

RESOLUTION NO. 2740

A RESOLUTION OF THE CITY OF SALISBURY TO WAIVE OUTSTANDING CHARGES, LIENS AND/OR JUDGMENTS AND PURCHASE IMPROVED REAL PROPERTY LOCATED AT 317 – 325 LAKE STREET, SALISBURY, MARYLAND 21801, FROM SALKAP, LLC.

WHEREAS, the donor, owner Salkap, LLC, desires to donate the real property located at 317 – 325 Lake Street, Salisbury, Maryland 21801, by deed dated October 3, 2003, and recorded in the Wicomico County, Maryland Land Records in Liber 2170, folio 632 through 637; and

WHEREAS, there are outstanding charges due to the City of Salisbury for this property for municipal infractions, removal of debris, grass cutting, weed removal, administrative fees and a deed of trust debt; and

WHEREAS, the City of Salisbury is interested in obtaining foreclosed and/or abandoned properties which create a blighting influence on our neighborhoods, so that said properties may be either rehabilitated for resale, or demolished to make way for new construction; and

WHEREAS, there is an outstanding lien on this property in the amount of Fifty Thousand Dollars (\$50,000) that must be paid by 2034; and

WHEREAS, it has been agreed that the \$50,000 lien shall be paid in three installments, with the final installment being due in 2020; and

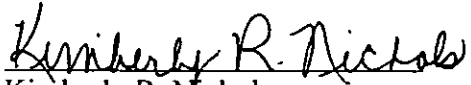
WHEREAS, the attached Contract of Sale for the property is authorized to be signed to purchase the property.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury, Maryland does hereby agree to waive outstanding charges, liens and/or judgments due to the City of Salisbury and purchase the real property located at 317 – 325 Lake Street, Salisbury, Maryland 21801 from Salkap, LLC, for the payoff of the \$50,000 lien in accordance with the terms contained in the attached Contract of Sale, contingent on the property having a clear title.

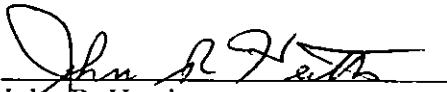
IT IS FURTHER RESOLVED that the Mayor is hereby authorized to negotiate, execute and deliver all documents on behalf of the City of Salisbury in connection with the purchase of this property and to take any action which is necessary to consummate the transactions described herein.

THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 27 day of March, 2017 and is to become effective immediately upon adoption.

ATTEST:

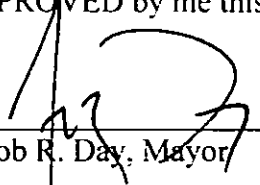


Kimberly R. Nichols
CITY CLERK



John R. Heath
PRESIDENT, City Council

APPROVED by me this 30th day of MARCH, 2017



Jacob R. Day, Mayor

Memo

To: Julia Glanz
From: Susan Phillips
Date: 3/27/2017
Re: Proposed North Prong Park Plan

As Salkap, LLC has expressed their desire to donate the properties that they own at 317-321 and 323-325 Lake St., I wish to summarize the information that the City gathered on the property from Salkap's last attempt to donate these properties to the City of Salisbury in 2009. Following a 1990 Oil Spill on the property, the EPA, U.S. Coast Guard, and MDE responded to the spill and over the course of the next decade took several corrective actions, culminating in the Coast Guard's 2000 instillation of a steel bulkhead and an interceptor trench pumping and treatment system. A 2004 report prepared for the EPA on the site came to the conclusion that:

Waste/source and groundwater analytic data indicate that the water table aquifer has been impact by a release of hazardous substances which may be at least partially attributable to on-site sources. No hazardous substances directly attributable to the site were detected in the two surface water samples collected from the property.¹

By 2009, however, letters to the City of Salisbury from the EPA and MDE stated that "oil was no longer detectable [in the groundwater]." Moreover, both the EPA and MDE closed their cases on the property at this time. The property was also removed from MDE's Master Brownfield Inventory list. As a result of these conclusions, there is no need for a Phase I or Phase II environmental impact study.

There are some financial obligations associated with the property. First, there is a deed of trust tied to the property for a debt owed by "Salkap, LLC" to "Herman Braude" as a result of an unpaid commercial loan from "Cadillac Investment Partners, LLC." The amount totals \$50,000 and is payable by July 31, 2034, after which point Herman Braude and/or his successors may sell the property at public auction to recoup this amount. As this donation would constitute a "purchase," the City of Salisbury would take on this debt and would have to pay it at point of sale. Moreover, upkeep of the property was estimated to be approximately \$2000 per annum, according to an estimate that Tom Stevenson received from a third party contractor in 2009.

¹ "Trip Report from the Lake Street Oil Farm Site: Salisbury, Wicomico County, Maryland," (EPA: 2004): 26.

