

**RESOLUTION NO. 3167**

**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 LAND DISPOSITION AGREEMENT WITH GREEN STREET HOUSING, LLC SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE SALE AND REDEVELOPMENT OF LOT 30.**

**WHEREAS**, the Mayor and Council of the City of Salisbury (the “**Council**”) determined there is surplus real property owned by the City of Salisbury (the “**City**”) that should be redeveloped and, furthermore, that there is a strong public need for increased infill development within the City;

**WHEREAS**, the City is the owner of all that certain real property identified as Parking Lot 30, Map 0106, Grid 0017, Parcels 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647 and 1648 (hereinafter referred to as the “**Property**”);

**WHEREAS**, on November 10, 2014, the City declared the Property surplus property;

**WHEREAS**, pursuant to § 16-8 *et seq.* of the Salisbury City Charter (the “**Charter**”) and Chapter 2.36 of the Salisbury City Code (the “**City Code**”), the City has the right to offer at public sale property declared surplus and to make awards thereof in the best interest of the City;

**WHEREAS**, City-owned surplus property should be developed, not only in consideration of the highest bid price but in consideration of the type of development proposed, and such development should require a commitment from the purchaser to develop such City-owned surplus property in a manner that will raise the City’s tax base and be in the best interest of the citizens of the City;

**WHEREAS**, in accordance with the foregoing, the City determined it to be in the best interest of the citizens of the City to sell the Property;

**WHEREAS**, the City of Salisbury advertised for proposals for the purchase and redevelopment of the Property;

**WHEREAS**, Council selected the proposal submitted by Green Street Housing, LLC as the awardee of the request for proposal, and, in accordance therewith, authorized the Mayor, on behalf of the City, to enter into that certain Disposition Contract dated March 31, 2016 with Green Street Housing, LLC setting forth the terms and conditions governing Green Street Housing, LLC’s purchase and redevelopment of the Property (the “**Original LDA**”);

**WHEREAS**, for various reasons, including the global COVID-19 pandemic, Green Street Housing, LLC’s purchase and redevelopment of the Property has been delayed, and the City and Green Street Housing, LLC have agreed to amend the Original LDA, in its entirety, as more particularly set forth in the Amended and Restated Land Disposition Agreement (the “**Amended LDA**”) attached hereto and incorporated herein as **Exhibit A**, to provide the rights and obligations of the City and Green Street Housing, LLC with respect to the following: **(i)** Green Street Housing, LLC’s purchase of the Property as described in the Amended LDA; **(ii)** the City’s lease of all that certain real property owned by the City and identified as 501 Willow Street, Salisbury, Maryland 21801 (Map 0106, Grid 0016 and Parcel 1588), consisting of 14,487 square feet, to Green Street Housing, LLC to improve that parcel for the use of parking for the Property; and, **(iii)** such other matter(s) relating to Green Street Housing, LLC’s purchase, lease and redevelopment of the project, subject to the terms and conditions contained in the Amended LDA; and

**WHEREAS**, by this Resolution, the Council **(i)** hereby approves the Amended LDA (attached hereto and incorporated herein as **Exhibit A**) and **(ii)** hereby authorizes the Mayor’s execution thereof on behalf of the City; and,

**WHEREAS**, upon the Mayor's execution of the Amended LDA on behalf of the City, as authorized hereunder, all of the terms set forth in the Amended LDA shall be deemed and otherwise construed to supersede and replace, in its entirety, the Original LDA.

**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 Land Disposition Agreement, by and between the City of Salisbury and Green Street Housing, LLC, attached hereto and incorporated herein as **Exhibit A** (the "**Amended LDA**").


**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 and **Exhibit A** attached hereto, and all exhibits attached thereto and incorporated therein, are incorporated into this section of the Ordinance as if such recitals and **Exhibit A** were specifically set forth at length in this Section 4.

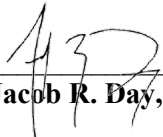
**THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 25<sup>th</sup> day of April, 2022 and is to become effective immediately upon adoption.

**ATTEST:**

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

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

Approved by me, this 27th day of April, 2022.

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

**AMENDED AND RESTATED LAND DISPOSITION AGREEMENT**

**THIS AMENDED AND RESTATED LAND DISPOSITION AGREEMENT** (“Agreement”) is entered into this 25<sup>th</sup> day of April, 2022, being the date that such is fully executed by all parties and fully and finally approved and adopted by the City Council for the City of Salisbury, Maryland (the “Effective Date”) by and between the *City of Salisbury*, a municipal corporation of the State of Maryland (the “City”), and *Green Street Housing, LLC*, a Maryland limited liability company validly registered to do business in the State of Maryland (“Developer”) (the City and Developer are hereinafter referred to collectively as the “Parties”). **WITNESSETH:**

**RECITALS**

**WHEREAS**, for purposes of this Agreement, the term “Developer” shall be deemed to include the following: (i) Green Street Housing, LLC, (ii) each and every subsidiary, successor-in-interest and/or assign of Green Street Housing, LLC and (iii) each of and every successor-in-interest, transferee, assignee and/or grantee of any right, title and/or interest of Green Street Housing, LLC and/or its successor(s)-in-interest(s) and/or assign(s) in and to the Property or any portion thereof. Accordingly, pursuant to the immediately preceding sentence, this Agreement, and all amendments hereto (if any), shall, in all respects, be construed and otherwise deemed to apply to and be binding upon Green Street Housing, LLC and each and every of its successor-in-interest(s) and/or assign(s) with respect to any and all right(s), title and/or interest(s) intended to be granted unto “Developer” in accordance with all terms and conditions set forth herein; and

