

STATE OF NORTH CAROLINA)
)
 ROWAN COUNTY) **LEASE**

THIS LEASE is made and entered into as of _____, 2018, by and between **DOWNTOWN SALISBURY, INC.**, a North Carolina limited liability company, as lessor (“Landlord”), and the **CITY OF SALISBURY, NORTH CAROLINA**, a municipal corporation of the state of North Carolina, as lessee (“Tenant”).

WITNESSETH:

Landlord and Tenant have previously agreed to cooperate in a plan to redevelop the Empire Hotel (the “Hotel”) located at 212-228 South Main Street, Salisbury, North Carolina 28144 (Rowan County tax parcel number 0101568). As part of the redevelopment plan, the City has agreed to lease certain space within the Hotel as provided in this Lease.

NOW THEREFORE, for and in consideration of the mutual promises contained in this Lease, the parties agree as follows:

**ARTICLE I
 DEMISE; QUIET ENJOYMENT**

1.1 Demise. Landlord, for and in consideration of the Monthly Rent, as defined below, to be paid and the covenants and agreements to be performed and observed by Tenant, does hereby lease to Tenant and Tenant does hereby lease and take from Landlord approximately 13,319 square feet of commercial space in the Hotel, constituting the property commonly known as the first floor (approximately 8,745 square feet) and mezzanine (approximately 4,574 square feet) of the former Montgomery Ward building, but as more particularly described on Exhibit A attached hereto (the “Leased Property”).

1.2 Quiet Enjoyment.

(a) Landlord covenants that Tenant will during the Lease Term (as defined in Article II) peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble or hindrance from Landlord, except as expressly required or permitted by this Lease. Tenant may use the Leased Property for any lawful purpose. Landlord acknowledges that Tenant may or may not occupy the Leased Property.

(b) Landlord may card the Leased Property "For Rent" or "For Sale" sixty days before the termination of this Lease. Landlord may enter the Leased Property at reasonable hours to exhibit same to prospective purchasers or tenants and to make repairs required of Landlord under the Lease Term or to make repairs to Landlord's adjoining Hotel, if any. Landlord will in all events provide Tenant with reasonable notice of any entry.

ARTICLE II LEASE TERM

The "Lease Term" is the time between the start of this Lease and the end of this Lease, as described in this Article.

2.1 Start. The Lease Term starts on the date (the "Start Date") that is the 1st day of the month subsequent to the later of (i) the date Landlord has received a certificate of occupancy for the shell of the Leased Property and (ii) the date Landlord has received a certificate of occupancy for all of the residential units in the Hotel, provided that the minimum number of residential units must be 50. Landlord agrees to present the Tenant with finish specifications for the Residential Units for the Tenant's review and approval prior to commencing the finishing of the Residential Units.

2.2 End.

- (a) The Lease Term ends on ten (10) years from the Start Date.
- (b) Landlord shall have the right to terminate the Lease upon at least thirty (30) days written notice to Tenant; provided, however, that in the event Tenant is physically occupying a portion of the Leased Property

pursuant to the Rental Agent Agreement (as hereinafter defined), Landlord shall have no right to terminate pursuant to this Section 2.2(b).

- (c) If any successor Landlord refinances the Hotel subsequent to the commencement of the redevelopment construction of the Hotel by any successor Landlord, then this Lease automatically terminates in regard to the Leased Premises provided, however, that in the event Tenant is physically occupying a portion of the Leased Property pursuant to the Rental Agent Agreement, the Lease shall not terminate in regard to such portion of the Leased Property.
- (d) If the Landlord refinances its ownership interest in the Hotel, and as a result of the refinancing event the Landlord receives a payment exceeding 150% of the Tenant's remaining Lease obligation, then this Lease terminates.
- (e) This Lease is also subject to early termination as provided in Articles VII and IX.
- (f) This Lease shall automatically terminate in the event the Start Date has not occurred on or before December 31, 2021.

