THIS REAL ESTATE PURCHASE AND OPTION AGREEMENT (the "**Agreement**") is made and entered into this ___ day of April, 2016, by and between **THE COUNTY OF MONTGOMERY, VIRGINIA**, hereinafter referred to as the "County", Grantor; and **FIDDLER'S GREEN PARTNERS, LLC**, hereinafter referred to as the "Purchaser", Grantee.

W I T N E S S E T H:

WHEREAS, the County owns the property identified as the Old Blacksburg Middle School ("**OBMS**"), Tax Map 25-A 94, Parcel ID# 070657, consisting of approximately 19.9 acres, with approximately Five Hundred (500) feet of road frontage on South Main Street in the Town of Blacksburg, Virginia, County of Montgomery, Virginia (the "**Property**"); and

WHEREAS, the County hereby agrees to subdivide the Property creating two parcels, a 14-acre parcel, more or less, on the rear portion of the Property (the "**Back Parcel**"), and a 5.9-acre parcel, more or less, on the front portion of the property adjoining South Main Street (the "**Front Parcel**"), with both parcels to be more specifically defined upon completion of the Subdivision Plat (as hereinafter defined); and

WHEREAS, the Purchaser desires to purchase and the County desires to sell the Back Parcel subject to the terms, covenants, conditions and restrictions contained in this Agreement: and

WHEREAS, the Purchaser desires to obtain an Option to Purchase and the County desires to provide Purchaser an Option to Purchase the Front Parcel subject to the terms, covenants, conditions, and restrictions contained in this Agreement; and

WHEREAS, the Board of Supervisors of the County of Montgomery, Virginia approved a Resolution on _____, agreeing to the terms of this Real Estate Purchase and Option Agreement, authorizing the Chairman of the Board of Supervisors to execute this Agreement and authorized the scheduling of a public hearing to be held on _____, in order to hear citizen comments on the Board's intention to convey this Property to the Purchaser.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the County and the Purchaser hereby agree as follows:

Section 1. <u>SALE AND PURCHASE</u>. In consideration of the Purchase Price (as hereinafter defined) and upon the terms and conditions hereinafter set forth, the County shall sell to Purchaser and Purchaser shall purchase from County the Back Parcel portion of the Property described as follows:

> All that certain tract or parcel of land, including all improvements, structures, and fixtures, owned by County, lying and being situated in the Town of Blacksburg, Virginia, Mount Tabor Magisterial District, County of Montgomery, Virginia, being the Fourteen (14) acre Back Parcel, more or less, located on the rear portion of the Property that will be more specifically defined upon completion of the Subdivision Plat as provided in Section 5 of this Agreement.

Section 2. PURCHASE PRICE AND EARNEST MONEY.

2.1 The purchase price (the "**Purchase Price**") for the Back Parcel shall be One Million, Seven Hundred Fifty Thousand and 00/100 Dollars ($1,750,000.00), and shall be payable in the manner set forth in this Agreement.

2.2. Within five (5) business days following the effective date of this Agreement, the Purchaser shall deposit earnest money (the "**Earnest Money**") in the amount of Fifty Thousand and 00/100 Dollars ($50,000) with the County of Montgomery, Virginia, 755 Roanoke Street, Ste. 2F, Christiansburg, Virginia. All of the Earnest Money shall be applied at Closing (as hereinafter defined) in the manner provided in this Agreement. All of the Earnest Money deposited with the County shall be placed in a non-interest bearing account. The parties acknowledge that Fidelity National Title Insurance Company (the "**Title Company**") is currently holding in escrow Fifty Thousand and 00/100 Dollars ($50,000), as earnest money for that Purchase and Sale Agreement, dated September 12, 2011, by and between the Montgomery County Economic Development Authority and Purchaser, and that such funds may be designated by Purchaser in writing as the Earnest Money for this Agreement and shall thereafter satisfy this provision and be governed by the terms of this Section 2.

2.3 The Earnest Money shall be held in escrow by the County and/or the Title Company until:

a) credited towards the Purchase Price at Closing;
b) paid to the County or returned to the Purchaser as provided by the terms of this Agreement;
c) all parties have agreed in writing as to its disposition; or
d) a court of competent jurisdiction orders disbursement and all appeal periods have expired.

Section 3. PAYMENT OF PURCHASE PRICE.

