

RESOLUTION NO. 3026

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND, FOR THE PURPOSE OF APPROVING THE FOURTH AMENDMENT TO DISPOSITION CONTRACT FOR THE SALE OF PROPERTY KNOWN AS PARKING LOT #16 AND THE SALISBURY GREEN, APPROVING THE SALES CONTRACT BETWEEN DAVIS SIMPSON HOLDINGS, LLC AND R. MILLER PROPERTIES, LLC FOR THE SALE OF THE SALISBURY GREEN, TO CONSOLIDATE THE TWO LOTS AND TO ADJUST THE DEADLINES FOR THE REDEVELOPMENT OF THE LOTS.

WHEREAS, the Mayor and City Council previously approved the surplus, sale and redevelopment of City Parking Lot #16 and the Salisbury Green in Resolutions 2848 and 2849; and

WHEREAS, City Parking Lot #16 was sold to Davis Simpson Holdings, LLC and a Disposition Contract was executed on June 26, 2018; and

WHEREAS, the Third Amendment to the Disposition Contract signed in June 2019 assigning the Buyer's interest to BKR Holdings, LLC, and BKR Holdings, LLC is now known as Davis Strategic Development, LLC; and

WHEREAS, the Salisbury Green was sold to R. Miller Properties, LLC and a Disposition Contract was executed on August 7, 2018; and

WHEREAS, the deeds and disposition contracts for both properties required the property to be developed as described in the individual Disposition Contracts, or the properties would revert to City ownership; and

WHEREAS, the City has determined that it is in the best interest of the citizens of the City to approve the sale of the Salisbury Green by R. Miller Properties, LLC to the owner of Lot #16, Davis Strategic Development, LLC; and

WHEREAS, the sale of the property requires an amendment to the Disposition Contract to be agreed upon and executed between Davis Strategic Development, LLC and the City of Salisbury for the redevelopment of Lot #16 and the Salisbury Green with terms acceptable to the City on or before April 15, 2020, as finally approved by the City Solicitor.


NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Salisbury, in regular session on the 23rd day of March, 2020, that the City consents to the sale of the Salisbury Green property to Davis Strategic Development, LLC on the condition that the parties, on or before April 15, 2020, negotiate and execute an amendment to the Disposition Contract, similar to the one attached herewith, with such terms and conditions as may be approved by the City Solicitor.


BE IT FURTHER ENACTED AND RESOLVED that this Resolution does not create an amendment to the Disposition Contract, that the consent and approval shall be conditional upon the successful execution of an amendment to the Disposition Contract, and that the Mayor is hereby authorized to execute the said amendment to Disposition Contract.

AND BE IT FURTHER ENACTED AND RESOLVED that this Resolution will take effect from and after its passage.

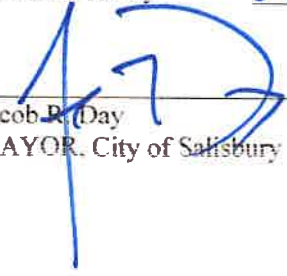
THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 23<sup>rd</sup> day of March, 2020 and is to become effective immediately upon adoption.

ATTEST:

  
\_\_\_\_\_  
Kimberly R. Nichols  
CITY CLERK

  
\_\_\_\_\_  
John R. Heath  
PRESIDENT, City Council

APPROVED by me this 20<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
Jacob R. Day  
MAYOR, City of Salisbury

## FOURTH AMENDMENT TO DISPOSITION CONTRACT

THIS FOURTH AMENDMENT TO DISPOSITION CONTRACT (this "Amendment") is made this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date") by and between THE CITY OF SALISBURY, MARYLAND, a municipal corporation (the "Seller") and DAVIS STRATEGIC DEVELOPMENT, LLC (previously known as BKR HOLDINGS, LLC, assignee of DAVIS SIMPSON HOLDINGS, LLC), a Maryland limited liability company (the "Buyer"), (Seller and Buyer are hereinafter referred to collectively as the "Parties").

