

DEVELOPMENT AGREEMENT

between

TOWN OF BLACKSBURG, VIRGINIA,

and

MIDTOWN REDEVELOPMENT PARTNERS, L.L.C.

As of May 14, 2019

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made as of the ____ day of May, 2019 (the “Effective Date”), by and between the **TOWN OF BLACKSBURG, VIRGINIA**, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia (the “Town” or “Locality”) and **MIDTOWN REDEVELOPMENT PARTNERS, L.L.C.**, a Virginia limited liability company (“Midtown”). The Town and Midtown are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

The Parties desire to work in cooperation to redevelop the Old Blacksburg Middle School property at the 500 block of South Main Street, bounded by Clay and Eheart Streets, located in the Town and within the boundaries of Montgomery County (the “County”), for a mixed-use project (the “Project”) as outlined in that certain change of zoning classification application, the Old Blacksburg Middle School Site pattern book dated May 13, 2019, which identifies the Proffered Elements and the Guiding Elements for the Project (the “Pattern Book”), and the proffered conditions (the “Proffers”) on behalf of the property owners of the Project Area, dated October 6, 2017 and last revised May 13, 2019 (the “Rezoning Application”).

Within the Project, the Town owns certain property identified on the County’s tax map as Tax Parcel #257-A-217 consisting of approximately 0.9415 acres of land (the “Town Eheart Property”) and Tax Parcel #257-A-218 consisting of approximately 0.385 acres of land (the “Town Clay Street Property,” and together with the Town Eheart Property, the “Town Property”) as more particularly identified on Exhibit A, and Midtown owns certain properties identified on the County’s tax map as Tax Parcels #257-A-94A, #257-25-C and #257-A-94 consisting of approximately 20 acres of land as more particularly identified on Exhibit A (the “Midtown Property” and together with the Town Property, the “Project Area”). The Rezoning Application includes a conceptual layout identifying the different components of the Project and this conceptual layout is attached hereto as Exhibit B (the “Conceptual Layout”).

Development of the Project will begin with the installation of the Initial Improvements (defined below) to facilitate and support the construction of buildings within the Project. The “Initial Improvements” shall collectively be (i) the Stormwater Facility (defined below), (ii) the Initial Road (defined below), (iii) the utilities located under or adjacent to the Initial Road (i.e., water, sewer lines, gas, cable, and telephone as applicable based on plans), (iv) mass grading of the developable area of the portion of the project zoned Downtown Commercial (the “DC Area”), (v) construction of a multi-purpose, outdoor event area above the Stormwater Facility within the portion of the

DC Area identified as “Old School Common” on DC Parcel 3 (the “Event Space”), (vi) installation of the Eheart Main Improvements (defined below), and (vii) installation of the Traffic Signal (defined below).

Midtown anticipates that the initial buildings in the DC Area will include a mixed-use building located on the portion of DC Area identified as “DC Parcel 2A” on the Conceptual Layout and a hotel on the portion of the DC Area identified as “DC Parcel 6” on the Conceptual Layout.

The Town desires to acquire from Midtown that portion of the DC Area identified on the Conceptual Layout as “DC Parcel 1B” for the construction and operation of the Public Safety Building (defined below) and that portion of the DC Area identified as “DC Parcel 1A” for the construction and operation of the Parking Garage (defined below) to support the uses in the DC Area and to provide additional public parking opportunities within the Town.

The Town anticipates that the Parking Garage will provide a parking facility to serve the Public Safety Building, the Project and existing needs for downtown area parking. The availability of the Parking Garage will reduce congestion on the streets of downtown and will reduce the need for surface parking in connection with the Project. The availability of the Parking Garage will also enable the Town to realize the public benefits from private investment into the Project, the expansion of the Town’s downtown, its commercial economy and its tax base and revenue, and the inclusion of other public amenities in the Project.

In addition to the Event Space, the Project will also include a plaza at the intersection of South Main and Eheart Street as generally described in the Rezoning Application (the “Plaza”) and a “central park” area within the portion of the Project zoned Planned Residential Development (the “PRD Area”) as such park is generally described in the Rezoning Application (the “Central Park”). The Event Space, Plaza and Central Park will be constructed by Midtown and dedicated to and accepted by the Town.

Midtown and the Town intend to set forth their understandings, agreements, rights and responsibilities in order to jointly facilitate the implementation of this Agreement and the development of the Project.

AGREEMENT

In consideration of the payment of Ten and 00/100 Dollars (\$10.00) and the mutual covenants, conditions, and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, the Parties hereto hereby agree as follows:

ARTICLE I

THE PROJECT

Section 1.1. The Project. Midtown desires to develop the Project as a mixed-use project within the parameters set forth in the Rezoning Application and this Agreement. Except as otherwise set forth herein, and subject to the Rezoning Approval (defined below), Town ordinances and other applicable legal requirements, the ultimate size, scope and configuration of the Project shall be determined by Midtown in its sole and absolute discretion, and Midtown reserves the right, from time-to-time, to modify the Project as may be permitted by the Rezoning Approval, Town ordinances, and other legal requirements.

Section 1.2. Subdivision of Project. The Project shall be initially subdivided by lot line adjustment, subdivision plat or other plat to create three land bays: one for the DC Area, one for the PRD Area and one within the DC Area that is comprised of DC Parcel 1A and DC Parcel 1B (the "Lot Line Adjustment Plat"). Further division of each land bay to create building parcels or lots may be depicted on the Lot Line Adjustment Plat or subsequent plats. The final boundary lines for the various components of the DC Area, such as DC Parcel 1A, DC Parcel 1B, DC Parcel 2A, the Plaza, the Event Space and DC Parcel 6, shall be established by recorded subdivision plat. The area for the public right of way for the Initial Road may be shown on the Lot Line Adjustment Plat or a subsequent subdivision or dedication plat. All subdivision plats for the Project shall be prepared and approved in accordance with the Town's subdivision ordinance. Neither site plan level nor construction level details will be required with the Lot Line Adjustment Plat, including, without limitation, a stormwater pollution prevention plan; provided, however, that the Town may require the Lot Line Adjustment Plat to contain a note that no building permit or certificate of occupancy will be issued without the prior approval of the stormwater pollution prevention plan.

Section 1.3. Architectural Design Approval.

(a) DC Area. Subsection 1.3(a) shall be used with #9 of the Proffers. The design, facade treatment and materials to be used for the buildings in the DC Area shall follow a unified and complimentary architectural theme consistent with the Rezoning Approval and in particular the Pattern Book. Architectural appearance and materials may vary from building to building, but with complementary architectural appearance and materials used on all sides of a building except where deviations are required by topography, to meet requirements of Rezoning Approval, or as approved by the Town through this design approval process. The Town, in its commercially reasonable discretion, shall review and approve the architectural design of each building in the DC

Area for compliance with the foregoing sentence at the time of site plan approval. Nothing in this Section (Architectural Design Approval) shall relieve Midtown or another owner in the DC Area of the obligations of the Proffers.

i. Prior to the Town's approval of any site plan application(s) for a building in the DC Area, the applicable owner or applicant shall submit conceptual plans and architectural elevations of each side of the applicable building detailing the proposed exterior appearance, including, without limitation, building materials, landscaping plans, and building layout and design criteria of the applicable building (the "DC Review Plans") to the Town Representative (defined below). The Town Representative shall present the DC Review Plans to the Town Council (defined below) for administrative review and approval to evaluate compliance with this Section (Architectural Design Approval) and the Rezoning Approval without a public hearing ("Architectural Design Approval"). The Town shall complete its review of the DC Review Plans and issue comments or the Architectural Design Approval within forty-five (45) days after receipt of a complete submission of the DC Review Plans, with Architectural Design Approval issued no later than sixty (60) days after a complete submission of the DC Review Plans. A submission shall be considered complete if the Town does not give Midtown or the applicable Parcel Developer (defined below) written notice of deficiencies of the submission within five (5) business days after the date submitted. In the event that Midtown or a Parcel Developer does not resubmit the DC Review Plans within five (5) business days after receipt of comments from the Town, the aforesaid sixty (60) day period shall be extended day-for-day after such fifth (5th) business day until the DC Review Plans are resubmitted.

ii. The Town and Midtown or a Parcel Developer, as applicable, shall work together to resolve comments during the sixty (60) day period referenced in Section 1.3(a), above, as such period may be extended. Any dispute regarding the DC Review Plans compliance (a "DC Architectural Dispute") shall be submitted to mediation with the hearing to be held in not less than thirty (30) days, and if not resolved in mediation, to binding arbitration. Any such arbitration shall be completed within thirty (30) days from the date after the mediation, with the arbitrator's opinion being due not more than ten (10) days thereafter. Each Party shall bear their own costs of mediation and arbitration under this Section (Architectural Design Approval).

(b) PRD Area. Subsection 1.3(b) shall be used with #17 of the Proffers. The design, façade treatment and materials to be used for the buildings in the PRD Area are stated in the proffer related to the architecture of the buildings in the PRD Area (the "PRD Proffer"). The PRD Proffer provides an architectural option for multifamily buildings in the PRD Area ("MF Option") and three (3) architectural options for townhomes and duplexes in the PRD Area ("TH/D Options").

i. Prior to the Town's approval of any subdivision of the PRD Area

into for sale lots, the front, side and rear elevations for the buildings with multi-family uses or Townhouse/duplex uses in the PRD Area, with materials noted and a color palate provided, shall be submitted to the Town ("PRD Submission") for Town Council to confirm conformance with the selected architectural option from the PRD Proffer and the applicable proffered design requirements in the Rezoning Approval. The Town Representative shall present the PRD Submission to the Town Council for administrative review and approval to evaluate compliance with this Section and the Rezoning Approval without a public hearing. The Town shall complete its review of the PRD Submission and issue comments or the Town's approval within thirty (30) days after receipt of a complete PRD Submission, with the Town's approval issued no later than forty-five (45) days after a complete submission of the PRD Submission. A submission shall be considered complete if the Town does not give Midtown or the applicable Parcel Developer (defined below) written notice of deficiencies of the submission within five (5) business days after the date submitted. In the event that Midtown or a Parcel Developer does not resubmit the PRD Submission within five (5) business days after receipt of comments from the Town, the aforesaid forty-five (45) day period shall be extended day-for-day after such fifth (5th) business day until the PRD Submission is resubmitted.

ii. The Town and Midtown or a Parcel Developer, as applicable, shall work together to resolve comments during the thirty (30) day period referenced in Section 1.3(b), above, as such period may be extended. Any dispute regarding the PRD Submission shall be submitted to mediation with the hearing to be held in not less than thirty (30) days, and if not resolved in mediation, to binding arbitration. Any such arbitration shall be completed within thirty (30) days from the date after the mediation, with the arbitrator's opinion being due not more than ten (10) days thereafter. Each Party shall bear their own costs of mediation and arbitration under this Section.

iii. In the event Midtown or a Parcel Developer elects not to use the MF Option and/or one of the TH/D Options, then Midtown or the Parcel Developer shall submit new front, side and rear elevations with materials noted and a color palate provided, showing the desired architectural design of the applicable multi-family building(s) or townhomes/duplex buildings for Town Council's approval in accordance with same procedural and timing process set out in Sections 1.3(b)(i) and (ii) above. After Town Council approval of the submitted architectural appearance for the applicable building type, the applicable residential building type (i.e., multi-family and/or townhome/duplex) shall be constructed in conformance with the Town Council approved architectural design for the specific building type.

iv. In the event Midtown or a Parcel Developer desires to switch to a different architectural appearance after beginning construction of a specific building type (i.e., multi-family and/or townhome/duplex) in the PRD Area, then the front, side and rear elevations with materials noted and a color palate provided for the new architectural

appearance in the PRD Area for a specific building type shall be submitted to the Town Council for approval in accordance with the same procedural and timing process set out in Sections 1.3(a)(i) and (ii) above. After such approval, that specific building type shall be built in conformance with either such approved architectural design or the initial architectural design used, or both.

v. For buildings with Townhouse or duplex units, individual unit elevations within a building may be rearranged within the building to enhance the architectural appearance of the PRD Area.

(c) In the PRD Area, synthetic stone may be used on buildings for up to 35% of the elevation area on each side of any one or more buildings in the PRD Area.

Section 1.4. Dates.

(a) “Initial Improvements Completion Date” shall mean prior to the issuance of the first certificate of occupancy for the building improvements on any of DC Parcel 6, DC Parcel 2A, DC Parcel 2B, DC Parcel 1A or DC Parcel 1B.

(b) “DC Parcel 6 (Hotel) Start Date” shall mean the date that is twenty four (24) calendar months after the date all of the Conditions Precedent (defined below) are satisfied and/or waived by the benefited party.

(c) “DC Parcel 1B (Public Safety Building) Start Date” shall mean the later of: (i) the date that is twenty four (24) calendar months after the date all of the Conditions Precedent are satisfied and/or waived by the benefited party, or (ii) the date upon which Midtown completed (evidenced by passing the Town’s final inspections) the Initial Improvements required to construct the Public Safety Building.

(d) “DC Parcel 2A Start Date” shall mean the date that is forty two (42) calendar months after the date all of the Conditions Precedent are satisfied and/or waived by the benefited party.

(e) “Closing Date” has the meaning set forth in Section 3.1 (The Town Property).

(f) “Event Space Dedication Date” shall mean the date which is no later than thirty (30) days after the improvements to the Event Space Property have been substantially completed in accordance with the approved site plan for the Event Space Property.

(g) “Plaza Dedication Date” shall mean the date which is no later than thirty (30) days after the improvements to the Plaza Property have been substantially completed in accordance with the approved site plan for the Plaza Property.

(h) “Central Park Dedication Date” shall mean the date which is no later than the fiftieth (50th) Certificate of Occupancy issued for the PRD Area, or such later date as agreed by the Town to permit use of the Central Park area for construction staging.

Section 1.5. Association or Management Documents. The Town and Midtown acknowledge and agree that the Project may become subject to a declaration, REA, and/or other agreement that may, *inter alia*, assign maintenance responsibility to one or more property owners’ associations (any one or more such document being a “Master Declaration”). The Master Declaration may establish maintenance standards to provide for a neat, clean, attractive Project maintained in first-class condition by such association(s). The Master Declaration may also require the payment of fees and assessments by owners of parcels in the Project. The Town hereby acknowledges and agrees that DC Parcel 1A, DC Parcel 1B, DC Parcel 3 and the area for the Central Park may be subject to the authority of such an association and the Town will be obligated to pay such fees and assessments. The association documents shall be subject to the approval of the Town Representative, not to be unreasonably withheld, condition or delayed in his/her commercially reasonable discretion. The Master Declaration and any subordinate declaration for the PRD Area and DC Area shall contain the use restrictions contained in Exhibit G of this Agreement.

