

**COMMONWEALTH OF MASSACHUSETTS**  
**Worcester, ss.**

To either of the Constables of the Town of Berlin in the County of Worcester:

Greetings: In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of said Town, qualified to vote in elections and in Town affairs, to meet at the Berlin Memorial School in said Berlin on Monday, the eleventh day of December, 2017 next, at 7:00 o'clock in the evening, then and there to act on the following articles, or in relation thereto:

**MUNI BUILDING/EXPENSES**

ARTICLE 1 - To see if the Town will vote to raise and appropriate, or borrow, or transfer from available funds, or otherwise provide the sum of eighty thousand dollars (\$80,000) to FY18 Budget Line Item 42, Public Buildings – Expenses, with regard to miscellaneous repairs and expenses for various public buildings, or take any action relative thereto. (Selectmen)

ARTICLE 2 - To see if the Town will vote to raise and appropriate, or borrow, or transfer from available funds, or otherwise provide the sum of forty-five thousand dollars (\$45,000) to FY18 Budget Line Item 42, Public Buildings – Expenses, with regard to expenses attendant to completion of the 1870 Town Hall elevator and Historical Commission curatorial building project, or take any action relative thereto. (Selectmen)

**RIVERBRIDGE DEVELOPMENT AGREEMENT AMENDMENT**

ARTICLE 3 - To see if the Town will vote to authorize the Board of Selectmen to enter into a Second Modification of Development Agreement with Riverbridge as follows:

SECOND MODIFICATION OF DEVELOPMENT AGREEMENT

*Whereas:* The Town of Berlin and Riverbridge North, LLC (the “Parties”, separately “Party”) entered into a certain Development Agreement (“Development Agreement”) dated December 2, 2009, which agreement is recorded at the Worcester County Registry of Deeds (“Registry”) at Book 45188, Page 343, and

*Whereas:* The Parties entered into a First Modification of Development Agreement (“First Modification”) dated November 25, 2013, recorded at the Registry at Book 51802, Page 22, and

*Whereas:* The Parties have agreed to a series of amendments of the Development Agreement and the First Modification, and wish to execute and record this Second Modification of Development Agreement (“Second Modification”) expressing those amendments, and

*Whereas:* at a Special Town Meeting held on December 11, 2017 the voters approved a warrant article authorizing the Berlin Board of Selectmen to enter into this Second Modification.

Now Therefore, the undersigned, for themselves, their heirs, successors and permitted assigns, for good and valuable consideration in the form of the promises, provisos and covenants each Party makes herein to the other, and for no payment of funds, hereby agree as follows:

1. The time frame for the completion of Phases 1, 4 and 5 of certain road work mitigation projects set forth in Exhibit B of the Development Agreement is changed to the earlier of: prior to the issuance of the certificate of occupancy for the 380,000<sup>th</sup> square foot of construction at Riverbridge, and four (4) years from the effective date of this Second Modification.