### RECITALS

WHEREAS, the City and Davis Simpson Holdings, LLC ("**Davis Simpson Holdings**") entered into a Disposition Contract (the "**Original Lot 16 Contract**"), dated June 26, 2018, pursuant to which the City agreed to sell unto Davis Simpson Holdings, and Davis Simpson Holdings agreed to purchase from the City, in accordance with the terms and conditions set forth therein, all that certain lot or parcel of land situate, lying and being in the City of Salisbury, in Parsons Election District, Wicomico County, Maryland, on the Southerly side of and binding upon East Market Street and on the Northerly side of the Riverwalk sidewalk retained by the City of Salisbury, said southerly side of said Riverwalk sidewalk binding upon the East prong of the Wicomico River and shown as Lot 2A on a Plat entitled, "Lands of City of Salisbury", prepared by Becker Morgan Group, dated March 6, 2019 (Project No.: 2015030.01) and recorded among the Land Records of Wicomico County, Maryland in Plat Cabinet No. 17, Folio 185, being a part of the same property conveyed to the City of Salisbury from Larmar Corporation by Deed dated March 3, 1978 and recorded among the Land Records of Wicomico County, Maryland, in Liber A.J.S. 894, folio 52, and further being part of the property designated and distinguished as Lot 2 on a plat entitled, "Resubdivision Lands of The City of Salisbury", prepared by Leslie S. Sherrill, dated June 23, 2017 and recorded among the aforesaid Land Records in Plat Cabinet M.S.B. 17, Folio 107 (said real property is hereinafter referred to as "**Lot 16**");

WHEREAS, the City and Davis Simpson Holdings amended the Original Lot 16 Contract by that certain First Amendment to Disposition Contract (the "**First Amendment to Lot 16 Contract**"), dated October 12, 2018, which said First Amendment to Lot 16 Contract extended the date of "Initial Settlement" set forth in the Original Lot 16 Contract from July 30, 2018 to November, 30, 2018;

WHEREAS, the City and Davis Simpson Holdings further amended the Original Lot 16 Contract, as amended by the First Amendment to Lot 16 Contract, by that certain Second Amendment to Lot 16 Contract (the "**Second Amendment to Lot 16 Contract**"), dated January 16, 2019, which said Second Amendment to Lot 16 Contract extended the "Approval Dates" (as defined in the Second Amendment to Lot 16 Contract) contained in the Original Lot 16 Contract;

WHEREAS, the City and Davis Simpson Holdings further amended the Original Lot 16 Contract, as amended by the First Amendment to Lot 16 Contract and the Second Amendment to Lot 16 Contract, by that certain Third Amendment to Lot 16 Contract (the "**Third Amendment to Lot 16 Contract**"), dated June 11, 2019, which said Third Amendment to Lot 16 Contract

assigned any and all of Davis Simpson Holdings' right, title and interest in and to the Original Lot 16 Contract, as amended by the First Amendment to Lot 16 Contract and the Second Amendment to Lot 16 Contract, as buyer of Lot 16 thereunder unto BKR Holdings, LLC (n/k/a Davis Strategic Development, LLC (i.e. "DSD")) and further amended the Original Lot 16 Contract (as amended by the First Amendment to Lot 16 Contract and Second Amended to Lot 16 Contract) as more particularly set forth therein (the Original Lot 16 Contract, the First Amendment to Lot 16 Contract, the Second Amendment to Lot 16 Contract and the Third Amendment to Lot 16 Contract are hereinafter referred to collectively as the "**Lot 16 Disposition Contract**");

WHEREAS, Initial Settlement (as defined in the Lot 16 Disposition Contract) on the City's conveyance of Lot 16 to DSD occurred on June 17, 2019;

WHEREAS, the City entered into a Disposition Contract (the "**Lot 3 Disposition Contract**"), dated August 7, 2018, with R. Miller Properties, LLC ("**RMP**"), pursuant to which the City agreed to sell unto RMP, and RMP agreed to purchase from the City, in accordance with the terms and conditions set forth therein, all that certain lot or parcel of land containing 14,027.41 square feet, more or less, being situate and lying on the southerly side of East Market Street and binding upon the northerly side of the East Prong of the Wicomico River in the City of Salisbury, Wicomico County, Maryland, and more particularly shown as "Lot 3 M. 107 P. 901" on that certain plat entitled "RESUBDIVISION LANDS OF CITY OF SALISBURY, MD MAP 107, PARCELS 884, 901, 902 & 904 (KNOWN AS "SALISBURY GREENS" AND "PARKING LOT 16")", prepared by the City of Salisbury Department of Public Works, said plat being recorded in Liber M.S.B. No. 17, Folio 107, being all that same parcel of real property having a premises address of 200 East Market Street, Salisbury, Maryland 21801, and further being all that same real property identified in the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0901 (Maryland Tax ID# 05-057825) (said real property is hereinafter referred to as "**Lot 3**");

