



**SALISBURY CITY COUNCIL
WORK SESSION AGENDA**

**JUNE 7, 2021
ZOOM MEETING**

- 4:30 p.m. Proclamation- Pride Month- presented by Mayor Jacob R. Day
- 4:35 p.m. Presentation- PFLAG- presented by Mark Delancey, Executive Director, PFLAG
- 4:45 p.m. Chesapeake Utilities Corporation- Somerset Natural Gas Project update- Department of Infrastructure and Development (DID) Director Amanda Pollack
- 4:55 p.m. PennTex/Beaver Run Drive Annexation petition discussion- Building Official William Holland
- 5:10 p.m. Ordinance to abandon the alley between Davis Street and East William Street- DID Director Amanda Pollack
- 5:25 p.m. Resolution- agreement for land swap at 116 W. Chestnut- DID Director Amanda Pollack
- 5:40 p.m. Faith Baptist Church Annexation agreement amendment- DID Director Amanda Pollack
- 5:55 p.m. Ordinance to adopt HORIZON Program- Deputy City Administrator Andy Kitzrow
- 6:10 p.m. Administration and Council Remarks
- 6:20 p.m. Adjournment

*Times shown are approximate. Council reserves the right to adjust the agenda as circumstances warrant.
The Council reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland 3-305(b).*

Join Zoom Meeting
<https://us02web.zoom.us/j/5362772908>
Meeting ID: 536 277 2908
Phone: 1.301.715.8592



May 19, 2021 Somerset Project Update

- **Work completed in past month**
 - Pipe and material deliveries completed
 - HDD under South Prong Wicomico River completed on 2/26/21
 - Ongoing construction activities:
 - Grading
 - Stringing/welding/fabrication
 - HDD pipeline installation
 - Open trench pipeline installation
- **Work to be completed in next month**
 - Ongoing construction activities at various locations:
 - Grading
 - Stringing/welding/fabrication
 - HDD pipeline installation
 - Open trench pipeline installation
- **Work performed in Salisbury**
 - Ongoing construction activities:
 - Grading
 - Stringing/welding/fabrication
 - HDD pipeline installation
 - Open trench pipeline installation
 - Approximately 82% of pipeline installed within town of Salisbury as of 5/17/21
- **Anticipated project completion date (Salisbury specific)**
 - Construction completion estimates are weather dependent
 - HDD Complete: 2Q21
 - North Salisbury Tie-ins: Early 3Q21
 - Restoration to be completed as construction is completed in sections
- **Coordination with Salisbury City Staff on Rails to Trails**
 - A small Chesapeake Utilities team is working directly with Will White, of the City of Salisbury to see if there are any areas where the trail aligns with our right of way
 - We learned from RailPros that crossing the rail road discussion will need to be coordinated with the Norfolk Southern Public Projects group
 - Received an approximate location of Rails to Trails near our right of way and underground system, reviewing internally the safety and maintenance impacts

Memorandum

To: Amanda Pollack, Director Infrastructure & Development
From: William T. Holland
Date: 5/13/2021
Re: City Council Work Session of the Proposed Annexation of Beaver Run Drive

The Department of Infrastructure & Development requests the PennTex – Beaver Run Dr. annexation be placed on the City Council work session scheduled for Monday, June 7. As part of the presentation, the City Council will be provided information related to this request, including, but not limited to the following:

- Purpose of the request;
- Consistency with applicable plans and policies;
- Overview of next steps; and
- Obtain consent from the Council to proceed with the annexation request.

Consistent with the City's 2006 Annexation Policies and Procedures, the applicant has signed the annexation petition. Moreover, the annexation petitioner has paid the required annexation deposit to begin the annexation process.

The 3.08-acre site is located on the northeast corner of Rt. 50 and Walston Switch Road which is contiguous to the City of Salisbury corporate limits. This request contains a concept development plan which includes a new 7-Eleven convenience store with updated site improvements.

Attached, please find the cover letter and the signed annexation petition along with an annexation survey, the concept development plan, and an aerial view of the location.

Staff is available to answer questions about this request.

May 6, 2021

City of Salisbury
Department of Building, Permitting & Inspections
Attention: Mr. William T. Holland, Director
125 North Division Street
Salisbury, MD 21801

Re: Annexation Petition
31997 Beaver Run Road
Map 39 – Parcel 264, Block A – Lots 1 and 2
City of Salisbury, Wicomico County, Maryland

Dear Mr. Holland,

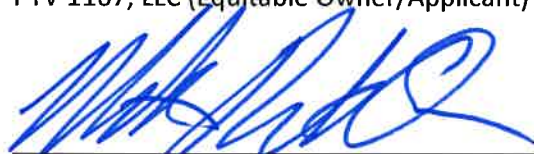
Pursuant to executed Agreement of Sale ("Agreement") between the Owners of the above noted parcels and PTV 1167, LLC ("Buyer"), a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania and authorized to do business in the State of Maryland, located at 400 Penn Center Boulevard, Building 4 – Suite 1000, Pittsburgh, PA 15235, its successors and assigns; Buyer provides this letter, in conjunction with previously submitted materials including an executed Petition for Annexation, as indication that the parties (Seller and Buyer) mutually intend to move forward with the annexation of the above noted properties into the City of Salisbury; subject to an annexation agreement. Attached hereto is a letter executed by both parties further confirming Seller's Authorization of Buyer to pursue annexation of the property.

Buyer intends to enter into a final Annexation Agreement and is permitted to do so by the Seller by virtue of the Agreement.

Sincerely,

PTV 1167, LLC (Equitable Owner/Applicant)

By:



William R. Owen, Asst. Vice President

Enc.

CITY OF SALISBURY

PETITION FOR ANNEXATION

To the Mayor and Council of the City of Salisbury:

I/We request annexation of my/our land to the City of Salisbury.

Parcel(s) # Parcel 264, Block A - Lots 1 & 2

Map # Map 39

SIGNATURE (S)

Signature



5/6/2021

Date

Printed

William R. Owen, Assit. Vice President
PTV 1167, LLC (Equitable Owner/Applicant)

Signature

Date

Printed

Signature

Date

Printed

Signature

Date

Printed



Real Estate Development

400 Penn Center Boulevard, Building 4
Suite 1000
Pittsburgh, PA 15235

T: 724-420-5367

F: 724-420-5369

April 14, 2021

PRESENTED VIA HAND DELIVERY TO:

Jeff Bucaro, VP of Assets
Ocean Petroleum Properties, Inc.

Re: Agreement of Sale by and between Ocean Petroleum Properties, LLC ("Seller") and PTV 1067, LLC, later assigned to PTV 1157, LLC ("Buyer"), dated July 13, 2020, as amended (the "Agreement"), for certain property in Wicomico County, Maryland, as more particularly described therein (the "Property")

Mr. Bucaro:


By your signature below, you verify as follows:

- That Seller is the legal owner of the Property;
- That you have the requisite authority to bind Seller to the terms hereunder;
- That Seller consents and agrees that, Buyer, pursuant to its equitable interest in the Property, may petition the City of Salisbury, Maryland, to have the Property annexed into the City and made a part thereof; and
- That Buyer is authorized to perform all functions, including but not limited to the executing the petition and related documents and appearing before all state and municipal bodies, in order to effectuate the annexation.

If you are in agreement with each of the items above, please sign below. If there are any questions, please do not hesitate to contact me or Jason Donald.

PTV 1057, LLC

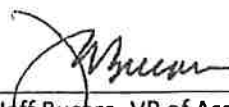
By: PennTex Ventures, LLC



Matt Rippin, General Counsel

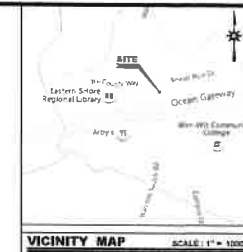
Date: 4/14/2021

Ocean Petroleum Properties, Inc.



Jeff Bucaro, VP of Assets

Date: 4/14/21



SCALE: 1" = 30'

PROJECT TITLE:



7-ELEVEN - BEAVER RUN
31997 BEAVER RUN DRIVE
CITY OF GALLSBURY
WICOMICO CO., MARYLAND

SHIRT TITLE

CONCEPT DEVELOPMENT PLAN

[illegible]

| | | |
|-------------|------|-------------|
| MARK | DATE | DESCRIPTION |
| PROJECT NO. | | 3020187.00 |

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| PROJECT NO.: | 2020187.00 |
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DATE: 05/11/2021

SCALE: 1" = 30'

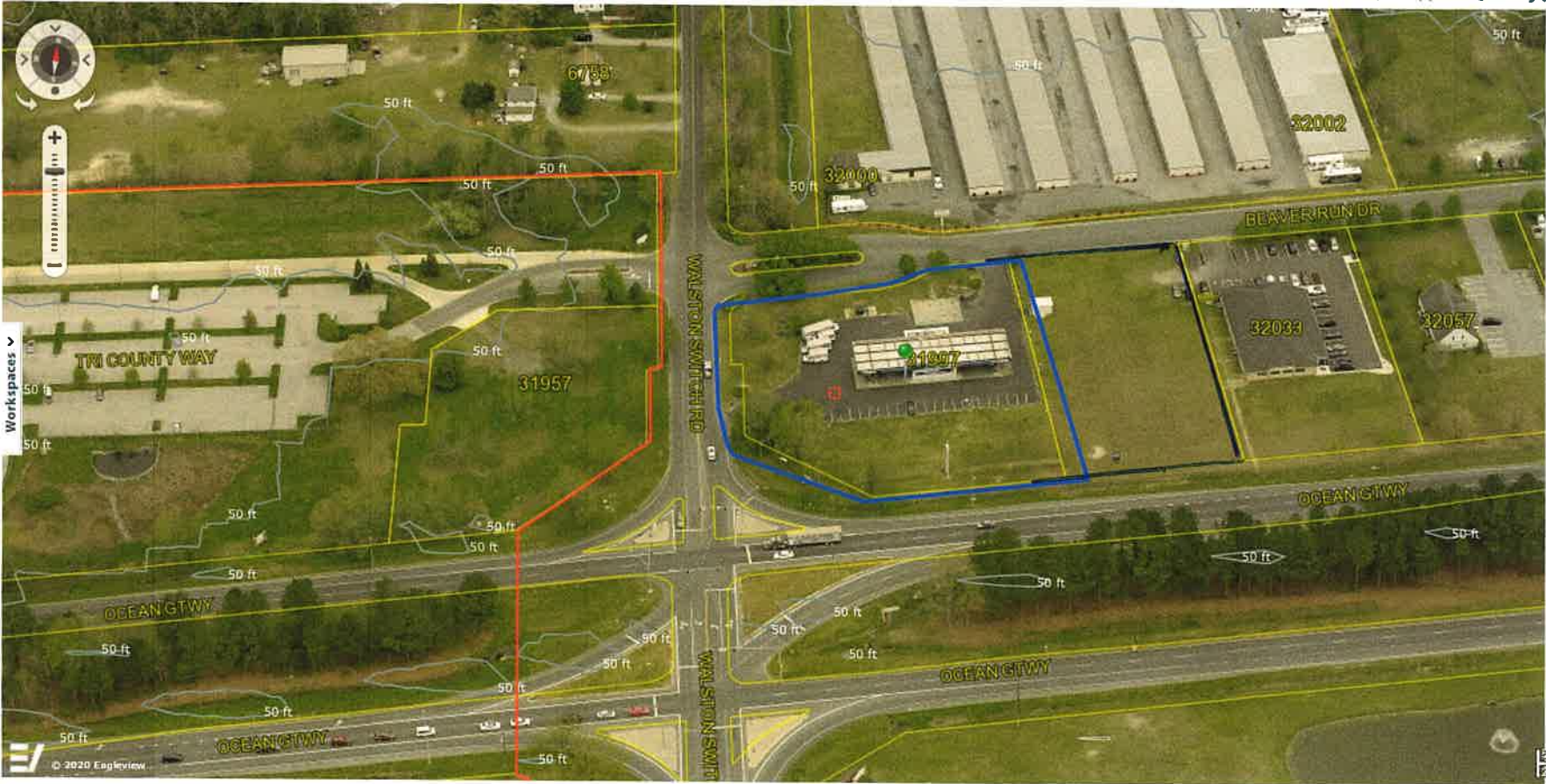
BRANZ, BY. S.H.P. PHOTOGR. JAN.

1 OF 1

1 OF 1

doi:10.1017/S0022292411000500

CONNECTEXPLORER™




map: Auto (Oblique) ▾ Dates: All ▾ < image 1 of 19 > 04/14/2020





City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda Pollack, P.E., Director of Infrastructure and Development 
Date: May 14, 2021
Re: Abandonment of the Alley between Davis Street and East William Street near East Main Street

The Department of Infrastructure and Development received and reviewed a Resubdivision Plat of the lands of Healing Hands Animal Hospital which is located at 727 East Main Street. Discussions about expansion of the building led to the possibility to close the alley located between two parcels owned by CLJW Realty, LLC. The alley runs between Davis Street and East William Street. Abandoning the alley would allow the property owner to add a portion of their other lands to their Hospital lands without restrictions of building across the alley.

On February 1, 2021, the City Surveyor sent letters with an exhibit showing the proposed alley abandonment to each property owner that abuts the alley. A sample letter is attached for reference. All of the owners have responded and have agreed to the abandonment of the alley. Attached is an Ordinance to abandon the alley.

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



February 1, 2021

CLJW Realty, LLC
727 E. Main Street
Salisbury, MD 21804

To Whom It May Concern,

The City of Salisbury has received a request to consider the abandonment of an alley running from Davis Street to E. William Street approximately 127 feet north of E. Main Street. You are being notified as the owner of the following property which is adjoining the alley.

Address: 727 E. Main Street

Tax ID Numbers: 05-020565

The alley is private and has a width of ten (10) feet as shown on the Plat of Glen Haven recorded among the Land records of Wicomico County in book JCK 142, page 999 (outlined in red on the attached drawing). In the event the alley is abandoned, adjoining property lines would be extended to the centerline of the alley to define the portion of the alley to be conveyed to and become part of the adjoining lands. It will be the responsibility of the adjoining property owners to revise and record a new deed for their properties.

At this time, we are requesting your consideration of this request for abandonment to determine if you would have any objection. Such consideration could include the potential for future development of your property or a need for continued use of the alley for access to the rear portion of your property.

We would appreciate your comments on this request within the next two weeks of the date of this letter prior to us making a decision on the request. Should you have any questions, please contact Mr. Les Sherrill, City Surveyor, at 410- 548-3170 or lsherrill@salisbury.md

Sincerely,

Amanda Pollack
City of Salisbury
Director of Infrastructure & Development

unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

Section 4. The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 4.

Section 5. This Ordinance shall take effect from and after the date of its final passage.

Section 6. Upon its final passage, this Ordinance shall not be codified.

THIS ORDINANCE was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the _____ day of _____, 2021 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the _____ day of _____, 2021.

