

Revised Development Agreement

THIS REVISED DEVELOPMENT AGREEMENT (“Agreement”) is made effective as of _____ 2018 by and among Downtown Salisbury, Inc., a North Carolina nonprofit corporation (“**DSI**”), the City of Salisbury, a North Carolina public body corporate and politic (the “**City**”) and Empire Hotel Holdings, LLC, a North Carolina limited liability company (“**Developer**”).

WHEREAS, DSI, the City and the predecessor in interest to Developer entered into that certain Preliminary Development Agreement dated as of June 15, 2017 (the “**PDA**”); and

WHEREAS, DSI is the current owner of the Empire Hotel located at 212-228 South Main Street, Salisbury, NC 28144 (the “**Property**”); and

WHEREAS, Developer has an agreement to acquire the Property from DSI pursuant to that certain Amended and Restated Real Estate Sales Contract dated as of an even date herewith (the “**Purchase Agreement**”); and

WHEREAS, DSI, the City and Developer desire for Developer to redevelop the Property as a mixed-use project with the upper floors used for residential purposes (the “**Residential Units**”) and the first floor used for residential, commercial, governmental or educational purposes (the “**Commercial Units**”); and

WHEREAS, as a part of the redevelopment of the Property, Developer has requested the City to master lease the Commercial Units as more particularly set forth herein (the “**Master Commercial Lease**”); and

WHEREAS, the parties desire to terminate and replace the PDA with this Agreement as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual obligations of the parties contained herein, each of the parties does hereby agree to terminate and replace the PDA as follows:

1. Purchase Agreement. DSI and Developer have executed the Purchase Agreement, and the acquisition of the Property and the applicable timelines shall be governed by the terms thereof. An estimated timeline of the process is attached hereto as Exhibit A, but the requirements of the Purchase Agreement shall govern the timing of the acquisition of the Property.
2. Cooperation. The parties agree to cooperate with each other in the redevelopment of the Property. DSI and the City agree that during the term of this Agreement DSI and the City will not negotiate with any third party in connection with redevelopment of the Property or disclose to any third party any information related to the Property or the redevelopment by Developer except as required by public records laws. As further explanation of the duty of the parties to cooperate, but not by way of limitation, the parties agree as follows:

- (a) Developer agrees to provide, within ten days of receipt, copies of reports and other documents related to the Property that are not specific to the Developer's business plan (as opposed to the Property or the community generally). If the Developer receives such a report under terms that do not allow Developer to provide copies, then the Developer will notify the City of the existence of the report within ten days of the Developer's receipt, and will provide the City with contact information for a person authorized to release the report to the City. Nothing in this paragraph requires the Developer to take any action other than to provide the copy or the notice provided for.
- (b) Developer agrees to advise the City and DSI on a pro-active basis and in a timely manner, but in any event within ten days, when the expected timeline as shown in Exhibit C changes, and at the same time to provide the City and DSI with a revised timeline.
- (c) Developer will provide the City and DSI with copies of existing floor plans and pro forma analyses on request. This paragraph does not require Developer to create new versions of floor plans or pro formas, but instead only to provide copies of existing documents.
- (d) Developer agrees to involve Larissa Harper, or any other City designee, in the Developer's process with United States Department of Housing and Urban Development. The parties agree that this involvement will be good business for both anticipating and resolving project issues. The Developer owes DSI and the City solid, timely communication. The Developer will advise the City when the HUD application goes in and feedback during the process.

(e)

3. Master Commercial Lease and Rental Agent Agreement. The City agrees to master lease the Commercial Units pursuant to the Lease attached hereto as Exhibit B. The City agrees to appoint Developer's affiliate, Black Point Investments, LLC, as the rental agent for the Commercial Units pursuant to the Rental Agent Agreement attached hereto as Exhibit C.

4. Responsibility for Costs.

(a) Developer shall be responsible for:

- 1. Fees and costs of its counsel and consultants;
- 2. The cost of any studies, reports or surveys commissioned or performed by Developer; and
- 3. All costs of the redevelopment of the Property other than costs of DSI or the City specifically set forth in the Master Commercial Lease or the Purchase Agreement.

(b) DSI and the City shall be responsible for:

1. Fees and costs of its counsel and consultants;
 2. The cost of any studies or surveys commissioned or performed by DSI or the City; and
 3. All costs of DSI or the City specifically set forth in the Master Commercial Lease or the Purchase Agreement.
- (c) In accordance with the City's policies and ordinances, DSI and the City shall identify all expected and customary City and County fees associated with the plan review and approval process, building permits, construction, connection (tap) fees, impact fees and other municipal charges. Developer shall include all such costs in its development and operating projections.
5. Term of Agreement. This Agreement shall be binding upon the parties until the closing or termination of the Purchase Agreement.
 6. Delivery of Work Product. If Developer decides not to proceed with redevelopment of the Property, Developer shall make available at no cost to DSI and the City for its unrestricted use all available work product related directly to the Property (not Developer) in the possession and control of Developer, including market analyses, soil and engineering reports, geotechnical reports, environmental reports, studies and testing, construction budgets and other documentation produced specifically related to the Property.
 7. Amendments. This Agreement may only be modified in writing signed by all parties.
 8. Dispute Resolution. In the event of a dispute among the parties concerning the terms or performance of this Agreement, the parties agree to take the following steps prior to commencing any proceeding before a court or administrative body:
 - (a) Meet and confer. Upon the request of either party, the parties will promptly 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 negotiation, 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 will pay one-half of the mediator's fees and expenses and all its own legal fees and other expenses related to the mediation.

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Exhibit A

Estimated Timeline

[attached]

Exhibit B

Lease Form

[attached]

Exhibit C

Rental Agent Agreement Form

[attached]