

## RESOLUTION NO. 3201

**A RESOLUTION** of the Council of the City of Salisbury proposing the annexation to the City of Salisbury of a certain area of land contiguous to and binding upon the Corporate Limits of the City of Salisbury to be known as “South Division Street Annexation”, beginning at a point being an existing corner of the Corporate Limits Line of the City of Salisbury, MD near the westerly line of South Division Street at its intersection with the northerly right of way line of Onley Road extended. X 1,201,760.73 Y 188,850.09 (1) Thence by and with the said line of Onley Road, North eighty-nine degrees twenty-two minutes thirty-one seconds East (N 89° 22' 31" E) two hundred thirty-two decimal two, six (232.26) feet to a point on the said line of Onley Road and Corporate Limits Line. X 1,201,992.98 Y 188,852.62 (2) Thence leaving the said line and by and with the easterly line of the lands of OT 2005, LLC, North three degrees thirteen minutes one seconds East (N 03° 13' 01" E) three hundred forty- eight decimal zero,zero (348.00) feet to a point on the northerly line of the said OT 2005, LLC lands. X 1,202,012.51 Y 189,200.08 (3) Thence by and with the said line of OT 2005, LLC, North eighty-nine degrees forty-seven minutes forty-two seconds West (N 89° 47' 42" W) two hundred twenty-four decimal eight, five (224.85) feet to a point on the existing Corporate Limit Line near the westerly right of way line of South Division Street. X 1,201,787.66 Y 189,200.88 (4) Thence by and with the said line South four degrees twenty-three minutes twenty-five seconds West (S 4° 23' 25" W) three hundred fifty-one decimal eight, two (351.82) feet to the point of beginning, containing 1.831 acres, more or less.

## RECITALS

**WHEREAS**, the City of Salisbury has received a Petition for Annexation, dated February 21, 2022, attached hereto as **Exhibit 1** and incorporated by reference as if fully set forth herein, signed by at least twenty-five percent (25%) of the persons who are resident registered voters and of the persons who are owners of at least twenty-five percent (25%) of the assessed valuation of the real property in the area sought to be annexed binding upon the Corporate Limits of the City of Salisbury to be known as “South Division Street Annexation” beginning at a point contiguous to and binding upon the existing corporate limits line of the City of Salisbury, MD, being on the westerly right of way line of South Division Street at the southern corporate limits of the City of Salisbury, continuing around the perimeter of the affected property to the point of beginning, being all that real property identified as Map 0048, Grid 0002, Parcel 199, Map 0048, Grid 0002, Parcel 200 and Map 0048, Grid 0003, Parcel 0202 and all that certain portion of the public road right-of-way known as “South Division Street” and further being the same real property more particularly described in the legal description attached hereto as **Exhibit 2** and incorporated as if fully set forth herein and being that same public right-of-way more particularly depicted on that certain plat entitled “Annexation Plat” attached hereto as **Exhibit 3** and incorporated as if fully set forth herein (the aforesaid real property

is hereinafter referred to as the “**Annexed Property**”); and

**WHEREAS**, the City of Salisbury has caused to be made a certification of the signatures on the said petition for annexation and the City of Salisbury has verified that the persons signing the petition represent at least twenty-five percent (25%) of the persons who are eligible voters and property owners owning twenty-five percent (25%) of the assessed valuation of real property in the area to be annexed, all as of September 15, 2022, as set forth in the certification by Leslie C. Sherrill, Surveyor, of the City of Salisbury, attached hereto as **Exhibit 4** and incorporated by reference as if fully set forth herein; and

**WHEREAS**, it appears that the aforesaid Petition for Annexation, dated May 6, 2021, meets all the requirements of applicable state and local law; and

**WHEREAS**, pursuant to MD Code, Local Government, § 4-406, a public hearing on this Resolution, providing for the City of Salisbury’s annexation of the Annexed Property as set forth herein, shall be and hereby is scheduled for April 10, 2023 at 6:00 p.m.

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

**Section 1.** It is proposed and recommended that that the municipal boundaries of the City of Salisbury be changed so as to annex to and include within the said municipal boundaries of the City of Salisbury all that certain real property more particularly described in **Exhibits 2 and 3** attached hereto and incorporated by reference as if fully set forth herein (the real property to be annexed by the City of Salisbury as contemplated by this Resolution is hereinafter referred to as the “**Annexed Property**”).

