

AS AMENDED ON JANUARY 13, 2020
RESOLUTION NO. 2990

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH FIRST MOVE PROPERTIES, LLC FOR THE PURCHASE OF PARKING PERMITS IN THE DOWNTOWN PARKING GARAGE, ~~TO GRANT A TEMPORARY CONSTRUCTION EASEMENT AND PERPETUAL MAINTENANCE EASEMENT, AND TO GRANT A DEED OF EASEMENT TO FIRST MOVE PROPERTIES, LLC.~~

WHEREAS, First Move Properties, LLC intends to improve properties it owns located at 130 East Main Street, 132 East Main Street and 144 East Main Street in the Central Business District; and

WHEREAS, the attached Developer's Agreement details the agreement between the City of Salisbury and First Move Properties regarding parking spaces in the garage; ~~and~~

~~WHEREAS, First Move Properties, LLC requires easements across real property owned by the City of Salisbury in order to improve the properties identified as 130 E. Main Street and 132 E. Main Street, City of Salisbury, to create a walkway from the property to the City of Salisbury parking garage; and~~

~~WHEREAS, the attached Deed of Easement and the attached Temporary Construction Easement and Perpetual Maintenance Easement detail the aforementioned easement areas and agreement between the City of Salisbury and First Move Properties, LLC.~~

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the Mayor is authorized to negotiate, sign and enter into an agreement ~~and easements~~ with First Move Properties, LLC that ~~are~~ is substantially similar to the attached Developer's Agreement, ~~Temporary Construction and Perpetual Maintenance Easement and Deed of Easement~~, with such other terms and conditions as may be required by the City Solicitor.

THIS RESOLUTION was duly passed at a meeting of the Council of the City of Salisbury held on January 13, 2020, and is to become effective immediately upon adoption.

ATTEST:


Kimberly R. Nichols, City Clerk


John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS:

21ST day of JAN, 2020


Jacob R. Day, Mayor

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("Agreement"), is dated this 21ST day of January 2020, by and between the *City of Salisbury, Maryland*, a municipal corporation of the State of Maryland (the "**City**"), and *First Move Properties, LLC*, a Maryland limited liability company ("**First Move**") (the City and First Move are hereinafter referred to collectively as the "**Parties**").

Recitals

WHEREAS, the City is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as "61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY", consisting of 61,979 square feet of land, more or less (said real property is hereinafter referred to as "**Parcel 881**");

WHEREAS, the City is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as "L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY", consisting of 18,151 square feet of land, more or less (said real property is hereinafter referred to as "**Parcel 880**") (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the "**City Property**");

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, used and maintained by the City as a parking garage (the "**Downtown Parking Garage**") for the purpose of providing parking to the general public at a fee, subject to applicable local law and regulations;

WHEREAS, the Downtown Parking Garage contains a total of Seven Hundred Three (703) parking spots;

WHEREAS, First Move is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as "L-40X110 132-134 E MAIN ST CITY OF SALISBURY"; being in all respects the same property conveyed by George H. White and Deborah W. Poole unto First Move, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (said real property is hereinafter referred to as "**132 E. Main**");

WHEREAS, First Move is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, and being described as "3,300 SQFT 130A-130 E. MAIN ST CITY OF SALISBURY", and further being in all respects the same property conveyed by Livingston Holdings, LLC unto First Move, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (said real property is hereinafter referred to as "**130 E. Main**") (132 E. Main and 130 E. Main are hereinafter referred to collectively as the "**E. Main Properties**");

WHEREAS, pursuant to the terms and conditions set forth in that certain Commercial Sales Contract, dated September 20, 2019 (the "**Contract of Sale**"), by and between First Move and Salisbury Area Chamber of Commerce, Inc. ("**SACC**"), First Move has agreed to purchase from SACC all that certain real property having a premises address of 144 E. Main Street, Salisbury, Maryland 21801, more particularly identified by the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0858 (Maryland Tax ID# 05-022673) (said real property is hereinafter referred to as "**144 E. Main**"), and all that certain real property having a premises address of 119 E. Market Street, Salisbury,

Maryland 21801, more particularly identified by the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0878 (Maryland Tax ID# 05-022703) (said real property is hereinafter referred to as "**119 E. Market**") (144 E. Main and 119 E. Market are hereinafter referred to collectively as the "**Chamber Property**");

WHEREAS, First Move plans to redevelop the E. Main Properties by constructing a twelve-story, approximately one hundred sixty-five feet (165' +/-) tall, structure thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story structure First Move plans to construct at the E. Main Properties is hereinafter referred to as the "**Ross Building**");

WHEREAS, upon its purchase of the Chamber Property, First Move plans to redevelop the Chamber Property by constructing a five-story structure thereon, which, when complete, will consist of twenty-five (25), four-person luxury-style apartments (the "**Chamber Building**") (the Ross Building and the Chamber Building are hereinafter referred to collectively as the "**FMP Project**");

WHEREAS, the fifty-nine (59) residential apartments within the Ross Building are designed to provide housing for a maximum of one hundred fifty-six (156) tenants, and, the twenty-five (25) residential apartments within the Chamber Building are designed to provide housing for a maximum of one hundred (100) tenants, thus, when complete, the FMP Project is intended to provide luxury-style apartment housing for a maximum of two hundred fifty-six residential tenants (residential tenants of the FMP Project are hereinafter referred to individually as a "**FMP Tenant**" and collectively as the "**FMP Tenants**");

WHEREAS, the Parties acknowledge and agree the FMP Project will have a material impact on the revitalization of Downtown Salisbury by: (i) significantly increasing the housing inventory available within Downtown Salisbury; and, (ii) directly linking Salisbury University students to the Downtown Salisbury area;