2. The First Modification (in the paragraph enumerated as number 6 therein) added a set of new sentences at the end of the second full paragraph of section 14.2 of the Development Agreement. These sentences allowed Riverbridge to avoid liability for an extra tax of \$51,200 per year, due if Riverbridge does not develop the planned Continuing Care Retirement Community (“CCRC”), by developing instead, at Riverbridge or elsewhere in Berlin, a State-licensed Memory Care facility, or Nursing facility, with at least 50 beds. An additional type of development at Riverbridge or elsewhere in Berlin by the principals of Riverbridge shall allow Riverbridge to avoid such extra tax: A Senior Residence Development containing at least 50 bedrooms, as allowed by Section 720 of the Berlin Zoning By-laws.
3. The date on which Riverbridge must begin to make such extra tax payments to the Town is hereby extended to the November 1<sup>st</sup> following the 4<sup>th</sup> anniversary of the effective date of this Second Modification.
4. The Parties recognize that the property known as River Run (“River Run”), described in section 14 of the Development Agreement, has now been subdivided into Lots 6A and 6B, as anticipated in such section 14. The approved subdivision plan was filed October 30, 2017 at the Worcester South District Registry of Deeds in Plan Book 930, Page 123. See also Covenant recorded the same date in Book 57963, Page 161.
5. As part consideration for this Second Modification, the Parties are cooperating in the leasing of land at River Run to an entity known as Boundless Adventures of Berlin, LLC, which will operate thereon an aerial adventure park. While River Run is owned by Riverbridge Glen, LLC, a subsidiary of Riverbridge North, LLC, it is agreed by the Parties that, in recognition of the Town’s option to purchase Lot 6B at River Run for \$1.00, as per section 14.7 of the Development Agreement (the “Option”), one half of the net leasehold revenues paid to Riverbridge Glen, LLC shall be paid over to the Town (the “50/50 split”) as additional Riverbridge project mitigation. Such payments will not reduce the Riverbridge obligations to pay a total of \$500,000 in mitigation funds to the Town pursuant to section 14.4 of the Development Agreement (this revenue is in addition). Net leasehold revenues are net of real estate taxes, property and liability insurance, and reasonable costs of management and maintenance of River Run by Riverbridge Glen, LLC (if any). In addition, the costs incurred by Riverbridge related to securing this tenant for the benefit of both parties, and the costs of readying the site for this use, including permitting and physical improvements to the site incurred by Riverbridge, up to a maximum of \$50,000, shall be reimbursed from initial rental payments before the 50/50 split of net rental revenues is commenced. Should the Town exercise the Option to purchase said Lot 6B, such revenues shall continue to be split on a 50/50 basis, since the Town and Riverbridge Glen, LLC will each own part of River Run.
6. The time period within which the Town may exercise the Option, as presently controlled by paragraph 6 of the First Modification, is hereby further extended to: four (4) years from the effective date of this Second Modification.

All terms and conditions of the Development Agreement and the First Modification of Development Agreement not altered by this Second Modification of Development Agreement remain in full force and effect. In the event of any conflict between this Second Modification and the Development Agreement or the First Modification of Development, the terms and conditions of this Second Modification of Development Agreement shall control, or take any other action relative thereto.  
(Selectmen)

## UNPAID, PRIOR YEAR BILLS

ARTICLE 4 - To see if the town will vote to raise and appropriate, borrow, and/or transfer from available funds the sum of \$6,095.00 to pay unpaid, prior year FY16 invoices from Community Ambulance Service for Advanced Life Support Intercept services, or take any action relative thereto. (Fire and EMS Chief)

ARTICLE 5 - To see if the town will vote to raise and appropriate, borrow, and/or transfer from available funds the sum of \$9,805.00 to pay unpaid, prior year FY17 invoices from Community Ambulance Service for Advanced Life Support Intercept services, or take any action relative thereto. (Fire and EMS Chief)

ARTICLE 6 - To see if the town will vote to raise and appropriate, borrow, and/or transfer from available funds, a sum of \$530.80 to pay unpaid, prior year FY17 invoice to Moura's Cleaning Services for Public Building - Expenses, or take any action relative thereto. (Selectmen)

ARTICLE 7 - To see if the town will vote to raise and appropriate, borrow, and/or transfer from available funds, a sum of \$55.00 to pay unpaid, prior year FY17 Conservation Commission - Expenses to reimburse Carolyn MacDonald for a conservation webinar registration, or take any action relative thereto. (Selectmen)

## PLANNING BOARD ARTICLES

ARTICLE 8 - To see if the Town will vote to amend the Town of Berlin Zoning By-law Article 4: Overlay Districts with the following changes:

1. To add a new Section 424.9 to the Regional Shopping Center Overlay District as follows:  
"424.9 The Regional Shopping Center may include drive-up facilities for banks, pharmacies, and other retail and service uses, and for a maximum of three (3) Fast Food Restaurants."
2. To replace the existing Section 444.3 in the Highway Shopping Center Overlay District with the following:  
"444.3 A Highway Shopping Center may include drive-up facilities for banks, pharmacies, and other retail and service uses, and for a maximum of three (3) Fast Food Restaurants".
3. To replace the last sentence of Section 454.2 in the Village Overlay District with the following:  
"A Mixed-Use Village may include drive-up facilities for banks, pharmacies, and other retail and service uses, and for a maximum of three (3) Fast Food Restaurants".
4. To strike the words "Fast Food Restaurants" from Section 454.3 in the Village Overlay District and replace with the words "more than three (3) Fast Food Restaurants".
5. To add a new Section 460 of the Zoning By-laws, "Limited Fast Food Restaurants Allowed in Certain Overlay Districts", reading as following:  
"Up to three (3) Fast Food Restaurants are allowed in each of three overlay districts, as per Sections 424.9; 444.3; and 454.2 of these by-laws, only if, as to each, the Planning Board

approves a circulation, parking and safety plan, as well as a refuse maintenance plan, as part of its Site Plan Approval process for such proposed Fast Food Restaurant.”