2.3 Hold Over. If Tenant remains in possession of the Leased Property after expiration of the Lease Term with Landlord's acquiescence but without any express agreement of the parties, Tenant is a tenant at will at a rental rate equal to 135% of the rental rate in effect at the end of this Lease, and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Leased Property after the expiration of the Lease Term but without Landlord's acquiescence, Tenant is a tenant at sufferance.

ARTICLE III MONTHLY RENT

3.1 Monthly Rent. Subject to adjustments as set forth herein, Tenant agrees to pay Landlord and Landlord agrees to accept, during the Lease Term, at

such place as Landlord may from time to time direct by notice to Tenant, an annual rent of \$12 per square foot payable in monthly installments of \$1 per square foot (the "Monthly Rent") due and payable on the first day of each month.

3.2 Late Fee. A late fee in the amount of 5% of the Monthly Rent is due from Tenant if payment is not postmarked or received by Landlord on or before the 15th day subsequent to its due date.

3.3 Adjustments to Rent.

(a) Tenant will pay a prorated Monthly Rent for any partial month. The prorated Monthly Rent will be determined by dividing the Monthly Rent by the number of days in the partial month.

(b) If at any time any taxes or governmental fees or charges assessed against the Hotel are due but remain unpaid, Tenant may withhold the Monthly Rent payments until all delinquencies are remedied. Tenant will pay any withheld Monthly Rent promptly upon the resolution of any delinquency.

(c) Landlord and Tenant acknowledge and agree that the Leased Space is subject to that certain Rental Agent Agreement dated as of an even date herewith by and between Tenant and Black Point Investments, LLC (the "Rental Agent Agreement"). The Monthly Rent will be credited as provided in the Rental Agent Agreement.

(d) The Monthly Rent may also be adjusted pursuant to Article VII or Article IX of this Lease.

**ARTICLE IV
TENANT'S OTHER OBLIGATIONS**

4.1 Personal Property Taxes. Tenant shall be liable for all taxes levied against any leasehold interest of Tenant or personal property and trade fixtures owned or placed by Tenant in the Leased Property.

4.2 Utilities. Tenant shall pay for all water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other services incident to Tenant's use of the Leased Property.

4.3 Tenant's Repairs. Tenant shall repair and maintain the Leased Property in good order and condition, except for reasonable wear and tear, the repairs required of Landlord pursuant to this Lease, and maintenance or replacement necessitated as the result of the act or omission or negligence of Landlord, its employees, agents, or contractors.

4.4 Tenant's Alterations. Tenant shall not make any additions, alterations, or improvements to the Leased Property without Landlord's prior written consent. Landlord may withhold consent only if the additions, alterations, or improvements present a safety hazard, constitute a nuisance, or otherwise fail to comply with the terms of this Lease. Notwithstanding anything herein to the contrary, consent shall not be granted if Landlord believes such change, modification, or alteration could cause the Hotel to not be in compliance with the standards required for the Hotel to maintain its Part 3 Certification from the United States Department of the Interior, National Park Service. Tenant shall promptly remove any additions, alterations, or improvements constructed in violation of this Lease upon Landlord's written request. Landlord may require Tenant to remove any additions, alterations, or improvements at the termination of this Lease and to restore the Leased Property to its prior condition at Tenant's expense. Any addition, alteration, or improvement that Landlord does not require Tenant to remove upon the termination of this Lease shall become Landlord's property. However, Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Leased Property. Tenant shall repair any damage to the Leased Property caused by the removal of any of Tenant's machinery or equipment.

4.5 Insurance. To the extent permitted by law Tenant shall maintain, with respect to the Leased Property, general liability insurance, naming Landlord as additional insured, with combined limits of not less than \$1,000,000 per accident and property damage limits of \$250,000. Tenant shall provide proof of insurance to Landlord prior to the Start Date. If at any time Tenant fails to maintain this insurance, Landlord may purchase this insurance and add the amount of the premium to the Monthly Rent, after notice from Landlord to Tenant.

4.6 Additional Charges Upon City Occupancy. In the event Tenant occupies any portion of the Leased Property pursuant to the terms of the Rental Agent Agreement, Tenant shall be responsible for any associated upfit as well as the portion of the taxes and common area maintenance applicable to such portion of the Leased Property.