There is, however, a source of revenue from the property in the form of a dock lease with Perdue Farms for their usage of a section of the bulkhead for docking purposes. The lease currently brings in revenue stream of \$1,500 per month. This lease was created in 2003, and I see absolutely no reason for the City not to renegotiate the lease to adjust for inflation. Using the U.S. Bureau of Labor Statistics' CPI inflation calculator,² the lease should be for \$1,939 in 2015 dollars. If the lease is renegotiated to \$2,000 per month, the \$50,000 debt could be paid off in 27 months, while also covering the cost of maintenance for those two years. Furthermore, the rent, if renegotiated, could cover the cost of the demolition, maintenance, and the outstanding debt in a little over five years' time:

Outstanding Costs:	\$50,000 Deed of Trust	
	\$68,000 Est. Cost of Full Demo	
	<u>\$10,000 5 Years of Maintenance</u>	
	\$128,000	Total Cost
-	\$128,000	5 Years, 4 Months of Rent

Lastly, a December 2008 appraisal, paid for by Salkap, put the market value of the property at \$530,000. While property values have fallen severely since 2008, the properties are still currently assessed at nearly \$200,000 according to SDAT. Thus, the current market value of the property can reasonably assumed to be between \$200,000 and \$500,000.

Unless you have any questions please forward this memorandum to the Mayor and City Council.

² Available at http://www.bls.gov/data/inflation_calculator.htm.

Memo

To: Julia Glanz
From: Susan Phillips
Date: 3/27/2017
Re: Proposed North Prong Park Plan (Addendum)

Addendum to original memo attached.

The attached resolution changes the payment of the fifty thousand dollar (\$50,000) lien that is held on 317 -325 Lake Street. This lien was to be paid by 2034, the lien holder wishes the lien be paid sooner as an agreement of the donation. The attached contract states that the lien will be paid by 2020, in payment installments as follows:

- \$20,000 by July 1, 2018
- \$15,000 by July 1, 2019
- \$15,000 by July 1, 2020

If you require no other information, please forward this information to the Mayor and Council.

ASSIGNMENT OF LEASE

THIS ASSIGNMENT, made this day of , 2017, by SALKAP, LLC, of 5307 North Charles Street, Baltimore, Maryland (hereafter called "Assignor") to City of Salisbury, a municipal corporation of the State of Maryland of 125 North Division Street, Salisbury, Maryland (hereafter called "Assignee"), WITNESSETH:

FOR VALUE RECEIVED, Assignor hereby grants, transfers and assigns to the Assignee all of the right, title and interest of Assignor in and to that certain lease which is more particularly described as follows:

Dock Lease Agreement between Perdue Farms Incorporated, Tenant, and SALKAP, LLC, Landlord, dated November 10, 2003 for the dock and adjacent walkway located on the Wicomico River at the property known as 317, 319, 321, 323, 325 and 327 Lake Street, Salisbury, Maryland 21801 and further outlined on Exhibit A.

TOGETHER with all extensions and renewals thereof and also together with any and all guarantees of the Lessee's obligations under said Lease and any and all extensions and renewals thereof. The said Lease and any and all extensions and renewals thereof are hereinafter collectively referred to as the "Lease".

1. Assignor hereby covenants and warrants to the Assignee that

(a) Assignor has not executed any prior Assignment of the Lease or its right, title and interest therein or the rentals to accrue thereunder;

(b) Assignor has not performed any act or executed any instrument which might prevent the Assignee from operating under any of the terms and conditions hereof, or which would limit the Assignee in such operation;

(c) Assignor has not accepted rent under the Lease for any period subsequent to the current period for which rent has already become due and payable;

(d) There is no default now existing under the Lease; and

(e) Assignor has not executed or granted any modification or amendment whatsoever of the Lease either orally or in writing, and that the Lease is in full force and effect according to the original terms and conditions thereof.

2. IT IS MUTUALLY AGREED THAT:

(a) The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Lease, or under or by reason of this assignment before the date of assignment, and Assignor shall and does hereby agree to indemnify the Assignee against and hold it harmless from any and all liability, loss or damage

which it may or might incur under the Lease or under or by reason of this assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease prior to the date of the assignment; should the Assignee incur any such liability, loss or damage under the Lease or under or by reason of events that occurred prior to the date of this assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall therefor immediately upon demand, and upon the failure of Assignor so to do, become hereby immediately due and payable.

(b) This assignment applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Lease" as used herein means not only the Lease hereby assigned or any extension or renewal thereof, but also any Lease subsequently executed by Assignor covering the demised premises or any part thereof. In this assignment, whenever the context so requires, the neuter gender includes the masculine or feminine, and the singular number includes the plural, and conversely. All obligations of each of the Assignor hereunder are joint and several.

3. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by registered mail addressed as follows:

TO: SALKAP, LLC
5307 North Charles Street
Baltimore, MD 21210

TO: City of Salisbury
125 North Division Street
Salisbury, MD 21801

ATTEST:

_____ (SEAL)

SALKAP, LLC

BY:

POSITION:

_____ (SEAL)

Jacob R. Day, Mayor
City of Salisbury

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2017, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared

_____ who acknowledged himself to be the President SALKAP, LLC and as such President, did execute and acknowledged the foregoing Assignment of Lease to be his act and deed.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

STATE OF MARYLAND, WICOMICO COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2017, 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 for the City of Salisbury, and as such Mayor, did execute and acknowledge the foregoing Assignment of Lease to be his act and deed.

AS WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

EXHIBIT A

DOCK LEASE

THIS DOCK LEASE (this "Lease") is made as of the 10 day of Nov, 2003, between PERDUE FARMS INCORPORATED, a Maryland corporation having an address at P.O. Box 1537, Salisbury, Maryland, 21802 ("Tenant"), and SALKAP, LLC, having an address at 5307 North Charles Street, Baltimore, Maryland, 21210 ("Landlord").

