

## EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the “Agreement”) is entered into on the 19<sup>th</sup> day of January, 2022 (the “Effective Date”), by and between the Town of Middletown, a Rhode Island municipal corporation with an address of 350 East main Road, Middletown, RI 02840 (the “Town”), and Middletown Commons Town Center, LLC, a Rhode Island limited liability company with an address of 351 West Main Road, Middletown, RI 02842 (the “Developer”). Town and Developer may also be referred to jointly as the “Parties.”

### RECITALS

WHEREAS, the Town is the owner of that certain property located at on West Main Road in Middletown, Rhode Island and identified as Lots 3, 4, 5, 6, & 7 on Middletown Tax Assessor’s Plat 102, consisting of approximately 15.27 acres of land, as more specifically described on Exhibit “A” attached hereto (the “Property”); and

WHEREAS, based on various planning studies, including a 2011 study by Vanasse Hangen Brustlin and a 2014 study by Matrix Design, and numerous community meetings, the Town has determined that the Property may be a suitable site for a mixed-use development; and

WHEREAS, on or about June 2, 2021, the Town issued a Request for Information (the “RFI”) to seek information from potential developers interested in a mixed development opportunity on the Property, and setting forth the Town’s development goals and potential uses; and

WHEREAS, the Developer submitted a response to the RFI (the “Proposal”), a copy of which is on file with the Town, which includes a proposed mixed-use with retail, restaurant and entertainment uses, multifamily housing rentals, including affordable units, a library and cultural center, and a hotel; and

WHEREAS, after scoring all of the proposals received in response to the RFI, the Town has selected the Developer as the entity with which to negotiate to seek to execute a mutually acceptable Lease Disposition and Development Agreement (“LDDA”) which will include, without limitation, terms and conditions on (i) an agreed vision for the development of the Property (the “Project”); (ii) a ground lease of the Property from the Town to the Developer (the “Ground Lease”); (iii) the Developer’s development of the Project on the Property; and (iv) use, occupancy and affordability restrictions that will apply to the Project; and

WHEREAS, the purpose of this Agreement is to establish procedures, standards and a schedule for non-binding negotiations between the Town and the Developer regarding the development of the Property, the LDDA and the Ground Lease. As more fully set forth in Section 3.1, the parties acknowledge and agree that this Agreement in itself does not grant the Developer the right to develop or lease the Property, nor does it require the Town lease or permit any development of the Property, nor does it obligate the Developer or the Town to any activities or costs to develop or lease the Property, other than the activities and costs necessary to

discharge the Developer's and the Town's obligations under this Agreement, including the obligation to negotiate in good faith as contemplated by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Developer hereby agree as follows:

## ARTICLE 1 EXCLUSIVE NEGOTIATIONS

Section 1.1 Good Faith Negotiations. The Town and the Developer agree for the Negotiation Period set forth in Section 1.2, to work cooperatively and in good faith to make a preliminary feasibility determination and, if the Project or any portion thereof is determined to be feasible and desirable by both Parties, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of an agreed vision for the development of the Property, a mutually satisfactory LDDA, including a Ground Lease in the manner set forth in this Agreement. The LDDA and Ground Lease shall contain terms acceptable to the Town and the Developer, in the respective exercise by each of its sole discretion. The LDDA shall include, without limitation, the conditions precedent to the Town and the Developer entering into the Ground Lease, physical and land title conditions of the Property at the conveyance of the leasehold interest, including environmental conditions, the proposed development schedule for the Project and other matters that may be identified by either party during the course of completing the negotiations of the LDDA. The Ground Lease shall include, without limitation, the term of the Ground Lease, the ground rent and any ongoing obligations with regards to the development and operation of the Property. The RFI and the Proposal shall serve as only as guides to the negotiation of the LDDA and the Ground Lease, and the parties recognize that review of additional information, input from the public and further discussion may lead to refinement and/or revision of the issues and concepts set forth in the RFI and the Proposal. Prior to the negotiation of the LDDA and the Ground Lease, the Town and the Developer shall negotiate a non-binding term sheet ("Term Sheet") setting forth the principal terms to be included in the LDDA and the Ground Lease as more fully described below. During the Negotiation Period, the Town will negotiate solely with the Developer with respect to lease and development of the Property.

