



To: Andy Kitzrow, City Administrator
From: Nick Voitiuc, Director
Date: January 9, 2025
Re: Amended Annexation Agreement Request- Hobbs Road

The Department of Infrastructure & Development requests the existing Hobbs Road Annexation be placed on the City Council work session agenda and subsequent legislative agenda scheduled for Monday, January 27, 2025, for consideration of an amended annexation agreement request.

Resolution No. 1564, which became effective December 6, 2007, was the original annexation agreement. Since that time, market changes and recently reduced annexation fees have resulted in the owner requesting the proposed revised/amended agreement.

The site is comprised of two parcels, located on the southeastern quadrant of the intersection of U.S. Routes 13 and 50, and binding upon the north side of Hobbs Road, totals 39.27 acres in area. The site is located within the Regional Commercial zoning district, and will be developed in accordance with standards for that district.

Attached, please find the proposed Resolution, Amended and Restated Annexation Agreement, and supplemental Exhibit to the Amended Agreement.

Unless you or the Mayor have any further questions, please forward a copy of this memo, the petition for annexation, and the boundary survey to Council for their review.

LIBER 0005 FOLIO 194

RESOLUTION NO. 3378

A RESOLUTION of the Council of the City of Salisbury to amend and restate the terms of an Annexation Agreement associated with property that was the subject of the 2007 "Hobbs Road-Iott Property Annexation", now known as the "Hobbs Road Annexation."

WHEREAS, Hobbs Road Development, LLC ("**Owner**") is the record owner of all that certain real property consisting of approximately 39.27 acres of land, more or less (the "**Property**"), identified as "**Parcel One and Parcel 729**" on that certain plat entitled "Boundary Survey for Hobbs Road Development, LLC" recorded among the Plat Records of Wicomico County, Maryland in Plat Cabinet No. 15, Folio 309; and

WHEREAS, Owner entered into an Annexation Agreement with the City of Salisbury on October 17, 2007 (the "**Original Agreement**") for the annexation of the Property, which annexation became effective on December 6, 2007; and

WHEREAS, Owner desires to construct upon the Property a commercial development, but, due to market changes from the date of the Original Agreement to the date hereof, the terms and conditions set forth in the Original Agreement make development of the Property infeasible; and

WHEREAS, the Owner desires to revise the terms and conditions contained in the Original Agreement in order to enable the development of the Property, including but not limited to revising the Original Agreement to reflect the recently reduced annexation fees adopted by the City of Salisbury.

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

Section 1. Mayor Randolph J. Taylor is hereby authorized to execute the Amended and Restated Annexation Agreement attached hereto as **Exhibit 1** and incorporated as if fully set forth herein on behalf of the City of Salisbury, for the City's acceptance of the amended and restated annexation terms as set forth therein.

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

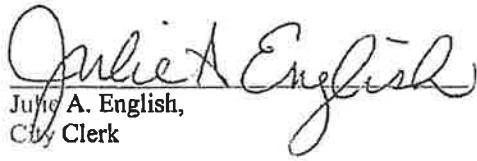
Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision this Resolution shall be deemed independent of all other provisions herein.

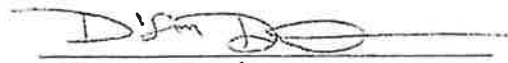
Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication 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 are incorporated into this section of this Resolution as if such recitals were specifically set forth at length in this Section 4.

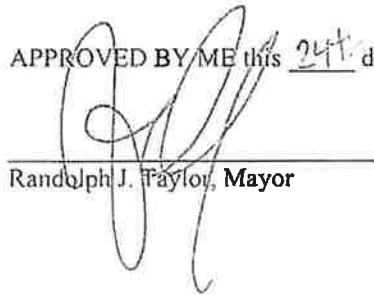
THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 27 day of January, 2025 and is to become effective immediately upon adoption.

LIBER 0005 FOLIO 195


Julie A. English,
City Clerk


D'Shawn M. Doughty,
Council President

APPROVED BY ME this 24th day of February, 2025.