**WHEREAS**, the City is the owner of all that certain real property identified as Parking Lot 30, Map 0106, Grid 0017, Parcels 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647 and 1648 (hereinafter referred to as the “Property”), and has, by unanimous vote of the Council of the City of Salisbury (the “City Council”), declared the Property to be surplus property; and

**WHEREAS**, Buyer hereby agrees that Seller will reserve and retain, at Closing, all appropriate easements for sidewalks and for installation and maintenance of utilities and roadways, as approved by the City and City Planning Commission; and

**WHEREAS**, Seller is the owner of all that certain real property identified as 501 Willow Street, Map 0106, Grid 0016 and Parcel 1588 consisting of 14,487 square feet and desires to enter into a 99 year lease with Developer for \$1.00 to improve for the use of parking for the Project.

**WHEREAS**, following the City’s declaration of the Property as surplus property, the City and Developer entered into that certain Disposition Contract dated March 31, 2016, which, together with all amendments thereto, set forth *inter alia* the rights and obligations of the Parties for the City’s conveyance of the Property to Developer for the development, construction and operation of the Property as provided therein (the Disposition Contract dated March 31, 2016, and all amendments thereto entered into by the Parties prior to this Agreement are hereinafter referred to collectively as the “Original Agreement”); and

**WHEREAS**, for various reasons, including the global COVID-19 pandemic and the Developer’s failure to be awarded low-income housing tax credits in prior funding rounds, the project as described in the Original Agreement, amended from time to time, and as more fully described on Exhibit A attached hereto (the “Project”) has been delayed and the parties now wish to amend and restate the Original Agreement, in its entirety, to provide the rights and obligations

of the Parties with respect to the City's conveyance of the Property to Developer; Developer's development and construction of the Project; and any other matter(s) related thereto, subject, in every respect, to the terms and conditions set forth herein.

**WHEREAS**, the City desires to provide for a Payment in Lieu of Taxes for the Project.

**NOW, THEREFORE**, for and in consideration of the premises and mutual obligations of the Parties hereto, the foregoing Recitals, which are deemed a substantive part of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the City and Developer, for each of themselves, their respective successors and/or assigns, hereby represent, covenant, warrant and agree as follows:

## **ARTICLE I**

### **GENERAL TERMS FOR CLOSING**

- 1.1 Purchase Price.** In consideration of Developer's payment to the City in the amount of Ten Thousand One and 00/100 Dollars (\$10,001.00) (the "**Purchase Price**"), at Closing, the City shall deliver to Developer a special warranty deed (the "**Deed**"), duly executed and acknowledged by the City, conveying good and merchantable fee simple title to the Property unto Developer. The payment of the Purchase Price shall be made in the following manner: (i) the Parties acknowledge that the City has been paid One Thousand One and 00/00 Dollars previously by Developer as a Deposit towards the Purchase Price; and (ii) the balance of the Purchase Price in cash or readily available funds at Closing (as defined herein).
- 1.2 Closing Date.** Settlement on the City's conveyance of the Property to Developer (hereinafter referred to as "**Closing**") shall take place within ninety (90) days from the date that the Developer receives full and final approval and receipt of a reservation of low-income housing tax credits ("**LIHTC**") from the 2022 competitive round issued by Maryland Department of Housing and Community Development. Developer shall provide the City with written notice within ten (10) days of its receipt of such reservation. The Parties expressly acknowledge that Developer's obligation to close the transaction contemplated herein shall be conditioned upon the receipt of the LIHTC. Should the Developer not be awarded the LIHTC, Developer shall have the right to terminate this Agreement by providing written notice to the City of its election to do so, and neither party shall have any further rights or obligations hereunder. Any advanced monies paid to the City, including, but not limited to any Deposit, shall be promptly returned to Developer upon receipt by the City of such written notice.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

- 2.1 Developer's Representations.** As of the Effective Date and continuing through the Closing Date, Developer represents and warrants to the City as follows:
- 2.1.1** (i) Developer has not applied for, consented to, acquiesced to, nor is subject to, the appointment of a receiver, trustee, custodian, liquidator or other similar official for itself or for all or substantially all of Developer's assets; (ii) Developer is not

subject to any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar proceeding, and Developer has not admitted, in writing, to any inability to pay its debts as they become due; (iii) Developer has not made any assignment for the benefit of creditors; (iv) Developer has not filed a petition or an answer seeking, consenting to or acquiescing in a reorganization or an arrangement with creditors, or sought to take advantage of any bankruptcy law, insolvency law or other law for the benefit of debtors; and (v) Developer has not filed an answer admitting the material obligations of a petition filed against it in any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar proceeding.

2.1.2 (i) Developer is duly formed, validly existing and in good standing, under the laws of its respective state of formation and, if not an entity formed under the laws of the State of Maryland, Developer is duly and validly registered, and in good standing, to do business as a foreign entity in the State of Maryland, (ii) Developer has all necessary power(s) and authority(ies) to execute and deliver this Agreement and to execute and deliver any and all related documents contemplated hereunder.

2.1.3 This Agreement, and any and all related documents contemplated hereunder to be executed by Developer (i) have been duly authorized by all requisite partnership, corporate or other action on the part of Developer, and (ii) are the valid and legally binding obligation of Developer, enforceable in accordance with their respective terms and conditions. Neither the execution and delivery of this Agreement or any related document(s) to be executed by Developer as contemplated hereunder, nor the performance of the obligations of Developer hereunder or thereunder, will result in the violation of any law or provision of the partnership agreement, articles of organization, articles of incorporation, by-laws, operating agreement or other organizational document of Developer, nor will this Agreement or any related document(s) contemplated hereunder, conflict with any order or decree of any court or governmental instrumentality by which Developer is bound.