1. **DEMISE OF PREMISES** Landlord, for and in consideration of the payment of the rent and performance of the covenants and agreements hereinafter mentioned, hereby leases to Tenant and Tenant hereby leases from Landlord that certain dock and walkway adjacent thereto located on the Wicomico River at the property known as 317, 319, 321, 323, 325 and 327 Lake Street, Salisbury, Maryland 20801 as outlined on Exhibit A hereto (the "Leased Facilities").
2. **TERM** The term of this Lease shall be month to month (the "Term"). Either party may terminate this Lease at any time by providing the other party with thirty (30) days prior written notice.
3. **TAXES** Landlord shall pay all real property taxes due and payable with respect to the Property.
4. **ANNUAL RENT** During the Term, the annual rent due and payable by Tenant hereunder shall be ~~Eighteen~~ ^{Eighteen} Thousand Dollars (~~\$18,000~~) (the "Annual Rent") payable in equal monthly installments of One Thousand Two Hundred and Fifty Dollars (\$1,250). *BK*
5. **USE; COMPLIANCE WITH LAWS** Tenant agrees to use the Leased Facilities in a clean and safe manner for the purpose of docking and mooring vessels serving Tenant's facilities adjacent to the Leased Facilities and the unloading and loading of cargo. Tenant agrees to comply with any applicable laws and regulations related to Tenant's use of the Leased Facilities.
6. **DAMAGE; REPAIRS; SURRENDER** Tenant shall be responsible for any damage to the Leased Facilities or personal injury or death caused by any of its agents or employees as a result of Tenant's use of the Leased Facilities. Tenant will, at the expiration of the Term or at the sooner termination by forfeiture or otherwise, deliver up the Leased Facilities in the same good order and condition as it was at the beginning of the tenancy, reasonable wear and tear and damage by casualty excepted. Tenant shall be charged with the protection of its own property, and in no event shall Landlord be liable for any damage to such property by reason of fire, other casualty or the elements. Tenant covenants that it will not make any alterations, additions, or changes of any kind to the Leased Facilities, without first securing the written consent of Landlord.

7. **SUBLETTING OR ASSIGNMENT** Tenant covenants that it will not sublet the Leased Facilities or any part thereof or assign this Lease, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Tenant shall be entitled to assign this Lease or sublet the Leased Facilities or any part thereof to an Affiliate of Tenant, without the prior consent of the Landlord. For the purposes of this Lease, the term "Affiliate" shall mean any entity which controls Tenant, is controlled by Tenant, or is under common control with Tenant.
8. **INDEMNITY AND LIABILITY INSURANCE** Tenant shall save and keep harmless and indemnify Landlord and Landlord's agents from and against any and all claims for damages whatsoever, and the costs of defending against the same, of any kind or nature, including personal injuries, arising in any manner or under any circumstances through the exercise by Tenant of any right granted or conferred hereby, whether such damage, including personal injury, shall be caused by Tenant or Tenant's agents; provided such indemnification shall not apply to the negligence or willful acts of Landlord or Landlord's agents. Tenant further agrees to maintain commercial general liability insurance with combined single limits in commercially reasonable amounts.
- Landlord shall indemnify and hold Tenant harmless from and against any loss or damages arising from the existence on the Property of any preexisting hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table or by the Environmental Protection Agency as hazardous substances.
- Landlord and Tenant each waive all rights to recovery, claims or causes of action against the other and the other's agents, trustees, officers, directors and employees on account of any loss or damage which may occur to the Leased Facilities or any improvements thereto or to any personal property of such party to the extent such loss or damage is caused by a peril which is insured against by either party, regardless of the cause or origin (including negligence of the other party). Landlord and Tenant each covenants to the other that, to the fullest extent permitted by law, no insurer shall hold any right of subrogation against the other party.
9. **QUIET ENJOYMENT** So long as Tenant is not in default hereunder, Landlord agrees to permit Tenant quiet enjoyment of the Leased Facilities during the Term of this Lease. Landlord represents and warrants that he owns the Leased Facilities in fee simple and that he has the authority to enter into and to perform his obligations under this Lease.
10. **CASUALTY** If the Leased Facilities are damaged by fire, flood or other casualty, Landlord shall cause such damage to be promptly repaired, and the Annual Rent hereunder shall be abated; provided, however, in the case of total destruction, if Landlord determines, in its reasonable judgment, that the Leased Facilities cannot be repaired using reasonable diligence within one hundred thirty (130) days from the date of the casualty, then it shall so notify the Tenant and either party shall have the right to terminate this Lease, by notifying the other party in writing within ten (10) days after the date of Landlord's notice to Tenant, in which

event the Lease shall terminate effective as of the date of such notice, and the Annual Rent shall be adjusted as of such date of termination.