3.1 A cash payment at Closing in the amount of One Million Five Hundred Thousand and 00/100 ($1,500,000) payable by cashier's check, wire transfer or other funds acceptable to the County for immediate disbursement to the County or as the County directs at Closing (the "**Cash Purchase Price**"), less any prorations for Apportioned Items (as hereinafter defined) to be credited to Purchaser, plus any prorations for Apportioned Items to be credited to the County. The remaining Purchase Price ("**Deferred Purchase Price**") in the amount of Two Hundred, Fifty Thousand and 00/100 Dollars ($250,000) shall be due and payable by Purchaser to the County within one year of the Closing.

3.2 The Deferred Purchase Price associated with the acquisition of the Back Parcel ($250,000.00) shall be evidenced by a non-negotiable, non-interest bearing Note made by Purchaser (the "**Note**"), payable within one year of closing. The Note shall be secured by a Letter of Credit ("**Letter of Credit**") provided by the Purchaser in the amount of $250,000.00, drawn on a bank with a branch in the New River Valley. The Letter of Credit shall be in a form acceptable to the County guaranteeing that the County may use the funds from the Letter of Credit if Purchaser does not pay the Deferred Purchase Price within one year of Closing.

3.3 All of the Earnest Money shall be applied at Closing to the cash due on such date in accordance with the Agreement.

Section 4. <u>CLOSING</u>. Subject to the satisfaction or waiver of all conditions precedent to closing, the closing of the transactions contemplated herein (the "**Closing**") shall be as follows:

4.1 The Closing shall be held at the offices of the Montgomery County Attorney, at 755 Roanoke Street, Ste. 2F, Christiansburg, Virginia 24073.

4.2 The Closing shall be held no later than thirty (30) days after the County is advised of the Town of Blacksburg's approval of the Subdivision Plat for recordation creating the two parcels, or at a date as mutually agreed by the parties ("**Closing Date**").

4.3 The County shall cause to be delivered at Closing to the Purchaser the items, documents and instruments specified herein (the "**Closing Documents**") in form acceptable to Purchaser, each being duly executed/acknowledged and in recordable form where required:

a) A Special Warranty Deed (the "**Deed**") executed by the County and dated as of the Closing Date, conveying good marketable and insurable fee simple title to the Back Parcel free from all liens, encumbrances, survey defects, restrictions, claims, rights-of-way, and other matters, excepting only the Permitted Exceptions (as hereinafter defined) in favor of Purchaser.
b) Evidence acceptable to Purchaser, Purchaser's attorney and/or Title Company selected by Purchaser to issue a title policy attendant with this transaction authorizing the consummation by the County of the purchase transaction contemplated hereby and the execution and delivery of the Closing Documents on behalf of the County.
c) Current tax statements and, to the extent available, tax certificates from previous years.
d) A closing settlement statement (the "**Closing Statement**") making such prorations and adjustments as required under this Agreement.
e) A Foreign Investment in Real Property Tax Act ("**FIRPTA**") affidavit executed by the County stating that the County is not a "Foreign Person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.
f) An affidavit containing all matters required by the Title Company to issue title insurance on the Property in favor of Purchaser or Purchaser's lender or Purchaser's attorney without exception for mechanic's liens and rights of third parties to possession and such other documents as shall be required of the County by the title insurance company as a condition to insuring the Purchaser title or such lender's lien, free of exceptions other than Permitted Exceptions.
g) A statement from the County certifying that all representations and warranties of the County contained in this Agreement are true and correct as of the Closing.

h) 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**").
i) The Subdivision Plat as defined in this Agreement.

4.4 At Closing, Purchaser or its permitted assignee, shall cause to be delivered to the County:

a) The Cash Purchase Price, less the Earnest Money already deposited with the County, and such credits to which Purchaser is entitled pursuant to this Agreement and the Closing Statement.
b) The Note and the Letter of Credit.
c) The Purchase Agreement Termination Letter (as hereinafter defined).
d) Such other documents, affidavits and instruments as requested by the County, or Title Company to affect the purchase as herein intended and the issuance of an owner's title policy, including the Closing Statement.

4.5 Upon the completion of all the documentation specified in this Agreement, the County shall be authorized to simultaneously cause the appropriate Closing Documents to be immediately recorded in the public records of the County and accept the balance of the proceeds from the sale, as applied at the Closing, after deducting all of the County's expenses provided herein.

4.6 Not less than five (5) days prior to Closing, the County shall furnish to Purchaser for its review and approval copies of the proposed Deed, authorizing resolutions, FIRPTA affidavit, Closing Statement, all documents reasonably necessary to satisfy the requirements of the title company and such other documents and instruments necessary to close the transaction as herein intended or as may otherwise be reasonably requested by the Purchaser.