Section 1.2 Negotiation Period. The negotiating period (the "Negotiation Period") shall commence on the Effective Date of this Agreement and shall expire ten (10) months thereafter. The Parties may agree to extend Negotiation Period for up to an additional ninety (90) days, if the Town determines that the Developer has met all of its obligations pursuant to this Agreement and that the Parties are making sufficient progress toward the negotiation of a mutually acceptable LDDA and Ground Lease. An extension shall be effective only if evidenced by an amendment executed by authorized representatives of the Town and the Developer. If a LDDA has not been executed by the Town and the Developer by the expiration of the Negotiating Period (as the Negotiating Period may be extended pursuant to this paragraph), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except that any provision of this Agreement that is expressly specified to survive termination shall remain in effect. If a LDDA is executed by the Town and the

Developer, then, upon execution of the LDDA, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed LDDA.

ARTICLE 2  
NEGOTIATION PROCESS AND RESPONSIBILITIES

Section 2.1 General Process.

(a) Negotiations. The initial negotiations hereunder shall generally be based on development concepts generally set forth in the RFI and the Proposal; however, the parties agree that said documents shall serve as only as guides to the negotiations, and that and the parties recognize that review of additional information, input from the public and further discussion may lead to refinement and/or revision of the issues and concepts set forth in the RFI and the Proposal. During the Negotiation Period, the Parties shall continue to develop the conceptual design and architecture of the Project, may continue to conduct marketing and feasibility analysis, and shall perform such other tasks as are reasonably necessary and appropriate to fulfill their obligations to negotiate in good faith with each other the Town toward a mutually acceptable Term Sheet and ultimately an LDDA and Ground Lease.

(b) Reports, Studies, and Related Documents. The parties shall provide each other with copies of summary reports, studies, analyses, and similar documents in draft form provided to them by their professional consultants, but excluding confidential or proprietary information and communications with their respective legal counsel, prepared or commissioned by the Parties with respect to this Agreement and the lease and development of the Property, promptly upon their completion. The Parties shall not be deemed to make any representation to each other regarding the accuracy, completeness, methodology or current status of any such reports, studies or analysis, nor shall they assume any liability with respect to any matter or information referred to or contained in such reports, nor shall they have any claim against each other or any consultant of either party arising out of the contents of such reports.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the Town will need sufficient, detailed information about the proposed lease and development of the Property (including, without limitation, financial information) to make informed decisions about the content and approval of the LDDA and Ground Lease. The Developer further acknowledges that the Town is subject to the Rhode Island Access to Public Records Act (the "Act"). The Act generally provides that written documents retained by the Town are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. The Developer acknowledges that the Town will make information regarding the Project, the Property, the Proposal and this Agreement available to the public upon request as required by the Act. However, in order to successfully negotiate the LDDA and the Ground Lease, the parties believe that there will be specific documents that may be sensitive or contain proprietary information that they will want to exchange in order to review and understand the transaction. To the extent consistent with the Act, the Town shall not disclose records that are specifically exempted from disclosure thereunder, including without limitation, documents listed in RIGL 38-2-2(4)(N), without the express consent of the Developer.

The Developer shall designate as “Confidential” any information which the Developer provides to the Town which the Developer desires to keep confidential and a statement as to why the request is consistent with the provisions of the Act; however, the Town shall not be bound by the Developer's designation of records as “Confidential” or the reasoning therefore provided by the Developer, if in its reasonable sole discretion, it believes that disclosure of the information, or any portion thereof, is required by the Act. If a request for disclosure of any information designated as “Confidential” by the Developer is made under the Act, the Town shall timely notify the Developer in writing of the request and whether the Town intends to disclose any or all of the information requested.

(c) Zoning Regulations. If the Project, as envisioned by the parties, would not be feasible under the Town's current zoning regulations, the parties shall cooperate in drafting proposed amendments to said regulations, including the possible creation of an overlay zoning district for the Property; provided however, that nothing in this Agreement shall require the Town to adopt or enact any such amendments, and the review and adoption of any amendments to the Town's zoning regulations shall be in compliance with all applicable notice and hearing requirements and with all other requirements of Rhode Island law, including without limitation, the requirement that any such amendment be consistent with the Town's Comprehensive Community Plan.