ATTEST:

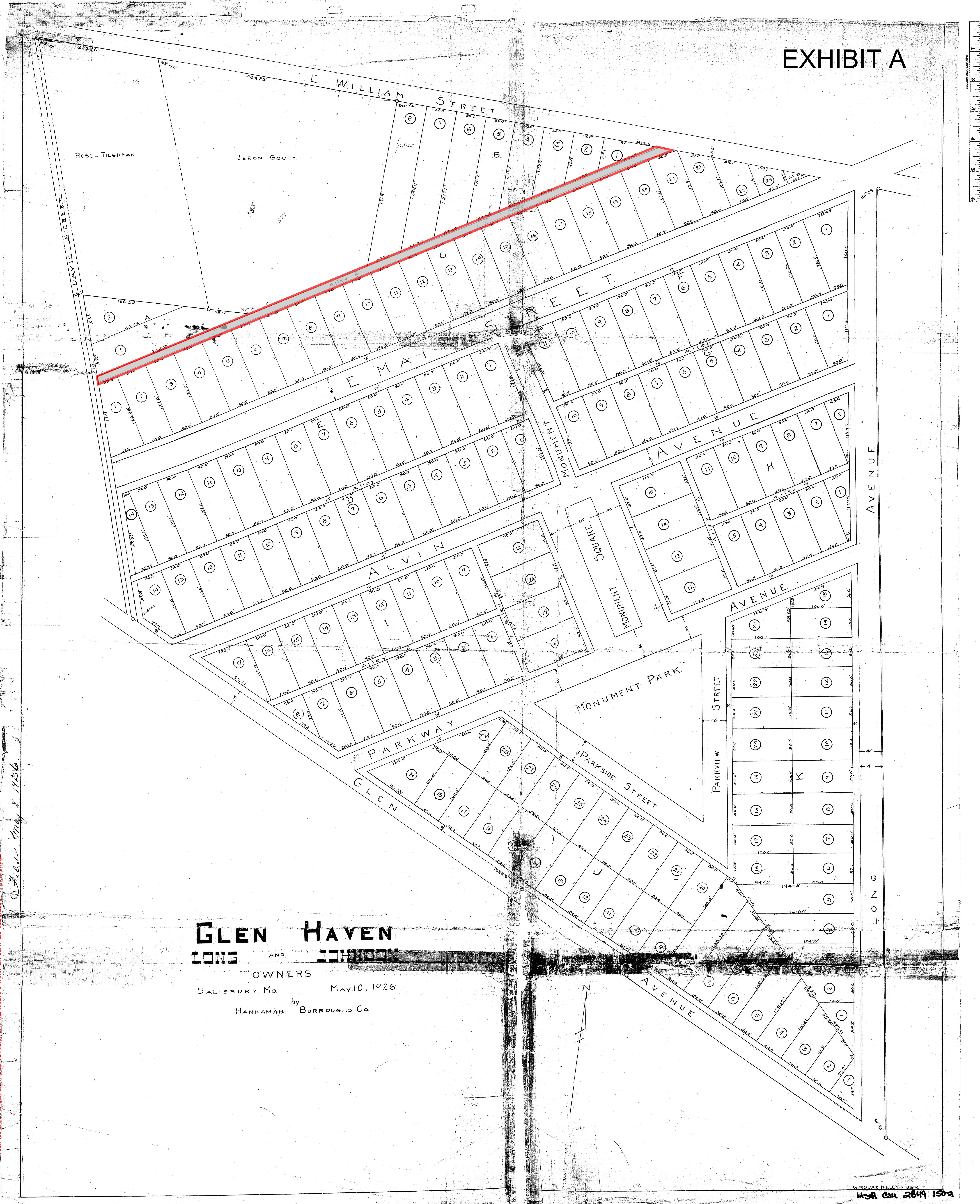
Kimberly R. Nichols, City Clerk

John R. Heath, City Council President

Approved by me, this _____ day of _____, 2021.

Jacob R. Day, Mayor

EXHIBIT A



GLEN HAVEN
LONG AND JOHNSON

OWNERS


SALISBURY, MD

May 10, 1926

by
HANNAMAN BURROUGHS CO.



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda Pollack, P.E., Director of Infrastructure and Development 
Date: May 21, 2021
Re: Resolution for land swap / property line adjustment with Roof Service of Delmarva, LLC at 116 W. Chestnut Street

The Department of Infrastructure and Development has received a request for a land swap with Roof Service of Delmarva, LLC for property at 116 W. Chestnut Street. Attached is an Agreement with an Exhibit showing the properties. The perimeter of Roof Service's property is shown by a light blue line on the attached Exhibit A. The boundary of City parking lot 13 is outlined in yellow on the exhibit.

Roof Service wants to erect fencing/gates around its property to secure the premises and set it up for its intended business uses, including storage of materials and parking of vehicles. Full utilization of Roof Service's property would effectively block ingress and egress to and from the 14' Alley via the 22' Street.

The proposed solution is a swap of land between Roof Service and the City of Salisbury. Per the exhibit, the area in yellow hatch lines is a 2,104 sq. ft. parcel Roof Service would propose to convey to the City (subject to an easement for Roof Service to access the 22' Street), in exchange for the City conveying to Roof Service the rectangular parcel depicted in light blue cross hatching, 5,375 sq. ft. in size, along the west side of the existing concrete median.

The City Swap parcel is essentially unusable space for the City since it is too narrow to effectively use in its present configuration. The City would need to demolish the existing concrete median and reconfigure the lot to try to gain additional parking spaces on the site. Based on the shape and configuration, it is not practical and would not gain significant parking. Conveying the City Swap Parcel makes Roof Service's Parcel more functional and creates a better configuration for parking its business vehicles, therefore we support this request.

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

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WHEREAS, the City of Salisbury (the “**City**”) is the fee simple owner of all that certain real property identified as Map 107, Parcel 0994 (Maryland Tax Account No. 09-062122), located at W. 1st Street, Salisbury, Maryland 21801 (the “**COS Parcel**”); and

WHEREAS, to utilize the RSOD Parcel for fenced storage, Roof Service has requested the City enter into an Agreement to Swap Property (the “**Agreement**”) with Roof Service, providing for the City’s conveyance of a portion of the COS Parcel to Roof Service and Roof Service’s conveyance of a portion of the RSOD Parcel to the City (said conveyances are hereinafter referred to collectively as the “**Land Swap**”), as more particularly shown on the Sketch Plat attached to and incorporated within the Agreement as “Exhibit A”, subject to the terms and conditions set forth in the Agreement (a copy of the Agreement, which is the subject of this Resolution, is attached hereto and incorporated herein as **Exhibit 1**); and

WHEREAS, the City of Salisbury does not object to the Land Swap as provided in the Agreement, which, upon settlement on the conveyances contemplated thereunder, will result in the adjustment of the boundary lines for each of the ROSD Parcel and the COS Parcel, as more particularly shown on “Exhibit A” to the Agreement; and

WHEREAS, pursuant to the terms and conditions contained in the Agreement, attached hereto and incorporated herein as **Exhibit 1**, Roof Service shall be responsible for the payment of all costs and expenses arising from or associated with the Land Swap, including, but not limited to, the preparation and/or recording of a subdivision plat, all deeds and any other documents necessary to effectuate the Land Swap; and

45 **WHEREAS**, any and all documents and plats prepared for, or in connection with, the Land Swap
46 shall be reviewed and approved by the City Solicitor prior to the Mayor's execution thereof on behalf of
47 the City.
48

49 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
50 **SALISBURY, MARYLAND**, as follows:

51 **Section 1.** The Mayor is hereby authorized to execute, on behalf of the City of Salisbury, that
52 certain Agreement to Swap Property, by and between Roof Service of Delmarva, LLC and the City of
53 Salisbury, Maryland, attached hereto and incorporated herein as **Exhibit 1** (the "**Agreement**").

54 **Section 2.** Any and all documents and/or plats prepared by Roof Service of Delmarva, LLC for
55 purposes of, or in connection with, the conveyances of real property contemplated by the Agreement shall
56 be reviewed and approved by the City Solicitor prior to the execution thereof by the Mayor on behalf of the
57 City of Salisbury.

58 **Section 3.** The Mayor, or his designated representative, is hereby authorized to take, on behalf of
59 the City of Salisbury, all such actions, including the negotiation, execution and/or delivery of all deeds,
60 settlement sheets or any other ancillary documents, as may be necessary to complete the transactions
61 contemplated by the terms of the Agreement.
62

63 **THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the
64 Council of the City of Salisbury held on this ____ day of _____, 2021 and is to become effective
65 immediately upon adoption.
66

67 **ATTEST:**
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71 _____
72 **Kimberly R. Nichols, City Clerk**
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74

John R. Heath, City Council President

75 Approved by me, this ____ day of _____, 2021.
76
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79

80 _____
81 **Jacob R. Day, Mayor**

AGREEMENT TO SWAP PROPERTY ("Agreement"), made this _____ day of _____, 2021, by and between **Roof Service of Delmarva, LLC**, a Maryland limited liability company (hereinafter, "RSD") and **City of Salisbury, Maryland**, a body politic and corporate of the State of Maryland (hereinafter, the "City") (sometimes, collectively, the "Parties");

WHEREAS, in order to resolve some configuration and traffic flow issues and benefit their respective properties, RSD and the City have agreed to swap certain portions of their respective properties;

WHEREAS, the creation of the separate parcels that the Parties intend to swap (collectively, the "Swap Parcels") will require certain subdivision work and the creation of a recordable plat depicting the exact boundaries of the Swap Parcels (the "Subdivision Work");

WHEREAS, the Swap Parcels are generally depicted on **Exhibit A** hereto, the yellow parcel (2,104± sq. ft.) to be conveyed to the City (the "City Parcel"); and the light blue parcel (5,375± sq. ft.) to be conveyed to RSD (the "RSD Parcel");

WHEREAS, RSD has agreed to pay the cost of the Subdivision work in order to facilitate the Parties' Agreement; and

WHEREAS, the Parties have reached certain other related agreements;

NOW, THEREFORE, in consideration of the premises including the recitals hereof, the Parties agree as follows:

1. Subdivision Work. RSD shall proceed diligently with the Subdivision Work needed to create legally transferrable parcels corresponding to the Swap Parcels. The City agrees, albeit at no extra cost to the City, to cooperate with the Subdivision Work.

2. Property Swap. Upon the completion of the Subdivision Work, RSD shall schedule with the City settlement of the exchange of the Swap Parcels. RSD shall prepare for the City's review the deed required to accomplish the property exchange, and shall pay all costs directly associated with preparing and recording such deed.

3. Easement And Other Agreements. RSD shall retain a permanent easement over and across the City Parcel for ingress, egress and regress to and from the 22' Street and Lemmon Hill Lane as depicted on Exhibit A. The City, following the property swap, shall be responsible for maintenance of the City Parcel.

4. Enforcement; Successors Bound. This Agreement shall be specifically enforceable by either Party according to its terms. It shall be binding upon the Parties' respective successors, legal representatives and assigns.

AS WITNESS, the authorized agents or offices of the Parties as of the day and year above written:

ATTEST:

ROOF SERVICE OF DELMARVA, LLC

By: _____
Timo Rajala, Managing Member

CITY OF SALISBURY

By: _____
Jacob R. Day, Mayor
City of Salisbury

STATE OF MARYLAND
COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of _____, 2021, before me, the undersigned officer personally appeared, **Timo Rajala**, who acknowledged himself to be Managing Member of Roof **Service of Delmarva, LLC**, a Maryland limited liability company, and that he, as such Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Roof Service of Delmarva, LLC by himself as such Managing Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires

STATE OF MARYLAND
COUNTY OF _____;

I HEREBY CERTIFY that on this _____ day of _____, 2021, before me, a Notary Public of the State of Maryland, personally appeared **Jacob R. Day** who acknowledged himself to be the Mayor of the City of Salisbury and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Salisbury by himself as such officer.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:



BOUNDARY ADJUSTMENT DRAFT

CHRIS CUSTIS
SURVEYING
410.726.3576
P.O. BOX 786
PRINCEGEES AVENUE, MD 21658
Surveying, Topography, Flood Elevation,
Construction Layout, Terrain Modeling, Consulting
chris@custissurveying.com

04/18/2021



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda Pollack, P.E., Director of Infrastructure and Development
Date: May 26, 2021
Re: Faith Baptist Church Annexation Agreement

The Faith Baptist Church Re-stated Annexation Agreement was discussed at the May 17, 2021 work session. The terms of the attached agreement have not been modified since the meeting. The agreement has been executed by the property owners.

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

Memorandum

To: Amanda Pollack, Director, City of Salisbury Department of Infrastructure & Development

From: Michael P. Sullivan

Date: 5/10/2021

Re: *Faith Baptist Annexation – Development Assessments under Proposed Amended & Restated Annexation Agreement*

Review of Request for Amended & Restated Annexation Agreement:

In February 2007, the City of Salisbury (the “**City**”) approved the annexation of approximately 44.38 acres of property located on Dagsboro Road adjacent to the Faith Baptist Church, being all that same real property more particularly identified as Map 0021, Parcel 0184, Map 0021, Parcel 0040 and Map 0021, Parcel 0182 (collectively the “**Annexed Property**”). The Petition for Annexation was submitted by Faith Baptist Church of Salisbury, Maryland (“**Faith Baptist**”) and a third-party land developer Vernon Esham Land Development, Inc. (“**Esham**”). Currently: Parcel 182 is owned exclusively by Faith Baptist; and, Parcel 184 and Parcel 40 is owned by Faith Baptist and Jeffrey L. Clemens and Kelly B. Clemens (collectively the “**Clemens**”) as tenants in common with the right of survivorship (with respect to Parcel 184 and Parcel 40, Faith Baptist holds a 93% ownership interest in each property and the Clemens hold the remaining 7% ownership interest in each property).

The Annexed Property was originally planned for intensive residential development. To facilitate such development, municipal water and wastewater service was required; and, the demand for public utilities necessary to serve the proposed project led Faith Baptist to seek the City’s annexation of the Annexed Property.

As with any other annexation, the City’s annexation of the Annexed Property was conditioned upon the execution of an Annexation Agreement providing the terms and conditions governing the City’s annexation of the Annexed Property. An Annexation Agreement, dated February, 2007, was entered into by Faith Baptist, Esham and the City and was recorded with the Land Records of Wicomico County at Liber 2828, folio 457 (the “**Original Agreement**”) (A copy of the Original Agreement is attached for your review). About one year after the City had annexed the Annexed Property, the real estate market bottomed-out and development of the Annexed Property, as had been proposed, was infeasible. Consequently, the Annexed Property did not get developed as intended originally and the property has remained unimproved since its annexation 12+ years ago. Pursuant to the terms contained in Section 6 of the Original Agreement, no taxes on the Annexed Property have been paid to the City.¹

In the Summer of 2020, representatives for Faith Baptist approached the City’s Administration about the status of the Annexed Property and requested the City revisit the Original Agreement. Despite the improved real estate market, Faith Baptist expressed to the City that the terms of the Original Agreement made development of the Annexed Property infeasible. A review of the Original Agreement indicated there were several significant obligations imposed by the City thereunder that not only would make development of the Annexed Property infeasible but are also inconsistent with the type of obligations the City currently imposes upon property owners requesting annexation. Accordingly, the parties agreed to pursue an Amended and Restated Annexation Agreement that would serve and

¹ The terms contained in Section 6 of the Original Agreement have been amended and are now set forth in Section 4(b) of the Amended Agreement.

protect the City's interests with respect to annexing such a large tract of land and providing municipal service to it, while also creating a feasible pathway for developing the Annexed Property, whether by Faith Baptist or a third-party buyer of the land.