**Section 2.** The annexation of the Annexed Property be and hereby is approved by the Council of the City of Salisbury subject to all terms, conditions and agreements contained in the aforementioned property description, the proposed Annexation Agreement, and the Annexation Plan, attached as **Exhibits 2, 5 and 6, respectively**, each of which is attached hereto and incorporated herein as if all such terms, conditions and agreements contained in such Exhibits were specifically set forth at length in this Resolution.

**Section 3.** The Zoning Map of the City of Salisbury shall be amended to include the Annexed Property within that certain Zoning District of the City of Salisbury identified as “**College and University**”, which said real property newly annexed into Corporate Limits of the City of Salisbury, as contemplated by this Resolution, is presently zoned “**LB-1 Light Business & Institutional**” in accordance with the existing zoning laws of Wicomico County, Maryland.

**Section 4.** Pursuant to MD Code, Local Government, § 4-406, the Council of the City of Salisbury shall hold a public hearing on this Resolution on April 10, 2023 at 6:00p.m. in the Council Chambers at the City-County Office Building, and the City Administrator shall cause a public notice of time and place of the said public hearing to be published not fewer than two (2) times at not less than weekly intervals, in at least one (1) newspaper of general circulation in the City of Salisbury, which said public

notice shall specify a time and place at which the Council of the City of Salisbury will hold the aforesaid public hearing, the date of which shall be no sooner than fifteen (15) days after the final required date of publication as specified hereinabove.

**AND, BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY AS FOLLOWS:**

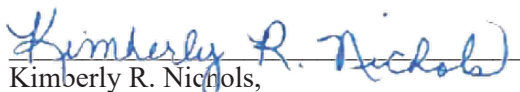
**Section 5.** It is the intention of the Council of the City of Salisbury that each provision this Resolution shall be deemed independent of all other provisions herein.

**Section 6.** It is further the intention of the 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 7.** The Recitals set forth hereinabove are incorporated into this section of this Resolution as if such recitals were specifically set forth at length in this Section 7.

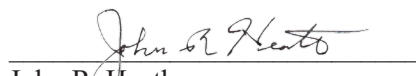
**Section 8.** This Resolution and the annexation of the Annexed Property as contemplated herein, shall take effect upon the expiration of forty-five (45) days following its final passage, subject, however, to the right of referendum with respect to this Resolution as set forth in MD Code, Local Government, § 4-401, et seq.

**THIS RESOLUTION** was introduced, read and passed at the regular meeting of the Council of the City of Salisbury held on the 27th day of February 2023, having been duly published as required by law in the meantime a public hearing was held on the 10th day of April, 2023 at 6:00 p.m., and was finally passed by the Council at its regular meeting held on the 10th day of April, 2023.

  
Kimberly R. Nichols,  
City Clerk

  
Muir W. Boda,  
Council President

APPROVED BY ME this 10th day of May, 2023.

  
John R. Heath,  
Acting Mayor

To the Mayor and Council of the City of Salisbury:

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

Parcel(s) # 199,200 & 202

1137-1141 S. Dinwiddie St.

Map # 48

SIGNATURE (S)