WHEREAS, the Parties further acknowledge and agree that the long-term viability of the FMP Project is contingent upon adequate public parking for the FMP Tenants;

WHEREAS, in order to provide adequate public parking for the FMP Tenants, First Move desires to ensure its ability to purchase up to two hundred fifty-six (256) parking permits for parking within the Downtown Parking Garage for the use of FMP Tenants;

WHEREAS, the Parties acknowledge that, as of the date and year first above written, the Downtown Parking Garage is not used to its full capacity and that two hundred fifty-six (256) parking spots are normally available for use by potential FMP Tenants;

WHEREAS, in consideration of the foregoing, the City agrees, on an annual basis, to make available up to two hundred fifty-six (256) parking permits authorizing the FMP Tenants to park within the Downtown Parking Garage, which said municipal parking permits shall be purchased annually by First Move from the City, on behalf of the FMP Tenants, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. **Term.** The term of this Agreement shall commence on the date and year first above written and shall continue for a term of three years (the "**Initial Term**").

a. The term of this Agreement shall automatically renew for successive terms of one (1) year (each such additional term of one (1) year is hereinafter referred to as a "**Renewal Term**"), unless either party provides written notice, at least ninety (90) days prior to the end of the Initial Term or any Renewal Term, as the case may be, specifying the party's election to

terminate this Agreement at the end of the Initial Term or such applicable Renewal Term (as used in this Agreement, the word “**Term**” shall be deemed to include, where appropriate, the Initial Term and all Renewal Terms (if any)).

b. In the absence of such written notice from either party, the Initial Term or such applicable Renewal Term, as the case may be, shall automatically renew for an additional one (1) year term as aforesaid upon the same terms and conditions set forth herein.

c. The City retains the right to suspend this Agreement without notice in the event of an emergency (including but not limited to damage to the Downtown Parking Garage which prohibits the safe use of the structure), or upon written notice following a determination by the City that the Downtown Parking Garage is in need of renovation or maintenance or that replacement of the garage is necessary. In the event of suspension of this Agreement, the Grantor will offer alternative parking permits to Grantee in other City locations to be determined by the Grantor.

2. **Parking Spaces.** Beginning with the execution of this Agreement and continuing for the duration of the Term, the City shall issue up to two hundred fifty-six (256) parking permits to First Move, authorizing the holders thereof to use appropriate and available parking spaces in the Downtown Parking Garage for public parking, by tenants of First Move in accordance with the provisions of Sections 3 and 5. (Any and all municipal parking permits purchased by First Move for use by its Tenants as contemplated by this Agreement are hereinafter referred to as the “**Parking Garage Permits**”).

3. **Purchase of the Parking Garage Permits.** Beginning with the execution of this Agreement, and on or before September 1st of each Fiscal Year thereafter during the Term, First Move shall purchase the number of Parking Garage Permits that First Move deems necessary and appropriate, in its discretion, for the operation and management of the FMP Project, including the provision of adequate public parking for the FMP Tenants residing at the FMP Project from time to time (for purposes of this Agreement the term “**Fiscal Year**” shall mean the period of July 1 – June 30). First Move expressly acknowledges and agrees that the City shall have no obligation whatsoever to reserve more than two hundred fifty-six (256) Parking Garage Permits for purchase by First Move.

4. **Purchase Price of Parking Garage Permits.** The purchase price for each Parking Garage Permit reserved for purchase by First Move shall be in that amount determined annually by the City in connection with the municipal budget adopted by the City Council and approved by the Mayor .

5. The City does not guarantee the availability of parking spaces in the Downtown Parking Garage for any permit holder. The permits issued are a license to park in any appropriate and available parking space. The issuance of the permit does not entitle the holder to a reserved space or the right to park at all times. All spaces are available on a first come first served basis.

6. **Miscellaneous.**

(a) **Authority.** Each party represents and warrants to the other party that: (i) it has the full right, power and authority to execute this Agreement; (ii) the execution and delivery of this Agreement and the performance of its obligations hereunder are not prohibited by or in breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which it is a party or by which it is otherwise bound; and, (iii) there are no legal requirements imposed upon it which prohibit or limit the execution and delivery of this Agreement and the performance of its obligations hereunder.

(b) **Entire Agreement.** This Agreement, and all exhibits attached hereto, constitute the entire agreement and understanding of the Parties with respect to the matters set forth herein, and all

prior negotiations, writings and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(c) **Waiver - Amendments.** Any of the terms or conditions of this Agreement may be waived but only in writing by the party which is entitled to the benefit thereof, and this Agreement may be amended or modified in whole or in part only by an agreement in writing executed by all of the Parties.

(d) **Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns. First Move may assign this Agreement and all its rights hereunder to any successor(s)-in-interest of First Move with respect to its ownership of, or any of its rights in and to, the FMP Project or any part or portion thereof.

(e) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect or otherwise limit the validity and enforceability of the other provisions hereof.

(f) **Construction.** This Agreement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(g) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties hereto acting for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising under, from or in connection with this Agreement.

(h) **Waiver of Jury Trial.** The Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counter-claim brought by a party hereto against the other on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another, and/or any claim, injury or damage arising from or consequent upon this Agreement.

(i) **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.

(j) **Counterparts.** This Agreement 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.

7. **Non-Appropriation.**

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any funding required by the City in this Agreement shall terminate on the last day for which appropriations were received by the City, without penalty or expense to the City.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Developer's Agreement as of the day and year first above written.

WITNESS/ATTEST:

THE CITY:

Kimberly R. Nichol

City of Salisbury, Maryland

By: Jacob R. Day (SEAL)
Jacob R. Day, Mayor

FIRST MOVE:

First Move Properties, LLC

By: _____ (SEAL)
Nicholas R. Simpson, Managing Member

DEED OF EASEMENT

THIS DEED OF EASEMENT, is made this ____ day of _____, 2020, by **THE CITY OF SALISBURY**, a municipal corporation of the State of Maryland (hereinafter referred to as "**Grantor**"), and **FIRST MOVE PROPERTIES, LLC**, a Maryland limited liability company (hereinafter referred to as "**Grantee**") (Grantor and Grantee are hereinafter referred to collectively as the "**Parties**").