ARTICLE V CONSTRUCTION AND COMPLETION

5.1 Construction. Landlord shall, at its sole expense, complete the Leased Property to a “base finish” including: completion of all life/safety items required by code with regard to ingress, egress, sprinklers, etc.; base building code items; completion of mechanical, electrical, and plumbing work to meet code requirements; completion of window replacements; completion of full environmental remediation; repair and refinish of existing wood flooring or, at the owner’s option, overlay existing floor with lightweight concrete, prepped to receive final finish flooring; demising walls in place; paint finish of exposed ceiling; and receipt of certificate of occupancy. Final inspections as stipulated by State and local codes for all work must be completed and all work must comply with all applicable codes and requirements. If Tenant formally takes possession of the Leased Property, whether by occupancy or by written notice to Landlord, this shall be evidence that the Leased Property was in satisfactory condition when Tenant took possession. Except as expressly set forth in this Lease, all other improvements to the Leased Property shall be performed by and at the expense of Tenant.

5.2 Landlord’s Repairs. Landlord shall keep the structural aspect of the Hotel in good repair, including the roof, foundations, exterior walls, and utility lines. Landlord will operate and maintain the Hotel in a careful and proper manner. Landlord must keep the Hotel in substantially the same condition, appearance and working order as is the case on the Lease Start Date. Landlord will promptly and faithfully comply with all requirements of governmental authorities relating to the use or condition of the Hotel. Landlord has the right to remodel the Hotel or make modifications and improvements as Landlord may determine, but these changes must not (a) result in the use of the Hotel for purposes substantially different from

those contemplated on the Lease Start Date or (b) reduce the number of residential units having a valid certificate of occupancy below 50.

**ARTICLE VI
INDEMNITY**

To the extent permitted by law, Tenant shall save Landlord harmless and indemnify Landlord from all injury, loss, claims, or damage to any person or property while on the Leased Property, unless caused by the willful acts or omissions or gross negligence of Landlord, its employees, agents, licensees, or contractors.

**ARTICLE VII
DAMAGE TO LEASED PROPERTY; RENT ABATEMENT**

If the Leased Property is destroyed by storm, fire, lightning, earthquake, or other casualty, or is otherwise damaged to the extent that Landlord, in its reasonable determination, cannot operate the Hotel or the Leased Property and cannot restore the same for a reasonable cost within a reasonable time, Landlord at its option may terminate. In that case, the Monthly Rent will be accounted for as of the date of the casualty.

In the alternative, Landlord may elect to restore the Leased Property to substantially the same condition as of the Start Date. In the event Landlord makes such election, Landlord will act with all due diligence to restore the property as quickly as practicable.

Tenant, however, owes no Monthly Rent for any period exceeding five consecutive business days during which the Leased Property is unavailable for Tenant's expected use for whatever reason, so long as the unavailability is not the result of Tenant's negligence or intentional action. This offset for unavailability will be applied as often as the circumstances may occur.

**ARTICLE VIII
ASSIGNMENT AND SUBLETTING**

Tenant may not assign or sublet this Lease or any interest hereunder except in accordance with the Rental Agent Agreement.

ARTICLE IX CONDEMNATION

If the Leased Property or any portion shall be taken under power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, then this Lease terminates as of the date when possession of the Leased Property, or the applicable portion, is taken by the taking authority. Landlord will then refund to Tenant any unearned Monthly Rent or other charges previously paid by Tenant.

All damages for any taking of all or any part of the Leased Property, including but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee of the Hotel, shall be Landlord's sole property, without any deduction therefrom for any present or future estate of Tenant. Tenant hereby assigns to Landlord all its right, title, and interest to any such award; provided, Tenant shall have the right to claim and recover from the taking authority any compensation that may be separately awarded or recoverable by Tenant. For example, compensation for any cost of loss which Tenant might incur because of the taking, including the cost of removing furniture and fixtures from the Leased Property.