Moving Forward:

Faith Baptist has identified the terms governing the "Development Assessments" due the City under Sections 7(F) and 7(G) of the Original Agreement as particularly making development of the Annexed Property infeasible.² The \$399,920.00 Development Assessment proposed under the Amended Agreement represents a significant reduction in the development assessments and related fees required under the Original Agreement currently in effect. Likewise, overall, the terms proposed under the Amended Agreement reflect a recognition of the challenges the Original Agreement unintentionally created for future development of the Annexed Property thirteen years after the parties executed the document

City staff agrees with Faith Baptist that development of the Annexed Property is the ultimate goal for all parties involved, including the community at large. Accordingly, to facilitate development of the Annexed Property, while also recognizing the impact the Development Assessments provided in the Original Agreement and revised under the Amended Agreement have on the feasibility and marketability of any potential development of the land, below is a proposal for the City consideration's that focuses on incentivizing development of the Annexed Property in return for forgiveness of the Development Assessment:

Faith Baptist has indicated it has no intentions to sell the property identified as Parcel 182 for development. Therefore, the Section 8(c) of the Amended Agreement which governs payment of the Development Assessments only pertains to the "**Development Property**" (i.e. Parcel 184 and Parcel 40). Section 8(c)(i) of the Amended Agreement provides a sliding scale for payment of the Development Assessments based on development of the Annexed Property. For example: Using the amount \$399,920.00 as the amount of the Development Assessment due from the Owner (as defined in the Amended Agreement) of the Development Property, payment of such Development Assessment would be proportionately forgiven based on the Owner of the Development Property meeting certain development milestones as follows:

- Within 12 months from the execution of the Amended Agreement, the Owner of the Development Property (at such time) must make payment to the City in amount of \$99,980.000.
- Within 18 months from the execution of the Amended Agreement, the Owner of the Development Property will submit a comprehensive development plan to the City which depicts the development plans for all buildable space on the Development Property.
- Provided not less than one-third of all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work within thirty-six (36) months following the execution of the Amended Agreement, the City shall waive payment of one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property (or its successor-in-interest) on the 3rd anniversary of the execution of the Amended Agreement.

² Section 7 of the Original Agreement provides the fees to be paid to the City in connection with annexation and development of the Annexed Property, which are summarized as follows:

1. The terms contained in Section 7(F) of the Original Agreement provide in pertinent part: "The Developer agrees to pay a development assessment of \$3,000.00 per dwelling unit..."
2. The terms contained in Section 7(G) of the Original Agreement provide in pertinent part: "The Developer also agrees to pay a development assessment to the City of \$2,000.00 per residential dwelling unit for ninety-four (94) percent of the dwelling units in the proposed development."

May 10, 2021

- Provided not less than two-thirds of all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work within forty-eight (48) months following the execution of the Amended Agreement, the City shall waive payment of an additional one-quarter of the Development Assessment (i.e. \$99,980.00, such that the City will have waived payment in the total amount of \$199,960.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property (or its successor-in-interest) on the 4th anniversary of the execution of the Amended Agreement.
- Provided all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work, within seventy-two (72) months following the execution of the Amended Agreement, the City shall waive payment of the final one-quarter of the Development Assessment (i.e. \$99,980.00, such that the City will have waived payment in the total amount of \$299,940.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property, at such time, on the 6th anniversary of the execution of the Amended Agreement, and no building permit for development of the Development Property may be issued until any and all amount(s) of the Development Assessment have been paid to the City.

Development of the Annexed Property is in the long-term fiscal interests of the City, as improvements to the Annexed Property will result in higher assessments and, consequently, a significant increase in the amount of revenue the City collects from the (currently unimproved) Annexed Property. Connecting payment of the Development Assessment to the completion of development milestones is as close to a win-win for the City and the Petitioners (as defined in the Amended Agreement) as available. If the development milestones set forth in Section 8(c) of the Amended Agreement are met: the Owner of the Development Property can avoid paying some or all of the Development Assessment; and, likewise, the City's interests are served because the Development Property is fully (or at least partially) developed and the revenue generated from tax assessments imposed on the Annexed Property (including the Development Property) are increased, thereby off-setting any revenue lost from the City's conditional waiver of the Development Assessment.

Thank you for your time and consideration of this matter. It is greatly appreciated.

Michael P. Sullivan

ANNEXATION AGREEMENT

THIS AGREEMENT is made this 5th day of February, 2007, by and between the City of Salisbury, a municipal corporation of the State of Maryland (hereinafter, "the City"), and the following two parties: (1) Vernon Esham Land Development, Inc. a Maryland corporation with its principal place of business at P.O. Box 375 in Hebron, Maryland and (2) Faith Baptist Church of Salisbury, Maryland, Inc. whose address is 30505 Dagsboro Road in Salisbury, Maryland 21804 (the latter two parties collectively designated hereinafter, "the Developer").

RECITALS

WHEREAS, the Developer is the record owner of certain real property located in Wicomico County, Maryland, (hereinafter, "the Property"), and more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Developer desires to construct upon the Property an expansion of the existing church and school facilities and a new residential development together with certain amenities; and

WHEREAS, the Property is not presently within the corporate boundaries of the City and is therefore ineligible to receive certain municipal services, including municipal water and wastewater service, that the Developer desires to obtain for the Property; and

WHEREAS, the Developer desires that the City annex the Property and the City desires to annex the Property, provided that certain conditions are satisfied; and

WHEREAS, pursuant to the authority contained in Article 23A of the Annotated Code of Maryland, Sections 19(b) and (n), the Developer and the City have agreed that the following conditions and circumstances will apply to the annexation proceedings and to the Property.

WITNESSETH:**1. WARRANTIES AND REPRESENTATIONS OF CITY:**

A. The City supports the Developer's general plan of development for the Property as set forth in the Concept Development Plan attached hereto as Exhibit B.

B. The City represents that it favors the development of the Property as represented and depicted in the Development Concept Plan, and will support the development as represented and depicted on the foregoing Development Concept Plan.

Return to Clay Hall
D CITY OF SALISBURY
DEPARTMENT OF PUBLIC WORKS
125 N. DIVISION ST. ROOM 202
SALISBURY, MD 21801-4940

C. The City guarantees, covenants and warrants that it will not set any policy, position or course of action which is specifically and solely detrimental to the development of the property and construction of houses and church and school facilities upon the Property, or that is inconsistent with the Development Concept Plan and other applicable regulations and standards.

D. The parties understand and agree that the City's herein provided covenant of support is not intended, nor could it be construed, to legally prohibit the City from enacting such future ordinances or charter provisions or engineering standards or amendments deemed necessary to protect the public health, safety and welfare of the residents of the City, nor from applying such ordinances or charter provisions to the development of the Property, provided such application does not operate to divest prior approvals, nor interfere with the Developer's vested rights to any greater extent than the impact of such ordinances and charter resolutions upon other similarly-situated properties within the City's boundaries.

E. The City acknowledges that the Developer has been induced to enter into this Agreement in part upon the City's representations that the City has and will have adequate capacity in its water and wastewater treatment facilities to provide service to the development contemplated by this Agreement upon the Property.

2. WARRANTIES AND REPRESENTATIONS OF THE DEVELOPER:

A. This Agreement constitutes the formal written consent to annexation by Faith Baptist Church of Salisbury, Inc. as required by Article 23A, Section 19(b). The Developer acknowledges that it will receive a benefit from annexation and agrees, as a bargained-for condition and circumstances applicable to the annexation, that it waives and completely relinquishes any right to withdraw its consent to annexation from the date of execution of this Agreement by all parties. The Developer further agrees that it will not petition the Annexation Resolution to referendum and that, in the event of a referendum in which it is permitted to vote, that it shall vote in favor of the Annexation Resolution.

B. Faith Baptist Church of Salisbury, Inc. warrants and represents that it has full authority to sign this Agreement and that it is in fact the sole owner(s) of the real property encompassed in the Annexation Area and more particularly described in Exhibit "A," and that there is no action pending against it involving it that would in any way affect its right and authority to execute this Agreement.

C. Faith Baptist Church of Salisbury, Inc. warrants and represents that it has the full power and authority to sign this Agreement and Consent and is, in fact, collectively the sole owner of not less than Twenty-five Percent (25%) of the assessed valuation of the real property within the Annexation Area.

3. APPLICATION OF CITY CODE AND CHARTER

From and after the effective date of the Annexation Resolution implementing this Agreement, all provisions of the Charter and Code of the City shall have full force and effect within the Property except as otherwise specifically provided herein.

4. MUNICIPAL SERVICES

Upon the effective date of the Annexation Resolution implementing this Agreement, the City will provide all applicable municipal services to the Annexation Area to the extent that the necessary public facilities exist to provide such services. The City will reserve the public water and sewer capacity to provide the service needed by the development of the Property shown in the concept development plan in Exhibit B.

5. CITY BOUNDARY MARKERS

The Developer will fund and install City Boundary Markers at the boundary lines to the newly enlarged City boundaries and will provide receipt of such work completed to the City within 90 days of expiration of the 45-day referendum period.

6. MUNICIPAL PROPERTY TAX

The City will withhold its right to collect property tax on the Property until a subdivision plat for the Property is officially recorded.

7. DEVELOPMENT CONSIDERATIONS:

A. The Developer agrees that it will cover the costs to the City of effecting the annexation of the Annexation Area, including but not limited to the City's costs for legal fees, planning, and other consulting fees in connection with the preparation of this Agreement and/or the necessary annexation resolution and related documents, for publication of any required notices, and for any other cost or expense reasonably related, in the City's sole judgment, to the annexation.

B. The Developer and City agree that the Property will be developed consistent with the regulations of the zoning district classification referenced in the Annexation Resolution and in substantial conformance with the concept development plan shown as Exhibit B.

C. The Developer acknowledges the City's concern about the adequacy of a single point of ingress/egress to the proposed development upon the Property and the City's desire to see a road connection made between East North Pointe Drive and Dagsboro Road through the proposed development. The Developer agrees that residential development to be constructed upon the Property should be served by a City street connection to East North Pointe Drive in addition to a City street connection to Dagsboro Road and that it is the Developer's responsibility to effectuate the street connection through the adjoining Brown tract. The parties acknowledge that the Developer has entered into a Memorandum of Understanding (attached hereto as Exhibit C) with the owners of the adjoining Brown tract setting forth commitments and conditions for obtaining and dedicating to the City right-of-way for the purpose of extending East North Point Drive through the Brown tract to the proposed development along with the water, sanitary sewer, and other utilities needed by the proposed development of the Property. The preliminary alignment of the right-of-way is made part of this Agreement and is attached hereto as Exhibit D, Preliminary Road Dedication Plat. It is understood by both parties that the dedication of the right-of-way extension of East North Pointe Drive through the Brown tract to the Property shall be obtained in a form acceptable to the City prior to any submittal of a subdivision plat for the development of the residential portion of the Property. The parties agree that any change to the preliminary alignment or any alternative alignment of the extension of East North Pointe Drive through the Brown tract shall be made only upon written approval of the City and no such change or alternative shall relieve the Developer from its responsibilities described herein and more particularly in paragraph D below.

D. The Developer agrees that prior to the issuance by the City of the 50th residential use and occupancy permit on the Property; it shall be the Developer's responsibility, upon an approved public works agreement, to have construction commenced, within the right-of-way described in paragraph C above (or alternative alignment, if approved by the City), a street to City design standards.

E. The Developer agrees to reserve as open space and dedicate to the City as future right-of-way a portion of the property, 30-foot wide, and located at the logical extension of Oliphant Drive, as shown on Exhibit B hereto, which property shall be subjected to a right-of-way easement in favor of the City for possible future construction of a street and pedestrian and bicycle way connecting the existing Oliphant Drive right-of-way to the interior street network of the development.

F. The Developer agrees to pay a development assessment to the City of \$3,000.00 per dwelling unit, the payment of which shall be required as a condition of the issuance of a building permit for each such unit, and which development assessment is understood by the parties to be intended for use by the City in its sole discretion for beatification, restoration, and revitalization improvements to existing neighborhoods in the City and which development assessment is understood by the parties to be in addition to and independent of the City's water and sewer connection charges and any other development impact fees imposed by Wicomico County or the City.

G. The Developer also agrees to pay a development assessment to the City of \$2,000.00 per residential dwelling unit for ninety four (94) percent of the dwelling units in the proposed development. Six (6) percent of the total dwelling units in the proposed development shall be exempted from this assessment. The payment of the assessment shall be made as a condition of the issuance of a building permit and which development assessment is understood by the parties to be intended for use by the City in promoting the implementation of a workforce housing program. The parties acknowledge their shared responsibility in promoting a program through which this development assessment is used by the City to help close the gap between the market rate price of a dwelling unit in the proposed development on the Property and the actual price that a prospective workforce housing purchaser can afford, as determined by the City. The Developer agrees to make available for use as workforce housing units six (6) percent of the total units in the proposed development on the Property and further agrees that the units will be indistinguishable from and entirely equal to the units not made available by the Developer for workforce housing, unless the Developer agrees at his discretion in cooperation with the City to make minor modifications internal to the unit which in a demonstrable way lower construction costs and the fair market rate sales price. The Developer agrees to accept pre-qualified buyers meeting workforce housing eligibility criteria established by the City for up to six (6) percent of the units in the development. If the City does not implement a program by the time the developer obtains his 80th building permit, the per unit development assessment shall apply to all units in the development and the assessment shall be used by the City at its sole discretion to meet housing needs through other means and the developer is relieved of responsibility contained herein with the exception of paying the per unit assessment.

H. The Developer represents that it will establish and incorporate a Homeowners' Association that shall take ownership, control, and responsibility for the maintenance and upkeep of any common areas and public amenities to be provided within the proposed subdivision, other than streets and/or other facilities to be accepted by and maintained by the City.

