



C. If Purchaser desires to extend the outside closing date to June 30, 2019, Purchaser shall make an earnest money payment to Seller on or before March 31, 2019, in the amount of 50% of the Seller's debt service on its loan for the premises payable between January 1, 2019 through March 31, 2019.

All Earnest Money shall be non-refundable unless Seller fails to timely cure a default hereunder or if this Agreement otherwise expressly provides for the return of the Earnest Money to Purchaser. The Earnest Money shall be applied as part of the cash portion of the Purchase Price (as hereinafter defined).

3. Purchase Price: The purchase price (the "Purchase Price") for the Premises shall be Eight Hundred Eighty Thousand and no/100ths Dollars (\$880,000.00) and shall be payable in cash at closing.

4. Access: For the duration of this Agreement, Purchaser or its agents shall have the unlimited right to enter upon the Premises at all reasonable times and upon reasonable notice for the purpose of making such inspections, surveys and tests as it may deem necessary or desirable. Any such entry to the Premises shall be at the Purchaser's sole risk and expense, and Purchaser shall adequately protect the Premises. Purchaser agrees to indemnify and hold Seller harmless from and against any and all damages, claims, losses, liabilities and expenses which may be imposed upon, incurred by, or asserted against Seller with respect to such inspections, surveys and tests.

5. Title: Seller shall convey marketable fee simple title to the Premises free and clear of all liens and encumbrances other than those Permitted Exceptions contained in Exhibit A attached hereto.

6. Warranties of Seller: Seller warrants and represents as follows:

(a) As of closing Seller shall be the owner of the fee simple title to the Premises, and all of the improvements located thereon, and it will forever warrant and defend the title to said Premises.

(b) As of closing, there will be no contracts affecting the Premises, there will be no leases or sub-leases affecting the Premises or any part thereof (other than a lease dated as of \_\_\_\_\_ 2018 between the Seller and the City), and there will be no parties in possession of the Premises or any part thereof. Possession of the Premises will be delivered to the Purchaser at closing.

(c) Seller has no actual knowledge, nor has Seller received any notice of, any violations of law, municipal ordinances or other legal requirements with respect to the Premises. Seller hereby furnishes Purchaser with an authorization to make the necessary searches for any such violations. As of the date hereof, Seller has not received any notices from any federal, state or municipal authority, suits, or judgments relating to violations of the Premises of zoning, building, fire, life safety, air pollution, rental controls or health regulations, or any notice or advice from any insurer of the Premises or any part thereof requesting any improvements, alterations, additions, corrections or other work in, on or about

the Improvements, whether related to the Premises or to the operations of any occupant thereof. Seller will promptly notify Purchaser if it receives any such notice at or before closing and will pay the cost of correcting any such violations.

(d) To the best of Seller's knowledge, no areas exist or have existed on the Premises where hazardous substances or waste have been generated, stored, disposed of, released or found, and Seller has no knowledge and has received no notice of the existence of any hazardous substances or waste on the Premises. For purposes of this Agreement, the "hazardous substances or waste" shall mean petroleum, including crude oil or any fraction thereof, flammable explosives, radioactive materials, any material containing polychlorinated biphenyls, and any of the substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Section 1802, the Resource Conservation and Recovery Act, U.S.C. Section 6901, et seq., or any other federal, state, local or other governmental legislation, statute, law, code, rule, regulation or ordinance, identified by its terms as pertaining to the disposal of hazardous substances or waste.

(e) Seller has not: (i) entered into or been subject to any consent decree, compliance order, or administrative order with respect to the Premises or any facilities or operations thereon; (ii) received notice under the citizens suit provision of any Environmental Law in connection with the Premises or any facilities or operations thereon; (iii) received any requests for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any environmental condition relating to the Premises or any facilities or operations thereon; or (iv) been subject to or threatened with any governmental or citizen enforcement action with respect to the Premises or any facilities or operations thereon.

(f) To the best of Seller's knowledge, no portion of the Premises is considered to be jurisdictional wetlands.