Section 1.6. Plan and Permit Review and Approvals for Initial Road, Shared Stormwater Facility and Utilities. As used in this Section, “Initial Site Work” shall mean the Initial Road, Shared Stormwater Facility and water and sewer utilities under and around the Initial Road, collectively. Prior to submission, Midtown or its representative shall hold a pre-submission meeting with the Town to review such site plan(s) and applicable construction drawings for the Initial Site Work. Midtown shall submit site plan(s) and applicable construction drawings for the Initial Site Work to the Town for approval. The drawings may also show the locations of gas services, communications services and electrical services. If incomplete, Town shall promptly notify Midtown within five (5) business days after submission. A submission shall be considered complete if the Town does not give Midtown written notice of deficiencies of the submission within five (5) business days of the date submitted. The Town shall complete its initial review of the submitted plan(s) and drawings and submit comments to Midtown within thirty (30) days after the complete submission by Midtown and acceptance by the Town. If requested by either party, Midtown and the Town shall meet to discuss the comments within five (5) business days after delivery of the comments. For each subsequent responsive submission by Midtown of the site plan(s) and construction drawings updated based on comments from the Town, the Town shall review and either issue comments or approve the site plan(s) and constructions drawings and issue the applicable permits for the Initial Site

Work within fifteen (15) days after such submission by Midtown. A meeting, responsive submission and review process shall repeat until the site plan(s) and construction drawings are approved and the applicable permits for the Initial Site Work are issued. The parties acknowledge that the objective of this process is to issue approvals of plans and permits prior to September 15, 2019 so that most of the infrastructure work may be completed prior to winter.

ARTICLE II

CONDITIONS PRECEDENT TO COMMENCEMENT OF REDEVELOPMENT

Section 2.1. Generally. The Parties' obligations hereunder are contingent upon the satisfaction of the conditions precedent contained in this Article II (Conditions Precedent to Commencement of Redevelopment) (collectively, the "Conditions Precedent" and individually a "Condition Precedent"). The Party benefited by a Condition Precedent may waive the applicable Condition Precedent by sending written notice of the waiver to the other Party. The Conditions Precedent shall be satisfied or waived within one (1) year after the date of Rezoning Approval (the "Condition Precedent Deadline"). If any of the Conditions Precedent are not satisfied or waived by the Condition Precedent Deadline, either Party shall have the right to terminate this Agreement by written notice to the other and thirty (30) days after receipt of such notice this Agreement shall terminate and be of no further force or effect, except those terms which specifically survive termination.

Section 2.2. Rezoning Approval. Midtown shall have received final and unappealable approval of the Rezoning Application ("Rezoning Approval"). This Agreement is not a contract to rezone the Project Area and this Agreement does not create any vested rights or other rights of Midtown. Midtown acknowledges and agrees that the approval of the Rezoning Application is a legislative function subject to the legislative discretion of the Town's governing body (the "Town Council").

Section 2.3. Lot Line Adjustment Plat. Midtown shall have prepared, in accordance with the Town's subdivision ordinance, and received from the Town final approval of the Lot Line Adjustment Plat.

Section 2.4. Project Funding. Midtown, and any applicable Parcel Developer, shall have received a binding commitment for equity investment and/or debt financing for the improvements to be constructed on DC Parcel 2A and DC Parcel 6, the Initial Improvements and the Eheart Main Infrastructure (defined below). "Parcel Developer" shall mean any of the following: a contract purchaser of one or more development parcels within the Project or a successor in interest to Midtown as to one or more development

parcels within the Project (including, without limitation, an owner or contract purchaser of one or more leasehold estates).

Section 2.5. Lender Approval. Midtown and any applicable Parcel Developer shall have obtained from any lender which is secured by any portion of the Project an agreement that: (a) obligates such lender to grant an unconditional release of DC Parcel 1A, DC Parcel 1B, the Plaza Property, the Event Space Property, the Central Park area and the right of way for the Initial Road from such lender's deed of trust; and (b) to subordinate its interests to those easements required to effect the provisions of this Agreement, including without limitation, all access and utility easements.

ARTICLE III

THE TOWN PROPERTY

Section 3.1. The Town Property. The Town will convey by deed of gift the Town Property to Midtown (the "Town Deed") no later than the later of (i) sixty (60) days after the date of Rezoning Approval, (ii) the date all of the Conditions Precedent are satisfied and/or waived by the benefited party or (iii) the date the Lot Line Adjustment Plat is approved and ready for recordation on the Closing Date (the "Closing Date").

Section 3.2. Access and Closing on Town Property.

(a) Not later than thirty (30) days after the date Rezoning Approval is achieved, the Town shall provide Midtown with copies of all title, survey, and study materials in its possession related to the Town Property at no cost to Midtown. Prior to the Closing Date, the Town grants permission to Midtown to access the Town Property to conduct testing, perform title examinations and surveys, and conduct such other investigations as Midtown may reasonably desire from time-to-time. Midtown shall provide the Town with prior notice of all such entries (and the purpose thereof) on the Town Property. Midtown hereby agrees to promptly and completely repair any damage to the Town Property resulting from such inspections or testing. Midtown has provided the Town, and the Town has provided Midtown, with copies of title, survey and other due diligence materials in their respective possession related to the Town Property. All inspections, evaluations, and surveys of the Town Property shall be at Midtown's sole cost and expense. Any liens shall be removed by the Town on or before the Closing Date. Except defects or flaws in title that are of such character that they may be readily remedied or removed by the Town, the Town shall have no obligation to improve or alter the Town Property, and Midtown shall otherwise accept the Town Property in its then "AS-IS" condition.

(b) The Town Deed and its legal description to convey the Town Property shall be mutually agreeable to the parties and drafted prior to the closing, provided that the legal description must be the same as what is contained in the Town's vesting deed(s) for the Town Property. The Town shall deliver an owner's affidavit (in a form acceptable to the title company to issue a title policy to Midtown at standard rates) to the title company enabling it to issue its final title insurance policy without exception for mechanic's or materialmen's liens, parties in possession or other off-record matters. The Town shall deliver an affidavit of non-foreign status executed by the party conveying the property. The Town shall deliver such other documents as required to consummate the conveyance of the Town Property to Midtown as reasonably requested by Midtown or Midtown's title company. Each Party shall pay all of its own costs in connection with the transfer of the Town Property. The Town shall pay for the preparation of the Town Deed and other typical seller settlement deliverables. All real estate taxes and assessments and any other sums normally and usually pro-rated shall be pro-rated as of the Closing Date. It shall be a condition of closing on the Town Property that there shall have been no material adverse change in the condition of the Town Property, including, without limitation, no change in title and survey matters as compared against Midtown's title commitment and survey, as reasonably determined by Midtown, and, in the event of any such change, the Town shall use commercially reasonable efforts to restore the Town Property and its state of title to such condition prior to the Closing Date, unless Midtown has agreed in writing to accept the Town Property subject to that change.

Section 3.3. County Performance Agreement. Each parties' obligation to close under this Agreement is hereby conditioned upon Midtown and the County executing a performance grant agreement. The full execution of such an agreement shall extinguish this condition and Midtown shall notice the Town of full execution of such agreement. Midtown's failure to obtain the aforementioned performance agreement shall not limit or terminate its obligations to complete the Initial Improvements and the Plaza. In the event this condition is not satisfied prior to the Closing Date, then (i) the Town may waive this condition by notice to Midtown in writing; or (ii) the Closing Date shall be extended day-for-day until this condition is satisfied and the Closing Date shall then become the tenth (10th) business day after Midtown notices the Town of full execution of such Agreement. In the event the Closing Date is so extended, the Town shall grant to Midtown the grading and construction easement specified in Section 6.1 (DC Parcel 1A and DC Parcel 1B Acquisition) with respect to the Town Property and then this grading and construction easement shall be amended to encumber DC Parcel 1A and DC Parcel 1B on the Closing Date in furtherance of Section 6.1 below. The Town may waive this condition to Closing in this Section 3.3 after the original Closing Date by sending notice to Midtown and upon Midtown's receipt the Closing Date shall become the thirtieth (30th) day after Midtown's receipt of such notice.

ARTICLE IV

INITIAL IMPROVEMENTS

Section 4.1. Initial Improvements. Midtown shall diligently and in good faith construct and install the Initial Improvements after all plans and permits for the Initial Improvements are approved and issued by the Town and County, as applicable, for completion (as evidenced by final inspection by Town) no later than the Initial Improvements Completion Date, excluding the Event Space. The Event Space shall be constructed and installed in accordance with the remaining Sections in this Article (**Initial Improvements**) and in accordance with the plans and permits approved and issued for the Initial Improvements.

Section 4.2. Initial Improvements Plans. Midtown shall obtain from the Town final approval of site plans and building permits for the Initial Improvements. The plans for the Initial Improvements may include one or more site plans, construction drawings, erosion and sediment control plans, and a stormwater pollution prevention plan. The preparation of such plans, to the extent not already prepared, will be informed through consultation with the Town's contractor. If such Town approval is not provided by the Closing Date, then each day thereafter until such approval is given shall be a Delay Day (defined below).

Section 4.3. Initial Road. The "Initial Road" shall be Church Street, together with its associated streetscape improvements designed in accordance with the Rezoning Approval. The Initial Road shall be designed and constructed to the Town's or VDOT's standard specifications for the functional classification of road the Initial Road will be. The Initial Road, and all improvements in the right of way, shall be dedicated, and submitted for acceptance, no later than the issuance of the first certificate of occupancy for any building constructed on DC Parcel 1A, DC Parcel 1B, DC Parcel 5, DC Parcel 4B or DC Parcel 6; provided, however, dedication of the Initial Road may occur in phases, if mutually agreeable to the Parties. The Town shall be responsible for the actual, documented cost to repair damage to the portions of dedicated road improvements for damage caused by Town or its contractors or other agents during construction of any public improvements on DC Parcel 1A or DC Parcel 1B, even if such damage occurs during Midtown's warranty period. Prior to the dedication of the Initial Road, the Town and Midtown shall execute and record a temporary construction access agreement for the Town's use of the portion of the Initial Road adjacent to DC Parcel 1A and DC Parcel 1B for review and approval by Midtown in its commercially reasonable discretion, not to be unreasonably withheld, conditioned or delayed. Upon Midtown's approval in writing, Midtown shall execute and return such agreement to the Town for execution and recordation. The Town shall be responsible for releasing such agreement prior to or in conjunction with dedication of this section of the Initial Road.

Section 4.4. Shared Stormwater Facility for Project.

(a) The Shared Stormwater Facility. The Project shall be served by an underground stormwater facility, generally located under the Event Space on DC Parcel 3, designed to handle a portion of the quality and quantity requirements for the Project based on estimated impervious area/surface calculations, as set forth in the Rezoning Application and the conceptual plan for the stormwater facility approved by the Town (the "Shared Stormwater Facility"). The Parties acknowledge that the Shared Stormwater Facility is designed based on anticipated development, and that estimated impervious areas have been allocated to each parcel in the Project, with only 75% of the quality requirements based on this estimated, impervious area being satisfied by the Stormwater System, as more particularly set forth in the Rezoning Application. To satisfy remaining quality requirements and due to impervious areas being more than estimated by Midtown in the design plans for the Stormwater System approved by the Town or changes in laws and regulations, the Shared Stormwater Facility will not serve the needs of each parcel within the Project, and each owner of a parcel within the Project (including, without limitation, the Town) may need to construct additional stormwater facilities or obtain offsite credits to meet the stormwater requirements applicable to its parcel and planned improvements thereon.

(b) Design Approval. Midtown received the Town's conceptual approval of the Shared Stormwater Facility. Midtown shall obtain the Town's final approval of the design and construction plans for the Shared Stormwater Facility by the Closing Date. If such Town approval is not provided by the Closing Date, then each day thereafter until such approval is given shall be a Delay Day. The Town and Midtown shall have approved in writing to each other the form of a shared maintenance agreement for the Shared Stormwater Facility (the "Facility Maintenance Agreement"). The Facility Maintenance Agreement shall be recorded against the Project prior to the issuance of the first certificate of occupancy for DC Parcel 6, DC Parcel 2A, DC Parcel 1A, or DC Parcel 1B. The Town is allocated the following capacities in the Shared Stormwater Facility design submitted to the Town as of the date hereof: DC Parcel 1B = 5.87%; DC Parcel 1A = 4.06%.

(c) Cost Sharing. The cost estimate to design, construct and install the Shared Stormwater Facility is attached hereto as Exhibit D. The Parties acknowledge that the costs of the Shared Stormwater Facility shall be allocated among the various parcels in the Project according to their estimated percentage, post build out, of the impervious surface for the parcels to be served. The Town shall be responsible for the costs attributable to DC Parcel 1B (Public Safety Building). Each development parcel shall have the right to connect to the Shared Stormwater Facility upon the owner of each development parcel paying its Facility Percentage Share (defined below) of the Facility Costs (defined below).

Notwithstanding the ownership of DC Parcel 1A and DC Parcel 3, Midtown shall be responsible for the Facility Percentage Share of the Facility Costs attributable to DC Parcel 1A and DC Parcel 3. "Facility Percentage Share" shall mean the percentage assigned to each development parcel in the Project as such percentages are shown on Exhibit D attached hereto. The "Facility Costs" shall mean the hard and soft costs incurred by Midtown to design, construct and install the Shared Stormwater Facility. The Facility Maintenance Agreement shall be recorded against the Project prior to issuance of the first certificate of occupancy for DC Parcel 6, DC Parcel 2A, DC Parcel 1A, or DC Parcel 1B. Midtown shall be permitted to reserve an easement for stormwater management facilities to serve the Project across, over and under any portion of the Project, including, without limitation, in the Master Declaration.

Section 4.5. Public Space Improvements. Midtown shall obtain the Town's written approval of Midtown's proposed design (being layout and construction specifications) for the Plaza and the Event Space (the "Approved PES Specifications") no later than the Closing Date. If such Town approval is not provided by the Closing Date, then each day thereafter until such approval is given shall be a Delay Day. Midtown's proposed design shall be informed through collaboration with the Town. The cost estimate for the design and construction of such improvements for the Plaza and the Event Space is attached hereto as Exhibit C. This cost estimate will be updated at the time Midtown submits the design plan to the Town for approval and submitted with the design plan; provided that such cost estimate shall not include the attributable Facility Costs or costs and expenses for grading. In the event that Midtown's estimated costs for the design and construction of such improvements for the Plaza and the Event Space exceed the PES Cost Ceiling (defined below) at the time Midtown seeks the Town's approval, the Town shall either (i) modify the scope of the Plaza and Event Space improvements to get such costs below the PES Cost Ceiling; or (ii) increase the amount of the PES Cost Ceiling by a corresponding amount (the "PES Cost Increase Amount") by entering into an amendment hereto to provide for such increase. The submitted cost estimate, as may be modified pursuant to clause (i) of this Section, shall be the Approved PES Cost Estimate. Midtown shall have sole responsibility for any construction cost overruns that occur after the Town has issued its approval, except for Change Overages (defined below). Except as agreed in writing by the Town, the "PES Cost Ceiling" shall mean Two Million and No/100 Dollars (\$2,000,000.00) as it may be increased by the PES Cost Increase Amount.

Section 4.6. Event Space. The Event Space will be located within a portion of DC Parcel 3 as generally shown on the Conceptual Layout (the "Event Space Property"). The Event Space will be designed, constructed by Midtown and conveyed to the Town in accordance with this Section.

