERIES 2012B BOND, THEN THE ADMINISTRATION SHALL BE DEEMED TO HAVE FORGIVEN REPAYMENT OF THE LOAN EVIDENCED BY THE SERIES 2012B BOND AND INTEREST THEREON, THE SERIES 2012B BOND SHALL BE DEEMED CANCELLED AND THE LOAN EVIDENCED BY THE SERIES 2012B BOND AND THE SERIES 2012B LOAN AGREEMENT SHALL BE DEEMED TERMINATED AND OF NO FURTHER FORCE AND EFFECT.

(k) Both the principal of and interest on the Bonds will be paid to the registered owners thereof in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mail before the payment date) to the registered owners at such addresses as the registered owners may designate from time to time by notice in writing delivered to the Town Administrator of the Town (the "Town Administrator").

(l) Notwithstanding the foregoing provisions of this Section 3, in the event of a discrepancy between the provisions of the Series 2012A Loan Agreement or the Series 2012B Loan Agreement and this Section 3, the provisions of the Series 2012A Loan Agreement or the Series 2012B Loan Agreement, as applicable, shall control.

SECTION 4. BE IT FURTHER RESOLVED that the Series 2012A Bond shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the United States Environmental Protection Agency's (and its successors') State Revolving Fund Program Regulations. Otherwise, the Series 2012A Bond may be prepaid by the Town, in whole or in part, only at such times and in such amounts, and upon payment by the Town of such prepayment premium or penalty, as the Director of the Administration, in his or her discretion, may specify and approve.

SECTION 5. BE IT FURTHER RESOLVED that the Bonds shall be executed in the name of the Town and on its behalf by the Mayor. The corporate seal of the Town shall be affixed to the

Bonds and attested by the signature of the Town Administrator. In the event any official whose signature shall appear on the Bonds shall cease to be such official prior to the delivery of the Bonds, or, in the event any such official whose signature shall appear on the Bonds shall have become such after the date of delivery thereof, said Bonds shall nevertheless be valid and binding obligations of the Town in accordance with their terms.

SECTION 6. BE IT FURTHER RESOLVED that the Series 2012A Bond shall be transferable only after the first principal payment date as set forth in such Bond or the date upon which the Maximum Principal Amount of the Series 2012A Bond has been borrowed, whichever is earlier, and the Series 2012B Bond shall be transferable only after the date upon which the Maximum Principal Amount of the Series 2012B Bond has been borrowed. Each Bond shall be transferable upon the books of the Town at the office of the Town Administrator by the registered owner in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Town Administrator, duly executed by such registered owner or his duly authorized attorney. The Town shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds of the same series as the bond surrendered, in such denominations as the Town shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered, and with the same maturities and interest rate, as applicable, and, with respect to any bond or bonds exchanged for the Series 2012B Bond, the same forgiveness provisions. If more than one bond is issued upon any such transfer of the Series 2012A Bond, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of the bonds representing the Series 2012A Bond then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The Town may deem and treat the party in whose name a Bond is registered as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof and interest due thereon and for all other purposes. References in this Resolution to a Bond shall be deemed to refer to any bond or bonds transferred for such Bond in accordance with the provisions of this Section 6, and references in this Resolution to the registered owner of a Bond shall be deemed to refer to any or all of the registered owners of bonds of such series contemplated by this Section 6, as applicable.

SECTION 7. BE IT FURTHER RESOLVED that except as provided hereinafter, the Series 2012A Bond shall be issued in substantially the form attached hereto as Exhibit A and incorporated by reference herein, and the Series 2012B Bond shall be issued in substantially the form attached hereto as Exhibit B and incorporated by reference herein. Appropriate variations and insertions to provide dates, numbers and amounts, and other modifications, including, without limitation, to reflect matters determined in accordance with Sections 3 and 9 hereof, may be made by the Mayor. All of the covenants contained in the forms attached hereto as Exhibit A and Exhibit B, respectively, as the same may be finally completed as provided in this Section 7, are hereby adopted by the Town as and for the forms of obligations to be incurred by the Town, and the covenants and conditions are hereby made binding upon the Town, including the promise to pay therein contained.