RECITALS

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as "61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY," consisting of 61,979 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as "**Parcel 881**");

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as "L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY," consisting of 18,151 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as "**Parcel 880**") (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the "**City Property**");

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, constructed, operated and maintained by Grantor as a parking garage for purposes of providing parking to the general public (the "**Downtown Parking Garage**");

WHEREAS, Grantor is an owner of a public right-of-way extending East from Baptist Street and running Westerly behind the properties situate on East Main Street to the North, known as 144 E. Main Street and 132 E. Main Street through 116 E. Main Street (the "**Alleyway**");

WHEREAS, Grantor is aware of third-parties with private rights to the use of said right-of-way;

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as "L-40X110 132-134 E MAIN ST CITY OF SALISBURY," being in all respects the same property conveyed by George H. White and Deborah W. Poole unto Grantee, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (hereinafter referred to as "**Parcel 856**");

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, described as "3,300 SQFT 130A-130 E. MAIN ST CITY OF SALISBURY", and being in all respects the same property conveyed by Livingston Holdings, LLC unto Grantee, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (hereinafter referred

to as "Parcel 855") (Parcel 856 and Parcel 855 are hereinafter referred to collectively as the "FMP Property");

WHEREAS, Grantee plans to redevelop the FMP Property by constructing a twelve-story, approximately one hundred sixty-five feet (165' +/-) tall, building thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story building Grantee plans to construct at the FMP Property is hereinafter referred to as the "**Ross Building**");

WHEREAS, for the use and operation of the Ross Building, Grantee desires the right to unrestricted use of a portion of the air space through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, the Property over which the Aerial Walkway extends is more particularly described in Exhibit A attached hereto and incorporated herein (a portion of the air space over the Property described in Exhibit A is hereinafter referred to as the "**Easement Area**");

WHEREAS, for purposes of Grantee's development and construction of the Ross Building, Grantor desires to grant and convey to Grantee, in accordance with the terms and conditions of this Deed of Easement, a perpetual, non-exclusive easement, over and through a portion of the air space over the Easement Area.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and obligations of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, Grantor and Grantee, for themselves and their respective successors and assigns, do hereby covenant and agree as follows:

1. **Grant of Easement.** Grantor does hereby grant and convey unto Grantee, its successors and assigns, a perpetual non-exclusive easement, to the air space through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, above the Easement Area. The easement shall continue for so long as a parking garage is maintained on the subject property and so long as Grantee utilizes and maintains the Aerial Walkway to the parking garage described herein. In the event that the Grantor determines, within its sole discretion, that the Downtown Parking Garage must be renovated (including tearing down and rebuilding) or be expanded, the Grantor will re-connect the Aerial Walkway to the repaired or replaced garage. If the Downtown Parking Garage ceases to exist in sufficiently close proximity to Grantee's property such that the currently planned Aerial Walkway cannot reasonably be utilized, the Grantor's obligations herein shall cease and this Easement will terminate.

2. **Purpose of Easement.** Grantor grants and conveys the easement described in Section 1 hereof for the purpose of granting and conveying unto Grantee, its successors and assigns, the right to a portion of the air space over the Easement Area, such that Grantor, its successors or assigns, shall not construct, maintain or erect, or permit the construction, maintenance or erection of any structure, of any type or kind whatsoever, permanent or temporary, that will infringe or otherwise obstruct the said air space of the Easement Area.

3. **Grantor's Use of the Property.** Subject to the terms set forth in Section 2 hereof, Grantor reserves unto itself, its successors, heirs and assigns, the full use and enjoyment

of the City Property, and in addition to the terms in Section 2., Grantor reserves the right to restrict access to the easement areas described herein whenever the City, in its sole discretion, deems it necessary for the maintenance, expansion or reconstruction of the Downtown Parking Garage or the Easement Area.

4. Non-Appropriation.

In the event that no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any funding required of the Grantor as a result of this Easement shall terminate on the last day for which appropriations were received by the Grantor, without penalty or expense to the Grantor.

5. Miscellaneous.

(a) Run with the Land. All covenants, obligations and benefits set forth in this Deed of Easement shall run with the City Property and the FMP Property and shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

(b) Further Actions. The Parties each covenant and agree to cooperate with one another and to do all things reasonably necessary in implementing the provisions of this Deed of Easement and to take whatever action(s) may be reasonably required of them respectively, from time to time, in order to implement the provisions of this Deed of Easement and all of the transactions contemplated hereby.

(c) Completion of the FMP Project by Grantee. Unless otherwise agreed to in writing by the Parties, in the event Grantee, its successors or assigns, fails or otherwise refuses to secure a Certificate of Occupancy for the Ross Building within three (3) years from the date hereof, this Deed of Easement, including all rights granted unto Grantee hereunder, shall terminate and be of no force and effect.

(d) Recording. The Parties expressly acknowledge and agree that this Deed of Easement, and all exhibits attached hereto, shall be recorded in the Land Records of Wicomico County, Maryland. Grantee shall bear all costs, if any, incurred in connection with the recording of this Deed of Easement as aforesaid.