I. The Developer agrees to reserve as open space a portion of the property, consisting of approximately three and one-third acres (3.3) acres and shown on Exhibit B attached hereto as the "Green". With respect to the "Green", both the City and Developer acknowledge the role of the Planning Commission in the review and approval of development plans for the Property and contemplate that the size and alignment of the green space may vary somewhat from that provided in the concept development plan in Exhibit B. The "Green" shall be designated as common area and be transferred to the ownership of the Homeowners' Association. The Developer agrees to construct upon the "Green" paved bicycle and pedestrian trails providing access and recreational amenities for residents of the development. With respect to all of the open spaces, the Developer agrees to commence installation at his expense trees, shrubs, and other landscaping of the species and caliper and in the locations and at a schedule provided for in the subdivision plats and improvement plans approved by the City. Guarantee of the maintenance of such plantings and landscaping shall be part of the Homeowners' Association covenants.

J. The parties acknowledge the City's preference that the open space reserved by the Developer on the residential portion of the Property be used for low-impact, passive recreation, and ecologically-sensitive stormwater management techniques, rather than for active or field-play recreation and the construction of stormwater management ponds, and the Developer agrees that it shall design the site to conform to this preference through cooperation with the City as needed. Where open space on the Property is set aside for stormwater management, the Developer shall cause easements or covenants, as necessary and appropriate for the permanent maintenance of such facilities, to be imposed upon the open space prior to transfer of ownership to the Homeowners' Association and/or Faith Baptist Church of Salisbury, Inc.

K. The parties acknowledge and agree that the obligations set forth herein on the part of both parties pertain to the Property, unless otherwise expressly stated herein.

8. **RECORD PLAT:**

The Developer will provide the City with a copy of the final record plat for the development of the Property.

9. **MISCELLANEOUS:**

A. The obligations of the parties hereto set forth herein are contingent upon the adoption of an Annexation Resolution effecting the annexation of the Property by the Mayor and City Council of the City of Salisbury and shall be void in the event the City fails to effect such annexation or such annexation is invalidated by referendum or otherwise.

B. The use of singular verb, noun and pronoun forms in this Agreement shall also include the plural forms where such usage is appropriate; the use of the pronoun "it" shall also include, where appropriate "he" or "she" and the possessive pronoun "its" shall also include, where appropriate, "his" "hers" and "theirs."

C. From time to time after the date of this Annexation Agreement, the parties, without charge to each other, will perform such other acts, and will execute, acknowledge and will furnish to the other such instruments, documents, materials and information which either party reasonably may request, in order to effect the consummation of the transactions provided for in this Agreement. Mutual agreement shall be obtained for any such act exceeding \$3,000.00 in cost.

D. This Agreement, which includes all exhibits, schedules and addenda hereto, each of which is incorporated in this Agreement by this reference, shall be recorded among the Land Records of Wicomico County and shall run with the land and be binding upon and inure to the benefit of the parties, their heirs, successors and assigns, and embodies and constitutes the entire understanding, representations, and statements, whether oral or written, are merged in this Annexation Agreement. The parties may renegotiate the terms hereof by mutual agreement, subsequent to the effective date of any Annexation Resolution adopted by the City pursuant hereto, provided that neither this Agreement nor any provisions hereof may be waived, modified or amended unless such modification is in writing and is signed by the party against whom the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument.

E. The parties hereto acknowledge that, in entering into this Agreement, neither party has been induced by, nor has relied upon, nor included as part of the basis of the bargain herein, any representations or statement, whether express or implied, made by any agent, representative or employee, which representation or statement is not expressly set forth in this Agreement.

F. This Agreement shall be construed according to its plain meaning without giving regard to any inference or implication arising from the fact that it may have been drafted in whole or in part by or for any one of the parties hereto.

G. This Agreement, its benefit and burden, shall be assignable, in whole or in part, by the Developer without the consent of the City or of its elected officials, employees or agents, to any purchasers or contract purchasers of the property or any party thereof. However, the Developer will not transfer or pledge as security for any debt or obligation, any interest in all or part of the Annexation Area, without first obtaining the written consent and acknowledgement of the transferee or pledgee to the Annexation Agreement and to the complete observance hereof. The Developer shall provide the City with copies of all documents of transfer or assignment, including exhibits when the documents are fully executed, regardless of recordation.

H. The captions in any Agreement are inserted for convenience only, and in no way define, describe or limit the scope of intent of this Agreement or any of the provisions hereof.

I. The laws of the State of Maryland shall govern the interpretation, validity, and construction of the terms and provisions of this Agreement. If any term or provision of this Agreement is declared illegal or invalid for any reason by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall, nevertheless, remain in full force and effect. Any suit to enforce the terms hereof or for damages or other remedy for the breach or alleged breach hereof shall be brought exclusively in the Courts of the State of Maryland in Wicomico County and the parties expressly consent to the jurisdiction thereof and waive any right that they might otherwise have to bring such action in or transfer or remove such action to the courts of any other jurisdiction.

J. All notices and other communications under this Agreement shall be in writing and shall be sent either by first class mail, postage prepaid, or by personal delivery, addressed to the parties as provided below. Notice shall be deemed given on the date delivered or attempted to be delivered during normal working hours on business days.

IF TO THE CITY: City Administrator
WITH A COPY TO: City Clerk

IF TO THE DEVELOPER: Vernon L. Esham
WITH A COPY TO: Rev. Robert C. Reinert

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS:

[Signature]

THE CITY OF SALISBURY, MARYLAND

By:

[Signature: Carrie P. Tilghman]

WITNESS/ATTEST:

OWNER / DEVELOPER:

VERNON ESHAM LAND DEVELOPMENT, INC.

Susan A. Bruce

By:

[Signature]

WITNESS/ATTEST:

OWNER / DEVELOPER:

FAITH BAPTIST CHURCH OF SALISBURY, MD., INC.

Susan A. Bruce

By:

[Signature: Robert C. Reinert] For Faith Baptist Church

APPROVED AS TO FORM:

[Signature]

, City Attorney

STATE OF MARYLAND

COUNTY OF Wicomico, to wit:

I HEREBY CERTIFY, that on this 5th day of February, 2007, before me, a Notary Public in and for the State aforesaid, personally appeared Barrie Tilghman, who has been satisfactorily proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be a duly elected official of the City of Salisbury, a municipal corporation of the State of Maryland, and that said official, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation as such official.

WITNESS my hand and notarial seal.

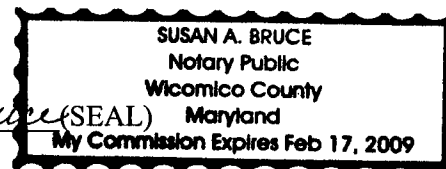
Deborah J. Stam
Notary Public

My Commission Expires: 1/1/2011

I HEREBY CERTIFY, that on this 17th day of January, 2007, before me, a Notary Public in and for the State aforesaid, personally appeared Vernon L. Esham, who has been satisfactorily proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be Member of Vernon Esham Land Development, Inc., a corporation of the State of Maryland, and that, being duly authorized so to do, he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as a Member.

WITNESS my hand and notarial seal.

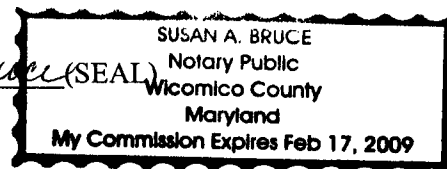
Susan A. Bruce (SEAL)
Notary Public

My Commission Expires: 2/17/09

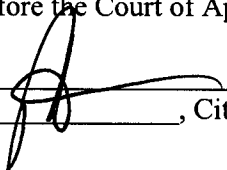
I HEREBY CERTIFY, that on this 17th day of January, 2007, before me, a Notary Public in and for the State aforesaid, personally appeared Robert C. Reinert, who has been satisfactorily proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be Senior Pastor of Faith Baptist Church of Salisbury, Maryland, Inc., a corporation of the State of Maryland, and that, being duly authorized so to do, he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as the Senior Pastor.

WITNESS my hand and notarial seal.

Susan A. Bruce (SEAL)
Notary Public

My Commission Expires: 2/17/09

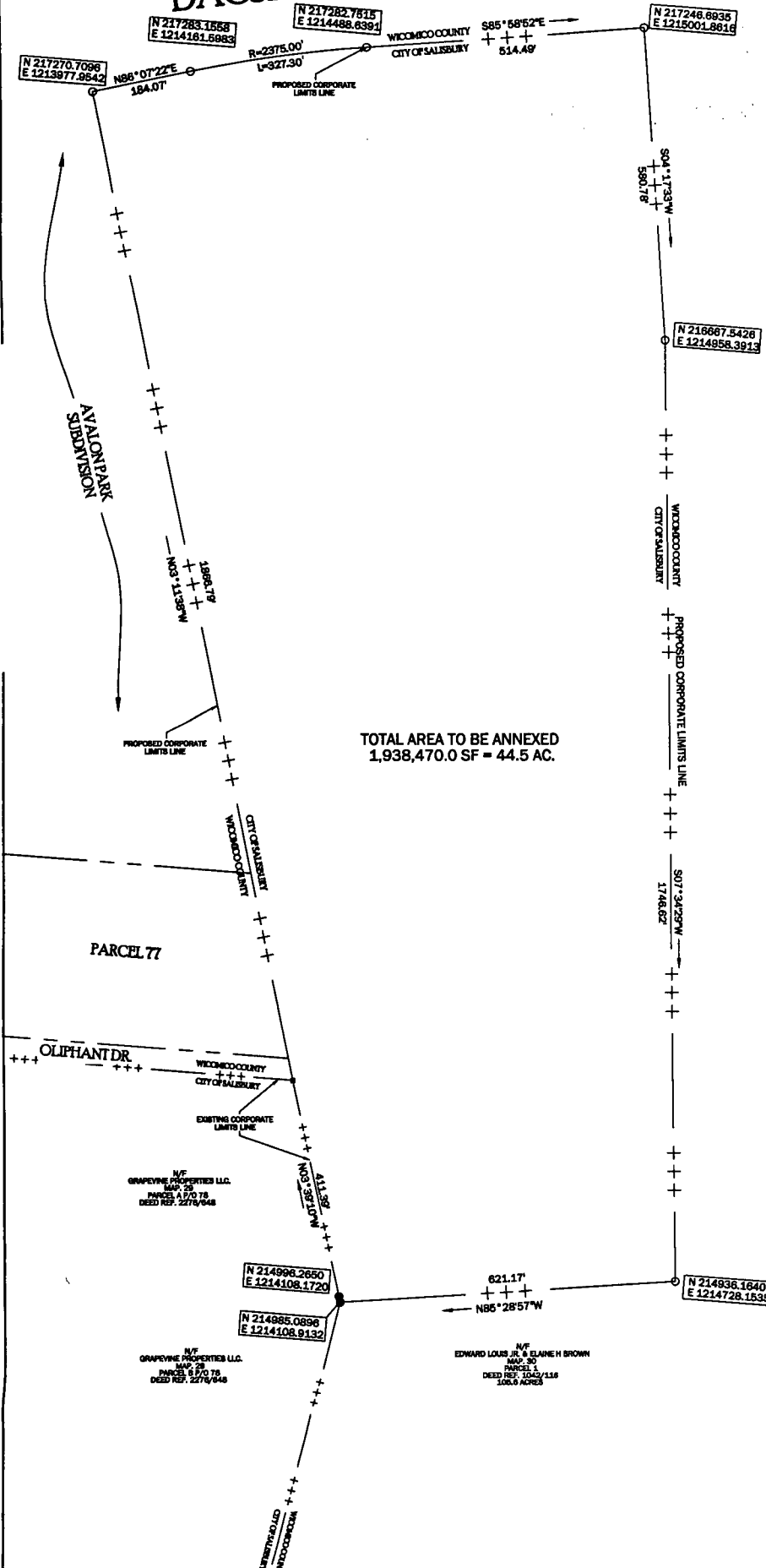
I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of an attorney duly admitted to practice before the Court of Appeals of Maryland.


_____, City Attorney

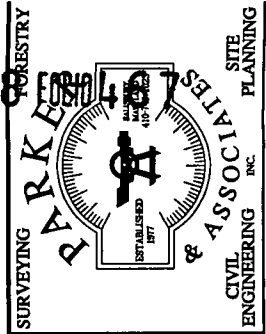
2828-467

LIBER 2828

DAGSBORO ROAD



TOTAL AREA TO BE ANNEXED
1,938,470.0 SF = 44.5 AC.

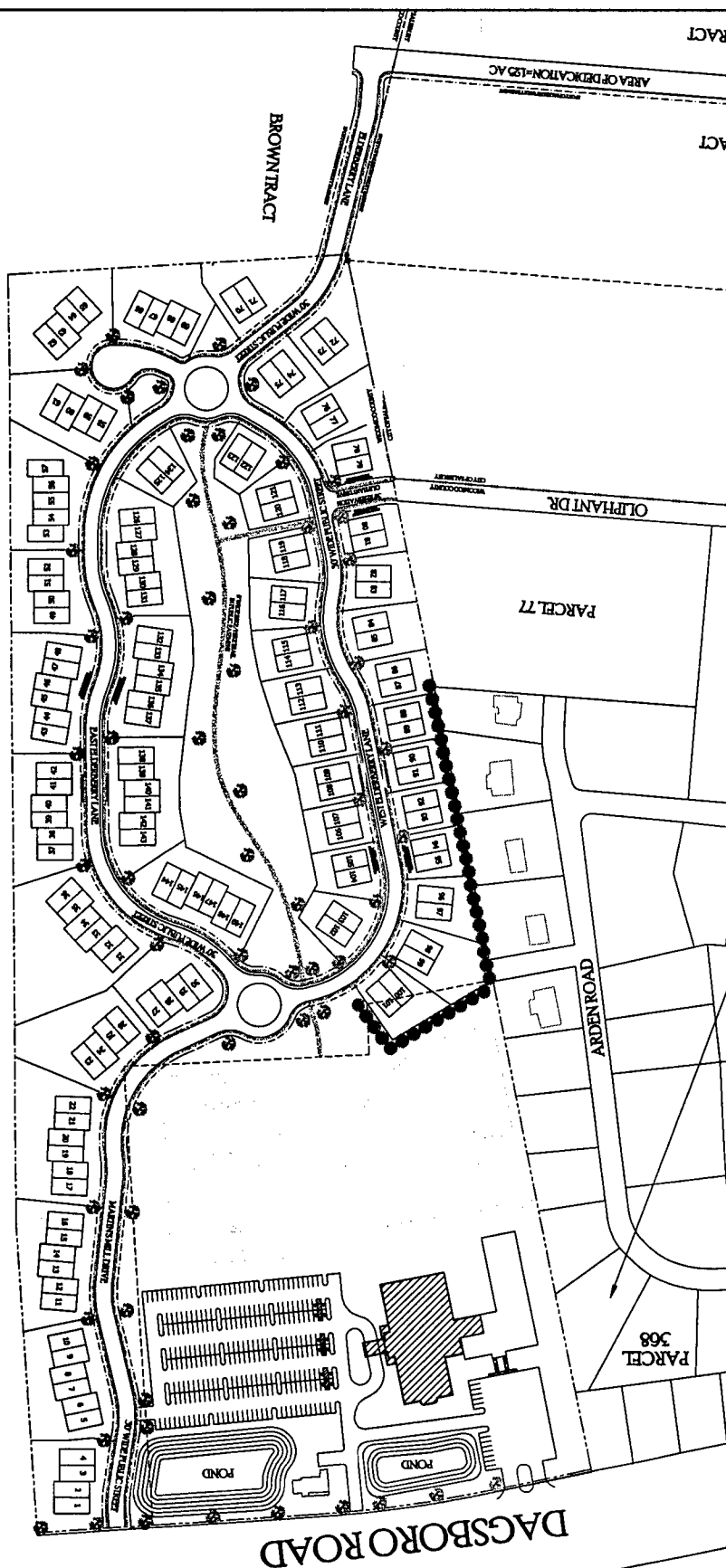


ATTACHMENT A - ANNEXATION SURVEY

DAGSBORO ROAD/FAITH BAPTIST CHURCH ANNEXATION
DAGSBORO ROAD, NORTH SALISBURY
CITY OF SALISBURY, MARYLAND

SCALE: 1"=200'

EXHIBIT "A"



ATTACHMENT B - CONCEPT DEVELOPMENT PLAN

FAITH BAPTIST CHURCH/MARTINS MILL ANNEXATION
DAGSBORO ROAD, NORTH SALISBURY
CITY OF SALISBURY, MARYLAND

SCALE: 1"=200'

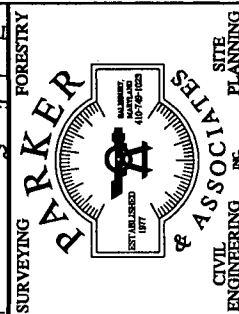


EXHIBIT "B"

Exh. B, 7 "C" LIBER 2828 FOLIO 469

LONG & BADGER, P.A.

