

## RESOLUTION NO 3263

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALISBURY AUTHORIZING THE MAYOR TO SIGN THE AMENDED AND RESTATED LAND DISPOSITION AGREEMENT FOR LOTS 1, 11, AND 15, TO SET THE TERMS FOR THE SALE AND CONSTRUCTION ON SAID LOTS.**

**WHEREAS**, the City is the owner of all that certain real property identified as **(i)** Map 0107, Parcel 1071 (Maryland Tax Account No. 09-061002) (“**Lot 1**”), **(ii)** Map 0107, Parcels 1074 -1079 (Maryland Tax Account Nos. 09-060987; 09-061029; 09-055215; 09-055207; 09-057994; and, 09-057986) (hereinafter referred to collectively as “**Lot 11**”), and **(iii)** Map 0107, Parcel 1066 (Maryland Tax Account No. 09-052534) (“**Lot 15**”);

**WHEREAS**, by the majority vote of the Council of the City of Salisbury (the “**City Council**”), at the October 28, 2002 Regular Meeting of the City Council, the City declared Lot 1 and Lot 11 to be surplus property;

**WHEREAS**, on or about October 30, 2015, the City entered into Disposition Contract for the sale of Parking lots 1 and 11 (“**Original LDA**”); and

**WHEREAS**, by the majority vote of the City Council at the November 22, 2021 Regular Meeting of the City Council, the City declared Lot 15 to be surplus property;

**WHEREAS**, the City desires to sell to Salisbury Town Center Apartments, LLC (“**Developer**”), and Developer desires to purchase from the City, Lots 1, 11, and 15 for the express purpose of the Developer’s development and construction thereon;

**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 and lease the surplus property defined hereinabove as Lot 1, Lot 11, and Lot 15;

**WHEREAS**, for various reasons, including the global COVID-19 pandemic, the Developer’s purchase, lease and redevelopment of Lot 1, Lot 11, and Lot 15 has been delayed, and the Developer 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 1**, to provide the rights and obligations of the City and Developer with respect to the following: **(i)** Developer’s purchase of such portion of Lot 1, Lot 11, and Lot 15 as described in the Amended LDA; **(ii)** the construction of a public parking garage in connection with the development of the Salisbury Town-Center Project in accordance with the terms contained in the Amended LDA; **(iii)** adding the purchase and development of Lot 15; and

(iv) such other matter(s) relating to Developer's purchase and development of the Sby Town-Center Lots (as defined in the Amended LDA), subject to all terms and conditions contained in the Amended LDA; and

**WHEREAS**, the specific provisions regarding the construction on Lots 1, 11, and 15, as well as the construction of a parking garage are specified in the Amended and Restated Land Disposition Agreement attached hereto as **Exhibit 1**; and

**WHEREAS**, by this Resolution, the Council hereby approves the funding agreement attached hereto as **Exhibit 1**.

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

Section 1. The Mayor of the City of Salisbury is hereby authorized to execute the Amended and Restated Land Disposition Agreement attached hereto and incorporated herein as Exhibit 1.

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


Section 3. it is the further 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 1 attached hereto, are incorporated into this section of the Resolution as if such recitals and Exhibit 1 were specifically set forth at length in this Section 4.

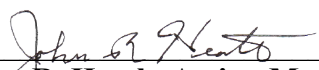
**THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 20<sup>th</sup> day of June, 2023 and is to become effective immediately upon adoption.

ATTEST:

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

  
\_\_\_\_\_  
**Muir W. Boda, City Council President**

Approved by me, this 22nd day of June, 2023.

  
\_\_\_\_\_  
**John R. Heath, Acting Mayor**

## AMENDED AND RESTATED LAND DISPOSITION AGREEMENT

THIS AMENDED AND RESTATED LAND DISPOSITION AGREEMENT ("Agreement") is entered into this 20<sup>th</sup> day of June, 2023, being that certain date that this Agreement is fully executed by all Parties hereto and is fully and finally approved and adopted by the City Council for the City of Salisbury, Maryland (said date is hereinafter referred to as the "Effective Date"), by and between the *City of Salisbury*, a municipal corporation of the State of Maryland (the "City"), and *Salisbury Town Center Apartments, 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**, the City is the owner of all that certain real property identified as (i) Map 0107, Parcel 1071 (Maryland Tax Account No. 09-061002) ("Lot 1"), (ii) Map 0107, Parcels 1074 -1079 (Maryland Tax Account Nos. 09-060987; 09-061029; 09-055215; 09-055207; 09-057994; and, 09-057986) (hereinafter referred to collectively as "Lot 11"), and (iii) Map 0107, Parcel 1066 (Maryland Tax Account No. 09-052534) ("Lot 15");

**WHEREAS**, by the majority vote of the Council of the City of Salisbury (the "City Council"), at the October 28, 2002 Regular Meeting of the City Council, the City declared Lot 1 and Lot 11 to be surplus property;

**WHEREAS**, by the majority vote of the City Council at the November 22, 2021 Regular Meeting of the City Council, the City declared Lot 15 to be surplus property;

**WHEREAS**, for purposes of the Salisbury Town-Center Project (as defined herein) to be developed and constructed by Developer as set forth herein, and all transactions between the Parties arising from or relating to Developer's planned development and/or construction of the Salisbury Town-Center Project as contemplated by this Agreement, the City desires to resubdivide Lot 1, Lot 11 and Lot 15 into Six (6) new, reconfigured lots and parcels of land identified as "Lot 1", "Lot 2", "Lot 3", "Lot 4" "New Parcel 1066" and "New Parcel 1071" as shown on the "Resubdivision Plat for Parcels 1066, 1071 and 1074-1079" attached hereto and incorporated herein as **Exhibit A** (the "Resubdivision Plat") (for purposes of this Agreement: "Lot 1" as shown on the Resubdivision Plat is hereinafter referred to as the "Unity Square Lot"; "Lot 2" as shown on the Resubdivision Plat is hereinafter referred to as the "Parking Garage Lot"; "Lot 3", "Lot 4", "New Parcel 1066" and "New Parcel 1071" as shown on the Resubdivision Plat are hereinafter referred to collectively as the "Sby Town-Center Lots"; and, "Lot 1", "Lot 2", "Lot 3", "Lot 4", "New Parcel 1066" and "New Parcel 1071" as shown on the Resubdivision Plat are hereinafter referred to collectively as the "Sby Property");

**WHEREAS**, subject to the terms and conditions set forth in this Agreement, the City desires sell to Developer, and Developer desires to purchase from the City, the Sby Town-Center Lots, as shown on the Resubdivision Plat attached hereto and incorporated herein as **Exhibit A**, for the express purpose of Developer's development and construction thereon of: (i) Three (3) Four (4) story buildings which, as planned by Developer, shall consist of approximately Two Hundred Twenty-Six (226) apartment units in the aggregate; and, (ii) with respect to "Lot 4" only, a One (1) story building, located adjacent to the Unity Square Lot, consisting of commercial space(s) for retail use (the Three (3) Four (4) story apartment buildings and the One (1) story commercial-retail building to be constructed by Developer on the Sby Town-Center Lots as contemplated by this Agreement are each hereinafter referred to individually as a "Town-Center Building" and are hereinafter referred to collectively the "Town-Center Buildings");

**WHEREAS**, the Town-Center Buildings shall be constructed on the Sby Town-Center Lots in conformity with the development plans depicted in the "Salisbury Town-Center Development Plan" (the "Development Plan") (a copy of the Development Plan is attached hereto and incorporated herein as **Exhibit B**) and in compliance with the Final Site Plan (as defined herein) as approved by the Salisbury-Wicomico County Planning and Zoning Commission (the "Planning Commission") (Developer's planned construction of the Town-Center Buildings, and all improvements associated therewith, at or upon the Sby Town-Center Lots as more particularly depicted in the Development Plan, is hereinafter referred to collectively as the "Salisbury Town-Center Project");

**WHEREAS**, at all times during the period beginning on the Closing Date (as defined herein) and continuing through and until the City's issuance of the Building Permit(s) (as defined herein) for Developer's construction of the Town-Center Buildings, and all improvements associated therewith, as contemplated by this Agreement, Developer shall lease to the City such portion(s) the Sby Town-Center Lots used by the City, as of the date and year first above written, for the operations of the public parking lot commonly referred to as the "**Downtown Parking Lot**", subject, in all respects, to the provisions of Section 4.2 and the terms and conditions of the Parking Lot Lease (as defined herein) to be executed by the Parties on or before the Closing Date (as defined herein) (the area(s) of the Sby Town-Center Lots to be leased by Developer to the City for the City's use and operation of the Downtown Parking Lot as set forth herein is hereinafter referred to as the "**Parking Lot Leased Premises**");

**WHEREAS**, following the City's declaration of Lot 1 and Lot 11 as surplus property, the City and Developer entered into that certain Land Disposition Agreement, dated October 30, 2015, which, together with all amendments thereto ("**Lots 1 and 11 LDA**"). Following the City's declaration of Lot 15 as surplus property, the City awarded, that certain Award of Exclusive Negotiating Period, dated January 18, 2022 (the "**Lot 15 Amendment**") providing for the City's sale of Lot 15 to Developer. The Lots 1 and 11 LDA and the Lot 15 Amendment collectively set forth *inter alia* the rights and obligations of the Parties for the City's conveyance or lease of such respective portions of the Sby Property to Developer for the development, construction and operation of such portions of the Sby Property as provided therein (the Lots 1 and 11 LDA and all amendments thereto, and, the Lot 15 Amendment, entered into by the Parties prior to this Agreement are hereinafter referred to collectively as the "**Original Land Disposition Agreement**"); and,

**WHEREAS**, for various reasons, including the global COVID-19 pandemic, the Salisbury Town-Center Project has been delayed and the Parties now wish to amend and restate the Original Land Disposition Agreement, in its entirety, to provide the rights and obligations of the Parties with respect to the following: (i) the City's conveyance of the Sby Town-Center Lots to Developer; (ii) Developer's development and construction of the Salisbury Town-Center Project on the Salisbury Town-Center Lots as depicted in the Development Plan and in compliance with the Final Site Plan as approved by the Planning Commission; (iii) Developer's lease of the Parking Lot Leased Premises to the City, subject to the terms and conditions of the Parking Lot Lease as more fully set forth herein; and, (iv) any and all other matter(s) related to Developer's planned development and construction of the Salisbury Town-Center Project as contemplated by this Agreement.

**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 permitted assigns, hereby represent, covenant, warrant and agree as follows:

## **ARTICLE I**

### **GENERAL TERMS FOR CLOSING ON CONVEYANCE OF THE SBY TOWN-CENTER LOTS**

- 1.1 **Purchase Price.** In consideration of the City's conveyance of the Sby Town-Center Lots to Developer as contemplated hereunder, Developer shall make payment to the City in the amount of Two Hundred Seventy-Five Thousand Dollars and 00/100 (\$275,000.00) (the "**Purchase Price**"), which said amount includes (i) Developer's payment of Twenty-Five Thousand Dollars and 00/100 (\$25,000.00), which shall be paid by Developer to the City upon the Parties' execution of this Agreement (the Initial Deposit and the Second Deposit are hereinafter referred to collectively as the "**Deposit**"). The Deposit shall be held in escrow by the City and shall be released by the City at Closing, subject to the terms and conditions set forth herein.
- 1.2 Subject to all terms and conditions of this Agreement, upon Developer's payment of the balance of the Purchase Price to the City at Closing, the Parties expressly acknowledge and agree as follows:
  - 1.2.1 The City shall deliver to Developer a Special Warranty Deed, duly executed and acknowledged by the City, conveying good and merchantable fee simple title to the Sby Town-Center Lots unto Developer, and containing such express reference(s), acceptable to the City, that the conveyance of the Sby Town-Center Lots to Developer thereunder is made subject to all terms and conditions of this Agreement; and,



1.2.2 At or prior to Closing, the Parties shall execute: (i) the Parking Lot Lease (as defined herein) in substantially the same form as **Exhibit C** attached hereto and incorporated herein; (ii) the Temporary Construction and Permanent Maintenance Easement(s), in substantially the same form as **Exhibit D** attached hereto and incorporated herein, providing the rights and responsibilities of the Parties with respect to any and all easement(s) granted to Developer over such certain portion(s) of City-owned real property necessary for Developer's development and construction of the Salisbury Town-Center Project as contemplated by this Agreement (the "**TC-PM Easement(s)**"); and (iii) the Town-Center Parking Garage Construction Management Agreement (the "**CRM**"), in substantially the same form as **Exhibit E** attached hereto and incorporated herein, governing the rights and responsibilities of the Parties with respect to the construction of the Town-Center Parking Garage (as defined herein). (For purposes of this Agreement, the Parking Lot Lease, the TC-PM Easement(s), the CRM are hereinafter referred to collectively as the "**Related Documents**".)