(e) Interpretation; Severability; Amendment. This Deed of Easement shall be governed by the laws of the State of Maryland without regard to its conflict of laws principles. The section headings contained in this Deed of Easement are inserted for convenience of reference only and do not, in any way, define, limit or describe the scope of this Deed of Easement or the intent of the provisions hereof. If any term of this Deed of Easement or any application thereof is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Deed of Easement shall remain in full force and effect. Any provision of this Deed of Easement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. This Deed of Easement constitutes the entire agreement of the Parties with respect to the matters set forth herein, and all prior negotiations, writings and understandings relating to the subject matter of this Deed of Easement are merged herein and are superseded and canceled by this Deed of Easement. This Deed of Easement, and all the terms and conditions set forth herein, shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's

agent or attorney drafted all or any part of this Deed of Easement. This Deed of Easement may be amended or modified only by an instrument in writing signed by the Parties hereto. The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Deed of Easement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Deed of Easement as of the day and year first above written.

WITNESS/ATTEST:

GRANTOR:

City of Salisbury, Maryland

Kimberly R. Field

By:  (SEAL)
Jacob R. Day, Mayor

GRANTEE:

First Move Properties, LLC

By: _____ (SEAL)
Nicholas R. Simpson, Managing Member

STATE OF MARYLAND, COUNTY OF Wicomico, TO WIT:

I HEREBY CERTIFY that on this 21st day of January, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JACOB R. DAY, who acknowledged himself to be the Mayor of THE CITY OF SALISBURY, MARYLAND, and that he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of said municipal corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Diane K. Carter
NOTARY PUBLIC

My Commission Expires: 5-16-22



STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared NICHOLAS R. SIMPSON, who acknowledged himself to be the Managing Member of FIRST MOVE PROPERTIES, LLC, and that he, as such Managing Member, being authorized so to do, executed the foregoing instrument on behalf of First Move Properties, LLC for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATION BY ATTORNEY

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Michael P. Sullivan

**TEMPORARY CONSTRUCTION EASEMENT
AND PERPETUAL MAINTENANCE EASEMENT**

THIS TEMPORARY CONSTRUCTION EASEMENT AND PERPETUAL MAINTENANCE EASEMENT (“Easement”), is made this ____ day of _____, 2020, by **THE CITY OF SALISBURY**, a municipal corporation of the State of Maryland (hereinafter referred to as “**Grantor**”), and **FIRST MOVE PROPERTIES, LLC**, a Maryland limited liability company (hereinafter referred to as “**Grantee**”) (Grantor and Grantee are hereinafter referred to collectively as the “**Parties**”).

RECITALS

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as “61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY,” consisting of 61,979 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as “**Parcel 881**”);

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as “L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY,” consisting of 18,151 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as “**Parcel 880**”) (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the “**City Property**”);

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, constructed, operated and maintained by Grantor as a parking garage for purposes of providing parking to the general public (the “**Downtown Parking Garage**”);

WHEREAS, Grantor is an owner of a public right-of-way extending East from Baptist Street and running Westerly behind the properties situate on East Main Street to the North, known as 144 E. Main Street and 132 E. Main Street through 116 E. Main Street (the “**Alleyway**”);

WHEREAS, Grantor is aware of third-parties with private rights to the use of said right-of-way;

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as “L-40X110 132-134 E MAIN ST CITY OF SALISBURY,” being in all respects the same property conveyed by George H. White and Deborah W. Poole unto Grantee, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (hereinafter referred to as “**Parcel 856**”);

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, described as “3,300 SQFT 130A-130 E. MAIN

ST CITY OF SALISBURY,” and being in all respects the same property conveyed by Livingston Holdings, LLC unto Grantee, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (hereinafter referred to as “**Parcel 855**”) (Parcel 856 and Parcel 855 are hereinafter referred to collectively as the “**FMP Property**”);

WHEREAS, Grantee plans to redevelop the FMP Property by constructing a twelve-story, approximately one hundred sixty-five feet (165’+/-) tall, building thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story building Grantee plans to construct at the FMP Property is hereinafter referred to as the “**Ross Building**”);

WHEREAS, in connection with its development and construction of the Ross Building, Grantee plans to construct and install an aerial pedestrian walkway, extending across certain portions of the Alleyway and connecting the Northeasterly corner of the fourth level of the Downtown Parking Garage with the Southerly side of the fourth floor of the Ross Building (the “**Aerial Walkway**”) (the area of land through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, as aforesaid, is described in **Exhibit A** attached hereto and incorporated herein);

WHEREAS, for purposes of Grantee’s construction and installation of the Aerial Walkway as aforesaid, Grantee requires access to the Alleyway during the period of its construction of the Aerial Walkway and from time to time thereafter to perform its obligations hereunder;

WHEREAS, in accordance with the terms and conditions set forth herein, Grantor desires to grant and convey unto Grantee a perpetual and non-exclusive easement over and through all that land and airspace described in **Exhibit A** attached hereto and incorporated herein, for the purposes herein contained;

WHEREAS, in accordance with the terms and conditions set forth herein, Grantor further desires to grant and convey unto Grantee, for the purposes herein contained, a temporary, non-exclusive easement over, under, in, along and across all that land described in **Exhibit B** attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and obligations of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, Grantor and Grantee, for themselves and their respective successors and assigns, do hereby covenant and agree as follows:

1. **Grant of Temporary Construction Easement.** Grantor, for itself and for its successors and assigns, hereby grants and conveys unto Grantee, its successors and assigns, a temporary, non-exclusive easement (the “**Temporary Construction Easement**”) for ingress, egress and regress over, under, in, upon, along and across all that property consisting of certain portions of the City Property, including such portions of the Downtown Parking Garage located thereon, and portions of the Alleyway as more particularly described in **Exhibit B** attached hereto and incorporated herein (the property described in **Exhibit B** is hereinafter referred to as

the “**Temporary Construction Easement Area**”), for Grantee’s use in connection with Grantee’s construction and installation of the Aerial Walkway.