Signature

Printed

W. Blair Rinnier, Authorized Signor

Date 2-21-22

Signature

Printed

Date \_\_\_\_\_

Signature

Printed

Date \_\_\_\_\_

Signature

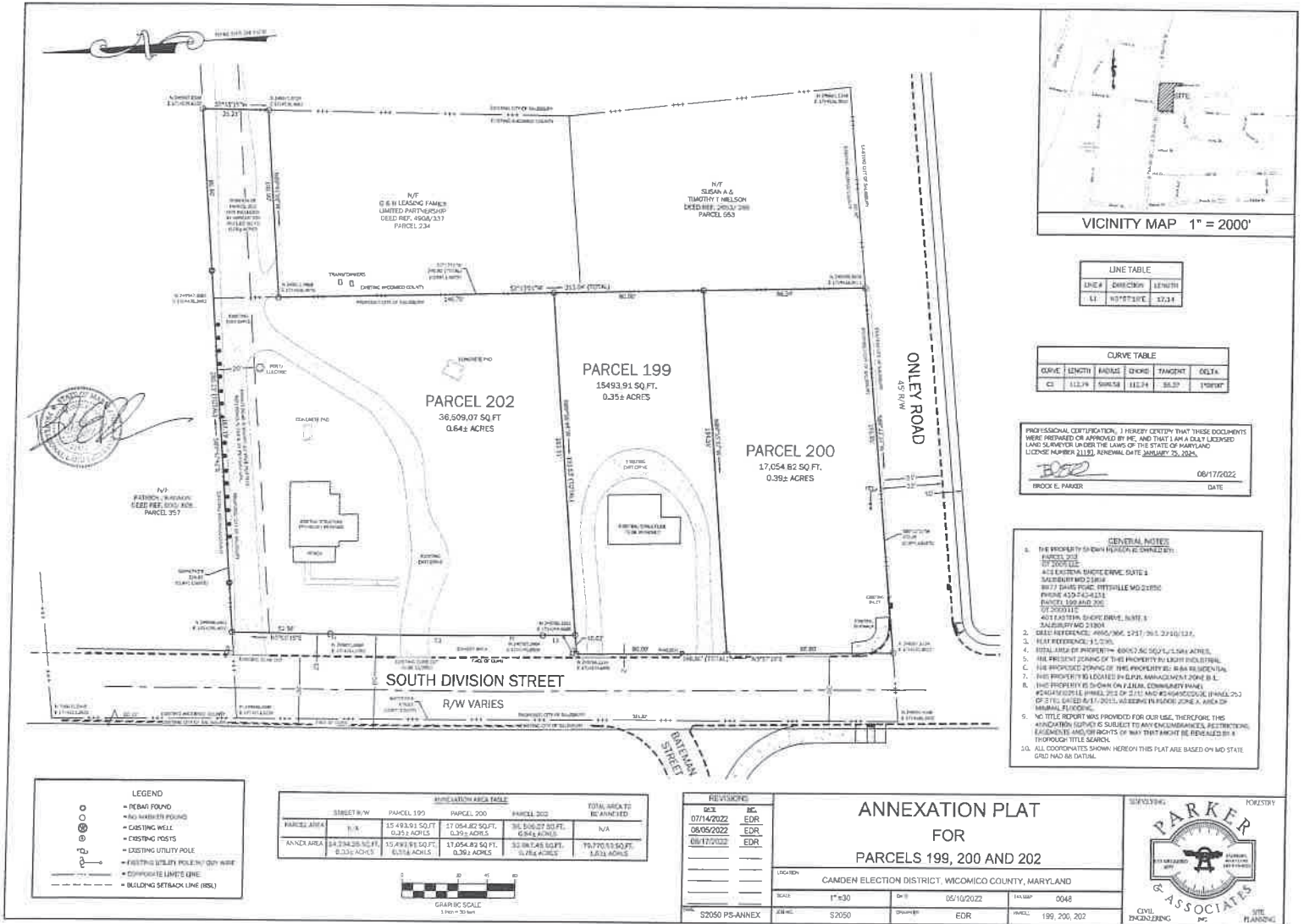
Printed

Date \_\_\_\_\_

## S DIVISION STREET – OT 2005, LLC

Beginning for the same at a point being an existing corner of the Corporate Limits Line of the City of Salisbury, MD near the westerly line of South Division Street at its intersection with the northerly right of way line of Onley Road extended. X 1,201,760.73 Y 188,850.09 (1) Thence by and with the said line of Onley Road, North eighty-nine degrees twenty-two minutes thirty-one seconds East (N 89° 22' 31" E) two hundred thirty-two decimal two, six (232.26) feet to a point on the said line of Onley Road and Corporate Limits Line. X 1,201,992.98 Y 188,852.62 (2) Thence leaving the said line and by and with the easterly line of the lands of OT 2005, LLC, North three degrees thirteen minutes one seconds East (N 03° 13' 01" E) three hundred forty-eight decimal zero, zero (348.00) feet to a point on the northerly line of the said OT 2005, LLC lands. X 1,202,012.51 Y 189,200.08 (3) Thence by and with the said line of OT 2005, LLC, North eighty-nine degrees forty-seven minutes forty-two seconds West (N 89° 47' 42" W) two hundred twenty-four decimal eight, five (224.85) feet to a point on the existing Corporate Limit Line near the westerly right of way line of South Division Street. X 1,201,787.66 Y 189,200.88 (4) Thence by and with the said line South four degrees twenty-three minutes twenty-five seconds West (S 4° 23' 25" W) three hundred fifty-one decimal eight, two (351.82) feet to the point of beginning.

