

**Mayor and Council**  
**American Rescue Plan Act (ARPA) Discussion and Strategic Planning Session,**  
**Special Session (22nd Voting Session), Executive Session, and Work Session**  
**October 19, 2021**  
**Agenda**

*"The City of Hagerstown will promote a diverse, business-friendly, and sustainable community with clean, safe, and strong neighborhoods."  
"The City of Hagerstown shall be the model provider of the most efficient and highest quality customer services to be known as the municipal  
location of choice for all"*

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The agenda and meeting packet is available at [www.hagerstownmd.org/government/agenda](http://www.hagerstownmd.org/government/agenda)

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"Small acts, when multiplied by millions of people, can transform the world." – Howard Zinn

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**9:00 AM**     **American Rescue Plan Act (ARPA) Discussion and Strategic Planning Session**  
***(BuroBox, 60 West Washington Street, Hagerstown, Maryland)***  
***Additional information will be presented during the discussion***

**EXECUTIVE SESSION**

**3:00 PM**     1.     The Mayor and Council will meet in Open Session only for the purpose of voting to close its meeting to discuss matters that the Open Meetings Act permits it to discuss in Executive/Closed Session.

**4:00 PM SPECIAL SESSION**

**4:00 PM**     1.     Introduction of an Ordinance: Authorizing the Purchase of Property Located at 32 N. Potomac Street, Hagerstown, Maryland

**4:00 PM WORK SESSION**

**4:10 PM**     1.     Proclamation: Economic Development Week

**4:15 PM**     2.     Certificate of Appreciation: Sarah and Ned Ardinger

**4:20 PM**     3.     Proclamation: National Conflict Resolution Day

**4:25 PM**     4.     Proposal for Clara Barton Memorial Adjacent to Cultural Trail near Park Circle - *Clara Barton Memorial Committee and Rodney Tissue, City Engineer*

**4:40 PM**     5.     Indoor Sports Facility ~ *Rodney Tissue, City Engineer*

**5:00 PM**     6.     2021 Hagerstown Ice & Sports Complex Annual Report - *Eric Deike, Director of Public Works, and Paul Sweeney, Hagerstown Ice Amateur Athletic Association (HIAAA) Board Chair*

**5:15 PM**     7.     Preliminary Agenda Review

**5:25 PM**     8.     Invest Hagerstown City Center Redevelopment Grant Application: 53 West Washington Street (Updegraff Building) ~ *Chris Siemerling, Economic Development Specialist*

**5:35 PM**     9.     Substation Property Lease and Purchase Agreements - 548 Eastern Boulevard South - *Nancy Hausrath, Director of Utilities, and Nathan Fridinger, Electric Operations Manager*

**CITY ADMINISTRATOR'S COMMENTS**

**MAYOR AND COUNCIL COMMENTS**

**ADJOURN**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

American Rescue Plan Act (ARPA) Discussion and Strategic Planning Session  
(BuroBox, 60 West Washington Street, Hagerstown, Maryland)  
*Additional information will be presented during the discussion*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

**Description**

|                                                       |                                            |
|-------------------------------------------------------|--------------------------------------------|
| 10.19.21_Memo_PT_and_Seas_Employee_COVID_Stipends.pdf | Part Time and Seasonal<br>Employee Stipend |
|-------------------------------------------------------|--------------------------------------------|





## **CITY OF HAGERSTOWN, MARYLAND**

Finance Department  
301-739-8577 X156

To: Scott Nicewarner, City Administrator

From: Donald Francis, Director of Human Resources  
Michelle Hepburn, Chief Financial Officer

Date: October 19, 2021

Subject: **FY22 PT and Seasonal Employee Stipends: Calendar 2020 COVID**

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During the August 17<sup>th</sup> Work Session, staff requests Mayor and Council consideration of a stipend to permanent part-time (PT) employees and Seasonal staff that worked a full term in Calendar 2020 and returned in Calendar 2021. After initial discussion surrounding full-time employee stipends, staff was asked to review part-time employees as well.

### **One-time Payment & Estimated Cost**

The amount of the PT stipend will be \$2.40 for each hour that was worked on-site. This stipend would be provided based on all the following conditions:

- Coverage period of January 27, 2020 through December 31, 2020. January 27, 2020 is the date currently recognized by the US Treasury as the pre-pandemic payroll event date
- Must be a permanent part-time employee
- Must be an active employee currently employed as of Monday, October 18, 2021
- Excludes any part-time employees that have left employment or tendered a resignation prior to Monday, October 18, 2021
- Payment will include only those hours worked on-site and will exclude time that was worked from home during this period

Based on the above criteria, there is a total of 33 active part-time employees eligible at an estimated cost of \$70K. The breakdown by fund for these costs:

- General Fund (24) - \$46K
- Parking Fund (8) - \$23K
- Golf Fund (1) - \$1K

The amount of the Seasonal stipend should be a flat amount up to \$1,000. The stipend would be provided based on the following conditions:

- Employee worked full term needed in Calendar 2020 and did not voluntarily or involuntarily leave prior to the end of the anticipated work schedule needed
- Must have returned to work with City for any portion of Calendar 2021 to qualify

### **Funding Source**

Dependent upon final decisions, each area will be responsible to keep overall total budget to approved FY22 levels while incorporating these stipends. There is some funding available in the General Fund Contingency budget line that can be used to help offset the General Fund costs related to this stipend.

Staff will be available for further discussion at the October 19<sup>th</sup> Work Session with subsequent approval by Motion at the October 26<sup>th</sup> Work Session if recommendation is accepted.

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

The Mayor and Council will meet in Open Session only for the purpose of voting to close its meeting to discuss matters that the Open Meetings Act permits it to discuss in Executive/Closed Session.

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

October\_19\_\_2021\_Executive\_Session\_Revised\_Agenda.pdf

**Description**

Executive Session Agenda



# EXECUTIVE SESSION

## MAYOR & CITY COUNCIL

### OCTOBER 19, 2021

### AGENDA

REVISED OCTOBER 18, 2021

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**3:00 p.m. EXECUTIVE SESSION**

1. To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State; (#4)  
*\*Business proposal*

**\*AUTHORITY: Annotated Code of Maryland, General Provisions Article: Section 3-305(b)**  
**(Subsection is noted in parentheses)**

*City Hall • Council Chamber • 1 East Franklin Street • Hagerstown, MD 21740*  
*301.739.8577, Ext. 113 • Telephone for the Hearing Impaired 301.797.6617*

## CITY OF HAGERSTOWN, MARYLAND

**PUBLIC BODY:** Mayor & City Council

**DATE:** October 19, 2021

**PLACE:** Room 407, 4<sup>th</sup> floor, City Hall

**TIME:** 3:00 p.m.

**AUTHORITY:** **ANNOTATED CODE OF MARYLAND, GENERAL PROVISIONS ARTICLE:** **Section 3-305(b) :**

1. To discuss:
  - ☐ (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
  - ☐ (ii) any other personnel matter that affects one or more specific individuals;
- ☐ 2. To protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
- ☐ 3. To consider the acquisition of real property for a public purpose and matters directly related thereto;
- ☒ 4. To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- ☐ 5. To consider the investment of public funds;
- ☐ 6. To consider the marketing of public securities;
- ☐ 7. To consult with counsel to obtain legal advice;
- ☐ 8. To consult with staff, consultants, or other individuals about pending or potential litigation;
- ☐ 9. To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- ☐ 10. To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
  - (i) the deployment of fire and police services and staff; and
  - (ii) the development and implementation of emergency plans;
- ☐ 11. To prepare, administer or grade a scholastic, licensing, or qualifying examination;
- ☐ 12. To conduct or discuss an investigative proceeding on actual or possible criminal conduct; or
- ☐ 13. To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- ☐ 14. Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- ☐ 15. Administrative Function

### **EXECUTIVE SESSION AGENDA**

City Hall • Council Chamber • 1 East Franklin Street • Hagerstown, MD 21740  
301.739.8577, Ext. 113 • Telephone for the Hearing Impaired 301.797.6617

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Introduction of an Ordinance: Authorizing the Purchase of Property Located at 32 N. Potomac Street, Hagerstown, Maryland

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

I hereby move to introduce an ordinance authorizing the purchase of property located at 32 N. Potomac Street, Hagerstown, MD. The acquisition of the property is consistent with the Mayor and City Council's goals for long-term investments to benefit the citizens of Hagerstown. The purchase price of \$825,000 is expected to be funded by the City's American Rescue Plan Act (ARPA) Funding.

**Action Dates:**

Date of Introduction: 10/19/2021

Date of Passage: 10/26/2021

Effective Date: 11/26/2021

**ATTACHMENTS:**

**File Name**

102621\_Intro\_Ordinance\_\_\_Aquisition\_32\_N\_Potomac.pdf

**Description**

Intro Ordinance - Acquisition  
32 N Potomac St

**REQUIRED MOTION**

**MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

**DATE:** October 19, 2021

**TOPIC:** Introduction of an Ordinance: Authorizing the Purchase of Property  
Located at 32 N. Potomac Street, Hagerstown, Maryland

|                   |              |
|-------------------|--------------|
| Charter Amendment | _____        |
| Code Amendment    | _____        |
| Ordinance         | <u>  X  </u> |
| Resolution        | _____        |
| Other             | _____        |

**MOTION:** I hereby move to introduce an ordinance authorizing the purchase of property located at 32 N. Potomac Street, Hagerstown, MD. The acquisition of the property is consistent with the Mayor and City Council's goals for long-term investments to benefit the citizens of Hagerstown. The purchase price of \$825,000 is expected to be funded by the City's American Rescue Plan Act (ARPA) Funding.

|                       |            |
|-----------------------|------------|
| DATE OF INTRODUCTION: | 10/19/2021 |
| DATE OF PASSAGE:      | 10/26/2021 |
| EFFECTIVE DATE:       | 11/26/2021 |

**CITY OF HAGERSTOWN, MARYLAND**

**AN ORDINANCE TO APPROVE THE  
PURCHASE OF A PORTION OF THE  
PROPERTY KNOWN AS  
32 NORTH POTOMAC STREET,  
HAGERSTOWN, MARYLAND**

**RECITALS**

WHEREAS, Manufacturers and Traders Trust Company., a New York Banking Organization, with principal offices at One M&T Plaza, Buffalo, New York 14203 (“M&T”), is the sole owner in fee simple of certain improved real property located in Hagerstown, Maryland known as 32 North Potomac Street (“the Property”); and

WHEREAS, the Mayor and Council believe that the acquisition of the Property, as set forth in the terms and conditions of this Contract of Sale would benefit the citizens; and

WHEREAS, the Mayor and Council wish to acquire the Property for the purpose of building a headquarters for its Finance Operations and Department of Community and Economic Development;

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to purchase the Property, and contingent upon the City’s right to conduct such environmental and physical studies of the Property as it sees fit during a Study Period, as set forth in the attached Contract of Sale;

**NOW THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED** by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.
2. That the purchase of the Property be and is hereby approved.
3. That the Mayor be and is hereby authorized to execute and deliver the Contract of Sale for the Property, a copy of which is attached hereto and incorporated herein by reference.
4. That City Staff be and are hereby authorized to execute and deliver any additional documentation and take any additional steps necessary to effectuate the purpose of this ordinance and satisfy the terms of the aforesaid Contract of Sale.

**BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT** this ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE  
CITY OF HAGERSTOWN, MARYLAND

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Donna K. Spickler,  
City Clerk

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Emily N. Keller, Mayor

Date of Introduction: October 19, 2021  
Date of Passage: October 26, 2021  
Effective Date: November 26, 2021

PREPARED BY:  
SALVATORE & MORTON, LLC  
CITY ATTORNEYS



## CONTRACT OF SALE

THIS CONTRACT OF SALE ("this Contract") is between **MANUFACTURERS AND TRADERS TRUST COMPANY**, a New York banking corporation, with principal business offices located at One M&T Plaza, Buffalo, New York 14203, ATTN: Corporate Real Estate Department, 18<sup>th</sup> Floor ("Seller") and **CITY OF HAGERSTOWN**, a municipal corporation with its principal business offices located at 1 East Franklin Street, Hagerstown MD 21740 ("Buyer").

1. *The Property.* Seller sells to Buyer, and Buyer purchases from Seller, the real property located in Hagerstown, Washington County, Maryland, and known as **32 N. Potomac Street, Hagerstown, MD 21740**, and being more particularly described in Exhibit A, attached hereto and by this reference incorporated herein, together with all applicable improvements and all the rights and appurtenances thereto. The property described in Exhibit A (legal description to be prepared by Buyer at Buyer's expense by an updated title report and/or survey), together with its appurtenances and improvements, if any, is hereinafter called the "Property." The items set forth on Exhibit C, attached hereto and by this reference incorporated herein, ("Seller's Personalty") are expressly excluded from sale and shall be removed from the Property before Settlement. The above notwithstanding, any personal property remaining in the Property on the date of Settlement shall be deemed abandoned by Seller and shall remain in the Property at Settlement for Buyer's use/disposal at its discretion.

2. *Purchase Price* The purchase price for the Property is Eight Hundred Twenty-Five Thousand and 00/100 Dollars (\$825,000.00). Buyer shall pay the Purchase Price as follows:

(a) Upon the execution of this Contract, Buyer shall deliver to Seller the sum of Two Thousand and 00/100 Dollars (\$2,000.00) in cash, by means of cash or wire transfer (the "Deposit"). The Deposit shall be held by Seller in a non-interest bearing escrow account to secure the payment of the Purchase Price and the performance of Buyer under the terms of this Contract. The Deposit shall be applied at Closing to the payment of the Purchase Price.

(b) At Settlement, payment of the Purchase Price by Buyer to Seller, paid in cash, by means of wire transfer, less (i) the Deposit received by Seller, (ii) any credits permitted by this Contract, and (iii) any settlement adjustments provided by this Contract.

The Deposit shall be held in escrow by Seller in a non-interest bearing escrow account to secure the payment of the Purchase Price and the performance of Buyer under the terms of this Contract. The Deposit shall be applied at Settlement to the payment of the Purchase Price.

3. *Time and Place of Settlement.* Settlement with respect to the transaction described herein (the "Settlement") shall be held on or before thirty (30) days following completion of the last to occur of the Title Period as defined in Section 11, the Study Period as defined in Section 12.2, at a time and location as the parties may mutually determine. It shall be the responsibility of the Buyer to select the person responsible for closing this transaction, for the payment of fees to

that person, and for furnishing Form 1099-S to the Internal Revenue Service, if applicable. Buyer shall pay all fees to the title company and all wire fees to wire Settlement proceeds to the Seller shall be paid by the Buyer.

4. *Deed to Property.* At Settlement, upon payment of the unpaid purchase money, a deed for the Property shall be executed by Seller. Seller shall prepare the deed which shall contain a covenant of special warranty.

5. *Possession.*

5.1 Buyer shall be entitled to possession of the Property following disbursement of Purchase Price funds and delivery of the deed.

5.2 *ATM Lease:* The Seller's obligations to settle on the purchase of the Property in accordance with the terms of this Contract is contingent upon the execution of a lease agreement substantially in the form attached hereto as Exhibit "E" between Seller and Buyer for an ATM on the Property ("ATM Lease"). If for any reason Seller and Buyer are unable to execute the lease on or before the last day of the Study Period (defined below) inclusive of Buyer's right to the Extension Period (defined below), either party shall have the right to terminate this Contract by giving written notice of termination to the other. In the event that either party terminates this Contract pursuant to this Section 5, (i) this Contract shall be and become null and void, (ii) neither party shall have any further rights or obligations hereunder except as expressly stated to survive, and (iii) the Deposit shall be promptly disbursed in accordance with Section 2 hereof.

6. *Recordation and Transfer Taxes.* All recordation taxes and state and local transfer fees relating to the conveyance of the Property to Buyer shall be paid one-half each by the Seller and the Buyer. All recording fees shall be paid by Buyer.

7. *Real Estate Taxes.* Real estate taxes and similar public charges against the Property that are payable on an annual basis (including district, sanitary commission, or other benefit charges, assessments, liens, or encumbrances for sewer, water, drainage, or other public improvements completed or commenced on or prior to the date hereof or subsequent thereto) shall be adjusted between the parties as of 12:00 Midnight prior to the date of Settlement and assumed and paid thereafter by Buyer. Buyer shall be responsible for all utilities on and after the date of Settlement.

8. *Risk of Loss.* The Property shall be held at the risk of Seller until Settlement hereunder. If the Property is damaged prior to Settlement, and Seller, on or before the Settlement date, is unable to or unwilling to restore the Property to its condition immediately prior to the damage, Buyer may elect (i) to terminate this Contract or (ii) elect to take the Property in its then "as is" condition without reduction in the Purchase Price and Seller shall assign to Buyer at Settlement all of Seller's right, title and interest in and to all insurance proceeds in respect of damage to the Property (but excluding Seller's Personalty), less any amounts actually expended by Seller for expenses of repair or restoration. If the Buyer elects to terminate this Contract, the full amount of the Deposit shall be returned immediately to Buyer, whereupon Buyer and Seller shall be released, as to one another, of all obligations and liabilities under this Contract, other than those that shall expressly survive termination.

9. *Condemnation.* In the event of a partial taking of the Property by condemnation or other exercise of the right of eminent domain before the delivery of the deed hereunder, the parties shall nevertheless proceed to Settlement, and Seller shall assign to Buyer at Settlement all of Seller's right, title and interest in and to all awards made in respect of such taking of the Property (but excluding Seller's Personalty). In the event of a total taking of the Property by condemnation or other exercise of the right of eminent domain before the delivery of the deed hereunder, the Deposit shall be promptly repaid to Buyer, and upon the payment thereof to Buyer, this Contract shall terminate except with respect to those obligations that shall expressly survive.

10. *Real Estate Commission.* Each party warrants to the other that it has not used the services of a real estate broker or agent in connection with this transaction. Each party agrees to defend, indemnify, and hold the other party harmless for any claim for real estate commissions arising by reason of the indemnifying party's breach of this warranty. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property or the termination of this Contract.

11. *Title.* Within thirty (30) days from the Effective Date ("Examination Period"), Buyer shall obtain, at its expense, a title report covering the Property from a licensed title insurance company selected by Buyer. Title to the Property shall be free and clear of all liens, encumbrances and restrictions (collectively, "Encumbrances"), except for (a) real property taxes applicable to the period after the date of Settlement and (b) those matters which are specified on Exhibit B, attached hereto and made a part hereof ("Permitted Matters"). Such title shall be insurable at regular rates by a reputable title insurance company. Buyer shall examine the title to the Property, inspect the Property and take any other action the Buyer deems is necessary to determine the condition of title to the Property. Buyer shall provide Seller with a copy of the title commitment, survey and all exception documents referred to in the title commitment. Buyer shall provide Seller with written notification, within the Examination Period, of any objections to the title ("Buyer's Title Notice"). Seller, at its expense, shall have the option of curing any objection raised by Buyer's Title Notice. In the event Seller elects to cure any objection raised by Buyer's Title Notice, Seller shall notify Buyer within ten (10) days of its receipt of Buyer's Title Notice (the "Title Response Period"). In the event Seller is unable to cure Buyer's title objections within thirty (30) days from the date of Buyer's Title Notice ("Title Cure Period") (the Examination Period and Title Cure Period, if any, together the "Title Period"), or Seller elects not to cure the objections raised by Buyer's Title Notice, Buyer shall have the option either (i) of taking such title as the Seller can give without abatement of the price or (ii) terminating this Contract and being immediately repaid the Deposit, and in the latter event there shall be no further liability or obligation on either of the parties hereto, except as expressly stated to survive herein. Buyer shall make such election either (i) in the event Seller elects not to attempt to cure any objections raised by Buyer, within ten (10) days after the expiration of the Title Response Period, or (ii) in the event Seller elects to attempt to cure objections raised by Buyer's Title Notice, within ten (10) days after the expiration of the Title Cure Period. If Buyer does not notify Seller of any objections to the title within the Examination Period, Buyer shall waive its rights to object to title defects or the exceptions which are of record prior to the Effective Date. As used in this Contract, the phrase "of record," shall mean matters recorded and properly indexed in the land records in the County in which the Property is located as of the Effective Date.