(a) Event Space Plans. No later than the approval date of the site plan for the Public Safety Building, Midtown shall submit for approval of a site plan for the

Event Space on the Event Space Property consistent with the Rezoning Approval and the Approved PES Specifications. Midtown shall obtain the Town's approval of the site plan for the Event Space in accordance with the Town's ordinance section(s) applicable to site plans. In the event the Town requires changes to the site plan that are different from the Approved PES Specifications, the approved design layout and the Rezoning Approval and such changes result in costs greater than the Approved PES Cost Estimate, then the Town shall be responsible for paying for such greater costs (the "Change Overage") to Midtown on the Event Space Dedication Date.

(b) Event Space Construction. After receiving approval of the site plan for the Event Space, Midtown shall construct or cause the construction of the Event Space in accordance with the approved site plan for the Event Space and the Approved PES Specifications. Midtown shall complete the Event Space on the later of: the issuance of the first certificate of occupancy for DC Parcel 4A or DC Parcel 2B at the corner of South Main Street and Eheart Street. Excluding Change Overage, any construction costs incurred by Midtown after submittal of a revised cost estimate in accordance with Section 4.5 that exceed the portion of the PES Cost Ceiling (as it may be increased by the PES Cost Increase Amount) applicable to the Event Space shall be the sole responsibility of Midtown.

(c) Event Space Acquisition. On the Event Space Dedication Date, Midtown shall convey the Event Space Property to the Town by separate gift or sale agreement, subject to all encumbrances of record as approved by the Town Representative in his/her commercially reasonable discretion not to be unreasonably withheld, conditioned or delayed (but not monetary liens) and the Town shall accept the Event Space Property in its "AS IS" condition following completion (evidenced by passing the Town's final inspections) of the improvements, but subject to any and all warranties Midtown received in connection with installation of the improvements on the Event Space Property. Midtown shall cooperate with the Town in enforcing any and all such warranties.

(d) Event Space Contribution. The Town shall pay to Midtown on the Event Space Dedication Date the following amounts (i) any PES Cost Increase Amount applicable to the Event Space, and (ii) any Change Overage applicable to the Event Space Property.

Section 4.7. Eheart Main Infrastructure and Traffic Signal. Midtown shall design, construct and install the following (the "Eheart Main Infrastructure"): the Eheart Street and Main Street road improvements required in the Rezoning Approval and the below and above ground improvements associated with the new traffic signal at the intersection of Eheart Street and Main Street required in the Rezoning Approval (the "Traffic Signal"). Upon completion of the installation of the Traffic Signal and the Eheart

Main Infrastructure, the Traffic Signal and the Eheart Main Infrastructure shall be dedicated to and accepted by the Town and thereafter maintained by the Town.

ARTICLE V

DC PARCEL 6 AND DC PARCEL 2A BUILDINGS

Section 5.1. DC Parcel 6 Building. Midtown or a Parcel Developer shall commence construction of the building and associated improvements for DC Parcel 6 based on the approved site plan and permits no later than the DC Parcel 6 (Hotel) Start Date. The use for DC Parcel 6 shall be as a hotel.

Section 5.2. DC Parcel 2A Building. Midtown or a Parcel Developer shall commence construction of the building and associated improvements for DC Parcel 2A based on the approved site plan and permits no later than the DC Parcel 2A Start Date. The use for DC Parcel 2A and 2B shall be as permitted in the Rezoning Approval. The parking spaces in the alley located on DC Parcel 2 shall not be used for high-frequency turnover parking such as grab-and-go or take-out parking.

Section 5.3. Plan and Permit Review and Approvals.

(a) Conceptual Approval – Initial Improvements. To the extent not already submitted pursuant to Section 1.6 as to the Initial Site Work, Midtown shall submit site plans and associated documents to the Town for conceptual approval of the design of the Initial Improvements. This submission will incorporate the Approved PES Specifications for the Event Space or be a part of the process to obtain Approved PES Specifications for the Event Space. Within five (5) business days after the submission, the Town shall confirm that all required materials and information have been provided in order for the submission to be deemed complete. If incomplete, Town shall promptly notify Midtown. A submission shall be considered complete if the Town does not give Midtown written notice of deficiencies of the submission within five (5) business days of the date submitted. The Town shall issue its approval of the submitted conceptual plans and associated documents within forty-five (45) days after the complete submission by Midtown. Midtown and the Town will work together in a prompt manner to resolve any comments to the submission during this forty-five (45) day period. In the event Midtown or a Parcel Developer does not resubmit such plans within five (5) business days after receipt of comments from the Town, the aforesaid forty-five (45) day period shall be extended day-for-day after such fifth (5th) business day until such plans are resubmitted.

(b) Conceptual Approval – Buildings on DC Parcel 6 and DC Parcel 2A. With respect to the buildings on DC Parcel 6 and DC Parcel 2A, each independent of each other, conceptual approval for the improvements on each (inclusive of preliminary

site plan approval) shall be the Architectural Design Approval obtained in accordance with Section 1.3 (Architectural Design Approval) above.

(c) Final Plans and Permits. To the extent not already prepared pursuant to Section 1.6 as to the Initial Site Work, Midtown or a Parcel Developer will prepare final construction drawings and site plans for the Initial Improvements, the Stormwater Facility, DC Parcel 6 and DC Parcel 2A, each independent of each other, based upon the applicable conceptual approval. Within five (5) business days after any submission, the Town shall confirm that all required materials and information have been provided in order for the submission to be deemed complete. If incomplete, Town shall promptly notify Midtown. A submission shall be considered complete if the Town does not give Midtown written notice of deficiencies of the submission within five (5) business days of the date submitted. To the extent not already completed pursuant to Section 1.6 as to the Initial Site Work, the Town shall complete its review of such plans submitted for the Initial Improvements, DC Parcel 6 and DC Parcel 2A, each independent of each other in accordance with the Town's customary site plan review procedure; provided that the Town will issue approval within four (4) months after a complete submission and acceptance by Town. In the event Midtown or a Parcel Developer does not resubmit such plans within ten (10) business days after receipt of comments from the Town, the aforesaid four (4) month period shall be extended day-for-day after such tenth (10th) business day until such plans are resubmitted. After the applicable plan approval, the Town shall review permit applications and issue the permits necessary for any construction activity associated with the remaining improvements shown on the applicable plans for the Initial Improvements, the Stormwater Facility, DC Parcel 6 and DC Parcel 2A, each independent of each other in accordance with the Town's customary permit review procedures; provided that the Town will issue approval within four (4) months after a complete submission. Failure of the Town to complete its review and issue approval within the specified time period shall not be deemed approval of any plans or permits and the Extension for Delays provision below shall apply.

Section 5.4. Extension for Delays. A "Delay Day" shall be day(s) (i) that one or more plan approvals and/or permit issuances by the Town is delayed beyond the applicable time period set forth in this Agreement, and/or (ii) after the Town initiates a DC Architectural Dispute until such dispute is resolved, and/or (iii) that the Town's acceptance of the Initial Improvements and/or the Eheart Main Improvements is delayed after Midtown or a Parcel Developer initiates acceptance as a result of the town's action or inaction. The DC Parcel 6 Start Date and the DC Parcel 2A Start Date shall both be extended day by day for each Delay Day.

ARTICLE VI

PUBLIC SAFETY BUILDING

Section 6.1. DC Parcel 1A and DC Parcel 1B Acquisition; Due Diligence. Midtown shall convey by special warranty deed DC Parcel 1A and DC Parcel 1B, at no cost or expense to the Town, except as set forth herein, on the Closing Date, each in their “AS IS” condition, subject to all encumbrances of record (but not monetary liens) and subject to a grading and construction easement to permit Midtown to improve DC Parcel 1A and DC Parcel 1B as required in Section 6.2 (Condition of DC Parcel 1A and DC Parcel 1B) below, in a form approved by the Parties in their commercially reasonable discretion which approval shall not be unreasonably withheld, conditioned or delayed. DC Parcel 1A shall also be conveyed subject to the Parking Space Lease Agreement specified in Section 7.4 (Parking Garage Lease) below. The legal description to convey DC Parcel 1A and DC Parcel 1B shall be mutually agreeable to the parties and drafted prior to the Closing Date. Midtown shall deliver an affidavit to the Town’s title company enabling it to issue its final title insurance policy without exception for mechanic’s or materialmen’s liens, parties in possession or other off-record matters. Midtown shall deliver an affidavit of non-foreign status. Midtown shall deliver such other documents as required to consummate the conveyance as reasonably requested by the Town or its title company.

Not later than thirty (30) days after the date Rezoning Approval is achieved, Midtown shall provide the Town with copies of all title, survey, and study materials in its possession related to DC Parcel 1A and DC Parcel 1B at no cost to the Town. Prior to the Closing Date, Midtown grants permission to the Town to access DC Parcel 1A and DC Parcel 1B to conduct testing, perform title examinations and surveys, and conduct such other investigations as the Town may reasonably desire from time-to-time. The Town shall provide Midtown with prior notice of all such entries (and the purpose thereof) on DC Parcel 1A and DC Parcel 1B. The Town hereby agrees to promptly and completely repair any damage to DC Parcel 1A and DC Parcel 1B resulting from such inspections or testing. All inspections, evaluations, and surveys of DC Parcel 1A and DC Parcel 1B shall be at the Town’s sole cost and expense. Any liens shall be removed by Midtown on or before the Closing Date.

Section 6.2. Condition of DC Parcel 1A and DC Parcel 1B; Midtown’s Improvements. Except as stated in this Agreement, Midtown shall have no obligation to improve or alter DC Parcel 1A and DC Parcel 1B, and the Town shall otherwise accept DC Parcel 1A and DC Parcel 1B in its then “AS-IS” condition. After the Closing Date, but prior to the Town’s construction of the any structures on DC Parcel 1A and DC Parcel 1B, Midtown shall complete: (1) mass grading of DC Area and removal of excess soil, in accordance with Midtown’s plans, and rough grading of DC Parcel 1A and DC Parcel 1B to the pad ready elevation as shown on Midtown’s plans, (ii) stormwater and sanitary sewer

connections stubbed to DC Parcel 1A and DC Parcel 1B's boundary line in the location shown on Midtown's plans, (iii) curb and gutter along the frontage of DC Parcel 1A with Clay Street, Initial Road and loop road around Event Space and DC Parcel 1B with Clay Street and loop road around Event Space, and (iv) an entrance onto the Initial Road for the Public Safety Building on DC Parcel 1A, and for DC Parcel 1B an entrance onto the loop road around the Event Space and a second entrance to the alley along the west side of DC Parcel 1B for the Parking Garage. After the completion (evidenced by passing the Town's final inspections) of Midtown's improvements, the Town will be responsible for all other improvements and services necessary for the construction and operation of the Parking Garage on DC Parcel 1A and the Public Service Building on DC Parcel 1B, including, without limitation, erosion and sediment controls.

Section 6.3. Construction Coordination and Access for DC Parcel 1A and DC Parcel 1B. The Town shall use a temporary construction access from Clay Street to DC Parcel 1A and DC Parcel 1B and the easement described in Section 4.3 (Initial Road) for the construction of the Parking Garage and the Public Safety Building. Midtown shall reasonably cooperate with the Town's request for construction access and staging areas during the construction of the Parking Garage and the Public Safety Building. The Town shall use reasonable efforts to minimize construction activity associated with the Parking Garage and the Public Safety Building on the portion of Church Street south of the southern property line of DC Parcel 1B. Prior to the Closing, Midtown shall prepare for the Town's review and approval in its commercially reasonable discretion, not to be unreasonably withheld, conditioned or delayed, a permanent access easement agreement across DC Parcel 4C to provide access to the entrance to the Public Safety Building and Parking Garage. Upon the Town's approval in writing, Midtown shall execute and return such agreement to the Town for execution and recordation.

Section 6.4. DC Parcel 1B Stormwater Reimbursement. No later than the earlier of (i) the Initial Improvements Completion Date or (ii) the issuance of a building permit for the Public Safety Building, the Town shall reimburse Midtown for DC Parcel 1B's Facility Percentage Share of the Facility Costs as specified on Exhibit D.

Section 6.5. Public Safety Building Construction. The Town, at its sole cost, shall design and complete construction (the "Public Safety Building Work") of a public safety building on DC Parcel 1B in accordance with the Rezoning Approval (the "Public Safety Building"). The Town shall commence construction of the Public Safety Building and associated improvements for DC Parcel 1B based on the approved site plan and permits no later than the DC Parcel 1B (Public Safety Building) Start Date. The Town shall provide to Midtown, by the Closing Date, a construction schedule for the construction of the Public Safety Building and related improvements, which may be updated as work progresses. The Town and Midtown shall cooperate in good faith to schedule their

construction activities in a manner to minimize interference with each other's work. All lighting for DC Parcel 1B shall be in accordance with the Zoning Ordinance and designed to minimize any negative impacts such lighting may have on the rest of the Project. In Section 12.21 (Representatives) below, the Town and Midtown each designate a contact person to coordinate the Public Safety Building Work with the other party and to coordinate the other obligations and approvals of the Town and Midtown herein. In the performance of the Public Safety Building Work, the Town shall, at its cost, obtain all permits, certificates and other approvals necessary for the Public Safety Building Work.

ARTICLE VII

PARKING GARAGE

Section 7.1. Parking Garage. "Parking Garage" shall mean a parking structure located on DC Parcel 1A containing a minimum of 300 spaces with an entrance and/or exit into the alley on the west side of DC Parcel 1A dedicated to the Public Safety Building use and a public entrance and exit into the loop road connecting to the Initial Road around the Event Space.

Section 7.2. Parking Garage Design. The Parking Garage shall be constructed with the approved materials from the Rezoning Approval. Facades that are substantially visually obscured from adjacent public streets may include pre-cast materials as primary building materials; provided, however, the same architectural appearance and materials shall be used on all sides of the Parking Garage. The design and layout of the Parking Garage shall minimize visibility of vehicles, contain substantial vertical elements to minimize the horizontal appearance of the Parking Garage. The design of the Parking Garage shall be subject to the approval of the Town Council as set forth in Section 1.3 (Architectural Design Approval).

Section 7.3. Parking Garage Construction. The Town, at its sole cost, shall design and complete construction (the "Parking Garage Work") of the Parking Garage on DC Parcel 1A in accordance with the Rezoning Approval. The Town shall submit plans for the Parking Garage no later than the submission of plans for the Public Safety Building. The Town shall complete construction of the Parking Garage and associated improvements for DC Parcel 1A based on the approved site plan and permits no later than the issuance of the first certificate of occupancy for the improvements on DC Parcel 2A, DC Parcel 2B, DC Parcel 4A or DC Parcel 4B. The Town shall provide to Midtown, by the Closing Date, a construction schedule for the construction of the Parking Garage and related improvements. The Town and Midtown shall cooperate in good faith to schedule their construction activities in a manner to minimize interference with each other's work. All lighting for DC Parcel 1A shall be in accordance with the Zoning Ordinance and designed to minimize any negative impacts such lighting may have on the rest of the Project. In

Section 12.21 (Representatives) below, the Town and Midtown each designate a contact person to coordinate the Parking Garage Work with the other party. In the performance of the Parking Garage Work, the Town shall at its cost, obtain all permits, certificates and other approvals necessary for the Parking Garage Work. Prior to the construction of the Parking Garage, Town shall operate DC Parcel 1A as a limited access property, not available for public use or for a public purpose.