Annexation containing 1.831 acres, more or less.





CERTIFICATION

S DIVISION STREET – OT 2005 LLC ANNEXATION

This is to certify that I have verified the petitions for the annexation and that to the best of my knowledge the persons having signed the petition represent at least 25% of the registered voters residing in the area to be annexed and are the owners of at least 25% of the assessed valuation of real property located in the area to be annexed.

Leslie C. Sherrill  
Surveyor

Date: 9/15/2022

S Division St – OT 2005 LLC – Certification – 09-15-2022.doc



# OT 2005, L.L.C. – SOUTH DIVISION STREET ANNEXATION

## Exhibit 5

### ANNEXATION AGREEMENT

**THIS ANNEXATION AGREEMENT (“Agreement”)** is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the *City of Salisbury, Maryland*, a municipal corporation of the State of Maryland (the “City”), and *OT 2005, L.L.C.*, a Maryland limited liability company (“OT 2005”) (the City and OT 2005 are hereinafter referred to collectively as the “Parties”).

### RECITALS

**WHEREAS**, for purposes of this Agreement, the term “OT 2005” shall be deemed to include each and every subsidiary, successor-in-interest and/or assign of OT 2005, as the case may be, such that this Agreement, and all of the terms and conditions set forth herein, shall apply to, be binding in all respects upon and inure to the benefit of each and every successor-in-interest and/or assign of OT 2005, as the case may be;

**WHEREAS**, OT 2005 is the owner of all that certain real property identified as Map 0048, Grid 0002, Parcel 199, consisting of 16,000 square feet more or less, having a premises address of 1139 St. Division St., Salisbury, Maryland 21804 (“**Parcel 199**”), pursuant to a Deed, dated October 27, 2022, from OT 2000, L.L.C. to OT 2005, recorded among the Land Records of Wicomico County, Maryland in Liber 5183, folio 1;

**WHEREAS**, OT 2005 is the owner of all that certain real property identified as Map 0048, Grid 0002, Parcel 200, consisting of 18,000 square feet more or less, having a premises address of 1141 St. Division St., Salisbury, Maryland 21804 (“**Parcel 200**”), pursuant to a Deed, dated October 27, 2022, from OT 2000, L.L.C. to OT 2005, recorded among the Land Records of Wicomico County, Maryland in Liber 5183, folio 1;

**WHEREAS**, OT 2005 is the owner of all that certain real property identified as Map 0048, Grid 0003, Parcel 0202, consisting of 36,509 square feet more or less, having a premises address of 1137 St. Division St., Salisbury, Maryland 21804 (“**Parcel 202**”), pursuant to a Deed, dated May 9, 2014, from Robert L. White, individually and t/a Whitey’s Bar-B-Q to OT 2005, recorded among the Land Records of Wicomico County, Maryland in Liber 3710, folio 127;

**WHEREAS**, Parcel 199, Parcel 200 and Parcel 202 are further described in the Annexation Plat attached hereto as *Exhibit 1* and incorporated herein. The Annexation Plat further depicts all that certain portion of the public road right-of-way known as “South Division Street”, consisting of 0.33 acres of land more or less and being that same public right-of-way (The aforesaid public road right-of-way is hereinafter referred to as the “**South Division Street ROW**”; Parcel 199, Parcel 200 and Parcel 202 and the South Division Street ROW are hereinafter referred to collectively as the “**Property**”). The Annexation Plat depicts all that same real property more particularly described by metes, bounds, courses and distances in that certain legal description attached hereto and incorporated herein as *Exhibit 2*; and

**WHEREAS**, OT 2005 intends to re-subdivide the three (3) parcels of the Property into one (1) parcel, as described in the “Annexation Site Plan the Grove,” a copy of which is attached hereto and incorporated herein as *Exhibit 3*;

**WHEREAS**, upon OT 2005’s subdivision of the Property into one (1) parcel as described in *Exhibit 3*, OT 2005 intends to construct upon the Property two (2) apartment buildings to be used for housing and associated uses consistent with the City’s College and University zoning;

**WHEREAS**, all of the land which makes up the Property is located within Wicomico County, Maryland and outside the municipal boundaries of the City, and, therefore, the Property is ineligible to



receive City services, including municipal water and sanitary sewer utility service, which OT 2005 desires to obtain for its development of the Property as aforesaid;