2.1.4 Developer hereby covenants that it will complete the development and construction of the Project in substantially similar manner as shown and in accordance with all terms and conditions of this Agreement and the original RFP for the project, including, but not limited to affordable housing and a marketplace on the first level of the project (the "Proposal", except for any modification(s) thereto as may be required for any approval(s) and/or permit(s) required for the development and/or construction of the Project). Subject to all applicable Federal, State and/or local law(s), rule(s) and/or regulation(s), there shall be no additional restrictions on Developer's use of the Property except for the terms and conditions set forth in this Agreement and all conditions (if any) imposed by any Federal, State or Local permitting authority having jurisdiction over Developer's development of the Project on the Property as contemplated hereunder.

2.2 **City Representations.** As of the Effective Date and continuing through and until Closing, the City represents and warrants to Developer as follows:

2.2.1 The City is the fee simple owner of the Property.

2.2.2 All bills and claims, incurred by the City, for labor performed and materials furnished to or for the Property, as the case may be, for all periods prior to the

Closing Date have been, or will be, paid in full prior to or on the Closing Date, such that upon Closing, as provided in Section 1.1, there shall be no mechanics' liens or materialmen's liens (whether or not perfected) on or affecting the Property. Notwithstanding any term to the contrary set forth herein, for purposes of this Agreement, Developer shall pay any and all costs or fees relating or arising from any labor performed, services provided and/or materials furnished for or in connection with Developer's acquisition of the Property and/or the development of the Project.

- 2.2.3 To the City's actual knowledge, no party has ever mined on or under Property, and no party has the right to do so.
- 2.2.4 To City's actual knowledge, with respect to the Property: (i) there are no violations or potential violation of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any State or local governmental authority having jurisdiction thereof; and, (ii) except for all publicly recorded restriction(s) encumbering the Property, there are no private restrictive covenants affecting the Property.
- 2.2.5 To the City's actual knowledge: (i) there are no pending or threatened condemnation actions or any other matter(s) of litigation, proceeding(s) or action(s) involving the Property or of any portion(s) thereof; and, (ii) there are no existing, proposed or contemplated plans to widen, modify or realign any public rights-of-way located adjacent to any portion of the Property.
- 2.2.6 To the City's actual knowledge and except as on record in the Land Records for Wicomico County: (i) There are no leases, management, maintenance, service or other contracts with respect to the Property; and, (ii) there are no pending contracts of sale, options to purchase or rights of first refusal (or the like) with respect to the Property.
- 2.2.7 Between the Effective Date and the Closing Date, the City expressly acknowledges and agrees not to: (i) make or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property; or, (ii) otherwise enter into any contract that would be in effect as of the Closing Date or bind Developer with respect to the Property from and after the Closing Date without the prior written approval of Developer.
- 2.2.8 Except as expressly set forth in this Agreement, from and after the Effective Date, the City shall: (i) refrain from performing any grading or excavation on or within, constructing or removing any improvement on or upon, or otherwise making any other change(s) to the Property, without the prior written approval of Developer; (ii) refrain from committing any waste or placing any refuse at or upon the Property; (iii) observe all laws, ordinances, regulations and restrictions affecting the Property and the respective use(s) thereof; (iv) refrain from taking any action to rezone or re-subdivide the Property except as approved by Developer, in writing, which said approval shall be subject to the sole discretion of Developer; and, (v) maintain such insurance now in force on or for the Property as is currently in effect.

- 2.2.9 From and after the Effective Date, the City shall not, without obtaining the prior written consent of Developer, which may be given or withheld in Developer's sole discretion: (i) lease, sell or transfer the Property or any portion(s) thereof or any interest(s) therein; (ii) encumber or pledge the Property or any portion thereof; (iii) grant a lien or security interest in or to the Property or any portion(s) thereof; (iv) permit to exist any recorded mechanics', materialmen's, laborers' or other lien upon all or any portion of the Property, unless such lien is the result of work performed by or on behalf of Developer; or (v) in any other way affect title to the Property prior to the Closing Date.
- 2.2.10 The City has duly and validly authorized, executed and delivered this Agreement, and neither the execution and delivery of this Agreement nor the City's performance of its obligations hereunder are restricted by or violate any legal, contractual or other obligation of the City.
- 2.2.11 Except as expressly set forth in this Agreement, as of the Closing Date, there shall be: (i) no contract(s) affecting the Property or any portion(s) thereof; (ii) no contract(s) or agreement(s) for the management of either the Property or any portion(s) thereof; and, (iii) there shall be no commission(s) due or owing in connection with the City's sale of the Property to Developer as contemplated by this Agreement.
- 2.2.12 There are no assessments for public improvements against the Property which remain unpaid, including, without limitation, any assessment(s) attributable to the construction of sewer or water lines or mains, public streets, sidewalks and /or curbs.