ARTICLE X EVENTS OF DEFAULT

10.1 Events of Default. The following will be "Events of Default" under this Lease and the term "Default" shall mean, whenever it is used in this Lease, any one or more of the following events:

- (a) Tenant's failure to pay Monthly Rent as provided for in this Lease;
- (b) Tenant's failure to comply with or abide by and perform any other obligation under this Lease;

(c) Tenant is adjudicated bankrupt;

(d) A permanent receiver is appointed for Tenant's property and is not removed within 60 days after written notice from Landlord; and

(e) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the Monthly Rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred.

10.2 Remedies on Default. Whenever any Event of Default is continuing, Landlord may take one or any combination of the following remedial steps:

(a) Cure the default and seek reimbursement from Tenant for expenses incurred in curing the default;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Tenant under this Lease; or

(c) If Landlord determines that the foregoing remedies are inadequate or inappropriate to cure the Event of Default or otherwise protect Landlord's interests, Landlord may terminate this Lease, evict Tenant from the Leased Property or any portion thereof and re-lease the Leased Property or any portion thereof.

10.3 Dispute Resolution. In the event of a dispute between Landlord and Tenant concerning the terms or performance of this Agreement, the parties shall take the following steps prior to commencing any proceeding before a court or administrative body:

(a) Meet and confer. Upon the request of any party, the parties will hold a meeting attended by individuals with decision-making authority regarding the dispute. At this meeting the parties will attempt in good faith to negotiate a resolution of the dispute.

(b) Mediation. If the dispute remains unsettled by reasonable discussion,

the parties will engage the services of a professional mediator agreed upon by the parties. The parties will then attempt in good faith to resolve the dispute through mediation. Each party shall bear one-half of the mediator's fees and shall pay all its own legal fees and expenses related to the mediation.

10.4 No Remedy Exclusive. No remedy conferred upon or reserved to Landlord in this Lease is intended to be exclusive, and every such remedy will be cumulative and will be in addition to every other remedy given under this Lease and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power, and any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle Landlord to exercise any remedy reserved in this Article X, it will not be necessary to give any notice, other than such notice as may be required in this Article X.

10.5 Waivers. If either party should breach any agreement contained in this Lease and thereafter the other party waives the breach, such waiver is limited to the breach so waived and does not waive any other breach under this Lease. A waiver of an event of default under the Rental Agent Agreement constitutes a waiver of any corresponding Event of Default under this Lease; provided that no such waiver extends to or affects any subsequent or other Event of Default under this Lease or otherwise impairs any right consequent thereon.

10.6 Legal Fees. If a party defaults under this Lease and the other party incurs legal or other expenses to collect any payments due under this Lease, or to enforce any provision of this Lease, then to the extent permitted by law the parties agree that the defaulting party will pay on demand to the non-defaulting party all reasonable legal fees and costs and all other reasonable costs of enforcement.

ARTICLE XI MISCELLANEOUS

11.1 Mortgagee's Rights. Tenant's rights shall be subject to any bona fide mortgage, which is now or may hereafter be placed upon the Leased Property by

Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting the subordination.

11.2 Environmental Warranties. Tenant represents and warrants it will comply with all applicable environmental laws. Tenant shall not permit any of Tenant's employees, agents, contractors or subcontractors, or any person present on the Leased Property to generate, manufacture, store, dispose or release on, about, or under the Leased Property any hazardous substances. Tenant may, however, store and use on the Leased Property commercially available substances used for painting, cleaning or other maintenance of the Leased Property. Tenant will use, store and dispose of any such substances in accordance with law and substantially in accordance with label directions.

11.3 Notices.

(a) Any communication required or permitted by this Lease must be in writing (not to include facsimile transmission or electronic mail).

(b) Any communication under this Lease will be deemed given on the delivery date shown on a United States Postal Service certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(i) If intended for Landlord, to: Downtown Salisbury, Inc., 217 South Main Street, Salisbury, NC 28144

(ii) If intended for Tenant, to: City of Salisbury, Attention: City Manager, 217 South Main Street, Salisbury, NC 28144

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to the other.