(g) From and after the date hereof up and until closing, Seller shall maintain the Premises in substantially the same condition as the Premises are in as of the date of this Agreement.

(h) Closing shall constitute acceptance of the Premises in its then existing condition.

7. Closing:

(a) The closing of the sale and purchase shall take place on or before December 31, 2018, at the law offices of Brockmann Law or such other place as the Purchaser may designate upon five (5) days' notice to Seller. It is anticipated that it will be an escrowed closing. Purchaser shall have the right to extend the outside closing date until March 31, 2019, and June 30, 2019, on written notice to Seller and the payment of the additional Earnest Money as set forth in Section 2, above.

(b) At closing, Seller shall deliver the following documents to the Purchaser and/or the title company:

(i) A good and sufficient recordable Special Warranty Deed conveying the Premises to the Purchaser, which shall vest in Purchaser marketable fee simple title to the Premises, free and clear of all liens and encumbrances, except those Permitted Title Exceptions shown on Exhibit A;

(ii) NCLTA Form 1;

(iii) A “non-foreign” affidavit as defined in Internal Revenue Code Section 1445; and

(iv) Any other documents reasonably required by the Purchaser or the title company in order to implement the terms of this Agreement.

(c) Purchaser and Seller shall each pay its own attorney’s fees. All outstanding city, state and county ad valorem real estate taxes for the year of closing will be prorated between the parties. All charges for utility service to the Premises shall be prorated as of closing. Seller shall pay the cost of all documentary stamps and/or transfer taxes and all costs associated with the preparation of the Special Warranty Deed. All other closing costs shall be paid by Purchaser.

8. Notice: Any notice required or permitted to be given hereunder by one party to the other shall be in writing and shall be effective when delivered in person to the individuals named below, or deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed as follows:

As to Purchaser: Empire Hotel Holdings, LLC  
2242 Crescent Avenue  
Charlotte, NC 28207-1510  
Attention: Britt Weaver

As to Seller: Downtown Salisbury, Inc.  
217 South Main Street  
Salisbury, NC 28144  
Attention: Larissa Harper, Director

With a copy to: City of Salisbury  
Attention: City Manager  
217 South Main Street  
Salisbury, NC 28144

9. Condemnation or Casualty Loss: In the event that, prior to closing, all or any portion of the Premises shall have been affected by any condemnation or taking by eminent domain, or shall be the subject of any condemnation procedure which shall have been commenced or of which Seller or Purchaser shall have received actual or

constructive notice, or in the event more than ten percent (10%) of the Premises has been damaged by fire, flood or other casualty, Purchaser shall have the option of:

(a) Accepting the Premises in the condition which exists at the time of closing, together with assignment of all proceeds of any condemnation award or insurance proceeds arising out of the condemnation of or casualty to the Premises, or

(b) Canceling this Agreement, in which event the Purchaser shall be entitled to the reimbursement of the Earnest Money.

All risk of loss until time of closing shall be on Seller, and Seller shall deliver possession of the Premises to Purchaser at closing in substantially the same condition as they were in when shown to agents of Purchaser.

10. Default: In the event Seller fails to fully and timely perform any of its obligations hereunder or otherwise refuses to complete the sale of the Premises as provided hereunder, Purchaser shall be entitled to recover all Earnest Money paid without prejudice to any additional rights, at law or in equity, that Purchaser may have as a result of such breach by Seller, including the right to sue for specific performance. Should Purchaser default under this Agreement, Seller shall be entitled to terminate this Agreement by giving written notice thereof to Purchaser, in which case Seller shall retain the Earnest Money paid by Purchaser without prejudice to any additional rights, at law or in equity, that Seller may have as a result of such breach by Purchaser.