Other than as anticipated herein, Seller shall not create or permit to be created any lien, easement or other encumbrance on the Property from the Effective Date. Buyer hereby expressly assumes the risk that restrictive covenants, zoning laws or other recorded documents may restrict or prohibit the use of the Property for the purpose(s) intended by the Buyer. The delivery of the deed by Seller and the acceptance thereof by Buyer shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations, if any, of Seller which are expressly stated in this Contract to survive Settlement.

Buyer hereby acknowledges that it shall not be entitled to, and does not and will not, rely on Seller or its agents as to (i) the quality, nature, adequacy or physical condition of the Property including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities or the electrical, mechanical, HVAC, plumbing, sewage or utility system, facilities or appliances at the Property, if any; (ii) the quality, nature, adequacy or physical condition of soils or the existence of ground water at the Property, (iii) the existence, quality, nature, adequacy or physical condition of the utilities serving the Property; (iv) the development potential of the Property for any particular purpose; (v) the zoning or other legal status of the Property; (vi) the Property or its operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vii) the quality of any labor or material relating in any way to the Property; or (viii) the condition of title to the Property or the nature, status and extent of any right, encumbrance, license, reservations, covenant, condition, restriction or any other matter affecting title to the Property.

12. *"As-Is" Sale; Study Period.*

12.1. *General.* EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY PERSONAL PROPERTY THEREIN, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES AND AGREES THAT UPON SETTLEMENT SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY 'AS IS, WHERE IS, WITH ALL FAULTS', EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS CONTRACT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS CONTRACT. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS." SELLER AFFIRMS THAT IT HAS RESTORED THE DRIVE-UP WINDOW (INCLUDING BULLET-RESITANT GLASS) TO ITS ORIGINAL CONDITION AS OF THE DATE OF THIS AGREEMENT.

12.2. *Study Period.* BUYER SHALL HAVE A PERIOD FROM THE EFFECTIVE DATE OF THIS CONTRACT THROUGH THE DATE WHICH IS NINETY (90) DAYS THEREAFTER ("STUDY PERIOD") TO CONDUCT SUCH PHYSICAL AND ENVIRONMENTAL INVESTIGATIONS OF THE PROPERTY AS BUYER HAS DEEMED NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS CONTRACT. IN ADDITION, BUYER SHALL USE BEST EFFORTS TO OBTAIN AN ORDINANCE, IN ACCORDANCE WITH THE TERMS OF ITS CHARTER, NECESSARY FOR IT TO PROCEED TO SETTLEMENT BY THE END OF THE STUDY PERIOD. BUYER SHALL HAVE THE RIGHT TO EXTEND THE STUDY PERIOD FOR ONE PERIOD OF THIRTY (30) DAYS ("EXTENSION PERIOD") FOR THE SOLE PURPOSE OF OBTAINING SUCH AN ORDINANCE BY NOTIFYING SELLER IN WRITING BY 5:00 P.M. ON THE LAST DAY OF THE STUDY PERIOD OF ITS INTENTION TO DO SO.

IF BUYER, IN ITS SOLE DISCRETION, DETERMINES THAT IT DOES NOT DESIRE TO ACQUIRE THE PROPERTY DUE TO THE CONDITION OF THE PROPERTY, BECAUSE IT HAS FAILED TO OBTAIN THE ORDINANCE, OR FOR ANY REASON, AND NOTIFIES SELLER IN WRITING BY 5:00 P.M. ON THE LAST DAY OF THE STUDY PERIOD (INCLUDING THE EXTENSION PERIOD, IF ANY) OF ITS ELECTION TO TERMINATE THIS CONTRACT, THE DEPOSIT SHALL BE RETURNED TO BUYER, THIS CONTRACT THEREUPON SHALL BECOME VOID AND THERE SHALL BE NO FURTHER OBLIGATION OR LIABILITY ON EITHER OF THE PARTIES HERETO EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF BUYER FAILS TO NOTIFY SELLER IN WRITING BY 5:00 P.M. OF THE LAST DAY OF THE STUDY PERIOD (OR THE EXTENSION PERIOD AS THE CASE MAY BE) OF TERMINATION OF THIS CONTRACT, THEN BUYER SHALL BE DEEMED TO HAVE WAIVED ITS TERMINATION RIGHT AND THE PARTIES SHALL PROCEED TO SETTLEMENT.

UPON WRITTEN REQUEST OF SELLER, BUYER SHALL FURNISH TO SELLER ALL REPORTS AND ESTIMATES UNDERTAKEN BY BUYER IN CONNECTION WITH THE STUDY PERIOD, WHICH OBLIGATION SHALL SURVIVE TERMINATION BUT SHALL END THREE (3) YEARS FROM THE DATE OF SETTLEMENT. UPON SETTLEMENT, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON SETTLEMENT, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SUCCESSORS AND ASSIGNS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF

ACTION (INCLUDING, BY WAY OF EXAMPLE ONLY, CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SUCCESSORS AND ASSIGNS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY AND AGREES, WITH RESPECT TO MATTERS ARISING FROM AND AFTER SETTLEMENT ONLY, TO DEFEND, INDEMNIFY, AND HOLD SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SUCCESSORS, AND ASSIGNS) HARMLESS FROM ANY CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, BY WAY OF EXAMPLE ONLY, CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. FOLLOWING THE STUDY PERIOD, EXCEPT AS OTHERWISE REQUIRED BY THIS CONTRACT, IN THE EVENT SETTLEMENT DOES NOT OCCUR, AS SELLER'S SOLE REMEDY, SELLER MAY RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND NOT AS A PENALTY TO COMPENSATE SELLER FOR LOST OPPORTUNITIES AS A CONSEQUENCE OF ENTERING INTO THIS CONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL THE DEPOSIT BE SUBJECT TO FORFEITURE TO SELLER IN THE EVENT OF A BUYER DEFAULT UNTIL AFTER THE EXPIRATION OF THE STUDY PERIOD. THIS SECTION SHALL SURVIVE SETTLEMENT.

13. *Right of Entry.* Upon the Effective Date, Seller hereby grants to Buyer, Buyer's engineers and other agents the right to enter upon the Property upon reasonable notice on or after the date of execution of this Contract to inspect the Property and to make such measurements, surveys, or non-invasive tests on the Property as Buyer may deem advisable. Buyer agrees to indemnify and hold harmless Seller from any claims, or liability, including, by way of example only, costs of defense and reasonable attorney fees, arising out of Buyer or the agents or invitees entering on the Property pursuant to this paragraph. Prior to any entry, Buyer shall provide Seller with evidence of public liability insurance with liability limits reasonably acceptable to Seller. In addition and prior to any entry, any contractor or third party hired to perform investigations or due diligence upon the Property shall provide Seller with evidence of general liability insurance including, but not limited to, coverage for products/completed operations, premises/operations, contractual and personal/advertising injury liabilities with commercially reasonable limits of coverage on a per occurrence basis for bodily injury and property damage, containing an endorsement insuring against damage to the Property and to or from underground utilities, and naming Seller as a named insured. Buyer further agrees to restore or have the Property restored to its condition on the date hereof after the completion of any measurements, surveys, or non-invasive tests conducted by the Buyer. This paragraph shall survive termination or Settlement.

14. *Representations and Warranties of Seller.* As of the date hereof and on the date of Settlement each of the statements in this paragraph shall be a true, accurate and full disclosure of all facts relevant to the matter contained therein and the enforceability of the statements as being true, accurate and full disclosure as of said dates, and shall survive Settlement and delivery and recording of the deed. The Seller hereby represents and warrants that:

(a) The persons executing this Contract on behalf of Seller are duly authorized to do so.

(b) Seller is duly organized and validly existing and has the requisite power and authority to enter into and carry out the terms of this Contract and no further approval of any board, court, or other body is necessary in order to permit Seller to consummate this Contract.

(c) To Seller's actual knowledge, Seller has not received notice of condemnation of all or any part of the Property or notices with respect to any outstanding violation of any zoning law, order, regulation, ordinance or requirement relating to the use or ownership of the Property.

(d) There are no other contracts of sale relating to the Property.

15. *Representations and Warranties of the Buyer.* As of the date hereof and on the date of Settlement each of the statements in this paragraph shall be a true, accurate and full disclosure of all facts relevant to the matter contained therein and the enforceability of the statements as being true, accurate and full disclosure as of said dates, and shall survive Settlement and delivery and recording of the deed. The Buyer hereby represents and warrants that:

(a) The persons executing this Contract on behalf of Buyer are duly authorized to do so.

(b) Buyer is duly organized and has the requisite power and authority to enter into and carry out the terms of this Contract and no further approval of any board, court, or other body is necessary in order to permit the Buyer to consummate this Contract.

16. *Buyer's Default.* Failure on the part of Buyer to comply with the terms, covenants, and conditions of this Contract, shall constitute a default and forfeiture of the Deposit and shall entitle the Seller to retain the Deposit paid by Buyer as Seller's sole remedy at law or in equity, all other remedies being waived. Notice of such default shall be given, in writing, by the Seller to the Buyer within ten (10) days after the default has occurred. In the event such notice of default is not given as provided in this section, Seller shall be deemed to have waived Seller's right to retain the Deposit and the Deposit shall be returned to the Buyer.

17. *Seller's Default.* Unless otherwise expressly provided herein, failure on the part of the Seller to comply with the terms, covenants, and conditions of this Contract shall constitute a default and shall entitle the Buyer as its sole remedies to either elect (i) to proceed to Settlement without any abatement of the Purchase Price, (ii) to be immediately repaid the Deposit paid by

Buyer to Seller, in which event there shall be no further liability or obligation on the part of either of the parties hereto, except as expressly stated to survive, and this Contract shall become null and void and of no further legal effect, or (iii) in the event of Seller's failure to proceed to Settlement and deliver the deed as provided in this Contract, to seek specific performance of such obligation of Seller. Notice of such default shall be given, in writing, by the Buyer to the Seller within ten (10) days after the default has occurred. In the event such notice of default is not given as provided in this Section, Buyer shall be deemed to have waived Buyer's right to terminate this Contract.