Randolph J. Taylor, Mayor

AFFIDAVIT OF INTENT TO USE ELECTRONIC SIGNATURE

1. I, Julie A. English am over eighteen years of age and competent to testify.
2. I have signed the document or documents accompanying this affidavit by means of an electronic signature, which is defined in Md. Code, Real Property § 3-701(E) as an "electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted with the intent to sign the document."
3. I have done so with the intent to sign the document.
4. My use of the electronic signature was not done for any illegal or fraudulent purposes.

I solemnly declare under the penalties of perjury that the contents of the foregoing paper is true to the best of my knowledge, information, and belief.

Julie A. English
Name of Affiant

AFFIDAVIT OF INTENT TO USE ELECTRONIC SIGNATURE

1. I, DShawn M. Doughty am over eighteen years of age and competent to testify.
2. I have signed the document or documents accompanying this affidavit by means of an electronic signature, which is defined in Md. Code, Real Property § 3-701(E) as an "electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted with the intent to sign the document."
3. I have done so with the intent to sign the document.
4. My use of the electronic signature was not done for any illegal or fraudulent purposes.

I solemnly declare under the penalties of perjury that the contents of the foregoing paper is true to the best of my knowledge, information, and belief.


Name of Affiant

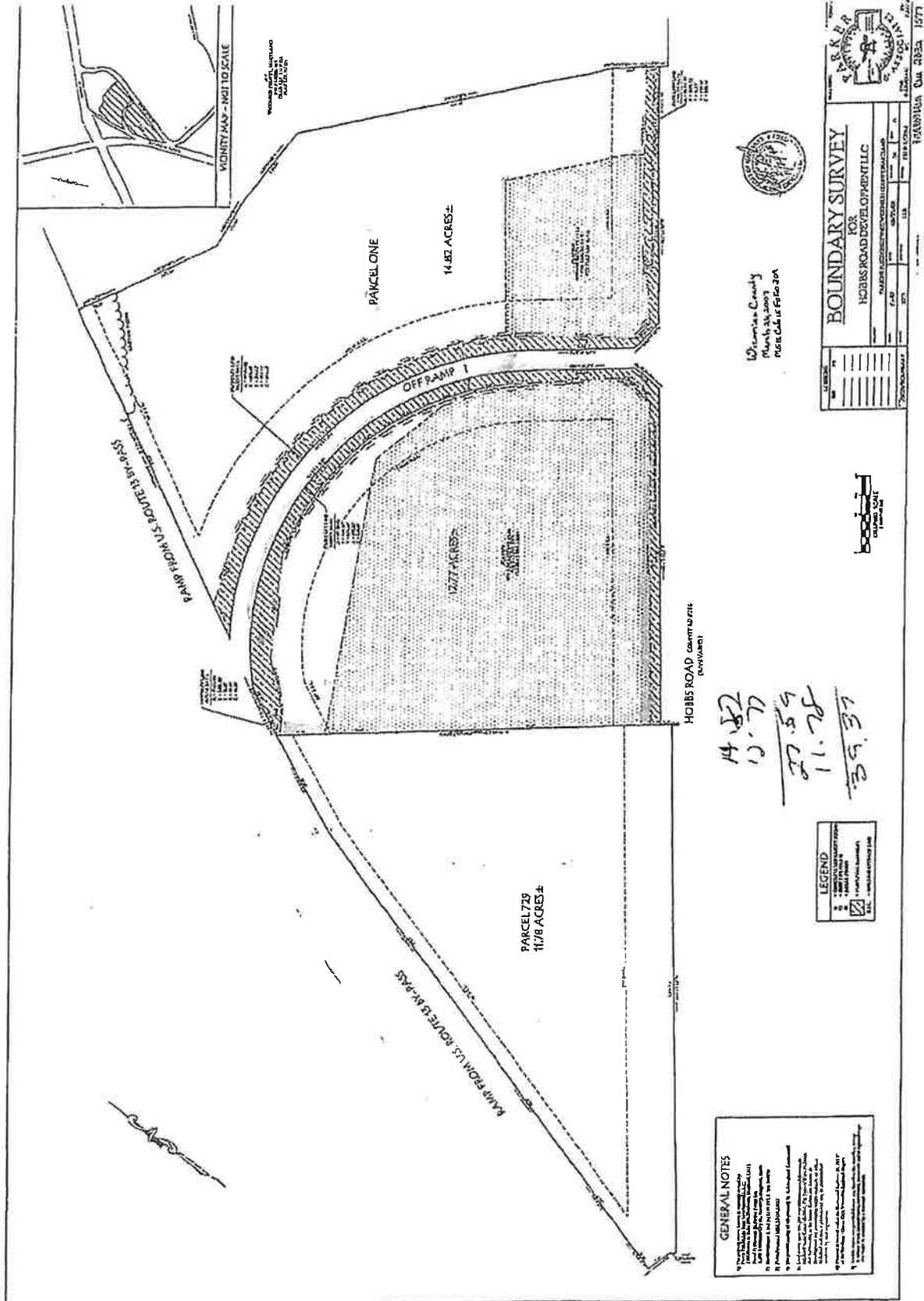
AFFIDAVIT OF INTENT TO USE ELECTRONIC SIGNATURE

1. I, Randolph J. Taylor, am over eighteen years of age and competent to testify.
2. I have signed the document or documents accompanying this affidavit by means of an electronic signature, which is defined in Md. Code, Real Property § 3-701(E) as an "electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted with the intent to sign the document."
3. I have done so with the intent to sign the document.
4. My use of the electronic signature was not done for any illegal or fraudulent purposes.

I solemnly declare under the penalties of perjury that the contents of the foregoing paper is true to the best of my knowledge, information, and belief.



Name of Affiant



LIBER 0005 FOLIO 200

Hobbs Road – Hobbs Road Development, LLC Annexation

AMENDED AND RESTATED ANNEXATION AGREEMENT

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT (“Agreement”) is made this 10 day of February, 2025, by and between the *City of Salisbury*, a municipal corporation of the State of Maryland (the “City”) and *Hobbs Road Development, LLC*, a Maryland limited liability company (“Owner”) (the City and Owner are hereinafter referred to collectively as the “Parties”).

RECITALS