1.3 **Study Period.** Developer shall have Twenty (20) days from the date the Resubdivision Plat is recorded with the Land Records of Wicomico County (the "**Study Period**"), to obtain a commercially reasonable title insurance binder evidencing clear title to the Sby Town-Center Lots intended to be conveyed by the City to Developer hereunder. In the event Developer cannot obtain a commercially reasonable title insurance binder evidencing clear title to Sby Town-Center Lots prior to the expiration of the Study Period, Developer may elect to terminate this Agreement, by providing written notice thereof to the City, in which case this Agreement shall terminate immediately, the City shall promptly refund the Deposit to Developer and, upon the City refunding the Deposit to Developer as aforesaid, the Parties shall have no further liabilities to one another hereunder.

1.4 **Building Permit.** To the extent not prohibited by applicable law or by applicable public policy as determined by a court of competent jurisdiction, the City shall cooperate with Developer in obtaining any and all approvals and/or permits necessary for Developer's development and construction of the Salisbury Town-Center Project as contemplated by this Agreement. Subject to the terms and conditions set forth in Sections 3.6, 3.7, 3.8 and 3.9 hereof, and all applicable Maryland (the "**State**") and local laws, rules and/or regulations, upon approval of the Final Site Plan (as defined herein) by the Planning Commission, Developer, at any time thereafter, may apply for any and all permit(s) required for the development and construction of the Salisbury Town-Center Project as depicted in the Development Plan (see **Exhibit B**) and in compliance with the said approved Final Site Plan.

1.5 **Closing Date.** Subject to Developer obtaining a commercially reasonable title insurance binder for its purchase of the Sby Town-Center Lots as provided in Section 1.3, settlement on Developer's purchase of the Sby Town-Center Lots from the City shall occur within Thirty (30) days from the date Developer records the Resubdivision Plat, as approved by the City, with the Land Records for Wicomico County. (Settlement on Developer's purchase of the Sby Town-Center Lots from the City, as contemplated by this Agreement, is hereinafter referred to as "**Closing**".)

1.6 **Condition of the Sby Town-Center Lots.**

1.6.1 Closing on Developer's purchase of the Sby Town-Center Lots as contemplated hereunder shall not be contingent upon the condition of the Sby Town-Center Lots or any portion(s) thereof and/or upon any inspection(s) of the Sby Town-Center Lots or any portion(s) thereof conducted by or on behalf of Developer prior to the date of Closing (said date is hereinafter referred to as the "**Closing Date**").

1.6.2 Except as specifically set forth herein, Developer expressly acknowledges and agrees that: (i) the City has made no warranties or representations to Developer regarding the condition of the Sby Town-Center Lots or any portion(s) thereof; and (ii) Developer has not relied upon any statements or representations made by the City, or any of its elected officials, appointed officials, employees, agents, attorneys, representatives or contractors, regarding the condition of the Sby Town-Center Lots or any portion(s) thereof or any other matter(s) relating to any of the Sby Town-Center Lots and/or the Salisbury Town-Center Project to be developed and constructed thereon.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

- 2.1     Representations and Warranties of Developer.** 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 the State of Maryland, and (ii) Developer has all necessary power(s) and authority(ies) to execute and deliver this Agreement and to execute and deliver any and all of the Related Documents (as defined hereinabove) intended to be executed by the Parties on or before the Closing Date pursuant to the terms and conditions of this Agreement.
- 2.1.3**     This Agreement and any and all of the Related Documents to be executed by the Parties on or before the Closing Date as provided herein (i) have been, or will be at the time of execution, duly authorized by all requisite partnership, corporate or other action on the part of Developer, and (ii) are, or will be at the time of execution, 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 of the Related Documents, nor the performance of the obligations of Developer set forth herein and/or in any of the Related Documents will result in the violation of any law or provision of Developer's Articles of Organization and/or Operating Agreement, or any other organizational document of Developer, nor will this Agreement or any of the Related Documents conflict with any order or decree of any court or governmental instrumentality by which Developer is bound or any other documents, agreements or instruments to which Developer is a party or by which Developer is bound that are not the subject of this Agreement or the related documents contemplated hereunder.
- 2.1.4**     Developer hereby covenants that it will complete the development and construction of the Salisbury Town-Center Project in accordance with all terms and conditions of this Agreement, the Development Plan attached hereto and incorporated herein as **Exhibit B** and the Final Site Plan as approved by the Planning Commission, except for any modification(s) thereto as may be necessary for any approval(s) and/or permit(s) required for Developer's planned development and/or construction of the Salisbury Town-Center Project as contemplated by this Agreement. Subject to all applicable Federal, State and/or local law(s), rule(s) and/or regulation(s), there shall be no restrictions on Developer's use of the Sby Town-Center Lots, or any portion(s) thereof or any improvement(s) constructed thereon, except as set forth in this Agreement and as may be imposed, from time to time, by any Federal, State or Local permitting authority having jurisdiction over Developer's development of the Salisbury Town-Center Project, provided any such restriction(s) shall apply to all property of similar size, location, zoning and/or use.

- 2.2**     **Representations and Warranties of the City.** As of the Effective Date and continuing through and until the Closing Date, the City represents and warrants to Developer as follows:
- 2.2.1**     The City is the fee simple owner of the Sby Property and all portions thereof.
- 2.2.2**     All bills and claims (if any) incurred by the City for labor performed and/or materials furnished to or for any portion(s) of the Sby Town-Center Lots have been, or will be, paid, in full, by the City prior to the Closing Date, such that upon Closing there shall be no mechanics' liens or materialmen's liens (whether or not perfected) on or affecting the Sby Town-Center Lots or any portion(s) thereof. Notwithstanding any term to the contrary set forth herein, for purposes of this Agreement, Developer shall pay any and all costs or fees relating to or arising from any labor performed, services provided and/or materials furnished for or in connection with Developer's acquisition of the Sby Town-Center Lots and/or Developer's planned development and construction of the Salisbury Town-Center Project as contemplated by this Agreement.
- 2.2.3**     To the City's actual knowledge, no party has ever mined on or under any portion(s) of the Sby Property and no party has the right to do so.
- 2.2.4**     To the City's actual knowledge, with respect to the Sby Town-Center Lots and any portion(s) thereof: **(i)** there are no violations, nor any potential violations, 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 any portion(s) of Sby Town-Center Lots, there are no private restrictive covenants affecting the Sby Town-Center Lots or any portion(s) thereof.
- 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 Sby Property or 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 Sby Town-Center Lots, except as otherwise provided in the Development Plan (attached hereto and incorporated herein as **Exhibit B**) or as may be required by the Planning Commission for approval of the Final Site Plan.
- 2.2.6**     Except as recorded in Land Records for Wicomico County, as of Effective Date and continuing through the Closing Date, there shall be: **(i)** no leases, management, maintenance, service or other contracts encumbering or otherwise governing the development or use of the Sby Town-Center Lots or any portion(s) thereof; and, **(ii)** no pending contracts of sale, options to purchase or rights of first refusal (or the like) applicable to the Sby Town-Center Lots or any portion(s) thereof.
- 2.2.7**     As of the Effective Date and continuing through 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 portion(s) of the Sby Property; or, **(ii)** enter into any contract that would be in effect as of the Closing Date or otherwise bind or restrict Developer with respect to its development and planned use of the Sby Town-Center Lots, or any portion(s) thereof, from and after the Closing Date, without the prior written approval of Developer, which approval shall not be unreasonably withheld, conditioned or delayed by Developer.
- 2.2.8**     Except as expressly set forth in this Agreement, as of the Effective Date and continuing through the Closing 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 any portion(s) of the Sby Town-Center Lots, without the prior written approval of Developer which approval shall not be unreasonably withheld, conditioned, or delayed by Developer; **(ii)** refrain from committing any waste or placing any refuse at or upon the Sby Town-Center Lots or any portion(s) thereof; **(iii)** observe all laws, ordinances, regulations and restrictions affecting the Sby Town-Center Lots and/or any use(s) of the Sby Town-Center Lots; **(iv)** refrain from taking any action to rezone, subdivide and/or resubdivide the Sby Property or any portion(s) thereof, except as expressly shown on Resubdivision Plat or as otherwise consented to by Developer in writing which approval shall not be unreasonably withheld,

conditioned or delayed by Developer; and, (v) maintain such insurance on or for the Sby Property, and all portion(s) thereof, in force as of the Effective Date.

- 2.2.9** As of the Effective Date and continuing through the Closing Date, the City shall not, without obtaining the prior written consent of Developer which approval shall not be unreasonably withheld, conditioned or delayed by Developer: (i) lease, sell or transfer the Sby Property or any portion(s) thereof or any of the City's right(s), title and/or interest(s) therein; (ii) encumber or pledge the Sby Town-Center Lots or any portion(s) thereof; (iii) grant a lien or security interest in or to the Sby 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 Sby Property; or, (v) in any other way affect title to the Sby Town-Center Lots or any portion(s) thereof. Nothing in this section shall prevent the City from encumbering the Unity Square Lot or Parking Garage Lot for purposes of obtaining financing, following recordation of the Resubdivision Plat with the Land Records for Wicomico County as provided in Section 3.5.
- 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(s) of the City.
- 2.2.11** As of the Effective Date and continuing through the Closing Date, there shall be no commission(s) due or owing in connection with the City's sale, and Developer's purchase, of the Sby Town-Center Lots or Developer's lease of the Parking Lot Leased Premises to the City as contemplated by this Agreement.
- 2.2.12** As of the Closing Date, there shall be no assessments for public improvements against the Sby Town-Center Lots or any portion(s) thereof 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 DEVELOPER'S PURCHASE OF THE SBY TOWN-CENTER LOTS FROM THE CITY**

- 3.1** **Date, Time and Place of Closing.** In accordance with all terms and conditions contained in this Agreement, including, expressly, the provisions set forth in Sections 1.1, 1.2, 1.3, 1.5 and 1.6 respectively, at Closing the City shall convey, unto Developer, good and merchantable fee simple title to the Sby Town-Center Lots. Subject to the terms set forth in Section 1.6, Closing shall occur at such time as mutually 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 Ten (10) days prior to the Closing Date. In consideration for Developer's performance of all its obligations under this Agreement, the Parties expressly acknowledge and agree that, subject to the terms set forth in Sections 1.1 and 1.2, at Closing, the City shall convey title to, and deliver possession of, the Sby Town-Center Lots to Developer.
- 3.2** **Delivery of the Deed at Closing.** Pursuant to Section 1.2, at Closing, the City shall deliver, or cause to be delivered, to Developer the Special Warranty Deed conveying any and all right(s), title and interest(s) the City has or may have in and to the Sby Town-Center Lots unto Developer. The Special Warranty Deed to be executed by the City and delivered to Developer at Closing shall 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 Sby Town-Center Lots or any portion(s) thereof. Subject to all applicable terms and conditions contained in this Agreement, upon the City's delivery of the executed Special Warranty Deed to Developer at Closing, Developer, at its sole cost and expense, shall record the said Special Warranty Deed for the Sby Town-Center Lots with the Land Records for Wicomico County.
- 3.3** **Closing Agent.** Developer shall have the option of selecting its own Title Insurance company or title attorney for Closing on Developer's purchase of the Sby Town-Center Lots from the City as set forth herein.