18. *Notices.* "Notice" means any notice, demand, request, or other communication or document to be provided hereunder to a party hereto (without implying any requirement that Seller/Buyer give any notice of default or of exercise of any of its rights or remedies). Each notice shall be in writing and shall be given to a party at its address set forth below or such other address as the party may hereafter specify for that purpose by notice to the other party. Each notice shall, for all purposes, be deemed given and received if given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service; or by a nationally recognized next day courier service:

Seller: Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, New York 14203  
Attn.: Corporate Real Estate, 18th Floor

Buyer: City of Hagerstown  
1 East Franklin Street  
  
Hagerstown MD 21740  
Attn.: Mr. Scott A. Nicewarner  
City Administrator

With a courtesy copy to: Jason Morton, City Attorney  
Salvatore & Morton, LLC  
82 West Washington Street, Suite 100  
Hagerstown, MD 21740

19. *Additional Consideration.* As a material consideration for Seller's entering into this Contract and based upon Buyer's representation that it does not intend on selling, leasing or otherwise disposing of the Property to a financial institution, credit union or other provider of financial services, or a person or entity otherwise affiliated with such an entity, in which event the Property would be of greater value to the Seller, Buyer agrees that if Buyer (i) enters into a contract between Settlement and the fifth anniversary of Settlement to sell the Property, (ii) enters into a lease conveying a leasehold interest in the Property between Settlement and the fifth anniversary of Settlement, or (iii) otherwise transfers possession and use of the Property between Settlement and the fifth anniversary of Settlement, and such other purchaser, lessee or other user is a financial institution, credit union or other provider of financial services, or otherwise affiliated with such an



entity, Buyer shall pay to Seller as premium on the Purchase Price the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00). Notwithstanding anything to the contrary contained herein, this obligation shall survive the Settlement and shall not be deemed to have been merged with the Settlement or the delivery of the deed.

20. *Financing Contingency.* This Contract is not conditioned or contingent in any manner upon the Buyer obtaining all or any portion of the Purchase Price by way of loan or financing of any kind. Buyer represents and warrants that it has sufficient funds to consummate this Contract.

21. *Leases.* Seller represents that the Property is not subject to any leases. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property.

22. *Service Contracts.* All service contracts shall be terminated by Seller effective the date of Settlement. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property.

23. *Sale of Other Real Estate.* This Contract is not conditioned or contingent in any manner upon the sale or settlement of any other real estate unless such contingency is also a part of this Contract.

24. *Documents.* Seller is not a "foreign person" as such term is defined in Section 1445 of the United States Internal Revenue Code of 1986, as amended. Seller agrees to deliver a standard Non-Foreign Person Affidavit at Settlement and (ii) an affidavit with respect to Section 10-912 of the Tax-General Article, Annotated Code of Maryland, regarding withholding on sales or transfers of real property in Maryland by nonresident individuals and nonresident entities. Seller agrees to deliver Seller's Affidavit and Gap Indemnity in the form attached hereto as Exhibit "D". Additionally, each party shall each execute a settlement statement, and provide to the Buyer's title company such evidence of authority for the transactions contemplated by this Contract, and the execution of documentation in connection therewith, as may reasonably be required.

25. *Joint and Several Liability.* If Buyer shall be one or more individuals, corporations or other entities, whether or not operating as a partnership or joint venture, then each such individual, corporation, entity, joint venturer or partner shall be deemed to be both jointly and severally liable for the Purchase Price and any other payments specified herein and for the satisfaction of all obligations of Buyer under this Contract.

26. *Assignment.* Buyer may not assign this Contract without the prior written consent of Seller, except that Buyer may, without the consent of Seller, assign the Contract to a controlled subsidiary or affiliate of Buyer or its principals set up for the sole purposed of holding fee title to the Property, provided the Buyer guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Contract. The rights and obligations of this Contract shall bind and benefit any successors or assigns of the parties.

27. *Like Kind Exchange.* The parties hereto represent that this Contract and the transaction contemplated is not in connection with a tax deferred exchange of like kind property

under Section 1031 of the Internal Revenue Code, as amended, or any other corresponding, substituted or applicable law

28. *Claims.* Seller shall indemnify and hold harmless Buyer from and against any and all third party claims resulting from or based on an event that occurred prior to Settlement that are covered under the casualty or liability insurance policies for the Property that were in effect prior to closing. In the event of any such third-party claim asserted against Buyer and Seller, Seller shall provide and pay for the cost of Buyer's defense (using counsel selected by Seller and reasonably acceptable to Buyer). The obligations of Seller under this Section shall survive Settlement for a period of three (3) years.

29. *Miscellaneous Provisions.*

29.1. *Effectiveness of Agreement* This Contract shall not be effective unless duly executed by the parties and until Seller receives the Deposit. The date upon which Seller has received both a fully-executed Contract and the Deposit shall be the "Effective Date."

29.2 *Entire Contract.* This Contract contains the final and entire Contract between the parties and neither they nor their agents shall be bound by any terms, conditions, or representations not herein written or specifically referred to herein. There are no customs, promises, terms, conditions or obligations referring to the subject matter or inducements leading to the execution hereof, other than those contained herein.

29.3. *Time of Essence.* Time is of the essence of this Contract.

29.4. *Binding Contract.* This Contract is binding on the parties and their personal representatives, successors, and assigns.

29.5. *Limited Liability.* The liability of Seller under this Contract is limited to Seller's interest in the Property, plus the amount of the Deposit. No other assets of Seller shall be subject to seizure or levy.

29.6. *Recording.* Except in accordance with Buyer's Charter and Code and in accordance State Law as to open meetings and public information requests, this Contract shall not be recorded in any office or place of public record. The above notwithstanding, this Contract shall not be recorded in the Land Records Office of the Washing County Clerk's Office.

29.7. *Legal Construction.* This Contract shall be interpreted and construed in accordance with the laws of the state of Maryland; excluding any such laws that might direct the application of the laws of another jurisdiction, provided that any controversy over the construction of this Contract shall be decided neutrally and without regard to events of authorship or negotiation. The parties agree to submit any and all disputes regarding this Contract to State Courts located in Washington County, Maryland.

29.8. *Amendments.* This Contract shall not be amended except in writing executed by all parties hereto.

29.9. *Survival.* Except as specifically provided, the warranties, statements, representations, promises and covenants contained herein shall merge into the deed to be delivered by Seller at Settlement.

29.10. *Forbearance.* A waiver or forbearance by any party of any breach of any covenant or term of this Contract shall not be construed to be a waiver or forbearance of any succeeding breach of the same covenant.

29.11. *Severability.* If any term or provision of this Contract, or any application thereof, shall be held invalid or nonenforceable, the remaining terms and provisions of this Contract, or the application of such terms or provisions that have been held valid or enforceable, shall not be affected thereby.

29.12. *Captions.* The captions used herein are for the purpose of convenient reference only and are not intended to express the full meaning of the provisions they introduce.

29.13. *Attorney's Fees.* If either party shall bring an action or suit or proceeding (including any cross-complaint, counterclaim or third party suit) against the other party by reason of the breach or alleged breach of any covenant, term or obligation of this Contract, or otherwise arising out of this Contract, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including reasonable attorneys' fees and expenses. For purposes of this Contract, "Prevailing Party" shall be deemed the party that recovered a greater relief in the action on the Contract. Furthermore, where an action has been voluntarily dismissed or dismissed under a settlement agreement, then there shall be no prevailing party for purposes of this section.

29.14. *Business Days.* If the time for performance of any of the terms, conditions and provisions of this Contract shall fall on a Saturday, Sunday or bank holiday, then the time of such performance shall be extended to the next business day thereafter.

30. *Critical Areas. Notice to buyer concerning the Chesapeake and Atlantic coastal bays critical area.* Buyer is advised that all or a portion of the property may be located in the "critical area" of the Chesapeake and Atlantic coastal bays, and that additional zoning, land use and resource protection regulations apply in this area. The "critical area" generally consists of all land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands, the Chesapeake Bay, the Atlantic coastal bays, and all of their tidal tributaries. The "critical area" also includes the waters and lands under the Chesapeake Bay, the Atlantic coastal bays, and all of their tidal tributaries to the head of tide. For information as to whether the property is located within the critical area, Buyer may contact the local department of planning and zoning, which maintains maps showing the extent of the critical area in the jurisdiction. Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties do not include land located in the critical area.

31. WAIVER OF TRIAL BY JURY. BUYER AND SELLER DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS CONTRACT, THE DOCUMENTS DELIVERED BY BUYER AT SETTLEMENT OR SELLER AT SETTLEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ANY ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THIS CONTRACT OR THE PROPERTY (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS CONTRACT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS CONTRACT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER SHALL SURVIVE THE SETTLEMENT OR TERMINATION OF THIS CONTRACT.

[Signatures appear on next page]

**IN WITNESS WHEREOF**, each party is signing this Contract on the date corresponding with that party's signature.

ATTEST/WITNESS:

SELLER:  
MANUFACTURERS AND TRADERS  
TRUST COMPANY

\_\_\_\_\_

By: \_\_\_\_\_  
Howard Block, Vice President

Date:

ATTEST/WITNESS:

BUYER:  
CITY OF HAGERSTOWN

\_\_\_\_\_

By: \_\_\_\_\_  
Emily N. Keller  
Mayor

Date:

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**EXHIBIT B**  
**PERMITTED MATTERS**

1. Building and use restrictions of record.
2. Vehicular or pedestrian easements of record affecting the Property and being contiguous to the front, rear or side lot lines.
3. Water, sewer, gas, electric, cable television, and telephone lines or easements therefor of record or as presently installed.
4. Prior grants, reservations or leases of coal, oil, gas, or other minerals as shown by instruments of record.
5. Easements apparent upon inspection of the Property.
6. Real estate taxes and assessments, and water and sewer rents, not yet due and payable. Real estate taxes and assessments, and water and sewer rents, shall be adjusted as of the date of Settlement (in accordance with Section 7 above.)
7. Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Property over any street or highway or over any adjoining Property and encroachments of similar elements projecting from adjoining property over the Property.
8. The state of facts which an accurate survey would show.
9. Covenants, conditions and restrictions of record affecting the Property.
10. Easements and rights-of-way of record affecting the Property.