**WHEREAS**, OT 2005, submitted a Petition for Annexation (the "**Petition**"), dated February 21, 2022, requesting the City annex each parcel of land which makes up the Property as contemplated herein;

**WHEREAS**, the City is willing to annex the Property, provided OT 2005 agrees to adhere to all laws, ordinances and regulations of the City, and the provisions of this Agreement, regarding OT 2005's use and development of the Property;

**WHEREAS**, appropriate and required public hearings on the proposed annexation of the Property have been held pursuant to all applicable state and local laws;

**WHEREAS**, pursuant to the authority contained in MD Code, Local Government, § 4-101, et seq., the City and OT 2005 enter into this Agreement to set forth the terms and conditions of the proposed annexation of the Property and all annexation proceedings relating thereto.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

**1. Effective Date.**

The effective date of this Agreement shall be the date upon which the Resolution approving the City's annexation of the Property becomes effective (said Resolution is hereinafter referred to as the "**Annexation Resolution**"). The annexation of the Property shall not become effective unless and until all applicable appeal and referendum periods have expired, and, if applicable, all appeals and referenda have been resolved in favor of the City's annexation of the Property.

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

(a) The City, the Salisbury-Wicomico County Planning Commission, and associated staff shall be guided by this Agreement, throughout the review of any and all development plans submitted for or relating to the Property or any portion thereof to ensure the provisions of this Agreement are specifically implemented. Any approval granted to or for a development plan for the Property or any portion thereof by any commission, board, body or agent of the City shall be in substantial compliance with all of the terms and conditions of this Agreement.

(b) The Parties expressly acknowledge and agree the City's support for the annexation of the Property, as provided herein, is not intended, nor shall it be construed, to prohibit the City from enacting such future ordinances, charter provisions, engineering standards or any amendments thereto deemed necessary or appropriate to protect the public, health, safety and welfare of the residents of the City, nor from applying such ordinances or charter provisions to the development of the Property or any portion thereof, provided any such application does not operate to divest prior approvals, nor interfere with OT 2005's vested rights in and to the Property, or any portion thereof, to any extent greater than the impact of such ordinances and charter resolutions have upon other similarly-situated properties located within the municipal boundaries of the City.

**3. Warranties & Representations of OT 2005.**

(a) This Agreement shall constitute the written consent of OT 2005 to annexation of the Property, as required by MD Code, Local Government, §§ 4-403(b)(1)-(2). OT 2005 represents and warrants to the City that it has the full power and authority to sign this Agreement and that OT 2005 is the sole owner of the Property more particularly described in **Exhibit 2** and, thus, constitutes the owner of one hundred percent (100%) of the assessed value of the Property. OT 2005 further represents and warrants to

the City that there is no action pending against, or otherwise involving, OT 2005 that would affect, in any way, the right and authority of OT 2005 to execute this Agreement.

(b) OT 2005 expressly acknowledges and agrees that it will receive a benefit from and upon the City's annexation of the Property; accordingly, by OT 2005's execution of this Agreement, OT 2005 agrees, as a bargained-for condition for the City's annexation of the Property, to waive and relinquish any and all right it has or may have to withdraw its consent to the City's annexation of the Property or any portion thereof. OT 2005 shall not petition the Annexation Resolution to referendum and, in the event the Annexation Resolution is petitioned to referendum and OT 2005 is permitted to vote in such referendum, OT 2005 shall vote in favor of the Annexation Resolution.

4. **Application of City Code and Charter.**

From and after the effective date of the Annexation Resolution, all provisions of the City of Salisbury Charter (the "Charter") and the Salisbury Municipal Code (the "City Code") shall have full force and effect within the Property, except as otherwise expressly set forth herein.

5. **Municipal Zoning.**

Upon the effective date of the Annexation Resolution, the Property shall be zoned College and University.

6. **Municipal Services.**

(a) Subject to the obligations of OT 2005 set forth in Section 9(f)(i)-(ii) hereof, the City agrees to provide all necessary municipal services required for OT 2005's development of the Property, including, but not limited to, adequate water and sewer services, fire and police protection, and other municipal services as generally available to City residents.

(b) With regard to public water and sewer allocation for the Property or any portion thereof, any allocation of public water or wastewater capacity and/or services shall be made by the City according to adopted allocation plans in effect at the time OT 2005 makes a request for such capacity and/or services.

