

COUNTY OF MONTGOMERY

PURCHASING DEPARTMENT
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CHRISTIANSBURG, VA 24073-3179
PHONE (540) 382-5784 | FAX: (540) 382-5783
Heather M. Hall, C.P.M., Procurement Manager

REQUEST FOR PROPOSAL, RFP # 16-07 ADDENDUM NUMBER 1

DATE: August 6, 2015

TITLE: Purchase of the Old Blacksburg Middle School Property

A. Attached is the contract with Fiddler's Green Partners, LLC., that has been requested.

ACKNOWLEDGE RECEIPT OF ADDENDUM # 1:

COMPANY/FIRM NAME AND ADDRESS:

_____ Zip Code _____

SUBMITTED BY:

NAME: _____

(print)

SIGNATURE: _____

TITLE: _____

DATE: _____

Toll Free Number: () _____ Telephone Number: () _____ Fax Number: () _____

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is dated as of the 12th day of September, 2011, by and between the MONTGOMERY COUNTY ECONOMIC DEVELOPMENT AUTHORITY, a Virginia non-stock corporation ("Seller"), and FIDDLER'S GREEN PARTNERS, LLC, a Virginia limited liability company ("Buyer") and, for purposes of Section 2, FIDELITY NATIONAL TITLE INSURANCE COMPANY ("Escrow Agent").

WITNESSETH:

For and in consideration of the respective agreements hereinafter set forth, the earnest money paid herewith, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth:

(a) those certain tracts or parcel of land containing +/- 7.87 acres described as Parcels C (~2.77 acres), D (~2.68 acres), and E (~2.42 acres), after including a portion of the acreage in Parcel F to bring it up to the stated acreage, as these parcels are shown on the Flexibility Diagram to the approved "Master Plan" for the Old Blacksburg Middle School property attached hereto as Exhibit A, which parcels shall be created by and the property lines and dimensions determined by the Subdivision Plat (as defined in Section 5(c)) (such tracts or parcels being collectively referred to herein as the "Land");

(b) those certain tracts or parcel of land containing the areas described as the "Spring Park" and "The Dell" on the Flexibility Diagram to the approved "Master Plan" for the Old Blacksburg Middle School property attached hereto as Exhibit A, which parcels shall be created by and the property lines and dimensions determined by the Subdivision Plat (as defined in Section 5(c)) (such tract or parcel is collectively referred to herein as the "Park Areas"). The parties agree that one (1) acre from Parcel F shall be added to expand "The Dell," with the remainder of Parcel F being added to Parcel E as noted above; and

(c) all other rights, privileges, easements and appurtenances pertaining to the Land and the Park Areas (subsections (a), (b) and (c) are hereinafter referred to as the "Property").

2. Purchase Price. The purchase price for the Property, subject to all adjustments hereinafter provided, shall be as follows (collectively the "Purchase Price"):

(a) For the Land, Three Hundred and Fifty Thousand Dollars (\$350,000.00) per acre, prorated for partial acres;

(b) For the Park Areas, One Hundred Thousand Dollars (\$100,000.00) per acre, prorated for partial acres.

The Purchase Price shall be payable as follows:

(a) Earnest Money. Within seven (7) business days of the execution of this Agreement by Seller and Buyer, Buyer will deliver to the Escrow Agent earnest money in the amount of Twenty Five Thousand Dollars (\$25,000) to be held in escrow in a non-interest bearing account (the "Escrow Funds") until:

- (i) credited towards the Purchase Price at Closing;
- (ii) paid to the Seller or returned to the Buyer as provided by the terms of this Agreement;
- (iii) all parties have agreed in writing as to its disposition; or

(iv) a court of competent jurisdiction orders disbursement and all appeal periods have expired.

