

RESOLUTION No. 3079

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.

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, a Developer's Agreement was approved via Resolution No. 2990 which was adopted on January 13, 2020; and

WHEREAS, modifications to the Developer's Agreement were discussed at a City Council work session on November 16, 2020 and the amended version is attached.

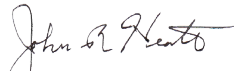
NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the Mayor is authorized to negotiate, sign and enter into an agreement with First Move Properties, LLC that is substantially similar to the attached Developer's Agreement with such other terms and conditions 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 November 23, 2020, and is to become effective immediately upon adoption.

ATTEST:




Diane K. Carter, Assistant City Clerk



John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS:

30 day of November, 2020



Julia Glanz, City Administrator
for and at the direction of
Jacob R. Day, Mayor

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("Agreement"), is dated this ____ day of _____ 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, First Move is the owner of all those certain lots and parcels of 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 858 and Map 0107, Grid 0015, Parcel 878, and being in all respects the same lots and parcels of real property conveyed by Salisbury Area Chamber of Commerce, Inc. unto First Move, by Deed dated January 21, 2020 and recorded among the Land Records of Wicomico County, Maryland in Liber 4589, folio 188 (said lots and parcel of real property is 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 a leasing office on the first floor, fifty-three (53) luxury-style apartments on the second through twelfth floors and a commercial retail space on the roof-top (the said twelve-story structure First Move plans to construct at the E. Main Properties is hereinafter referred to as the “**Ross Building**”);

WHEREAS, First Move plans to redevelop the Chamber Property by constructing a six-story structure thereon, which, when complete, will consist of thirty-three (33), two and 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-three (53) residential apartments within the Ross Building are designed to provide housing for a maximum of one hundred seventy (170) tenants, and, the thirty three (33) residential apartments within the Chamber Building are designed to provide housing for a maximum of one hundred thirty (130) tenants, thus, when complete, the FMP Project is intended to provide luxury-style apartment housing for a maximum of three hundred (300) 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 reserve and otherwise make available two hundred seventy-eight (278) 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 no less than two hundred seventy-eight (278) 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 reserve two hundred seventy-eight (278) 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 July 1, 2022 and shall continue for a term of eight (8) years (i.e. July 1, 2022 – June 30, 2030) (the “**Initial Term**”).

(a) The term of this Agreement shall automatically renew for successive terms of four (4) years (each such additional term of four (4) years is hereinafter referred to as a “**Renewal Term**”), unless the City or First Move provides written notice to other party at least one hundred eighty (180) days prior to the end of the Initial Term or any Renewal Term, as the case may be, specifying the 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 the City or First Move, the Initial Term or such applicable Renewal Term, as the case may be, shall automatically renew for the Renewal 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 City will offer alternative parking permits to First Move in other City locations to be determined by the City.

2. **Parking Spaces.** Beginning on July 1, 2022 and continuing for the duration of the Term, the City shall reserve two hundred seventy-eight (278) parking permits, authorizing the holders thereof to use appropriate and available parking spaces in the Downtown Parking Garage for public parking, for purchase by First Move, on behalf of the FMP Tenants, in accordance with the provisions of Sections 3 and 5. (Any and all parking permits purchased by First Move for use by the FMP Tenants as contemplated by this Agreement are hereinafter referred to as the “**Parking Garage Permits**”).

3. **Purchase of the Parking Garage Permits.** Beginning on July 10, 2022, and on or before July 10th 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 seventy-eight (278) Parking Garage Permits for purchase by First Move in any Fiscal Year during the Term of this Agreement. In the event First Move purchases less than two hundred seventy-eight (278) Parking Garage Permits for use in a Fiscal Year, First Move hereby expressly waives and releases the City from and against any and all claims First Move has or may have with respect to any Parking Garage Permits reserved for purchase hereunder which are not purchased by First Move for use during such Fiscal Year.

4. **Purchase Price of Parking Garage Permits.** The default purchase price for a Parking Garage Permit authorizing the holder thereof to park at the Downtown Parking Garage shall be the Student Rate charged by the City for the applicable Fiscal Year. Permits for anyone other than students shall be at the applicable City rate.

All student rate permits shall be distributed exclusively to residents of the Ross who are full-time students at Salisbury University, UMES (University of Maryland, Eastern Shore) or Wor-Wic Community College. Developer shall retain a list of all permits distributed and the identity of the recipient of each student permit. Developer will be responsible for collecting and keeping proof of each students’ eligibility, annually. The City has the right, but not the obligation, to audit the parking records at any time.

No student parking permits will be distributed to anyone, except as authorized herein, nor shall they be utilized by Developer, its employees or guests. Any improper use of a student permit will obligate the Developer to reimburse the City for the difference between the student rate and the highest rate applicable in the Downtown Parking Garage.

5. **No Guarantee of Parking Spots in Downtown Parking Garage.** 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. **Cancellation of Agreement.** Notwithstanding any term to the contrary set forth herein, the Parties expressly acknowledge and agree that, in the event First Move has not obtained a Certificate of Occupancy for each of the Ross Building and the Chamber Building by August 1, 2023 this Agreement shall terminate immediately and shall be of no force and effect.

8. **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.

9. **Effective Date.** This Agreement shall be deemed effective as of the date and year first above written, which shall be the later of the following dates: (a) the date this Agreement is executed by First Move; or, (b) the date this Agreement is executed by the City.

**[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 Developer's Agreement as of the date and year referenced below.

WITNESS/ATTEST:

THE CITY:

City of Salisbury, Maryland

By: _____ (SEAL)
Julia Glanz, City Administrator, for and with
the Authority of Jacob R. Day, Mayor

Date: _____, _____, 2020

FIRST MOVE:

First Move Properties, LLC

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

Date: _____, _____, 2020



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda Pollack, P.E., Director of Infrastructure and Development
Date: November 3, 2020
Re: The Ross Developers Agreement

AP

First Move Properties, LLC, the developer of 130/132/144 East Main Street, is seeking modifications to the Developer's Agreement for The Ross Development. The Developer's Agreement was approved via Resolution No. 2990 on January 13, 2020. The Resolution authorized the Mayor to negotiate and sign an agreement that is substantially similar to the one presented at that time. The Resolution and draft agreement from January is attached for reference.

The changes requested by First Move Properties include:

1. Defining First Move as the owners of the properties.
2. Increasing the number of parking permits from 256 to 278.
3. Increasing the length of the term of the agreement.
4. Increasing the length of the renewal term of the agreement.
5. Defining that the price for each parking permit shall be the established Student Rate charged by the City for that fiscal year.
6. Adding a clause for the cancellation of the agreement.
7. Modifying the effective dates of the agreement.

The City has added language that states that permits for anyone other than students shall be charged at the applicable City rate. Additionally, the Developer shall maintain a list of all students receiving parking permits that reside in the building, The list is subject to audit by the City.

Unless you or the Mayor has further questions, please forward a copy of this memo and the agreement to the City Council.

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~~ are 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:  (SEAL)
Jacob R. Day, Mayor

FIRST MOVE:

First Move Properties, LLC

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