7. **Standards & Criteria.**

Should any environmental, engineering, or other similar standard or criteria expressly provided in this Agreement be exceeded by any local, state or federal law, regulation, rule, standard or authorized criteria, which may be adopted subsequent to the execution of this Agreement, the newer stricter standard, criteria, law or regulation shall apply.

8. **City Boundary Markers.**

(a) OT 2005, at its sole cost and expense, shall install City Boundary Markers at the boundary lines representing the enlarged City boundaries resulting from the City's annexation of the Property. OT 2005 shall provide the City with receipt(s), or other written documentation acceptable to the City, evidencing the installation of the boundary lines, as aforesaid, within ninety (90) days of the expiration of the forty-five (45) day referendum period applicable to the Annexation Resolution.

(b) In the event OT 2005 fails to comply with its obligations under Section 8(a) hereof, then, upon the expiration of the ninety (90) day period set forth in Section 8(a), OT 2005 shall make payment to the City in the amount of either Ten Thousand Dollars and 00/100 (\$10,000.00) or the amount of the costs incurred by the City to perform the obligations of OT 2005 under Section 8(a), whichever is greater.

9. **Development Considerations.**

(a) **Fees & Costs.** OT 2005 expressly acknowledges and agrees that it shall make payment to the City for any and all fees, costs and/or expenses, including, but not limited to, legal fees, planning fees and/or consulting fees, incurred by the City in connection with the preparation of this Agreement, the preparation of the Annexation Resolution, the preparation of any other document(s) pertaining to the annexation of the Property, the publication of public notice(s) for the annexation of the Property, and any other matter relating to or arising from the annexation of the Property, as determined by the City in its sole discretion. The City shall invoice OT 2005 for all costs to be paid by OT 2005 under this Section 9(a) and OT 2005 shall make payment to the City for all such amounts within fifteen (15) days of OT 2005's receipt of any such invoice from the City.

(b) **Development of Property.** OT 2005 shall develop the Property in a manner compliant with all laws and regulations governing the development of property located within the City's College and University zoning district.

(c) **Contribution to Area Improvement.** OT 2005 agrees to install sidewalks along the full public road frontage of the Property and to install pedestrian walkways within the Property in such manner and to such extent as determined necessary and appropriate by the City's Department of Infrastructure and Development.

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

- (i) Prior to OT 2005's submission or filing of any application or request for issuance of a permit for or relating to OT 2005's development of the Property, including an application for a building permit, or upon the expiration of one hundred twenty (120) days from the effective date of the Annexation Resolution, whichever occurs first, OT 2005 shall pay to the City a non-refundable development assessment in the amount of Thirteen Thousand Five Hundred Sixteen Dollars and 50/100 (\$13,516.50) (the "**Development Assessment**"). OT 2005 expressly acknowledges and agrees that its payment of the Development Assessment to the City under this Section 9(d)(i) is a material part of the consideration received by the City hereunder, without which the City would not enter into this Agreement.
- (ii) In the event OT 2005 fails to pay the Development Assessment to the City in accordance with the terms of Section 9(d)(i), the Development Assessment shall bear interest from the due date thereof to the date of payment at the rate of ten percent (10%) per annum. Notwithstanding any term to the contrary set forth herein, OT 2005 shall make payment of the Development Assessment, including all late charges incurred thereon, if any, to the City, prior to the City's issuance of any permit for or relating to any development of the Property.
- (iii) The Parties expressly acknowledge and agree the Development Assessment is intended for use by the City, in its sole discretion, for purposes of beautification, restoration and revitalization improvements to existing neighborhoods in the City. The Parties further acknowledge and agree the Development Assessment shall be in addition to, and otherwise independent of, any and all water and sewer comprehensive connection charges or fees assessed, levied or otherwise imposed by the City, any and all impact fees imposed by Wicomico County or the City, and/or any other charges or fees which the City may assess against OT 2005 or the Property in accordance with the terms and conditions of this Agreement and/or pursuant to any law or regulation applicable to the Property and/or the development thereof.

(e) **Community & Environmental Design.** OT 2005 expressly acknowledges and agrees that any development plan for the Property shall: feature strong pedestrian, functional and visual relationships

from the street and sidewalk to the front entrance of each structure constructed at or upon the Property; include enhanced site landscaping which recognizes and otherwise displays the “gateway” character of the Property; and, provide buffer plantings and forest retention for purposes of establishing a buffer between the developed portion of the Property and the residentially zoned properties adjoining portions of the Property.