(b) Balance of Purchase Price. The balance of the Purchase Price after deduction of the Escrow Funds shall be payable by Buyer on two Closing dates, as described herein, by:

(i) First Closing Date. A cash payment on the First Closing Date for Parcels D and E (approximately 5.1 acres) of the Land in the amount of One Million Seven Hundred and Sixty Thousand Dollars (\$ 1,760,000.00), less any prorations for Apportioned Items (as hereinafter defined) or adjustment for actual acreage purchased to be credited to Buyer, plus any prorations for Apportioned Items to be credited to Seller; and by a cash payment for the Park Areas in the amount of Two Hundred Forty Two Thousand Four Hundred and Fifty Dollars (\$242,450.00).

(ii) Second Closing Date. A cash payment on the Second Closing Date for Parcel C of the Land in the amount of Nine Hundred Sixty Nine Thousand Five Hundred Dollars (\$ 969,500.00), less any prorations for Apportioned Items (as hereinafter defined) or adjustment for actual acreage purchased to be credited to Buyer, plus any prorations for Apportioned Items to be credited to Seller; and by a deferred cash payment for the Park Areas transferred on the First Closing Date in the amount of One Hundred Thirty Thousand Five Hundred and Fifty Dollars (\$130,550.00).

3. Time for Acceptance. If the Agreement is not executed by all parties within thirty (30) days of the date of this Agreement, this Agreement shall be null and void and the Escrow Funds, if previously paid by Buyer, shall be returned immediately to Buyer.

4. Closing.

(a) Place and Date. The settlement ("Closing") under this Agreement shall be held at the offices of LeClairRyan, Settlement Agent, at 1715 Pratt Drive, Suite 2700, Blacksburg, Virginia 24060, or at another mutually agreeable location, on the "First Closing Date" which shall be within ninety (90) days following the end of the Due Diligence Period, as such period may be extended pursuant to Section 5. Possession of Parcels D and E of the Land and of the Park Areas portion of the Property free of right or claim of right of possession by any party other than Buyer shall be given by Seller to Buyer at the First Closing Date. The Second Closing Date shall be within twenty four (24) months of the end of the Due Diligence Period, as such period may be extended pursuant to Section 5. Possession of Parcel C of the Land free of right or claim of right of possession by any party other than Buyer shall be given by Seller to Buyer at the Second Closing Date.

(b) Seller's Obligations. On the First Closing Date, Seller shall deliver the following to Buyer, each in form and substance reasonably satisfactory to Buyer, in recordable form when appropriate (collectively the "Seller's First Closing Documents");

(i) A general warranty deed with English covenants of title (the "Deed") conveying to Buyer fee simple, marketable title to the Parcels D and E of the Land and of the Park Areas portion of the Property, free and clear of all easements, restrictions, conditions, covenants, reservations, encroachments, tenancies, leases, parties in possession, liens and other encumbrances other than (a) public utility easements and rights of way, and zoning and building laws and ordinances; provided that such rights of way, easements, laws and ordinances do not interfere, in the sole judgment of Buyer, with Buyer's proposed use of Parcels D and E of the Land and of the Park Areas portion of the Property; (b) ad valorem taxes not yet due and payable; and (c) such other exceptions or title objections as are acceptable to Buyer in Buyer's sole judgment ((a), (b) and (c) are collectively referred to as "Permitted Exceptions").

(ii) An affidavit containing all matters required by Buyer's title insurance company to issue title insurance on the Parcels D and E of the Land and of the Park Areas portion of the Property in favor of Buyer and/or Buyer's lender without exceptions for mechanic's liens and rights of third parties to possession and such other documents

as shall be required of Seller by the title insurance company as a condition to insuring Buyer's title and/or such lender's lien, free of exceptions other than Permitted Exceptions.

(iii) A statement from Seller certifying that all representations and warranties of Seller contained in this Agreement are true and correct as of Closing.

(iv) A certification of non-foreign status of the Seller in compliance with the Foreign Investment in Real Property Tax Act of 1980, as amended, and a certification of residency of Seller in compliance with Section 58.1-317 of the Code of Virginia of 1950, as amended.

(v) An affidavit that provides all information necessary for the satisfaction of the reporting requirements under Section 6045(e) of the Internal Revenue Code of 1986, as amended (1099S Affidavit).

(vi) The Subdivision Plat (as defined in Section 5(c)).