Section 2.2 Developer Due Diligence. During the Negotiation Period the Parties shall undertake such due diligence as is necessary to determine the suitability of the Property for the Project as set forth below and within the times set forth in the Performance Schedule attached as Exhibit “B”:

(a) Due Diligence. During the Negotiation Period and within the time set forth in the Performance Schedule, the Developer shall conduct due diligence activities it deems necessary to provide the Developer with sufficient information to determine the feasibility of developing a Project on the Property. The Developer's due diligence activities may include but are not limited to a physical survey of the Property and all buildings, facilities and infrastructure located on or about the Property. The Town shall provide the Developer all requested information regarding the Property in the Town's possession in a timely fashion. The Developer shall be responsible for the costs of all such studies, surveys and investigations.,

Developer acknowledges and recognizes that regardless of the results of Developer's investigations of the Property or the buildings and facilities located on the Property, the Property will be leased to the Developer “AS IS, WHERE IS, AND WITH ALL FAULTS.” This does not impact the Developer's rights to withdraw from the Project prior to the execution of the LDDA or Ground Lease commencing in the event of the discovery of a condition that makes the Project infeasible.

(b) Title Review. The Developer shall conduct a review of the title to the Property within thirty (30) days of the effective date of this Agreement and shall provide the Town with a Preliminary Title Report (the “Title Report”). If the Developer objects to any exception appearing on the Title Report or should any title exception arise after the date of the Title Report, the Developer shall notify the Town in writing within fifteen (15) days of receipt of the report. If

the Developer objects to any exception to title, the Town, within fifteen (15) days of receipt of the Developer's objection, shall notify the Developer in writing whether the Town elects to (i) cause the exception to be removed of record, (ii) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception, or (iii) terminate this Agreement unless the Developer elects to take title subject to such exception. If the Town fails to respond to the Developer, such failure shall constitute the Town's election to terminate this Agreement unless the Developer elects to take title subject to such exception. If the Town's elects not to remove any exception objected to by the Developer, the Developer may, within fifteen (15) days of receipt of the Town's notice, elect to terminate this Agreement. If any Party elects to terminate this Agreement pursuant to this Section 2.2(b), no Party shall thereafter have any obligations to or rights against the others hereunder. If the Developer fails to provide any notification to the Town regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this Section 2.2(b) shall be deemed satisfied, this Agreement shall continue in effect, and the condition of title at closing under any executed LDDA and Ground Lease shall be as set forth in the Title Report.

Section 2.3 Developer Obligations. During the Negotiation Period, the Parties shall be responsible for completing the following tasks within the time set forth in the Performance Schedule attached as Exhibit "B":

(a) Community Engagement Plan. In addition to attending and participating in public hearings conducted by the Town to solicit input from the public regarding the Project, the parties shall prepare a community engagement plan (the "Community Engagement Plan") within the time set forth in the Performance Schedule. The Community Engagement Plan shall include the Parties' proposed plan for conducting outreach to community groups and stakeholders in the vicinity of the Project to seek input from the public with respect to the Project and to educate the public with respect to the Project. The Community Engagement Plan shall include public workshops by the Planning Board and the Town Council following submission of the Master Plan referenced in Section 2.3 (c) of this Agreement. If the parties are unable to agree on the terms of a Community Engagement Plan within thirty (30) days of the date of this Agreement, the Town may, in its discretion, elect to terminate this Agreement.

(b) Financing Plan. Within the time set forth in the Performance Schedule, the Developer shall provide to the Town a preliminary detailed financial analysis of the Project (the "Financing Plan"). The Financial Plan shall be refined by the parties during the Negotiating Period, as appropriate, and will be used to evaluate the financial feasibility of the Project and to assist in the negotiations of terms regarding ground rent and payment of costs of land and development and site improvements. Any financial reports or feasibility studies will be general in nature and certified by experts in the field but will not be required to contain the Developer's proprietary information.

(c) Master Plan. Within the time set forth in the Performance Schedule, the Developer shall prepare and provide the Town with a proposed conceptual development plan for the Property (the "Master Plan"), that includes: (a) a detailed description of the proposed use of the Property, including the square footage of each type of use; (b) a proposed development phasing schedule; (c) details of the proposed affordable housing units and the nature of any affordability

controls; and, (d) a preliminary site plan, which shall include the general location of the proposed buildings, landscaping, the massing of the proposed buildings, roadways, parking and points of ingress and egress, and any other improvements to be constructed as part of the Project, and, (e) an updated analysis of the land use entitlements required for the entire Project. Workshops will be held by the Planning Board and the Town Council to solicit public comment on the Master Plan. If following said workshops and any revisions to the Master Plan resulting therefrom, the parties determine that the Project, as set forth therein, would not be feasible under the Town's current zoning regulations, the parties shall cooperate in drafting proposed amendments to said regulations, including the possible creation of an overlay zoning district for the Property accommodating the specific uses and dimensions proposed therein, as provided Section 2.1 (c) hereof. The proposed zoning amendments shall be referred to the Planning Board who shall make comment and recommendations relative to the proposed zoning change. Upon receipt of the Planning Board's recommendation, the Town Council shall hold public hearings on the proposed Zoning amendments.