2. **Term of Temporary Construction Easement.** Grantee shall provide Grantor with at least three (3) days prior written notice of Grantee’s intention to commence the use of and/or work within the Temporary Construction Easement Area for Grantee’s construction and/or installation of the Aerial Walkway or any purpose related thereto (the “**Construction Commencement Date**”). Unless relinquished sooner by Grantee, the term of the Temporary Construction Easement shall commence on the Construction Commencement Date and shall continue, without interruption, through and until such time as Grantee secures a Certificate of Occupancy for the Ross Building planned for construction at the FMP Property. The public right-of-way shall remain open for the ingress and egress of the public during construction. Any temporary closure of the public right-of-way may only be accomplished for short periods of time with the permission of the Director of the Department of Infrastructure and Development.

3. **Grant of Easement.** Grantor does hereby grant, convey, transfer and deliver unto Grantee a perpetual and non-exclusive easement (the “**Permanent Easement**”) in, to, upon, through, along and across all that area of land and airspace described in **Exhibit A** attached hereto and incorporated herein (the property described in **Exhibit A** hereinafter referred to as the “**Permanent Easement Area**”), for Grantee’s use in the maintenance of the Aerial Walkway.

4. **Term of Permanent Easement.** The term of the Permanent Easement shall begin as of the Construction Commencement Date and, thereafter, shall continue for so long as a parking garage is maintained on the subject property and so long as Grantee utilizes and maintains the aerial pedestrian walkway to the parking garage described herein. Upon the commencement thereof as aforesaid, unless and until the Permanent Easement is terminated pursuant to this section, the Permanent Easement shall run with the City Property and the FMP Property and shall inure to the benefit of Grantee, its successors and assigns.

5. **Construction of Improvements.**

(a) In connection with its use of the Temporary Construction Easement Area and Permanent Easement Area hereunder, Grantee shall:

- (i) Obtain any and all permits which are required to be obtained before using any portion of the Temporary Construction Easement Area and/or the Permanent Easement Area in connection with Grantee’s development and/or construction of the Ross Building, including Grantee’s construction and/or installation of the Aerial Walkway;
- (ii) Construct and maintain all improvements within the Permanent Easement Area in compliance with all applicable laws, regulations and/or ordinances of each governmental agency having jurisdiction over the construction and/or use of any improvements constructed and/or installed by Grantee upon or within the Permanent Easement Area. Any improvements constructed within the Permanent Easement Area, including, but not limited to, the Aerial Walkway, shall be maintained by Grantee in good condition, both as to safety and appearance, and the maintenance of all such

improvements shall be performed by Grantee in a manner so as to not interfere with the use, maintenance or operation of the Alleyway located below the horizontal bottom of the Permanent Easement Area, except that Grantee shall have the right, upon reasonable notice to Grantor, to occupy the Alleyway for purposes of performing its maintenance obligations hereunder. If, in the reasonable judgment of Grantor, the use or operation of the Alleyway may be interfered with or jeopardized as a result of Grantee's failure to perform its maintenance obligations hereunder, Grantor may, but shall not be obligated to, enter onto the Permanent Easement Area and perform such work as may be reasonably necessary in order to perform Grantee's duties and obligations under this Section 5(a)(ii); in which case, Grantee shall, upon the written request of Grantor, promptly reimburse Grantor for any and all reasonable expenses Grantor may incur in its performance of any of Grantee's duties and obligations contained in this Section 5(a)(ii), and Grantor shall provide Grantee with reasonable documentation evidencing all such reasonable expenses incurred by Grantor;

- (iii) For itself and for its successors, representatives, agents and assigns, Grantee expressly agrees it shall not place any improvements or fixtures on, or conduct any activity within, the Permanent Easement Area which will unreasonably interfere with Grantor's and/or the general public's use or enjoyment of the Alleyway with respect to that certain area located below the horizontal bottom of the Permanent Easement Area as described in Exhibit A; and
- (iv) For itself and for its successors, representatives, agents and assigns, Grantee expressly agrees it shall not store or discharge, or allow the storage or discharge of, any radioactive, toxic, flammable, poisonous, explosive or other dangerous, hazardous materials or waste within the Temporary Construction Easement Area and/or the Permanent Easement Area.

(b) Renovation or Rebuilding of Downtown Parking Garage.

In the event that the Grantor determines, within its sole discretion, that the Downtown Parking Garage must be renovated (including tearing down and rebuilding) or be expanded, the Grantor will re-connect the Aerial Walkway to the repaired or replaced garage. If the Downtown Parking Garage ceases to exist in sufficiently close proximity to Grantee's property such that the currently planned Aerial Walkway cannot reasonably be utilized, the Grantor's obligations herein shall cease and this Easement will terminate.

6. Indemnification and Insurance.

(a) Grantee hereby expressly agrees to defend, indemnify and hold Grantor, and all of Grantor's elected officials, appointed officials, employees, representatives, agents and contractors, harmless from and against:

- (i) Any and all claims by any person, firm or entity for labor, services, materials or supplies provided in connection with the construction, installation and/or maintenance of any improvement constructed and/or installed at, upon or within the Temporary Construction Easement Area and/or the Permanent Easement Area in connection with Grantee's construction of the Ross Building, including Grantee's construction and/or installation of the Aerial Walkway; and/or
- (ii) Any and all claims for injuries to, or the death of, any and all individuals, or for loss of or damage to property, or from any environmental damage, degradation, response and clean-up costs, including all reasonable attorney's fees and related expenses incurred by Grantor, arising from or related to Grantee's use and/or occupancy of the Temporary Construction Easement Area and/or the Permanent Easement Area in connection with Grantee's construction of the Ross Building, including Grantee's construction and/or installation of the Aerial Walkway.