On the Second Closing Date, Seller shall deliver the following to Buyer, each in form and substance reasonably satisfactory to Buyer, in recordable form when appropriate (collectively the "Seller's Second Closing Documents");

(i) A general warranty deed with English covenants of title (the "Deed") conveying to Buyer fee simple, marketable title to the Parcel C of the Land and any other portion of the Property not previously conveyed, free and clear of all easements, restrictions, conditions, covenants, reservations, encroachments, tenancies, leases, parties in possession, liens and other encumbrances other than (a) public utility easements and rights of way, and zoning and building laws and ordinances; provided that such rights of way, easements, laws and ordinances do not interfere, in the sole judgment of Buyer, with Buyer's proposed use of the Property; (b) ad valorem taxes not yet due and payable; and (c) such other exceptions or title objections as are acceptable to Buyer in Buyer's sole judgment ((a), (b) and (c) are collectively referred to as "Permitted Exceptions").

(ii) An affidavit containing all matters required by Buyer's title insurance company to issue title insurance on the Parcel C of the Land in favor of Buyer and/or Buyer's lender without exceptions for mechanic's liens and rights of third parties to possession and such other documents as shall be required of Seller by the title insurance company as a condition to insuring Buyer's title and/or such lender's lien, free of exceptions other than Permitted Exceptions.

(iii) A statement from Seller certifying that all representations and warranties of Seller contained in this Agreement are true and correct as of Closing.

(iv) A certification of non-foreign status of the Seller in compliance with the Foreign Investment in Real Property Tax Act of 1980, as amended, and a certification of residency of Seller in compliance with Section 58.1-317 of the Code of Virginia of 1950, as amended.

(v) An affidavit that provides all information necessary for the satisfaction of the reporting requirements under Section 6045(e) of the Internal Revenue Code of 1986, as amended (1099S Affidavit).

(c) Costs, Adjustments and Prorations. Ad valorem taxes and general and special assessments ("Apportioned Items") shall be prorated between Seller and Buyer as of the First and Second Closing Date based upon the best available estimates of the amount of the same which will be due and payable on the Property for the year of the respective Closing. As soon as the actual amount of taxes and assessments are determined, Seller and Buyer shall readjust the amount of taxes and assessments paid or to be paid by each party. Seller agrees to pay all roll-back taxes, if any, the expense of preparing the Deed, the grantor's recordation tax, the expense of preparing or obtaining the statements, certificates and affidavits required of Seller by this Agreement, the expense of delivery of existing documents regarding the relevant portions of Property, all charges for utilities furnished to the relevant portions of the

Property prior to the date of Closing, and the expenses and costs related to the removal or release of any title objections on the relevant portions of the Property other than Permitted Exceptions if Seller elects to cure any title objections unacceptable to Buyer. Buyer agrees to pay the costs of title examination, title insurance premiums, clerk's fees and grantee's taxes for the recordation of the deed and the cost of such tests as may be undertaken by Buyer pursuant to Section 5. Each party shall pay its own attorneys' fees and other expenses (expenses other than those specifically described above) that it may incur in connection with the transaction contemplated hereby.

(d) Assignment by Buyer. Except as provided in this Section 4(d), Buyer shall not assign its rights and obligations under this Agreement without Seller's written consent. Seller acknowledges that Buyer may wish to assign its rights and obligations under this Agreement to a corporation or LLC owned, controlled, established or created by Buyer for the purpose of holding real estate investments of Buyer. Seller hereby consents to such assignment of this Agreement by Buyer. The parties also acknowledge that the Town of Blacksburg may have an interest in purchasing all or a portion of Parcel C. Upon written notice received on or before January 1, 2012 from the Town of Blacksburg, that it wishes to purchase either all of Parcel C or a portion thereof acceptable to Buyer, then the parties agree that the Buyer shall, upon the execution of a mutually acceptable contract, assign to the Town the right to buy all or a portion of Parcel C, upon paying the agreed purchase price therefore, including the respective share of the Park Areas (being approximately 35% thereof). The parties further agree that Buyer's obligation to assign this portion of the Agreement to the Town shall be conditioned upon the agreement of the Town to: (i) coordinate their planned development and intended land uses with Buyer in a reasonable manner; and (ii) to not thereafter sell, lease or assign their interest in Parcel C to another developer without Buyer's written permission and agreement that the use is not a competing use.