Section 7.4. Parking Space Lease Agreement and Parking Utilization Agreement. Prior to the issuance of the Certificate of Occupancy for the Parking Garage, the Town and Midtown shall enter into a Parking Space Lease Agreement (form attached as Exhibit F) and a Parking Utilization Agreement (form attached as Exhibit H). The Parking Space Lease Agreement shall provide for Midtown to lease a minimum of two hundred (200) parking spaces for a term of five years, with Users (defined below) receiving priority for the parking spaces above two hundred (200) after the initial two hundred (200) parking spaces are allocated to Users. The Parking Utilization Agreement shall provide for the Town to allow Midtown priority status with respect to the use of a minimum of two hundred (200) parking spaces for a period of 20 years, commencing upon the expiration of the Parking Space Lease Agreement. The Parking Space Lease Agreement and the Parking Utilization Agreement shall require each User of a parking space to pay to the Town or its designee an annual or monthly market-rate parking fee per space. Midtown shall have the right to assign or allocate such parking spaces to a Parcel Developer and Midtown and a Parcel Developer shall have the right to assign their respective spaces to users, occupants and tenants of the applicable parcels (collectively, with Midtown and Parcel Developer(s), as each is assigned a parking space, a “User”). The Parking Space Lease Agreement, or a memorandum of lease, may be recorded. The Parking Utilization Agreement may be recorded.

Section 7.5. Special Service District/Special Assessments. The Town reserves the right to establish a special service district (Virginia Code § 15.2-2400, et seq.), or other special assessment mechanism applicable to the Property. At this time, the Town does not anticipate that the additional tax rate will exceed \$0.20 per \$100 of assessed value. At this time, the Town anticipates that such service district will terminate upon the collection of approximately \$2,500,000, less any contingency in the Parking Garage budget not used for hard costs, plus any debt service costs.

ARTICLE VIII

PLAZA

Section 8.1. Plaza. The Plaza will be located within a portion of DC Parcel 3 as generally shown on the Conceptual Layout (the “Plaza Property”). The Plaza will be

designed and constructed by Midtown and conveyed to the Town in accordance with this Article (Plaza).

Section 8.2. Plaza Plans. No later than the site plan submission for DC Parcel 2B and “DC Parcel 4A,” as shown on the Conceptual Layout, Midtown or a Parcel Developer shall submit to the Town for approval a site plan for the Plaza consistent with the Rezoning Approval, the approved design layout, and the Approved PES Specifications. Midtown or a Parcel Developer shall obtain the Town’s approval of the site plan for the Plaza in accordance with the Town’s ordinance section(s) applicable to site plans. In the event the Town requires changes to the site plan for the Plaza that are different from the Approved PES Specifications, the approved design layout and the Rezoning Approval and such changes result in costs greater than the Approved PES Cost Estimate, then the Town shall be responsible for paying for such greater costs (also the “Change Overage”) to Midtown on the Plaza Dedication Date.

Section 8.3. Plaza Construction. After receiving approval of the Plaza site plan, Midtown or a Parcel Developer shall construct or cause the construction of the Plaza in accordance with the approved site plan for the Plaza and the Approved PES Specifications. Excluding Change Overage, any constructions costs incurred by Midtown after submittal of a revised cost estimate in accordance with Section 4.5 that exceed the portion of the PES Cost Ceiling (as it may be increased by the PES Cost Increase Amount) applicable to the Plaza shall be the sole responsibility of Midtown.

Section 8.4. Plaza Acquisition. On the Plaza Dedication Date, Midtown shall convey the Plaza Property to the Town by separate gift or sale agreement, subject to all encumbrances of record and in a form approved by the Town (but not monetary liens) and the Town shall accept the Plaza Property in its “AS IS” condition after completion of the improvements, but subject to any and all warranties Midtown received in connection with installation of the improvements on the Plaza Property. Midtown shall cooperate with the Town in enforcing any and all such warranties.

Section 8.5. Plaza Contribution. The Town shall pay to Midtown on the Plaza Dedication Date the following amounts: (i) any remaining PES Cost Increase Amount, and (ii) any Change Overage applicable to the Plaza Property.

ARTICLE IX

REMAINDER OF PROJECT

Section 9.1. Central Park. Midtown shall design and construct the Central Park on the portion of the Project labeled as “Central Park” on the Conceptual Layout. For Central Park, Midtown shall finish grade, install the multi-use trail and sidewalks as

generally depicted in the Rezoning Approval, install a base level of landscaping as described in the Proffers, seed the “lawn” areas and provide lighting as required by the Rezoning Approval. The site plan for the proposed improvements to the area for the Central Park shall be submitted no later than the submission of the site plan for the improvements to DC Parcel 1B or the submission of the site plan for the improvements to DC Parcel 6, whichever is later. Prior to the Central Park Dedication Date, Midtown shall dedicate, and the Town shall accept, the Central Park with the boundaries of the parcel of land containing the Central Park established by a recorded subdivision plat.

Section 9.2. Balance of Project. Except as otherwise provided herein, Midtown and a Parcel Developer shall have no obligation to perform any improvements or alterations to the Project. Except as otherwise expressly stated in this Agreement, and subject to the Rezoning Approval and other applicable legal requirements, Midtown retains control over the general use, organization and layout of the Project, and reserves the right at any time to construct, reconstruct, develop, redevelop, alter, remove and/or replace any and all improvements and buildings (other than the Initial Improvements and the Shared Stormwater Facility); provided however, that the foregoing shall not materially adversely affect the use and enjoyment of the Public Safety Building, the Parking Garage, the Plaza and the Event Space. Midtown may reserve additional utility and easement rights on areas adjacent to DC Parcel 1A, DC Parcel 1B and DC Parcel 3.

Section 9.3. Third Party Reviews Used by Town. The Town will assist Midtown in the development of the Project by processing Midtown’s applications and requests expeditiously and by using a third party review process, if available to the Town at the time of submission, for site work, building, erosion and sediment control, and stormwater plan review and approval. Town shall use its best efforts to have such third party reviews available. Midtown shall be responsible for the costs for third party reviews. If such third party reviews are not available, the Town shall use its commercially reasonable efforts to expedite its internal review processes for such plans by processing such plans on a priority basis.

Section 9.4. Easements. The Parties acknowledge that the development and operation of the Project will require the reservation of easements for vehicular and/or pedestrian access and/or utilities over portions of the Project conveyed or dedicated to the Town. The parties agree that such easements should be functional but located to minimize the effect on the function of the property conveyed or dedicated to the Town. The parties shall cooperate in determining the location and extent of such easements. The location and extent of such easements shall be determined by Midtown, shown on the site plans reviewed by the Town and reflected in a Master Declaration or other instrument recorded against the DC Area and subject to the Town’s approval as set forth in Section 1.5 (Association(s) or Management Documents).

Section 9.5. Parking Reservation. The parking spaces located on DC Parcel 2A, DC Parcel 2B, DC Parcel 4A, Parcel 4B, and DC Parcel 4C shall be reserved for the use of DC Parcel 2A, DC Parcel 2B, DC Parcel 4A, DC Parcel 4B, and/or DC Parcel 4C. Notwithstanding the foregoing sentence, the parties acknowledge that any one or more of these parking spaces may be necessary for certain special events using the Plaza and Event Space. The Town shall have the right to use such parking spaces for special events, primarily on evenings or weekends, not to exceed twelve (12) calendar days per year unless otherwise agreed to by the Town and the association for the DC Area. The Town will use its best efforts to provide Midtown, the association for the DC Area, and the owner(s) of DC Parcel 2A, DC Parcel 2B, DC Parcel 4A and/or DC Parcel 4C of such dates and hours for which these parking spaces are needed for such special events prior to December 31st of the prior calendar year, but no later than sixty (60) days prior to the event. The Town's proposed dates and events on those dates shall be informed through collaboration with Midtown. Midtown or the owner(s) of DC Parcel 2A, DC Parcel 2B, DC Parcel 4A, DC Parcel 4B and/or DC Parcel 4C shall include these provisions in any tenant leases.

Section 9.6. Parking Management Plan. The Town and Midtown will work together on an ongoing basis to develop and administer a Parking Management Plan to maximize the efficient and convenient use and availability of both on-site and on-street parking resources available for and around the Project.

Section 9.7. Parking Sign Plan for Surface Parking. The surface parking spaces located on DC Parcels 4A, 4B, and 4C shall not be marked with individual signs for each parking space. Groups or areas of parking spaces may be designated with appropriate group signage.

Section 9.8. No Further Responsibility for Town. The Town shall have no responsibilities or obligations with respect to the construction of the Project other than as set forth herein, excluding the Town's governmental services, reviews, inspections and approvals with respect to the Project.

ARTICLE X

Intentionally Omitted.

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.1. Default.

(a) Town Default; Midtown Remedies. If the Town defaults under this Agreement at any time, and such default materially adversely affects Midtown, and such default continues for more than thirty (30) days following written notice from Midtown to the Town without the Town commencing to cure such default within such thirty (30) period and diligently pursuing the cure to completion then such shall constitute an Event of Default hereunder, in which case Midtown may exercise any and all of its legal and equitable rights and remedies and its rights and remedies under this Agreement, including, without limitation, the right to terminate this Agreement. Notwithstanding the foregoing, if such default occurs with respect to the construction of the Public Safety Building then the cure period shall be 180 days following written notice from Midtown to the Town, instead of thirty (30) days.

(b) Midtown Default; Town Remedies. If (i) Midtown defaults under this Agreement at any time, and such default materially adversely affects the Town, and such default continues for more than thirty (30) days following written notice from the Town to Midtown without Midtown commencing to cure such default within such thirty (30) period and diligently pursuing the cure to completion, or (ii) the Bankruptcy of Midtown, then such shall constitute an Event of Default hereunder, in which case Town may exercise any and all of its legal and equitable rights and remedies and its rights and remedies under this Agreement, including, without limitation, the right to terminate this Agreement. "Bankruptcy" means any of the following: (i) the filing of a voluntary petition under any federal or state law for the relief of debtors; (ii) the filing of an involuntary proceeding under any such law; (iii) the making of a general assignment for the benefit of the assignor's creditors; (iv) the appointment of a receiver or trustee for a substantial portion of a Person's assets; or (v) the seizure by a sheriff, receiver, or trustee of a substantial portion of a Person's assets; provided, however, that no bankruptcy shall be deemed to have occurred in the case of an event described in clause (ii), (iv), or (v) above, until the proceeding, appointment, or seizure has been pending for thirty (30) days. Notwithstanding clause (i) of this Section, if a default under clause (i) of this Section occurs with respect to the construction of the building on DC Parcel 6, DC Parcel 2A, then the cure period for each shall be 180 days following written notice from the Town to Midtown, as applicable, instead of thirty (30) days.

Section 11.2. Attorney Fees; Damages; Remedies. Notwithstanding anything to the contrary, if either the Town or Midtown brings suit or other legal proceedings to enforce the provisions of this Agreement against the other, each party shall bear its own

attorneys' fees and litigation costs and expenses incurred by it in connection with such suit or proceeding. The liability of the parties hereunder shall be limited to actual damages and neither party shall be liable to the other for consequential, special or punitive damages. All remedies provided to the Parties are cumulative and not restrictive of other remedies, including, without limitation, specific performance. **No Party shall pursue any and all rights and remedies under this Article (Default and Remedies) after an event of default by one of the other parties until the dispute resolution process in Section 12.4 (Disputes) below has been exhausted in accordance with its terms. In no event shall either Party's total liability exceed \$250,000.**

ARTICLE XII

MISCELLANEOUS

Section 12.1. Assignment.

(a) This Agreement is binding upon and shall inure to the benefit of the Town and Midtown and their respective successors and assigns.

(b) Except as provided in Sections 12.1(c)-(e) (Assignment) below, neither Party shall assign its interest in this Agreement without the prior written approval of the other Party.

(c) Notwithstanding anything to the contrary contained in Section 12.1(b) (Assignment) above, Midtown shall have the right to transfer and assign all of its right, title and interest in and to this Agreement, without the Town's consent, to: (i) a financial institution or lender that lends funds to Midtown in connection with the Project; (ii) an entity or person that controls, is controlled by, or is under common control with Midtown; or (iii) after the substantial completion of the Initial Improvements, any entity or person.

(d) Notwithstanding anything to the contrary contained in Section 12.1(b) (Assignment), Midtown shall also have the sole and unfettered right to transfer and assign any portion of its right, title and interest in and to any portion of this Agreement, without the Town's consent, to a Parcel Developer; provided that the Parcel Developer expressly agrees to assume the obligations relative to the real estate acquired by the Parcel Developer.

(e) Notwithstanding anything to the contrary contained in Section 12.1(b) (Assignment), Midtown shall have the sole and unfettered right to sell or assign ownership interests in Midtown's entity without the consent of the Town and without the same being deemed an assignment of Midtown's interest in this Agreement.

Section 12.2. Construction Obligations Generally. The Parties covenant and agree that the Project shall be constructed in full compliance with all applicable federal, state and local laws, Noise Ordinances, Environmental Laws, rules and regulations and that all construction shall be of good quality and shall be made in a workmanlike manner consistent with industry standards. Each Party agrees to supervise and direct the construction of its portion of the Project using its best skill and attention, and agrees that it shall be solely responsible for all construction methods, techniques and procedures. During construction of the Project, each Party shall keep its portion of the Project clean and in good order, free of trash and construction debris. To the extent possible, all Parties will keep all construction parking on the Project and minimize off-site construction parking. If one Party fails to do so, the other Party may issue a written warning identifying the section of the Project that has not been maintained. If the Party receiving the warning does not correct the condition within five (5) days of its receipt of such written notice, the Party issuing the notice may clean the Project and charge the other Party for all its reasonable costs and expenses incurred therein, which shall be paid promptly by the applicable Party and if not paid the Party owed money may pursue its right and remedies under Article X (Default and Remedies). The resolution provided in this Section (Construction Obligations Generally) is provided in lieu of any other dispute resolution process provided herein.

Section 12.3. Mechanics' Liens. Nothing contained in this Agreement shall be construed to authorize any Party to subject any property owned by the other Party to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any construction and development work or arising in any other manner in connection with the Project. Each Party shall promptly discharge at its own cost and expense (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien against any property in the Project owned by the other Party (whether or not such lien is valid or enforceable as such) that may arise out of any payment due for, or purported to be due for, any construction and development work or any other labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for those areas. If any Party fails to discharge any such liens within ten (10) days of its receipt of written notice from another Party demanding the same, the aggrieved Party shall be authorized to cause such liens to be discharged and to charge the other Party for all its costs and expenses (including, without limitation, attorney's fees) in so doing and if not paid the Party owed money may pursue its right and remedies under Article X (Default and Remedies). The resolution provided in this Section (Mechanics' Liens) is provided in lieu of any other dispute resolution process provided herein.