WHEREAS, by Deed dated November 29, 2018 and recorded among the Land Records of Wicomico County, Maryland, in Liber 4409, Folio 109, the City conveyed unto RMP all that real property defined herein as Lot 3 subject to the terms and conditions set forth in the Lot 3 Disposition Contract;

WHEREAS, DSD and RMP entered into a Commercial Sales Contract (the "**Lot 3 Contract of Sale**"), dated September 23, 2019, pursuant to which RMP agreed to sell unto DSD, and DSD agreed to purchase from RMP, all that certain real property defined herein as Lot 3, subject to the terms and conditions set forth in the Lot 3 Contract of Sale;

WHEREAS, pursuant to the terms and conditions set forth in Section 10 of the Lot 3 Contract of Sale, DSD and RMP entered into an Assignment of Development Documents (the "**Assignment**"), dated September 23, 2019;

WHEREAS, as provided in Section 6 of the Assignment, DSD and RMP expressly acknowledged and agreed that DSD's obligation to purchase Lot 3 from RMP under the Lot 3 Contract of Sale, and, therefore, DSD's obligations under the Assignment, is expressly

conditioned upon DSD entering into a Disposition Contract with the City for DSD's use and development of Lot 3 as agreed to by DSD;

WHEREAS, as contemplated by the terms set forth in Section 6 of the Assignment, DSD, on or about October 22, 2019, submitted a "Request for Amendment to Disposition Contracts for Lots 3 & Lots 16" (the "**Request**") to the City, whereby DSD requested the City's consent to certain modifications of the Lot 16 Disposition Contract and the Lot 3 Disposition Contract, and suggested terms for DSD's development of the combined Lot 3 and Lot 16 properties (hereinafter referred to as the "**Consolidated Lot**");

WHEREAS, the City wishes to revise certain terms and conditions contained in the Lot 16 Disposition Contract and the Lot 3 Disposition Contract to enable the development of the Consolidated Lot;

WHEREAS, the Disposition Contracts prohibit transfer of any interest in the property until construction is completed;

WHEREAS, the Disposition Contract dated June 26, 2018, Paragraphs 12.C. through 12.G., specify dates for the Preliminary Site Plan Approval, Final Site Plan Approval/Stormwater Approval, Building Permit, Construction Commencement and Certificate of Occupancy, respectively (the "Approval Dates"), and the Third Amendment to Disposition Contract dated June 11, 2019 amended those dates, and those dates have, in some cases, already passed as of the this amendment; and

WHEREAS, Buyer and Seller now desire to again amend the Disposition Contract dated June 26, 2018 as more particularly described below.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties hereby agree that the Original Lot 16 Disposition Contract, as previously amended, is hereby amended as follows:

1. Conveyance of 200 E. Market Street property.

The City consents to the sale and transfer of the property previously conveyed to R. Miller Properties pursuant to the Disposition Contract dated August 7, 2018, to Davis Strategic Development, LLC subject the following conditions: the City shall join in said deed to release its legal rights with regard to R. Miller Properties and to establish the City's rights with regard to possession and use of both Lots 3 and 16 prior to final settlement, the City's entitlement to the covenants required by this amended Disposition Contract and the City's rights of reversion of both Lots 3 and 16 before and after final settlement should Buyer fail to meet its obligations under this amended Disposition Contract. Upon the sale and transfer of Lot 3 (the Miller property), Lot 3 shall be consolidated with Buyer's previously acquired adjacent parcel (Lot 16) and shall be subject to the provisions of the

Original Lot 16 Disposition Contract dated June 26, 2018 and all of its amendments as if originally conveyed to Davis Strategic Development, LLC.

2. DSD's Development of Lot 16 and Lot 3.

Upon the consolidation of Lot 16 and Lot 3 into one (1) parcel of land (the "Consolidated Lot") under paragraph 1. of this Amendment, DSD hereby covenants that it shall develop the Consolidated Lot in accordance with the Development Proposal, dated July 6, 2017 (the "Development Proposal"), submitted by DSD and accepted the City, subject to the following modifications:

- a. The four (4) story mixed-used building DSD had planned for development on Lot 16, as set forth in the Development Proposal, shall be developed upon the Consolidated Lot (Lot 16 and Lot 3);
- b. The number of apartment units within the four (4) story mixed-used building planned for development by DSD, under the Development Proposal, shall be increased from thirty-seven (37) apartments to forty-seven (47) apartment units; and,
- c. The four (4) story mixed-used building planned for development by DSD on the Consolidated Lot shall provide for a restaurant with 2,000 square feet of interior floor space, provide designated outdoor seating area(s) and contain roll-up doors for inside and outside seating that presents a beer-garden design aesthetic.