WHEREAS, Owner is the record owner of all that certain real property consisting of approximately 39.27 acres of land, more or less (the “Property”), identified as “**Parcel One and Parcel 729**” on that certain plat entitled “Boundary Survey for Hobbs Road Development, LLC” recorded among the Plat Records of Wicomico County, Maryland in Plat Cabinet No. 15, Folio 309 (the **Plat**) (a copy of the Plat is attached hereto and incorporated herein as **Exhibit A-1**);

WHEREAS, Owner and the City entered into an Annexation Agreement dated October 17, 2007 for the Property that was recorded among the Land Records of Wicomico County in Liber M.S.B. No. 2870, Folio 291 (the “**Original Agreement**”);

WHEREAS, Owner desires to construct upon the Property a commercial development, but, due to market changes from the date of the Original Agreement to the date hereof, the terms and conditions set forth in the Original Agreement make development of the Property infeasible;

WHEREAS, the City and Owner have agreed to revise the terms and conditions contained in the Original Agreement in order to enable the development of the Property for the benefit of the Parties; and,

WHEREAS, pursuant to the authority contained in the Annotated Code of Maryland, Local Government Article, Section 4-101, *et seq.* the Owner and the City have agreed to execute this Agreement which sets forth the following terms and conditions that shall apply to the Property and shall supersede and replace the Original Agreement effective the date hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be the date upon which it is approved by majority vote of the City Council of the City of Salisbury (the “**City Council**”).

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

(a) When reviewing any development plan submitted for or relating to the Property or any portion thereof, including, but not limited to, any subdivision plat subdividing or resubdividing the Property or any portion(s) thereof, the City of Salisbury-Wicomico County Planning Commission (the “**Planning Commission**”) and its associated staff, and the City, and all of its officials, employees, representatives, agents and consultants, shall be guided by the provisions of this Agreement, to ensure all matters addressed by this Agreement are implemented in accordance with the terms and conditions set forth herein. All approvals relating to the development and/or use of the Property or any portion(s) thereof granted by any commission, board, body or agent of the City or any other government agency having jurisdiction over the Property or the development of any portion thereof, shall, to the fullest extent possible, comply with all terms and conditions of this Agreement.

