

# RENTAL AGENT AGREEMENT

**THIS RENTAL AGENT AGREEMENT** (“Agreement”) is made and entered into as of \_\_\_\_\_, 2018, by and among **BLACK POINT INVESTMENTS, LLC**, a North Carolina limited liability company ("Rental Agent"), **EMPIRE HOTEL REDEVELOPMENT, LLC**, a North Carolina limited liability company ("Owner"), and the **CITY OF SALISBURY, NORTH CAROLINA**, a municipal corporation of the state of North Carolina (the "City").

## WITNESSETH:

**WHEREAS**, Owner and the City entered into that certain Lease dated as of an even date herewith (the “Lease”) for the lease of approximately 13,319 square feet of commercial lease space (the “Commercial Lease Space”) in the building commonly known as the Empire Hotel on 212-228 South Main Street in Salisbury, North Carolina; and

**WHEREAS**, the parties wish to enter into this Agreement (1) to appoint Rental Agent as the City’s agent with the power and authority to enter into subleases for the Commercial Lease Space (the "Subleases"), and (2) to establish the application of rent payments received for Commercial Lease Space.

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

**1. Appointment of Agent.** The City appoints Rental Agent to act as the City’s agent for the purposes set out in this Agreement. As the City’s agent, Rental Agent has full power and authority to market the Commercial Lease Space, to find prospective tenants for the Commercial Lease Space (“Subtenants”). Rental Agent may utilize professional leasing agents from time-to-time to assist Rental Agent in the leasing of the Commercial Lease Space.

**2. Processing of Subleases.** Rental Agent has the exclusive right and authority to negotiate and finalize Subleases for signature by the City. Rental Agent must give the City at least thirty (30) days written notice of any Sublease that Rental

Agent intends the City to execute and deliver. As part of the required notice, Rental Agent must provide the City with the proposed form of the Sublease and any rental application or similar material Rental Agent has gathered or received. The City may only object to any proposed Sublease on the basis that the Sublease [i] imposes additional or more stringent terms or conditions on the City than exist under the Lease, [ii] contains rent payments less than \$12 per square foot, [iii] does not assume all of the City's additional obligations under the Lease in regard to the portion of the Commercial Lease Space subleased by such Subtenant, or [iv] violates the restrictions set forth in Exhibit A attached hereto (the "Use Restrictions"). The City must notify Rental Agent of any objection by the end of the calendar day that is the thirtieth (30<sup>th</sup>) day after the City receives the written notice of the proposed Sublease. Otherwise, the City will accept such Sublease and provide a signed counterpart of such Sublease on or before such thirtieth (30<sup>th</sup>) day.

**3. Application of Sublease Rent Payments.** All Subleases shall provide that all rent payments under Subleases shall to be paid directly to Rental Agent (and not to the City). Rental Agent will retain all rent payments made under Subleases (the "Sublease Payments") and remit them to Landlord to satisfy the obligations of the City under the Lease. The City shall receive a credit against the Monthly Rent (as defined in the Lease) for the amount of all Sublease Payments. In the event Rental Agent receives Sublease Payments in any month in excess of the Monthly Rent, the City shall receive a credit for such excess to be applied on the next installment(s) of Monthly Rent in which the City is not receiving a full credit of Sublease Payments towards the Monthly Rent.

**4. Occupancy by the City.** So long as this Agreement is in effect, the City has no separate right to sublease any portion of the Commercial Lease Space but may propose potential Subleases or agree to permanently occupy certain portions of the Commercial Lease Space in accordance with the Sublease parameters above. If at any time the City desires to occupy any portion of the Commercial Lease Property not subject to a Sublease with the intent to conduct City business from the occupied portion, then the City may elect to revoke Rental Agent's agency under this Agreement with respect to that portion. The City must give ten (10) days prior written notice to Rental Agent to make such election. Notwithstanding the above, Rental Agent may defer such election for up to thirty (30) days in the event Rental Agent is actively negotiating a Sublease for such portion of the Commercial Lease Property (as evidenced by a term sheet or such other materials so as to indicate the proposed

subtenant). In the event Rental Agent is unable to finalize a proper Sublease in such thirty (30) day period, then such revocation shall be effective as of the end of such thirty (30) day period. In the event the City does revoke Rental Agent's agency in regard to a portion of the Commercial Lease Property, the Use Restrictions shall still apply to such portion of the Commercial Lease Property. In addition, the City shall be responsible for any upfit required in such space and shall thereafter be required to pay (in addition to the monthly rent and other obligations under the Lease) all taxes, insurance and common area maintenance applicable to the such portion of the Commercial Lease Property. In other words, the Lease shall become "triple net" in regard to such portion of the Commercial Lease Property.