**(f) Public Utility Improvements & Extensions.**

- (i)** The Parties expressly acknowledge and agree that extensions of public water and sanitary sewer utilities will be necessary to meet the utility service requirements for and within the Property. Accordingly, the Parties expressly acknowledge and agree that OT 2005 shall, at its sole cost and expense, design and construct, or cause to be designed and constructed, such public water and sanitary sewer utility extension(s), including water and sewer main(s), trunk line(s), fire hydrant(s) and appurtenant facilities, required or imposed to serve the development or redevelopment of, or any other site improvements to or for, the Property or any portion thereof, in accordance with the City’s standards and specifications.
- (ii)** In addition to the provisions set forth in Section 9(f)(i), OT 2005’s design and construction of all facilities necessary for the extension and service of public water and sanitary sewer utilities to the Property shall be governed by the terms and conditions of a Public Works Agreement, by and between OT 2005 and the City (the “PWA”), which shall be executed by the Parties as soon as practicable after the Annexation Resolution becomes effective, with the express agreement that execution of the PWA by the Parties will not be unreasonably conditioned, withheld or delayed; provided, however, no permit may be issued to OT 2005, or any party acting on its behalf, for any work associated with OT 2005’s development of the Property, or any portion thereof, until the PWA has been executed by the Parties.

**10. RECORD PLAT.**

OT 2005 shall provide the City with a copy of the final record plat for any development of, on or within the Property.

**11. NOTICES.**

All notices and other communication in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof: (1) when delivered in person on a business day at the address set forth below; (2) on the third (3<sup>rd</sup>) business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid certified or registered mail, return receipt requested, at the address set forth below; or, (3) when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery.

All notices and other communications to OT 2005 shall be addressed to, and delivered at, the following addresses:

OT 2005, L.L.C  
c/o W. Blair Rinnier, Jr.  
218 East Main St.  
Salisbury, MD 21801

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



City of Salisbury  
c/o Richard Baldwin, Director  
Department of Infrastructure and Development  
125 N. Division Street, Room 202  
Salisbury, Maryland 21801

*With a copy to:*  
Laura E. Hay, Esquire  
Cockey, Brennan & Maloney, P.C.  
313 Lemmon Hill Lane  
Salisbury, Maryland 21801

**12. Future Uses of Annexed Property.**

OT 2005 expressly acknowledges and agrees that, upon the effective date of the Annexation Resolution, any development of the Property must comply with all applicable laws, rules and regulations of the City, as may be amended from time to time, including, but not limited to, all applicable zoning laws of the City, and all applicable permitting and/or approval procedures established by the City governing the development and/or use of property located within the City's College and University zoning district. Development of the Property shall be subject to, and must comply with, any and all applicable capacity fees and/or impact fees established by the City and/or Wicomico County existing as of the effective date of the Annexation Resolution, subject to any amendments thereto as approved by the City and/or Wicomico County from time to time. The Parties expressly acknowledge and agree that this Agreement, or any of the terms set forth herein, shall not, in any way, constitute, or otherwise be construed as, an approval for any specific development on or within the Property or any portion thereof; nor shall this Agreement or any of its terms constitute or otherwise be construed as a waiver by the City of any fee(s) or charge(s) associated with or arising from OT 2005's development and/or use of the Property or any portion thereof.

**13. Miscellaneous Provisions.**

(a) **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties, acting for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising from or in connection with this Agreement.

(b) **Scope of Agreement.** This Agreement is not intended to limit the exercise of any police power(s) of the City, to limit the operation of the City government or to guarantee the outcome of any administrative process. Unless otherwise expressly set forth in this Agreement or in any other subsequent agreement entered into by the Parties, this Agreement shall be subject to all properly enacted laws, and properly adopted governmental regulations, now or hereafter existing and applicable. This Agreement shall not be rendered invalid by reason of the enactment or amendment of any law or the adoption or amendment of any regulation, which is: (i) enacted or adopted by the City in the exercise of a governmental power for a valid governmental purpose; (ii) enacted or adopted by the City as a result of a state or federal mandate; or, (iii) applicable to the Property and to similarly situated property located outside of the City in Wicomico County.