Attorneys at Law

JOHN B. LONG, II
JEFFREY E. BADGER

J. GARRETT SELLER
DOUGLAS W. MCCABE

Direct E-Mail
jlong@longbadger.com

124 EAST MAIN STREET
P. O. Box 259
SALISBURY, MARYLAND 21803-0259

Phone: (410) 749-2356
Fax: (410) 749-8731

HOBART B. HUGHES
FULTON P. JEFFERS

-OF COUNSEL-

JOHN WILLIAM LONG
1914-1986

December 14, 2006

Kenneth L. Hooper, Esq.
P.O. Box 138
Salisbury, MD 21803-0138

RE: Faith Baptist Church Easement

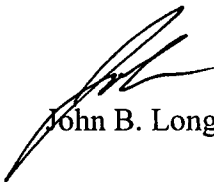
Dear Ken:

I am in receipt of your letter dated December 13, 2006 with respect to the acquisition of a right-of-way over the Brown property which is adjacent to the property being developed by the Church. We are satisfied with your proposal and you may begin to prepare the documents necessary to transfer the easement.

Also, as we discussed the Browns are seriously considering the possibility of making a gift of this right-of-way to the Church. After you have prepared the requisite documents we can discuss the gift aspects further.

Should you have any questions, please do not hesitate to call.

Sincerely,



John B. Long, II

JBLII:o
cc: Ms. Elaine H. Brown
F:\R-E\7-4677\Hooper.lt

MSB H102
AUG 08, 2007 12:24 PM

LIBER 2828 FOLIO 470

TARGET

NORTH
POINTEDR

END OF CURRENT ROW

NORTHPOINTEDR ROADWAY EXTENSION

GRAPEFRUIT, LLC TRACT

SALISBURY 77, LLC TRACT

AREA OF DEDICATION=125 AC

OLIPHANT DR

Received for Record AUG 08 2007 and
recorded in the Land Records of Wicomico
County, Maryland in Liber M.S.B.
No. 2828 Folios 457-470
Mark S. Bowe Clerk

WICOMICO COUNTY
CITY OF SALISBURY

WICOMICO COUNTY
CITY OF SALISBURY

WICOMICO COUNTY
CITY OF SALISBURY

WICOMICO COUNTY
CITY OF SALISBURY

ELDERBERRY LANE

BROWN TRACT

30 WIDE PUBLIC STREET

ATTACHMENT D - PRELIMINARY ROAD DEDICATION DETAIL

FAITH BAPTIST CHURCH/MARTINS MILL ANNEXATION
DAGSBORO ROAD, NORTH SALISBURY
CITY OF SALISBURY, MARYLAND

SCALE: 1"=300'

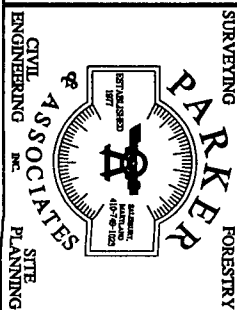


EXHIBIT "D"

Faith Baptist Church/Martins Mill Annexation – Dagsboro Road

AMENDED AND RESTATED ANNEXATION AGREEMENT

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT (“Agreement”) is made this ____ day of _____, 2021, by and between the *City of Salisbury*, a municipal corporation of the State of Maryland (the “City”) and *The Faith Baptist Church of Salisbury, Maryland*, a body corporate of the State of Maryland (“Faith Baptist”), with a principal office address of 108 W. Lehigh Ave., Salisbury, Maryland, and *Jeffrey L. Clemens and Kelly B. Clemens* (collectively the “Clemens”), with an address of 272 Hunsberger Lane, Harleysville, PA 19438 (Faith Baptist and the Clemens are hereinafter referred to collectively as “Petitioners”), (the City and Petitioners are hereinafter referred to collectively as the “Parties”).

RECITALS

WHEREAS, for purposes of this Agreement, the term “Owner” shall be deemed to include (i) each of Petitioners, (ii) each and every subsidiary, successor-in-interest and/or assign of each of Petitioners and (iii) each of and every successor-in-interest, transferee, assignee and/or grantee of any right, title and/or interest of either of Petitioners and/or each of their successors and/or assigns in and to the Property or any portion thereof, such that this Agreement, and all of the terms and conditions set forth herein, shall apply to, be binding in all respects upon and inure to the benefit of each and every successor-in-interest and/or assign of Petitioners, as the case may be;

WHEREAS, Owner owns all that certain real property identified as Map 0021, Grid 0019, Parcel 0184 (Maryland Account Identifier (“SDAT Account No.”) 05-091470), consisting of 25.1800 acres more or less, having a premises address of Dagsboro Road, Salisbury, Maryland 21804 (“Parcel 184”), pursuant to a Deed, dated September May 7 , 2008 and recorded among the Land Records of Wicomico County, Maryland in Liber 2929, folio 057, from Faith Baptist to the Clemens, providing (i) the Clemens and Faith Baptist, as tenants in common with the right of survivorship, own a seven percent (7%) interest in and to Parcel 184, and (ii) Faith Baptist owns, in fee simple, an undivided ninety-three percent (93%) interest in and to Parcel 184;

WHEREAS, Owner owns all that certain real property identified as Map 0021, Grid 0019, Parcel 0040 (SDAT Account No. 05-121027), consisting of 4.1300 acres more or less, having a premises address of 30505 Dagsboro Road, Salisbury, Maryland 21804 (“Parcel 40”), pursuant to a Deed, dated September May 7 , 2008 and recorded among the Land Records of Wicomico County, Maryland in Liber 2929, folio 057, from Faith Baptist to the Clemens, providing (i) the Clemens and Faith Baptist, as tenants in common with the right of survivorship, own a seven percent (7%) interest in and to Parcel 40, and (ii) Faith Baptist owns, in fee simple, an undivided ninety-three percent (93%) interest in and to Parcel 40 (Parcel 184 and Parcel 40 are hereinafter referred to collectively as the “Development Property”);

WHEREAS, Faith Baptist owns, in fee simple, all that certain real property identified as Map 0021, Grid 0019, Parcel 0182 (SDAT Account No. 05-090431), consisting of 15.07 acres more or less, having a premises address of 30505 Dagsboro Road, Salisbury, Maryland 21804 (“Parcel 182”), pursuant to a Deed, dated June 26, 1980 by Walter I. Shockley and Hilda R. Shockley, his wife, and Richard E. Cullen and Charles W. Nelson, Jr., Trustees for Marva Production Credit Association to Faith Baptist, recorded among the Land Records of Wicomico County, Maryland in Liber 944, folio 209 (the Development Property and Parcel 182 are hereinafter referred to collectively as the “Property”);

WHEREAS, Faith Baptist and Vernon Esham Land Development, Inc. (“Vernon”), and the City entered into an Annexation Agreement, dated February 5, 2007 and recorded among the Land Records of Wicomico County, Maryland in Liber M.S.B. No. 2828, Folio 457 (the “Original Agreement”), setting forth the terms and conditions governing the City’s annexation of the Property;

WHEREAS, Petitioners desire to sell the Development Property to a third-party buyer for development of the Property, but, due to market changes from the date of the Original Agreement to the date hereof, the Parties have determined the terms and conditions set forth in the Original Agreement make the sale and development of the Property infeasible;

WHEREAS, in accordance with the foregoing, the Parties have agreed to amend the terms and conditions contained in the Original Agreement as set forth herein;

WHEREAS, pursuant to the authority contained in the Annotated Code of Maryland, Local Government Article, Section 4-101, *et seq.* Petitioners and the City have agreed to execute this Agreement, and the terms and conditions of this Agreement shall apply to the Development Property and Parcel 182, respectively, as set forth herein, and, by their execution of this Agreement, the Parties expressly acknowledge this Agreement, and all of the terms set forth herein, shall be deemed and otherwise construed, in all respects, to supersede and replace the Original Agreement effective the date hereof;

WHEREAS, by their execution of this Agreement, the Parties expressly acknowledge and agree that all terms and conditions set forth in this Agreement shall apply to and otherwise govern any purchaser of the Property and any portion thereof, as if such purchaser was named herein as “**Owner**”.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be the date upon which this Agreement is approved by majority vote of the City Council of the City of Salisbury (the “**City Council**”).

2. **Warranties & Representations of the City.**

(a) When reviewing any development plan(s) submitted for or relating to the Property or any portion thereof, including, but not limited to, any Subdivision Plat subdividing the Property, the City of Salisbury-Wicomico County Planning Commission (the “**Planning Commission**”) and its associated staff, and the City, and all of its officials, employees, representatives, agents and consultants, shall be guided by the provisions of this Agreement, to ensure all matters addressed by this Agreement are implemented in accordance with the terms and conditions set forth herein. All approvals relating to the development and/or use of the Property or any portion thereof granted by any commission, board, body or agent of the City or any other government agency having jurisdiction over the Property and/or any development of any portion thereof, shall, to the fullest extent possible, comply with all terms and conditions of this Agreement.

(b) The Parties expressly acknowledge the City’s execution of this Agreement is not intended, nor shall it be construed, in any way whatsoever, to prohibit the City from enacting or otherwise adopting any future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, the City may deem necessary or appropriate to protect the health, safety and welfare of City residents or the public at large, or from applying the provisions of any such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, to any matter relating to any development or use of the Property or any portion thereof; provided, however, any such application by the City shall not result in the divestment or termination of any prior approval(s) for any development and/or use of the Property or any portion thereof, or interfere with Owner’s vested rights in and to the Property or any portion thereof to an extent greater than the impact such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, have upon other similarly-situated properties located within the municipal limits of the City.

3. **Warranties & Representations of Owner.**

(a) The execution of this Agreement shall constitute Owner’s express written consent to the terms of this Agreement which shall be deemed to run with and otherwise govern the Property and any portion(s) thereof as more particularly set forth herein, including any development and/or use of the Property or any portion(s) thereof, arising from the City’s annexation of the Property by Resolution No.1466 (the “**Annexation Resolution**”), adopted by the City Council of the City of Salisbury on February 12, 2007.

(b) Petitioners each represent and warrant to the City as follows: (i) Each of Petitioners have the full power and authority to execute this Agreement; (ii) Petitioners are the sole owners of Parcel 184 and Parcel 40, and Faith Baptist is the sole owner of Parcel 182, and, accordingly, Petitioners are the sole owners of all that certain real property constituting one hundred percent (100%) of the assessed value of the Property, as of the date and year first above written; and, (iii) to the best of each of Petitioners’ knowledge and belief there is no action pending against or

otherwise involving either of Petitioners and/or the Property which could affect, in any way whatsoever, Petitioners' right and authority to execute this Agreement and the performance of the obligations of any Owner hereunder.

4. Application of City Code and Charter; City Taxes.

(a) The Parties expressly acknowledge and agree, as of the effective date of the Annexation Resolution, the Property has been annexed by the City and, therefore, all provisions of the City of Salisbury Charter and the City Code have had (and shall continue to have) full force and effect as to all matters applicable or otherwise relating to the Property including the development and/or use of any portion thereof, except as otherwise expressly set forth herein. Subject to the terms set forth in Section 4(b), the Parties further expressly acknowledge and agree that, as of the effective date of the Annexation Resolution, the Property has been and shall remain subject to any and all applicable taxes, fees and/or other charges levied, assessed or imposed by the City from time to time.

(b) Notwithstanding any term to the contrary set forth herein, the Parties expressly acknowledge and agree, as of the effective date of the Annexation Resolution and continuing through and until such time as the Petitioners convey the Development Property, or any portion thereof, to any third party or a subdivision plat for the Property is recorded with the Land Records of Wicomico County, Maryland, whichever event occurs first, the City shall withhold its right to collect property tax on the Property.

5. Municipal Zoning. The Parties acknowledge and agree that the Property is zoned by the City as R-10A Residential ("R-10A").

6. Municipal Services.

(a) Subject to the obligations of Owner under Sections 8(c)(i)-(iii), the City agrees to provide all necessary municipal services required for any Owner's development and/or use of the Property or portion thereof, including, but not limited to, adequate water and sewer services, fire and police protection, and other municipal services generally available to residents of the City.

(b) With respect to the allocation of public water and/or wastewater capacity and services for the Property or any portion thereof, any such allocation shall be determined by the City pursuant to the City's allocation plans in effect at the time a request for public water and/or wastewater capacity and services is submitted by the Owner of such portion of the Property for which such capacity and services is requested in accordance with the City's applicable policies and procedures. Notwithstanding any term to the contrary set forth herein, Owner expressly acknowledges and agrees that no public water or wastewater capacity for any existing use(s) or any future development of the Property or portion(s) thereof shall be allocated or otherwise reserved by the City unless and until payment has been made to the City for all applicable capacity fee(s) for any such allocation of water and/or wastewater capacity and services in accordance with the applicable policies of the City existing at the time of such request. The payment to pay any capacity fee(s) or the connection of any portion of the Property to the City's water and/or wastewater systems shall be due to the City upon the earlier occurrence of: (i) Owner's election, at its discretion, to connect the Property, or any portion thereof, to the City's water and/or wastewater systems; or (ii) the issuance, by the Wicomico County Health Department or the Maryland Department of the Environment (as the case may be), of a final non-appealable order requiring the connection of any portion of the Property to the City's water and/or wastewater systems.