(b) Grantee shall obtain and keep in full force and effect, until construction of the Ross Building is completed (including the construction and/or installation of the Aerial Walkway), a single policy of builders' risk insurance, effective as of the Construction Commencement Date, naming Grantor as an additional covered insured thereunder, with policy limits of not less than the full replacement cost of all insurable components of the improvements to be constructed and/or installed by Grantee on or within the Temporary Construction Easement Area and/or the Permanent Easement Area in connection with Grantee's construction of the Ross Building, including Grantee's construction and/or installation of the Aerial Walkway. Grantee's obligation to maintain a policy of builder's risk insurance under this Section 6(b) shall terminate as of the date on which Grantee secures a Certificate of Occupancy for the Ross Building. Furthermore, Grantee, for itself and for its successors and assigns, agrees to obtain and maintain a policy or policies of general public liability insurance, including broad form endorsements, on an occurrence basis, naming Grantor as an additional covered insured thereunder, with combined policy limits of not less than Five Hundred Thousand Dollars (\$500,000) for injuries, including accidental death, to any one person, and subject to the same limit for each person, not less than One Million Dollars (\$1,000,000) for any one accident involving two or more persons; and property damage liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) for any one accident and not less than One Million Dollars (\$1,000,000) in the aggregate with respect to any improvements constructed, installed and/or maintained by Grantee within the Permanent Easement Area. Grantee shall provide Grantor with a certificate of such insurance policy(ies) issued by a company authorized to do business in Maryland naming Grantor as an additional insured thereunder, with a right to not less than thirty (30) days written notice of cancellation or non-renewal of any such insurance policy(ies).

7. Non-Appropriation.

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any unbudgeted expenses required of the Grantor as a result of this Easement shall terminate on the last day for which appropriations were received by the Grantor, without penalty or expense to the Grantor.

8. **Miscellaneous.**

(a) **Authority.** Each party represents and warrants to the other party that it: (i) has the full right, power and authority to execute this Easement; (ii) the execution and delivery of this Easement and the performance of its obligations hereunder are not prohibited by or in breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which it is a party or by which it is otherwise bound; and, (iii) there are no legal requirements imposed upon it which prohibit or limit the execution and delivery of this Easement and the performance of its obligations hereunder.

(b) **Waiver-Amendments.** Any of the terms or conditions contained in this Easement may be waived but only in writing by the party which is entitled to the benefit thereof, and this Easement may be amended or modified in whole or in part only by an agreement in writing executed by all of the Parties. Each and every right, remedy and power granted to a party under this Easement or allowed by law shall be cumulative and not exclusive of any other.

(c) **Completion of the FMP Project by Grantee.** Notwithstanding any term to the contrary set forth herein, in the event Grantee, its successors or assigns, fails or otherwise refuses to secure a Certificate of Occupancy for the Ross Building within three (3) years from the date hereof, this Easement, including the Temporary Construction Easement, the Permanent Easement and all rights granted unto Grantee hereunder, shall terminate and be of no force and effect, unless otherwise agreed to in writing by the Parties.

(d) **Severability.** If any term of this Easement or any application thereof is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Easement shall remain in full force and effect. Any provision of this Easement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(e) **Binding Nature of Easement; Run with the Land.** All covenants, obligations and benefits set forth in this Easement shall run with the City Property, the Alleyway, and the FMP Property and shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

(f) **Entire Agreement.** This Easement, including all exhibits attached hereto, constitutes the entire agreement and understanding of the Parties with respect to the matters set forth herein, and all prior negotiations, writings and understandings relating to the subject matter of this Easement, including, but not limited to, the Temporary Construction Easement and Permanent Easement conveyed and granted unto Grantee hereunder, are merged herein and are superseded and canceled by this Easement.

(g) **Construction.** This Easement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Easement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Easement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(h) **Notices.** All notices and other communication given by a party to the other in connection with this Easement shall be in writing and shall be deemed delivered to the addressee thereof: (i) when delivered in person on a business day at the address set forth below; or, (ii) on the third (3rd) business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid certified or registered mail, return receipt requested, at the address set forth below; or, (iii) when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery.

All notices and other communications to Grantor shall be addressed to, and delivered at, the following address:

The City of Salisbury
c/o Director of the Department of Infrastructure & Development
125 N. Division Street
Salisbury, Maryland 21801

All notices and other communications to Grantee shall be addressed to, and delivered at, the following address:

First Move Properties, LLC
c/o Nicholas R. Simpson
P.O. Box 335
Salisbury, Maryland 21803

Either party may change its address by providing notice to the other party as set forth in this Section 7(h).

(i) **Governing Law.** This Easement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles.

(j) **Recording.** The Parties expressly acknowledge and agree that this Easement, and all exhibits attached hereto, shall be recorded in the Land Records of Wicomico County, Maryland. Grantee shall bear all costs, if any, incurred in connection with the recording of this Easement as aforesaid.

(k) **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Easement.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
[SIGNATURES APPEAR ON THE PAGE THAT FOLLOWS]**

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Temporary Construction Easement and Perpetual Maintenance Easement as of the day and year first above written.