- 3.4 Pro-rations/Recordation & Transfer Taxes.** All public or governmental charges or assessments against the Sby Town-Center Lots, or any portion(s) thereof, 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 Date, 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 were levied as of the Closing Date. In addition, the costs of any and all state and local recordation and transfer taxes arising from Developer's purchase of the Sby Town-Center Lots shall be paid by Developer at Closing. All other Closing costs shall be paid by the Developer, excepting any attorneys' incurred by the City in connection with Closing on the transactions contemplated herein.
- 3.5 The Resubdivision Plat.** Within Twenty (20) days following the full execution of this Agreement by the Parties, Developer shall submit the Resubdivision Plat in substantially the same form attached hereto and incorporated herein as **Exhibit A**, to the City of Salisbury Department of Infrastructure and Development ("City DID") for review and approval by the City. Any and all costs, fees and/or taxes arising from, relating to or in connection with the preparation, modification, submission and/or approval(s) of the Resubdivision Plat shall be paid by Developer at its sole cost and expense. Upon the City's approval of the Resubdivision Plat, Developer shall promptly record the approved Resubdivision Plat with the Land Records for Wicomico County. Any and all costs and/or fees incurred in connection with recording the Resubdivision Plat as aforesaid shall be paid by Developer at its sole cost and expense.
- 3.6 Final Site Plan Approval.**
- 3.6.1** By its execution of this Agreement, Developer hereby expressly acknowledges and agrees that, within Ninety (90) days following the Closing Date, Developer shall submit a final site plan for its planned development of the Salisbury Town-Center Project on the Salisbury Town-Center Lots (the "**Final Site Plan**") to City DID for its review, comment, and acceptance. The Final Site Plan to be submitted by Developer in accordance with this Section 3.6.1 shall provide for Developer's planned development and construction of the Salisbury Town-Center Project as depicted by the Development Plan, and in accordance with all terms and conditions of this Agreement, 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. Nothing in this section shall serve to change or the City's procedures and requirements for such approval.
- 3.6.2** In the event Developer shall fail or refuse, for any reason(s) whatsoever (or no reason), to submit the Final Site Plan to City DID within Ninety (90) days from the Closing Date in accordance with the provisions of Section 3.6.1, the City, at its sole discretion, may assess the Delayed Performance Penalties (as defined below) against Developer in accordance with the provisions of Section 3.9.
- 3.7 Building Permit Issuance.**
- 3.7.1** Developer hereby expressly acknowledges and agrees that, within One Hundred Fifty (150) days from the Closing Date, Developer shall submit the requisite application(s) to City DID for issuance of the necessary building permit(s) authorizing Developer's construction of the Salisbury Town-Center Project at or upon the Sby Town-Center Lots, as shown in the Development Plan attached hereto and incorporated herein as **Exhibit B** and in compliance with the Final Site Plan approved by the Planning Commission (each such building permit required for the construction of the Salisbury Town-Center Project, or any part(s) thereof, is hereinafter referred to individually as a "**Building Permit**" and collectively as the "**Building Permits**"). Any Building Permit(s) Developer requests City DID issue to authorize construction of the Salisbury Town-Center Project, or any part(s) thereof, shall: (i) comply with the Final Site Plan as approved by the Planning Commission; (ii) 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(s); and, (iii) shall be subject to review and approval by City DID in accordance with its policies and procedures governing the issuance of building permits as established and maintained by City DID from time to time.



3.7.2 In the event Developer fails to submit the Building Permit application(s) to City DID within One Hundred Fifty (150) days from the Closing Date due to delay(s) or other circumstances which are outside the reasonable control of Developer and do not arise from, or relate to, any breach by Developer of its obligations hereunder, the One Hundred Fifty (150) day period set forth in Section 3.7.1 shall be extended by One (1) day for each and every day such delay continues and until such time as City DID issues the requisite Building Permits to Developer. Any extension provided Developer under this Section 3.7.2 shall be subject to the prior written approval of the City which shall not be unreasonably withheld.

3.8 **Issuance of Certificate(s) of Occupancy for the Project.** Developer expressly acknowledges and agrees that Developer shall (i) substantially complete the Salisbury Town-Center Project in accordance with all terms and conditions of this Agreement and as more particularly shown on the Final Site Plan as approved by the Planning Commission, such that Developer shall have secured a Certificate of Occupancy from the City for the Salisbury Town Center Buildings within Thirty-Six (36) months from the Closing Date (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 hereunder, the issuance of a Certificate of Occupancy for any and all of the Salisbury Town Center Buildings shall not be unreasonably withheld by the City. (For purposes of this Agreement the term “**Certificate of Occupancy**” shall mean when any Salisbury Town Center Building is structurally complete to the point the City would ordinarily issue a certificate of occupancy for such building.) Notwithstanding any term to the contrary set forth herein, Developer, without incurring any liability under Section 3.9, shall have the option to extend the C-O Deadline for a period of twelve (12) months, subject to Developer delivering written notice of such election to the City not less than Sixty (60) days prior to the C-O Deadline (said extended time period is hereinafter referred to as the “**Extended C-O Deadline**”). Developer expressly acknowledges and agrees that the right to extend the C-O Deadline granted to Developer under this Section 3.8 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 Salisbury Town-Center Project as shown on the Final Site Plan approved by the Planning Commission.

3.9 **Delayed Performance Penalties.** Except as expressly set forth in Section 3.8, in the event Developer fails to perform any of its obligations under Sections 3.6, 3.7 and/or 3.8, respectively, 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 Fifteen (15) days following the date the City delivers written notice to Developer, specifying the obligation(s) Developer failed to perform in accordance with the terms and conditions contained in Sections 3.6, 3.7 and/or 3.8 respectively (said written notice from the City to Developer is hereinafter referred to as a/the “**Notice of Penalty**”); and, if Developer fails to cure the default(s) specified in the Notice of Penalty within Fifteen (15) days from the date of delivery thereof, the City may, in its sole discretion, assess a Delayed Performance Penalty against Developer in an amount not to exceed Seven Thousand Five Hundred Dollars and 00/100 (\$7,500.00) for each and every month Developer remains in default of any its obligation(s) under Sections 3.6.1, 3.7.1 and/or 3.8 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 3.9 shall be Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00).

3.10 **Merger.** The Parties expressly acknowledge and agree that none of the provisions of this Agreement shall be merged by reason of the Special Warranty Deed, to be executed by the City and delivered to Developer at Closing in accordance with Section 1.2, conveying and otherwise transferring any and all right(s), title and interest(s) the City has or may have in and to the Sby Town-Center Lots unto Developer as contemplated by this Agreement.

3.11 **Code Covenant.** Developer agrees that all final plans for any and all structures and/or site improvements to be constructed by Developer for or in connection with the development of the Salisbury Town-Center Project at the Sby Town-Center Lots shall be comply with all applicable provisions of Federal, State and local law(s), rule(s) and/or regulation(s).

- 3.12 **Cooperation between the Parties.** The City shall in good faith consider any request submitted by Developer for approval of any financing incentive(s) available for the development of the Salisbury Town-Center Project as contemplated hereunder, which said financing incentive(s) may, by way of example only, include the following: 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. Nothing in this section shall be construed to require the City to limit, alter, or amend its requirements or procedures for obtaining said financing incentives. The Developer remains responsible for meeting all requirements of any said financing incentives.

#### **ARTICLE IV**

#### **THE PARKING LOT LEASE**

- 4.1 **Parking Lot Lease.** The Parties expressly acknowledge and agree as follows:
- 4.1.1 As of the Effective Date, the City is the sole and exclusive owner of all those certain lots and parcels of real property defined herein as the Sby Property, portions of which are currently used by the City for the use and operation of the Downtown Parking Lot.
- 4.1.2 As a material part of the consideration to be received by the City for its conveyance of the Sby Town-Center Lots to Developer as contemplated by this Agreement, beginning on the Closing Date and continuing through and until the date a Building Permit for the construction of the Salisbury Town-Center Project is issued by City DID, Developer hereby agrees to lease to the City, and the City agrees to lease from Developer, the Parking Lot Leased Premises in accordance with the terms and conditions of the Parking Lot Lease, in substantially the same form as **Exhibit C** attached hereto and incorporated herein, to be executed by the Parties on or prior to the Closing Date. Notwithstanding any term to the contrary set forth herein, the Parties expressly acknowledge and agree Closing on the City's conveyance of the Sby Town-Center Lots to Developer shall be expressly conditioned upon the Parties' execution of the Parking Lot Lease, in substantially the same form as **Exhibit C** attached hereto and incorporated herein, on or prior to the Closing Date. The City may not assign the Parking Lot Lease, or any of its right(s) or interest(s) arising thereunder, nor sublet any portion(s) of the Parking Lot Leased Premises, without the prior written consent of Developer which approval shall not be unreasonably withheld, conditioned or delayed by Developer. Developer understands and hereby approves use of the parking lot for purposes of constructing Unity Square under RFP 23-104, for so long as the Parking Lot Lease is in effect pursuant to the terms thereof.
- 4.2 **Terms to be Contained in the Parking Lot Lease.** Regardless of any mutually agreed upon modifications the Parties may make to the form Parking Lot Lease attached hereto and incorporated herein as **Exhibit C**, the Parties expressly acknowledge and agree the Parking Lot Lease to be executed by the Parties pursuant to Section 4.1 shall contain the following principal terms:
- 4.2.1 **Lease Term.** The "Term" of the Parking Lot Lease shall commence on the Closing Date and shall automatically renew, at the City's sole discretion, on a month-to-month basis through and until the earlier of the following to occur: (i) the date on which the City issues a Building Permit to Developer for the construction of the Salisbury Town-Center Project, or any part(s) thereof, at the Sby Town-Center Lots; or, (ii) the City's earlier termination of the Parking Lot Lease as provided in Section 4.2.2.
- 4.2.2 **The City's Right to Early Termination of the Parking Lot Lease.** At any time during the Term of the Parking Lot Lease, the City may elect to terminate the Parking Lot Lease by delivering written notice, specifying such election, to Developer not less than Fifteen (15) days prior to the expiration of the then-current monthly lease period.
- 4.2.3 **Rent & Other Charges Due from the City under the Parking Lot Lease.** At all times during the Term of the Parking Lot Lease, Developer shall charge the City a monthly rental fee in the amount of One Dollar and 00/100 (\$1.00). At all times during the Term of the Parking Lot Lease and following the expiration or earlier termination thereof as provided in Section 4.2.1, the City shall be responsible for the payment of all fees and/or costs arising from or associated with the City's operation of the Downtown

Parking Lot at the Parking Lot Leased Premises, including any fees billed for utility service(s) provided in connection with the City's operation of the Downtown Parking Lot, regardless of whether such fees and/or costs were incurred prior to after the expiration of the Term of the Parking Lot Lease or the City's earlier termination thereof as provided in Section 4.2.1.

- 4.2.4 Obligations of the City under the Parking Lot Lease.** At all times during the Term of the Lease, the City, at its sole and expense, shall be responsible for any and all repairs and maintenance of the Parking Lot Leased Premises and any and all improvements located thereon, including, but not limited to, paving and patching repairs, sidewalk repairs, storm water and other utility repairs, parking age ticket spitter repairs, parking booth repairs, light pole repairs and bulb replacement, and snow removal and salting; provided, however, Developer shall be responsible for any repairs to the Parking Lot Leased Premises or any portion(s) thereof, including any and all repairs to any improvement(s) located thereon, caused by the intentional or solely negligent act(s) or omission(s) of Developer and/or any of its agents, representatives, principals, members, officers, employees and/or contractors.
- 4.2.5 Insurance for Downtown Parking Lot.** At all times during the Term of the Parking Lot Lease, the City shall, at its sole cost and expense, maintain a policy or policies of commercial general liability insurance with respect to the City's use of the Parking Lot Leased Premises for the operations and maintenance of the Downtown Parking Lot for public parking, with all premiums for such insurance policy(ies) fully paid by the City on or before date such premiums are due, and any such insurance policy(ies) shall be issued by, and binding upon, an insurance company licensed to do business in the State of Maryland. Prior to the Parties' execution of the Parking Lot Lease, the City shall provide Developer with a current Certificate(s) of Insurance evidencing the City's compliance with the terms of this Section 4.2.5.
- 4.2.6 Developer Access to the Parking Lot Leased Premises.** At all times during the Term of the Parking Lot Lease, Developer, and any of its authorized agents, representatives, employees and/or contractors, shall have the right to enter upon any and all portions of the Parking Lot Leased Premises for any reason(s) whatsoever and at any time(s), without prior notice to the City, provided Developer shall not unreasonably interfere with the City's operation of the Downtown Parking Lot at the Parking Lot Leased Premises, unless such interference is otherwise reasonably required or unavoidable for Developer's performance of its obligations for the development and construction of the Salisbury Town-Center Project as contemplated by this Agreement.