11. **CONDEMNATION** If the whole or any part of the Leased Facilities shall be taken under the power of eminent domain, or shall be sold by Landlord under threat of condemnation proceedings, then this Lease shall terminate as to the part so taken or sold on the day when Tenant is required to yield possession thereof. If the amount of the Leased Facilities so taken or sold is such as to impair substantially the usefulness of the Leased Facilities for the purposes for which the same is hereby leased, then Tenant shall have the option to terminate this Lease as of the date when Tenant is required to yield possession. Landlord shall notify Tenant within ten (10) days of receipt of notice of condemnation.
12. **DEFAULT BY TENANT; REMEDIES OF LANDLORD** The occurrence of either of the following shall constitute a default (hereinafter called "**Default**"):
- (a) the failure of Tenant to pay the Annual Rent within fifteen (15) days after notice thereof in writing from Landlord to Tenant that such amount is past due, or
 - (b) the violation of any of the other terms, covenants, or conditions of this Lease by Tenant, which violation shall remain uncured for a period of thirty (30) days after notice thereof in writing for Landlord to Tenant; provided if the violation is of a nature that cannot be cured within thirty (30) days, Tenant shall not be deemed to be in default under this Lease provided Tenant has commenced to cure the violation within the original thirty (30) day period and continues to pursue such cure diligently.
- Following a Default, Landlord may, at its option, cancel and annul this Lease and Landlord shall be entitled to the benefit of all the provisions of law for the speedy recovery of lands and tenements as against a tenant holding over now in force or which may hereafter be enacted.
13. **TENANT HOLDING OVER** If Tenant shall not immediately surrender possession of the Leased Facilities at the termination of this Lease, Tenant shall become a tenant from month to month upon all of the terms, covenants, and conditions hereof, provided Annual Rent shall be paid to and accepted by Landlord, in advance, at one and one-half the rate of Annual Rent payable hereunder just prior to the termination of this Lease; but unless and until Landlord shall accept such Annual Rent from Tenant, Landlord shall continue to be entitled to retake possession of the Leased Facilities without any prior notice whatsoever to Tenant.
14. **WAIVER** Any waiver of any covenant or condition of this Lease shall extend to the particular case only, and shall not be construed as applying to or in any way waiving any further or other rights hereunder. Acceptance of Rent with knowledge of default shall be a waiver of that default.
15. **NOTICES** Any Notice required or permitted by this Lease to be given by either party to the other may be either personally delivered, sent by overnight delivery, or certified mail,

properly addressed and prepaid, to the addresses of the parties herein given, unless another address shall have been substituted for such address by Notice in writing. Notices shall be deemed given the day delivered, if hand delivered, the first business day following the deposit with the delivery service, if given by overnight delivery, and three days after mailing, if sent by certified mail.

16. **MISCELLANEOUS** The use of the singular herein shall include the plural and vice versa, and the use of any gender shall include all genders. The covenants herein shall be binding upon, and the rights hereunder shall inure to the benefit of the parties hereto, their personal representatives, successors and assigns. This Lease constitutes the entire agreement between the parties in respect of the leasing of the Leased Facilities, and there are no oral agreements between the parties in connection herewith. This Lease shall be governed and controlled by the law of the State of Maryland.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed as of the date first above written.

WITNESS

LANDLORD

SALKAP, LLC

Maria Van Duse

By: [Signature] (SEAL)