5. Due Diligence Period. The transaction contemplated herein is conditioned upon Buyer determining, satisfying, obtaining or receiving, at its sole cost, except as otherwise set forth below, the conditions or items set forth below on or before April 30, 2012 (the "Due Diligence Period"):

(a) Buyer has obtained from Seller confirmation that Seller has obtained from the Town of Blacksburg, Virginia (the "Town") good and marketable fee simple title to any portion of the Property owned by the Town, free and clear of all easements, restrictions, conditions, covenants, reservations, liens, encroachments, tenancies, leases, parties in possession, and other encumbrances other than Permitted Exceptions.

(b) Buyer has obtained from Seller a current boundary survey of the Property prepared and certified to Buyer and Buyer's title insurance company by a certified land surveyor, which survey shall include (i) the location, area, dimensions and boundaries of the Property and a metes and bounds description of the Property, (ii) the location and dimensions of any improvements constructed thereon, (iii) the location of all easements of record affecting the Property, specifying the holder of each such easement, (iv) any building restoration and/or set back lines, (v) means of ingress and egress to and from public and private streets, roads and rights of way, (vi) a certification as to the location of the Property within or without any flood hazard area, and (vii) such other matters as the Buyer may require, which survey shall show no conditions unacceptable to Buyer.

(c) Seller has delivered to Buyer, at Seller's sole expense, a subdivision plat creating the Land and Park Areas, which subdivision plat shall be in form and content acceptable to both Seller and Buyer (the "Subdivision Plat").

(d) Buyer has obtained a title insurance commitment covering the Property issued by a title insurance company acceptable to Buyer at standard rates in an amount acceptable to Buyer containing no conditions precedent to the issuance of the title insurance policy unacceptable to Buyer and no exceptions to coverage other than Permitted Exceptions.

(e) Buyer has obtained confirmation from Seller that (i) the Property has been re-zoned by Seller at Seller's sole expense to a zoning district which expressly allows for Buyer's proposed use of the Property as

either "RM48" Medium Density Residential Multi-unit Residential District, as that term is defined in the Town of Blacksburg Zoning Ordinance, or as a "Planned Residential District" or such other zoning classification, or combination of classifications, acceptable to Buyer in its sole discretion which allows a comparable or higher residential density and which may allow but which does not require first floor commercial or non-residential uses (ii) no conditional use permit not already granted by the Town of Blacksburg is required for Buyer's intended use, (iii) the Property is in compliance with all applicable environmental, health and safety, building codes, zoning and land use laws and all other local, state or federal laws and regulations, and (iv) the Property is not located in a flood hazard area as determined in accordance with criteria established by local, state or federal agencies. Buyer agrees to be named as a joint applicant on the rezoning application and to fully cooperate with and support Seller's efforts to have the property rezoned as described above, including by providing any required concept plans, site plans, and description of proposed use(s) prepared by or on behalf of Buyer, at Buyer's sole expense. Seller agrees, as part of this condition, to convey to Buyer copies of all environmental reports and assessments obtained by Seller relating to the Land.

(f) Buyer has obtained confirmation from Seller that Seller has complied with Section 11 of this Agreement.

(g) Buyer has obtained (or has determined to its satisfaction in the exercise of its sole discretion that it can obtain) all permits, licenses, approvals including but not limited to site plans, construction drawings and other permit approval, that are required by the Town of Blacksburg and approval of construction financing by the Lender of Buyer's choice and an appraisal ordered by the lender which will reflect the land value satisfactory to the lender as may be required to (i) construct the improvements desired by Buyer on the Property including, without limitation, one or more multi-tenant residential buildings (totaling not less than 48 bedrooms per acre of the Property, inclusive of the acreage of the Land and Park Areas) in one or more phases of development and related entranceways, exits, signs, outdoor lighting and required parking areas, satisfactory to Buyer in Buyer's sole discretion to meet Buyer's planned development and that no restrictions regarding rents are placed upon the property that may diminish its financing options.