WITNESS/ATTEST:

GRANTOR:

City of Salisbury, Maryland

Kimberly R. Nichols

By: [Signature] (SEAL)
Jacob R. Day, Mayor

GRANTEE:

First Move Properties, LLC

By: _____ (SEAL)
Nicholas R. Simpson, Managing Member

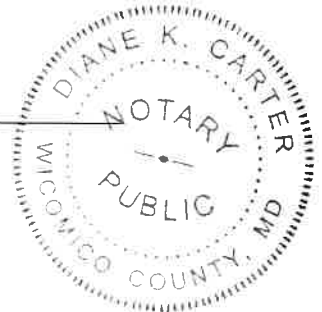
STATE OF MARYLAND, COUNTY OF Wicomico, TO WIT:

I HEREBY CERTIFY that on this 21st day of January, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JACOB R. DAY, who acknowledged himself to be the Mayor of THE CITY OF SALISBURY, MARYLAND, and that he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of said municipal corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

My Commission Expires: 5-16-22

Diane K. Carter
NOTARY PUBLIC



STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared NICHOLAS R. SIMPSON, who acknowledged himself to be the Managing Member of FIRST MOVE PROPERTIES, LLC, and that he, as such Managing Member, being authorized so to do, executed the foregoing instrument on behalf of First Move Properties, LLC for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATION BY ATTORNEY

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Michael P. Sullivan

EXHIBIT "A"



EXISTING PARKING GARAGE

EXISTING BUILDING

EXISTING BUILDING

Easement Line Table

LINE	LENGTH	CHD. BEARING
L1	49.78'	S06° 14' 00"E
L2	53.40'	S84° 04' 19"W
L3	49.62'	N06° 14' 00"W
L4	53.40'	N83° 46' 00"E

FPK

FIR

"THE ROSS"
BLDG. NO. 1

PERMANENT
EASEMENT
(AREA = 2,656.72 ft²)

PLAZA

"THE ROSS"
BLDG. NO. 2

ALLEY

N/F
ONE TEN
BAPTIST, LLC
PARCEL 875
1730/652

EX. BUILDING

EAST MAIN STREET

BAPTIST STREET



- PROPOSED PERMANENT EASEMENT AREA

THE ROSS
PERPETUAL MAINTENANCE EASEMENT
144 EAST MAIN STREET
CITY OF SALISBURY
WICOMICO COUNTY, MARYLAND

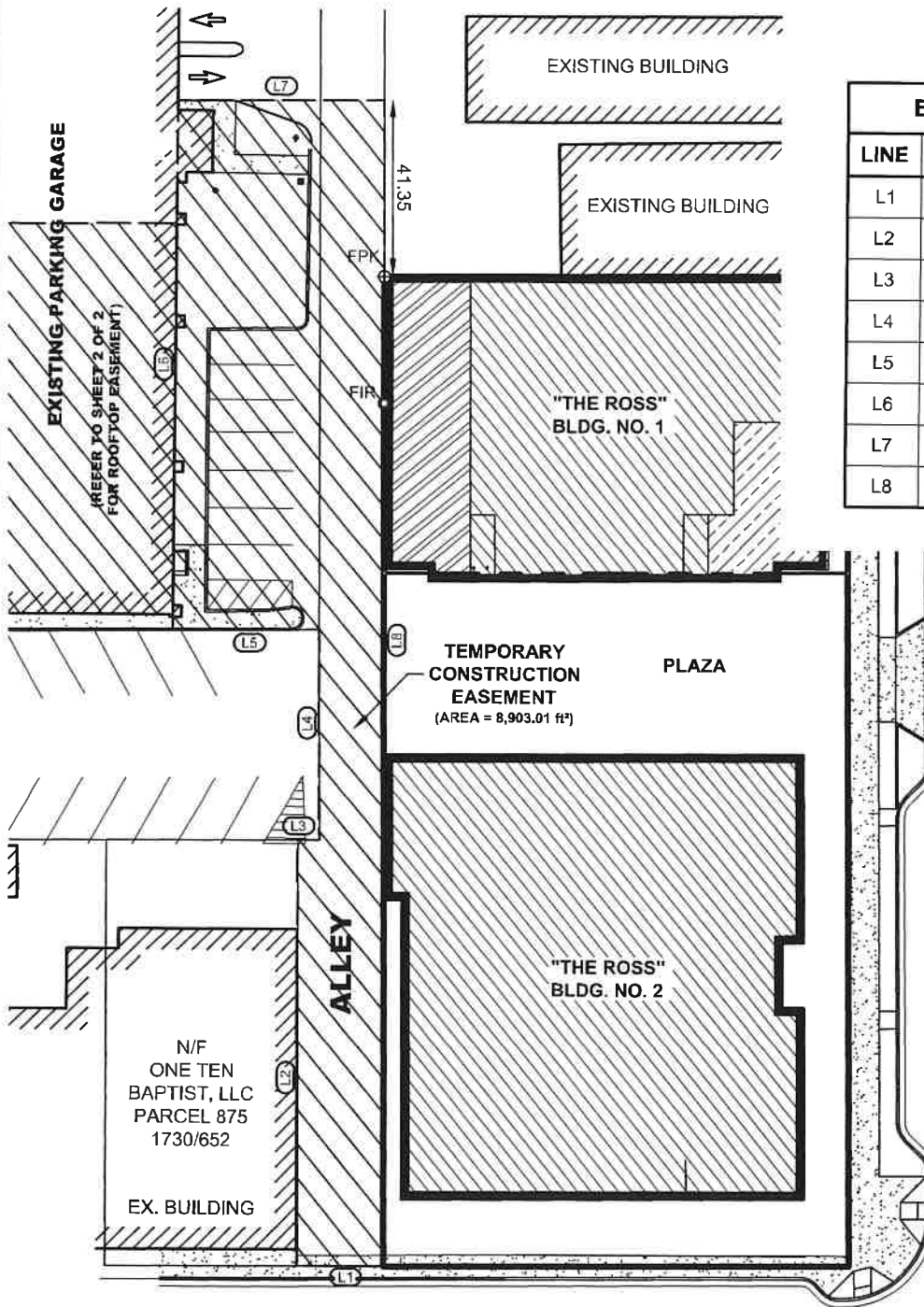
**BECKER
MORGAN**
GROUP

ARCHITECTURE
ENGINEERING
Salisbury, DE
312 West Main Street
Salisbury, MD 21801
Ph. 410.546.9100
Fax 410.546.2824

BMG: 2018010.00
SCALE: 1" = 40'
DATE: 12/16/2019
DRAWN BY: E.H.H.