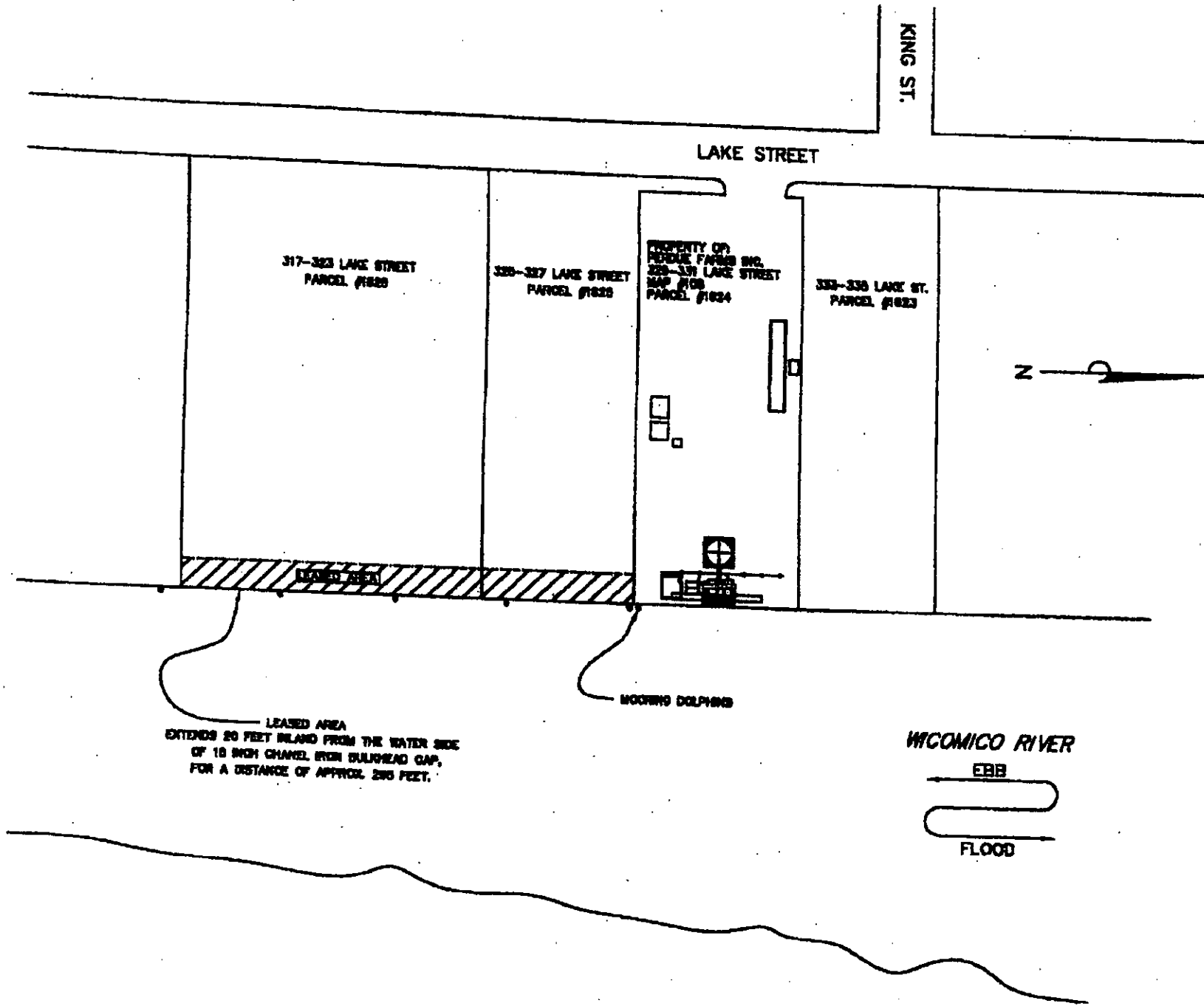
WITNESS

TENANT

PERDUE FARMS INCORPORATED

By: [Signature] (SEAL)

EXHIBIT "A"



CONTRACT OF SALE

THIS CONTRACT OF SALE ("this Contract"), dated the ____ day of _____, 2017, between Salkap, LLC, ("Seller"), whose address is 2601 Biscayne Blvd, Miami, FL 33137 and City of Salisbury, Maryland ("Buyer"), whose address is Department of Internal Services, 125 N. Division Street, Salisbury, MD 21801.

1. *The Property.* Seller sells to Buyer, and Buyer purchases from Seller, the real property located in City of Salisbury, Wicomico County, Maryland, and known as 317-323 Lake Street, Salisbury, MD 21801, Map 0106, Grid 0011, Parcel 1625, and 325-327 Lake Street, Salisbury, MD 21801, Map 0106, Grid 0011, Parcel 1626, together with all improvements and all the rights and appurtenances thereto. The property was acquired by the Seller by deed dated October 3, 2003 and is recorded in the Wicomico County land records, Liber 2170, folio 632 and is hereinafter called the "Property."

2. *Purchase Price.* The purchase price for the Property is Fifty Thousand Dollars (\$50,000.00), of which Buyer will pay three installment payments to the lien holder, Cadillac Investment Partners, LLC as follows: Twenty Thousand Dollars (\$20,000.00) on or before July 1, 2018; Fifteen Thousand Dollars (\$15,000.00) on or before July 1, 2019; and Fifteen Thousand Dollars (\$15,000.00) on or before July 1, 2020, the receipt of which Seller shall acknowledge.

3. *Time and Place of Settlement.* Unless the parties agree otherwise, Settlement shall take place at _____ a.m./p.m. on the ____ day of _____, 2017 at _____ (location).

4. *Deed to Property.* At Settlement a special warranty deed for the Property shall be executed by Seller and prepared at Buyer's expense.

5. *Possession.* Buyer shall be given possession of the Property at Settlement. Seller warrants that there exists a current Dock Lease, dated November 10, 2003, with Perdue Farms Incorporated, which shall be Assigned to Buyer at Settlement.

6. *Risk of Loss.* The Property shall be held at the risk of Seller until Settlement hereunder.

7. *Buyer's Default.* If Buyer defaults in Buyer's obligation to purchase the Property, Seller shall have the right, at Seller's election, to retain all deposits paid hereunder as liquidated damages and not as a penalty, and upon such election, the parties shall be released from all further liability hereunder at law and in equity, except with respect to the provisions of this Contract which survive its termination.

8. *Real Estate Commission.* Each party warrants to the other that it has not used the services of a real estate broker or agent in connection with this transaction. Each party agrees to defend, indemnify, and hold the other party harmless for any claim for real estate commissions arising by

reason of the indemnifying party's breach of this warranty. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property or the termination of this Contract.

9. Representations of Seller. The Seller makes the following representations and warranties to the Buyer, which shall survive the Settlement and the delivery of the deed and contract of sale for the Property to the Buyer.

A. The Property, including the location of any buildings thereon, is correctly described above.

B. The Seller is, and will be, to and including the Settlement Date (as hereinafter defined), in compliance with each and every undertaking on its part under all outstanding leases of the Property or any part thereof (the "Leases"). To the best of Seller's knowledge, as of the date hereof, the tenants under the Leases have each complied with all material undertakings on their respective parts to be performed, except as disclosed on Exhibit A attached hereto as a part hereof. The Seller will give the Buyer prompt written notice of any material default by any tenant under any of the Leases occurring subsequent to the date hereof and prior to the Settlement Date to the extent Seller acquires knowledge thereof.