### ARTICLE III

#### **CLOSING ON THE CONVEYANCE OF THE PROPERTY**

- 3.1 **Date, Time and Place of Closing.** The City shall convey the Property unto Developer in accordance with all terms and conditions contained in this Agreement. Subject to the terms set forth in Article I, Closing shall occur at such time as agreed to by the Parties and at such place as determined by Developer, the location of which shall be provided to the City not less than five (5) days prior to the Closing Date. In consideration for Developer's performance of all its obligations under this Agreement and any related document(s) contemplated hereunder, the Parties expressly acknowledge and agree that, subject to the terms set forth in Section 1.1, at Closing, title and possession of the Property shall be conveyed and delivered by the City to Developer.
- 3.2 **Delivery of the Deed at Closing.** At Closing, the City shall deliver or cause to be delivered to Developer the special warranty Deed conveying the Property unto Developer, and Developer shall comply with the provisions set forth herein and shall further contain a covenant of special warranty and further assurances, and shall be subject to any and all publicly recorded easements for public utilities and any other publicly recorded easements, agreements, covenants and/or restrictions encumbering the Property or any portion(s) thereof. Subject to all applicable terms and conditions contained in this Agreement, upon the City's delivery of the executed Deed to Developer at Closing, Developer, at its sole

cost and expense, shall record the Deed in the Land Records for Wicomico County, Maryland.

**3.3 Closing Agent.** Developer shall have the option of selecting its own Title Insurance company or Title Attorney for Closing on its purchase of the Property as contemplated hereunder.

**3.4 Pro-rations/Recordation Taxes.** All public or governmental charges or assessments against the Property which are or may be payable on an annual basis, including all assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed on or prior to the Closing shall be adjusted and apportioned between the Parties as of the Closing Date and shall be assumed and paid thereafter by Developer, regardless of whether any such assessments have been levied as of the Closing Date. In addition, the costs of any and all state and local recordation and transfer taxes arising from the City's conveyance of the Property to Developer shall be paid by Developer at Closing.

**3.5 Site Plan Approval.**

**3.5.1.** By its execution of this Agreement, Developer hereby expressly acknowledges and agrees that, on or before Ninety (90) days after Closing, Developer shall submit a final site plan for the Project (the "**Final Site Plan**") to City DID for its review and acceptance thereof, which said Final Site Plan shall provide for the development and construction of the Project as contemplated herein and in accordance with all terms and conditions set forth herein, subject to all applicable State and local law(s), rule(s) and/or regulations(s) governing final site plans for property development. Upon City DID's acceptance of the Final Site Plan, City DID shall have the Final Site Plan promptly scheduled for consideration and approval by the Planning Commission.

**3.5.2** In the event Developer shall fail or refuse, for any reason(s) whatsoever (or no reason), to submit the Final Site Plan for the Project to DID within the time limit prescribed herein, the City, at its sole discretion, may assess the Delayed Performance Penalties (as defined below) in accordance with the terms and conditions contained in Section 3.9.

**3.6 Building Permit.**

**3.6.1** By its execution of this Agreement, Developer hereby expressly acknowledges and agrees that, on or before thirty (30) days from Final Site Plan approval as described in Section 3.5 herein, Developer shall have applied for and diligently sought from the City all building permits necessary for construction of the Project ("**Building Permit**"). The Building Permit requested by Developer in connection with the Project hereunder shall: (i) comply with all applicable Federal, State and local law(s), rule(s) and regulation(s) governing the construction of the improvements which are the subject of such Building Permit; and (ii) shall be subject to review and approval by City DID in accordance with its policies and procedures governing the issuance of building permits.

**3.6.2** In the event Developer fails to obtain all Building Permit for construction of the Project within ninety (90) days from submission of a Building Permit application



as described in Section 3.6.1 due to delay(s) outside the control of Developer and which otherwise do not arise from, or relate to, any breach by Developer of its obligations hereunder, such time period set forth herein for such milestone shall be extended by one (1) day for each and every day of such delay and until such time as the Building Permit is issued by City DID to Developer.

**3.6.3** In the event the Building Permit for construction of the Project is not issued by City DID to Developer within Six (6) months from the date Developer submits its request for the issuance of the Building Permit to City DID, provided such delay(s) does not arise from, or relate to, any breach by Developer of its obligations hereunder, including, but not limited to, Developer's obligation to comply with all applicable Federal, State and/or local law(s), rule(s) and/or regulation(s) governing the Building Permit for the construction of the Project, Developer shall have the right to terminate this Agreement by delivering written notice to the City, c/o Jacob R. Day, Mayor, specifying Developer's election to terminate this Agreement in accordance with this Section 3.6.3.

### **3.7 Certificate of Occupancy Completion.**

**3.7.1** Developer expressly acknowledges and agrees that Developer shall (i) substantially complete the Project in accordance with all terms and conditions of this Agreement, such that Developer shall have secured a Certificate of Occupancy from the City for the Project within Twenty-Four (24) Months after the Building Permit has been issued (the "C-O Deadline"). Subject to all applicable Federal, State and local law(s), rule(s) and regulation(s) and Developer's performance of all its obligations in accordance with all terms and conditions of this Agreement, the issuance of a Certificate of Occupancy shall not be unreasonably withheld by the City.

**3.7.2** Notwithstanding any term to the contrary set forth herein, in the event Developer has not secured a Certificate of Occupancy from the City for a Certificate of Occupancy for the Project on or before the C-O Deadline, Developer may, in its sole and absolute discretion, and without incurring liability for the Delayed Performance Penalties set forth in Section 3.9, extend the C-O Deadline and the performance of Developer's obligations under Section 3.7.1, by up to Twelve (12) months (said extended time period is hereinafter referred to as the "Extended C-O Deadline"); provided, however, the right to extend the C-O Deadline granted to Developer under this Section 3.7.2 may be exercised by Developer only once and, if exercised by Developer, such Extended C-O Deadline shall apply to Developer's completion of the development and construction of all, and not less than all, of the improvements constituting the Project as approved by the City for issuance of the Building Permit.