## ARTICLE V

### **CONSTRUCTION OF THE TOWN-CENTER PARKING GARAGE AT THE PARKING GARAGE LOT**

#### **5.1 Construction of the Town-Center Parking Garage at the Parking Garage Lot.**

- 5.1.1** On behalf of the City, Developer shall design and construct a new parking garage at the Parking Garage Lot containing a minimum, of Four Hundred Fifty (450) marked parking spaces (the "**Town-Center Parking Garage**"). The design, and the costs for construction, of the Town-Center Parking Garage shall be subject to the consent of the City which shall not be unreasonably withheld or delayed. Except as specifically provided in Section 5.2.2, the Parking Garage Lot and the Town-Center Parking Garage constructed thereon shall, at all times, be owned and maintained by the City at its sole cost and expense.
- 5.1.2** Except as specifically set forth in Section 5.2.1, The City shall pay all costs incurred for the construction of the Town-Center Parking Garage at the Parking Lot; provided, however, the costs for the construction of the Town-Center Parking Garage at the Parking Garage Lot shall not exceed the sum of Ten Million Dollars and 00/100 (\$10,000,000.00) (the "**Maximum PG-Construction Appropriation**") plus the amount of the Developer Garage Contribution (as defined hereinbelow). The Maximum PG-Construction Appropriation shall include, but is not limited to, all costs incurred by the City for: (i) any financing obtained by the City to fund construction of the Town-Center Parking Garage up to three percent (3%) of the bond; (ii) environmental remediation required for construction of the Town-Center Parking Garage at the Parking Garage Lot; (iii), the construction of the Town-Center Parking Garage at

the Parking Garage Lot as contemplated hereunder, and (iv) unforeseen conditions such as storm water management.

- 5.1.3** Prior to Developer's submission of the Final Site Plan to City DID for review and approval by the Planning Commission pursuant to the terms and conditions set forth in Section 3.6.1, Developer shall provide the City with a construction cost proposal (the "**PG-Cost Proposal**"), prepared and executed by the general contractor overseeing the construction of the Town-Center Parking Garage as specified in the CRM, which shall provide the estimated total costs for construction of the Town-Center Parking Garage in accordance with the design plan(s) prepared or procured by Developer, at its sole cost, and approved by the City. The Parties expressly acknowledge and agree the costs for construction of the Town-Center Parking Garage, including any costs incurred by the City to obtain financing to fund such construction costs and/or to complete environmental remediation (if any) necessary to permit the construction of the Town-Center Parking Garage at the Parking Garage Lot, shall not exceed Ten Million Seven Hundred Fifty Thousand Dollars and 00/100 (\$10,750,000.00), which said amount represents the sum of the Maximum PG-Construction Appropriation plus the Developer Garage Contribution (as defined hereinbelow). In the event the PG-Cost Proposal provides a total estimated cost for construction of the Town-Center Parking Garage in excess of Ten Million Seven Hundred Fifty Thousand Dollars and 00/100 (\$10,750,000.00), the Parties expressly acknowledge and agree the City shall have the right to: (i) terminate the CRM, by delivering written notice of such termination to Developer; (ii) receive a copy of any and all design plans, documents, surveys, CAD and/or notes relating to the planning, design and/or construction of the Town-Center Parking Garage prepared by on or on behalf of Developer (collectively the "**Parking Garage Plans**"), and Developer shall have a copy of all such Parking Garage Plans provided to the City within Seven (7) days following the City's termination of the CRM as provided herein; and, (iii) contract with a general contractor selected by the City, in its sole discretion, for the construction of the Town-Center Parking Garage at the Parking Garage Lot subject to such terms and conditions the City, in its sole discretion, may deem acceptable. Notwithstanding any term to the contrary set forth in this Section 5.1.3, the City shall complete construction of the Town-Center Parking Garage on or before the CO-Deadline or the Extended CO-Deadline (if applicable). The Parties expressly acknowledge and agree the terms contained in the immediately preceding sentence constitute a material part of the consideration to be received by Developer hereunder, without which Developer would not enter into this Agreement.

## **5.2 Developer Responsibilities for Construction of the Town-Center Parking Garage.**

- 5.2.1** The Parties expressly acknowledge and agree Developer shall contribute Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) (the "**Developer Garage Contribution**") for the planning, permitting, construction and maintenance of the Town-Center Parking Garage. Developer shall deliver a lump sum payment, in the amount of the Developer Garage Contribution, to the City within Ten (10) days from the date the City issues any building permit(s) authorizing construction of the Town-Center Parking Garage, or any part(s) thereof, at the Parking Garage Lot. Any and all costs and expenses incurred by Developer for the design of the Town-Center Parking Garage pursuant to the provisions of Section 5.2.2 shall be deemed separate and exclusive from the Developer Garage Contribution to be paid by Developer to the City under this Section 5.2.1.
- 5.2.2** The Parties expressly acknowledge and agree Developer shall be responsible for all costs and expenses incurred in connection with the procurement and preparation of any and all design plan(s) and construction drawing(s) for the Town-Center Parking Garage. The design plan(s) and construction drawing(s) for the Town-Center Parking Garage procured by, and/or prepared at the at the direction of, Developer in accordance with this Section 5.2.2 shall be subject to the City's approval which such approval shall not be unreasonably withheld or delayed by the City. In the event the City does not approve of any design plan(s) and/or construction drawing(s) for the Town-Center Parking Garage, or any component(s) thereof, the City shall provide Developer with written notice specifying: (i) the design plan(s) and/or construction drawing(s) disapproved by the City; (ii) the reason(s) for the City's disapproval of such design plan(s) and/or construction drawing(s); and, (iii) reasonable and feasible alternatives for Developer to have incorporated within the Town-Center Parking Garage design plan(s)



and/or construction drawing(s), in lieu of the design plan(s) and/or construction drawing(s), or part(s) thereof, disapproved by the City. For purposes of this Section 5.2.2 only, email correspondence to either of the Parties at the email addresses provided in Section 7.4 shall constitute sufficient delivery of written notice by such party.

- 5.2.3** Developer shall be responsible for coordinating and relocating the Four (4) charging stations, owned and operated by Delmarva Power, installed on “New Parcel 1066” as identified on the Resubdivision Plat attached hereto and incorporated herein as **Exhibit A**.

**5.3 Timeline and Other Conditions for the Construction of the Town-Center Parking Garage.**

- 5.3.1** The City shall commence construction of the Town-Center Parking Garage prior to or simultaneously with Developer’s commencement of construction of the Town-Center Buildings for the Salisbury Town-Center Project, subject to all terms and conditions set forth in Sections 3.6 and 3.7 respectively.
- 5.3.2** In accordance with the terms set forth in Section 1.2.2, on or before the Closing Date, the Parties shall execute the CRM in a form substantially similar to **Exhibit E** attached hereto and incorporated herein, which the Parties expressly acknowledge and agree shall include, at a minimum, terms specifying: **(i)** the costs of construction and the design details for the Town-Center Parking Garage; and, **(ii)** the rights and responsibilities of the Parties with respect to the construction of the Town-Center Parking Garage at the Parking Garage Lot as contemplated by this Agreement.
- 5.3.3** Notwithstanding any term to the contrary set forth herein, Developer’s submission of the Final Site Plan within the time period set forth in in Section 3.6.1 shall be expressly conditioned upon the City’s prior passage of a Bond Ordinance authorizing the City to issue and sell general obligations bonds in an aggregate principal amount not to exceed Ten Million Dollars and 00/100 (\$10,000,000.00) for the express purpose of funding the Maximum PG-Construction Appropriation for the City’s payment of the costs incurred for construction of the Town-Center Parking Garage at the Parking Garage Lot as contemplated by this Agreement (the said Bond Ordinance to be passed by the City in accordance with the provisions of this Section 5.3.3 is hereinafter referred to as the “**2023 Parking Facilities Bond Ordinance**”). In the event passage of the 2023 Parking Facilities Bond Ordinance does not occur prior to the deadline for Developer’s submission of the Final Site Plan provided in Section 3.6.1, Developer, at its sole discretion, may, without liability or penalty under Section 3.9, elect to extend the deadline for submission of the Final Site Plan and any and all deadlines occurring thereafter (including, expressly, the deadline for obtaining the Building Permits and the C-O Deadline (as defined hereinabove) set forth in Sections 3.7.1 and 3.8.1 respectively), for each and every day following the deadline for Developer’s submission of the Final Site Plan under Section 3.6.1 that the 2023 Parking Facilities Bond Ordinance is not passed or otherwise adopted by the City.

**ARTICLE VI**

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

- 6.1. Default by Developer.** In the event Developer fails, or otherwise refuses, for any reason whatsoever (or no reason), to proceed to Closing as provided herein, the Deposit shall be paid to the City as liquidated damages and this Agreement shall thereupon terminate immediately upon the City’s delivery of written notice specifying Developer’s default and the City’s election to terminate this Agreement as result thereof; provided, however, in the event of a default by Developer, the City shall have the right to pursue any and all remedies available to the City, at law and/or in equity, arising from Developer’s default hereunder. Developer shall not be in default under this Agreement if Developer fails to Close because the City and Developer cannot agree on any documents listed in Section 1.2.2.
- 6.2. Default by the City.** In the event the City fails, or otherwise refuses, for any reason other than that Developer has failed to meet its obligations under this Agreement to proceed to Closing as provided herein, the Deposit shall be promptly refunded to Developer and this Agreement shall thereupon terminate immediately following Developer’s delivery of written notice specifying the City’s default and Developer’s election to terminate this Agreement as result thereof; provided, however, in the event of a default by the City, Developer shall have the





right to pursue any and all remedies available to Developer, at law and/or in equity, arising from the City's default hereunder. The City shall not be in default under this Agreement if the City fails to Close because the City and Developer cannot agree on any documents listed in Section 1.2.2.

## **ARTICLE VII**

### **MISCELLANEOUS**

- 7.1 Risk of Loss to Sby Town-Center Lots.** Prior to Closing on Developer's purchase of the Sby Town-Center Lots as contemplated by this Agreement, the Sby Property, including, expressly, each of the Sby Town-Center Lots and any portion(s) thereof, shall be held at the sole risk of the City. In the event of any substantial loss or damage to any of the Sby Town-Center Lots, or any portion(s) thereof, prior to the Closing Date, provided such substantial loss or damage to any of the Sby Town-Center Lots, or any portion(s) thereof, does not arise from or relate to the gross negligence or willful misconduct of Developer its agents, employees, or contractors, Developer, within Ten (10) days from the occurrence of such substantial loss or damage to any of the Sby Town-Center Lots, or any portion(s) thereof, shall deliver written notice to the City specifying Developer's election to: (i) terminate this Agreement, in which event, this Agreement and any 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 the City's rights under any policy or policies of insurance covering the Sby Town-Center Lots, 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 7.1, Developer shall be deemed to have affirmed this Agreement in accordance with the terms and conditions of subsection (ii) hereof.
- 7.2 Assignment.** Neither the 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 non-assigning party.
- 7.3 No 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 purchase of the Sby Town-Center Lots or any portion(s) thereof. The City to the extent not prohibited by applicable law or by applicable public policy as determined by a court of competent jurisdiction and funds have been appropriated 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 and expenses) 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 7.3 shall survive Closing or any earlier termination of this Agreement.
- 7.4 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 7.4:

**If to Developer:**

Salisbury Town Center Apartments, LLC  
c/o Bradley J. Gillis, Authorized Representative  
150 W. Market Street, Suite 101  
Salisbury, Maryland 21801  
Email: [brad@ggibuilds.com](mailto:brad@ggibuilds.com)

**With a copy to:**

Salisbury Town Center Apartments, LLC  
c/o T. Kevin Carney  
11526 Pebblecreek Drive  
Timonium, Maryland 21093  
Email: [kevin@thomasbuildersinc.com](mailto:kevin@thomasbuildersinc.com)

**With a copy to:** Michael P. Sullivan, Esquire  
150 W. Market Street, Suite 101  
Salisbury, Maryland 21801  
Email: [mike@ggibuilds.com](mailto:mike@ggibuilds.com)

**If to the City:** City of Salisbury  
c/o Andy Kitzrow, City Administrator  
125 N. Division Street, Mayor's Office  
Salisbury, Maryland 21801  
Email: [akitrow@salisbury.md](mailto:akitrow@salisbury.md)

**With a copy to:** Law Office of Marianna Batie  
c/o Reena Patel, Esquire  
1321 Mt Hermon Rd, Suite B  
Salisbury, Maryland 21801  
Email: [reena@battielaw.com](mailto:reena@battielaw.com)

**With a copy to:** Cockey, Brennan & Maloney, P.C.  
c/o Ashley A. Bosche, Esquire, City Solicitor  
313 Lemmon Hill Lane  
Salisbury, Maryland 21801  
Email: [bosche@cbmlawfirm.com](mailto:bosche@cbmlawfirm.com)

Any Notice sent by personal delivery in accordance with the foregoing shall be delivered during normal business hours and shall be deemed received as evidenced by execution of a receipt therefor or, if delivery is rejected by the recipient or a person acting on the recipient's behalf, when delivery was attempted. Any Notice sent by overnight courier service in accordance with the foregoing shall be deemed received as evidenced by the records of such courier service. 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.