C. At Settlement, except for the Leases, there will be no contracts affecting the Property or any part thereof. At Settlement there will be no contracts or agreements for the management of the Property, or any part thereof, and there will be no leasing commission due or owing in connection with any lease or on account of any tenancy or occupancy of any portion of the Property, except for renewal commissions as set forth in Exhibit B attached hereto as part hereof.

D. The Seller has no knowledge of any actions, suits or proceedings which have been instituted or threatened against or affecting the Property, at law or in equity, or before any federal, state or municipal governmental commission, board, bureau, agency or instrumentality which will materially adversely affect the value, occupancy, use or operation of the Property. The Seller will give the Buyer prompt written notice of any such action, suit or proceeding arising subsequent to the date hereof and prior to Settlement to the extent Seller acquires knowledge thereof.

E. The Seller has duly and validly authorized, executed and delivered this Contract, and neither the execution and delivery of this Contract nor its performance are restricted by or violate any contractual or other obligation of the Seller.

F. There are no assessments for public improvements against the Property which remain unpaid, including, without limitation, those for construction of sewer or water lines or mains, streets, sidewalks and/or curbs.

G. To the best of the Seller's knowledge, all improvements on the Property lie within the boundaries on the Property above named and do not encroach on any other property or violate any setback requirements.

10. *Additional Undertakings of the Seller.*

A. *Feasibility Studies.*

10.1. *General.* Subject to the rights of existing tenants, for a sixty (60) day period after the date of this Contract (the "Feasibility Period"), Buyer and its agents shall have the right to enter upon the Property at its sole risk for the purpose of inspecting the same and conducting surveys and other tests of surface and subsurface conditions, investigations, and feasibility studies. During such period the Seller shall furnish to the Buyer all information concerning the Property which the Buyer may reasonably request. The Buyer may, at its sole expense, make such engineering and other studies of the Property prior to the Settlement Date as it may deem necessary. Within a reasonable time after such entries Buyer shall restore the Property to its prior condition. Buyer shall defend, indemnify, and hold Seller harmless from and against any damage, liability, loss, deficiency, or expense (including attorneys' fees, court costs, and other expenses) resulting from, and will pay Seller upon demand the full amount of any sum Seller may be or become obligated to pay on account of, all obligations, liabilities, claims, accounts, demands, liens, or encumbrances, which result from acts, conduct, omissions, contracts, agreements, or commitments of Buyer or its agents, in any way related to or arising from the exercise by Buyer of the rights herein granted to enter the Property and conduct tests thereon.

10.2. *Election to Proceed or Terminate.* If during the Feasibility Period Buyer shall determine, at its discretion, that the acquisition and development of the Property is not feasible, Buyer shall have the right, by written notice to Seller (the "Termination Notice"), to terminate this Contract prior to the expiration of the Feasibility Period. Upon receipt of the Termination Notice, this Contract shall terminate and thereupon the parties hereto shall be released from all further liability hereunder, at law and in equity, except as provided herein. If Buyer fails to give the Termination Notice on or before the expiration of the Feasibility Period, Buyer's right to terminate this Contract under this Section shall expire and Buyer shall thereafter be obligated to perform all of the terms, covenants, and provisions of this Contract to be performed by Buyer hereunder, including, without limitation, the obligation to consummate Settlement.

10.3. *Studies.* If Buyer terminates this Contract or defaults in its obligations hereunder, Buyer shall promptly deliver to Seller after the date of such termination or default, for no additional consideration, copies of all governmental permits and approvals, surveys, plats, soil tests, and engineering, environmental, architectural, and other reports, studies, and documents obtained by Buyer or its agents with respect to the Property.

B. The Seller agrees that, from the date of this Agreement to the Settlement date, it will:

(i) Operate the Property only in the ordinary and usual manner and that it will not enter into any new lease or any renewal or amendment of any of the Leases without the prior

written consent of the Buyer;

(ii) Not become a party to any service contract or similar agreement with respect to or affecting the Property without the prior written consent of the Buyer;

(iii) Not cancel (except for nonpayment of rent or other material breach), modify, or amend any of the Leases or accept the surrender thereof, without the prior written consent of the Buyer;

(iv) Maintain, at its expense, all existing fire and extended coverage policies covering the Property and promptly cause the Buyer to be named as an additional insured thereunder as its interest may appear. The herein described property is to be held at the risk of Seller until legal title has passed. Buyers may acquire additional insurance if they wish;

(v) Use reasonable efforts to require all tenants occupying the Property to comply with all material obligations on their respective parts to be performed pursuant to their respective leases;

(vi) Correct all building code or other violations relating to the Property; and

(vii) Keep the Property in good condition and repair.

The consent of the Buyer to those matters specified in this paragraph 10.B. shall not be unreasonably withheld by Buyer.

11. *Delivery of Certain Materials to Buyer.* Promptly, but in no event later than _____ (___) days following the date hereof, the Seller shall deliver to the Buyer the following:

A. All surveys, engineering, environmental, or similar reports in the Seller's possession, custody, or control relating to the Property;

B. Copies of all Leases, together with a summary of each Lease specifying (i) the tenant's name, (ii) the premises leased, (iii) the lease term (including any renewal rights), (iv) the rent and the date through which rent has been paid, (v) the extent of tenant's responsibility for the payment of utility costs, taxes and expense escalations, (vi) a listing of all concessions, rebates, allowances or free rent given to the tenant, and (vii) the amount of any security deposit held by the Seller with respect to the lease;

C. Copies of all original building plans and specifications for the Property which are in the Seller's possession; and

D. A listing of the Personal Property, together with a listing of all liens or security interests of others with respect thereto.