**3.8 Delayed Performance Penalties.** Except as expressly set forth in Section 3.7.2, in the event Developer fails to perform its obligations herein, the City, at its sole discretion, may assess financial penalties (each a "Delayed Performance Penalty", collectively the "Delayed Performance Penalties") against Developer. A Delayed Performance Penalty may be assessed by the City against Developer beginning thirty (30) days from the date of written notice from the City to Developer specifying the obligation(s) Developer failed to performed in accordance with the terms and conditions contained herein (said written

notice from the City to Developer is hereinafter referred to as a "Notice of Penalty"). If Developer fails to cure the default(s) specified in the Notice of Penalty within Thirty (30) days from the date of delivery thereof to Developer, the City may, in its sole discretion, assess a Delayed Performance Penalty against Developer in an amount which does not exceed One Thousand and 00/100 Dollars (\$1,000.00) for each and every month Developer remains in default of its obligation(s) herein (subject to the provisions contained in Section 3.7.2, if applicable), as the case may be. Notwithstanding any term to the contrary set forth herein, the maximum aggregate amount of the Delayed Performance Penalties the City may assess against the City against Developer under this Section 3.8 shall not exceed Fifty Thousand Dollars and 00/100 (\$50,000.00).

- 3.9 **Merger.** Parties expressly acknowledge and agree that none of the provisions of this Agreement shall be merged by reason of any deed transferring title to Property to Developer or any of its successor(s)-in-interest and/or assign(s).
- 3.10 **Assignment.** Developer shall have the right to assign the rights and obligations under this Agreement to a related party without the prior written consent of the City.
- 3.11 **Cooperation.** The City shall make good faith efforts regarding the consideration of any request submitted by Developer for approval of any financing incentive(s), including by way of example only: Payment in Lieu of Taxes, Enterprise Zone designation, Comprehensive Connection Fee Waiver(s), HORIZON Program benefits, Building Permit Fee(s) Waiver(s), Riverwalk Reimbursement Program benefits, and/or public funding for public spaces.
- 3.12 **Payment in Lieu of Taxes.** The City hereby agrees to enter into a Payment in Lieu of Taxes ("PILOT") agreement with the Developer, attached hereto as Exhibit B, provided the Developer constructs and operates a rental housing project for persons with low to moderate income in accordance with the guidelines of a Low Income Housing Tax Credit covenant and complying with Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland. The PILOT agreement shall provide for a reduction of the City of Salisbury real estate taxes in an amount of \$650 per unit per year for a term of forty (40) years from the date the building is granted a certificate of occupancy.

#### **ARTICLE IV**

##### **PRE-CLOSING DEFAULT BY DEVELOPER OR THE CITY**

- 4.1. **Default by Developer.** In the event Closing fails to occur by reason of Developer's failure or refusal to perform its obligations in accordance with the terms and conditions of this Agreement, or by reason of any misrepresentation by Developer under this Agreement existing on the Closing Date (any of which shall be considered a "Developer's Closing Default"), the City shall have the right assess Delayed Performance Penalties against the Developer as liquidated damages hereunder. Such remedy shall be in addition to keeping the Deposit, and the combination of such shall constitute the sole remedy of the City against the Developer for any default herein.
- 4.2. **Default by the City.** In the event Closing fails to occur by reason of the City's failure or refusal to perform its obligations in accordance with the terms and conditions of this

Agreement, or by reason of any misrepresentation by the City under this Agreement existing on the Closing Date (any of which shall be considered a "City's Closing Default"), Developer shall have the right to elect to: (i) terminate this Agreement by delivering written notice thereof to the City; (ii) waive the condition and proceed to close the transactions contained herein; or (iii) enforce specific performance of the City's obligation to execute the documents required for settlement on the City's conveyance of the Property to Developer, each of which shall be subject to all terms and conditions contained in this Agreement and any other agreement(s) to be executed by the Parties as contemplated hereunder. In the event Developer elects to terminate this Agreement upon the occurrence of any City's Closing Default, neither party shall have any further rights, obligations or liabilities under this Agreement except for those which are expressly stated herein to survive the termination of this Agreement and any Deposit paid by the Developer shall be returned to it immediately upon its request by written notice.

## **ARTICLE V**

### **MISCELLANEOUS**

- 5.1 Risk of Loss to the Property.** Prior to Closing on the City's conveyance of Property to Developer as contemplated by this Agreement, the Property shall be held at the risk of the City. In the event of substantial loss or damage to the Property prior to the Closing Date, provided such substantial loss or damage to the Property does not arise from or relate to the gross negligence or willful misconduct of Developer, Developer, within ten (10) days from the occurrence of such substantial loss or damage to the Property, shall deliver written notice to the City specifying Developer's election to: (i) terminate this Agreement, in which event this Agreement, and all rights and obligations of the Parties hereunder shall terminate immediately (except for any and all rights and/or obligations of the Parties expressly stated herein to survive termination of this Agreement) and the Parties shall have no further liability whatsoever to one another; or (ii) affirm this Agreement, and all terms and conditions contained herein, in which event, the City shall assign to Developer any all of City's rights under any policy or policies of insurance applicable to the Property, to the extent permitted by the City's insurance carrier. In the event Developer fails to deliver the aforesaid written notice to the City within the time period set forth in this Section 5.1, Developer shall be deemed to have affirmed this Agreement in accordance with the terms and conditions of subsection (ii) hereof.
- 5.2 Assignment.** Except as set forth in Section 3.10, neither City nor Developer may assign this Agreement or any of their respective rights or obligations hereunder, in whole or in part, without the prior written consent of the other party. Except as set forth in Section 3.10, any attempt by a party hereto to assign this Agreement or such party's right(s) and/or obligation(s) hereunder without the prior written consent of non-assigning party, such assignment shall be deemed void and of no force and effect in any way whatsoever.
- 5.3 Brokers.** The City and Developer each represent to the other that it has had no dealings with any broker, finder or other party concerning Developer's acquisition of the Property as contemplated hereunder. The City and Developer each hereby agree to indemnify, protect, defend (with counsel satisfactory to the other) and hold harmless the other from and against any and all claims, liabilities, losses, damages, costs and expenses (including