- 7.5 Integration; Waiver.** This Agreement and any ancillary agreements referenced herein constitute the entire understanding between the Parties with respect to all 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, 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.
- 7.6 Governing Law and Venue.** 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. Jurisdiction and venue for any dispute involving interpretation or breach of this Agreement shall be in the Maryland State courts located in Wicomico County, Maryland or if a proceeding must be brought in federal court, the action shall be brought in the United States District Court for the District of Maryland.
- 7.7 Waiver by Jury.** **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW OR BY APPLICABLE PUBLIC POLICY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY A PARTY HERETO AGAINST THE 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.**

- 7.8 **Professional Fees.** In the event Developer or the City brings any action or proceeding against the other party 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. The City's obligations under this section shall be subject to the appropriation of funds for said purpose.
- 7.9 **Construction.** The section headings contained in this Agreement are inserted for convenience of 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 all Exhibits attached hereto, as the same may be amended, modified, supplemented or replaced from time to time in accordance with the provisions of this Agreement. 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.
- 7.10 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, heirs and permitted assigns.
- 7.11 **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.
- 7.12 **No Third-Party Beneficiary.** The provisions of this Agreement and of the Related Documents to be executed and delivered by the Parties on or before the Closing Date are and will be for the benefit of the Parties hereto only and shall not be for the benefit of any third-party. Accordingly, no third-party shall have any right(s) whatsoever to enforce any provision(s) of this Agreement or any provision(s) of any of the Related Documents to be executed and delivered by the Parties on or before the Closing Date as set forth herein.
- 7.13. **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.
- 7.14 **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 and as is not prohibited by applicable law or by applicable public policy as determined by a court of competent jurisdiction in order 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.
- 7.15 **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Section 7.15.
- 7.16 **Non Business days.** In the event any day on which an action is to be taken or a payment made in accordance with the provision of this Agreement is a Saturday, Sunday, or a holiday observed by City, the bank at which the City maintains funds from which any payment to be made by the City is provided for in this Agreement or the bank at which Developer maintains funds from which any payment to be made by Developer is provided for in this Agreement (in any such case, a "**Non-Business Day**"), such action or such payment shall be made on the next succeeding day that is not a Non-Business Day.
- 7.17 **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.

*[The remainder of this page is intentionally left blank]*

*[SIGNATURES APPEAR ON THE PAGE THAT IMMEDIATELY FOLLOWS]*

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":**

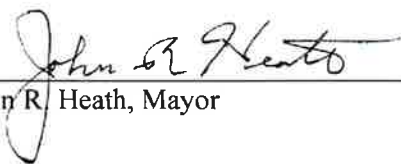
**Salisbury Town Center Apartments, LLC**

By:  (SEAL)  
Bradley J. Gillis, Authorized Representative

**THE "CITY":**

**City of Salisbury, Maryland**



By:  (SEAL)  
John R. Heath, Mayor

**[SIGNATURE PAGE FOR AMENDED & RESTATED LOT DISPOSITION AGREEMENT  
BY AND BETWEEN SALISBURY TOWN CENTER APARTMENTS, LLC & THE CITY OF SALISBURY]**

**EXHIBIT A**

**THE RESUBDIVISION PLAT**





**EXHIBIT B**

**THE DEVELOPMENT PLAN**

SALISBURY, MD  
COMPREHENSIVE DEVELOPMENT PLANS

[illegible]

Sheet List Table	
Sheet Number	Sheet Title
SHEET-1	(JLL SHEET)
SHEET-2	GENERAL SITE PLAN INCLUDING
SHEET-3	COMPARISON SITE PLAN
SHEET-4	W. MARKET STREET/SCAPS
SHEET-5	W. MARKET STREET/SCAPS
SHEET-6	GAMMON AVE. STREETSCAPE
SHEET-7	GRIFFIN AVE. STREETSCAPE
SHEET-8	ELLAVARON
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SHEET-11	THIRULET BUILDINGS
SHEET-12	THIRULET BUILDINGS
SHEET-13	GRACES
SHEET-14	GRACES

LAND USE SUMMARY
LIMIT OF DISTURBANCE
EXISTING SITE IMPROVEMENTS
PROPOSED SITE IMPROVEMENTS

[illegible]

SHEET-1

[illegible]

TITLE SHEET  
TOWN CENTER



*J. Polym. Sci., Part A: Polym. Chem.*





SHEET-2

OVERALL SITE PLAN RENDERING

# **SALISBURY TOWN CENTER**

SALISBURY, MARYLAND

**RENDERED VIEWS**  
20 APRIL, 2023







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## SALISBURY TOWN CENTER

SALISBURY, MARYLAND

W. MARKET STREET AT CIRCLE AVE

20 APRIL, 2023





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## SALISBURY TOWN CENTER

SALISBURY, MARYLAND

## CIRCLE AVE. AT RETAIL

20 APRIL, 2023





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## SALISBURY TOWN CENTER

SALISBURY, MARYLAND

## POOL AMENITY

20 APRIL, 2023





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## SALISBURY TOWN CENTER

SALISBURY, MARYLAND

## W. MARKET STREET

20 APRIL, 2023





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## SALISBURY TOWN CENTER

SALISBURY, MARYLAND

## BUILDING B ENTRY

20 APRIL, 2023





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## SALISBURY TOWN CENTER

SALISBURY, MARYLAND

## BUILDING B ENTRY

20 APRIL, 2023

**EXHIBIT C**

**FORM AGREEMENT (DO NOT EXECUTE) –  
PARKING LOT LEASE AGREEMENT**

**NOTE: THIS DOCUMENT IS INTENDED TO SERVE AS EXHIBIT C TO THE AMENDED & RESTATED LOT DISPOSITION AGREEMENT BY AND BETWEEN THE CITY OF SALISBURY AND SALISBURY TOWN CENTER APARTMENT, LLC. DO NOT EXECUTE THIS DOCUMENT. INITIAL ONLY.**

**PARKING LOT LEASE AGREEMENT**

**THIS PARKING LOT LEASE AGREEMENT**, is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between by and between the *City of Salisbury*, a municipal corporation of the State of Maryland (the “City”), and *Salisbury Town Center Apartments, 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”).

**RECITALS**

**WHEREAS**, Developer is the owner of all that certain real property identified as New Parcel 1066, Lot 3, Lot 4 and New Parcel 1071 (collectively the “**Sby Town-Center Lots**”), as shown on that certain Resubdivision Plat, titled “Resubdivision and Dedication Plat for Parcels 1066, 1071 and 1074-1079”, dated June 1, 2023, and recorded among the Land Records of Wicomico County in Plat Book No. \_\_\_\_, Page \_\_\_\_ (the “**Resubdivision Plat**”);

**WHEREAS**, on even date herewith, the City conveyed the Sby Town-Center Lots unto Developer for the purpose of Developer’s development and construction of the Salisbury Town-Center Project as more particularly set forth in that certain Amended and Restated Land Disposition Agreement, dated June \_\_\_\_, 2023, by and between Developer and the City (the “**LDA**”); and,

**WHEREAS**, in accordance with Article IV of the LDA, Developer, as a material part of the consideration received by the City for its conveyance of the Sby Town-Center Lots to Developer as aforesaid, Developer hereby agrees to lease to the City, and the City hereby agrees to lease from the Developer, all those certain portions of the Sby Town-Center Lots used by the City, as of the date hereof, for the operations of a public parking lot commonly referred to as the “**Downtown Parking Lot**”, subject to all terms and conditions set forth herein (the portions of the Sby Town-Center Lots to be leased by Developer to the City for the City’s use and operation of the Downtown Parking Lot as set forth herein is hereinafter referred to as the “**Parking Lot Leased Premises**”).

**THAT FOR AND IN CONSIDERATION** of the Property and other good, valuable and sufficient considerations, the parties agree as follows:

1. **Leased Premises.** Developer does hereby leases unto the City, and the City hereby leases from Developer, the Parking Lot Leased Premises, for the Term set forth in Section 2 and subject to all terms and conditions set forth herein.

2. **Term and Termination.**

(a) Developer hereby leases the Parking Lot Leased Premises to the City, and the City hereby leases the same from Developer, on a month-to-month basis, commencing on the date and year first above written (the “**Commencement Date**”) and continuing for each month thereafter unless and until this Lease is terminated as provided in Section 2(b) hereof (the “**Term**”).

(b) This Lease, and the Term hereof, shall terminate upon the first occurrence of the following:

(i) The City provides Fifteen (15) days prior written notice to Developer specifying the City’s intention to terminate this Lease not less than Fifteen (15) prior to the expiration of the then-current monthly lease period; or

(ii) Unless otherwise agreed to in writing by the Parties, the date on which the City issues a Building Permit to Developer for the construction of the Salisbury Town-Center Project, or any part(s) thereof, at or upon any of the Sby Town-Center Lots or portion(s) thereof.

3. **Rent.** For each month this Lease shall be in effect as provided in Section 2(b) hereof, the City hereby agrees to pay Developer monthly rent in the amount of One Dollar and 00/100 (\$1.00) (the “**Monthly Rent**”) for the lease of the Parking Lot Leased Premises as provided herein in the amount of One Dollar (\$1.00). Rent shall be due and payable to Developer on the first (1<sup>st</sup>) day of the month for each calendar month during the Term hereof.



4. **The City's Permitted Use of the Parking Lot Leased Premises.** At all times during the Term hereof, the City shall use the Parking Lot Leased Premises for the exclusive purpose of operating and maintaining parking lot available for use by the public on such days, at such times, and subject to such conditions as the City may determine in its sole discretion. Notwithstanding any term to the contrary set forth herein, Developer acknowledge and agrees that, during the Term of this Lease, the City may use the Parking Lot Leased Premises, or any portion(s) thereof, for or in connection with the City's construction of "Unity Square" as more particularly described in RFP 23-104 issued and approved by City prior to the date and year first above written.

5. **Insurance.** At all times during the Term, City shall, at its sole cost and expense, maintain, and in keep in force, a policy or policies of commercial general liability insurance for the City's use of the Parking Lot Leased Premises for the City operations and maintenance of the Downtown Parking Lot for public parking as provided herein, with all premiums for such insurance policy(ies) fully paid by the City on or before date such premiums are due, and any such insurance policy(ies) shall be issued by, and binding upon, an insurance company licensed to do business in the State of Maryland. Prior to the Parties' execution of this Lease, the City shall provide Developer with a current Certificate(s) of Insurance evidencing the City's compliance with the terms of this Section 5.