12. *Miscellaneous Adjustments and Prorations.* The following adjustments and prorations shall be made between the parties on the Settlement Date. The provisions of paragraphs 12.A., 12.C. and 12.E. shall survive Settlement and the delivery of the deed and contract of sale for the Property to the Buyer.

A. All rentals collected by Seller up to the Settlement Date which are allocable to the period commencing with the Settlement Date shall be paid by the Seller to the Buyer. Any rentals which have accrued to and remain unpaid as of the Settlement Date shall belong to the Seller, and shall be remitted to Seller as and when collected by the Buyer. Rents collected by Buyer after the Settlement Date shall be applied first to current rent due and then to past due rent starting with the most recent delinquency. All rents collected prior to the Settlement Date for taxes and expenses under escalation clauses in the Leases, shall be paid over to Buyer at Settlement if such taxes or expenses remain unpaid on the Settlement Date. All rents collected after the Settlement Date for taxes and expenses under escalation clauses in the Leases shall be paid over to Seller if Seller has paid such taxes or expenses prior to the Settlement Date. For the purposes of this subparagraph all rentals shall be apportioned on a daily basis using the number of days in the month in which the Settlement Date occurs.

B. All security deposits, if any, collected by the Seller from the tenants of the Property, shall be paid by the Seller to the Buyer on the Settlement Date.

C. All utilities shall be adjusted and apportioned as of the Settlement Date.

D. All taxes, general or special, and all other public or governmental charges or assessments against the premises, which are not payable by tenants under tax escalation provisions in the Leases, which are or may be payable on an annual basis (including Metropolitan District, Sanitary Commission or other benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the date hereof, or subsequent thereto), shall be adjusted and apportioned as of the Settlement Date and shall be assumed and paid thereafter by the Buyer, whether assessments have been levied or not as of the Settlement Date.

E. The costs of state and local recordation and transfer taxes shall be paid by the Buyer.

F. Seller shall pay all taxes, costs, and fees relating to the recordation of any release of a mortgage, deed of trust, or other lien or encumbrance affecting the Property which is to be released or discharged at Settlement or upon the final installment payment paid by Buyer.

13. *Title and Subdivision.*

13.1. *Title Report.* Within sixty (60) days from the date of this Contract, Buyer if it desires, shall obtain, at its expense, a title report covering the Property from a licensed title insurance company selected by Buyer. Buyer shall give written notice to Seller within the sixty (60) day period listing any title exception that is not acceptable to Buyer (the "Title Defect"). If

Buyer shall fail to provide such notice to Seller within the sixty (60) day period, Buyer shall be considered to have waived its right to object to the Title Defect. Seller shall have thirty (30) days from the receipt of Buyer's notice within which to determine whether to cure or remove the Title Defect or to terminate this Contract. If Seller elects to cure or remove the Title Defect, Seller shall do so by giving Buyer written notice of the election within the thirty (30) day period, otherwise Seller shall be deemed to have elected to terminate this Contract.

If Seller elects to terminate this Contract, the deposit shall be returned to Buyer, whereupon this Contract shall become null and void and of no further force and effect at law or in equity. If Seller elects not to terminate this Contract, Seller shall be required to convey the Property to Buyer at Settlement, subject to any matter affecting title to the Property in existence as of the date of the title report, regardless of whether shown or revealed by the title search and report, to which no objection is taken by Buyer in the manner and time set forth above.

13.2. *Ground Rent.* If the title report discloses that the Property is subject to payment of a ground rent pursuant to a perpetually renewable ground rent lease, Buyer shall not object to the fact that the Property is subject to a ground rent if Seller agrees to reduce the purchase price of the Property by an amount equal to the annual ground rent capitalized at the rate of ten percent (10%). If the Property is subject to such a ground rent, Buyer is hereby placed on notice in accordance with Md. Real Prop. Ann. Code § 14-117, as amended, (the "Code") that if the ground rent is not timely paid the effect may be (a) that the reversionary owner of the ground rent may bring an action of ejectment against the ground rent tenant under § 8-402(b), as amended, of the Code, and (b) as a result of the ejectment action, the reversionary owner of the ground rent may own the Property in fee, discharged from the lease.

13.3. *Subdivision.* If either Seller or Buyer prior to Settlement shall make a good faith determination that for Seller legally to convey the Property to Buyer, an approved subdivision plat of the Property must first be recorded among the Land Records of the County/City (the "Land Records"), then neither party shall be obligated to proceed to Settlement unless Buyer, at Buyer's expense, prior to Settlement, obtains all necessary governmental approvals and records the subdivision plat of the Property among the Land Records at or prior to Settlement. Seller and Buyer shall each cooperate with the other in filing any necessary applications, and in the processing of the subdivision plat before the appropriate governmental agencies. If a subdivision plat is required, Buyer shall have the right to postpone Settlement for up to sixty (60) additional days from the date of Settlement as determined under Section 3 (Time and Place of Settlement) if this additional time is required for Buyer to obtain the necessary governmental approvals.