4.7 Ad valorem taxes and general and special assessments ("**Apportioned Items**") shall be prorated between the County and Purchaser as of the Closing Date based upon the best available estimates of the amount of the sums which will be due and payable on the Back Parcel for the year of the Closing. As soon as the actual amount of taxes and assessments are determined, the County and Purchaser shall readjust the amount of taxes and assessments paid or to be paid by each party.

4.8 The County agrees to pay for: (1) the cost of the Subdivision Plat necessary to subdivide the Property to create two (2) separate parcels, the Back Parcel and Front Parcel, and the cost of recording such Subdivision Plat; (2) all roll-back taxes, if any; (3) the expense of preparing the Deed; (4) the Grantor recordation tax, if any; (5) the expense of preparing or obtaining the statements, certificate and affidavits required of the County by this Agreement; (6) all charges for utilities furnished to the relevant portions of the Property prior to the date of Closing; (7) 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 the County elects to cure any title objections unacceptable to Purchaser; (8) all costs incurred to remove any liens; and (9) all transfer taxes and documentary stamp taxes applicable to Grantor, if any.

4.9 Purchaser agrees to pay the costs of (1) title examination and title insurance premiums; (2) the cost of providing a Letter of Credit as required by this Agreement; (3) the cost of preparation of the Note as required by this Agreement; (4) Clerk's fees and Grantee's taxes for the recordation of the Deed; and (5) any tests, inspection or other costs undertaken by the Purchaser in inspecting the Property.

4.10 Except as otherwise provided herein, all other fees and closing costs shall be allocated to and paid by the County and Purchaser pursuant to customs for similar transactions in Montgomery County, Virginia, at or before the date of closing. Each party shall pay its own attorney's fees, broker or real estate agent fees and other expenses (expenses other than those specifically described above) that it may incur in connection with the transaction contemplated hereby.

Section 5. <u>CONDITIONS PRECEDENT TO CLOSING</u>.

5.1 At Closing, the County shall convey to Purchaser good and marketable fee simple title to the Back Parcel by Deed of Special Warranty, free of all liens, defects, tenancies, encumbrances and encroachments, except as otherwise indicated herein and subject only to such restrictions and easements as shall then be of record which do not affect the use of the Back Parcel for Purchaser's intended use or render the title unmarketable. If a defect is found which can be remedied by legal action or other action within a reasonable time, the County shall, at the County's expense, promptly take such action as is necessary to cure the defect. The County shall take such action (including legal action) within sixty (60) days from the Purchaser's notice of default, such notice to be given no later than ten (10) days prior to closing ("**Cure Period**"), within which to satisfy the Purchaser's objections and cure any and all defects. In the event the County shall be unable to satisfy the Purchaser's objections within the Cure Period, the Purchaser shall have the right, exercisable at any time prior to Closing to either (a) extend the County's time period for curing objections and defects or (b) waive the Purchaser's objection and purchase the Property subject to such defects, in which event the defects and subject matter of such unwaived objections shall become permitted exceptions ("**Permitted Exceptions**") and the County shall convey the Property to the Purchaser subject to the Permitted Exception(s) or (c) terminate this Agreement prior to Closing, in which event the Earnest Money shall be returned to the Purchaser and neither party shall have any further rights, duties or obligations hereunder. In addition to the Purchaser's objections, the County shall be obligated to discharge at Closing, at the County's sole cost and expense, any title exceptions that represent liens securing the payment of any monetary amounts.

5.2 Prior to Closing, the County shall secure, at its sole cost and expense, and shall provide to Purchaser, a recordable Plat of Subdivision of the Property (the "**Subdivision Plat**") creating two parcels, the Back Parcel containing 14 acres, more or less, located on the rear portion of the Property and the Front Parcel containing a 5.9 acre parcel, more or less, located on the front portion of the Property adjoining South Main Street. The Subdivision Plat shall be prepared by a certified land surveyor in form and content acceptable to both the County and Purchaser and shall be approved by the Town of Blacksburg, Virginia for recordation.

5.3 In the event that the conditions or items set forth in this Section 5 are not satisfied or waived by Purchaser, in either event as determined in Purchaser's

sole discretion, Purchaser may terminate this Agreement by giving notice of the failure of a condition or item and notice of such termination to County on or before the Closing whereupon the Earnest Money shall be immediately paid to Purchaser. In the event that Purchaser does not notify the County of the failure of a condition or item on or before the Closing, all conditions and items set forth in this Section shall be deemed satisfied.