(h) Buyer has the right to erect and maintain on the Property such signs of the types and sizes and in the locations as Buyer may, in its sole determination, desire consistent with the Town of Blacksburg Sign Ordinance.

(i) Buyer has obtained approval of the requisite governmental authorities of Buyer's site plan, soil and erosion control plan, storm water runoff plan and all other plans and specifications for the Property and the construction of Buyer's intended improvements thereon and the parties have reached mutual agreement on the overall master site plan of the Old Blacksburg Middle School site.

(j) In addition to the foregoing conditions set forth in paragraphs (a) through (i) above, Buyer has received the results of such tests, inquiries, studies, inspections and other examinations as Buyer may elect in its sole judgment and at its sole expense to conduct to determine the suitability of the Property for Buyer's purposes, which results shall be satisfactory to Buyer in its sole determination. Such tests, inquiries, studies, inspections and other examinations may include, but shall not be limited to, zoning reports, lien searches, review of sign ordinances, soil tests, borings, engineering studies, compaction and density studies, environmental studies, Phase I and Phase II Geotechnical Studies and utility availability investigations. Buyer shall provide to Seller copies of all written reports received by Buyer related to such tests, inquiries, studies, inspections and other examinations.

(k) Buyer will have access to the property during the due diligence time frame to conduct engineering studies, which include but are not limited to those listed in paragraph (j) above and may use core drillings as needed. Purchaser agrees to restore the property to its present condition regarding any ground disturbance. Buyer will hold harmless the seller for any work or acts performed by Buyer or Buyer's agents and shall carry liability insurance in an amount of \$1,000,000 to fully indemnify the seller of any and all claims brought by any party against the seller due to any act by the Buyer, its employees and representation.

Within thirty (30) days after receipt of the survey and title commitment, Buyer shall notify Seller of any title objections and Seller shall have a period of sixty (60) days from the date of such notice within which to remedy such title objections to Buyer's satisfaction. If Seller elects not to cure such title objections or fails to cure such title objections, Buyer may, at its option (i) extend the time to remedy such title objections with the agreement of Seller, (ii) accept title subject to such exceptions or (iii) terminate this Agreement whereupon the Escrow Funds shall be immediately returned to Buyer. Any title objections accepted or waived by Buyer shall be deemed to be "Permitted Exceptions."

Notwithstanding any other provision of this Agreement, if the rezoning application is not submitted to the Town of Blacksburg and the items described in Sections 5(a), 5(c) and 5(f) are not satisfied on or before January 1, 2012, the Due Diligence Period shall automatically be extended for one (1) month and the Due Diligence Period shall automatically be extended for one (1) additional month on the first day of each month thereafter beginning January 1, 2012 if all of the items described above are not satisfied on such date.

In the event that the conditions or items set forth in this Section 5 are not satisfied or waived by Buyer, in either event as determined in Buyer's sole discretion, Buyer may terminate this Agreement by giving notice of the failure of a condition or item and notice of such termination to Seller on or before the end of the then current Due Diligence Period whereupon the Escrow Funds shall be immediately paid to Buyer. In the event that Buyer does not notify Seller of the failure of a condition or item on or before the end of the then current Due Diligence Period, all conditions and items set forth in this Section 5 shall be deemed satisfied.

Buyer and its authorized contractors, agents, representatives and employees shall be entitled to go upon the Property to make such inspections, examinations, surveys, tests and other studies as Buyer in its sole judgment deems necessary or advisable. Should Buyer or its agents disturb the Property during such inspections or testing, Buyer will restore the same to its pre-inspection or pre-testing condition.