7. Standards & Criteria. Should any environmental, engineering or other similar standard or criteria expressly provided in this Agreement be exceeded by any local, state or federal law, regulation, rule, standard or authorized criteria enacted, promulgated, ordered or adopted following the date and year of this Agreement, such newer stricter law, regulation, rule, standard and/or authorized criteria shall govern the rights and obligations of the Parties hereunder.

8. Development Considerations.

(a) **Fees & Costs.** Petitioners, jointly and severally, expressly acknowledge and agree to pay the City for any and all fees, costs and/or expenses, including, but not limited to, any legal fees, planning fees and/or consulting fees, incurred by the City in connection with the preparation of this Agreement and the preparation of any other document(s) pertaining to the annexation of the Property, the publication of any public notice(s) for or in connection with the City's execution of this Agreement and/or the City's annexation of the Property, and/or any other matter relating to or arising from the City's preparation of this Agreement and/or the annexation of the Property, as determined by the

City in its sole discretion. The City shall invoice Faith Baptist for any costs to be paid by Petitioners under this Section 8(a), and Petitioners shall make payment of all amounts due and owing the City under this Section 8(a) within thirty (30) days from Faith Baptist's receipt of such invoice from the City.

(b) Development of the Property. The Property, and all portion(s) thereof, shall be developed in a manner that complies with all laws and regulations governing the development of property located within the City's R-10A Zoning District.

(c) Contribution to the Re-Investment in Existing Neighborhoods.

- (i)** Subject to the terms and conditions contained in this Section 8(c)(i), Owner of the Development Property shall, jointly and severally (if applicable), pay a non-refundable development assessment to the City in the total amount of Three Hundred Ninety-Nine Thousand Nine Hundred Twenty Dollars and 00/100 (\$399,920.00) (the "**Development Assessment**"). The Development Assessment is intended for use by the City, in its sole discretion, for purposes of beautification, restoration and revitalization improvements to existing neighborhoods within the City, or for any other purpose deemed necessary and appropriate by the City. The Development Assessment is in addition to and independent of: **(A)** any water and/or wastewater comprehensive connection charge(s), capacity fee(s) or any other assessment(s) charged, levied or otherwise imposed by the City in connection with any use or development of the Property or any portion thereof; **(B)** any impact fee(s) levied or imposed by Wicomico County or the City relating to any use or development of the Property or any portion thereof; and/or, **(C)** any other charge(s) or fee(s) the City may assess against Owner and/or the Property in accordance with this Agreement and/or any applicable law(s) or regulation(s) governing the development or use of the Property or any portion thereof.
- (ii)** The Parties expressly acknowledge and agree Owner's payment of the Development Assessment as provided in this Section 8(c)(ii) represents a material part of the consideration to be received by the City hereunder, without which the City would not enter into this Agreement. The Development Assessment shall be paid by Owner to the City as follows:
 - (A)** Within twelve (12) months from the date of this Agreement, Owner of the Development Property shall make payment to the City in the amount of Ninety-Nine Thousand Nine Hundred Eighty Dollars and 00/100 (\$99,980.00).
 - (B)** Within eighteen (18) months from the date of this Agreement, Owner of the Development shall submit a comprehensive development plan to the City, which said comprehensive development plan shall depict the development plans for all buildable space on the Development Property.
 - (C)** Provided not less than one-third of all buildable space on the Development Property is developed for use, such that a building permit has been issued for such work at any time prior to thirty-six (36) months from the date of this Agreement, the City shall waive payment of one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from Owner of the Development Property thirty-six (36) months from the date of this Agreement (i.e. on the 3rd anniversary of the execution of this Agreement).
 - (C)** Provided not less than two-thirds of all buildable space on the Development Property is developed for use, such that a building permit has been issued for such work at any time prior to forty-eight (48) months from the date of this Agreement, the City shall waive payment of an additional one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from

Owner of Development Property forty-eight (48) months from the date of this Agreement (i.e. on the 4th anniversary of the execution of this Agreement).

- (D) Provided all buildable space on the Development Property is developed for use, such that a building permit has been issued for such work within seventy-two (72) months from the date of this Agreement, the City shall waive payment of the final one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from Owner of the Development Property sixty (60) months from the date of this Agreement (i.e. on the 6th anniversary of the execution of this Agreement), and, thereafter, no building permit for development of the Annexed Property may be issued until any and all amount(s) of the Development Assessment have been paid to the City.
- (iii) In the event Owner fails to pay any portion of the Development Assessment in accordance with the terms and conditions set forth in Section 8(c)(ii)(A)-(D), the unpaid Development Assessment, or such unpaid portion, shall bear interest from the due date thereof to the date of payment at the rate of ten percent (10%) per annum. Notwithstanding any term to the contrary set forth herein, the Development Assessment (or such portion(s) thereof due and owing the City in accordance with Section 8(c)(i)-(ii)), including all late charges incurred thereon (if any), shall be paid to the City prior to the issuance of a certificate of occupancy for any building or structure constructed at or developed on the Development Property.
- (d) **Public Utility Improvements & Extensions; Wastewater Service.**

 - (i) The Parties expressly acknowledge and agree the extension of public water and wastewater utilities will be necessary to meet the requirements for utility service provided to the Development Property and Parcel 182, respectively. Accordingly, at its sole cost and expense, Owner of the Development Property shall design and construct, or cause to be designed and constructed, such public water and wastewater utility extension(s), including, but not limited to, water main(s), sewer main(s), trunk line(s), fire hydrant(s), pump station(s) and any appurtenant facilities, necessary to serve the Development Property and Parcel 182, respectively, in accordance with all applicable City standards and specifications and subject to the approval of the Director of the City of Salisbury Department of Infrastructure and Development (the City's "**I&D Department**"). Owner further acknowledges and agrees the water and wastewater sewer utility facilities designed and constructed in accordance with this Section 8(d)(i) shall be sized in the manner and to the extent determined by the Director of the City's I&D Department.
 - (ii) The design and construction of the facilities required for the extension of the City's public water and wastewater utilities to serve the Development Property and Parcel 182, respectively, shall be governed by the terms and conditions of a Public Works Agreement by and between Owner of the Development Property and the City (the "**PWA**"). The PWA shall be executed by Owner of the Development Property and the City as soon as reasonably practicable following the Planning Commission's approval of any development plan for or relating to the Development Property, or any portion(s) thereof, including, but not limited to, any subdivision plat providing for the subdivision of the Development Property or any portion(s) thereof, and any such approval from the Planning Commission shall be expressly conditioned upon the Parties' execution of the PWA in accordance with the terms of this Section 8(d)(ii). Notwithstanding any term to the contrary set forth herein, no permit may be issued to Owner of the Development Property, or any party acting for or on such Owner's behalf, for any work associated or in connection with the development of the Development Property, or any portion

thereof, until the PWA is executed by the Owner of the Development Property and the City.

9. Notices. All notices and other communication in connection with this Agreement shall be made in writing and shall be deemed delivered to the addressee thereof as follows: **(a)** when delivered in person on a business day at the address set forth below; **(b)** 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, **(c)** 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 Petitioners shall be addressed to, and delivered at, the following addresses:

[Faith Baptist Church of Salisbury, Maryland and/or Jeffrey L. Clemens and Kelly B. Clemens]
c/o Robert Reinert
30505 Dagsboro Road
Salisbury, Maryland 21804

With a copy to:
Reena Patel, Esquire
Hearne & Bailey, P.A.
126 East Main Street
Salisbury, Maryland 21801

All notices and other communications to the City shall be addressed to, and delivered at, the following addresses:

City of Salisbury
c/o Amanda H. Pollack, P.E., Director
Department of Infrastructure and Development
125 N. Division Street, Room 202
Salisbury, Maryland 21801

With a copy to:
Michael P. Sullivan, Esquire
Cockey, Brennan & Maloney, P.C.
313 Lemmon Hill Lane
Salisbury, Maryland 21801

10. Future Uses of the Property. The Petitioners, on behalf of themselves and all Owners hereafter of the Property or any portion(s) thereof, expressly acknowledge and agree that, upon the effective date of this Agreement, any development or use of the Property or any portion thereof must comply with all applicable laws, rules and regulations of the City, as may be amended from time to time, including, but not limited to, all applicable zoning laws of the City and all applicable permitting and/or approval procedures established by the City governing the development and/or use of property located within the City's R-10A Zoning District. Any development, subdivision and/or use of the Property, or any portion(s) thereof, shall be subject to, and must comply with, all applicable capacity fees and/or impact fees as established by the City and/or Wicomico County existing on the effective date of this Agreement, subject to any amendments thereto as may be adopted or promulgated, from time to time. The Parties expressly acknowledge and agree that neither this Agreement nor any of the terms set forth herein shall, in any way whatsoever, constitute or otherwise be construed as an approval by the City of any specific development at, upon or within the Property, or any portion(s) thereof, including any subdivision of the Property subsequent to the date and year first above written. Except as set forth in Section 4(b), the Parties further expressly acknowledge and agree that neither this Agreement nor any of its terms shall constitute or otherwise be construed as a waiver by the City of: any tax(es) levied or assessed by the City upon the Property or any portion(s) thereof; or, any fee(s), assessment(s) or charge(s) that may be imposed by the City, from time to time, arising from or in connection with any development or any use of the Property, or any portion(s) thereof, and/or any subdivision of the Property.

11. Miscellaneous Provisions.

(a) **Applicable 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, 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 from or in connection with this Agreement.

(b) **Scope of Agreement.** This Agreement is not intended to limit the exercise of any police power(s) of the City, nor is this Agreement intended to limit the operations of the City government or guarantee the outcome of any administrative process. Unless otherwise expressly set forth herein, this Agreement shall be subject to all properly enacted laws and properly adopted governmental regulations, now or hereafter existing and applicable. This Agreement shall not be rendered invalid by reason of the enactment or amendment of any law or the adoption or amendment of any regulation, which is: (i) enacted or adopted by the City in the exercise of a governmental power for a valid governmental purpose; (ii) enacted or adopted by the City as a result of a state or federal mandate; or, (iii) applicable to the Property and to similarly situated property located outside of the City in Wicomico County.

(c) **Entire Agreement.** This Agreement and all exhibits attached hereto constitutes the entire agreement and understanding of the Parties with respect to the transactions contemplated herein, and all prior negotiations, writings and understandings of the Parties relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(d) **Waiver.** None of the terms or conditions of this Agreement may be waived, except if set forth in a writing signed by the party entitled to the benefit of the term(s) or condition(s) so waived; and, such waiver shall be effective only in the specific instance and for the specific purpose for which the waiver is given.

(e) **Development of the Property as a Private Undertaking.** The Parties expressly acknowledge and agree: (i) any development or use of the Property, or any portion thereof, is a private undertaking by such Owner of the Property or such portion(s) thereof; (ii) neither the City nor either of Petitioners is acting as the agent of any other party hereto in any respect hereunder; and, (iii) that each party hereto is an independent contracting entity with respect to the provisions of this Agreement. No partnership, joint venture or other association between the Parties, of any kind whatsoever, is formed by the terms of this Agreement.

(f) **Modification.** Neither this Agreement nor any term contained herein may be waived, modified, amended, discharged or terminated except in a writing signed by the Parties.

(g) **Binding Effect.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any successor municipal authority of the City and all successor Owner(s) of record of the Property or any portion thereof.

(h) **Assignment of Agreement.** The Parties expressly acknowledge and agree this Agreement shall be assignable, in whole or in part, by any Owner to any purchaser of the Property or any portion(s) thereof, without the consent of the City or any of its elected officials, employees or agents; provided, however, any sale, transfer, assignment, gift or conveyance of the Property, or portion(s) thereof, shall be subject to the terms of this Agreement. Notwithstanding any term to the contrary set forth in this Section 11(h), any Owner of the Property or portion(s) thereof shall not transfer, or pledge as security for any debt or obligation, any of its right(s), title and/or interest(s) in or to the Property or any portion(s) thereof without first obtaining the acknowledgment of the transferee or pledgee to be bound by all of the terms and conditions contained in this Agreement, as if such transferee or pledgee was a party to this Agreement, and each and every such Owner shall provide the City with a copy of all documents, including all exhibits attached thereto (if any), evidencing any transfer or assignment by such Owner.

(i) **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and/or assigns.

(j) **Recording of Agreement.** This Agreement, including all exhibits attached hereto (each of which is incorporated in this Agreement by this reference), shall be recorded among the Land Records of Wicomico County, the costs of which shall be paid by Petitioners. This Agreement and all terms and conditions contained herein

shall run with the Property, and all portions thereof, and shall be binding upon and inure to the benefit of the Parties and each and every of their respective heirs, personal representatives, successors, transferees and/or assigns.

(k) No Reliance. Each of the Parties, for itself, expressly acknowledges and agrees that, in entering into this Agreement, such party has not been induced by or relied upon any representation(s) or statement(s), whether express or implied, written or unwritten, made by any agent, representative or employee of the other party to this Agreement, which is not expressly set forth herein.

(l) Further Assurances. The Parties covenant and agree to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to give full effect to this Agreement.

(m) Severability. In the event any term, provision, covenant, agreement or portion of this Agreement, or his application to any person, entity or property, is adjudged invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application thereof to any person, entity or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

(n) 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 party on any matters 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.

(o) Remedies. In addition to each and every remedy now or hereafter existing at law or in equity, the Parties expressly agree that, each party shall have the right to enforce this Agreement by an action for specific performance against the other.

(p) 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.

(q) Time. Time is of the essence with respect to this Agreement and each and every provision hereof.

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

[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 Amended and Restated Annexation Agreement as of the day and year first above written.

ATTEST/WITNESS:

Theresa Ellen Zachell

James J. J. J. J.

James J. J. J. J.

"PETITIONERS":

"Faith Baptist"

Faith Baptist Church of Salisbury, Maryland, Inc.

By: Robert Reinert (Seal)
Robert Reinert, Authorized Officer

The "Clemens"

Jeffrey L. Clemens (Seal)
Jeffrey L. Clemens
Kelly B. Clemens (Seal)
Kelly B. Clemens

THE "CITY":

City of Salisbury, Maryland

By: _____ (Seal)
Jacob R. Day, Mayor

STATE OF Maryland, Wicomico COUNTY, TO WIT:

I HEREBY CERTIFY, that on this 25th day of May, 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared ROBERT REINERT, who acknowledged himself to be an Authorized Officer of FAITH BAPTIST CHURCH OF SALISBURY, MARYLAND, INC., and that he, as such Authorized Officer, being authorized so to do, executed the foregoing instrument on behalf of FAITH BAPTIST CHURCH OF SALISBURY, MARYLAND, INC. for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Theresa Ellen Zocholl
NOTARY PUBLIC
My Commission Expires: March 5, 2025



STATE OF South Carolina COUNTY OF Greenville TO WIT:

I HEREBY CERTIFY that on this 25 day of may, 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JEFFREY L. CLEMENS, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and he acknowledged that he executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Janet Gibson
NOTARY PUBLIC
My Commission Expires: September 4, 2024

STATE OF South Carolina, COUNTY OF Greenville, TO WIT:

I HEREBY CERTIFY that on this 25 day of may, 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared KELLY B. CLEMENS, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and she acknowledged that she executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Janet Gibson
NOTARY PUBLIC
My Commission Expires: September 4, 2024

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2021, 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.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATION BY ATTORNEY

I hereby certify that I am an attorney admitted to practice before the Court of Appeals of Maryland, and that the foregoing instrument was prepared under my supervision.