(d) Entitlements. The Developer acknowledges that the Project will require discretionary approvals and entitlements from the Town, the state of Rhode Island and other entities. The Developer, at its sole cost, shall be responsible for obtaining all such land use entitlements and other governmental approvals or permits as may be necessary for the Developer's contemplated development on the Property. The Town shall cooperate with the Developer's efforts to obtain such entitlement by signing necessary applications or other consents to applications, provided however, the Town shall not be obligated to incur any costs associated with such cooperation. All such applications shall comply in all respects with the terms and conditions of the LDDA. The Developer shall not submit any applications for entitlements until the Developer and the Town have entered into the LDDA and the Town has approved the Project plans and application materials.

The Ground Lease shall be deemed effective only upon receipt of all required approvals and entitlements. In the event all required approvals and entitlements are not received, the obligations of the Town shall be stayed and the Developer shall have the opportunity to amend its Plan and resubmit for approval, or to terminate the Project with no obligation to proceed as party to the Ground Lease.

(e) Utilities. During the Negotiation Period, the Developer shall consult with the applicable utility companies to determine preliminarily if existing utility facilities require expansion, relocation or undergrounding in connection with the Project.

Section 2.4 Term Sheet. During the Negotiation Period and within the time set forth in the Performance Schedule, the Developer and the Town will negotiate the Term Sheet for the Project that is consistent with the Developer's Proposal as such Proposal is refined in accordance with this Agreement. The Term Sheet shall include the fundamental terms that will serve as a basis for the negotiation of the LDDA and the Ground Lease, including, but not limited to, the term of the Ground Lease, the proposed ground rent, the basic elements of the Project, the community benefits package to be included with the Project and a viable financial plan for the Project. Once the Developer and the Town staff have negotiated the Term Sheet, the Term Sheet shall be presented to the Town Council for its approval, which may approve or disapprove the

Term Sheet in its sole discretion. If the Town Council approves the Term Sheet it shall inform the negotiation of the LDDA and the Ground Lease. If the Town Council disapproves the Term Sheet, either Party may terminate this Agreement, in which event no Party shall thereafter have any obligations to or rights against the others hereunder, except for those provisions that survive termination.

Section 2.5 Right of Entry. During the Negotiation Period, the Town grants to the Developer and the Developer's agents the right to enter upon the Property, subject to the terms and conditions of this Section 2.5, for the sole and exclusive purpose of conducting studies and investigations that will assist the Developer in negotiating a LDDA and Ground Lease and performing its obligations hereunder. Such entry shall be made only during regular business hours and upon not less than two (2) business days' advance telephonic or email notice to Town Administrator Shawn J. Brown ("Town's Authorized Representative"). The Developer shall not interfere with any existing the Town operations or departments occupying the Property during any inspection or investigation of the Property and the Developer's access to certain portion of the existing buildings may be limited due to the current uses of the Property. The Developer shall be responsible for obtaining any permits necessary for any studies or investigations to be conducted. Prior to conducting any destructive testing or any environmental testing involving drilling or borings, the Developer shall provide the Town's Authorized Representative with written notification of the scope of such testing for the Town's Authorized Representative's approval in his reasonable discretion. The Developer shall bear all costs of such studies and investigations and shall be responsible for restoring the Property to its original condition after completion of such studies and investigations. The Developer shall be responsible for repairing any damage to the Property caused by such investigations

Prior to exercise of the right of entry granted in this Section 2.5, the Developer shall provide the Town with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies terminable only after ten (10) days' advance written notice to the Town, each policy to be in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage. Each insurance policy shall name the Town as an additional insured and shall contain a waiver of any right of subrogation against the Town.