**SECTION 8.** BE IT FURTHER RESOLVED that (a) as authorized by the Charter and the MWQFA Act, the Town hereby determines to sell the Bonds to the Administration by private sale, without public bidding, which sale by private sale is hereby deemed by the Town to be in its best interest and in the interest of its citizens due, in part, to the beneficial interest rate for the Series 2012A Bond and the potential forgiveness of the Series 2012B Bond.

(b) Pursuant to the authority of the Enabling Act, the MWQFA Act, the Charter and the Ordinance, the Series 2012A Bond shall be sold to the Administration by private sale, without public bidding, for a price of the par amount of the Series 2012A Bond. Pursuant to the authority of the Enabling Act, the MWQFA Act, the Charter and the Ordinance, the Series 2012B Bond shall be sold to the Administration by private sale, without public bidding, for a price of the par amount of the Series 2012B Bond.

(c) The Series 2012A Bond shall be sold to the Administration and the purchase price of the Series 2012A Bond shall be advanced to the Town in accordance with the Loan Agreement relating to the Series 2012A Bond, the substantially final form of which is attached hereto as Exhibit C (the "Series 2012A Loan Agreement"). The Series 2012B Bond shall be sold to the Administration and the purchase price of the Series 2012B Bond shall be advanced to the Town in accordance with the Loan Agreement relating to the Series 2012B Bond, the substantially final form of which is attached hereto as Exhibit D (the "Series 2012B Loan Agreement"). The Series 2012A Loan Agreement and the Series 2012B Loan Agreement are referred to herein collectively as the "Loan Agreements" and individually as a "Loan Agreement", and the terms and conditions of the Loan Agreements, as completed as provided in this Section 8, are hereby incorporated by reference herein and approved by and adopted as the obligations of the Town. Each Bond is referred to in the corresponding Loan Agreement as the "Note".

(d) As authorized by Section 9-1606(d) of the MWQFA Act and as provided for in Section 7 of the Ordinance, the Town hereby pledges any moneys that the Town is entitled to receive from the State of Maryland, including the Town's share of the State income tax, to secure its obligations under the Loan Agreements. Such pledge and any limitations thereon permitted by the Administration shall be evidenced and detailed in each Loan Agreement.

(e) The Town is hereby authorized and directed to pay any fees or costs provided for in each Loan Agreement which are not payable proceeds of the corresponding Bond, including, without limitation, any administrative fees and any ongoing fees or costs. The obligation of the Town to pay such amounts shall be absolute and unconditional as further provided in the Loan Agreements.

(f) The Mayor is hereby authorized and directed to complete, execute and deliver the Loan Agreements for and in the name of the Town with such changes, insertions and deletions not substantially altering the substance of the Loan Agreements as shall be approved by the Mayor, including, without limitation, to reflect matters determined in accordance with subsections (b) through (f) of Section 3 above, to provide for the forgiveness provisions relating to the Series 2012B Bond as reflected in Section 3(j) above, to reflect matters referred to in subsections (d) and (e) above, to comply with program requirements of the Administration, to complete the exhibits to the substantially final forms of the Loan Agreements attached hereto, or as are determined by the Mayor not to be materially adverse to the interests of the Town, such

approval to be evidenced conclusively by the Mayor's execution and delivery of the Loan Agreements. Notwithstanding anything to the contrary contained in this Resolution, advances under the Loan Agreements or the Bonds and prepayment or payment of the principal of and interest on the Bonds shall be made in accordance with the respective Loan Agreements. The Town agrees to abide by and perform the covenants and agreements set forth in the Loan Agreements as finally completed, executed and delivered in accordance with this Section 8 as though such covenants and agreements were set forth in full in this Resolution.

SECTION 9. BE IT FURTHER RESOLVED that (a) as soon as may be practicable after the adoption of this Resolution, the Bonds shall be suitably prepared in definitive form, executed and delivered to the Administration in connection with the first advance of the proceeds of the Series 2012A Bond. The Mayor, the Town Administrator, the Deputy Town Administrator of the Town, the Director of Finance of the Town (commonly referred to as the Finance Director) and all other appropriate officials and employees of the Town are expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bonds to the Administration and to negotiate, approve, execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith. Each of the Mayor and the Town Administrator is hereby expressly authorized to take any necessary actions under the Loan Agreements or the Bonds in order to requisition advances on behalf of the Town. Each of the Mayor and the Town Administrator is hereby expressly designated an "Authorized Officer" for purposes of the Loan Agreements.