6. **Taxes.** At all times during the Term, Developer shall pay any real property taxes assessed on or against the Parking Lot Leased Premises or any portion(s) thereof.

7. **Improvements and Alterations to the Parking Lot Leased Premises.**

(a) At all times during the Term, the City, at its sole cost and expense, shall be responsible for any and all repairs to and/or maintenance of the Parking Lot Leased Premises and any and all improvements located thereon, including, but not limited to, paving and patching repairs, sidewalk repairs, any signage and/or lighting installed at or upon the Parking Lot Lease Premises, storm water and other utility repairs, parking age ticket spitter repairs, parking booth repairs, light pole repairs and bulb replacement, and snow removal and salting; provided, however, Developer shall be responsible for any repairs to the Parking Lot Leased Premises or any portion(s) thereof, including any and all repairs to any improvement(s) located thereon, caused by the intentional or solely negligent act(s) or omission(s) of Developer and/or any of its agents, representatives, principals, members, officers, employees and/or contractors.

(b) Notwithstanding any term to the contrary set forth herein, the City expressly acknowledges and agrees that, at all times during the Term, the City shall not demolish, improve or otherwise make any alteration(s) to the Parking Lot Leased Premises, or any portion(s) thereof, or to any structure(s) or other improvement(s) located and/or installed thereon, without the prior written consent of Developer.

(c) At all times during the Term, the City shall keep the Parking Lot Leased Premises in good working order and repair; and, upon the termination of this Lease as provided in Section 2(b), the City shall surrender the possession of Parking Lot Leased Premises and return the same to Developer in as good condition and repair as when received by the City on the date and year first above written, ordinary wear and tear excepted.

8. **Assignment or Sublease.**

(a) The City may not assign this Lease, or any of its right(s) or interest(s) arising thereunder, nor sublet any portion(s) of the Parking Lot Leased Premises, without the prior written consent of Developer which approval shall not be unreasonably withheld, conditioned or delayed by Developer.

(b) Developer may not assign this Lease, or any of its right(s) or interest(s) arising thereunder, nor sublet any portion(s) of the Parking Lot Leased Premises, without the prior written consent of the City which approval shall not be unreasonably withheld.

9. **Amendment; Waiver.** This Lease 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.

10. **Governing Law and Venue.** This Lease, and all terms set forth herein, shall be governed by, and construed in accordance with, the laws of the State of Maryland, without regard to its conflicts of laws principles. Jurisdiction and venue for any dispute involving interpretation or breach of this Lease shall be in the Maryland State courts located in Wicomico County, Maryland or if a proceeding must be brought in federal court, the action shall be brought in the United States District Court for the District of Maryland.

11. **Waiver of Trial by Jury.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW OR BY APPLICABLE PUBLIC POLICY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY A PARTY HERETO AGAINST THE OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF THE PARTIES TO ONE ANOTHER AND/OR ANY CLAIM, INJURY OR DAMAGE ARISING FROM OR CONSEQUENT UPON THIS LEASE.

12. **Professional Fees.** In the event Developer or the City brings any action or proceeding against the other party by reason of any breach of any covenant, agreement or provision on the part of the other party arising out of this Lease, 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. The City's obligations under this Section 12 shall be subject to the appropriation of funds for said purpose.

13. **Construction.** The section headings contained in this Lease are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this Lease or of any of the provisions hereof. Whenever required by the context of this Lease, the singular shall include the plural and the masculine shall include the feminine and vice versa. All references in this Lease to any section(s) and exhibit(s) (if any) are references to the sections of this Lease and all Exhibits (if any) attached hereto, as the same may be amended, modified, supplemented or replaced from time to time in accordance with the provisions of this Lease. This Lease, 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 Lease. All Exhibits (if any) attached hereto are incorporated herein by reference.

14. **Binding Effect.** All of the terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto, provided that nothing in this Section 14 shall be deemed to permit any assignment, subletting, occupancy or use contrary to the terms set forth in Section 8.

15. **Severability.** If any term or provision of this Lease or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease 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 Lease shall be valid and enforced to the fullest extent permitted by law.

16. **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Section 16.

17. **Non-Appropriation.** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, the City will immediately notify Developer of such occurrence and this Lease, and all of the Parties' rights and obligations hereunder, shall terminate on the last day for which appropriations were received for this Lease, without penalty or expense to the City.

18. **Counterparts.** This Lease 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.

*[The remainder of this page is intentionally left blank]*

*[SIGNATURES APPEAR ON THE PAGE THAT IMMEDIATELY FOLLOWS]*

**IN WITNESS WHEREOF**, the Parties have hereunto set their hands and seals and acknowledged this Parking Lot Lease Agreement as of the date and year first above written.

**WITNESS/ATTEST:**

**“DEVELOPER”:**

**Salisbury Town Center Apartments, LLC**

\_\_\_\_\_

**By:** \_\_\_\_\_ (SEAL)  
Bradley J. Gillis, Authorized Representative

**THE “CITY”:**

**City of Salisbury, Maryland**

\_\_\_\_\_

**By:** \_\_\_\_\_ (SEAL)  
John R. Heath, Acting Mayor

**NOTE:**

**THIS DOCUMENT IS INTENDED TO SERVE AS EXHIBIT C TO THE AMENDED & RESTATED LOT DISPOSITION AGREEMENT BY AND BETWEEN THE CITY OF SALISBURY AND SALISBURY TOWN CENTER APARTMENT, LLC.**

**DO NOT EXECUTE THIS DOCUMENT. INITIAL ONLY.**

**EXHIBIT D**

**FORM AGREEMENT (DO NOT EXECUTE) –  
TEMPORARY CONSTRUCTION & PERMANENT MAINTENANCE EASEMENT(S)**



**NOTE: THIS DOCUMENT IS INTENDED TO SERVE AS EXHIBIT D TO THE AMENDED & RESTATED LOT DISPOSITION AGREEMENT BY AND BETWEEN THE CITY OF SALISBURY AND SALISBURY TOWN CENTER APARTMENT, LLC. DO NOT EXECUTE THIS DOCUMENT. INITIAL ONLY.**

**TEMPORARY CONSTRUCTION EASEMENT**  
**AND ONGOING MAINTENANCE EASEMENT**

**THIS TEMPORARY CONSTRUCTION EASEMENT AND ONGOING MAINTENANCE EASEMENT** (“Easement”), is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by **THE CITY OF SALISBURY**, a municipal corporation of the State of Maryland (hereinafter referred to as “Grantor”), and **SALISBURY TOWN CENTER APARTMENTS, LLC**, a Maryland limited liability company (hereinafter referred to as “Grantee”) (Grantor and Grantee are hereinafter referred to collectively as the “Parties”).

**RECITALS**

**WHEREAS**, Grantor is the owner of all that certain lot and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map \_\_\_\_\_, Grid \_\_\_\_\_, Parcel \_\_\_\_\_, Lot \_\_\_\_\_, consisting of \_\_\_\_\_ square feet of land, more or less (\_\_\_\_\_/+/- sq. ft.), being all that same lot and parcel of land more particularly depicted and identified as [Lot/Parcel] \_\_\_\_ on that certain plat entitled “Resubdivision Plat for Parcels 1066, 1071 and 1074-1079”, prepared by Parker & Assoc., Inc. dated \_\_\_\_\_, 2023 and recorded among the Land Records of Wicomico County, Maryland in Plat Book No. \_\_\_\_\_, Folio \_\_\_\_\_ (the “**Resubdivision Plat**”) (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as the “**Unity Square Lot**”);

**WHEREAS**, Grantor is the owner of all that certain lot and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map \_\_\_\_\_, Grid \_\_\_\_\_, Parcel \_\_\_\_\_, Lot \_\_\_\_\_, consisting of \_\_\_\_\_ square feet of land, more or less (\_\_\_\_\_/+/- sq. ft.), being all that same lot and parcel of land more particularly depicted and identified as [Lot/Parcel] \_\_\_\_ on the Resubdivision Plat (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as the “**Parking Garage Lot**”) (the Unity Square Lot and the Parking Garage Lot are hereinafter referred to collectively as the “**Sby Property**”);

**WHEREAS**, there exists a public street and right-of-way, known as Camden Street, extending South from Division Street and running Westerly to the point of intersection with the public street and right-of-way known as W. Market Street (the “**Camden St. ROW**”);

**WHEREAS**, there exists a public street and right-of-way, known as Circle Avenue, extending North from Carroll Street and running Easterly beyond the intersection of Division Street and Main Street (the “**Circle Ave. ROW**”);

**WHEREAS**, Grantee is the owner of all that certain lot and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map \_\_\_\_\_, Grid \_\_\_\_\_, Parcel \_\_\_\_\_, Lot \_\_\_\_\_, consisting of \_\_\_\_\_ square feet of land, more or less (\_\_\_\_\_/+/- sq. ft.), being all that same lot and parcel of land more particularly depicted and identified as [Lot/Parcel] \_\_\_\_ on the Resubdivision Plat (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as “**Lot 3**”);

**WHEREAS**, Grantee is the owner of all that certain lot and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map \_\_\_\_\_, Grid \_\_\_\_\_, Parcel \_\_\_\_\_, Lot \_\_\_\_\_, consisting of \_\_\_\_\_ square feet of land, more or less (\_\_\_\_\_/+/- sq. ft.), being all that same lot and parcel of land more particularly depicted and identified as [Lot/Parcel] \_\_\_\_ on the Resubdivision Plat (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as “**New Parcel 1066**”);

**WHEREAS**, Grantee is the owner of all that certain lot and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map \_\_\_\_\_, Grid \_\_\_\_\_, Parcel \_\_\_\_\_, Lot \_\_\_\_\_, consisting of \_\_\_\_\_ square feet of land, more or less (\_\_\_\_\_/+/- sq. ft.), being all that same lot and parcel of land more particularly depicted and identified as [Lot/Parcel] \_\_\_\_

\_\_\_ on the Resubdivision Plat (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as “**New Parcel 1071**”) (Lot 3, Lot 4, New Parcel 1066 and New Parcel 1071 are hereinafter referred to collectively as the “**Sby Town-Center Lots**”);

**WHEREAS**, with respect to the Sby Town-Center Lots, Grantee plans to develop and construct thereon (i) Three (3) Four (4) story buildings which, as planned by Developer, shall consist of approximately Two Hundred Twenty-Six (226) apartment units in the aggregate; and, (ii) with respect to “Lot 4” only, a One (1) story building, located adjacent to the Unity Square Lot, consisting of commercial space(s) for retail use (the Three (3) Four (4) story apartment buildings and the One (1) story commercial-retail building to be constructed by Developer on the Sby Town-Center Lots as contemplated by this Agreement are each hereinafter referred to individually as a “**Town-Center Building**” and are hereinafter referred to collectively the “**Town-Center Buildings**”) (Developer’s planned construction of the Town-Center Buildings, and all improvements associated therewith, at or upon the Sby Town-Center Lots as more particularly depicted in the Development Plan, is hereinafter referred to collectively as the “**Salisbury Town-Center Project**”);

**WHEREAS**, the Salisbury Town-Center Project shall be developed and constructed by Grantee in accordance with, and subject to, the terms and conditions set forth in that certain Amended and Restated Lot Disposition Agreement, dated June \_\_\_, 2023 (the “**LDA**”), by and between Grantor and Grantee;

**WHEREAS**, in connection with its development and construction of the Town-Center Building at and upon New Parcel 1066, Grantee plans to construct and install an aerial pedestrian walkway, extending across certain portions of the Camden St. ROW that, when complete, will connect the Southerly side of the third floor of the Town-Center Building to be constructed at New Parcel 1066 with the Northerly side of the third floor of the Town-Center Building to be constructed at and upon Lot 3 (the said walkway is hereinafter referred to as the “**Camden Walkway**”) (the area of land over which, and the airspace through which, the Camden Walkway will extend, for the purposes of connecting the third floor of the New Parcel 1066 Town-Center Building to the third floor of the Lot 3 Town-Center Building as aforesaid, is more particularly described in “Item 1” of Exhibit A attached hereto and incorporated herein; and, the area of land over which, and the airspace through which, the Camden Walkway will extend for the purposes of connecting the third floor of the New Parcel 1066 Town-Center Building to the third floor of the Lot 3 Town-Center Building, as aforesaid, is more particularly depicted on that certain Easement Plat entitled the “Salisbury Town-Center Aerial Walkway Easement Plat”, prepared by Parker & Associates, Inc. dated \_\_\_, 2023, attached hereto and incorporated herein as Exhibit B (the “**Walkway Easement Plat**”));