**EXHIBIT C**  
**EXCLUDED ITEMS**

- Safe Deposit boxes
- Telephone equipment (disconnected at the wall)
- Security equipment, provided that internal wiring shall remain
- Alarm equipment, provided that internal wiring shall remain)
- ATM
- Personal Computers
- Printers
- All branch equipment, including without limitation, teller machines, photocopier, fax, currency counters, check writer, adding machines, typewriters)
- Teller line, including without limitation, the back counter
- Under counter steel
- Furniture



**EXHIBIT D**  
**OWNER'S AFFIDAVIT**

PREMISES: 32 N. Potomac Street,  
Hagerstown, MD 21740

STATE OF NEW YORK  
COUNTY OF ERIE : ) SS

ON THE \_\_\_\_ day of \_\_\_\_\_ 2021, before me, the undersigned Officer, personally appeared the undersigned, who being duly sworn according to law and intending to be legally bound, depose(s) and say(s) that the following statements are true and correct to my actual knowledge and belief.

That the Grantor herein is the owner of Premises.

That the Grantor in this transaction is in actual possession of the entire premises, and there are no leases or agreements affecting the premises or any part thereof outstanding, other than those that are presently being assigned.

The Premises are not used for residential purposes

Access to the Premises (whether vehicular or pedestrian) to and from the public street has never been a subject of dispute or limited in any way

Grantor is entitled to sole possession of the Premises.

Within the preceding 18 months, Grantor has not attached any fixtures, commenced any construction, repairs alterations or improvements, ordered or contracted to for same in respect of the Premises, which have not been paid for in full and that there are no outstanding or disputed claims for any such work or item.

I have not received a notice of any violation of any covenant, conditions or restrictions of record affecting the Premises.

The present transaction is not made for the purposes of hindering, delaying or defrauding any creditors of the Grantor and does not constitute all or substantially all of the Grantor's assets.

Any water, sewer or other utility charges due and or accrued up to date of closing/settlement will be paid by the Grantor.

This affidavit is made for the purpose of inducing [INSERT TITLE COMPANY] or its duly authorized agent to hold settlement on the above premises, and to issue its title insurance policy, insuring the title thereto and to make disbursement of funds arising out of said transaction.

The Grantor hereby indemnifies and agrees to save harmless [INSERT TITLE COMPANY] and its agent, [INSERT, IF ANY], against any damages or expense, including attorney fees, sustained as a result of any of the foregoing matters not being true and accurate and further indemnifies [INSERT TITLE COMPANY] as to defects, liens, encumbrances, adverse claims or other matters, if any, created, by an act or omission of the Grantor, first appearing on the public records or attaching subsequent to the most recent effective date of the above-referenced Commitment but prior to the effective date of such title insurance policy or policies or other title evidence. [INSERT TITLE COMPANY] and its agent, [INSERT IF ANY] will present the Deed forthwith after settlement for recording to Washington County, Maryland.

**EXHIBIT E**  
**ATM LEASE AGREEMENT**

**THIS ATM LEASE AND AGREEMENT** ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2021 ( "Effective Date"), by and between **CITY OF HAGERSTOWN**, a municipal corporation with its principal business offices located at 1 East Franklin Street, Hagerstown MD 21740 ("Landlord"), and **MANUFACTURERS AND TRADERS TRUST COMPANY**, a New York banking corporation, ("Tenant") (together, "Parties"), sets forth the terms and conditions upon which, among other things, Tenant will lease from Landlord designated space consisting of approximately 160 square feet in the location depicted on Exhibit "A" attached hereto and made a part hereof ( "Premises") being a portion of the building ("Building") located property known as **32 N. Potomac Street, Hagerstown, MD 21740** ( "Property"). As of the Effective Date Tenant has sold the Property which includes the Premises to Landlord pursuant to a certain Contract of Sale dated October 19, 2021. Tenant has installed and is operating a cash dispensing machines ("ATM") and attendant customer accommodations (the ATM and the attendant accommodations shall be referred to collectively as the "Facility") at the Premises. The Parties hereby make this Agreement to provide for the continued operation of the Facility contemporaneously with the closing of the Property under the Contract of Sale. **The Parties agree that the Facility shall be moved on or before December 31, 2023, from its present location in the Building to the location, consisting of 126 square feet, reflected on Exhibit "B" attached hereto and made a part hereof. Landlord shall pay the costs associated with constructing the space for the Facility in the location on Exhibit "B," and to the specifications set forth on Exhibit "B," except that Tenant shall pay the costs associated with installation of signage, alarm system to the Facility and moving and installation of the ATM in the Facility. Landlord shall install duct work to the room, and Tenant shall install any additional and/or special HVAC zoning and/or special temperature control equipment. Also, Landlord shall install electric service to the room, and Tenant shall connect the Facility to electric service. There shall be no separate meter for the Facility. Final architectural drawings for Exhibit "B" shall be agreed upon in writing by the parties prior to re-location of the Facility, and shall constitute an Addendum to this Agreement.**

In consideration of and subject to the promises, covenants and conditions set forth hereinafter, the Parties agree as follows:

1. Premises.

1.1. Landlord does hereby lease and let unto Tenant the Premises for the Facility, and Tenant does hereby take from Landlord for the Facility, the Premises. Tenant and its invitees shall also have a nonexclusive right during the Term of this Agreement to use the common areas of the Property but only in connection with Tenant's Facility, in common with others entitled to the use of the common areas. As used in this Agreement, the term "common areas" means, without limitation, the entryways, sidewalks, walkways, reasonably necessary for the use and operation of the Facility which are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant and other tenants, occupants and customers of the Property. The use of the common areas shall be subject to all reasonable Rules and Regulations

as Landlord may from time to time promulgate provided they are uniformly applied to all tenants, occupants and customers of the Property.

1.2. Tenant has removed its personal property used in the operation of a branch banking office from the Building and the Premises, except for such personal property constituting the Facility. Notwithstanding such removal, Tenant will have access to the full Premises and continue to operate, access, and service the Facility.

1.3. Landlord shall not permit any bank or "non-bank" deployer of ATM, electronic, remote or similar banking facilities to install, operate or maintain an exterior-facing ATM on the Property during the Term of this Agreement and shall not assume or enter into any legally enforceable obligation providing any bank with the right to install, operate or maintain an ATM or other electronic, remote, or similar banking facility during the Term of this Agreement without Tenant's prior written consent, which may be withheld in Tenant's sole discretion. In the event of a breach of this covenant and written notice to Landlord of such breach and Landlord's failure to rectify such breach with fifteen (15) days after such written notice, then Tenant may continue to operate the Facility but all Rent obligations shall be suspended until such breach is rectified. For purposes of this Paragraph, "bank" means a banking organization, including without limitation, a commercial bank, trust company, savings bank, savings and loan association, credit union, or a bank holding company.

1.4. Tenant may temporarily close the Facility during any period in which reasonable access or electricity or data/voice communications services are interrupted.

1.5. The hours of operation of the ATM shall be at the sole and absolute subjective discretion of Tenant.

1.6. Landlord shall be permitted admittance to the Premises for purposes of exhibiting the Premises to prospective purchasers or tenants; provided that Landlord shall request such admittance in writing at least at least five (5) business days prior to the proposed showing date. Landlord shall be accompanied by a representative of Tenant during the showing. Notwithstanding such escort, all admittance to the Premises shall be at Landlord's sole risk and Landlord shall indemnify Tenant for any claims made for injury or property damage resulting from such admittance.

## 2. Term of Agreement; Rent.

2.1. The initial term of this Lease shall commence on the simultaneous occurrence of (i) the settlement of the Property under the Contract of Sale between Tenant as "Seller" and Landlord as "Buyer," and (ii) the full execution and delivery of this Lease by the parties hereto (the "Commencement Date") and terminating on the date that is the last day of the month in which the third anniversary of the Commencement Date occurs (the "Expiration Date"), unless sooner terminated as provided in this Lease.

2.2. Tenant shall have six (6) options to renew the term for two (2) years each option upon all the terms, covenants, and conditions set forth herein ("Renewed Term"), except that that Rent

shall increase 3% over the previous two (2) year period. The right to exercise such options shall be conditioned upon Tenant's giving Landlord written notice of its election to renew (the "Renewal Notice") not less than six (6) months prior to the expiration of the initial Term or Renewed Term as the case may be. After the exercise of a renewal option, all references to the Term of this Lease shall be deemed to mean the Term as extended pursuant to this Section.

2.3. Commencing on the Commencement Date, Tenant agrees to pay to Landlord monthly rent ("Rent") in the amount of Four Hundred Dollars (\$400.00), payable in advance on the first day of each month. If any Rent is not received by the fifteen (15th) day of the month, Tenant shall pay a five percent (5%) per annum interest charge against the unpaid balance from the date due to the date of payment. In the event of termination of this Agreement, Rent shall be prorated and all prepaid Rent shall be refunded to Tenant within fifteen (15) days of the date of termination. The preceding sentence shall survive termination of this Agreement.

3. Permits. During the Term of this Agreement, Tenant will have the ongoing duty to assure that all permits related to the Facility which are necessary for the jurisdiction in which the Facility is located (the "Permits"), if any, are kept current. Tenant will give Landlord timely notice of any requirements, federal, state or local, with which Landlord must comply pertaining to the operation of the Facility, and Tenant will bear or reimburse Landlord any costs attendant to such compliance. Landlord shall cooperate fully with Tenant in obtaining and maintaining the Permits at no out of pocket cost or expense to Landlord. In the event that any required Permits are withdrawn or denied, this Agreement shall automatically terminate, whereupon neither party shall have any further rights, duties, obligations or liabilities, except for those that expressly survive the termination of this Agreement.

4. Uses.

4.1. The Premises may be used solely for operation of the Facility. The ATM shall perform such services and the Facility shall be operated as determined by Tenant in its sole discretion. Nothing in this Lease shall in any way be interpreted to impose any obligation upon Landlord to provide any services to the Premises, including but not limited to cleaning, trash, or security.