(b) The Parties expressly acknowledge the City's execution of this Agreement is not intended, nor shall it be construed, in any way whatsoever, to prohibit the City from enacting or otherwise adopting any future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, the City may deem necessary or appropriate to protect the health, safety and welfare of City residents or the public at large, or from applying the provisions of any such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, to any matter relating to any development or use of the Property or any portion thereof; provided, however, any such application by the City shall not result in the divestment or termination of any prior approval(s) for any development and/or use of the Property or any portion thereof or interfere with Owner's vested rights in and to the Property or any portion thereof to an extent greater than the impact such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, have upon other similarly-situated properties located within the municipal limits of the City.

3. Warranties & Representations of Owner.

(a) The execution of this Agreement shall constitute Owner's express written consent to the terms of this Agreement which shall be deemed to run with and otherwise govern the Property and any portion(s) thereof as more particularly set forth herein, including any development and/or of the Property and any portion(s) thereof, arising from the City's annexation of the Property by Resolution No. 1564 adopted by the City Council of the City, of Salisbury on October 22, 2007 and which became effective on December 6, 2007 (the "Annexation Resolution").

(b) Owner represents and warrants to the City as follows: (i) Owner has the full power and authority to execute this Agreement; (ii) Owner is the sole, fee simple owner of the Property, and, accordingly, is the fee simple owner of all that certain real property constituting one hundred percent (100%) of the assessed value of the Property, as of the date and year first above written; and, (iii) to the best of Owner's knowledge and belief there is no action pending against or otherwise involving Owner and/or the Property which could affect, in any way whatsoever, Owner's right and authority to execute this Agreement and the performance of the obligations of Owner hereunder.

4. Application of City Code and Charter; City Taxes. The Parties expressly acknowledge and agree, as of the effective date of the Annexation Resolution, the Property has been annexed by the City and, therefore, all provisions of the City of Salisbury Charter and the City Code have had (and shall continue to have) full force and effect as to all matters applicable or otherwise relating to the Property including the development and/or use of any portion thereof, except as otherwise expressly set forth herein. The Parties further expressly acknowledge and agree that, as of the effective date of the Annexation Resolution, the Property has been and shall remain subject to any and all applicable taxes, fees and/or other charges levied, assessed or imposed by the City from time to time.

5. Municipal Zoning. The Parties acknowledge and agree that the Property is currently zoned by the City as Regional Commercial.

6. Municipal Services.

(a) Subject to the obligations of Owner under Sections 8(c)(i)-(iii), the City agrees to provide all necessary municipal services required for Owner's development and/or use of the Property or any portion(s) thereof, including, but not limited to, adequate water and sewer services, fire and police protection, and other municipal services generally available to residents of the City.

(b) With respect to the allocation of public water and/or wastewater capacity and services for the Property or any portion thereof, any such allocation shall be determined by the City pursuant to the City's allocation plans in effect at the time a request for public water and/or wastewater capacity and services is submitted by Owner of such portion(s) of the Property for which such capacity and services is requested in

accordance with the City's applicable policies and procedures. Notwithstanding any term to the contrary set forth herein, Owner expressly acknowledges and agrees that no public water or wastewater capacity for any existing use(s) or any future development of the Property or any portion(s) thereof shall be allocated or otherwise reserved by the City unless and until payment has been made to the City for all applicable capacity fee(s) for any such allocation of water and/or wastewater capacity and services in accordance with the applicable policies of the City existing at such time. The payment for any capacity fee(s) or for the connection of the Property or any portion(s) thereof to the City's water and/or wastewater systems shall be due to the City upon the earlier occurrence of: (i) Owner's election, at its discretion, to connect the Property, or any portion thereof, to the City's water and/or wastewater systems; or (ii) the issuance, by the Wicomico County Health Department or the Maryland Department of the Environment (as the case may be), of a final non-appealable order requiring the connection of any portion of the Property to the City's water and/or wastewater systems.