Or take any action relative thereto. (Planning Board)

ARTICLE 9 - To see if the Town will vote to amend the Town of Berlin Zoning By-law Article 7: Alternative Residential Site Development with the following changes:

713.2(c) Add to the end of the existing sentence “except for the first 40 feet after the intersection with the public way the maximum slope shall be seven percent.”

713.2 Change (h) to (i) and add a new (h) Curves. The radius of all curves shall be great enough to allow passage of emergency vehicles.

713.3 At the end of the third to last sentence remove “by regulation” and add “in consultation with the Highway Superintendent, Fire Chief and Chief of Police.”

Or take any action relative thereto. (Planning Board)

ARTICLE 10 - To see if the Town will vote to amend the Town of Berlin Zoning By-law Article 9: Signs, Section 941 Address Signs, with the following changes:

941.1 Delete in its entirety the existing 941.1 and replace with the following: Every building, including, but not limited to, dwellings, apartment buildings, condominiums, and business establishments shall have affixed thereto a number representing the address of such building. Said number shall be of a nature and size and shall be situated on the building so that, to the extent practicable, it is visible from the nearest street or road providing vehicular access to such building. If visibility from the street or road is not practicable, then the number shall be attached to the building at a location that is visible from the building’s driveway or main access way and, the address number shall also appear on a sign attached to a post or mailbox adjacent to the driveway or main access way.

941.2 Delete in its entirety the existing 941.2 and replace with the following: A sign containing an address number may include identification of an on-premises professional office or customary home occupation. Such sign may be attached to the building or may be on a post not more than eight (8) feet high. A maximum of one such sign is allowed on a lot and it may not exceed six (6) sq. ft. in area.

Or take any action relative thereto. (Planning Board)

## **MARIJUANA MORATORIUM**

ARTICLE 11 - To see if the Town will vote to amend the Town’s Zoning By-laws by adding a new Article 16 - Temporary Moratorium on Recreational Marijuana Establishments, that would provide as follows, and further to amend the Table of Contents to add Article 16, “Temporary Moratorium on Recreational Marijuana Establishments”:

**ARTICLE 16: TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS**

## **1610 Purpose**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016 and as further amended on July 28, 2017, Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning By-laws, a non-medical Marijuana Establishment (hereinafter, a "Recreational Marijuana Establishment"), as defined in M.G.L. Chapter 94G, Section 1, is not specifically addressed in the Zoning By-laws. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning By-laws regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact by-laws in a consistent manner.

## **1620 Definition**

"Recreational Marijuana Establishment" shall mean a "marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business."

## **1630 Temporary Moratorium**

For the reasons set forth above and notwithstanding any other provision of the Zoning By-laws to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through June 30, 2019 or until such time as the Town adopts Zoning By-law amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning By-laws in response to these new issues.

Or take any action relative thereto (Selectmen).

## **PAYMENT AGREEMENTS FOR OVERDUE TAXES**

ARTICLE 12 - To see if the town will vote to accept the provisions of M.G.L. Chapter 60, Section 62A and amend the town's General By-law's by adding a new chapter as follows: PAYMENT AGREEMENTS FOR OVERDUE TAXES

Section 1. Pursuant to M.G.L. Chapter 60, Section 62A the Treasurer is hereby authorized to enter into a written payment agreement ("Agreement") with those person(s) entitled to redeem ownership of parcels of real estate ("Redeemer") which have been taken by the Town as a result of nonpayment of real estate taxes.

Section 2. Such Agreements may be authorized for all categories of real property subject to all other terms and conditions in this bylaw.