6. Conditions Precedent. The obligation of Buyer to purchase the Property from Seller is subject to satisfaction at or prior to the First Closing Date of each of the following conditions (any of which may be waived in whole or in part by Buyer, but a failure to discover any circumstances made on condition of this Section shall not constitute a waiver of any warranties and representations provided for elsewhere in this Agreement):

(a) The parties determining to their mutual satisfaction the allocation of costs for all public streets, public recreational areas and other public improvements, on or immediately adjoining the Property that are necessary for the intended use and/or required by the Town of Blacksburg.

(b) Seller has complied with and otherwise performed each of the covenants and obligations of Seller set forth in this Agreement. All representations and warranties of Seller contained in this Agreement shall be true and correct as of Closing.

(c) Buyer has received and approved all of Seller's Closing Documents.

(d) Buyer has not notified Seller of the failure of a condition or item and termination of the Agreement in accordance with Section 5.

(e) The obligation of Buyer to purchase the Park Areas portion of the Property from Seller is subject to the written agreement of the Town of Blacksburg (The "Town") at or prior to the First Closing Date to each of the following conditions (any of which may be waived in whole or in part by Buyer, but a failure to discover any circumstances made on condition of this Section shall not constitute a waiver of any warranties and representations provided for elsewhere in this Agreement):

- (i) The Town agreeing that the Park Areas (~3.73 acres) will count towards and satisfy Buyer's open space requirements for the intended development of Parcels C, D and E;
- (ii) The Town agreeing that the potential residential development density of the Park Areas will be transferred by the Town to Parcels C, D and E so that the Land may be developed with increased densities;
- (iii) The Town Agreement that the remaining .72 acres from Parcel F (after one acre becomes part of the expanded The Dell park area) which includes the .42 acres shown as Street C which will not be needed, and shall merge into Parcel E giving Parcel E 2.42 acres for development;
- (iv) The Town agrees to fund all public infrastructure and improvements to the Spring Park and The Dell Park Areas;
- (v) The Town agrees that the Park Areas can be used for underground and/or above-ground (if attractively designed as a feature and amenity of the Park Areas) stormwater management for the Land development.
- (vi) The Town agrees to fund all public road improvements adjacent to parcels C, D and E, in exchange for the Agreement of Buyer to fund the sidewalks, bike paths and streetscape landscaping along such roadways.

Upon the Town's written agreement to conditions (i) through (vi), above, the Buyer will agree to dedicate the Park Areas to the public for use as Town park, recreational and open spaces in the areas shown on the Master Plan. In exchange for the foregoing, the Seller agrees that it will dedicate to the Town, at no cost to the Town, the rights of way for New Church Street, Miller Avenue extended from New Church Street to Clay Street and Streets A and B (if it is determined in the rezoning of the Property that Streets A and B shall be built as public streets) as shown on the Master Plan. Should the Town not agree to the conditions set forth in this paragraph, Buyer shall only be obligated to Close on the Land, and shall have no obligation to purchase the Park Areas.

In the event any of the conditions precedent to Closing have not been satisfied or waived as of the First Closing Date, this Agreement shall be terminated whereupon the Escrow Funds shall be immediately paid to Buyer.

7. Seller's Representations. Seller represents and warrants to Buyer that as of the date of this Agreement and as of Closing that:

(a) Seller owns, or will own as provided in this Agreement, good and marketable fee simple title to the Property, free and clear of all easements, restrictions, conditions, covenants, reservations, liens, encroachments, tenancies, leases, parties in possession, and other encumbrances other than Permitted Exceptions. There are no unrecorded interests in or restrictions, conditions, easements or covenants on the Property of any kind which are not Permitted Exceptions.

(b) There is no pending nor, to the best of Seller's knowledge, any threatened litigation, administrative proceeding, action or claim affecting the Property, including, but not limited to a proposed zoning change other than the proposed zoning change by Seller and Buyer pursuant to Section 5(e).

(c) To the best of Seller's knowledge, the Property is in compliance with all applicable environmental, health and safety, building codes, zoning and land use laws and all other local, state or federal laws and regulations.