(b) References in this Resolution to any official by title shall be deemed to refer (i) to any official authorized under the Charter or other applicable law to act in such titled official's stead during the absence or disability of such titled official, and/or (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter or other applicable law.

SECTION 10. BE IT FURTHER RESOLVED that each advance of the proceeds of the Bonds shall be paid directly to the Town and shall be deposited by the Town Administrator or other appropriate Town official in the proper municipal accounts, or shall be paid at the direction of the Authorized Officer, or shall be paid as otherwise required by the Administration. Advances under the Bonds shall be used and applied by the Town exclusively and solely for the public purpose of financing, reimbursing or refinancing a portion of the costs of the Project. Nothing in this Resolution shall be construed to authorize the expenditure of any moneys except for a proper public purpose. The proceeds of the Bonds are hereby appropriated for the purposes set forth in this Resolution.

SECTION 11. BE IT FURTHER RESOLVED that (a) the full faith and credit and unlimited taxing power of the Town are hereby irrevocably pledged to the prompt payment of the principal of and interest on the Bonds as and when the same are payable and to the levy and collection of the taxes hereinbelow described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bonds. The Town shall levy or cause to be levied, for each and every fiscal year during which each Bond may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the payment, when due, of the principal of and interest on such Bond payable in each such fiscal

year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency. The Town hereby covenants with the registered owner of each Bond to take any action that lawfully may be appropriate from time to time during the period that such Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(b) Notwithstanding the provisions of subsection (a) above, the principal of and interest on the Bonds will be payable in the first instance from revenues received in connection with the operation of the wastewater system serving the Town, including charges for use of or connection to such system, all to the extent such revenues are lawfully available for such purpose. To the extent of any such revenues received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

(c) The foregoing provisions shall not be construed so as to prohibit the Town from paying the principal of and interest on the Bonds from the proceeds of the sale of any other obligations of the Town or from any other funds legally available for that purpose. Subject to any provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder applicable to the Series 2012A Bond, the Town may apply to the payment of the principal of or interest on each Bond any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if the funds are granted or paid to the Town for the purpose of assisting the Town in accomplishing the type of project or projects which such Bond is issued to finance, reimburse or refinance or are otherwise available for such purpose, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

SECTION 12. BE IT FURTHER RESOLVED that (a) Each of the Mayor and the Town Administrator, acting individually, or such officials acting in concert, shall be the official or officials of the Town responsible for the issuance of the Series 2012A Bond within the meaning of Section 1.148-2(b)(2) of the Treasury Regulations (defined below). Each of the Mayor and the Town Administrator, acting individually, or such officials acting in concert, also shall be the official or officials of the Town responsible for the execution and delivery (on the date of the issuance of the Series 2012A Bond) of a certificate of the Town (the "Section 148 Certificate") that complies with the requirements of Section 148 ("Section 148") of the Code and the applicable regulations thereunder (the "Treasury Regulations"). Each such official, acting individually, or such officials acting in concert, is hereby authorized and directed to execute and deliver the Section 148 Certificate to counsel rendering an opinion on the validity and tax-exempt status of the Series 2012A Bond on the date of the issuance and delivery of the Series 2012A Bond.

(b) The Town shall set forth in the Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Series 2012A Bond or of any monies, securities or other obligations to the credit of any account of the Town which may be deemed to be proceeds of the Series 2012A Bond pursuant to Section 148 or the Treasury Regulations (collectively, the "Bond Proceeds"). The Town covenants with the registered owner of the Series 2012A Bond that the facts, estimates and circumstances set forth in the Section 148 Certificate will be based on the Town's reasonable expectations on the date of

issuance of the Series 2012A Bond and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) Each of the Mayor and the Town Administrator, acting individually, or such officials acting in concert, is hereby authorized and empowered, on behalf of the Town, to make any designations, elections, determinations or filings on behalf of the Town provided for in or permitted by the Code and the Treasury Regulations and to reflect the same in the Section 148 Certificate and/or the IRS Form 8038-G filed in connection with the issuance of the Series 2012A Bond or any other documentation deemed appropriate by bond counsel to the Town.