The Developer shall protect, indemnify and defend (with counsel reasonably acceptable to the Town) and hold harmless the Town, and its respective board members, officers, employees, and agents (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges arising out of or in any way related to any entry by the Developer or the Developer's agents upon the Property, unless such matters arise from the sole and active negligence or willful misconduct of the Town or other Indemnified Party. The foregoing obligation of the Developer shall survive the expiration of this Agreement.

The provisions of this Section 2.5 to the contrary notwithstanding, the Developer shall not conduct any invasive investigation, inspection, or test on the Property without prior written

notice to the Town's Authorized Representative of the proposed investigation, study, inspection or test (including, with respect to any hazardous substances invasive testing, a written plan for such testing) and the Town's Authorized Representative's approval thereof, which will not be unreasonably withheld, conditioned or delayed and will be deemed given if the Town's Authorized Representative has not given its approval or reasonable disapproval in writing within ten (10) business days after receipt of the Developer's notice of the proposed investigation, study, inspection or test (and any required written plan). Additionally, the Developer shall provide to the Town for the Town's review and approval (which approval will not be unreasonably withheld, conditioned or delayed) copies of summary drafts of any reports prepared in connection with any such activities prior to the reports becoming final and submitted to third parties (including governmental agencies). The Town's failure to disapprove of any draft report within ten (10) business days of the Town's receipt will conclusively be deemed approval by the Town of the draft report in question.

Section 2.6 Grant Applications. The Parties agree to cooperate in seeking funding from available state and/or federal sources to pay for the costs of the planning, pre-development and due diligence activities contemplated by this Agreement, including without limitation, a Site Readiness Grant from the Rhode Island Commerce Corporation.

Section 2.7 Acquisition of Adjacent Parcel. The Parties agree that the feasibility of the Project and the ingress and egress to the Property would be enhanced by the Town's acquisition of that certain parcel of land containing approximately 58,375 square feet of area, which directly abuts Lot 6 on Middletown Tax Assessor's Plat 102 to the north and west, as shown on the Plan attached hereto as Exhibit "C" (the "Adjacent Parcel"). The Parties agree to cooperate in the Town's efforts to acquire the Adjacent Parcel.

Section 2.8 Town Cooperation. The Town shall reasonably cooperate in providing the Developer with information in the Town's possession relevant to development of the Property.

### ARTICLE 3 GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the Town or the Developer to enter into an LDDA or Ground Lease or to enter into any other agreement. By execution of this Agreement, the Town is not committing itself to or agreeing to undertake any disposition of the Property or any portion thereof. Execution of this Agreement by the Town is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Town action the final discretion and approval regarding the execution of an LDDA and Ground Lease and all proceedings and decisions in connection therewith. Any LDDA and Ground Lease resulting from negotiations pursuant to this Agreement shall become effective only if and after such LDDA and Ground Lease have been considered and approved by the Town Council following compliance with all applicable notice and hearing requirements and compliance with all other requirements of law. No agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into an LDDA or Ground Lease, nor shall any such documents, actions or communications constitute any oral or implied



agreement by either Party to enter into any other agreement. The Parties acknowledge that the final form of any agreement governing the development of the Property may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

Section 3.2 Further Approvals. The Developer expressly acknowledges that notwithstanding any agreement resulting from the negotiations contemplated hereby, the Project contained in such agreement may be subject to the receipt of additional state and/or local approvals related to, without limitation, zoning, development plan review, environmental regulations, drainage and traffic, and that if such approvals are not obtained, the proposed development of the Property may not proceed.

Section 3.3 Notices. Each notice, request, demand, instruction or other document required or permitted to be given hereunder ("Notice") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by depositing the same with the United States Postal Service, certified or registered mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth below and marked to the designated individual's attention. Each Notice shall be effective upon being so deposited, but the time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof. Rejection or other refusal by the addressee to accept or the inability of any messenger, courier or the United States Postal Service to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Either party shall have the right from time to time to change the address to which a Notice to it shall be sent to another address in the continental United States (but not a post office box) by giving Notice to the other party of the changed address at least ten (10) days prior to such changes.