7. **Standards & Criteria.** Should any environmental, engineering or other similar standard or criteria expressly provided in this Agreement be exceeded by any local, state or federal law, regulation, rule, standard or authorized criteria enacted, promulgated, ordered or adopted following the date and year of this Agreement, the newer stricter law, regulation, rule, standard or authorized criteria shall govern the rights and obligations of the Parties hereunder.

8. **Development Considerations.**

(a) **Fees & Costs.** Owner expressly acknowledges and agrees to pay the City for any and all fees, costs and/or expenses, including, but not limited to, any legal fees (The City acknowledges receipt from Owner of a deposit towards said legal fees in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), planning fees and/or consulting fees, incurred by the City in connection with the preparation of this Agreement and the preparation of any other document(s) pertaining to the annexation of the Property, the publication of any public notice(s) for or in connection with the City's execution of this Agreement and/or the City's annexation of the Property, and/or any other matter relating to or arising from the City's preparation of this Agreement and/or the annexation of the Property, as determined by the City in its sole discretion. The City shall invoice Owner for all costs to be paid by Owner under this Section 8(a) and Owner, shall make payment of all amounts due and owing the City under this Section 8(a) within fifteen (15) days of Owner's receipt of any invoice from the City.

(b) **Development of the Property.** Owner shall develop the Property or any portion(s) thereof in a manner that complies with all laws and regulations governing the development of property located within the City's Regional Commercial zoning district, unless such zoning is subsequently changed in which case development shall be in accordance with the new zoning for the Property.

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

- (i) Subject to the terms and conditions contained in this Section 8(c)(i), Owner shall pay a non-refundable development assessment to the City in the total amount of Twenty-Four Thousand Five Hundred Dollars and 00/100 (\$24,500.00) (the "**Development Assessment**"). The Development Assessment is intended for use by the City, in its sole discretion, for purposes of beautification, restoration and revitalization improvements to existing neighborhoods within the City, or for any other purpose deemed necessary and appropriate by the City. The Development Assessment is in addition to and independent of: (A) any water and/or wastewater comprehensive connection charge(s), capacity fee(s) or any other assessment(s) charged, levied or otherwise imposed by the City in connection with the use or development of the Property or any portion(s) thereof; (B) any impact fee(s) levied or imposed by Wicomico County or the City

LIBER 0005 FOLIO 203

relating to any use or development of the Property or any portion(s) thereof; and/or, (C) any other charge(s) or fee(s) the City may assess against Owner and/or the Property in accordance with this Agreement and/or any applicable law(s) or regulation(s) governing the development or use of the Property or any portion thereof.

(ii) The Parties expressly acknowledge and agree Owner's payment of the Development Assessment as provided in Section 8(c)(i) represents a material part of the consideration to be received by the City hereunder, without which the City would not enter into this Agreement. The Development Assessment shall be paid by Owner to the City simultaneous with the execution of this Agreement.

(iii) In the event Owner fails to pay the Development Assessment, or any portion thereof, in accordance with the terms of Section 8(c)(i), the unpaid Development Assessment, or such unpaid portion, shall bear interest from the due date thereof to the date of payment at the rate of ten percent (10%) per annum. Notwithstanding any term to the contrary set forth herein, the Development Assessment, including all late charges incurred thereon (if any), shall be paid to the City prior to the issuance of any certificate of occupancy for any building or structure constructed at or developed on the Property.

(d) **Public Utility Improvements & Extensions; Wastewater Service.**

(i) The Parties expressly acknowledge and agree the extension of public water and wastewater utilities will be necessary to meet the requirements for utility service provided to the Property. Accordingly, at its sole cost and expense, Owner shall design and construct, or cause to be designed and constructed, such public water and wastewater utility extension(s), including, but not limited to, water main(s), sewer main(s), trunk line(s), fire hydrant(s), pump station(s) and any appurtenant facilities, necessary to serve the Property, including any future development thereof, in accordance with all applicable City standards and specifications and subject to the approval of the Director of the City of Salisbury Department of Infrastructure and Development (the City's "**DID Department**"). Owner further acknowledges and agrees the water and wastewater sewer utility facilities designed and constructed in accordance with this Section 8(d)(i) shall be sized in the manner and to the extent determined by the Director of the City's DID Department.