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

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

(e) **Project as a Private Undertaking.** The Parties expressly acknowledge and agree: (i) that the development or redevelopment of the Property, or any portion thereof, is a private undertaking; (ii) that neither the City nor OT 2005 is acting as the agent of the other party in any respect hereunder; and, (iii) that each of the City and OT 2005 is an independent contracting entity with respect to the provisions of this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement.

(f) **Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the Parties.

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

(h) **Assignment of Agreement.** The Parties expressly acknowledge and agree this Agreement shall be assignable, in whole or in part, by OT 2005, without the consent of the City or any of its elected officials, employees or agents, to any purchaser of the Property or any portion thereof; provided, however, any transfer of all or a portion of the Property shall be subject to the terms of this Agreement. Notwithstanding any term to the contrary set forth in this Section 13(h), OT 2005 shall not transfer, or pledge as security for any debt or obligation, any of its interest in or to all or any portion of the Property without first obtaining the acknowledgment of the transferee or pledgee to be bound by all of the terms and conditions set forth herein, as if such transferee or pledgee was a party to this Agreement. OT 2005 shall provide the City with a copy of all documents, including all exhibits attached thereto (if any), evidencing any transfer or assignment by OT 2005 of any of its interests in and to the Property or any portion thereof.

(i) **Express Condition.** The obligations of OT 2005 under this Agreement shall be contingent upon the annexation of the Property becoming effective (as set forth in Section 1 hereof) and shall not constitute the personal obligations of OT 2005 independent of its ownership of the Property or any portion thereof. Notwithstanding any term to the contrary set forth herein, the obligations of OT 2005 under Section 9(a) hereof shall not be contingent or otherwise conditioned upon annexation of the Property and shall be binding upon and enforceable against OT 2005, its successors, representatives and assigns, to the fullest extent permitted by Maryland law.

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

(k) **Recording of Agreement.** This Agreement, including all exhibits, schedules and/or addenda attached hereto, each of which is incorporated in this Agreement by this reference, shall be recorded among the Land Records of Wicomico County, the costs of which shall be paid by OT 2005. This Agreement, and all of the terms contained herein, shall run with the Property and be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and/or assigns.

(l) **No Reliance.** Each party to this Agreement, for itself, expressly acknowledges and agrees that, in entering into this Agreement, such party has not been induced by, nor has relied upon, nor included as part of the basis of the bargain herein, any representation(s) or statement(s), whether express or implied, made by any agent, representative or employee of the other party to this Agreement, which is not expressly set forth herein.

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



(n) **Severability.** The Parties intend that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application thereof to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

(o) **Waiver of Jury Trial.** The Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counter-claim brought by any party against any other party on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another, and/or any claim, injury or damage arising from or consequent upon this Agreement.

(p) **Remedies.** In addition to each and every remedy now or hereafter existing at law or in equity, the Parties expressly agree that, provided the Annexation Resolution becomes effective, the Parties shall have the right to enforce this Agreement by an action for specific performance.

(q) **Survival.** The terms and conditions of this Agreement shall survive the effective date of the Annexation Resolution and shall not be merged or expunged by the City's annexation of the Property or any portion thereof.

(r) **Construction.** This Agreement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

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

(t) **Cooperation.** The Parties hereto agree that each will cooperate with the other to the extent necessary to facilitate the issuance of any and all required permits from any non-party government agency for OT 2005's development of the Property.

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

***[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]  
[SIGNATURES APPEAR ON THE PAGE THAT FOLLOWS]***

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals and acknowledged this Agreement as of the day and year first above written.

**ATTEST/WITNESS:**

**"OT 2005":**

**OT 2005, L.L.C.**

\_\_\_\_\_

By: \_\_\_\_\_ (Seal)  
W. Blair Rinnier, Jr., Authorized Representative

**THE "CITY":**

**City of Salisbury, Maryland**

\_\_\_\_\_

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

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared W. Blair Rinnier, Jr., who acknowledged himself to be an Authorized Representative of OT 2005 I, LLC, and that he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument on behalf of OT 2005, LLC for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JACOB R. DAY, who acknowledged himself to be the MAYOR of THE CITY OF SALISBURY, MARYLAND, and that he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of said municipal corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**CERTIFICATION BY ATTORNEY**

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

\_\_\_\_\_  
**Laura E. Hay, Esq.**