reasonable attorney's fees) suffered or incurred by the other in connection with any claim arising out of the acts of the indemnifying party (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with the indemnifying party or others on its behalf). The terms of this Section 5.3 shall survive Closing or the earlier termination of this Agreement.

5.4 **Notice.** Any notice, request, demand, consent, approval and other communications ("Notice") under this Agreement shall be in writing, and shall be sent by personal delivery, reputable overnight courier service or certified mail, postage prepaid, return receipt requested. Each Notice shall be sent, addressed to the party for whom it is intended at its address set forth below or to such other address as it may designate for the delivery of Notices to it by giving at least five (5) days prior Notice to the other party in accordance with this Section 6.4:

**If to Developer:**

Thomas Ayd  
Green Street Housing, LLC  
212 E. Main Street, Suite 200  
Salisbury, MD 21801

**With a copy to:**

John P. Custis, Esq.  
Long, Badger & Sheller, LLP  
124 East Main Street  
Salisbury, MD 21801

**If to City:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With a copy to:**

Ashley Bosche, Esq.  
Cockey, Brennan & Maloney, P.C.  
313 Lemmon Hill Lane  
Salisbury, Maryland 21801

Any Notice sent by personal delivery in accordance with the foregoing shall be delivered during normal business hours and shall be deemed received when delivered or, if delivery is rejected, when delivery was attempted. Any Notice sent by overnight courier service in accordance with the foregoing shall be deemed received on the first business day following the date sent. Any Notice sent by certified mail in accordance with the foregoing shall be deemed received on the third (3<sup>rd</sup>) business day following the date mailed.

5.5 **Integration; Waiver.** This Agreement constitutes the entire understanding between the Parties hereto with respect to the matters set forth herein and the transactions contemplated hereunder, and all prior agreements, understandings, representations and statements, oral or written, relating to the subject matter of this Agreement, including, expressly, the Original Land Disposition Agreement (as defined hereinabove), are merged herein and superseded and canceled by this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except in a writing

signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. No waiver by either party hereto of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

- 5.6 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland, without regard to its conflicts of laws principles.
- 5.7 Waiver by Jury.** EACH OF THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST ANY OTHER PARTY 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.
- 5.8 Professional Fees.** In the event a party hereto brings any action or proceeding against another party hereunder by reason of any breach of any covenant, agreement or provision on the part of the other party arising out of this Agreement, then the prevailing party shall be entitled to recover from the other party all actual costs and expenses of the action or proceeding, including reasonable attorneys', accounting, engineering and other professional fees.
- 5.9 Construction.** The captions in this Agreement are inserted for reference only and in no way define, describe or limit the scope or intent of this Agreement or of any of the provisions hereof. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. All references in this Agreement to Articles, Sections and Exhibits are references to the Articles and the Sections of this Agreement and the Exhibits attached hereto. This Agreement, and all the terms and conditions thereof, 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. All Exhibits attached hereto are incorporated herein by reference.
- 5.10 Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors, assigns and heirs. If more than one person and/or entity shall execute this Agreement as Developer or subsequently becomes Developer hereunder, then the liability of each such person and entity hereunder, and under each document or other instrument required to be executed and delivered by Developer as contemplated by this Agreement at Closing or otherwise, shall be joint and several.
- 5.11 Severability.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- 5.12 **No Third-Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of the City and Developer only and are not for the benefit of any third party. Accordingly, no third party shall have the right to enforce the provisions of this Agreement or any documents to be executed and delivered at or in connection with Closing.
- 5.13. **Recordation.** Developer, at its sole cost and expense, may record or otherwise place in any public record this Agreement or any memorandum or notice hereof.
- 5.14 **Further Assurances.** Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Developer shall, if requested by the City, execute acknowledgments of receipt with respect to any materials, deposits or other items delivered by the City to Developer.
- 5.15 **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.
- 5.16 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

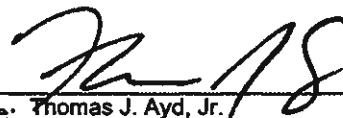
IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals and acknowledged this Amended and Restated Land Disposition Agreement as of the date and year first above written.

WITNESS/ATTEST:

**“DEVELOPER”:**

**Green Street Housing, LLC**



By:  (SEAL)  
 Name: Thomas J. Ayd, Jr.  
 Its: Operating Manager

**THE “CITY”:**

**City of Salisbury, Maryland**



By:  (SEAL)  
 Jacob R. Day, Mayor

## **Exhibit A**

### ***Description of the Project***

**Project Name:** SBY Market Center

**Parcels:** "Lot 30" consisting of Map 0106, Grid 0017, Parcels 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647 and 1648

"501 Willow Street" consisting of Map 0106, Grid 0016 and Parcel 1588

**Description:** The project will consist of up to eighty (80) apartments, common areas and amenity spaces for the apartments and commercial space of up to 10,000 square feet. The project include two (2) five-story buildings. Each building will have 40 units. There will be a mix of 1, 2 and 3-bedroom units. One building will have the leasing office, apartment amenities and commercial space on the ground level and the other building will have four stories of apartments above ground level parking.