Section 12.4. Disputes. Prior to the initiation of any litigation, the Parties shall seek to resolve any and all claims, disputes, and other matters utilizing mediation in accordance with the dispute provisions provided in this Section (Disputes).

(a) If a dispute arises out of or relates to this Agreement, or a claimed breach of this Agreement, but excluding any section of this Agreement which has its own dispute resolution, the Parties shall first try in good faith to resolve the dispute through negotiation among the Parties and by nonbinding mediation. In the event of any such dispute, a Party may give the other Parties a written description of the dispute and the relief requested. The Parties shall promptly attempt to resolve the dispute by negotiation involving senior staff. If the dispute is not promptly resolved by negotiation, any Party may demand in writing that all of the Parties involved in the dispute participate in a formal mediation presided over by a third-party neutral mediator. If the parties cannot agree on a mediator, then McCammon Group, 6641 West Broad Street, Richmond, Virginia 23230, or its successor, shall have the power to select the mediator. The Parties shall share in the cost of the mediation proceedings equally.

(b) If mediation is unsuccessful, the Parties shall be free to initiate litigation or take other appropriate action as they deem appropriate. However, no Party shall initiate any litigation or action against any other Party to this Agreement with respect to the performance or enforcement of this Agreement without first complying with the dispute resolution provisions of this Section (Disputes) except for the sole and limited purpose of tolling a statute of limitations or similar laws that would otherwise impair a party's legal rights, or for enforcing this Section (Disputes).

Section 12.5. Entire Agreement. This Agreement incorporates all prior negotiations and discussions between the parties regarding its subject matter and represents the entire agreement of the Town and Midtown as of the Effective Date. This Agreement may only be modified by a written instrument executed by the Town and Midtown.

Section 12.6. Headings. The captions and section headings contained in this Agreement are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

Section 12.7. Notices. A notice, communication, or request under this Agreement shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

Midtown: Midtown Redevelopment Partners, L.L.C.
Attention: Jeanne Stosser
PO Box 10397
Blacksburg, Virginia 24060

with a copy to: James K. Cowan, Jr., Esq.
Cowan Perry PC
250 South Main Street, Suite 226
Blacksburg, Virginia 24060

The Town: The Town of Blacksburg
Attention: Town Manager
P.O. Box 90003
300 South Main Street
Blacksburg, Virginia 24062

with a copy to: The Town of Blacksburg
Attention: Town Attorney
P.O. Box 90003
300 South Main Street
Blacksburg, Virginia 24062

and a copy to: Gentry Locke Attorneys
Attention: Gregory J. Haley, Esq.
10 Franklin Road S.E., Suite 900
Roanoke, Virginia 24011

Any notice, communication, or request so sent shall be deemed to have been “given” (a) as of the next business day after being sent, if sent by nationally recognized overnight delivery service (next business day delivery), (b) as of the fifth (5th) business days after being sent, if sent by Certified U.S. Mail or (c) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

Section 12.8. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and

provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable.

Section 12.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 12.10. Unavoidable Delay. Excluding events covered by Section 5.4, in the event that either Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, abnormal weather conditions, inability to procure materials, failure of power, unforeseen restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, then the performance of such act shall be excused for the period of the delay notwithstanding any provision for time of the essence, and the period for the performance of any other related act by either Party shall be extended for a period equivalent to the period of such delay; provided, however, that in no event shall a Party be excused from (1) the payment of any amounts due under the terms of this Agreement, or (2) the conveyance of real property or an interest therein.

Section 12.11. No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the Town and Midtown or as constituting Midtown as the agent or representative of the Town for any purpose or in any manner under this Agreement, and *vice versa*, it being understood that Midtown is an independent party hereunder.

Section 12.12. Representatives Not Individually Liable. No member, official, representative, agent, or employee of the Town shall be personally liable to Midtown or any successor in interest in the event of any default or breach by the Town for any amount which may become due to Midtown or its successor or on any obligations under the terms of this Agreement. No officer, agent, partner, member, representative, owner or employee of Midtown or any of its members shall be personally liable to the Town (individually or collectively) in the event of any default or breach by Midtown for any amount which may become due to the Town (individually or collectively) or on any obligations under the terms of this Agreement.

Section 12.13. Broker. The Parties represent and warrant to the others that this transaction has resulted between the parties without the assistance of any broker or finder

being involved. Each Party expressly warrants that no property subject to this Agreement is currently the subject of any sales or marketing agreement with any real estate agent, firm or brokerage. In the event there are fees or commissions payable to any other person or firm on account of this sale and purchase, such fees or commissions shall be the full responsibility of the party whose actions resulted in such a claim for fees or commissions, and to the maximum extent permitted by law, such Party shall indemnify and hold the other harmless as to any payment with respect thereto. The provisions of this Section (Broker) shall survive the Closing and transfer of legal title to the properties.

Section 12.14. Third Party Beneficiary. Except as provided herein, nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third-party beneficiary. Any and all purchasers of development parcels within the Project shall be third party beneficiary(s) of this Agreement.

Section 12.15. Incorporation into Agreement. All exhibits, schedules, and recitals form a part of this Agreement.

Section 12.16. No Waiver. No failure on the part of the Town or Midtown to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

Section 12.17. Estoppel Certificates. The Town and Midtown, at any time and from time-to-time, upon not less than thirty (30) days' prior written notice from a party hereto, or to a person designated by such party, such as a tenant or a mortgagee or potential investor, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best knowledge of the signer of such certificate, the Town or Midtown is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (c) any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Agreement (if such other person is identified at the time such certificate was requested).

Section 12.18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of law rules.

Section 12.19. Consent to Jurisdiction and Venue. The parties hereto (a) agree that any suit, action or other legal proceeding, as between the parties hereto, arising out of or relating to this Agreement shall be brought and tried only in the Circuit Court of Montgomery County, Virginia, (b) consent to the jurisdiction of such court in any such suit, action or proceeding, and (c) waive any objection which any of them may have to the laying of venue or any such suit, action, or proceeding in such court and any claim that any such suit, action, or proceeding has been brought in an inconvenient forum. The parties hereto agree that a final judgment in any such suit, action, or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 12.20. Annual Appropriation. Notwithstanding anything to the contrary, all of the Town's undertakings expressed in this Agreement that extend beyond the Town's current fiscal year, except those that constitute "continuing service" as that term is defined in *Concerned Residents of Gloucester County v. Gloucester County Board of Supervisors*, 248 Va. 488, 495 (1994), and except those that do not constitute debt within the meaning of Article VII (Plaza and Event Space), Section 10(b) of the Constitution of Virginia, shall be subject to annual appropriation by Town Council.

Section 12.21. Representatives.

(a) Town Representative. The Town hereby appoints the Town Manager, or his or her designee, as the Town's representative (the "Town Representative") for purpose of notice, communication, and decision making pursuant to this Agreement, except for those Approvals that must be granted by the Town Council. Midtown shall have no obligation to verify the authority of the Town Representative. The Town reserves the right to modify or terminate such appointment and to appoint another Town Representative.

(b) Midtown Representative. Midtown hereby appoints James K. Cowan, Jr., as the representative for purpose of notice, communication, and decision making pursuant to this Agreement (the "Midtown Representative"). The Town shall have no obligation to verify the authority of the Midtown Representative. Midtown reserves the right to modify or terminate such appointment with written notice to the Town Representative.

Section 12.22. Ancillary Documents. The Town Representative and Midtown Representative are each hereby authorized to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement, provided such documents do not materially alter the relationship of the Parties or the principal elements of the Project, and to grant approvals and consents on behalf of the

Town (except where approval or consent of the Town Council is required hereunder) or Middtown, as the case may be.

Section 12.23. Authority. To induce the other Parties to enter into this Agreement, each Party represents and warrants to the other Parties as follows: Each has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by the Parties in connection with its obligations hereunder. The execution, delivery and performance by the Parties of this Agreement have been duly authorized by all requisite action, and this Agreement is a valid and binding obligation of each Party enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

Section 12.24. Additional Representations. In addition to any express agreements contained herein, each Party represents and warrants to other Parties as follows:

(a) The Party is the owner of fee simple title to the property it is conveying and has the legal right, power and authority to enter into the conveyance instruments required herein and to consummate the transactions contemplated hereby.

(b) It has received no written notice from any governmental agency of any violation relating to the property it is conveying or of any required alterations, repairs or corrections to any conditions existing on that property.

(c) The property being conveyed is not subject to any lease or license agreement.

(d) To that Party's actual knowledge, no Hazardous Materials have been released from or deposited on or otherwise affect the property it is conveying, nor has that property been used at any time by any person as a hazardous waste treatment, storage or disposal site.

(e) Except as may specifically be set forth in this Agreement, each Party has not made and does not make any representations or warranties, whatsoever, as to the physical condition of, the income generated or to be derived from, the expenses or operation of, or any other matter or thing either pertaining to, affecting or relating to the property it is conveying. Furthermore, each Party receiving property under this Agreement hereby expressly acknowledges that no one has made any warranties or representations, whatsoever, regarding the quality of the soil of, the availability of water to, the market or resale potential of, or any other matter or thing relating to or affecting the property being conveyed, except as may be expressly set forth in this Agreement.

Section 12.25 Confidentiality. The Town acknowledges that any information provided by Midtown or the purchaser of any development parcel in the Project to the Town concerning the cost of developing any portion of the Project, the terms of any financing for any portion of the Project, the identity of any potential tenant of any portion of the Project, the terms of any lease of a tenant at any portion of the Project or the actual sales of any tenant of any portion of the Project may constitute confidential financial information and may contain trade secrets and confidential information. Accordingly, the Town, to the fullest extent permitted by the Virginia Freedom of Information Act, shall withhold disclosure of such information and provide notice of any request for such information to Midtown or the purchaser of any development parcel in the Project. This Section 12.25 (Confidentiality) shall not limit, however, the exercise of the Town's rights in any legal or arbitration proceeding.

Section 12.26 Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for the performance of any act, including the expiration date of any cure periods provided herein, on or by a date that is not a "Business Day," then such payment or such performance shall be required on or by the immediately succeeding "Business Day," which term shall mean a day other than a Saturday, Sunday, or legal holiday in the Commonwealth of Virginia.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Town has caused this Agreement to be duly executed in its name and on its behalf by Marc Verniel, the Town Manager of the Town of Blacksburg, Virginia and Midtown has caused this Agreement to be duly executed in its name and on its behalf by Jeanne Stosser, its Managing Member.

TOWN OF BLACKSBURG, VIRGINIA,
a municipal corporation of the
Commonwealth of Virginia

By: [Signature] (SEAL)
Name: Marc Verniel
Title: Town Manager

Approved as to form:

By: [Signature] (SEAL)
Printed Name: Lawrence S. Spencer, Jr.
Title: Town Attorney

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Montgomery, to-wit:

The foregoing Development Agreement was acknowledged before me this 14th day of May, 2019, by Marc Verniel of the Town of Blacksburg, Virginia, in his/her capacity as Town Manager.

[Signature]
Notary Public

My commission expires: 7/31/21
Notary registration number: 7575814



MIDTOWN REDEVELOPMENT
PARTNERS, L.L.C., a Virginia limited
liability company

By: Jeanne Stosser (SEAL)
Name: JEANNE STOSSER
Title: MANAGING MEMBER

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Montgomery, to-wit:

The foregoing Development Agreement was acknowledged before me this
14th day of May, 2019, by Jeanne Stosser of Midtown
Redevelopment Partners, L.L.C., a Virginia limited liability company, in his/her capacity
as managing member.

[Signature]
Notary Public

My commission expires: 7/31/21
Notary registration number: 7575814



Exhibit A

Town Property – Parcel 3 and Parcel 4 as shown below.
Midtown Property – Parcel 1, Parcel 2 and Parcel 5 as shown below.