Section 6. REPRESENTATIONS AND WARRANTIES.

6.1 In addition to the representations and warranties expressly contained elsewhere in this Agreement, the County makes the following representations, warranties and covenants as of the date hereof and as of the Closing Date, and the truth of which shall be a condition precedent to Purchaser's obligation to close the transaction contemplated herein:

a) County has no knowledge of any restrictions, easements, limitations or conditions of any sort whatsoever affecting the use of the Property other than zoning or building regulations affecting the Property and the Permitted Exceptions.
b) County has no knowledge of any pending improvement liens or special assessments to be made against the Property by any governmental authority.
c) There are no leases, oral or written, which in any way bind County or the Property.
d) County has no knowledge of any fact or condition existing which would result or could result in the termination or reduction of the current access from the Property to existing thoroughfares, or of any reduction in or to water, sewer or other utility services presently serving the Property, other than those matters shown on the Commitment.
e) County has no knowledge of whether any and all of the utilities (including but not limited to, water, storm and sanitary sewer, gas, electricity and telephone facilities) are available on the Property in sufficient quantities to adequately service the proposed use by the Purchaser. County further has no knowledge of any contingent liabilities, costs, expenses or outstanding assessments, including, without limitation, "tap-in fees", "impact fees" or "wetlands or environmental assessment fees" which may be incurred by Purchaser as a condition to the use or enjoyment of the Property.
f) There are no unpaid bills or claims in connection with the construction of or any repairs to the Property nor shall there be on the Closing Date; that no work or services have been performed to or on the Property which could give rise to the creation of any mechanic's, materialman's or similar lien.
g) There are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy pending against, contemplated by or threatened against County or the Property.

h) There exists no pending action, suit or proceeding (or threat thereof) against County or with respect to the Property, which could in any manner inhibit the transactions contemplated in this Agreement or otherwise have an adverse impact on the Property.

i) Neither the execution and delivery of this Agreement by County nor County's performance of its obligations hereunder will result in a violation or breach of any term or provision or constitute a default or accelerate the performance required under any other agreement or document to which County is a party or under which it is otherwise bound or to which the Property, or any part thereof, is subject, and will not constitute a violation of any law, ruling, regulation or order to which County or the Property is subject.

j) As of the Closing Date, Purchaser will not be obligated under any employment, maintenance, management or service contract pertaining to the Property except as may be expressly assumed in writing by Purchaser at or prior to Closing.

k) As of the Closing Date, there shall be no leasing commissions, locator's or finder's fees due in connection with the Property.

l) The terms "hazardous waste," "hazardous substance, “disposal," "release" and "threatened release" as used in this Agreement, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et. seq. ("CERCLA"), theSuperfund Amendments and Reauthorization Act of 1986, Pub.L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et. seq., The Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq., or other applicable local, state or Federal environmental, health or safety laws, rules or regulations adopted pursuant to any of the foregoing or otherwise enacted ("Environmental Laws"). County represents and warrants that: (a) with respect to the Property, County has no knowledge of the existence of (i) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by County or any prior owners or occupants of the Property, (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; (iii) any buried tanks, drums and other containers now or previously having been located upon the Property; (iv) any electrical transformers or other equipment of any type or nature located upon the Property containing PCB's; (v) any matter that would cause the Property to constitute the location or source of environmental contamination; or (vi) any distilled hydrocarbons or perc on or under the Land, except in trace amounts; and (b) County has no knowledge of any other environmental conditions with respect to the Property which now or in the future may require remediation save and except the presence of asbestos.

m) County has obtained all necessary consents and permissions related to the transaction herein contemplated and required under any covenant, agreement, encumbrance, law or regulation.
n) The party or parties executing this Agreement on behalf of County have been duly authorized and are empowered to bind County to this Agreement.
o) No person, firm, corporation or other entity has any right or option to acquire the Property, or any part thereof, from County other than Purchaser.

6.2 With respect to the representations and warranties set forth in Section 6.1, immediately upon discovery of any breach or inaccuracy with respect thereto or discovery of facts or circumstances which would make the representations untrue as of Closing, County shall advise Purchaser of such breach or inaccuracy in such representations or warranties for purposes of its representation and warranty of the same as of the Closing Date. The truth and accuracy of the statements set forth in the above representations and warranties are a condition precedent to Purchaser's obligation to close this transaction. From and after the date hereof, and until the Closing or earlier termination of this Agreement, County shall not take any action, or omit to taking any action, which action or omission would have the effect of materially violating any of the representations and warranties of County contained in this Agreement.