The apartments will all be financed, in part, by low income housing tax credits and will primarily serve households earning less than 60% of the AMI. Not less than 5% or greater than 10% of the units will be reserved for households above 60% of the AMI.

The commercial space will be used to create a public market and uses that support or compliment the public market. The public market will be designed in consultation with the City and a specialty consultant.

Other improvements to the project will include the raising the height of the existing bulkheading and the extension of the Riverwalk. Hard scaping and landscaping will be planned for the transition between the buildings and the Riverwalk.

Parking for the project will include a mix of on-street parking, off-street surface parking, parking under one building, and parking on the parcel known as 501 Willow Street. 501 Willow Street will be improved to provide a parking lot. The project will also have non-exclusive access to parking on the City's Lot 33 on West Main Street.

**Financing:**

**SBY Market Center will be financing using the “Twinning” financing strategy with a portion the property be financed using tax exempt bonds and 4% low income housing tax credits (LIHTC) and a portion of the property being financing with 9% competition LIHTC. Each financing will include additional loan financing from Maryland DHCD.**



Preliminary Site Plan



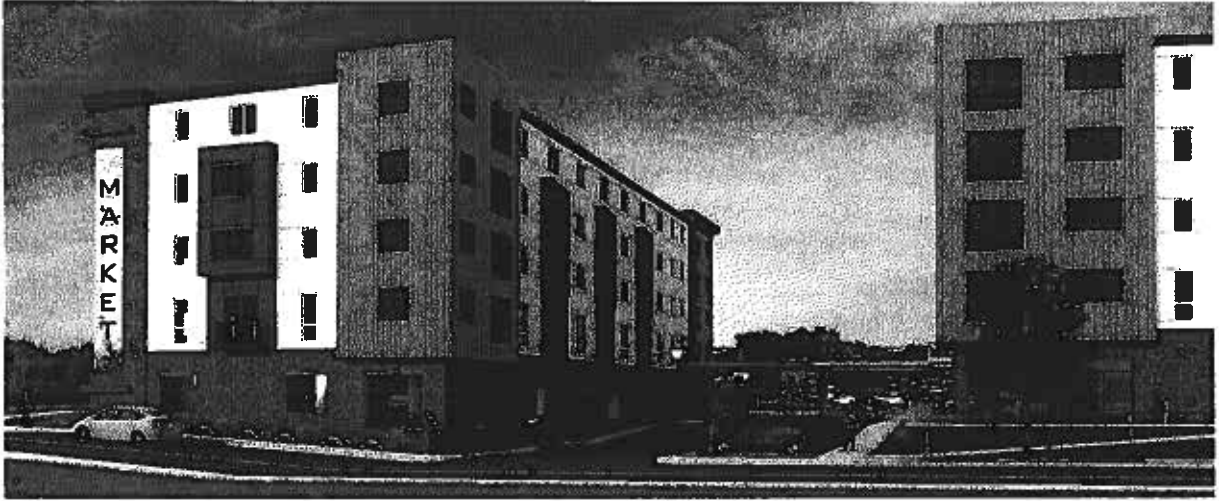
**Illustrative Renderings**



*View from West Main Street*



*View from Route 50 Eastbound*



*View from Lake Street*

**Exhibit B**

***Form of PILOT Agreement***

**PAYMENT IN LIEU OF TAX AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between **The City of Salisbury**, a body corporate and politic (hereinafter referred to as the “City”), and **Green Street Housing, LLC**, a limited liability company formed in the State of Maryland (hereinafter referred to as the “Owner”).

**WHEREAS**, the Owner proposes to develop \_\_\_\_\_, a residential development consisting of \_\_\_\_\_ rental apartment buildings, located at 401 West Main Street in Salisbury, Maryland, and identified as \_\_\_\_\_ (the “Property”), for the purposes of providing rental housing to low to moderate income households (the “Project”); and

**WHEREAS**, Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, as amended, provides, among other things, that real property in the City may be exempt from City property tax if:

- (a) The real property is owned by a person engaged in constructing or operating housing structures or projects; and
- (b) The real property is used for a housing structure or project that is constructed or substantially rehabilitated under a federal, state or local government program that:
  - (1) funds construction, or insures its financing in whole or in part, or
  - (2) provides interest subsidy, rent subsidy or rent supplements; and
- (c) The Owner:
  - (1) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the government programs and to renew any annual contributions contract or other agreement for rental subsidy or supplement; or
  - (2) enters into an agreement with the City to allow the property or portion of the property which was maintained for lower income persons to remain as housing for lower income persons for a term of at least forty (40) years; and
- (d) The Owner enters into an agreement with the City for the payment of a negotiated sum in lieu of applicable City property taxes on the Property; and

**WHEREAS**, the Owner plans to operate the Project as rental housing for low to moderate income households and intends to comply with Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland; and

**WHEREAS**, the Owner has demonstrated to the City that an agreement for payments in lieu of taxes is necessary; and

**WHEREAS**, pursuant to an Amended and Restated Land Disposition Agreement dated the date hereof between Green Street Housing, LLC and the City, the City agreed to enter into an agreement for payments in lieu of taxes for the Project.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:** In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, it is agreed as follows:

1. The Owner agrees: (1) that it will operate the Project as rental housing for low to moderate income households and will limit rents pursuant to the Extended Low Income Housing Covenant for Low Income Housing Tax Credits between the Owner and the Maryland Department of Housing and Community Development (herein the “Extended Use Covenant”); (2) it will make no less than 60 percent of the units available to households having incomes of no more than 60 percent of the area median income; and (3) that the Project qualifies and will continue to qualify in all respects under the provision of said Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland.