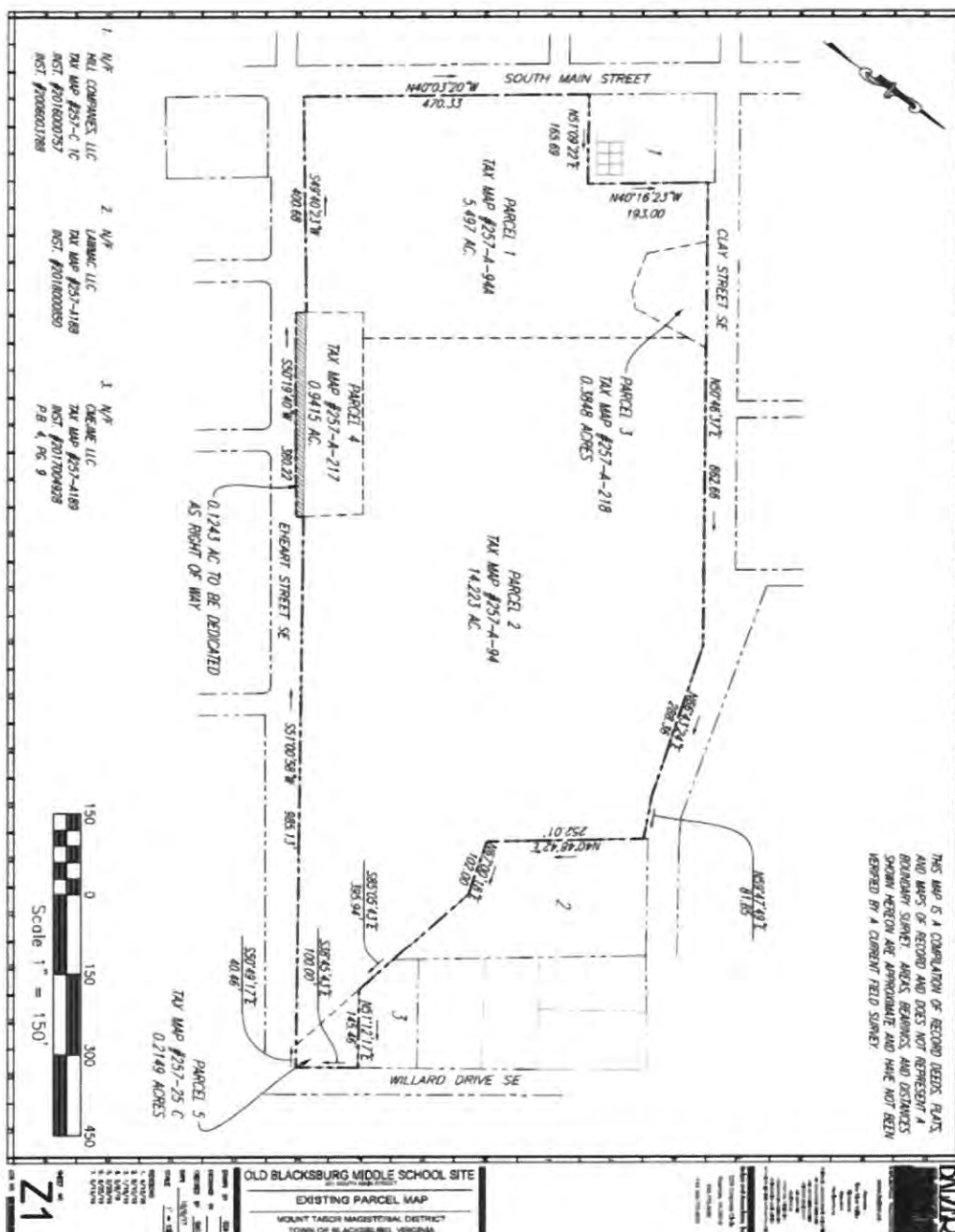


Exhibit B

DC Area Conceptual Layout

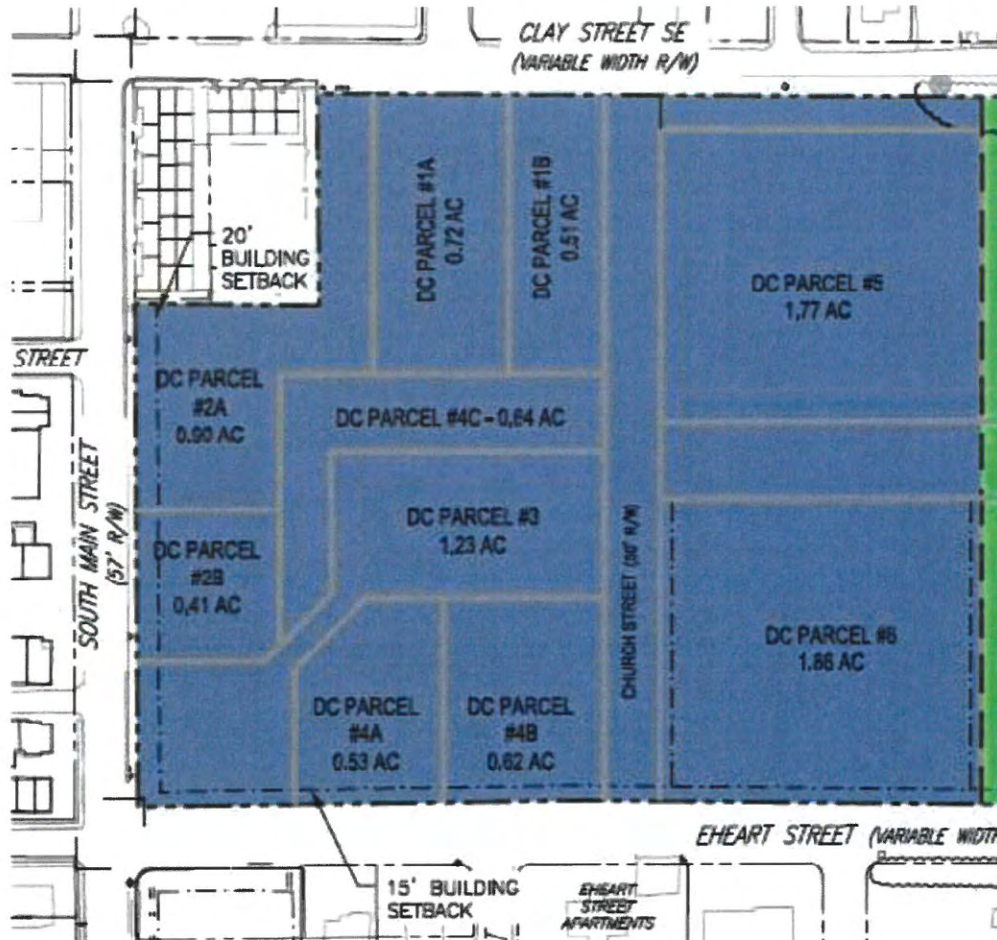


Exhibit C

[Improvement Cost Estimate for Plaza and Event Space]

ENGINEER'S CONSTRUCTION COST ESTIMATE
PROJECT: OBMS - PLAZA & COMMONS

LOCALITY: TOWN OF BLACKSBURG
JOB NUMBER: B1200098
DATE: 9/14/18



QTY.	UNIT	CONSTRUCTION ITEM	UNIT COST	LINE ITEM COST
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ROADWAY ITEMS

1750	S.Y.	HD PAVING	\$53.00	\$92,750.00
1720	S.Y.	REGULAR DUTY PAVING	\$44.00	\$75,680.00
910	L.F.	CG-6 CURB&GUTTER	\$33.00	\$30,030.00
910	L.F.	CG-2 CURB	\$26.50	\$24,115.00
3210	S.Y.	CONCRETE SIDEWALK, 4" THICK / SPECIALTY PAVERS	\$145.00	\$465,450.00
1	EACH	LANDSCAPING	\$85,000.00	\$85,000.00
1	EACH	SITE FURNISHINGS	\$85,000.00	\$85,000.00
1	EACH	SITE AMENITIES (WATER FEATURE)	\$275,000.00	\$275,000.00
1	EACH	SPECIALTY LIGHTING	\$150,000.00	\$150,000.00
1	EACH	PROJECT MANAGEMENT	\$50,000.00	\$50,000.00
1	EACH	DESIGN, ENGINEERING, SURVEYING	\$150,000.00	\$150,000.00
1	EACH	SIGNAGE	\$10,000.00	\$10,000.00
1	EACH	ELECTRICAL/PLUMBING/COMMUNICATION	\$50,000.00	\$50,000.00
1	EACH	PAVILION/STAGE/STRUCTURE	\$125,000.00	\$125,000.00

20% CONTINGENCY AND MOBILIZATION

SUBTOTAL **\$1,668,025**

\$333,605

ESTIMATE TOTAL **\$2,001,630**

Exhibit D

Shared Stormwater Facility Cost Estimate and Each Parcel's Facility Percentage Share
Stormwater Management – Total estimated cost for underground system, outfall pipes/structures and downstream storm sewer improvements. No onsite storm sewer is included in this price, it is assumed that would be designed and installed as part of each individual site's plan.

TOTAL COST: \$1,511,312.00 – Total Impervious Area Treated: ±11.474 acres (\$131,716.23/acre)

Parcel 1A –

Impervious Area: 0.466 acres

Facility Percentage Share of Facility Costs: \$61,379.76

Parcel 1B –

Impervious: 0.674 acres

Facility Percentage Share of Facility Costs: \$88,776.74

Parcel 2A –

Impervious Area: 0.574 acres

Facility Percentage Share of Facility Costs: \$75,605.11

Parcel 2B –

Impervious Area: 0.243 acres

Facility Percentage Share of Facility Costs: \$32,007.04

Parcel 3 –

Impervious Area: 0.53 acres

Facility Percentage Share of Facility Costs: \$68,809.60

Parcel 4A –

Impervious Area: 0.470 acres

Facility Percentage Share of Facility Costs: \$61,906.63

Parcel 4B –

Impervious Area: 0.587 acres

Facility Percentage Share of Facility Costs: \$77,317.43

Parcel 4C –

Impervious Area: 0.609 acres

Facility Percentage Share of Facility Costs: \$80,215.18

Parcel 5 –

Impervious Area: 1.401 acres

Facility Percentage Share of Facility Costs: \$184,534.44

Parcel 6 –

Impervious Area: 1.420 acres

Facility Percentage Share of Facility Costs: \$187,037.04

PRD Parcels -

Impervious Area: 4.50 acres

Facility Percentage Share of Facility Costs: \$592,723.03

Exhibit F

PARKING SPACE LEASE FORM

(See attached.)

PARKING SPACE LEASE AGREEMENT

THIS PARKING SPACE LEASE AGREEMENT (this "**Lease**") is entered into as of the 1st day of [REDACTED] 2019, by and between **MIDTOWN REDEVELOPMENT PARTNERS, LLC**, a Virginia limited liability company ("**Tenant**"), and the **TOWN OF BLACKSBURG, VIRGINIA**, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia ("**Landlord**").

RECITALS:

A. Tenant and Landlord entered into that certain Development Agreement (the "**Development Agreement**"), effective as of the [REDACTED] day of May, 2019, to redevelop the Old Blacksburg Middle School property located in the Town at the 500 block of South Main Street, bounded by Clay and Eheart Streets, for a mixed-use project (the "**Project**").

B. In the Development Agreement, Tenant agreed to convey to Landlord that certain lot or parcel of land identified as [REDACTED] [NEW TAX MAP #] ("**Parking Structure Parcel**") and that certain lot or parcel of land identified as [REDACTED] [NEW TAX MAP #] ("**Public Safety Parcel**"), each of which is more particularly described on Exhibit A attached hereto and incorporated herein.

C. Landlord wishes to enter into this Agreement to facilitate the development of the Public Safety Building and the Parking Garage as part of the Project. The Parking Garage will provide a parking facility to serve the Public Safety Building, the Project and existing needs for Downtown area parking. The availability of the Parking Garage will reduce congestion on the streets of Downtown and will reduce the need for surface parking in connection with the Project. The availability of the Parking Garage will also enable the Town to realize the public benefits from private investment into the Project, the expansion of the Town's downtown, its commercial economy and its tax base and revenue, and the inclusion of other public amenities in the Project.

D. Tenant is the owner of the land described on Exhibit B attached hereto and incorporated herein (each, a "**Tenant Parcel**" and together, the "**Tenant Parcels**").

E. The Development Agreement provides for the Landlord to construct a multi-story parking structure on the Parking Structure Parcel that will include more than Three Hundred (300) parking spaces (the "**Parking Garage**").

F. Landlord will operate the Parking Garage as a limited-access parking structure generating revenue through the provision of parking spaces for fees based on hourly or monthly

usage, in addition to providing parking spaces for employees working at the public safety building located on the Public Safety Parcel.

G. Landlord wishes to enter a lease with Tenant for the access and use of a minimum of two hundred (200) parking spaces located in the Parking Garage (such 200 parking spaces are hereinafter collectively referred to as the “**Tenant Parking Spaces**” and each individual one is referred to herein as a “**Tenant Parking Space**”) upon the terms and conditions hereinafter described.

LEASE:

In furtherance of the parties obligations and promises in the Development Agreement and in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Construction of Parking Garage; Use Prior to Construction. Upon (i) completion of the Parking Garage, and (ii) Landlord’s completion and/or receipt of any and all final inspections and approvals to permit the use of the Parking Garage for its intended purpose (“**Substantial Completion**”), Landlord shall send written notice to Tenant of Substantial Completion of the Parking Garage (the “**Ready Notice**”) promptly after Substantial Completion of the Parking Garage. The “**Commencement Date**” shall be the date a full certificate of occupancy is issued for the entire Parking Garage. Prior to the construction of the Parking Garage, Landlord shall operate the Parking Structure Parcel as a limited access property, not available for public use or for a public purpose.

2. Lease of Parking Spaces; Right of Access.

(a) Landlord hereby leases to Tenant the Tenant Parking Spaces, on the terms and conditions set forth herein. The Tenant Parking Spaces shall be leased on a non-exclusive, non-designated basis. In addition, to the extent needed, the Town will provide priority status to any User (as defined below) who needs a parking space beyond the minimum leased hereunder after the two hundred (200) Tenant Parking Spaces are allocated to Users for an additional fifty (50) parking spaces. During the Term (defined below) of this Lease, Tenant and any User (defined below) of a Tenant Parking Space shall have the right to access the Parking Garage for the purpose of ingress to, and egress from, the Parking Spaces as provided for in the terms of any applicable Parking Agreement (defined below), which shall be the same terms offered to other monthly or annual parking users of the Parking Garage. Subject to the terms of this Agreement, the Town agrees to permit Tenant and any User to use the Tenant Parking Spaces in their “As Is/Where Is” condition with no representations or warranties, express or implied, and on the

terms set forth in this Agreement.

(b) Priority Status. Landlord will use a number of parking spaces in the Parking Garage in connection with the Public Safety Building and to make daily public parking available. Landlord intends to make the majority of parking spaces in the Parking Garage available for use on a monthly or annual basis. During the term of this Agreement, a minimum of 200 Tenant Parking Spaces will be leased to Tenant. During the terms of this Agreement, Landlord will make up to an additional fifty (50) parking spaces available to Users on a monthly or annual basis on a priority basis. If additional parking spaces are available for monthly or annual use, Users shall be given priority in the use of those parking spaces. If all of the parking spaces available for use on a monthly or annual basis are being used, Landlord will maintain a waiting list. Landlord will give Users priority on the waiting list. As parking spaces become available, all Users shall be offered the use of such parking spaces before any non-Users.

3. Operator Management of Parking Garage. Landlord may hire a company (an “**Operator**”), to be selected in Landlord’s sole discretion, to oversee administration and/or maintenance of the Parking Garage, including, but not limited to, collection of the Use Fees.

4. Allocation of Parking Spaces. Upon reasonable prior notice to the Landlord, Midtown may assign, transfer or sublease, any one or more of the Parking Spaces, and any of its other rights or interests under this Agreement, to a buyer in conjunction with a sale of one or more of Tenant Parcels. Any such assignment, transfer or sublease of rights under this Agreement shall be memorialized in an agreement to be recorded in the Clerk’s Office of the Circuit Court of Montgomery County and such assignment, transfer or sublease may be subsequently assigned or transferred to a subsequent buyer of the applicable Tenant Parcel. Midtown, or Midtown’s successors or assignees, as the case may be, may in turn assign their allocated Parking Spaces to owners, tenants, employees, licensees and invites possessing, occupying or using any portion of the applicable Tenant Parcel. The assigned user of a Parking Space shall be referred to herein as a “**User**.” Prior to the issuance of a Certificate of Occupancy for a building located on a Tenant Parcel, Tenant shall allocate a portion of the Parking Spaces to that particular Tenant Parcel.

5. Parking Agreements for Each Parking Space.

(a) Except as expressly stated herein, all other terms related to the use, payment of the Use Fee, controlled access, upkeep, insurance, limitation of liability and any other rights and/or obligations with respect to the Parking Spaces shall be set by agreement(s) (singularly, a “**Parking Agreement**” or collectively, the “**Parking Agreements**”) entered into between each User and the Landlord. Each User shall enter into a Parking Agreement prior to a

User's use of a Parking Space.

(b) Landlord will make Tenant Parking Spaces available to Users pursuant to this Lease only upon the execution of a Parking Agreement for that User.

(c) The parties acknowledge that the Landlord intends to make all of the unused spaces in the Parking Garage available for daily or hourly use on the days of Virginia Tech football games held in Blacksburg, Virginia and other special events which will occur on weekends or outside regular business hours ("**Special Events**"). The Tenant Parking Spaces and the other parking spaces made available pursuant to this Agreement will be unavailable to Users during those periods; provided, however, that residential Users and Users for office purposes will be allowed to continue use of their parking space at their agreed upon rate provided no activities related to parking or other Special Events are conducted from the space. If a User desires to use a space for parking or other activities related to Special Events, such User must pay the applicable special event pricing for the Special Event.

6. Term. The term of this Lease (the "**Term**") shall be for a period of five (5) years, commencing on the Commencement Date.