V-102

EXHIBIT "B"



Easement Line Table

LINE	LENGTH	CHD. BEARING
L1	20.00'	S6° 14' 00"E
L2	100.00'	S83° 46' 00"W
L3	5.00'	N6° 14' 00"W
L4	50.00'	S83° 46' 00"W
L5	34.71'	S6° 14' 00"E
L6	124.67'	S84° 05' 38"W
L7	49.00'	N6° 14' 00"W
L8	274.67'	N83° 46' 00"E

BAPTIST STREET



- PROPOSED TEMPORARY CONSTRUCTION EASEMENT AREA

SHEET 1 OF 2

THE ROSS
TEMPORARY CONSTRUCTION EASEMENT
 144 EAST MAIN STREET
 CITY OF SALISBURY
 WICOMICO COUNTY, MARYLAND

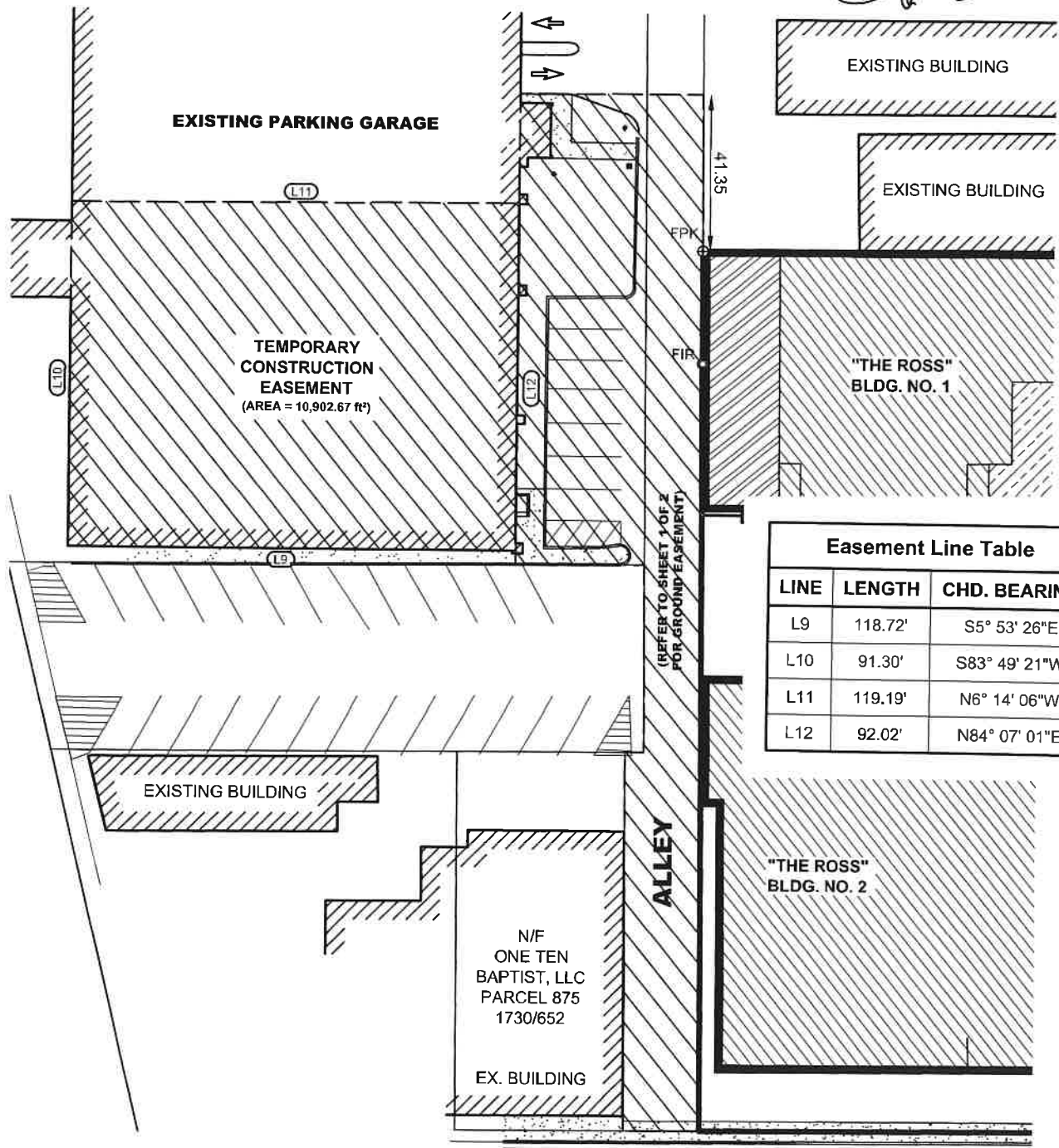
**BECKER
 MORGAN**
 GROUP

ARCHITECTURE
 ENGINEERING
Salisbury, DE
 312 West Main Street
 Salisbury, MD 21801
 Ph. 410.546.9100
 Fax 410.546.2824

BMG: 2018010.00
 SCALE: 1" = 40'
 DATE: 12/16/2019
 DRAWN BY: E.H.H.

V-100

EXHIBIT "B"



Easement Line Table		
LINE	LENGTH	CHD. BEARING
L9	118.72'	S5° 53' 26"E
L10	91.30'	S83° 49' 21"W
L11	119.19'	N6° 14' 06"W
L12	92.02'	N84° 07' 01"E



- PROPOSED TEMPORARY CONSTRUCTION EASEMENT AREA

SHEET 2 OF 2

THE ROSS
TEMPORARY CONSTRUCTION EASEMENT
 144 EAST MAIN STREET
 CITY OF SALISBURY
 WICOMICO COUNTY, MARYLAND

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V-101