2. Beginning July 1, 2024, or the July 1 following the issuance of certificate of occupancy, whichever is later, the Property shall be exempt from ordinary City property taxes. The payments to be made hereunder by the Owner to the City with respect to the Project shall be in lieu of all ordinary City taxes on real property under the Tax Property Article of the Annotated Code of Maryland. The payments to be made hereunder by the Owner to the City shall be made by the Owner first and accepted by the City through the Fiscal Year 2064, or for forty years following the issuance of certificates of occupancy.

3. This Agreement shall be in effect for forty years, which is anticipated to be through **Fiscal Year 2064, ending June 2064**, and the portion of the property to be maintained for lower income persons shall remain as housing for lower income persons for a term of at least forty (40) years pursuant to Section 7-506.1(a)(2)(iv)2.

4. If at any time during the term of this Agreement, the City real property taxes are equal to or less than the amount due under the Payment in Lieu of Taxes (the “PILOT”); the Owner shall have City real property taxes payable.

5. For the **Fiscal Years 2024 through 2064**, the Owner’s annual payment in lieu of taxes shall be calculated as follows:

Owner shall make payment to the City in an amount equal to the fiscal year taxes, an amount of the assessed value of the property times the City tax rate minus (such subtracted

amount calculated as follows: \$650 x \_\_\_ units = \$ \_\_\_\_\_). No credit shall be given to Owner in the event the reduction is in excess of the City tax rate.

6. By July 30<sup>th</sup> of each year, the City shall bill the Owner for the payment which is due by September 30<sup>th</sup> of that year, as set forth in this Agreement.

7. Payments due hereunder will be considered delinquent thirty (30) days after the due date of the bill sent to the Owner. Interest at the rate of one percent (1%) per month shall be charged and collected by the City on all amounts remaining unpaid thirty (30) days after the due date.

8. If, during the term of this Agreement, a Project fails to meet the requirements set forth in the above paragraph 1, then the Owner shall pay a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement, plus all interest, less all amounts actually paid under this Agreement.

9. If the Owner is in default for one hundred eighty (180) days for any payment required under any of the provisions of this Agreement, the City may, at its option, declare a default by providing written notice of the default to the Owner and to the holders of all mortgages or deeds of trust. If within thirty (30) days of such notice, the payments have not been brought current, then the City may, at its option, declare all amounts due as follows: a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement, plus all interest, if any, less all amounts actually paid under this Agreement. To enforce its rights under this paragraph, the City may renegotiate this Agreement, foreclose, or seek any other remedy available at law or in equity. Notwithstanding anything to the contrary which is or might be contained in this agreement, payments due under this paragraph shall be considered a first lien against the Property and superior to any other liens placed upon the Property and may be collected the same manner as City taxes.

10. This Agreement may be assigned to a holder of a mortgage or deed of trust in the event of a foreclosure or transfer under said mortgage or deed of trust, provided that the assignee shall be subject to the terms and conditions of this Agreement.

11. For the purposes of this Agreement, all notices shall be hand-delivered or mailed by first class mail or certified mail, return receipt requested or via overnight delivery service. Notices shall be given to the parties as follows:

TO CITY:                   The City of Salisbury.  
125 N. Division Street  
Salisbury, MD 21801

TO OWNER:               \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TO LENDER:**           **Community Development Administration**  
                                  **7800 Harkins Road**  
                                  **Lanham, MD 20706**  
                                  **Attention: Director, Division of Credit**  
                                  **Assurance**

Each notice that is sent by one party to the other party at the listed address shall be presumed to have been received three (3) days after the date of mailing; except when prior written notice is given by one party to the other that a party or an address has changed. Notwithstanding any provision to the contrary contained in this Agreement, any person or party not listed in this paragraph shall not be entitled to notice as may be required by this Agreement unless one party notifies the other party that additional notice shall also be sent to such person or party.

12. This Agreement shall inure to the parties hereto and their respective successors, assigns, and/or legal representatives.

13. It is understood and agreed by the execution of this Agreement that the City does not waive any rights of governmental immunity which it may have in any damage suits against it, and that the City reserves the right to plead governmental immunity in such suit in law or in equity or such pleading as is appropriate notwithstanding the execution of this Agreement.

14. This Agreement shall be governed by the Maryland law and any actions between the parties hereto shall be brought in and vest jurisdiction and venue solely in the Circuit Court for Wicomico County.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed in its name by the City Administrator, to be attested to by the Executive Assistant, and to have the City Seal affixed hereto; and the Owner has caused this Agreement to be signed in its name by its General Partner, duly attested.

[Signature on Following Page]

ATTEST:

\_\_\_\_\_, LLC  
a Maryland limited liability company,

By: \_\_\_\_\_, LLC,  
its Managing Member

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Thomas J. Ayd, Jr.  
Title: Authorized Person

ATTEST:

**CITY OF SALISBURY, MARYLAND**

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
Jacob R. Day, Mayor