7. Use Fees. Each month during the first year of the Term, each User that is making use of a Parking Space shall pay to the Operator, for Landlord's benefit, a monthly fee in the amount of Fifty and No/100 Dollars (\$50.00), which may be paid annually (the "**Use Fee**") in the manner set forth in the User's Parking Agreement. Each year thereafter during the Term, the monthly rate shall be consistent with the market monthly parking fee charged by comparable parking garages in the Town of Blacksburg. The failure of a User to pay a Use Fee shall not be a default hereunder, but Landlord or the Operator may terminate such User's access to the Parking Garage until the default is cured. In the event a User fails to pay a Use Fee, Landlord's and the Operator's sole recourse shall be against the User pursuant to the terms of the Parking Agreement.

8. Location of Parking Spaces. Landlord or the Operator may, at its election, require that the Parking Spaces be specifically identified and located in an area designated by Landlord or Operator. If such an election is made and the space is to be identified by signage, the cost of such signage shall be paid by the owner of the Tenant Parcel to which the applicable Parking Space has been assigned.

9. Permitted Use. A User's permitted use of the Parking Spaces shall be limited solely to use by that User for the parking of registered and functional automobiles and motorcycles only. In the event a User does not use a Parking Space in accordance with this Section, Landlord's and the Operator's sole recourse shall be against the User pursuant to the

terms of the Parking Agreement.

10. Damage by Fire or Other Casualty. If the Parking Garage is damaged by fire, the elements or by accident, the Town shall use reasonable efforts to repair the Parking Garage to the extent practical and any Use Fees due to Landlord or Operator shall be abated to the extent one or more Parking Spaces are not available for use, and such abatement shall continue until the affected Parking Spaces are made available to the affected User. The Landlord shall have no liability to Tenant or to any User for interruption to its business as a result of damage to the Parking Garage due to fire or other casualty. In the event a User causes any damage to the Parking Garage, Landlord's and the Operator's sole recourse shall be against the User pursuant to the terms of the Parking Agreement.

11. Mortgagee Provisions.

(a) Tenant and every successor and assign of Tenant, including any owner of a Tenant Parcel, is hereby given the right by Landlord, in addition to any other rights herein granted, upon ten (10) days' prior written notice to assign this Lease, or any part or parts thereof, and any subleases, assignments or transfers hereunder as collateral security for a lender providing a first deed of trust lien to finance the development of a Tenant Parcel (each a "**Lender**"), which notice shall name the Lender and include a copy of the form of security assignment followed promptly after execution with a copy of the final form of assignment executed by all parties. Thereafter, Landlord will give notice to the named Lender of any default by Tenant or the applicable owner of a Tenant Parcel in the performance of this Lease simultaneously with the giving of a notice of default provide to Tenant or the applicable owner of a Tenant Parcel and will not terminate this Lease as to Tenant or an owner of a Tenant Parcel due to such default without giving the Lender sixty (60) days after delivery of such default notice to cure such default, or in the event that any such default cannot, with reasonable diligence, be cured within such sixty (60) day period, such longer time as may be required to complete such cure, provided Lender notifies Landlord of its intention to cure such default and Lender promptly commences and diligently pursues such cure to completion, and (c) in the event that such default is incapable of cure by Lender, such time as may be required for Lender to gain possession of the interest of Tenant or the applicable owner of a Tenant Parcel under the Lease pursuant to the terms of the Loan Agreement and Security Instrument, provided Lender notifies Landlord of its intention to cure such default and Lender promptly commences and diligently pursues such cure to completion.

(b) Any Lender permitted pursuant to this Section 11 to take an assignment of the leasehold interest of Tenant or the portion of this leasehold interest assigned, transferred or sublet to an owner of a Tenant Parcel, shall have the benefit of the following provisions:

(i) Lender may, but will not be obligated to, cure any default by Tenant or

the applicable owner of a Tenant Parcel under this Lease in accordance with Section 11(a) above. In the event of a termination of this Lease as a result of a default not capable of being cured the Lender, the Lender's sole remedy shall be the right to enter into a New Lease (defined below) as provided in Section 11(b)(v) below.

- (ii) Landlord acknowledges that, if Lender or any other party succeeds to the interest of Tenant under this Lease or the interest of an owner of a Tenant Parcel with respect to a portion of the rights granted under this Lease as a result of foreclosure proceedings, the granting of a deed in lieu of foreclosure, or through any other means, Lender or any such other party (the "**Successor Tenant**") shall become a substituted tenant or assignee, transferee or subtenant under this Lease without necessity of any consent of or approval by Landlord so long as all defaults under this Lease are cured within any applicable notice and cure period provided in Section 11(a) above. The Lender shall provide written notice to the Landlord identifying the name and address of the Successor Tenant. The Successor Tenant upon assuming the terms of this Lease or the portion of the Lease applicable to the allocate Parking Spaces shall have the right to sell and assign the leasehold estate or portion thereof to any successor in interest of title to the applicable Tenant Parcel(s). Upon and after such acquisition and the timely curing of all defaults, this Lease shall continue in full force and effect as if no default by Tenant or the applicable owner of a Tenant Parcel, if any, under the Lease had occurred.
- (iii) The Successor Tenant shall not be required to assume the delinquent obligations of Tenant or the applicable owner of a Tenant Parcel under this Lease, but shall be deemed to have agreed to perform all of the obligations of Tenant or those applicable to the applicable owner of a Tenant Parcel thereunder only from and after the date of such acquisition and only for so long as such Successor Tenant is the owner of a Tenant Parcel.
- (iv) If this Lease is terminated prior to the expiration of the term thereof for failure to cure a non-monetary default not capable of being cured by the Lender, or if this Lease is rejected in any bankruptcy proceeding involving Tenant a Tenant Designee under the United States Bankruptcy Code (or any successor law providing similar relief), Landlord shall enter into a new lease ("**New Lease**") with the applicable Lender for the remainder of the Term of the lease which would have been in effect if

this Lease had not been terminated or rejected, at the same Use Fee and having the same other provisions as this Lease (as amended thereby).

12. Recording. Tenant shall have the right, in Tenant's sole discretion, to record a memorandum of this Lease in the Clerk's Office for the Circuit Court of Montgomery County, Virginia.

13. Notices. All notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with the Lease shall be in writing, signed by the party, and shall be served (as an alternative to personal service) by registered or certified mail, overnight courier service, or e-mail (provided the original notice is delivered within two (2) business days of the subject e-mail transmittal) at the addresses set forth below for such party. Any such notice shall be considered delivered (i) on the date of hand delivery, (ii) on the first business day after the date of deposit with an overnight courier, (iii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as non-deliverable, as the case may be, if mailed by certified mail, or (iv) upon receipt if delivered by e-mail, provided the notice is sent prior to 6:00 p.m. eastern standard time on the day of delivery. Any party may change its address by giving notice as set forth in this Section.

Tenant:

Midtown Redevelopment Partners, L.L.C.
Attention: Jeanne Stosser
PO Box 10397
Blacksburg, Virginia 24060

with a copy to:

James K. Cowan, Jr., Esq.
Cowan Perry PC
250 South Main Street, Suite 226
Blacksburg, Virginia 24060

Landlord:

The Town of Blacksburg
Attention: Town Manager
P.O. Box 90003
300 South Main Street
Blacksburg, Virginia 24062

with a copy to:

The Town of Blacksburg
Attention: Town Attorney
P.O. Box 90003
300 South Main Street

Blacksburg, Virginia 24062

14. Amendments. Neither Tenant nor the Landlord will agree to any amendment or modification to this Lease or a voluntary termination of this Lease without the Lender's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

15. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

16. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Lease, notwithstanding that all the parties shall not have signed the same counterpart. Copies of this Lease, and fax or pdf signatures thereon, shall have the same force, effect and legal status as an original.

17. Notice and Cure. In the event either party breaches an obligation of it contained herein, the non-breaching party shall send written notice to the breaching party describing the breach in sufficient detail and the breaching party shall have thirty (30) days after receipt of such written notice to cure the breach and no default shall exist; provided, however, that if the breach cannot reasonably be cured within the thirty (30) day cure period, then so long as the breaching party commences and diligently pursues a cure to completion, no default shall exist. If the breach is not so cured, a default shall exist and the non-breaching party shall have all rights and remedies at law or equity against the breaching party.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns and successors in title to Tenant.

19. Attorney Fees; Damages; Remedies. Notwithstanding anything to the contrary, if either Landlord or Tenant brings suit or other legal proceedings to enforce the provisions of this Agreement against the other, each party shall bear its own attorneys' fees and litigation costs and expenses incurred by it in connection with such suit or proceeding. The liability of the parties hereunder shall be limited to actual damages and neither party shall be liable to the other for consequential, special or punitive damages. All remedies provided to the Parties are cumulative and not restrictive of other remedies, including, without limitation, specific performance. **No Party shall pursue any and all rights and remedies after an event of default by one of the other parties until the dispute resolution process in Section 20 (Disputes) below has been exhausted in accordance with its terms. In no event shall either Party's total liability exceed \$250,000.**

20. Disputes. Prior to the initiation of any litigation, the Parties shall seek to resolve

any and all claims, disputes, and other matters utilizing mediation in accordance with the dispute provisions provided in this Section (Disputes).

(a) If a dispute arises out of or relates to this Agreement, or a claimed breach of this Agreement, but excluding any section of this Agreement which has its own dispute resolution, the Parties shall first try in good faith to resolve the dispute through negotiation among the Parties and by nonbinding mediation. In the event of any such dispute, a Party may give the other parties a written description of the dispute and the relief requested. The Parties shall promptly attempt to resolve the dispute by negotiation involving senior staff. If the dispute is not promptly resolved by negotiation, any Party may demand in writing that all of the Parties involved in the dispute participate in a formal mediation presided over by a third-party neutral mediator. If the parties cannot agree on a mediator, then McCammon Group, 6641 West Broad Street, Richmond, Virginia 23230, or its successor, shall have the power to select the mediator. The Parties shall share in the cost of the mediation proceedings equally.

(b) If mediation is unsuccessful, the Parties shall be free to initiate litigation or take other appropriate action as they deem appropriate. However no Party shall initiate any litigation or action against any other party to this Agreement with respect to the performance or enforcement of this Agreement without first complying with the dispute resolution provisions of this Section (Disputes) except for the sole and limited purpose of tolling a statute of limitations or similar laws that would otherwise impair a party's legal rights, or for enforcing this Section (Disputes).

21. Section 21. Consent to Jurisdiction and Venue. The parties hereto (a) agree that any suit, action or other legal proceeding, as between the parties hereto, arising out of or relating to this Agreement shall be brought and tried only in the Circuit Court of Montgomery County, Virginia, (b) consent to the jurisdiction of such court in any such suit, action or proceeding, and (c) waive any objection which any of them may have to the laying of venue or any such suit, action, or proceeding in such court and any claim that any such suit, action, or proceeding has been brought in an inconvenient forum. The parties hereto agree that a final judgment in any such suit, action, or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS, the following duly authorized signatures:

LANDLORD:

TOWN OF BLACKSBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia

By: _____ (SEAL)

Name: _____

Title: _____

Approved as to form:

By: _____ (SEAL)

Printed Name: _____

Title: Town Attorney

TENANT:

MIDTOWN REDEVELOPMENT PARTNERS, L.L.C., a Virginia limited liability company

By: _____ (SEAL)

Printed Name: _____

Title: _____

EXHIBIT A

[Legal descriptions of Parking Structure Parcel and Public Safety Parcel to be attached]

EXHIBIT B

[Legal descriptions of each of Tenant Parcels to be attached]

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Exhibit G

Encouragement of Long-Term Residents

1. All leased communities and apartment buildings within the PRD shall adopt the following criteria:

- No “four (4) bedroom and four (4) bath product be offered for lease.
- All leases shall be by the unit. “By-the-bedroom” leases shall not be permitted.
- Residents shall be required to state in an affidavit that their income is two times the monthly rent for the unit at the time of unit rental.
- Onsite management shall be provided to all owners during office hours of 9:00 am to 5:00 pm Monday through Friday; and 24 hour on-call emergency maintenance service. One office in the OBMS Site may manage all properties located in the PRD.
- A Resident and Guest parking policy will be adopted for the OBMS Site which shall issue parking permits/stickers to residents and visitor passes for visitors. Parking passes shall be visibly displayed in a location determined by the parking policy.

2. All “for sale” residential units and developments in the PRD (excluding transfers by the developer to related and/or subsidiary entities), whether single-family, townhome, duplex or condominium unit, shall be part of a Residential Homeowners Association or Property Owners Association (“HOA”) that must adopt the following rules and regulations prior to the sale of any units:

- All purchasers shall be required to represent to the seller and the HOA in an affidavit, at the time of purchase, that they are not acquiring the property primarily for investment purposes or as a “rental property.”
- In the event a residential unit is rented, the owner shall provide to the HOA the name and contact information of the each tenant and each person residing in the unit. In the alternative, the owner shall provide the name and contact information for the person responsible for communicating with each tenant and each person residing in the unit.
- The initial term of any lease shall be at least twelve (12) months. Short term tenancies of less than twelve (12) months shall not be permitted.

- All leases must contain a clause notifying the tenants of the obligations to abide by all covenants and bylaws, as well as the Town's occupancy limitations.

Exhibit H

PARKING UTILIZATION AGREEMENT

(See attached.)

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Prepared by:
Jeffrey P. Geiger, Esq. (72960)
Hirschler Fleischer, P.C.
2100 East Cary Street
Richmond, VA 23223

Tax Parcel #: [REDACTED]

PARKING UTILIZATION AGREEMENT

This **PARKING UTILIZATION AGREEMENT** ("**Agreement**") is entered into this [REDACTED] day of [REDACTED] 2019, by and between **MIDTOWN REDEVELOPMENT PARTNERS, LLC**, a Virginia limited liability company ("**Midtown**"), and the **TOWN OF BLACKSBURG, VIRGINIA**, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia (the "**Town**").

RECITALS:

A. Midtown and the Town entered into that certain Development Agreement (the "**Development Agreement**"), effective as of the [REDACTED] day of May, 2019, to redevelop the Old Blacksburg Middle School property located in the Town at the 500 block of South Main Street, bounded by Clay and Eheart Streets, for a mixed-use project (the "**Project**").

B. In the Development Agreement, Midtown agreed to convey to the Town that certain lot or parcel of land identified as [REDACTED] ("**Parking Garage Parcel**") and that certain lot or parcel of land identified as [REDACTED] ("**Public Safety Parcel**"), each of which is more particularly described on Exhibit A attached hereto and incorporated herein.

C. Town wishes to enter into this Agreement to facilitate the development of the Public Safety Building and the Parking Garage as part of the Project. The Parking Garage will provide a parking facility to serve the Public Safety Building, the Project and existing needs for Downtown area parking. The availability of the Parking Garage will reduce congestion on the streets of Downtown and will reduce the need for surface parking in connection with the Project. The availability of the Parking Garage will also enable the Town to realize the public benefits from private investment into the Project, the expansion of the Town's downtown, its commercial economy and its tax base and revenue, and the inclusion of other public amenities in the Project.

D. Midtown is the owner of the land described on Exhibit B attached hereto and incorporated herein (each, a "**Midtown Parcel**" and together, the "**Midtown Parcels**").