**WHEREAS**, in connection with its development and construction of the Town-Center Building at and upon New Parcel 1071, Grantee plans to construct and install an aerial pedestrian walkway, extending across certain portions of the Circle Ave. ROW that, when complete, will connect the Northerly side of the third floor of the Town-Center Building to be constructed at New Parcel 1071 with the Southerly side of the third floor of the Town-Center Building to be constructed at and upon Lot 3 (the said walkway is hereinafter referred to as the “**Circle Walkway**”) (the area of land over which, and the airspace through which, the Circle Walkway will extend, for the purposes of connecting the third floor of the New Parcel 1071 Town-Center Building to the third floor of the Lot 3 Town-Center Building as aforesaid, is more particularly described in “Item 2” of Exhibit A attached hereto and incorporated herein; and, the area of land over which, and the airspace through which, the Circle Walkway will extend, for the purposes of connecting the third floor of the New Parcel 1071 Town-Center Building to the third floor of the Lot 3 Town-Center Building as aforesaid, is more particularly depicted on the Walkway Easement Plat attached hereto and incorporated herein as Exhibit B) (the Camden Walkway and the Circle Walkway are hereinafter referred to collectively as the “**Town-Center Aerial Walkways**”);

**WHEREAS**, in connection with Grantee’s construction and installation of the Town-Center Aerial Walkways as aforesaid, Grantee requires access to certain portions of the Camden St. ROW and the Circle Ave. ROW, respectively, from time to time, during the period of Grantee’s construction of the Town-Center Aerial Walkways and from time to time thereafter for Grantee’s performance of its obligations under the LDA and this Easement, respectively;

**WHEREAS**, in accordance with the terms and conditions set forth herein, Grantor desires to grant and convey unto Grantee an ongoing and non-exclusive easement over and through all that certain land and airspace consisting of those certain portions of the Camden St. ROW and Circle Ave. ROW described in Exhibit A attached hereto and incorporated herein and as more particularly depicted in the Walkway Easement Plat attached hereto and incorporated herein as Exhibit B; and,

**WHEREAS**, in accordance with the terms and conditions set forth herein, Grantor further desires to grant and convey unto Grantee, for the purposes herein contained, a temporary, non-exclusive easement over, under, in, along and across: (i) all those certain portions of the Camden St. ROW more particularly described in "Item 3" of **Exhibit A** attached hereto and incorporated herein and depicted in the Walkway Easement Plat; and, (ii) all those certain portions of the Camden St. ROW more particularly described in "Item 3" of **Exhibit A** attached hereto and incorporated herein and as more particularly depicted in the Walkway Easement Plat attached hereto and incorporated herein as **Exhibit B**.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and obligations of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, Grantor and Grantee, for themselves and their respective successors and assigns, do hereby covenant and agree as follows:

**1. Grant of Temporary Construction Easements.**

(a) **Camden St. ROW Temporary Construction Easement.** Grantor, for itself and for its successors and assigns, hereby grants and conveys unto Grantee, its successors and assigns, a temporary, non-exclusive easement (the "**Temporary Construction Easement**") for ingress, egress and regress over, under, in, upon, along and across all those certain portions of the Camden St. ROW as more particularly described in "Item 3" of **Exhibit A** attached hereto and incorporated herein and shown on the Walkway Easement Plat attached hereto and incorporated herein as **Exhibit B**, for Grantee's use in connection with Grantee's construction and installation of the Camden Walkway. (The said certain portion(s) of the Camden St. ROW described in "Item 3" of **Exhibit A**, and more particularly depicted in the Walkway Easement Plat attached hereto and incorporated herein as **Exhibit B**, is hereinafter referred to as the "**Camden St. ROW Temporary Construction Easement Area**"; and, the temporary, non-exclusive easement granted unto Grantee pursuant to the terms contained in this Section 1(a) is hereinafter referred to as the "**Camden St. Temporary Construction Easement**".)

(b) **Circle Ave. ROW Temporary Construction Easement.** Grantor, for itself and for its successors and assigns, hereby grants and conveys unto Grantee, its successors and assigns, a temporary, non-exclusive easement (the "**Temporary Construction Easement**") for ingress, egress and regress over, under, in, upon, along and across all those certain portions of the Circle Ave. ROW as more particularly described in "Item 4" of **Exhibit A** attached hereto and incorporated herein and shown on the Walkway Easement Plat attached hereto and incorporated herein as **Exhibit B**, for Grantee's use in connection with Grantee's construction and installation of the Circle Walkway. (The said certain portion(s) of the Circle Ave. ROW described in "Item 4" of **Exhibit A**, and more particularly depicted in the Walkway Easement Plat attached hereto and incorporated herein as **Exhibit B**, is hereinafter referred to as the "**Circle Ave. ROW Temporary Construction Easement Area**"; and, the temporary, non-exclusive easement granted unto Grantee pursuant to the terms contained in this Section 1(b) is hereinafter referred to as the "**Circle Ave. Temporary Construction Easement**".) (The Camden St. ROW Temporary Construction Easement Area and the Circle Ave. ROW Temporary Construction Easement Area are hereinafter referred to collectively as the "**Temporary Construction Easement Areas**"; and, the Camden St. Temporary Construction Easement and the Circle Ave. Temporary Construction Easement granted unto Grantee pursuant to the terms contained in Section 1(a) and Section 1(b), respectively, are hereinafter referred to collectively as the "**Temporary Construction Easements**".)

**2. Term of Temporary Construction Easements.** The term of the Temporary Construction Easements shall commence on and as of the date and year first above written (the "**Construction Commencement Date**") and shall continue, without interruption, through and until such time as Grantee is issued the Certificate(s) of Occupancy for the Town-Center Buildings to be constructed at and upon the Sby Town-Center Lots in accordance with the Final Site Plan for Grantee's development of the Salisbury Town-Center Project., as approved by the Salisbury-Wicomico County Planning and Zoning Commission (the "**Planning Commission**") prior to the date and year first above written.

**3. Grant of Ongoing Maintenance Easements.**

(a) **Ongoing Easement for the Camden St. Walkway.** Grantor does hereby grant, convey, transfer and deliver unto Grantee an ongoing and non-exclusive easement, for Grantee's use, operation and maintenance of the Camden Walkway, across, within, upon and along all that area of land and airspace through which the Camden Walkway will extend, being all the same area and portion(s) of the Camden St. ROW described in "Item 1" of Exhibit A and as more particularly shown on the Walkway Easement Plat attached hereto and incorporated herein as Exhibit B (the "**Camden St. Walkway Ongoing Easement Area**"). (The easement granted unto Grantee pursuant to the terms contained in this Section 3(a) is hereinafter referred to as the "**Camden St. Walkway Easement**".)

(b) **Ongoing Easement for the Circle Ave. Walkway.** Grantor does hereby grant, convey, transfer and deliver unto Grantee an ongoing and non-exclusive easement, for Grantee's use, operation and maintenance of the Circle Walkway, across, within, upon and along all that area of land and airspace through which the Circle Walkway will extend, being all the same area and portion(s) of the Circle Ave. ROW described in "Item 1" of Exhibit A and as more particularly shown on the Walkway Easement Plat attached hereto and incorporated herein as Exhibit B (the "**Circle Ave. Walkway Ongoing Easement Area**"). (The easement granted unto Grantee pursuant to the terms contained in this Section 3(b) is hereinafter referred to as the "**Circle Ave. Walkway Easement**".) (The Camden St. Walkway Ongoing Easement Area and the Circle Ave. Walkway Ongoing Easement Area are hereinafter referred to collectively as the "**Ongoing Easement Areas**"; and, the Camden St. Walkway Easement and the Circle Ave. Walkway Easement are hereinafter referred to collectively the "**Ongoing Easements**".)

**4. Term of Ongoing Easements.** The term of the Ongoing Easements shall begin on Construction Commencement Date (as defined hereinabove) and, thereafter, shall continue for so long as any Sby Town-Center Lot is improved by a Town-Center Building constructed, or under construction, thereon. Unless and until the Ongoing Easements are terminated pursuant to the provisions of this Section 4, the Ongoing Easements shall run with the land of Grantor more particularly described in "Item 1" and "Item 2" of Exhibit A and inure to the benefit of Grantee, its successors and assigns.

**5. Construction of the Town-Center Aerial Walkway Improvements.**

(a) In consideration of the Temporary Construction Easements and the Ongoing Easements granted unto Grantee by Grantor hereunder, Grantee hereby expressly acknowledges and agrees that, beginning on the Construction Commencement Date and continuing for the term of the Ongoing Easements as provided in Section 4, Grantee shall:

- (i) Obtain any and all permits which are required before using any portion of the Temporary Construction Easement Areas and/or the Ongoing Easement Areas in connection with Grantee's development and/or construction of any part of the Salisbury Town-Center Project at or upon any portion(s) of the Sby Town-Center Lots, including, expressly, Grantee's construction, installation and/or maintenance, as the case may be, of the Town-Center Aerial Walkways;
- (ii) Construct and maintain all improvements for and/or comprising the Salisbury Town-Center Project, as shown on the Final Site Plan for the Salisbury Town-Center Project approved by the Planning Commission prior to the date and year first above written, located within any portion(s) of the Ongoing Easement Areas in compliance with all applicable laws, regulations and/or ordinances of each governmental agency having jurisdiction over the construction and/or use of any improvements constructed and/or installed by Grantee upon or within the Ongoing Easement Areas or any portion(s) thereof. Any improvement(s) developed and/or constructed by or on behalf Grantee located within any portion(s) of the Ongoing Easement Areas, including, but not limited to, the Town-Center Aerial Walkways, shall be maintained by Grantee in good condition, both as to safety and appearance, and the maintenance of all such improvements shall be performed by Grantee in a manner so as to not interfere with the use, maintenance or operation of such portions of the Camden St. ROW and/or the Circle Ave. ROW which are located below the horizontal bottom of the Camden St. Walkway Ongoing Easement Area and/or the horizontal bottom of the Circle Ave. Walkway Ongoing Easement Area, as the case may be; except that, Grantee shall have the right, upon reasonable written notice to Grantor, to occupy and temporarily close the Camden St. ROW and/or the Circle Ave. ROW, or any such



portion(s) thereof, as may be reasonably necessary, from time to time, for the performance of Grantee's maintenance obligations hereunder. For so long as the Ongoing Easements granted hereunder shall be in effect, if, in the reasonable judgment of Grantor, the use or operation of the Camden St. ROW and/or the Circle Ave. ROW, or any portion(s) thereof, may be interfered with or obstructed arising from any failure on the part of Grantee to perform any of its maintenance obligations hereunder, Grantor may, but shall not be obligated to, enter onto the Ongoing Easement Areas or any portion(s) thereof and perform such work as may be reasonably necessary to perform the duties and obligations of Grantee set forth in this Section 5(a)(ii); in which event, Grantee shall, upon the written request of Grantor, promptly reimburse Grantor for any and all reasonable expenses incurred by Grantor arising from Grantor's performance of any duties and/or obligations of Grantee contained in this Section 5(a)(ii). Prior to any reimbursement being made to Grantor under this Section 5(a)(ii), Grantor shall provide Grantee with reasonable written documentation evidencing all reasonable expenses incurred by Grantor for which Grantor seeks reimbursement from Grantee;

- (iii) For itself and for its successors, representatives, agents and assigns, Grantee expressly acknowledges and agrees Grantee shall not place any improvements or fixtures on, or conduct any activity within, any portion(s) of the Ongoing Easement Areas which unreasonably interferes with Grantor's and/or the general public's use or enjoyment of the portion(s) of the Ongoing Easement Areas over and through which the Camden Walkway and/or the Circle Walkway, respectively, will extend as more particularly shown on the Walkway Easement Plat attached hereto and incorporated herein as Exhibit B; and,
- (iv) For itself and for its successors, representatives, agents and assigns, Grantee expressly acknowledges and agrees Grantee shall not store or discharge, or allow the storage or discharge of, any radioactive, toxic, flammable, poisonous, explosive or other dangerous, hazardous materials or waste within the Temporary Construction Easement Areas and/or the Ongoing Easement Area, or any portion(s) thereof.