6.3 Purchaser represents and warrants to County that as of the date of this Agreement and as of Closing that Purchaser 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 Purchaser in accordance with its terms.

Section 7. SURVIVAL. All warranties, representations, covenants, obligations and agreements contained in this Agreement shall survive the execution and delivery of the Deed and shall expressly survive the Closing.

Section 8. POSSESSION. Purchaser shall be entitled to full possession of the Back Parcel at Closing, subject only to the Permitted Exceptions.

Section 9. PRORATIONS AND ADJUSTMENTS. The following items shall be prorated and adjusted between Purchaser and the County at the Closing or otherwise:

9.1 Prior to the Closing, County shall provide to Purchaser such information and verification reasonably necessary to support the prorations and adjustments under this Agreement. The items to be prorated pursuant to this Agreement shall be prorated between County and Purchaser based on the actual number of days in the applicable period, as of the close of the day immediately preceding the Closing Date, the Closing Date being a day of income and expense to Purchaser.

9.2 All taxes and assessments (including, without limitation, any assessments imposed by private covenant) levied against the Back Parcel (whether or not yet due and payable) on or before the date of Closing shall be paid in full by County on or before Closing. Purchaser shall receive a credit for any accrued but unpaid taxes and assessments (including, without limitation, any assessments imposed by private covenant) attributable to any period before the Closing Date. If the amount of any such taxes or assessments has not been determined as of the Closing, such credit shall equal 110% of the most recent available bill therefore. Such taxes and assessments shall be reprorated within ninety (90) days after the issuance of the applicable final bill therefore. In the event there exists any so-called "greenbelt," "roll-back" or other deferred taxes the payment of which are retroactive to the period of County's ownership of the Back Parcel and properly attributable to County, such retroactive taxes shall be the obligation of County.

9.3 In the event that final bills are not available or cannot be issued prior to Closing for any item being prorated under this Agreement, then Purchaser and County agree to reprorate such items as soon as such bills are available, final adjustment to be made as soon as reasonably possible after Closing. This Section and any other reproration or payment obligation set forth in this Section shall survive Closing.

Section 10. COMMISSIONS. Purchaser and County hereby represent and warrant to each other that it, its officers, employees and agents have not dealt with any broker, in connection with the purchase and sale of the Back Parcel or Front Parcel contemplated herein, nor contracted for real estate commissions or similar fees in connection therewith, nor has either party acted in a manner so as to give rise to a claim for real estate commissions or similar fees. The provisions of this Section shall survive Closing.

Section 11. FIDDLERS GREEN PURCHASE AND SALE AGREEMENT WITH EDA. The Purchaser agrees to deliver, simultaneously with Closing on the Back Parcel, to the Montgomery County Economic Development Authority, a written notice terminating the Purchase and Sale Agreement, dated September 12, 2011, by and between the Montgomery County Economic Development Authority and Fiddlers Green Partners, LLC, with said termination to be effective the date of Closing (the "**Purchase Agreement Termination Letter**").

Section 12. TERMINATION AND REMEDIES.

12.1 In the event that any of the County's representations or warranties contained herein are untrue, or if County shall have failed to have performed any of the covenants and/or agreements contained herein which are to be performed by County, or if any of the conditions precedent to Purchaser's obligation to consummate the transaction contemplated hereby shall have failed to occur, Purchaser may, at its option, terminate this Agreement by giving written notice of termination to County and receive a full and immediate refund of any and all Earnest Money previously deposited. Notwithstanding anything to the contrary contained in this Section, County and Purchaser agree that this remedies provision is not intended to apply to any default or breach by County or Purchaser of any of its obligations that survive the Closing under this Agreement or under any instrument or document delivered by County or Purchaser at the Closing pursuant hereto or in connection herewith, or to any breach of a representation or warranty made under this Agreement that survives the Closing under this Agreement, it being understood and agreed that from and after the Closing Date, Purchaser and County shall have all rights and remedies at law

and in equity with respect to any such default or breach of obligations or any such breach of a representation or warranty.

12.2 If this Agreement is terminated by Purchaser pursuant to any provision of this Agreement authorizing such termination, Purchaser shall be entitled to the immediate refund of any and all Earnest Money previously deposited, and thereafter County and Purchaser shall have no further obligation or liabilities one to the other hereunder, except as in this Agreement so provided.