(d) To the best of Seller's knowledge, the Property does not contain any hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic air pollutants or toxic pollutants (as such terms are used under local, state or federal laws and regulations including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2801 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), and the Clean Water Act (33 U.S.C. §§ 1251 et seq.); or in any amendments thereto or any regulations promulgated pursuant thereto and herein referred to as "Hazardous Substances"). To the best of Seller's knowledge, the Property is not subject to liability under federal, state or local laws or regulations because of the presence of stored (except regulations regarding petroleum products stored in above ground storage tanks), leaked, spilled or disposed petroleum products, waste materials or debris, "PCB's" or PCB items (as defined in 40 C.F.R. § 761.3), underground storage tanks, asbestos or the past or present accumulation, treatment, storage, disposal, spillage or leakage of any Hazardous Substances.

(e) Public water, storm and sanitary sewers, electricity, telephone, natural gas and other utilities are available in necessary capacity for the proposed use and development at standard rates with standard tap on or connection fees to service the Property through publicly dedicated lines and facilities located at the lot lines of the Property without the utilization of any private easements. Buyer shall make this determination during the Due Diligence Period.

(f) Seller is not subject to any agreement, legal actions, judgments, decrees, understandings or interests that would limit or restrict Seller's right to execute and deliver this Agreement and to carry out the transactions contemplated hereby. Except as otherwise provided for herein, there are no lease provisions, service contracts, management agreements or other agreements which are in force and will survive Closing and which relate to the operation, management or maintenance of the Property.

(g) Seller has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action and this Agreement constitutes a valid and legally binding agreement enforceable against Seller in accordance with its terms.

8. Buyer's Representations. Buyer represents and warrants to Seller that as of the date of this Agreement and as of Closing that Buyer is an entity, duly organized, validly existing and is in good standing under the laws of the Commonwealth of Virginia and has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action and this Agreement constitutes a valid and legally binding agreement enforceable against Buyer in accordance with its terms.

9. No Waste. Seller shall commit no waste upon the Property, and Seller shall maintain the Property in good condition.

10. Risk of Loss. Risk of loss shall remain with Seller until Closing. If, prior to Closing, the Land shall be damaged by casualty, and unless Seller elects, at Seller's option, to repair such damage to Buyer's satisfaction prior to Closing, this Agreement shall be terminated whereupon the Escrow Funds shall be immediately paid to Buyer. If, prior to Closing, any of the improvements shall be destroyed or damaged by fire or other casualty, Seller shall remove, at their sole expense, such destroyed or damaged improvements prior to Closing.

11. Removal of Current Improvements and Structures. Prior to the end of the Due Diligence Period and at its sole expense, Seller agrees to remove all improvements and structures currently located on the Property (excepting only any improvement, structure, utility, or other similar item which Buyer requests in writing be retained). In the event that Seller fails to fulfill its obligations under this Section 11 prior to the end of the Due Diligence Period, the Buyer, at

its option may (i) proceed to Closing, in which event the Purchase Price shall be reduced by the amount of the cost to Buyer of removing such improvements and structures, if such amounts are paid by Buyer prior to Closing, or (ii) terminate this Agreement whereupon the Escrow Funds shall be paid to Buyer and the parties hereto shall have no further obligations hereunder.

12. Broker's Commission. Seller and Buyer each represent to the other that no broker's or real estate commissions are or shall be due in respect of this transaction by reason of this Agreement or any agreement made or which may be alleged to have been made by either party.

13. Default and Liquidated Damages. In the event Buyer defaults under the terms and conditions of this Agreement, the Escrow Funds shall be paid to Seller by the Escrow Agent as liquidated damages in full settlement of any claims, whereupon Buyer and Seller shall be relieved of all obligations under this Agreement. The parties hereto acknowledge that Seller's damages upon default would be difficult to determine with particularity and that said sum is a reasonable estimation of Seller's damages. The receipt of said payment shall be Seller's sole and exclusive remedy for a breach hereunder and Seller specifically waives any right to seek specific performance of this Agreement or the recovery of any consequential damages. In the event Seller defaults under the terms and conditions of this Agreement, the Escrow Agent shall promptly return the Escrow Funds to Buyer and Buyer, except as otherwise expressly provided herein to the contrary, shall have any other remedy against Seller available in law or equity including specific performance. In the event either Seller or Buyer becomes entitled to the Escrow Funds upon cancellation of this Agreement in accordance with its terms, Seller and Buyer agree to deliver a letter of instruction to the Escrow Agent directing disbursement of the Escrow Funds to the party entitled thereto. In the event either party fails or refuses to sign or deliver such an instruction letter when the other party is entitled to disbursement of the Escrow Funds, such party shall pay, upon final order of a court of competent jurisdiction, all expenses, including reasonable attorney's fees, actually incurred and paid by the party so entitled to the Escrow Funds.