Michael P. Sullivan, Esq.

MEMORANDUM

To: Julia Glanz, City Administrator
From: Andy Kitzrow, Deputy City Administrator
Subject: Updated HORIZON program
Date: June 1, 2021

Here is summary of the Hotel Or Residential Incentive Zone (HORIZON) program. State Legislation SB 794 and HB 1179 has made this program possible.

Program Goals

The primary goal of the program is to accelerate the construction or expansion of hotel or multifamily residential development in the Central Business Zoning District and Riverfront Redevelopment Zoning Districts (Exhibit 1) spurring economic activity in Downtown Salisbury. Additionally, the program aims to:

- Add new jobs to the Downtown workforce by providing spaces, culture and an environment that will be attractive to new companies and promote local growth.
- Attract private capital investments into the Central Business District and Riverfront Redevelopment Districts by funding large scale development projects that increase the assessed value of real property in Downtown by millions of dollars.

Program Eligibility

- The project location is within one or more of the following Zoning Districts: Central Business District and/or Riverfront Redevelopment Districts and constitutes new development, rehab or revitalization of an existing building or property
- The project must serve primarily as a multifamily residential development or a hotel as defined in the City's annotated code.
- Upon completion, the project will increase the assessed value of the real property base value by at least \$10,000,000.00.

Tax Credit Schedule

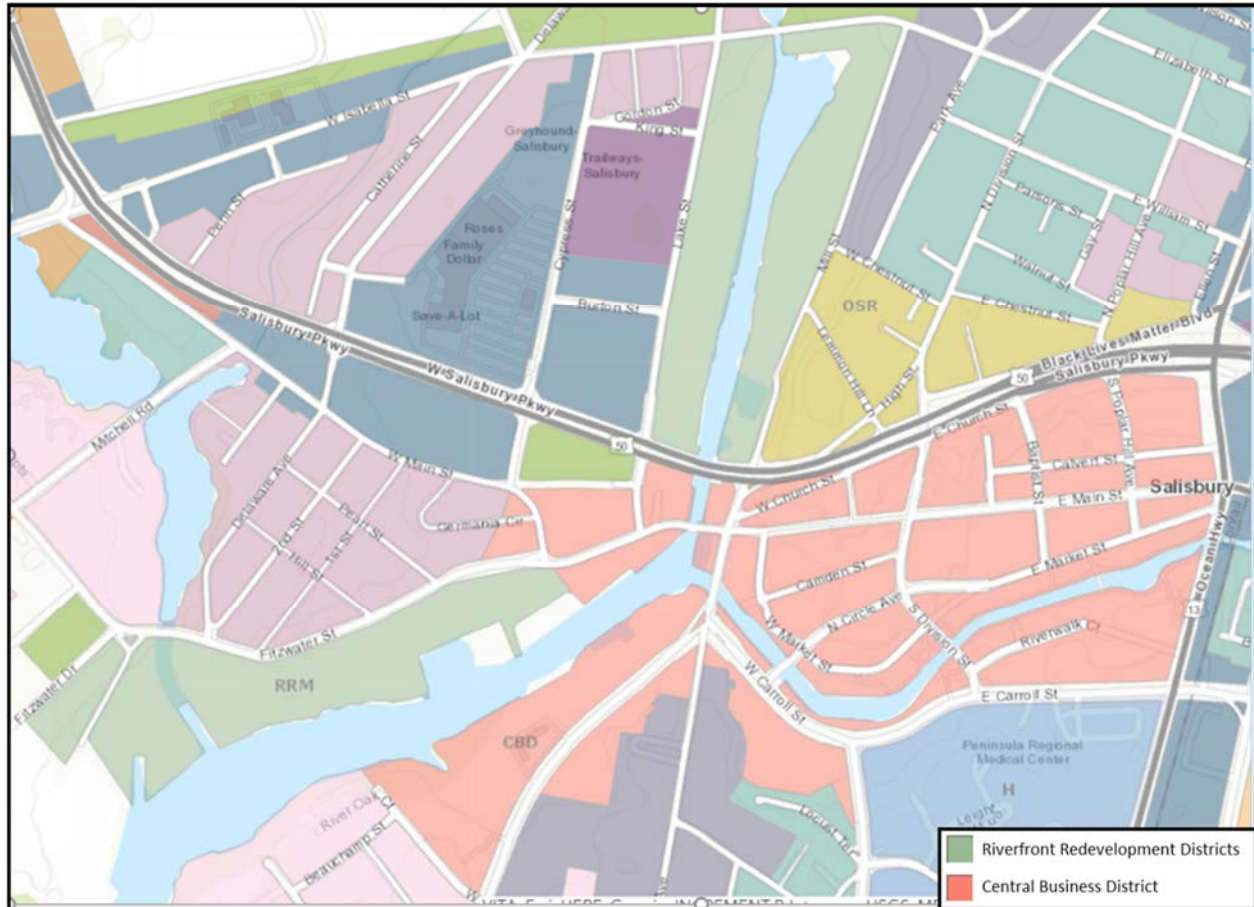
- Twenty (20) year term as follows:

| Tax Billing Year | Real Property Tax Credit |
|------------------|--------------------------|
| Years 1 to 5 | 100% |
| Years 6 to 10 | 80% |
| Years 11 to 15 | 60% |
| Years 16 to 20 | 40% |



MEMORANDUM

Exhibit 1



AN ORDINANCE OF THE CITY OF SALISBURY TO ESTABLISH A PROGRAM TO ENCOURAGE HOTEL AND LARGE SCALE RESIDENTIAL DEVELOPMENT AND REVITALIZATION IN THE DOWNTOWN AREA OF SALISBURY, TO BE KNOWN AS THE HORIZON PROGRAM.

WHEREAS, implementing the Hotel Or Residential Incentive Zone (HORIZON) Program will encourage financially responsible businesses to construct or expand hotel and residential business interests in these areas, which may further result in positive economic and social effects, including, but not limited to increases in cultural activity opportunities, employment opportunities, and business activities; and

WHEREAS, the City has developed a HORIZON Program Guidelines and Application with specific requirements that shall be monitored and administered by the Department of Infrastructure and Development in order to ensure that all information and submissions are correct and properly considered; and

WHEREAS, the City's establishment of the HORIZON Program hereunder is authorized by Section 9-324(d) of the Property-Tax Article of the Annotated Code of Maryland.

Section 1. Title 3 of the Salisbury City Code, entitled “REVENUE AND FINANCE, be and hereby is amended by adding a new Chapter 3.25, titled “Hotel Or Residential Incentive Zone (HORIZON) Program”, as follows:

“Hotel” has the meaning set forth in Chapter 5.68

51 A. The HORIZON Program is hereby established for the purpose of accelerating the construction
52 or expansion of hotel or multifamily residential development in the Central Business Zoning District
53 and Riverfront Redevelopment Zoning Districts.

54
55 B. The City hereby adopts the HORIZON Program Guidelines and the Application submitted with
56 this ordinance and attached hereto and incorporated herein as Exhibit A as the initial approved
57 application and grants administrative powers to the Director of the Department of Infrastructure
58 and Development to process and monitor submitted applications in conjunction with the Department
59 of Finance, to make necessary changes to the application for the HORIZON Program, and to adopt
60 such additional rules and regulations as may be necessary for the proper and efficient administration
61 of the HORIZON Program.

62
63 C. An application for the HORIZON Program shall be subject to final approval by a Resolution of
64 the City Council.

65
66 D. Upon approval of an application for the HORIZON Program by a Resolution of the City Council,
67 the Department of Infrastructure and Development shall prepare a HORIZON Agreement for
68 execution by the applicant and the City.

69
70 E. All real property tax credits received through the HORIZON Program shall run with the land
71 and be payable only to the then current owners of the real property.

72
73 F. The HORIZON Program is hereby established for a period of ten years from the date of final
74 passage of the ordinance. The program shall be reevaluated prior to the end of the third year. The
75 City Council may approve modifications to the HORIZON Program and suspend or terminate the
76 continuance of the HORIZON Program at any time by Resolution of the City Council.

77
78 **BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF**
79 **SALISBURY, MARYLAND, as follows:**

80 **Section 2.** It is the intention of the Mayor and Council of the City of Salisbury that each provision of this
81 Ordinance shall be deemed independent of all other provisions herein.

82 **Section 3.** It is further the intention of the Mayor and Council of the City of Salisbury that if any section,
83 paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or
84 otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to
85 the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this
86 Ordinance shall remain and shall be deemed valid and enforceable.

87 **Section 4.** The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such
88 recitals were specifically set forth at length in this Section 4.

89 **Section 5.** This Ordinance shall take effect from and after the date of its final passage.
90

91 **THIS ORDINANCE** was introduced and read at a Meeting of the Mayor and Council of the City of
92 Salisbury held on the ____ day of _____, 2021 and thereafter, a statement of the substance of
93 the Ordinance having been published as required by law, in the meantime, was finally passed by the Council
94 of the City of Salisbury on the ____ day of _____, 2021.

95
96 ***[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]***

97 ***[SIGNATURES APPEAR ON THE PAGE THAT FOLLOWS]***
98
99

100 **ATTEST:**

101

102

103

104 Kimberly R. Nichols, City Clerk

John R. Heath, City Council President

105

106

107

108 Approved by me, this _____ day of _____, 2021.

109

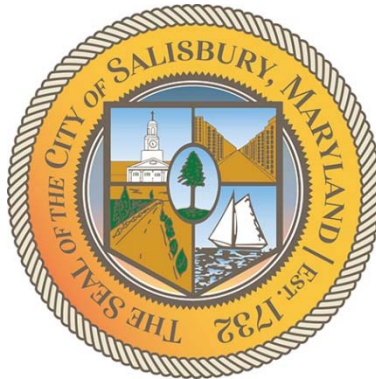
110

111

112

113 Jacob R. Day, Mayor

114



HORIZON Program (Hotel Or Residential Incentive Zone)

Guidelines and Application

Department of Infrastructure & Development
Room 202
125 N. Division Street
Salisbury, Maryland 21801

Phone: 833-SBY-CITY

June 2021

HORIZON Program Guidelines and Application

The HORIZON Program (the “**Program**”) is a real property tax credit program. The primary goal of the Program is to accelerate the construction or expansion of hotel or multifamily residential development in the Central Business Zoning District and Riverfront Redevelopment Zoning Districts (**Exhibit 1**), and to increase economic activity in Downtown Salisbury. Additionally, the Program aims to:

- Add new jobs to the Downtown workforce by providing spaces, culture and an environment that will be attractive to new companies and promote local growth.
- Attract private capital investments into the Central Business District and Riverfront Redevelopment Districts by supporting large scale development projects that increase the assessed value of real property in Downtown Salisbury.

Eligibility for HORIZON Program Real Property Tax Credit

A developer (each an “**Applicant**” and collectively the “**Applicants**”) may submit written documentation to the Director of the Department of Infrastructure & Development (“**DID**”) to establish eligibility for a project (a/the “**Project**”) if the Project meets all of the following criteria:

1. The Project must be located within one or more of the following Zoning Districts: Central Business District and/or Riverfront Redevelopment Districts, and must constitute new development, rehabilitation or revitalization of an existing building or property.
2. The Project must serve primarily as a multifamily residential development or a hotel as defined in the City’s Municipal Code.
3. Upon completion, the Project must increase the assessed value of the real property by at least \$10,000,000.00. If the master plan of the Project is “phased”, each phase must meet the eligibility requirements independently.
4. The Project must comply with all applicable Zoning and Building Codes.
5. The Project must be consistent with the Envision Salisbury Master Plan adopted via Resolution No. 2600, dated March 17, 2016, and the adopted Comprehensive Plan of the City of Salisbury.
6. The Project must comply with all requirements of the Salisbury Historic District Commission (**Exhibit 2**).
7. The Project must not have received a certificate of occupancy before July 1, 2021.

General Conditions

1. Applicants must comply with all Program guidelines and conditions.
2. Applicants must comply with the “Envision Salisbury Master Plan” proposal for the area in which the Project is located.
3. Applicants must be the owner of the Project to apply for the Program.

4. Properties and owners must be current on all City, County, State, and Federal property and income taxes and remain current throughout the tax credit term. Failure to comply will result in suspension of the tax credit during any period of non-compliance and, at the discretion of the City Council, may result in termination of the HORIZON Program Agreement (the “**HORIZON Agreement**”) and the forfeiture of tax credits for the remainder of the HORIZON Program Tax Credit Schedule (the “**Tax Credit Schedule**”). Reimbursement of tax credits received during any period of non-compliance will be required and, to the fullest extent permitted by law, shall be a lien on the property for which the HORIZON Program Tax Credit (the “**Tax Credit**”) was requested.
5. Building permits for a Project must be received within the schedule defined in the HORIZON Agreement.
6. All construction work for a Project must comply with applicable laws, ordinances, building codes and zoning ordinances.
7. The HORIZON Program Application (the “**Application**”) must include drawings of the proposed Project made to the specifications required by the Director of DID which demonstrate what the Project will look like when completed and show it will be in full compliance with the requirements of the Program. Upon completion of the Project, the Applicant will obtain an appraisal of the real property from a qualified professional appraiser approved by the City of Salisbury.
8. The Applicant shall not deviate from the Project described in the Application or change the intended use of the property (e.g. change the Project from development of residential units to development of retail space); doing so without the prior approval of the Director of DID and the Council will disqualify the Project for the Tax Credit.
9. It is expressly agreed that Applicants shall be solely responsible for all safety conditions and compliance with all safety regulations, building codes, ordinances, and other regulations applicable to any Project for which the Tax Credit is sought under the Program.
10. It is expressly understood and agreed by each Applicant, that Applicants waive and release the City of Salisbury, its agents, employees, officers and/or directors from any and all liability for or arising from any property damage, personal injury, or other loss related in any way to the Project, the development and/or construction thereof, the Program or any Tax Credit(s) granted to an Applicant thereunder.
11. Each Applicant shall be responsible for hiring and executing an agreement with a general contractor, licensed to operate in the State of Maryland, for the construction of the Project. Each Applicant shall ensure that, in connection with the construction of the Project, its general contractor provides insurance coverage for comprehensive public liability, property damage liability, builder’s risk, and workers’ compensation.
12. Each Applicant must certify that: there are no hazardous materials located on the property at which the Project is constructed; the Applicant will not cause or allow any hazardous materials to be placed on the property at which the Project is constructed; and, the property

at which the Project is constructed is in compliance with all applicable Federal, State, and local environmental laws and regulations.