14. *Environmental Matters.* To the best of the knowledge of the Seller, as of the date of this Contract and as of the date of Settlement, the Property (including land, surface water, ground water, and improvements) is now and will then be free of all contamination, including (i) any "hazardous waste," "underground storage tanks" "petroleum," "regulated substance," or "used oil" as defined by the Solid Waste Disposal Act of 1976 (42 U.S.C. § 6901, *et seq.*) as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §

9601, *et seq.*) as amended, or by any regulations promulgated thereunder (including, but not limited to, asbestos and radon); (iii) any "oil, petroleum products, and their byproducts" any "hazardous substance" as defined by the Maryland Environmental Code, Title 7, Subtitle 2, as amended, or by any regulations promulgated thereunder; (iv) any substance the presence of which on, in, or under the Property, is prohibited by any law similar to those set forth above; and (v) any other substance which by law, regulation, or ordinance requires special handling in its collection, storage, treatment, or disposal.

14.1. *Environmental Representations and Warranties.*

(a) Seller represents and warrants that (i) Seller has no knowledge of any Hazardous Material at, upon, under, or within the Property or, to the best of its knowledge, within any contiguous real estate; and (ii) Seller shall not cause or permit to exist any Hazardous Material at, upon, under, or within the Property until the Settlement date.

(b) Seller further represents and warrants that (i) neither Seller, nor any other party has been, is, or will be involved in operations at or near the Property, which operations could lead to (A) the imposition of liability under any Hazardous Material laws on Buyer, or any former owner of the Property; or (B) the creation of a lien on the Property under any Hazardous Material laws; and (ii) Seller has not permitted, and will not permit, any tenant or occupant of the Property to engage in any activity that could impose liability under any Hazardous Material laws on such tenant or occupant, on Seller or on any other owner of any of the Property.

14.2. *Environmental Covenants.*

(a) Seller shall comply strictly and in all respects with the requirements of any Hazardous Material laws and related regulations and shall notify Buyer immediately in the event of any discharge or discovery of any Hazardous Material at, upon, under, or within the Property before the Settlement date.

(b) Promptly upon the written request of Buyer, Seller shall provide Buyer with all past environmental site assessment or environmental audit reports to enable Buyer to assess the presence or absence of any Hazardous Material and the potential costs in connection with abatement, cleanup, or removal of any Hazardous Material found on, under, at, or within the Property.

14.3. *Indemnity.*

(a) Seller does hereby absolutely, unconditionally, and irrevocably indemnify and hold harmless Buyer from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Buyer, with respect to Seller's past use, or its tenants' use, during Seller's ownership of the Property for:

(i) any past discharge of Hazardous Material, the threat of a discharge of any Hazardous Material, or the presence of any Hazardous Material affecting the Property whether or not the same originates or emanates from the Property, including any loss of value of the Property as a result of any of the foregoing;

(ii) any costs of removal or remedial action incurred by the United States Government or any state, county, or municipal governmental authority, any response costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction, or loss, incurred pursuant to any Hazardous Material laws;

(iii) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at the Property; and

(iv) any other environmental matter affecting the Property within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state, county or municipal environmental agency.

(b) In the event of any discharge of Hazardous Material, the threat of a discharge of any Hazardous Material, or the presence of any Hazardous Material affecting the Property, whether or not the same originates or emanates from the Property, and/or if Seller shall fails to comply with any of the requirements of any Hazardous Material laws or related regulations or any other environmental law or regulation, Buyer may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as Buyer shall deem necessary or advisable in order to abate the discharge of any Hazardous Material, remove any Hazardous Material, or cure Seller's noncompliance.

(c) It is the intention of Seller that the provisions of this Agreement shall supersede any provisions herein, which in any way limit the personal liability of Seller and that Seller shall be personally liable for any obligations hereunder. All of the representations, warranties, covenants, and indemnities herein shall survive the transfer, if any, of any or all right, title, and interest in and to the Property by Seller.

(d) The term "Hazardous Material" means (i) any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto and replacements therefor; or (ii) such substances, materials, or wastes as are regulated by the Resource Conservation and Recovery Act of 1976 or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, any

amendments thereto or orders, regulations, directions, or requirements thereunder; or (iii) such hazardous or toxic substances, materials, or wastes that are or may become regulated under any other applicable county, municipal, state, or federal law, rule, ordinance, direction, or regulation.

15. Miscellaneous Provisions.

15.1. *Entire Agreement.* This Contract contains the final and entire agreement between the parties and neither they nor their agents shall be bound by any terms, conditions, or representations not herein written.

15.2. *Time of Essence.* Time is of the essence of this Contract.

15.3. *Joint and Several Liability.* If Buyer consists of more than one (1) person or entity, their liability under this Contract shall be both joint and several.

15.4. *Binding Agreement.* This Contract is binding on the parties and their personal representatives, successors, and assigns.

WITNESS the hands and seals of the parties.

WITNESS:

_____(SEAL)
Roger Miller, Member
Salkap, LLC, Seller

_____(SEAL)
Wayne Frederick, Member
Salkap, LLC, Seller

_____(SEAL)
Michael Masch, Member
Salkap, LLC, Seller

WITNESS:

_____(SEAL)
Jacob R. Day, Mayor
City of Salisbury, Maryland, Buyer