(ii) The design and construction of the facilities required for the extension of the City's public water and wastewater utilities to serve the Property shall be governed by the terms and conditions of a Public Works Agreement by and between Owner and the City (the "**PWA**"). The PWA shall be executed by the Parties as soon as reasonably practicable following the Planning Commission's approval of any development plan for or relating to the Property or any portion thereof, including, but not limited to, any subdivision plat providing for the subdivision of the Property, and any such approval from the Planning Commission shall be expressly conditioned upon the Parties' execution of the PWA in accordance with the terms of this Section 8(d)(ii). Notwithstanding any term to the contrary set forth herein, no permit may be issued to Owner, or any party acting for or on Owner's behalf, for any work associated or in connection

LIBER 0005 FOLIO 204

with the development of the Property or any portion thereof, until the PWA is executed by the Parties.

- (e) **Improvements to Hobbs Road.** Owner agrees to design and construct improvements to Hobbs Road, south of the Property, as may be required by and subject to the standards and approval of the Wicomico County Department of Public Works (the “**County Public Works Department**”), to resolve traffic safety concerns -caused by the anticipated increase in traffic on Hobbs Road due to the development of the Property. Owner further agrees to develop the ultimate roadway construction improvements plan and right-of-way for Hobbs Road for approval by the County Public Works Department, which said plan shall provide accommodation for roadway entrances on both sides of Hobbs Road for the entire length of the development frontage and the construction of all improvements along the Hobbs Road property frontage as may be required by the County Public Works Department. Owner shall enter into a Public Works Agreement with Wicomico County, and/or such other agreement(s) as may be required by Wicomico County (collectively the “**Hobbs Road Improvements Agreement**”), setting forth the terms and conditions of the improvements to Hobbs Road to be constructed by Owner pursuant to this Section 8(e), and a copy of the fully executed Hobbs Road Improvements Agreement shall be provided to the Director of the City’s DID Department prior to the City’s issuance of any building permit for construction at the Property. Owner expressly acknowledges and agrees, in the event facilities required for the extension of the City’s public water and wastewater utilities are constructed within the roadbed of Hobbs Road, then such portion of Hobbs Road must be annexed into the City at the sole cost and expense of Owner.

9. **Record Plat.** Owner shall provide the City with a copy of the final record plat for any development of, on or within the Property or any portion thereof, including any subdivision plat providing for the subdivision of the Property.

10. **Notices.** All notices and other communication in connection with this Agreement shall be made in writing and shall be deemed delivered to the addressee thereof as follows: (a) when delivered in person on a business day at the address set forth below; (b) on the third (3rd) 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, (c) when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery.

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

Hobbs Road Development, LLC
8011 Log Town Road
Berlin, Maryland 21811

With a copy to:
Jeffrey E. Badger, Esquire
Long Badger, LLC
124 East Main Street
Salisbury, Maryland 21801

LIBER 0005 FOLIO 205

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

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

With a copy to:
Heather R. Konyar, Esquire
Cockey, Brennan & Maloney, P.C.
313 Lemmon Hill Lane
Salisbury, Maryland 21801

11. **Future Uses of the Property.** Owner expressly acknowledges and agrees that, upon the effective date of this Agreement, any development or use of the Property or any portion thereof must comply with all applicable laws, rules and regulations of the City, as may be amended from time to time, including, but not limited to, all applicable zoning laws of the City and all applicable permitting and/or approval procedures established by the City governing the development and/or use of property located within the City's Regional Commercial zoning district unless such zoning is subsequently changed in which case development of the Property shall be in accordance with new zoning for the Property. Any development, subdivision and/or use of the Property or any portion(s) thereof shall be subject to, and must comply with, all applicable capacity fees and/or impact fees as established by the City and/or Wicomico County existing on the effective date of this Agreement, subject to any amendments thereto as may be adopted or promulgated, from time to time. The Parties expressly acknowledge and agree that neither this Agreement nor any of the terms set forth herein shall, in any way whatsoever, constitute or otherwise be construed as an approval by the City of any specific development at, upon or within any portion of the Property, including any subdivision of the Property subsequent to the date and year first above written. The Parties further expressly acknowledge and agree that neither this Agreement nor any of its terms shall constitute or otherwise be construed as a waiver by the City of: any tax(es) levied or assessed by the City upon the Property; or, any fee(s), assessment(s) or charge(s) that may be imposed by the City, from time to time, arising from or in connection with any development or use of the Property, or any portion thereof, and/or any subdivision of the Property or any portion(s) thereof.