If to the Town:           Shawn J. Brown, CPA, CFE  
Town Administrator  
Town of Middletown  
350 East Main Road  
Middletown, RI 02840

With copies to:           Ronald Wolanski, AICP  
Town Planner  
Town of Middletown  
350 East Main Road  
Middletown, RI 02840

Peter Brent Regan, Esq.  
Sayer Regan & Thayer, LLP  
130 Bellevue Avenue  
Newport, RI 02840

If to the Developer: Middletown Commons Town Center, LLC  
351 West Main Road  
Middletown, RI 02842

With a copy to: Girard Galvin, Esq.  
Galvin Law, Ltd.  
10A Washington Square  
Newport, RI 02840

Section 3.4 Real Estate Commissions. The Town shall not be liable for any real estate commissions or brokerage fees, which may arise under this Agreement. The Town represents that it has engaged no broker, agent or finder in connection with this transaction, and the parties each agree to indemnify, protect, defend, and hold harmless the other from any claim by any broker, agency or finder retained, or allegedly retained, by the indemnifying party.

Section 3.5 Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 3.6 Defaults and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. In addition, the failure of the of the Parties to meet any of the Performance Benchmarks by the date set forth in the Performance Schedule shall constitute a event of default. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten (10) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by either party, the nondefaulting party's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Parties indemnification obligations pursuant to Sections 2.5 and 3.4 shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

Section 3.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island.

Section 3.8 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the Town, which consent shall

not be unreasonably withheld, and any such attempted transfer or assignment without the prior written consent of the Town shall be void.

Section 3.9 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Town and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 3.10 Time. Time is of the essence of each and every provision of this Agreement in which time is a factor.

Section 3.11 No Agency, Joint Venture or Partnership. The Town and the Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Town and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Town and the Developer.

Section 3.12 Interpretation of Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, and agreements whether oral or written, except to the extent that the Proposal informs the negotiations contemplated in this Agreement. Any amendment to this Agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it will be effective. Both parties have had an equal opportunity to participate in the drafting of this Agreement. The usual construction of an agreement as to the drafting party shall not apply to this Agreement.


Section 3.13 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it. This Section shall survive the expiration or termination of this Agreement.

Section 3.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures. The Effective Date of this Agreement shall be the date this Agreement is signed by the Town.

Town of Middletown:

By:

  
\_\_\_\_\_  
Shawn J. Brown, CPA, CFE  
Town Administrator

1 / 19 / 2022  
\_\_\_\_\_  
Date

Middletown Commons Town Center, LLC:

By:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Date

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dateset opposite their signatures. The Effective Date of this Agreement shall be the date this Agreement is signed by the Town.

Town of Middletown:

By:



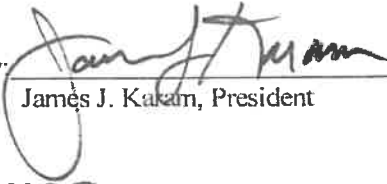
Shawn J. Brown, CPA, CFE  
Town Administrator

\_\_\_\_\_  
Date

Middletown Commons Town Center, LLC


West Main Commons, LLC, Manager

By: J. Karam Management, Inc., its Manager

By:   
James J. Karam, President

\_\_\_\_\_  
Date 1/25/22

Landings I, LLC, Manager

By:   
Christopher C. Bicho, Manager

\_\_\_\_\_  
Date 1/25/22

EXHIBIT "A"  
LEGAL DESCRIPTION

All those certain lots or parcels of land, together with the improvements thereon, at on West Main Road in Middletown, Rhode Island and identified as Lots 3, 4, 5, 6, & 7 on Middletown Tax Assessor's Plat 102, consisting of approximately 15.27 acres of land, more or less.

EXHIBIT "B"  
PERFORMANCE SCHEDULE

Roadmap:

1. Approval and Execution of Exclusive Negotiating Agreement.
2. Title report ordered. Within 30 days of execution of the Agreement.
3. Submission of Master Plan to Planning Board and Town Council. February 1, 2022.
4. Planning Board Public Workshop on Master Plan.
5. Town Council Workshop on Master Plan.
6. Determination of need for zoning amendments.
7. Developer provides financial plan / feasibility study / Term Sheet to Town. April 1.
8. Discussion on financial impacts revenue, etc.
9. Submission of proposed zoning amendments to Planning Board.
10. Planning board holds public hearing on proposed zoning amendments.
11. Town Council holds public hearings on proposed zoning amendments.
12. Execution of LDDA and conditional Ground Lease.
13. Entitlement Period, including Planning Board review of Development Application.

EXHIBIT "C"  
PLAN OF ADJACENT PARCEL  
Middletown Tax Assessor's Plat 102, Lot 6