14. Notices. All notices, requests, demands or other communications required or given in connection with this Agreement shall be in writing and may be delivered in person, by overnight delivery by a nationally recognized overnight delivery company or mailed in the U.S. Mail, postage pre-paid, certified mail, return receipt requested. Any notice, request, demand or other communication shall be effective three (3) days after deposit in the U.S. Mail, one (1) day after deposit with the overnight delivery company, and upon delivery if delivered in person. The addresses to be used in connection with such correspondence are as set forth below, or such other address as a party shall from time to time direct by notice in the manner permitted by this Section, ten (10) days prior to the effective date of such change:

if to Seller: Montgomery County Economic Development Authority
755 Roanoke Street, Suite 2H
Christiansburg, Virginia 24073-3184
Attn: Brian Hamilton

if to Buyer: Fiddler's Green Partners, LLC
P.O. Box 10397
Blacksburg, VA 24060

with a copy to:
LeClairRyan
1715 Pratt Drive, Suite 2700
Blacksburg, Virginia 24060
Attn: James K. Cowan, Jr., Esq.

15. Miscellaneous.

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective executors, administrators, heirs, successors-in-title, successors and assigns. Seller shall have the right to assign this Agreement only with Buyer's consent.

(b) This Agreement constitutes the entire agreement of the parties hereto regarding the purchase and sale of the Property and supersedes any prior oral or written agreements between the parties with respect to the transaction contemplated by this Agreement. No representations, inducements, promises or agreements, oral or written, between the parties not embodied herein shall be of any force or effect.

(c) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

(d) No waiver shall be enforceable unless in writing and no waiver of a breach of any covenant or default shall be construed to be a waiver of any succeeding breach of the same covenant or default. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that right or any other right, unless otherwise expressly provided.

(e) No amendment to this Agreement shall be binding on any of the parties to this Agreement unless such amendment is in writing and such amendment is executed by all of the parties. If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

(f) Time is of the essence with respect to the parties' rights and obligations under this Agreement.

(g) All representations, warranties, covenants and agreements contained in this Agreement shall survive Closing and execution and delivery of the Deed and shall not be merged therein.

(h) The headings throughout this Agreement are for convenience and reference only, and they shall not define, limit, modify or add to the interpretation or meaning of any provision of this Agreement or in any way affect the scope, intent or effect of this Agreement.

(i) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

(j) Seller and Buyer shall execute such additional documentation as reasonably may be required to effectuate this Agreement. Upon Buyer's request, Buyer and Seller shall execute a memorandum of this Agreement in recordable form satisfactory to Buyer, which memorandum shall, at Buyer's option and expense, be recorded.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed effective as of the date first written above.

SELLER:

MONTGOMERY COUNTY ECONOMIC DEVELOPMENT AUTHORITY

By: Todd M. Murray
Name: TODD M. MURRAY
Title: Chairman
Date: 10/14/10

BUYER:

FIDDLER'S GREEN PARTNERS, LLC

By: Jeanne Stasser
Name: JEANNE STASSER
Title: Managing Member
Date: 10-13-11

The undersigned confirms the receipt of \$25,000 delivered into escrow pursuant to Section 2 of this Agreement and its agreement to serve as Escrow Agent. For purposes of Section 2, Escrow Agent enters into this Agreement.

ESCROW AGENT:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____
Date: _____

Frank T. McCormick
Senior Vice President / Regional Manager