13. Applicants shall maintain or cause to be maintained both property and commercial general liability coverage for the Project and the property at which the Project is constructed, both during and after the construction/rehabilitation related to the Program.
14. If a Project is located in the 100-year floodplain, as designated by Federal Emergency Management Agency (FEMA), the Applicant shall be required to provide evidence of flood insurance coverage.
15. Following the completion of the Project, the Applicant shall ensure that all necessary approvals for the commencement of the activities that will take place on the property, including all applicable permits and licenses, have been obtained.
16. Having met all other requirements to receive a building permit, the Applicant shall commence construction of the Project no later than one (1) year after the date that the City Council formally adopts the Resolution approving the Application for the Project or pursuant the schedule as set forth in the HORIZON Agreement.
17. An Applicant must secure the certificate of occupancy for the Project no later than two (2) years after the date the building permit is issued for construction of the Project or pursuant to the schedule as defined in the HORIZON Agreement.
18. An Applicant shall maintain the property and all improvements of the Project, and otherwise comply with the Municipal Code of the City of Salisbury.
19. An Applicant shall authorize the City of Salisbury to promote any Project approved for the Program. Such promotion by the City of Salisbury may include, but is not limited to displaying a sign at the Project site during and after construction, and using photographs and descriptions of the Project in City of Salisbury materials and press releases.
20. The City of Salisbury shall have the right to refuse and/or rescind the Tax Credits granted for the Project if the City believes the work is unsatisfactory, the construction of the Project is not being completed according to the approved Application or the executed HORIZON Agreement, or the increased assessed value of the real property following completion of Project construction does not meet the eligibility requirements.
21. If the property at which a Project approved for the Program is constructed (or planned for construction) changes ownership and becomes tax exempt during the term of the program, then 50% of the Tax Credits received prior to such change of ownership shall be reimbursed to the City of Salisbury within thirty (30) days from the date of settlement on the change of ownership. Reimbursement of Tax Credits received will be required, and, to the fullest extent permitted by law, shall be a lien on the property for which the Tax Credit was requested.

Tax Credit Schedule

1. The Tax Credits will be calculated on the increased assessed value of the real property after completion of the Project. The full amount of taxes shall be collected on the assessed value of the property prior to beginning the Project (including demolition of pre-existing improvements), or the assessed value of the real property without improvements, whichever will result in the higher tax to be paid. Taxes shall also be collected on the increased assessed value, described above, minus any applicable credit throughout the duration of the twenty (20) year term.
2. The Tax Credit may be combined with other local, state, and federal incentive programs. The Tax Credit will not supersede state or federal incentive programs and will be applied after those incentive programs have been applied to the real property tax bill.
3. Once a certificate of occupancy for the Project has been issued and the real property, at which the Project is constructed, has been appraised and its increased assessed value established, the Tax Credit will take effect during the next fiscal year tax billing cycle.
4. Tax Credit in each year will be that percentage set forth in the table below of the excess taxes due over and above the assessed value of the subject real property prior to commencing construction of the Project (including demolition of pre-existing improvements), or the assessed value of the real property without improvements, whichever will result in the higher tax to be paid. The Tax Credit schedule is as follows:

| Tax Billing Year | Real Property Tax Credit |
|-------------------------|---------------------------------|
| Years 1 to 5 | 100% |
| Years 6 to 10 | 80% |
| Years 11 to 15 | 60% |
| Years 16 to 20 | 40% |

Tax Credit Process

- 1) Tax credits will be applied to City of Salisbury the annual real property tax bills issued for the property at which the Project is located. Remaining balances will be due as scheduled.
- 2) Properties must be current on all City, County, State, and Federal property and income taxes. All Tax Credits will be suspended unless and until the property's owners and tenants are current on all City, County and State property and income taxes.
- 3) Once initiated, the Tax Credit will run, in accordance with schedule set forth above, for the entire term of twenty (20) years unless the owner of the property becomes delinquent in paying the aforementioned taxes or fails to meet the eligibility requirements or general conditions of the Program.

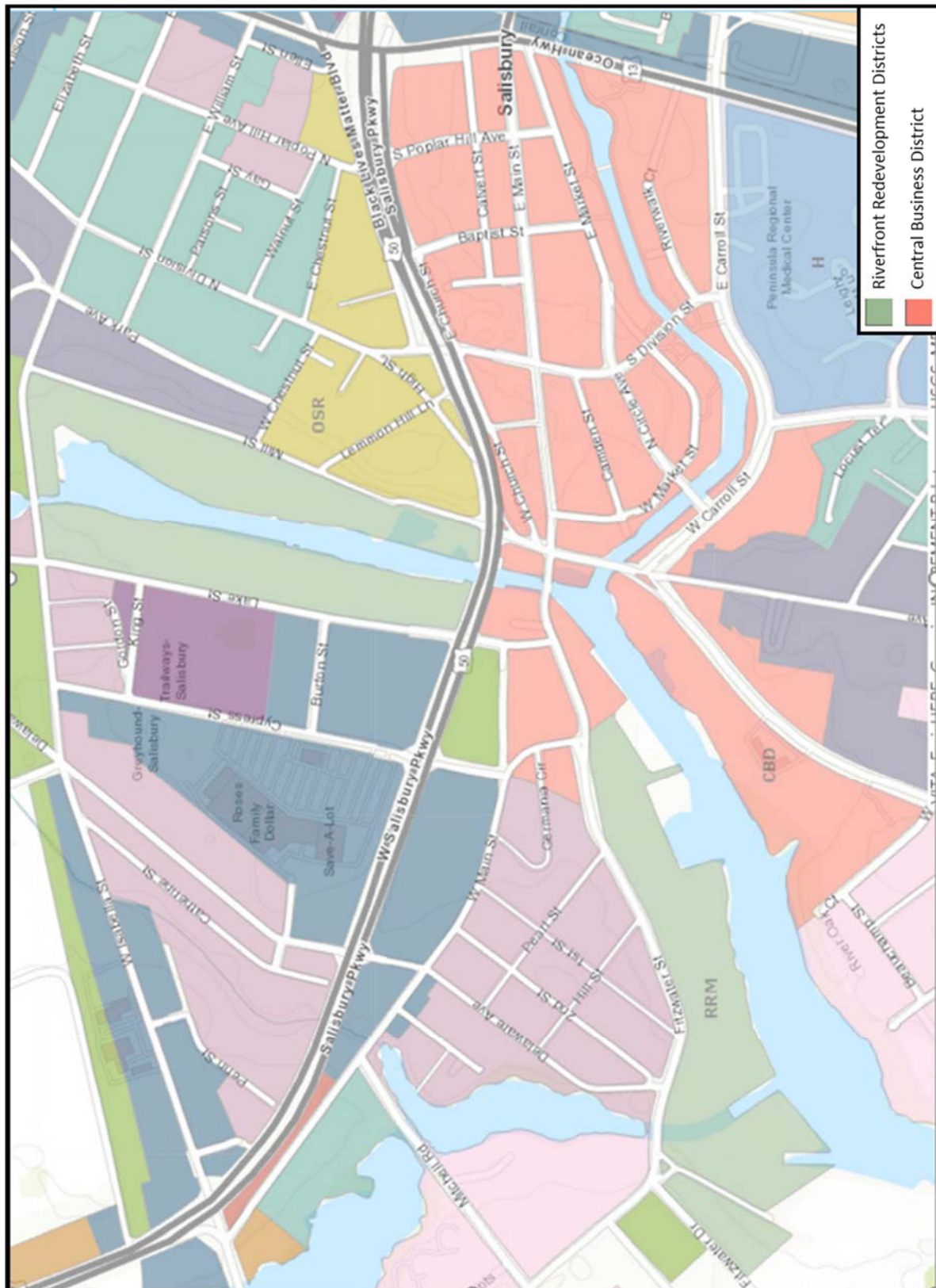
Requirements for Application for HORIZON Tax Credit

1. Interested Applicants must meet with DID staff to review the Program and specifications for the Applicant's Project.
2. Applications are due **(i)** after preliminary site plan approval for the Project by DID and **(ii)** prior to issuance of grading/site permits for the Project.
3. One copy of the completed Application shall be submitted in paper form to DID and an electronic copy shall also be emailed to infdev@salisbury.md.
4. Portions of an Applicant's Application may be kept confidential by completing a Nondisclosure Agreement upon request and providing specific reasons for the request. Notwithstanding any term to the contrary set forth herein, Applicants expressly acknowledge and agree that any Maryland public information act requests may result in information marked "confidential" by the Applicant being disclosed by the City unless such information is prohibited from disclosure (or is permitted for non-disclosure) under Maryland's Public Information Act.
5. **IMPORTANT NOTE:** Applications for the Program must be received, reviewed and confirmed as complete by DID **PRIOR** to the issuance of a certificate of occupancy for the Project.
6. The Director of DID will issue an official Notice of Pre-Approval in the form of a Letter of Intent to be signed by the Applicant. Included with the Letter of Intent will be a preliminary summary of the Tax Credit for the Project and a proposed draft HORIZON Agreement for the Project. Applicants must agree to the negotiated terms within thirty (30) days of receipt of these documents.
7. Once the Letter of Intent has been signed, the Application, and recommendation will be forwarded to the Mayor for the Mayor's pre-approval.
8. Once the Mayor has pre-approved the Project for Program Tax Credit, a Resolution supporting the Tax Credit and proposed HORIZON Agreement for the Project will be presented at a City Council Work Session and subsequently (if approved) the Resolution will be sent to a City Council Legislative Session for City Council approval.
9. DID staff will finalize the HORIZON Agreement for Project, which must be executed by the Applicant within fifteen (15) days of the Applicant's receipt thereof. A HORIZON Agreement shall be valid for one (1) calendar year from the date the HORIZON Agreement is fully executed by the Applicant and the City of Salisbury. If construction of the Project is delayed or the schedule set forth in the HORIZON Agreement is not met, then the Applicants may request a one (1) year extension, and approval of such request shall be considered by the Mayor.
10. Applicants shall agree to adhere to the development schedules included in their Application, in the HORIZON Agreement, and (if applicable) any Land Disposition Agreements/Contracts approved by the City.

Exhibit 1

City of Salisbury Zoning Map

The legend includes the Central Business District and the Riverfront Redevelopment Districts.



City of Salisbury
HORIZON Program Application

General Information

Application Date: _____

Legal Name of Business:

Address of Property:

Legal Description of Property:

Name of Business Owner:

Address of Business Owner:

Business Owner Telephone #: _____

Business Owner E-mail address: _____

Name of Property Owner:

Address of Property Owner:

Property Owner Telephone #: _____

Property Owner E-mail address: _____

Property Assessment Overview

Current Assessed Value of the Real Property \$ _____

Current City of Salisbury Real Property Taxes \$ _____

Completed Project Appraised (Assessed) Value of the Property \$ _____

Project Narrative

1) Brief history of the site / building:

2) General description of the proposed project:

3) How does this project align with the HORIZON program goals?

4) Does this project conform to the City's adopted Downtown Master Plan? How does this project meet the goals of the Downtown Master Plan?

5) Use Mix: Type of Use / Percentages:

6) Property ownership structure:

7) Do you intend to “Phase” the project? If so, please provide phasing details.

8) Description of on- or off-site or associated additional projects, if applicable.

9) Description of public or tenant accessible amenities, if applicable.

Check any other incentives / programs that have been applied for.

- ☐ Enterprise Zone
- ☐ Rise Zone
- ☐ Comprehensive Connection Charge Waivers
- ☐ Revolving Loan Program
- ☐ Community Legacy Grant
- ☐ SD/SGIF Grant
- ☐ Other City/County/State/Federal Grant
- ☐ Other Tax incentives
- ☐ Energy use incentives
- ☐ Other Public investment

I, the Applicant, have read and understand the HORIZON Program guidelines, and I agree to abide by the general conditions as set forth in this application. I further understand that if I am awarded the real property tax credit, I will be required to enter into a HORIZON Program Agreement with the City of Salisbury.

Signature of Business Owner: _____

Printed Name: _____ Date: _____

Signature of Property Owner (if different from Business Owner):

Signature of Property Owner: _____

Printed Name: _____ Date: _____

HORIZON PROGRAM AGREEMENT

THIS HORIZON PROGRAM AGREEMENT (“Agreement”), is dated this ____ day of _____, 20__, by and between the *City of Salisbury, Maryland*, a municipal corporation of the State of Maryland (the “City”), and **NAME**, a Maryland limited liability company (“Name”) (the City and Name are hereinafter referred to collectively as the “Parties”).

Recitals

WHEREAS, via Ordinance No. ____ passed on ____, 2021, the City established a program to encourage hotel and large scale residential development and revitalization in the downtown area of Salisbury, known as the HORIZON Program;

WHEREAS, Name 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 ____, Grid ____, Parcel ____, and being described as “_____”;

WHEREAS, Name plans to develop the property by constructing _____, which, when complete, will consist of _____ (hereinafter referred to as the “Project”);

WHEREAS, the Parties acknowledge and agree the Project will have a material impact on the revitalization of Downtown Salisbury by significantly increasing the (hotel or housing) inventory available within Downtown Salisbury;

WHEREAS, via Resolution No. ____ passed on ____, 20__, the City authorized Name to utilize the HORIZON Program for Project.

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 _____ and shall continue for a term of twenty (20) (the “Term”). HORIZON Program Agreements are valid for one (1) calendar year from the agreement date. If projects are delayed or the schedule defined in the agreement is not met, then applicants may request a 1-year extension which will be considered by the Mayor.

2. Dates.

(a) 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 Name; or, (b) the date this Agreement is executed by the City.

(b) The Building Permit application must be received by the Department of Infrastructure and Development by _____, 20__.

(c) Construction will commence no later than _____, 20__.

(d) The certificate of occupancy must be received no later than _____, 20__.

3. 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. Name may assign this Agreement and all its rights hereunder to any successor(s)-in-interest of Name with respect to its ownership of, or any of its rights in and to, the 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.

(k) **Indemnity.** Name shall indemnify, defend and save harmless the City and its officers, employees and agents from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorneys' fees, in any way connected with any injury to any person or damage to any property or any loss to the City or third parties.

(l) **Unsatisfactory work.** The City shall have the right to refuse tax credits to Name if the City believes the work for development of the Project is unsatisfactory, construction of the Project is not being completed according to the approved HORIZON application or this Agreement, or the increased assessed value of the real property does not meet the eligibility requirements.

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)
Jacob R. Day, Mayor

Date: _____, _____, 20__

DEVELOPER:

Name

By: _____ (SEAL)
Printed name and title

Date: _____, _____, 20__