11.4 Condition Precedent. The obligation of Landlord and Tenant under this Lease is expressly subject to the issuance of all necessary permits and licenses for the renovation of the Hotel in accordance with plans developed by and at the

sole expense of Landlord by all governmental authorities having jurisdiction over the Leased Property and the Hotel.

11.5 Entire Agreement. This Lease, along with the Rental Agent Agreement, contains the entire agreement of the parties with respect to this general subject matter.

11.6 Amendments. This Lease may not be amended without the written consent of both parties.

11.7 Governing Law; Venue. The parties intend that this Lease and all matters of its interpretation will be governed by North Carolina law. To the extent permitted by law, the parties agree that any action brought with respect to this Lease must be brought in the North Carolina General Court of Justice in Rowan County, North Carolina.

11.8 Memorandum of Lease; Recording. At the request of either party, Landlord and Tenant will at any time execute a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes. Either party may provide for a memorandum of this Lease to be recorded with the Register of Deeds of Rowan County, North Carolina.

11.09 Captions. The captions of the sections of this Lease are for convenience only and are not intended to affect the interpretation of this Lease.

11.10 Counterparts. This Lease may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

11.11 Severability. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, that holding will not invalidate or render unenforceable any other provision of this Lease.

11.12 Assignments. In the event of a sale of the Hotel by Landlord, this Lease shall automatically be assigned to the purchaser of the Hotel without further consent. Any such purchaser of the Hotel from Landlord may further assign its rights and obligations under this Lease, upon notice to Tenant, to any entity in

which (i) William R. Hughes or Britt L. Weaver directly or indirectly owns or controls or (ii) becomes a master tenant or subtenant of the Hotel for historic tax credit purposes. Any other assignment by Landlord or its assigns shall require the written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed.

11.13 Need for LGC approval. The City's obligations under this Lease will not be binding until the Lease has been approved by the North Carolina Local Government Commission in the manner required by law.

(SIGNATURES ON THE FOLLOWING PAGES)

IN WITNESS WHEREOF, Landlord has executed and delivered this Lease as of the date first above written.

DOWNTOWN SALISBURY, INC.,
a North Carolina nonprofit corporation

By: _____

Name: _____

Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of said State and County, do hereby certify that _____ came before me this day and acknowledged that (s)he is the _____ of DOWNTOWN SALISBURY, INC., a North Carolina nonprofit corporation, and that the foregoing instrument was voluntarily executed in the nonprofit corporation's name for the purposes set forth therein.

WITNESS my hand and official stamp or seal, this ____ day of _____, 2018.

[SEAL]

Notary Public

My commission expires: _____

[LEASE dated as of _____, 2018,
between Downtown Salisbury, Inc.,
and the City of Salisbury, North Carolina]

IN WITNESS WHEREOF, Tenant has executed and delivered this Lease as of the date first above written.

[SEAL]
ATTEST:

CITY OF SALISBURY,
NORTH CAROLINA

Diane Gilmore
City Clerk

By: _____
Lane Bailey
City Manager

STATE OF NORTH CAROLINA; ROWAN COUNTY

I, _____, a Notary Public of said State and County, do hereby certify that Lane Bailey and Diane Gilmore personally came before me this day and acknowledged that they are the City Manager and the City Clerk, respectively, of the City of Salisbury, North Carolina, and that by authority duly given and as the act of such City, the foregoing instrument was signed in the City's name by such City Manager, sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this ___ day of _____, 2018.

[SEAL]

Notary Public

My commission expires: _____

[LEASE dated as of _____, 2018,
between Downtown Salisbury, Inc.,
and the City of Salisbury, North Carolina]

This Agreement has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

Greg C. Gaskins
Secretary, North Carolina
Local Government Commission

By _____
[Greg C. Gaskins or
Designated Assistant]

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Shannon C. Moore
Finance Officer
City of Salisbury, North Carolina

[LEASE dated as of _____, 2018,
between Downtown Salisbury, Inc.,
and the City of Salisbury, North Carolina]

EXHIBIT A

Drawing of Leased Premises

[Attached]