12.3 If County is not then in default in its obligations or agreements, and Purchaser has not terminated this Agreement pursuant to any of the provisions authorizing such termination, and Purchaser fails to close the transaction contemplated hereby, County shall be entitled to receive the Earnest Money as liquidated damages as County's sole and exclusive remedy for such failure, County hereby specifically waiving any and all rights which it may have to damages or specific performance as a result of Purchaser's default under this Agreement. County and Purchaser recognize and agree that such remedy providing for liquidated damages is not feasible.

Section 13. <u>RISK OF LOSS</u>.

13.1 Risk of loss until the Closing shall be borne by County. In the event that damage, loss or destruction of the Property or any part thereof, by fire or other casualty, occurs prior to the actual closing of the transaction contemplated hereby, Purchaser shall, at its option, exercised by notice to County within fifteen (15) days following the date that County has provided notice to Purchaser of such casualty, elect one of the following:

a) To terminate this Agreement and receive an immediate refund of all Earnest Money previously deposited; or
b) If County shall provide written notice to Purchaser that it will repair such casualty damage, to extend the Closing Date a reasonable time period, which time period shall not exceed sixty (60) days, in order to enable County to repair such damage to the Property, and in such event County shall promptly repair such damage and restore the Property to substantially the condition that existed prior to such casualty; or in the event County fails or refuses to repair such damage within the period specified herein, Purchaser shall have the option to either proceed with the Closing and receive a credit against the Purchase Price in the amount of such insurance proceeds not expended through the Closing Date in making such repairs together with any deductible amount applicable to such insurance coverage, or Purchaser may elect to terminate this Agreement and receive an immediate refund of all Earnest Money deposited hereunder; or
c) To close the transaction contemplated hereby and take an assignment of and receive in cash (or cashier's or certified check) all insurance proceeds payable as a result of such casualty loss, and receive a credit in the amount of any deductible applicable to such insurance coverage, or, if such proceeds are not made available by the holder or holders of

any indebtedness secured by liens against the Property, to receive a credit against the Purchase Price in the amount of such casualty loss together with any deductible amount applicable thereto.

13.2 In the event that, under this Section, the County is required to repair any damage whatsoever to the Property, County agrees that all such damage will be repaired so that the Property will be in a state of condition equal or greater to that as of the date hereof, but, in any event, in such manner as required by any applicable code, regulation or order applicable to the completion of such repairs.

13.3 County shall maintain the current insurance coverage in force for the Property in full force and effect through the Closing Date.

Section 14. <u>OPTION TO PURCHASE FRONT PARCEL</u>.

14.1 The County hereby grants to Purchaser the sole and exclusive option (the "**Option**"), subject to terms, covenants, conditions and restrictions contained in this Section, to Purchase the Front Parcel described as follows:

> All that certain tract or parcel of land, including all improvements, structures, and fixtures, owned by County, lying and being situated in the Town of Blacksburg, Virginia, Mount Tabor Magisterial District, County of Montgomery, Virginia, being the 5.9-acre Front Parcel, more or less, located on the front portion of the Property adjacent to South Main Street that will be more specifically defined upon completion of the Subdivision Plat as provided in Section 5 of this Agreement.

14.2 The Purchase Price should the Purchaser exercise the Option to Purchase the Front Parcel shall be Two Million, Five Hundred Thousand and 00/100 Dollars ($2,500,000), due at closing.

14.3 The exercise of the Option to Purchase the Front Parcel shall be made by Purchaser delivering written notice of the exercise of the Option to the County no later than one (1) year from the effective date of this Agreement, at such place as the County may designate in this Agreement for the delivery of notice. The Purchaser may request one six (6) month extension, the time period to be added to the end of the twelve (12) month option period, only if the Purchaser needs additional time to complete the rezoning process with the Town of Blacksburg, Virginia. The written notice exercising the Option shall be deemed to have been delivered to County upon delivery of written notice to the County's address listed in the Agreement by either certified mail, return receipt requested, by overnight mail service or by hand delivery. If the Purchaser does not exercise the Option to Purchase within one (1) year of the effective date of this Agreement or within the six (6) month extension period, if extended, the Option shall be considered null, void and of no effect, unless the parties otherwise agree in writing to extend the Option time.