12. **Miscellaneous Provisions.**

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

(b) **Scope of Agreement.** This Agreement is not intended to limit the exercise of any police power(s) of the City, nor is this Agreement intended to limit the operations of the City government or guarantee the outcome of any administrative process. Unless otherwise expressly set forth herein, this Agreement shall be subject to all properly enacted laws and properly adopted governmental regulations, now or hereafter existing and applicable. This Agreement shall not be rendered invalid by reason of the enactment or amendment of any law or the adoption or amendment of any regulation, which is: (i) enacted or adopted by the City in the exercise of a governmental power for a valid governmental purpose; (ii) enacted or adopted by

the City as a result of a state or federal mandate; or, (iii) applicable to the Property and to similarly situated property located outside of the City in Wicomico County.

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

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

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

(f) **Modification.** Neither this Agreement nor any term contained herein may be waived, modified, amended, discharged or terminated except in a writing signed by the Parties.

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

(h) **Assignment of Agreement.** The Parties expressly acknowledge and agree this Agreement shall be assignable, in whole or in part, by Owner to any purchaser of the Property or any portion thereof, without the consent of the City or any of its elected officials, employees or agents; provided, however, any sale, transfer, assignment, gift or conveyance of the Property, or any portion thereof, shall be subject to the terms of this Agreement. Notwithstanding any term to the contrary set forth in this Section 12(h), Owner shall not transfer, or pledge as security for any debt or obligation, any of its interest in or to all or any portion of the Property without first obtaining the acknowledgment of the transferee or pledgee to be bound by all of the terms and conditions contained in this Agreement, as if such transferee or pledgee was a party to this Agreement. Owner shall provide the City with a copy of all documents, including all exhibits attached thereto (if any), evidencing any transfer or assignment by Owner of any of his interests in and to the Property or any portion thereof.

(i) **Express Condition.** The obligations of Owner under this Agreement shall not constitute the personal obligations of Owner independent of his ownership of the Property or any portion thereof. Notwithstanding any term to the contrary set forth herein, Owner expressly acknowledges and agrees Owner's obligations under Section 8(a) are not contingent or otherwise conditioned upon the execution of this Agreement by the Parties and such obligations shall be binding upon Owner and enforceable by the City against Owner and/or any of Owner's successor(s), representative(s), transferee(s) and/or assign(s), to the fullest extent permitted by Maryland law.

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

(k) **Recording of Agreement.** This Agreement, including all exhibits attached hereto (each of which is incorporated in this Agreement by this reference), shall be recorded among the Land Records of Wicomico County, the costs of which shall be paid by Owner. This Agreement and all terms and conditions

contained herein shall run with the Property, and any portion thereof, and shall be binding upon and inure to the benefit of the Parties and each of their respective heirs, personal representatives, successors, transferees and/or assigns.

(l) **No Reliance.** Each of the Parties, for itself, expressly acknowledges and agrees that, in entering into this Agreement, such party has not been induced by or relied upon any representation(s) or statement(s), whether express or implied, written or unwritten, made by any agent, representative or employee of the other party to this Agreement, which is not expressly set forth herein.

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE PAGE THAT FOLLOWS]

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

ATTEST/WITNESS:

"OWNER":

Hobbs Road Development, LLC



By:  (Seal)
George Harkins, Managing Member

THE "CITY":

City of Salisbury, Maryland



By:  (Seal)
Randy Taylor, Mayor