#### **6. Indemnification and Insurance.**

(a) Grantee hereby expressly acknowledges and agrees to defend, indemnify and hold harmless Grantor, and all of Grantor's elected officials, appointed officials, employees, representatives, agents and contractors (for purposes of this Section 6, such persons are hereinafter referred to collectively as "**Indemnitees**"), from and against:

- (i) Any and all claims by any person, firm or entity for labor, services, materials or supplies provided in connection with the construction, installation and/or maintenance of any improvement constructed and/or installed at, upon or within the Temporary Construction Easement Areas and/or the Ongoing Easement Areas in connection with Grantee's development and/or construction of Salisbury Town-Center Project, including the construction and/or installation of the Camden Walkway and/or the Circle Walkway by or on behalf of Grantee; and,
- (ii) Any and all claims, liabilities, damages, losses, judgments, fines, penalties, suits, proceedings, actions, causes of action, costs and expenses, including the reasonable attorneys' fees incurred by such Indemnitee(s), arising from, relating to or in connection with: (A) Grantee's use and/or occupancy of the Temporary Construction Easement Areas; and/or, (B) Grantee's use of the Ongoing Easement Areas, the conduct or operation of Grantee's business on or within the Ongoing Easement Areas, or any activity, work, or other things done, permitted or suffered by Grantee in or upon the Ongoing Easement Areas, the construction, installation, use and/or maintenance of the Camden Walkway and/or the Circle Walkway.

(b) Until such time as Grantee is issued the Certificate(s) of Occupancy for the Town-Center Buildings to be constructed at and upon the Sby Town-Center Lots in accordance with the Final Site Plan for Grantee's development of the Salisbury Town-Center Project as approved by the Planning Commission prior to the date and year first above written, Grantee shall obtain, and keep in full force and effect, a single policy of builders' risk insurance, effective as of the Construction Commencement Date, naming Grantor as an additional covered insured thereunder, with policy limits in an amount not less than the full replacement cost of all insurable components of the improvements constructed by or on behalf of Grantor, located within the Temporary Construction Easement Areas or any portion(s) thereof, for or in connection with Grantee's development and construction of the Salisbury Town-Center Project, including, expressly, the construction and/or installation of the Town-Center Aerial Walkways.

(c) Grantee's obligation to maintain a policy of builder's risk insurance under this Section 6(c) shall terminate on and as of the date Grantee is issued the Certificate(s) of Occupancy for the Town-Center Buildings as set forth in Section 6(b). Grantee, for itself and for its successors and assigns, hereby expressly acknowledges and agrees that, upon the termination of the builder's risk insurance policy to be obtained and maintained by Grantee in accordance with the provisions of Section 6(b), Grantee shall obtain and maintain a policy or policies of general public liability insurance, including broad form endorsements, on an occurrence basis, naming Grantor as an additional covered insured thereunder, with combined policy limits of not less than Five Hundred Thousand Dollars (\$500,000) for injuries, including accidental death, to any one person, and subject to the same limit for each person, not less than One Million Dollars (\$1,000,000) for any one accident involving two or more persons; and property damage liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) for any one accident and not less than One Million Dollars (\$1,000,000) in the aggregate with respect to any improvements constructed, installed and/or maintained by or on behalf of Grantee and located within the Ongoing Easement Areas, including, expressly, the Town-Center Aerial Walkways. Grantee shall provide Grantor with a certificate of such insurance policy issued by a company authorized to do business in Maryland naming Grantor as an additional insured thereunder, with a right to not less than Thirty (30) days written notice of cancellation or non-renewal of any such insurance policy.

(d) For so long as the Sby Town-Center Lots are improved by the Town-Center Buildings and/or Grantee, or its successors or assigns, continue to occupy or use the Ongoing Easement Area in accordance with the rights and interests granted unto Grantee under Sections 1(a)-(b) and Sections 3(a)-(b) hereof, the obligations of Grantee set forth in Sections 6(a)-(c) shall run with the ownership of the Sby Town Lots and shall be binding upon Grantee's successors and assigns.

#### **7. Non-Appropriation.**

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any unbudgeted expenses required of the Grantor as a result of this Easement, and all rights and obligations of the Parties hereunder, shall terminate on the last day for which an appropriation was received by the Grantor for such expenses, without penalty or expense to either of the Parties.

#### **8. Miscellaneous.**

(a) **Authority.** Each party represents and warrants to the other party that it: (i) has the full right, power and authority to execute this Easement; (ii) the execution and delivery of this Easement and the performance of its obligations hereunder are not prohibited by or in breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which it is a party or by which it is otherwise bound; and, (iii) there are no legal requirements imposed upon it which prohibit or limit the execution and delivery of this Easement and the performance of its obligations hereunder.

(b) **Waiver-Amendments.** Any of the terms or conditions contained in this Easement may be waived but only in writing by the party which is entitled to the benefit thereof, and this Easement may be amended or modified in whole or in part only by an agreement in writing executed by all of the Parties. Each and every right, remedy and power granted to a party under this Easement or allowed by law shall be cumulative and not exclusive of any other.

(c) **Completion of the Salisbury Town-Center Project by Grantee.** Notwithstanding any term to the contrary set forth herein, in the event no Certificate of Occupancy for a Town-Center Building has been issued to Grantee within three (3) years from the date and year first above written, this Easement, including the Temporary Construction Easements, and any and all rights and interests associated therewith, granted unto Grantee under Sections 1(a)-(b) and

the Ongoing Easements, and all rights and interests associated therewith, granted unto Grantee under Sections 3(a)-(b), shall terminate and shall be deemed of no force and effect, unless otherwise agreed to in writing by the Parties.

(d) **Severability.** If any provision of this Easement or any application thereof is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Easement shall remain in full force and effect. Any provision of this Easement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(e) **Binding Nature of Easement; Run with the Land.** Except as expressly set forth herein, all covenants, obligations, rights, benefits and/or interests contained in this Easement shall: (i) run with the land of Grantor more particularly described in Exhibit A and the land constituting the Sby Town-Center Lots as more particularly shown on the Resubdivision Plat (as defined hereinabove); and, (ii) be binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, successors and/or assigns.

(f) **Entire Agreement.** This Easement, including all exhibits attached hereto, constitutes the entire agreement and understanding of the Parties with respect to the matters set forth herein. All prior negotiations, writings and understandings relating to the subject matter of this Easement, including, but not limited to, the Temporary Construction Easements and Ongoing Easements conveyed and granted unto Grantee hereunder, are merged herein and are superseded and canceled by the Parties' execution of this Easement.

(g) **Construction.** This Easement 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 Easement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Easement. 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

(h) **Notices.** All notices and other communication given by a party to the other in connection with this Easement shall be in writing and shall be deemed delivered to the addressee thereof: (i) when delivered in person on a business day at the address set forth below; or, (ii) 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, (iii) when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery. All notices and/or other written communications required or permitted under this Easement shall be addressed and delivered to the Parties as follows:

**If to Grantee:**

Salisbury Town Center Apartments, LLC  
c/o Bradley J. Gillis, Authorized Representative  
150 W. Market Street, Suite 101  
Salisbury, Maryland 21801  
Email: [brad@ggibuilds.com](mailto:brad@ggibuilds.com)

**With a copy to:**

Salisbury Town Center Apartments, LLC  
c/o T. Kevin Carney  
11526 Pebblecreek Drive  
Timonium, Maryland 21093  
Email: [kevin@thomasbuildersinc.com](mailto:kevin@thomasbuildersinc.com)

**With a copy to:**

Michael P. Sullivan, Esquire  
150 W. Market Street, Suite 101  
Salisbury, Maryland 21801  
Email: [mike@ggibuilds.com](mailto:mike@ggibuilds.com)

**If to the City:**

City of Salisbury  
c/o Andy Kitzrow, City Administrator  
125 N. Division Street, Mayor's Office  
Salisbury, Maryland 21801  
Email: [akitrow@salisbury.md](mailto:akitrow@salisbury.md)

**With a copy to:**

Law Office of Marianna Batie  
c/o Reena Patel, Esquire  
1321 Mt Hermon Rd, Suite B  
Salisbury, Maryland 21801  
Email: [reena@battielaw.com](mailto:reena@battielaw.com)

**With a copy to:**

Cockey, Brennan & Maloney, P.C.  
c/o Ashley A. Bosche, Esquire, City Solicitor  
313 Lemmon Hill Lane  
Salisbury, Maryland 21801  
Email: [bosche@cbmlawfirm.com](mailto:bosche@cbmlawfirm.com)

Either party hereto may change its address by providing notice to the other party as set forth in this Section 8(h).

(i) **Governing Law.** This Easement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles.

(j) **Recording.** The Parties expressly acknowledge and agree that this Easement, and all exhibits attached hereto, shall be recorded in the Land Records of Wicomico County, Maryland. Grantee shall bear all costs, if any, incurred in connection with the recording of this Easement as aforesaid.

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

*[The remainder of this page is intentionally left blank]*

***[SIGNATURES APPEAR ON THE PAGE THAT IMMEDIATELY FOLLOWS]***

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

**WITNESS/ATTEST:**

\_\_\_\_\_

**GRANTOR:**

**City of Salisbury, Maryland**

By: \_\_\_\_\_ (SEAL)  
John R. Heath, Acting Mayor

**GRANTEE:**

**Salisbury Town Center Apartments, LLC**

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Bradley J. Gillis, Authorized Representative

**NOTE:**

**THIS DOCUMENT IS INTENDED TO SERVE AS EXHIBIT D TO THE AMENDED & RESTATED LOT DISPOSITION AGREEMENT BY AND BETWEEN THE CITY OF SALISBURY AND SALISBURY TOWN CENTER APARTMENT, LLC.**

**DO NOT EXECUTE THIS DOCUMENT. INITIAL ONLY.**



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 JOHN R. HEATH, who acknowledged himself to be the Acting Mayor of THE CITY OF SALISBURY, a municipal corporation of the State of Maryland, and that he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of the City of Salisbury for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

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

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

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 BRADLEY J. GILLIS, who acknowledged himself to be the Authorized Representative of SALISBURY TOWN CENTER APARTMENTS, LLC, a Maryland limited liability company, and that he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument on behalf of Salisbury Town Center Apartments, LLC for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

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

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

#### **CERTIFICATION BY ATTORNEY**

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

\_\_\_\_\_  
Michael P. Sullivan



# City of Salisbury

John "Jack" R. Heath, Mayor

**To:** Mayor and City Council  
**From:** Jennifer Miller  
Director of Procurement  
**Date:** June 20, 2023  
**Subject:** Amended and Restated LDA for Lots 1/11/15

Attached for Council review and discussion, please find the Amended and Restated Land Disposition Agreement between the City of Salisbury and Salisbury Town Center Apartments, LLC.

## Parking Lots 1 & 11

- RFP 05-14 Disposition and Development of Lots 1 & 11 Re-Bid
  - RFP issued: 03/13/15
  - Proposals received: 04/30/15
  - City Council approval (Resolution 2558) of original LDA with Devreco, LLC: 10.12.15

## Parking Lot 15

- Brokered by KLNb via RFP A-21-103 Real Estate Advisory Services
- Lot 15 details:
  - Declaration of Surplus: 11/22/21
  - Property land area: 19,733 SF
  - SDAT Value Assessment: \$198,300 (as of 2/14/22 memo to Council)
- Real Estate Notice of Sale: 11/23/21
- Offer to Purchase Receipt Dates: 01/05/22
- Total offers received: 1
  - Salisbury Town Center Apartments, LLC \$50,000
- Notes:
  - Exclusive Negotiating Period was granted by City Council on February 14, 2022

cc Andy Kitzrow