14.4 In the event the Purchaser exercises this Option, the following provisions shall govern the settlement:

a) At closing, the County shall deliver to Purchaser a Special Warranty Deed conveying a good, marketable and insurable fee simple title to the Front Parcel, free of all liens, encumbrances and defects, and subject only to such restrictions, covenants and easements as shall now be of record which do not render the title unmarketable. If a defect is found which is of such character that it can be remediated by legal action or other means within sixty (60) days of written notice of such defect, the County shall, at the County's expense, promptly take such action as is necessary to cure the defect. If said defect cannot be cured within a reasonable time, the Purchaser shall have the option of terminating any agreement to purchase the Front Parcel.
b) At settlement, the County shall give and the Purchaser shall take possession of the Front Parcel "AS IS" at time of closing, free of all tenants and tenancies.
c) The risk of loss by fire or other casualty is assumed by County until settlement.
d) During the term(s) of this Option, the Purchaser and its agents, shall be afforded the opportunity to enter on to the Front Parcel and make any inspections, explorations, examinations, tests or investigations of the Front Parcel as Purchaser may deem prudent, all at the Purchaser's sole cost. The Purchaser covenants that it shall not commit waste nor otherwise damage the Property during its examination of the Front Parcel.
e) The Purchaser may, as agent of the County, seek during the term(s) of this Option to file a rezoning application with the Town of Blacksburg to rezone the Front Parcel to a more intensive commercial zoning for the Purchaser's intended use of the Front Parcel. The County agrees to cooperate with the Purchaser on any applications required to obtain the Purchaser's desired rezoning, but all costs of rezoning, engineering, studies and plat approval, shall be the Purchaser's sole responsibility. The County shall sign any applications for rezoning and/or Special Use Permits and such other documents as may be necessary for the Purchaser's successful rezoning of the Front Parcel.
f) The County hereby makes, and will make at the settlement of the Front Parcel, the same warranties and representations contained in Section 6 of this Agreement to this Closing as the County made on the Back Parcel Closing.
g) Settlement shall take place within thirty (30) days of the exercise of this Option by Purchaser, in the Office of the Montgomery County Attorney, 755 Roanoke Street, Christiansburg, VA 24073.
h) The County shall pay the expense of preparing the Special Warranty Deed and the recordation tax applicable to Grantors. Except as otherwise agreed herein, all other expenses incurred by Purchaser in connection with the settlement, including, but not limited to, the rezoning of the Front Parcel, title examination, insurance premiums, survey costs, engineering and study costs, recording costs applicable to

Grantee, loan fees, and the fees of Purchaser's attorney, broker or real estate agent shall be borne by Purchaser. All taxes and assessments shall be pro-rated between the parties as of the date of settlement.

i) The County agrees to exercise ordinary and reasonable care in the maintenance and upkeep of the Property, ordinary wear and tear excepted from the date of this Agreement to the date of settlement or the termination of the Option.

j) The Parties hereby represent to each other that no real estate agent or broker has been involved in this Option to Purchase and each agrees to hold the other harmless from any claim for a commission by reason of any action on their part.

k) The provisions contained in this Agreement shall not merge with the Deed conveying the Front Parcel, but shall survive the execution and delivery of the Deed.

14.5 Notice and other correspondence regarding this Option shall be delivered to the Parties at the addresses contained in the Notice provision under Section 15.1 of this Agreement.

Section 15. <u>NOTICES</u>.

15.1 Unless otherwise stated in this Agreement, 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 County: Montgomery County
755 Roanoke Street, Suite E
Christiansburg, Virginia 24073-3184
Attn: County Administrator

With a copy to:

Martin M. McMahon
Montgomery County Attorney
755 Roanoke Street, Suite F
Christiansburg, Virginia 24073-3184

if to Purchaser: Fiddlers Green Partners, LLC
P.O. Box 10397
Blacksburg, Virginia 24060
Attn: Jeanne Stosser, Managing Member

With a copy to:

James K. Cowan, Jr.
Cowan & Perry, PC
202 S. Main Street, Suite 202
Blacksburg, Virginia 24060

15.2 The addresses and addressees for the purpose of this article may be changed by either party by giving notice of such change to the other party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein shall be deemed to continue in effect for all purposes.

Section 16. MISCELLANEOUS.