4.2. Tenant shall have the right to contract with any electronic funds transaction processing network and to operate and promote the ATM as a part of such network, provided such agreement shall not affect the rights and obligations of the Parties under this Agreement.

5. Installation. Tenant shall continue to be responsible for all equipment costs for the ATM, signage, security equipment, and the environmental surround. Landlord agrees to accommodate Tenant's reasonable needs with respect to the Facility, including without limitation, granting permission to Tenant to install, at Tenant's risk and expense, additional security equipment outside the Premises at a location to be agreed upon by Landlord, which agreement shall not be unreasonably withheld, conditioned or delayed.

6. Maintenance.

6.1. Landlord will maintain and keep in good repair all structural components, including exterior walls, roof, and foundation of the Building, existing at the Property. Landlord will not use any areas adjacent to the Premises in any way that would block, impede or restrict reasonable Tenant or Customer (defined below) access to the Facility. In addition, Landlord at its sole cost and expense shall keep the outdoor common areas, including the area immediately adjacent to the Premises, lit in the manner in which they are lit as of the date hereof, shall maintain in good condition and repair the outdoor common areas, including, without limitation, landscaping, sidewalks, entrances and exits, and shall keep the outdoor common areas in a clean, safe, presentable and sanitary condition with adequate drainage and reasonably free of snow, ice and debris. In the event any space immediately adjacent to the Premises shall be leased or otherwise occupied, Landlord shall immediately notify Tenant of such occurrence so as to allow Tenant to be aware of the increased risk to the Facility.

6.1.1. A "Customer" is a person who has an account relationship with Tenant or any other financial institution that has entered into an arrangement which permits its customers to utilize the ATM and who has a transaction with Tenant or such other financial institution at the ATM. Such person commences to be a Customer when using the ATM and continues to be a Customer until the transaction is completed. Evidence that a person with an account relationship used or intended to use the ATM or a record by the ATM of a transaction by the person shall conclusively establish that the person is a Customer.

6.2. Landlord, at Landlord's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force (collectively, the "Laws"), including, without limitation, the Americans With Disabilities Act, (i) which shall impose any duty upon Landlord or Tenant with respect to access to the Property (but excluding the Premises and the Facility which shall be the responsibility of the Tenant), (ii) which shall impose any duty upon Landlord with respect to any business conducted by Landlord at the Property, (iii) when the requirement for compliance applies to the Property or real estate generally, (iv) when the requirement for compliance involves a structural repair which is not caused by the use permitted Tenant hereunder, or (v) when the requirement applies to any portion of the Property that Landlord has agreed to maintain or maintains. Landlord covenants and agrees to indemnify and hold Tenant harmless from and against any expenses (including attorneys' fees), liability, losses, costs, damages or claims of whatever nature arising out of or in connection with Landlord's failure to comply with such Laws as provided hereinabove.

6.3. Tenant at Tenant's expense shall comply with all Laws that relate to the operation of the ATM and the occupancy of the Premises. Tenant will maintain all improvements installed by Tenant on the Premises and will provide complete service for the Facility, including, but not limited to, cleaning, maintenance (including, without limitation, software and hardware maintenance), repair, parts and labor, and security with the objective of keeping the Facility in good operating order and condition at all times but subject to reasonable periods for down-time and maintenance (collectively, the "Maintenance").

6.4. Tenant will provide Landlord with the telephone number of its network control for use in the event of emergency.

6.5. The cost of reasonable HVAC for the Facility will be borne by Landlord. In the event of an interruption or delay in electric or any other utility service, Landlord shall use reasonable efforts to restore or have restored such service, but Landlord shall not be liable for any interruption or delay in electric or any other utility service for any reason unless caused by the gross negligence or willful misconduct of Landlord or its agents. **Tenant shall pay Fifty and 00/100 (\$50.00) per month to reimburse Landlord for the cost of electricity consumed by the Facility.**

6.6. The cost of maintaining the monthly voice/data service will be borne by Tenant.

6.7. Tenant shall provide at its own expense cash replenishment for the ATM.

7. Replacement/Taxes. The ATM and other fixtures and equipment at the Facility will remain the property of Tenant. Tenant may replace the ATM at any time at its sole cost and expense with new or alternative models (the "Replacement") after Landlord's approval of any required alterations to the Premises to effect such Replacement, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant will pay all personal property taxes or similar assessments directly relating to the Facility, or reimburse Landlord therefor; provided, however, that the foregoing shall not include any federal or state income or franchise taxes based upon income, net worth or capital of Landlord or any business privilege taxes levied upon the fees paid to Landlord under this Agreement. Landlord will pay, when or before they are due, any real estate taxes or similar assessments attributable to the Premises.

8. Right to Subcontract. Tenant may undertake Replacement, Maintenance and Removal (as defined in Paragraph 11) itself or may subcontract all or any part thereof. Tenant and its subcontractors shall at all times be independent contractors, and it is not the intent of Tenant or Landlord to create any type of employment, agency, partnership or joint venture relationship. Landlord shall permit Tenant's employees, agents, and contractors to have access to the Facility to perform the Maintenance.

9. Removal. Within fifteen (15) days after the Termination Date or any other termination of this Lease by either party, Tenant shall commence, at its sole effort and expense, removal of the ATM from the Premises and shall restore the exposed area of the exterior/interior of the Premises created by the removal of the ATM with materials that are consistent with the material (and color) of the surrounding exterior/interior of the Premises on the Termination Date, and based on specifications provided to Landlord for review and approval, which review and approval shall not be unreasonably withheld, conditioned or delayed (the "Removal"). The Removal will include obtaining all necessary permits, taking the ATM and surrounds from the Premises, removing all security equipment and communications equipment, and leaving the Premises in broom clean condition, normal wear and tear and casualty excepted. Once the Removal has begun, it shall be finally completed within ten (10) days thereafter.

10. Indemnity and Insurance.

10.1. Tenant hereby agrees to defend and hold Landlord harmless from and to indemnify Landlord for any and all losses, claims, damages (but excluding any and all consequential and incidental damages), liabilities or expenses (including reasonable attorneys' fees) to third parties of any nature or kind in connection with loss of life, bodily injury or property damage arising directly from the operation or use of the Premises as well as the Facility including the Installation, Replacement, Maintenance, Removal or operation of the Premises as well as the Facility to the extent not caused by the negligence or willful misconduct of Landlord, its employees, agents, or contractors.

10.2. Tenant shall purchase and maintain insurance with the following minimum coverages: commercial general liability written on an occurrence basis with minimum limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and with limits of not less than Two Million Dollars (\$2,000,000.00) in the aggregate. The insurance required above shall include contractual liability coverage and shall also have umbrella coverage in a minimum amount of Three Million Dollars (\$3,000,000.00). Certificates of insurance evidencing Landlord as an additional insured shall be furnished annually upon request to Landlord. The insurance coverage will be provided by insurance carriers licensed in the State of Maryland. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to self-insure with respect to the provisions of this paragraph provided Tenant's certified net worth remains in excess of Fifty Million Dollars (\$50,000,000.00).

10.3. Landlord indemnifies and agrees to defend and hold Tenant and its officers, directors, shareholders, agents, employees and affiliates harmless from any and all losses, claims, damages (but excluding any and all consequential and incidental damages), liabilities or expenses (including reasonable attorneys' fees) to third parties of any kind or nature in connection with loss of life, bodily injury or property damage arising from operation of the Property to the extent not caused by the negligence or willful misconduct of Tenant, its agents, contractors or employees.

10.4. Landlord shall purchase and maintain such insurance as will protect it from the claims that may arise out of or result from the foregoing paragraph and its obligations under this Agreement. Such insurance shall include the following minimum coverage: commercial general liability written on an occurrence basis with minimum limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and with limits of not less than Two Million Dollars (\$2,000,000.00) in the aggregate. Insurance coverage will be provided by insurance carriers licensed in the State of Maryland.

10.5. The insurance required hereby may be maintained by means of a policy or policies of blanket insurance.

10.6. Notwithstanding anything to the contrary herein contained, Landlord and Tenant do mutually each release and discharge the other of and from all suits, claims, and demands whatsoever, whether in contract or in tort, for loss or damage to the property of the other, even if caused by or occurring through or as a result of any negligent act or omission of the party released hereby or its contractors, agents, or employees, provided such property damage or loss



is caused by any risk covered by policies of Commercial Property Insurance with industry standard Special Form or equivalent carried or required hereunder to be carried by the Parties. Each party shall carry such policies of Commercial Property Insurance with industry standard Special Form or equivalent which shall contain a waiver of subrogation consistent with this paragraph.

11. Signage. Landlord hereby acknowledges that Tenant's ability to use the existing exterior sign box already located on the west/street side of the Property is deemed approved. Any change in the size and/or placement of any sign on the exterior of the Premises or on the Property advertising the Facility shall be with Landlord's written consent and at Tenant's expense and must comply with all applicable laws. Landlord expressly reserves the right to install additional signage on the Property which otherwise complies with all applicable laws. The existing monument sign shall be utilized exclusively by Landlord. Tenant shall remove any and all of its signage at the Termination Date or upon any other termination of this Lease Agreement by either party.

12. Promotions. Any promotions, advertising or publicity developed by Tenant in connection with the Facility shall be the property of, and belong exclusively to, Tenant. Neither Tenant nor Landlord shall use the other's names, trade names, trademarks, service marks, logos, or other identifying items without the prior written consent of the other party; provided, that Tenant is not required to obtain Landlord's approval of Tenant's use the address of the Facility as a location reference in its marketing and/or promotional materials.

