

## RESOLUTION NO. 3110

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY TO AUTHORIZE THE MAYOR TO ENTER INTO, ON BEHALF OF THE CITY OF SALISBURY, AN AMENDED AND RESTATED ANNEXATION AGREEMENT WITH THE FAITH BAPTIST CHURCH OF SALISBURY, MARYLAND AND JEFFREY L. CLEMENS AND KELLY B. CLEMENS, SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE ANNEXATION AND DEVELOPMENT OF ALL THAT CERTAIN REAL PROPERTY IDENTIFIED AS: (i) MAP 0021, GRID 0019, PARCEL 0184; (ii) MAP 0021, GRID 0019, PARCEL 0040; AND (iii) MAP 0021, GRID 0019, PARCEL 0182.**

**WHEREAS**, pursuant to Resolution No. 1466, dated February 12, 2007, the Council of the City of Salisbury (the "**Council**") approved the City's annexation of all that certain real property identified as: (i) 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**"); (ii) 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**"); and (iii) 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**") (Parcel 184, Parcel 40 and Parcel 182 are hereinafter referred to collectively as the "**Annexed Property**"); and

**WHEREAS**, as a condition of the City's annexation of the Annexed Property as aforesaid, the City and The Faith Baptist Church of Salisbury, Maryland and Vernon Esham Land Development, Inc. (constituting the owners of the Annexed Property at such time) entered into an Annexation Agreement, dated February 5, 2007 and recorded among the Land Records of Wicomico County in Liber 2828, Folio 457 (the "**Original Agreement**"), which set forth the terms and conditions governing the annexation of the Annexed Property and the development thereof; and

**WHEREAS**, The Faith Baptist Church of Salisbury, Maryland and Jeffrey L. Clemens and Kelly B. Clemens, constituting the owners of the Annexed Property as of the date and year of this Resolution (collectively "**Petitioners**"), desire to sell Parcel 184 and Parcel 40 to a third-party buyer for development of the such property, however, due to changes in the market occurring since the date of the Original Agreement, the City and Petitioners have determined the terms and conditions set forth in the Original Agreement make such sale and development of Parcel 184 and Parcel 40 infeasible; and

**WHEREAS**, the City, pursuant to the authority contained in the MD Code, Local Government, Section 4-101, et seq., and Petitioners have agreed to amend the terms and conditions contained in the Original Agreement as more particularly set forth in the Amended and Restated Annexation Agreement (the "**Amended Agreement**") attached hereto and incorporated herein as **Exhibit A**; and

**WHEREAS**, by this Resolution, the Council hereby approves the Amended Agreement (attached hereto and incorporated herein as **Exhibit A**) and hereby authorizes the Mayor's execution thereof on behalf of the City, and, upon the Mayor's execution of the Amended Agreement, all of the terms set forth in the Amended Agreement shall be deemed and otherwise construed to supersede and replace the Original Agreement.

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

**Section 1.** The Mayor is hereby authorized to execute, on behalf of the City of Salisbury, that certain Amended and Restated Annexation Agreement, by and between the City of Salisbury and The Faith Baptist Church of Salisbury, Maryland and Jeffrey L. Clemens and Kelly B. Clemens, attached hereto and incorporated herein as **Exhibit A** (the "**Amended Agreement**").

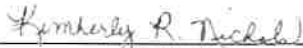
**Section 2.** It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Resolution shall be deemed independent of all other provisions herein.

**Section 3.** It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, 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 Resolution shall remain and shall be deemed valid and enforceable.

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

**THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 14<sup>th</sup> day of June 2021 and is to become effective immediately upon adoption.

**ATTEST:**

  
\_\_\_\_\_  
**Kimberly R. Nichols, City Clerk**

  
\_\_\_\_\_  
**John R. Heath, City Council President**

Approved by me, this 22nd day of June, 2021.

  
\_\_\_\_\_  
**Jacob R. Day, Mayor**

**Faith Baptist Church/Martins Mill Annexation – Dagsboro Road**

**AMENDED AND RESTATED ANNEXATION AGREEMENT**

**THIS AMENDED AND RESTATED ANNEXATION AGREEMENT** (“**Agreement**”) is made this 15<sup>th</sup> day of June, 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 3<sup>rd</sup> 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 4<sup>th</sup> 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 6<sup>th</sup> 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 (3<sup>rd</sup>) 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

Theresa Ellen Zachell

Theresa Ellen Zachell

**"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**

Julie A. English

By: Jacob C. Day (Seal)  
Jacob C. Day, Mayor

STATE OF Maryland Wicomico COUNTY, TO WIT:

I HEREBY CERTIFY that on this 25<sup>th</sup> 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 Zochall

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 Allen

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 Allen

NOTARY PUBLIC

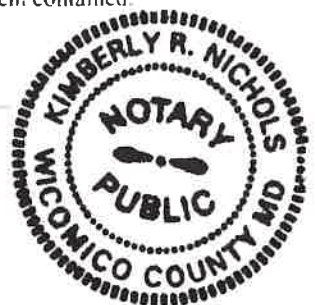
My Commission Expires: September 4, 2024

STATE OF MARYLAND, COUNTY OF Wicomico TO WIT:

I HEREBY CERTIFY that on this 15<sup>th</sup> day of June, 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.

Kimberly R. Nichols



NOTARY PUBLIC

My Commission Expires: 3-5-22

**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.



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

AP

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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*

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## **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.<sup>1</sup>

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

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<sup>1</sup> 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.

May 10, 2021

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.<sup>2</sup> 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 3<sup>rd</sup> anniversary of the execution of the Amended Agreement.

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<sup>2</sup> 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 4<sup>th</sup> 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 6<sup>th</sup> 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