(d) The Town covenants with the registered owner of the Series 2012A Bond that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Series 2012A Bond to be an "arbitrage bond" within the meaning of Section 148 and the Treasury Regulations, and that it will comply with those provisions of Section 148 and the Treasury Regulations as may be applicable to the Series 2012A Bond on the date of the issuance of the Series 2012A Bond, and which may subsequently lawfully be made applicable to the Series 2012A Bond, as long as the Series 2012A Bond remains outstanding and unpaid.

SECTION 13. BE IT FURTHER RESOLVED that the Town specifically covenants that it will comply with the provisions of the Code applicable to the Series 2012A Bond, including, without limitation, compliance with provisions regarding the timing of the expenditure of the proceeds of the Series 2012A Bond, the use of such proceeds and the facilities financed, reimbursed or refinanced with such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service and the rebate of certain earnings resulting from the investment of the proceeds of the Series 2012A Bond (or payments in lieu thereof). The Town further covenants that it shall make such use of the proceeds of the Series 2012A Bond, regulate the investment of the proceeds thereof and take such other and further actions as may be required to maintain the excludability from federal income taxation of interest on the Series 2012A Bond. All officers, employees and agents of the Town are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Series 2012A Bond as may be necessary or appropriate.

SECTION 14. BE IT FURTHER RESOLVED that notwithstanding anything to the contrary contained in the Ordinance or this Resolution, the Town shall use and apply proceeds of the Bonds only as permitted by the Loan Agreements, the Clean Water Act (as defined in the Loan Agreements) and the Act (as defined in the Loan Agreements).

SECTION 15. BE IT FURTHER RESOLVED that the Mayor and the Town Administrator, on behalf of the Town, working with bond counsel to the Town, are hereby authorized and directed in connection with the issuance of the Series 2012A Bond to provide for the preparation and approval of comprehensive written post-issuance tax compliance procedures to be followed with respect to the Series 2012A Bond and other outstanding tax-exempt obligations of the Town and tax-exempt obligations of the Town to be issued in the future, excluding conduit issues. The Mayor and the Town Administrator's approval of such written procedures shall be evidenced conclusively by their signature thereon. The Mayor and the Town Administrator, on behalf of the Town, working with bond counsel to the Town, are hereby further authorized and empowered to

approve the amendment, modification or replacement of the then-existing post-issuance tax compliance procedures from time to time, such approval to be evidenced conclusively by such officials' signatures thereon. Any such post-issuance tax compliance procedures shall be maintained in the records of the Town but need not be filed in any court records.

SECTION 16. BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its adoption by the Council and its approval by the Mayor.

INTRODUCED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

ADOPTED \_\_\_\_\_ AS INTRODUCED \_\_\_\_\_ AS AMENDED [CHECK APPLICABLE LINE] BY THE COUNCIL OF BERLIN BY A VOTE OF \_\_\_\_\_ (YEAS), \_\_\_\_\_ (NOS), \_\_\_\_\_ (ABSTENTIONS) THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
ANTHONY J. CARSON, JR.  
TOWN ADMINISTRATOR

\_\_\_\_\_  
ELROY BRITTINGHAM, SR.  
VICE PRESIDENT OF THE COUNCIL

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012:

\_\_\_\_\_  
WM. GEE WILLIAMS, III  
MAYOR

EFFECTIVE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

#144277;50016.018

**TOWN ADMINISTRATOR'S REPORT**  
**02-27-12**

**Purchase Orders**

PO# 201201627 in the amount of \$1,620.00 to Cross Match Technologies for Livescan Maintenance Agreement.

PO# 201202040 in the amount of \$1,545.60 to Worcester County for sludge disposal.

PO# 201202199 in the amount of \$4,582.10 to A.P. Croll for emergency work on sanitary lateral at Chamber of Commerce.

PO# 201202244 in the amount of \$10,000.00 to Donaway Furniture for grant match for interior conversion from warehouse to retail/office at 11 S. Main Street.

PO# 201202245 in the amount of \$20,000.00 to Donaway Furniture for grant match for interior conversion from warehouse to retail at 11 Pitts Street.

**Updates**