**5. No Amendment of Lease.** Nothing in this Agreement is intended to modify or amend the terms of the Lease or any obligations arising under the Lease.

**6. 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.

**7. Amendments.** This Agreement may not be amended without the written consent of all parties.

**8. Notices.**

(a) Any communication required or permitted by this Agreement must be

in writing (not to include facsimile transmission or electronic mail).

(b) Any communication under this Agreement 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 Rental Agent, to: Black Point Investments, LLC, 2242 Crescent Avenue, Charlotte, NC 28207
- (ii) If intended for the City, to: City of Salisbury, Attention: City Manager, 217 South Main Street, Salisbury, NC 28144
- (iii) If intended for Owner, to: Empire Hotel Redevelopment, LLC, 2242 Crescent Avenue, Charlotte, NC 28207

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

**9. No Assignments.**

(a) Except as provided in (b), no party may assign any interest in this Agreement without the others' prior written consent.

(b) Owner or Rental Agent may assign its rights and obligations under this Agreement, upon notice to City, to any entity in which (i) Rental Agent or its principals directly or indirectly own or control or (ii) becomes a master tenant or subtenant of the Hotel for historic tax credit purposes. Any other assignment by Owner or Rental Agent shall require the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

**10. Legal Fees.** If a party defaults under this Agreement and the other party incurs legal or other expenses to collect any payments due under this Agreement, or to enforce any provision of this Agreement, 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.

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

**12. Governing Law; Venue.** The parties intend that this Agreement 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 Agreement must be brought in the North Carolina General Court of Justice in Rowan County, North Carolina.

**13. Captions.** The captions of the sections of this Agreement are for convenience only and are not intended to affect the interpretation of this Agreement.

**14. Counterparts.** This Agreement 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.

**15. Termination.** This Agreement terminates effective as of the termination of the Lease. In addition, either party shall have the right to terminate this Agreement at any time upon ninety (90) days' written notice.

**(SIGNATURES ON THE FOLLOWING PAGE)**

**IN WITNESS WHEREOF**, Owner and Rental Agent have executed and delivered this Agreement as of the date first above written.

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

By Its Manager:

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

By: \_\_\_\_\_  
Britt Weaver, Manager

**BLACK POINT INVESTMENTS, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_  
Britt Weaver, Manager

[RENTAL AGENT AGREEMENT  
dated as of \_\_\_\_\_, 2018,  
by and among Black Point Investments, LLC,  
Empire Hotel Redevelopment, LLC,  
and the City of Salisbury, North Carolina]

**IN WITNESS WHEREOF**, the City has executed and delivered this Agreement as of the date first above written.

**CITY OF SALISBURY, NORTH CAROLINA**

By: \_\_\_\_\_  
Lane Bailey, City Manager

[RENTAL AGENT AGREEMENT  
dated as of \_\_\_\_\_, 2018,  
by and among Black Point Investments, LLC,  
Empire Hotel Redevelopment, LLC,  
and the City of Salisbury, North Carolina]

**EXHIBIT A**  
**USE RESTRICTIONS**

- a. laundry or dry-cleaning establishment, provided, the foregoing restriction shall not include an establishment for dry cleaning drop-off and pick-up only, with no cleaning services being performed at the subject property;
- b. off-track betting establishment;
- c. a pool or billiard hall (unless operated as part of a large-scale family recreation or entertainment facility);
- d. a business selling alcoholic beverages for on-premises consumption except for a restaurant with sit down table service as its primary operation in which the sale of alcoholic beverages does not exceed 60% of its gross sales;
- e. adult book store or any form of adult entertainment;
- f. bingo parlor;
- g. a video game parlor or amusement arcade;
- h. a business which would emit or produce noxious fumes or gases (excluding nail salons and restaurants) or loud noises;
- i. an assembly or manufacturing operation;
- j. an establishment selling or exhibiting pornographic materials;
- k. nightclub, discotheque or dance hall;
- l. a mortuary or funeral home;
- m. a church or other place of worship;
- n. an abortion clinic or plasma donation center;
- o. any establishment which stocks, displays, sells, rents, or offers for sale or rent any merchandise or material commonly used or intended for the use with or in consumption of any narcotic, dangerous drug, or other controlled substance, including, without limitation, any hashish pipe, water pipe, bong, pipe screens, rolling papers, rolling devices, coke spoons or roach clips;
- p. an operation whose principal use is a massage parlor and/or exotic dancing, provided this shall not prohibit massages in connection with a beauty salon, health club or athletic facility; or
- q. a pawn shop.