13. Default.

13.1. In the event Tenant shall default in the performance of any of the terms or provisions of this Agreement, Landlord shall promptly so notify Tenant in writing. If Tenant shall fail to cure such default within ten (10) days after receipt of such notice in the case of a monetary default, or within twenty (20) days after receipt of such notice in the case of a non-monetary default, or if the non-monetary default is of such character as to require more than twenty (20) days to cure and Tenant shall fail to commence to do so within twenty (20) days after receipt of such notice and thereafter diligently proceed to cure such default and such additional time does not expose Landlord to civil or criminal fines or other liability, then in either such event, in addition to any other remedy which may be available at law or in equity to Landlord, (i) Landlord may cure such default, and any reasonable expense incurred in connection therewith shall be paid by Tenant promptly upon demand, or (ii) Landlord may cancel and terminate this Agreement or (iii) Landlord may proceed by appropriate court action to enforce Tenant's performance hereunder, or to recover from Tenant any or all damages or expenses (excluding consequential, punitive, special or incidental damages) which Landlord shall have sustained by reason of Tenant's default in such performance or on account of Landlord's enforcement of its remedies hereunder. Notwithstanding anything contained herein to the contrary, Landlord shall have no property interest in, or lien or right of distraint upon the contents of the ATM or any other fixtures or equipment in the Facility used for holding or processing cash or other personal property.

13.2. In the event Landlord shall default in the performance of any of the terms or provisions of this Agreement, Tenant shall promptly so notify Landlord in writing. If Landlord shall fail to

cure such default within twenty (20) days after receipt of such notice, or if any non-monetary default is of such character as to require more than twenty (20) days to cure and Landlord shall fail to commence to do so within twenty (20) days after receipt of such notice and thereafter diligently proceed to cure such default and such additional time does not expose Tenant to civil or criminal fines or other liability, then, in either such event, in addition to any other remedy which may be available at law or in equity to Tenant, a) Tenant may cure such default, excepting any default concerning an environmental matter outside the Premises, and any expense incurred in connection therewith shall be paid by Landlord promptly upon demand, or b) Tenant may cancel and terminate this Agreement, or c) Tenant may proceed by appropriate court action to enforce Landlord's performance hereunder, or to recover from Landlord any or all damages or expenses (excluding consequential, punitive, special or incidental damages) which Tenant shall have sustained by reason of Landlord's default in such performance or on account of Tenant's enforcement of its remedies hereunder. Nothing contained in this Section shall abrogate Landlord's right to terminate this Agreement as provided herein.

14. Eminent Domain. If the whole or any part of the Premises shall be taken under the power of eminent domain or sold to the condemning authority under threat of the exercise of eminent domain, but the use of the Facility is not disturbed thereby, then this Agreement shall continue with respect to the remaining portion of the Premises. If the portion of the Premises so taken or sold is, in the reasonable opinion of Tenant, such as to substantially impair the usefulness of the Premises for the purposes for which the same are hereby leased, then this Agreement shall terminate as of the date when Tenant is required to yield possession. The compensation awarded for such taking, or the sale proceeds, both as to Landlord's reversionary interest and Tenant's interest under this Agreement, shall belong to and be the property of Landlord. Nothing herein contained shall be deemed to prevent Tenant from receiving any award in any condemnation proceeding for trade fixtures installed by Tenant, the unamortized value of any Installation paid for by Tenant, or for moving components of the Facility owned by Tenant.

15. Casualty. If the Property or Premises shall be damaged by fire, the elements, unavoidable accident or other insurable casualty, and provided neither party terminates the Agreement, Landlord shall promptly, at its own expense, cause such damage to be repaired, but in no event shall Landlord be responsible for damage to or repair of the ATM or any other improvements installed by Tenant. If the Facility is not thereby rendered unusable, in Tenant's reasonable judgment, Rent shall not be abated. If by reason of such occurrence the Facility is rendered unusable, any payment of Rent by Tenant shall be wholly abated until the Premises are restored to a condition which is reasonably satisfactory to Tenant.

16. Governing Law and Severability. This Agreement shall be construed under the laws of the State of Maryland without regard to conflict of laws principles. It is agreed that if any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect; and if any provision is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

17. WAIVER OF TRIAL BY JURY. TENANT AND LANDLORD HEREBY MUTUALLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE PARTIE AGREE TO SUBMIT ANY AND ALL LITIGATION RELATING TO THIS LEASE AGREEMENT TO STATE COURTS LOCATED IN WASHINGTON COUNTY, MARYLAND.

18. Assignment. This Agreement may not be assigned by Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Tenant may assign this Agreement without Landlord's consent to a corporation wholly owned by Tenant, or in which Tenant owns a majority of the stock entitled to vote, or which is wholly owned by a corporation which owns a majority of the stock of Tenant entitled to vote, or which is a successor in interest to Tenant pursuant to a merger or corporate reorganization or which purchases substantial assets of Tenant. Following such an assignment (other than by merger), Tenant will remain responsible for performance of all obligations on its part under this Agreement. Landlord may not assign this Agreement without the Tenant's written consent, which shall not be unreasonably withheld.

19. Notice. Any notice given under this Agreement shall be in writing. Each notice shall, for all purposes, be deemed given and received (i) if given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service, (ii) if given by nationally recognized overnight courier service, delivery charges prepaid, on the day it is delivered, as evidenced by the delivery receipt, or (iii) upon refusal of delivery. Such notice shall be sent to the respective party at the address designated below or to any other address that the respective party may designate by notice delivered pursuant hereto:

IF TO LANDLORD: 1 East Franklin Street  
Hagerstown MD 21740  
Attn: Mr. Scott A. Nicewarner, City Administrator

WITH A COPY TO: Jason Morton  
Salvatore & Morton, LLC  
82 West Washington Street, Suite 100  
Hagerstown, MD 21740

IF TO TENANT: Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, New York 14203  
Attention: Corporate Real Estate, 18<sup>th</sup> Floor

WITH A COPY TO: Manufacturers and Traders Trust Company  
1800 Washington Boulevard  
Baltimore, MD 21230  
Attention: Network Planning/ATM Product

20. Survival. The provisions of Sections 9, 10, 23, 26 and 27 shall survive the termination or expiration of this Agreement.

21. Merger. This Agreement supersedes any prior written or oral negotiations or understandings, and any such negotiations or understandings are merged herein.

22. Representations.

22.1. Landlord warrants and represents to Tenant that the execution and delivery of this Agreement and the performance of the provisions hereof have been duly authorized by all necessary entity action on its part, and this Agreement has been duly and validly executed and delivered by it and constitutes a valid and legally binding agreement enforceable against it in accordance with its terms; and, neither the execution and delivery of this Agreement nor the performance of the provisions hereof is or will constitute a violation of any contract, lease, sublease or other agreement or relationship to which it is a party or by which it is bound or to which the Property is subject. Landlord hereby agrees to indemnify and hold harmless Tenant against any losses, damages, liabilities or expenses of any nature or kind directly or indirectly arising from a breach of this representation, including, but not limited to, any suits, claims, and/or actions having such a violation as their basis.

22.2. Tenant warrants and represents to Landlord that the execution and delivery of this Agreement and the performance of the provisions hereof have been duly authorized by all necessary corporate action on its part, and this Agreement has been duly and validly executed and delivered by it and constitutes a valid and legally binding agreement enforceable against it in accordance with its terms; and, neither the execution and delivery of this Agreement nor the performance of the provisions hereof, is or will constitute a violation of any contract, lease or other agreement or other relationship to which it is a party or by which it is bound. Tenant hereby agrees to indemnify and hold harmless Landlord against any losses, damages, liabilities or expenses of any nature or kind directly or indirectly arising from a breach of this representation, including, but not limited to, any suits, claims, and/or actions having such a violation as their basis.

22.3 Pursuant to United States Presidential Executive Order 13224 ("Executive Order") and related regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, U.S. persons and entities are prohibited from transacting business with persons or entities who, from time to time, are determined to have committed, or to pose a risk of committing or supporting terrorist acts, narcotics trafficking, money laundering and related crimes. Those persons and entities are identified on a list of Specially Designated Nationals and Blocked Persons (the "List"), published and regulated by OFAC. The names, including aliases, of those persons or entities on the List ("Blocked Person") are updated frequently. In addition, OFAC enforces other Executive Orders which, from time to time, impose restrictions on transactions with, or involving certain countries.

22.3.1. Landlord represents and warrants to Tenant that neither it, nor, to its knowledge, any of its respective officers, directors, or council members is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States

Treasury Department as a terrorist, a Blocked Person, or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by OFAC and that it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

22.3.2. Tenant represents and warrants to Landlord that neither it, nor, to its knowledge, any of its respective officers, directors, partners, or any person or entity that directly or indirectly controls it or has an ownership interest in it of ten percent (10%) or more, is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, a Blocked Person, or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by OFAC and that it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

23. Environmental Matters. Landlord covenants that the Property will be operated in compliance with all applicable federal, state and local laws, ordinances and regulations (collectively, "Laws") relating to environmental pollutants or hazardous, toxic or similar substances (hereinafter "Pollutants"); and that any generation, handling, transportation, storage, treatment or disposal of Pollutants occurring on the Property will be in compliance with all applicable Law. During the Term, Tenant covenants that the Premises and the Facility will be operated in compliance with all applicable environmental Laws. Tenant shall not generate, handle, transport, store, treat or dispose of Pollutants on the Property except in such limited quantities as are necessary for the permitted use of the Premises and in compliance with all applicable Law. In the event any Pollutants are determined to be located on, in, or affecting the Property, or if the Property is determined to be subject to any past, existing, pending or threatened investigation by any governmental authority under any Law, Landlord shall notify Tenant in writing immediately. Should Landlord be required to contact any governmental or quasi-governmental authorities concerning the Property, Landlord shall so advise Tenant and Tenant shall have the right to be present during any such contacts.

24. Quiet Enjoyment. Tenant, upon payment of Rent, shall and may peacefully and quietly have, hold and enjoy the Premises for the Term without trouble or hindrance.

25. Waiver. The waiver at any time by Landlord or Tenant of any particular provision of this Agreement shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver shall not be constructed or understood as waiving any further or other rights of any character whatsoever.

26. Confidentiality. Except in accordance with Buyer's Charter and Code and in accordance State Law as to open meetings and public information requests, this Contract shall not be recorded in any office or place of public record.

27. No Brokers. Landlord and Tenant represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Facility or this

transaction and each agrees to indemnify the other against and hold the other harmless from any claims by any party with whom the indemnifying party has consulted or negotiated with regard to the Facility or this transaction.