Section 3. The Treasurer may enter into an Agreement only upon the existence of the following conditions:

- All real estate taxes due for the current fiscal year assessed against the parcel, as well as any other fees and charges owed to the Town, are paid to date; and
- The Redeemer, at the time of execution of said Agreement, pays to the Town a minimum of 25% of the total amount required to redeem the parcel, including all principal, interest, fees, costs, and other charges, in the form of certified funds or cash. Any exceptions (lower) would require Selectmen approval.
- The Treasurer will freeze Land Court action during the dates the payment agreement is in effect and the Redeemer remains in compliance with all the terms of the agreement.

Section 4. The term of the payment Agreement shall be up to sixty (60) months as per the request of the Redeemer. All payments shall be monthly based on the Town's fiscal year and in the amounts and at the time provided in a payment schedule prepared by the Treasurer that is and shall be a part of said payment Agreement.

Section 5. The Redeemer shall be in breach of the payment Agreement by failing to make any payment(s) under the Agreement as provided in the schedule or if a check for any payment is returned, or by failing to stay up to date on current fiscal year taxes and/or other charges that are a lien on the same parcel(s). In the event of such breach, the full amount of the overdue tax, including all interest, charges and fees, will immediately become due and the Treasurer may bring or continue an action to foreclose the tax title on such parcel(s). The Treasurer is under no obligation to accept late payments but may do so at his or her discretion. In the event that the Redeemer breaches a payment Agreement a subsequent payment Agreement shall not be made available for the same parcel(s). During the term of the Agreement, the Treasurer may not bring an action to foreclose on the tax title of the Redeemer unless there is a breach of the Agreement.

Section 6. The Redeemer shall be entitled to a credit equal to fifty (50%) percent of the accrued interest on the balance owed on the tax title account after the 25% payment required to redeem the parcel as provided for in this bylaw. Interest shall continue to accrue, pursuant to the rate established by state law for tax title accounts, during the term of the payment Agreement but shall be subject to the fifty (50%) percent credit provided for herein. The Treasurer shall calculate the credit at the time of the execution of the Agreement and the credit shall be reflected in the payment schedule so as to be deducted from the last payment(s).

Section 7. The Agreement shall not be assignable by the Redeemer. The Agreement does not change or alter in any way the priority of the Town's lien on the parcel(s). In the event of any sale or other transfer of any kind of the parcel(s) subject to an Agreement or any interest therein, in whole or part, all amounts owed to the Town, including the full amount of interest, fees and costs, shall become immediately due and payable before any such transaction may take place.

Section 8. The Treasurer and the Redeemer shall execute an Agreement that sets forth terms and conditions for payment that are consistent with this bylaw. No extensions or amendments to the Agreement or to the terms and conditions as set forth in this bylaw shall be allowed, except that the Treasurer is authorized to agree to accept accelerated payments and reduce the down payment if also approved by the Selectmen. In the event of any discrepancy between the Agreement and the bylaw, the bylaw shall control, or take any action thereto. (Treasurer)

## MILITARY SERVICE & PUBLIC EMPLOYEES

ARTICLE 13 - To see if the Town will vote to accept M.G.L. Chapter 33, Section 59 of the Massachusetts General Laws "Effect of military service on salary, seniority and leave allowances of public employees," and allow the Board of Selectmen, in their capacity as the sitting Personnel Committee, to make confirming changes to this effect in the Personnel Policy, or take any action relative thereto. (Selectmen)

And you are directed to serve this Warrant, by posting up attested copies thereof as per vote of the Town in said Town, seven days at least before the time of holding said meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting as aforesaid.

Given under our hands this 20<sup>th</sup> day of November in the year of our Lord two thousand seventeen.

BOARD OF SELECTMEN

Thomas Andrew, Chairman

Christine Keefe, Vice Chairman

Lisa Wysocki, Clerk

*Friday, December 1, 2017 from 9 a.m. – 8 p.m.*

### **Open Voter Registration for Special Town Meeting**

Town Clerk's Office, 23 Linden Street

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*Monday, December 11, 2017 at 7 p.m.*

### **Special Town Meeting**

Berlin Memorial School, 34 South Street