3. Resubdivision of Property.

- a. Buyer shall deliver to the City a Resubdivision Plat consolidating the parcels into one parcel of land.
- b. Buyer shall bear all costs of the resubdivision and comply with all City of Salisbury standards and specifications, as directed by the City of Salisbury Director of Infrastructure and Development.
- c. Buyer shall obtain approval of the Resubdivision Plat prior to submitting the Preliminary Site Plan as described in paragraph 12.C. of the Original Lot 16 Disposition Contract.

4. Approval Dates.

- a. Paragraph 12.C. Preliminary Site Plan Approval. The date September 21, 2019 shall be deleted and the date July 1, 2020 shall be inserted in lieu thereof.
- b. Paragraph 12.D. Final Site Plan Approval/Stormwater Approval. The date of February 15, 2020 shall be deleted and the date January 1, 2021 shall be inserted in lieu thereof.
- c. Paragraph 12.E. Building Permit. The date May 1, 2020 shall be deleted and the date March 16, 2021 shall be inserted in lieu thereof.
- d. Paragraph 12.F. Construction Commence. The date June 1, 2020 shall be deleted and the date April 16, 2021 shall be inserted in lieu thereof.

- e. Paragraph 12.G. Certificate of Occupancy Completion. The date June 1, 2021 shall be deleted and the date April 16, 2022 shall be inserted in lieu thereof.
5. The parties acknowledge and agree that the Buyer identified in the Original Lot 16 Disposition Contract dated June 26, 2018, Davis Simpson Holdings, LLC, which was permitted to assign to BKR Holdings, LLC pursuant to the Third Amendment to the Disposition Contract, now known as Davis Strategic Development, LLC is the Buyer under this amended Disposition Contract; both the assignee and the original Buyer, Davis Simpson Holding, LLC, shall remain obligated to fulfill all of Buyers' obligations under the Agreement and any subsequent amendments.
  6. Upon execution of this Fourth Amendment to Disposition Contract, both Lot 3, previously conveyed to Miller, and Lot 16 which was conveyed at initial settlement to Buyer on June 17, 2019, shall be a Consolidated Lot and developed as required by the June 26, 2018 Original Lot 16 Disposition Contract and all subsequent amendments.
  7. The last sentence of paragraph 3.C. of the original Disposition Contract is hereby eliminated.
  8. At the time of Final Settlement, Seller shall execute a new deed to Buyer with all covenants required by the Disposition Contract, including Seller's rights of reversion and shall add a requirement for easement access to the Riverwalk at both the East and West ends of the Consolidated Lot described herein.
  9. Except as specifically modified by this Fourth Amendment, the terms of the Disposition Contract and any prior amendments, shall remain in full force and effect and are hereby ratified by the Parties.
  10. The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Fourth Amendment.
  11. This Fourth Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Amendment pursuant to due authority in duplicate, each of which shall be considered an original hereof, as of the day and year first above written.

WITNESS/ATTEST:

**SELLER:**  
CITY OF SALISBURY

Kimberly R. Nichols  
Kimberly R. Nichols  
City Clerk

J.R. Day (Seal)  
By: Jacob R. Day  
Mayor

**BUYER:**  
Davis Strategic Development, LLC

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
By: Bret C. Davis, Authorized Member (Seal)





City of  
**Salisbury**  
Jacob R. Day, Mayor

**To:** City Council  
**From:** Jennifer Miller  
Director of Procurement  
**Date:** March 16, 2020  
**Subject:** RFP 15-17 Disposition & Development of Lot 16 and Salisbury Green

Please find attached a Resolution and the Fourth Amendment to Disposition Contract, authorizing transfer of ownership of Lot 3 ("Salisbury Green") from R. Miller Properties to Davis Strategic Holdings (DSD), LLC. This amendment details the changes to the development plan which consolidates Lot 3 and Lot 16 (previously purchased by DSD) into one development parcel and updates the development timelines.