E. The Development Agreement provides for the Town to construct a multi-story parking structure on the Parking Structure Parcel that will include more than Three Hundred (300) parking spaces (the "**Parking Garage**").

F. The Town will operate the Parking Garage as a limited-access parking structure generating revenue through the provision of parking spaces for fees based on hourly or monthly usage, in addition to providing parking spaces for employees working at the public safety building located on the Public Safety Parcel.

G. The Town and Midtown have entered into a five (5) year lease for the use of a minimum of two hundred (200) parking spaces in the Parking Garage (the "Parking Space Lease Agreement"). Upon the expiration of the Parking Space Lease Agreement, the Town wishes to grant Midtown priority status with respect to the use of a minimum of two hundred (200) parking spaces located in the Parking Garage (such 200 parking spaces are hereinafter collectively referred to as the "**Parking Spaces**" and each individual one is referred to herein as a "**Parking Space**") upon the terms and conditions hereinafter described.

AGREEMENT:

In consideration, of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Priority Status.

(a) Upon the expiration of the Parking Space Lease Agreement, the Town shall allow Midtown and its successors and assigns priority status with respect to the use of two hundred (200) Parking Spaces on the terms and conditions set forth herein. The use of the Parking Spaces shall be on a non-exclusive, non-designated basis.

(b) The Town will use a number of parking spaces in the Parking Garage in connection with the Public Safety Building and to make daily public parking available. The Town intends to make the majority of parking spaces in the Parking Garage available for use on a monthly or annual basis. During the term of this Agreement, a minimum of 200 Parking Spaces will be available to Midtown for lease. During the term of this Agreement, the Town will make up to an additional fifty (50) parking spaces available to Midtown on a monthly or annual basis on a priority basis as such spaces become available. If additional parking spaces are available for monthly or annual use, Midtown shall be given priority in the use of those parking spaces. If all of the parking spaces available for use on a monthly or annual basis are being used, the Town will maintain a waiting list. The Town will give Midtown priority on the waiting list.

(c) In the event Midtown, or its successors or assigns, desire to secure for a User the use of one or more of the Parking Spaces, Midtown, or its successor or assignee, shall provide the Town with written notice of the number of Parking Spaces desired and, to the extent possible, the identity of the Users (as defined below) who will be using those Parking Spaces (each, a "**User Notice**"). No more than three (3) months after receipt of a User Notice, the Town or its Operator shall make the number of Parking Spaces requested in such User Notice available to Midtown

and/or the applicable User(s) (defined below) on an unrestricted basis. In no event shall the Town be required to make available for Users more than the maximum number of Parking Spaces stated in this Agreement (200). However, in the event a User's Parking Agreement (defined below) expires or is terminated, the subject Parking Space may be re-designated to a new User upon the sending of a User Notice for that Parking Space. All Users of the Parking Spaces shall have, subject to the terms of their respective Parking Agreement, access over, across and through the Parking Garage Parcel and the Parking Garage on the same basis as offered other monthly or annual parkers in the Parking Garage. Such access shall be subject to the terms and conditions established by, and evidenced through a Parking Agreement with the Town or a company, to be selected in the Town's sole discretion, to oversee administration and/or maintenance of the Parking Garage, including, but not limited to, collection of the Use Fees (the "**Operator**"). This Agreement grants a license from the Town to Midtown, and its successors and assigns, for the use of the Parking Spaces and the access rights. The grant of such license to use the Parking Spaces shall not be construed to grant any interest in property owned by Town, except as provided in the prior sentence. Midtown shall have no possessory interest in any portion of the Parking Garage. Subject to the terms of this Agreement, the Town agrees to permit Midtown to use the Parking Spaces in their "As Is/Where Is" condition with no representations or warranties, express or implied, and on the terms set forth in this Agreement.

2. Rights of Town to Lease Parking Spaces. Subject to the terms of the foregoing Section 1, the Town or the Operator may, in its sole discretion, lease or otherwise make available to any third parties any of the Parking Spaces as are from time to time not subject to an active Parking Agreement with a User. In addition, in the event any Parking Space is not physically occupied by a User's vehicle, regardless of whether such Parking Space is subject to an active Parking Agreement, the Town (or the Operator on the Town's behalf) may lease such Parking Space to a third party on an hourly basis. Notwithstanding the rights reserved by the foregoing sentence, the Town shall use reasonable efforts to ensure that the Operator manages the occupancy of the Parking Garage in a manner such that Users with active Parking Agreements, subject to the terms of their respective Parking Agreements, shall during the term thereof have access to the Parking Garage and use of a Parking Space.

3. Permitted Use. A User's permitted use of the Parking Spaces shall be limited solely to use by that User for the parking of registered and functional automobiles and motorcycles only. In the event a User does not use a Parking Space in accordance with this Section, The Town's and the Operator's sole recourse shall be against the User pursuant to the terms of the Parking Agreement. The Town or the Operator may, at its election, require that the Parking Spaces be specifically identified and located in an area designated by the Town or Operator. If such an election is made and the space is to be identified by signage, the cost of such signage shall be paid by Midtown or, if the Parking Space was requested by an owner of a Midtown Parcel other than Midtown, the owner of the Midtown Parcel who submitted the User Notice. Any personal property placed in or on the Parking Garage or any of the Parking Spaces shall be so placed at the risk of the owner of such personal property, and the Town shall have no liability of any kind, for any reason, for the loss of, or damage to, such personal property.

4. Allocation of Parking Spaces. Upon reasonable prior notice to the Town, Midtown may assign or transfer its right to use and access any one or more of the Parking Spaces, and any of its other rights or interests under this Agreement, subject to the terms of any Parking Agreements, to a buyer in conjunction with a sale of one or more of the Midtown Parcels. Any such assignment or transfer of rights under this Agreement may be subsequently assigned or transferred to a subsequent buyer of the applicable Midtown Parcel. Midtown, or Midtown's successors or assignees, as the case may be, may in turn assign their rights to one or more allocated Parking Spaces to owners, tenants, employees, licensees and invites possessing, occupying or using any portion of the applicable Midtown Parcel. The assigned user of a Parking Space shall be referred to herein as a "**User.**" Prior to the issuance of a Certificate of Occupancy for a building located on a Midtown Parcel, Midtown shall allocate the rights to use and access a portion of the Parking Spaces to that particular Midtown Parcel.

5. Parking Agreements with Town or Operator.

(a) Except as expressly stated herein, all other terms related to the use, payment of the Use Fee, controlled access, upkeep, insurance, limitation of liability and any other rights and/or obligations with respect to the Parking Spaces shall be set by standard agreement(s) (singularly, a "**Parking Agreement**" or collectively, the "**Parking Agreements**") entered into between each User and the Town or Operator. Each User shall enter into a Parking Agreement prior to a User's use of a Parking Space.

(b) The Town will make Parking Spaces available to Users pursuant to this Agreement only upon the execution of a Parking Agreement for that User.

(c) The parties acknowledge that the Town intends to make all of the unused spaces in the Parking Garage available for daily or hourly use on the days of Virginia Tech football games held in Blacksburg, Virginia and other special events which will occur on weekends or outside regular business hours ("**Special Events**"). The Parking Spaces and the other parking spaces made available pursuant to this Agreement will be unavailable to Users during those periods; provided, however, that residential Users and Users for office purposes will be allowed to continue use of their parking space at their agreed upon rate provided no activities related to parking or other Special Events are conducted from the space. If a User desires to use a space for parking or other activities related to Special Events, such User must pay the applicable special event pricing for the Special Event.

6. Use Fees. Each month, each User that is making use of a Parking Space shall pay to the Town or the Operator, a monthly fee in the amount consistent with the market monthly parking fee charged by comparable parking garages in the Town of Blacksburg.

7. Term and Termination. This Agreement will commence upon the expiration of the Parking Space Lease Agreement (the "Commencement Date"), and will continue for a term of Twenty (20)

years. In the event the Town ceases to operate or use the Parking Garage, the Town shall notice Midtown and the Users using the Parking Spaces at least one (1) year in advance. After expiration of the one (1) year period, the Town shall send notice of the date operation of the Parking Garage will cease. Such notice shall be sent at least sixty (60) days prior to the date operation of the Parking Garage will cease. On the date operation of the Parking Garage permanently ceases, the rights granted herein for use of the Parking Spaces shall terminate automatically. Should the need exist as a result of the termination of this Agreement, the Town shall cooperate with Midtown as reasonably necessary to obtain a zoning or proffer amendment to remain in compliance with all applicable zoning and related laws and ordinances relative to parking requirements for the Midtown Parcels.

8. Damage by Fire or Other Casualty. If the Parking Garage is damaged by fire, the elements or by accident, the Town shall use reasonable efforts to repair the Parking Garage to the extent practical and any use fees due to the Town or Operator shall be abated to the extent one or more Parking Spaces are not available for use, and such abatement shall continue until the affected Parking Spaces are made available to the affected User. The Town shall have no liability to Midtown or any User for interruption to its business as a result of damage to the Parking Garage due to fire or other casualty. In the event a User causes any damage to the Parking Garage, the Town's and the Operator's sole recourse shall be against the User pursuant to the terms of the Parking Agreement.

9. Notices. All notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with the Agreement shall be in writing, signed by the party, and shall be served (as an alternative to personal service) by registered or certified mail, overnight courier service, or e-mail (provided the original notice is delivered within two (2) business days of the subject e-mail transmittal) at the addresses set forth below for such party. Any such notice shall be considered delivered (i) on the date of hand delivery, (ii) on the first business day after the date of deposit with an overnight courier, (iii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as non-deliverable, as the case may be, if mailed by certified mail, or (iv) upon receipt if delivered by e-mail, provided the notice is sent prior to 6:00 p.m. eastern standard time on the day of delivery. Any party may change its address by giving notice as set forth in this Section.

Midtown:

Midtown Redevelopment Partners, L.L.C.
Attention: Jeanne Stosser
PO Box 10397
Blacksburg, Virginia 24060

with a copy to:

James K. Cowan, Jr., Esq.
Cowan Perry PC
250 South Main Street, Suite 226
Blacksburg, Virginia 24060

The Town:

The Town of Blacksburg
Attention: Town Manager
P.O. Box 90003
300 South Main Street
Blacksburg, Virginia 24062

with a copy to:

The Town of Blacksburg
Attention: Town Attorney
P.O. Box 90003
300 South Main Street
Blacksburg, Virginia 24062

10. Entire Agreement. This Agreement constitutes the entire agreement between Midtown and the Town as to the matters contained herein, and shall not be altered, amended or modified except by a writing executed by the duly authorized officials of both Midtown and the Town.

11. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, this Agreement shall remain in full force and effect in accordance with its terms, disregarding such unenforceable or invalid provision.

12. Captions. The caption headings contained herein are used solely for convenience and shall not be deemed to limit or define the provisions of this Agreement.

13. No Waiver. Any failure of a party to enforce that party's rights under any provision of this Agreement shall not be construed or act as a waiver of said party's subsequent right to enforce any of the provisions contained herein.

14. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement, notwithstanding that all the parties shall not have signed the same counterpart. Copies of this Agreement, and fax or pdf signatures thereon, shall have the same force, effect and legal status as an original.

16. Recording. Midtown shall have the right, in Midtown's sole discretion, to record this Agreement in the Clerk's Office for the Circuit Court of Montgomery County, Virginia.

17. Successors; Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns and successors in title to Midtown.

18. Attorney Fees; Damages; Remedies. Notwithstanding anything to the contrary, if either the Town or Midtown brings suit or other legal proceedings to enforce the provisions of this Agreement against the other, each party shall bear its own attorneys' fees and litigation costs and expenses incurred by it in connection with such suit or proceeding. The liability of the parties hereunder shall be limited to actual damages and neither party shall be liable to the other for consequential, special or punitive damages. All remedies provided to the Parties are cumulative and not restrictive of other remedies, including, without limitation, specific performance. **No Party shall pursue any and all rights and remedies after an event of default by one of the other parties until the dispute resolution process in Section 19 (Disputes) below has been exhausted in accordance with its terms. In no event shall either Party's total liability exceed \$250,000.**

19. Disputes. Prior to the initiation of any litigation, the Parties shall seek to resolve any and all claims, disputes, and other matters utilizing mediation in accordance with the dispute provisions provided in this Section (Disputes).

(a) If a dispute arises out of or relates to this Agreement, or a claimed breach of this Agreement, but excluding any section of this Agreement which has its own dispute resolution, the Parties shall first try in good faith to resolve the dispute through negotiation among the Parties and by nonbinding mediation. In the event of any such dispute, a Party may give the other parties a written description of the dispute and the relief requested. The Parties shall promptly attempt to resolve the dispute by negotiation involving senior staff. If the dispute is not promptly resolved by negotiation, any Party may demand in writing that all of the Parties involved in the dispute participate in a formal mediation presided over by a third-party neutral mediator. If the parties cannot agree on a mediator, then McCammon Group, 6641 West Broad Street, Richmond, Virginia 23230, or its successor, shall have the power to select the mediator. The Parties shall share in the cost of the mediation proceedings equally.

(b) If mediation is unsuccessful, the Parties shall be free to initiate litigation or take other appropriate action as they deem appropriate. However no Party shall initiate any litigation or action against any other party to this Agreement with respect to the performance or enforcement of this Agreement without first complying with the dispute resolution provisions of this Section (Disputes) except for the sole and limited purpose of tolling a statute of limitations or similar laws that would otherwise impair a party's legal rights, or for enforcing this Section (Disputes).

20. Consent to Jurisdiction and Venue. The parties hereto (a) agree that any suit, action or other legal proceeding, as between the parties hereto, arising out of or relating to this Agreement shall be brought and tried only in the Circuit Court of Montgomery County, Virginia, (b) consent to the jurisdiction of such court in any such suit, action or proceeding, and (c) waive any objection which any of them may have to the laying of venue or any such suit, action, or proceeding in such court and any claim that any such suit, action, or proceeding has been brought in an inconvenient forum. The parties hereto agree that a final judgment in any such suit, action, or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

WITNESS, the following duly authorized signatures:

TOWN OF BLACKSBURG, VIRGINIA, a municipal
corporation of the Commonwealth of Virginia

By: _____ (SEAL)

Name: _____

Title: _____

Approved as to form:

By: _____ (SEAL)

Printed Name: _____

Title: Town Attorney

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

The foregoing Agreement was acknowledged before me this _____ day of
_____, 20__, by _____ of the Town of Blacksburg, Virginia, in
his/her capacity as _____.

Notary Public

My commission expires: _____

Notary registration number: _____

MIDTOWN REDEVELOPMENT PARTNERS, L.L.C.,
a Virginia limited liability company

By: _____ (SEAL)

Printed Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__, by _____ of Midtown Redevelopment Partners, L.L.C., a Virginia limited liability company, in his/her capacity as _____.

Notary Public

My commission expires: _____

Notary registration number: _____

EXHIBIT A

[Legal descriptions of Parking Structure Parcel and Public Safety Parcel to be attached]

EXHIBIT B

[Legal descriptions of each of Midtown Parcels to be attached]

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