16.1 In the event that, prior to the date of the Closing, County acquires knowledge of any pending or threatened claim, suit or proceeding to condemn or take all or a material part of the Property under the power of eminent domain, then County shall immediately give notice thereof to Purchaser, and Purchaser shall have the right to terminate its obligations under this Agreement by delivering notice thereof to County within thirty (30) days after receiving notice from County of such condemnation or taking, and thereupon all Earnest Money shall be refunded to Purchaser and the rights and obligations of the parties hereto shall cease. If Purchaser shall not elect to terminate this Agreement pursuant to this Section, the parties shall proceed with the Closing in accordance with the terms hereof without abatement of the Purchase Price, but all proceeds of any condemnation award shall be payable solely to Purchaser, and County shall have no interest therein.

16.2 This Agreement and the exhibits attached hereto contain the entire agreement between the parties, and no written or oral promise, representation, warranty or covenant not included in this Agreement or any such referenced agreements has been or is relied upon by either party.

16.3 Neither party has made any representations, warranties or covenants to the other concerning any tax benefits or tax treatment which may accrue to be given to the other party in connection with the transaction contemplated hereby. Each party has relied upon its own examination of the full Agreement and the provisions thereof, and the counsel of its own advisors, and the warranties, representations and covenants expressly contained in this Agreement itself.

16.4 No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by both Purchaser and County.

16.5 In the event that any litigation arises hereunder, it is specifically stipulated that this Agreement shall be interpreted and construed according to the laws of the state in which the Property is situated.

16.6 The prevailing party in any litigation between the parties arising under this Agreement shall be entitled to recover reasonable attorneys' fees.

16.7 This Agreement shall be executed in any number of counterparts which together shall constitute the agreement of the parties. The article headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

16.8 This Agreement, and the rights and obligations hereunder, may be assigned by Purchaser to:(i) an entity controlled by or under common control of Purchaser or any principal of Purchaser, or (ii) a subsidiary or an affiliate of Purchaser. In the event of any such assignment, such assignee shall assume the obligations of the original party designated as Purchaser hereunder and shall provide written evidence of such assumption to the County. Thereafter, the original Purchaser shall be released from its obligations hereunder. County expressly agrees to close the transaction contemplated hereunder with the permitted assignee of Purchaser. This Agreement may be assigned by County.

16.9 All references in this Agreement to the "Effective Date," "the date hereof," "the Effective Date of this Agreement" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Agreement. Unless otherwise provided, in computing any time period set forth in this Agreement, the day of the triggering act or event shall not be counted, and all subsequent days shall be counted; provided, however, that the last day of any such period shall not be included if it is a weekend day or a legal holiday, in which case such period shall be extended to the next day that is not a weekend day or legal holiday.

16.10 This Agreement and the terms and provisions hereof shall inure to the benefit and be binding upon the parties hereto and their respective heirs, executors, personal representatives, permitted successors and assigns whenever the context so requires or permits.

16.11 If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties hereto may still effectively realize the complete benefit of the transaction contemplated hereby.

16.12 Any references to one gender used herein, whether masculine, feminine or neuter, shall be deemed to be a reference to any other gender as may be appropriate under the circumstances; further, the singular shall include the plural and the plural the singular.

16.13 Time is of the essence with respect to all the time periods expressed in this Agreement.

16.14 At the request of either party, Purchaser and County agree to reasonably cooperate with the other in structuring and documenting the purchase and sale of the Property to effect a tax deferred exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code and its corresponding regulations. Such cooperation shall be at nominal cost to the other party. In no event shall such cooperation require a delay of the Closing or require Purchaser to take title to any property other than the Property.

16.15 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.

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

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WITNESS THE FOLLOWING SIGNATURES AND SEALS:

COUNTY OF MONTGOMERY, VIRGINIA

By:_____
Christopher A. Tuck, Chair

FIDDLER'S GREEN PARTNERS, LLC

By:_____
Jeanne H. Stosser, Managing Member

STATE OF VIRGINIA

COUNTY OF MONTGOMERY, to-wit:

The foregoing instrument bearing date of April __, 2016, was acknowledged before me this _____, day of _____, 2016, by Christopher A. Tuck, Chair of the Board of Supervisors of the County of Montgomery, Virginia, for and on behalf of the County of Montgomery, Virginia.

My commission expires:

Registration Number:

_____

Notary Public

STATE OF VIRGINIA

COUNTY OF MONTGOMERY, to-wit:

The foregoing instrument bearing date of April __, 2016, was acknowledged before me this _____, day of _____, 2016, by Jeanne H. Stosser, Managing Member, for and on behalf of Fiddler's Green Partners, LLC.

My commission expires:

Registration Number:

_____

Notary Public