11. Broker Representation and Warranty. Seller and Purchaser each represent that they have not engaged any broker for this transaction. Purchaser hereby indemnifies and agrees to hold Seller harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including costs and attorneys' fees incurred in connection with the enforcement of this indemnity) which may be asserted or recovered against Seller on account of any brokerage fee, commission or other compensation due and owing any person arising by reason of the Purchaser's breach of the foregoing representation and warranty that it has not engaged a broker in connection with this transaction. Seller hereby indemnifies and agrees to hold Purchaser harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including costs and attorneys' fees incurred in connection with the enforcement of this indemnity) which may be asserted or recovered against Purchaser on account of any brokerage fee, commission or other compensation due and owing any party arising by reason of the Seller's breach of the foregoing representation and warranty. This Section 11 shall survive closing or any termination of this Agreement.

12. Attorneys' Fees. If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees in the amount of fifteen percent (15%) of any sum collected, together with all costs and expenses, and a right to such attorneys' fees and expenses shall be deemed to have accrued upon the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

13. Assignment: This Agreement is fully assignable by Purchaser to any entity in which Britt Weaver and/or William R. Hughes is a principal.

14. Choice of Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. The parties agree that Rowan County, North Carolina shall be the exclusive jurisdiction for any claim or dispute regarding this Agreement, its interpretation, enforcement of its terms, allegations of its breach or otherwise.

15. Amendment and Waiver: No provision of this Agreement may be amended, modified, supplemented, changed, waived, discharged, or terminated unless each party hereto consents in writing.

16. Severability of Provisions: In the event that any one or more of the provisions contained in this Agreement should be found or held to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired thereby.

17. Captions: The captions or headings of any section of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

18. Survival of Agreement: All covenants, warranties and agreements set forth in this Agreement shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of monies made under, pursuant to or by reason of this Agreement.

19. Miscellaneous: This Agreement contains the entire understanding and agreement between the parties in regard to the purchase and sale of the Premises. It shall not be modified or amended in any way except by a written instrument executed by both parties. This Agreement shall be binding upon and inure to the benefit of each party hereto and their successors. Time is of the essence of this Agreement.

20. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

21. 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.

22. City as a Party; No Third-Party Beneficiaries. As a party to this agreement, the City has the right to enforce the provisions of this Agreement directly against either the Seller or the Purchaser to the extent it may deem such enforcement necessary or advisable. The parties intend that no provision of this Agreement is intended, nor shall it be interpreted, to provide or create any third-party beneficiary rights to any other person or entity.

23. Cooperation and Work Product. Seller shall cooperate with Buyer in regard to any necessary SHPO and NPS submissions and approvals. Buyer shall promptly provide Seller with full copies of such submissions and approvals when submitted and/or received by Buyer. Buyer agrees to provide copies of any other reports generated by Buyer in regard to the Premises from time-to-time subject to any restrictions from Buyer's lender.

24. Public Improvements. Buyer has requests for public improvements from the City as follows:

A. A master lease of certain commercial space comprising a portion of the Premises.

B. Permanent availability of 70 additional parking spaces in close proximity to the Premises.

C. Sidewalk improvements and streetscape improvements for approximately 290 linear feet along South Main Street and 201 linear feet on Bank Street.

Buyer reserves the right to make future requests if necessary for the redevelopment of the Premises.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, Seller and Purchaser have caused this Agreement to be executed as of the day and year first above written.

**SELLER:**

**DOWNTOWN SALISBURY, INC.,**  
a North Carolina nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER:**

**EMPIRE HOTEL HOLDINGS, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_

Britt Weaver, Manager

**THE CITY:**

**CITY OF SALISBURY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[AMENDED AND RESTATED REAL ESTATE SALES CONTRACT**  
dated as of \_\_\_\_\_, 2018, by and among  
Downtown Salisbury, Inc., Empire Hotel Holdings, LLC, and the City of Salisbury]

EXHIBIT A

PERMITTED EXCEPTIONS

1. Ad valorem taxes for the year 2018 and all subsequent years not yet due and payable; and
2. All valid and enforceable conditions, covenants, restrictions, easements and rights-of-way of record.

**Schedule A**

**Legal Description**

**[Insert Legal Description from Final Survey]**