28. Headings. Headings used in this Agreement are for convenience and reference only and shall not be deemed to limit, define, construe or interpret any provision contained herein.

29. The submission of this Lease by Tenant to Landlord for examination does not constitute a reservation of or option for the Premises. This Lease will become effective only upon execution thereof by both parties and delivery thereof to Tenant.

30. If any term or provision of this Lease, or any portion thereof, and the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provisions of this Lease shall be valid and enforceable to the fullest extent permitted by law.

31. Whenever in this Lease a period of time is calculated or stated as a number of days, it shall be construed to mean calendar days, and the day of the act, event or default from which the designated period of time begins to run shall not be included; provided, however, that when any period of time would end on a Saturday, Sunday or legal holiday, such period shall be deemed to end on the next day following which is not a Saturday, Sunday or legal holiday.

32. This Lease may be executed in one or more counterparts by original signatures, and/or signatures transmitted via facsimile or portable document file. The transmission of a signed counterpart of this Lease by facsimile or by portable document file shall have the same force and effect as delivery of an original signed counterpart of this Lease and shall constitute valid and effective delivery for all purposes.

[end of text – signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on or as of the date first above written.

WITNESS/ATTEST:

CITY OF HAGERSTOWN

By: \_\_\_\_\_  
Emily N. Keller  
Mayor

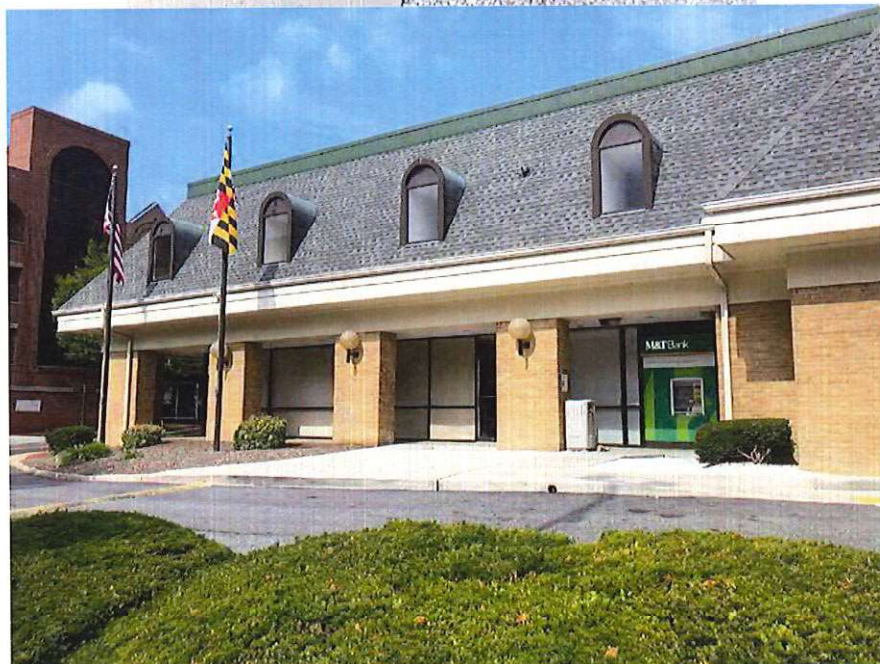
WITNESS/ATTEST:

MANUFACTURERS AND TRADERS  
TRUST COMPANY

By: \_\_\_\_\_  
Name: Howard Block  
Title: Vice President



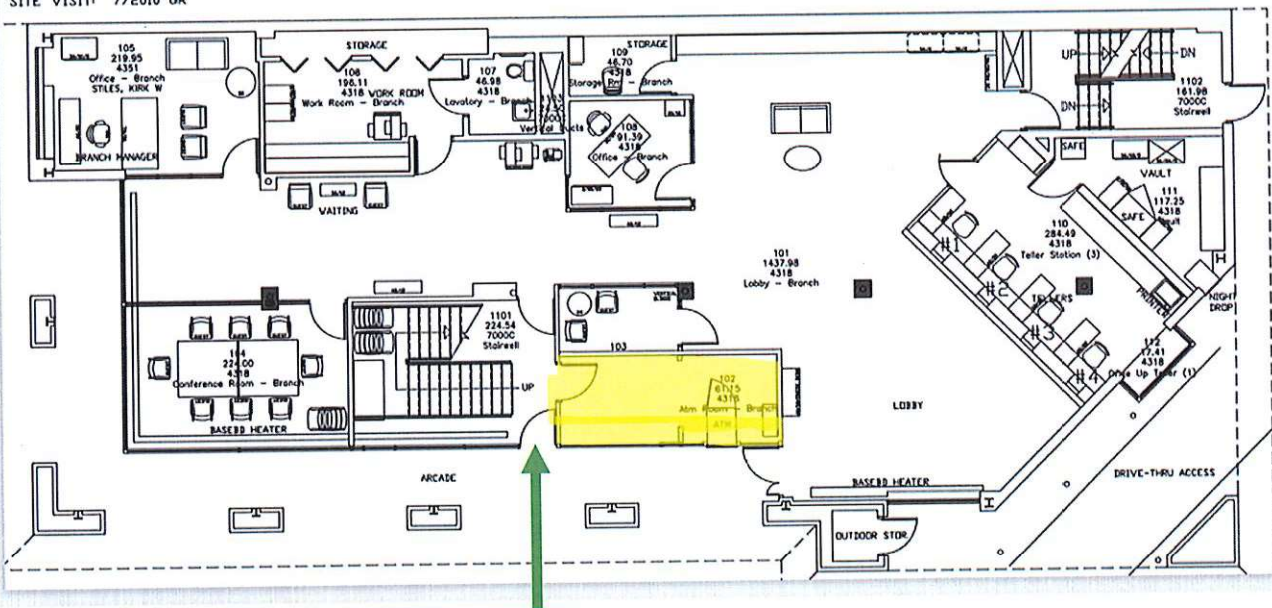
Exhibit A





ATM Room for leave behind M&T Bank ATM

SITE VISIT: 7/2010 dk



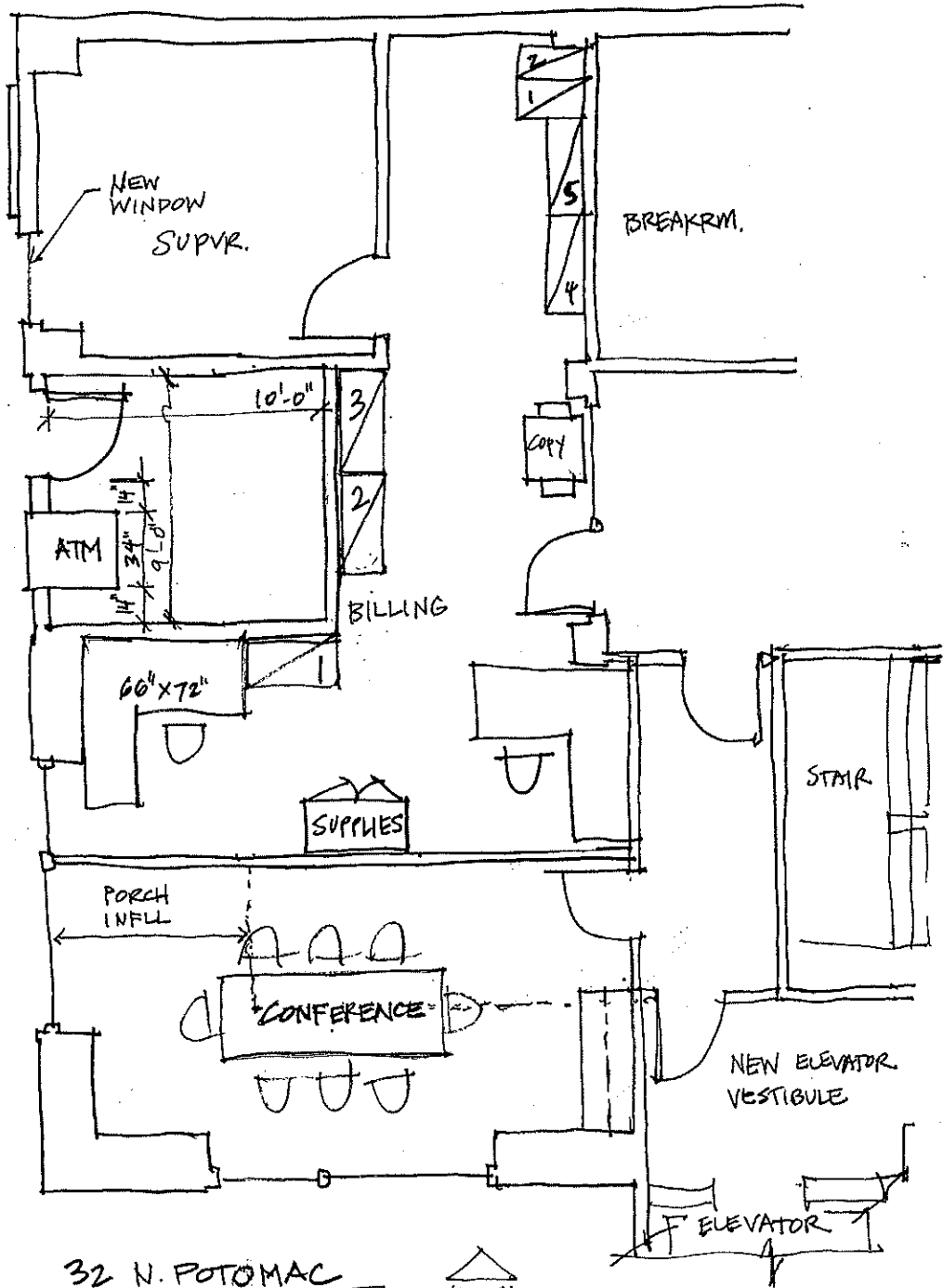
M&T to access door to service ATM

## **Exhibit B**

### **M & T Bank ATM Room Buildout Requirements**

- 10'x10' room, or site-specific comparable per attached drawings
- Minimum 5/8" drywall, metal studs
- Walls/studs to deck and insulated
- Must maintain 70 degrees at all times
- 60 AMP breaker pull station with three (3) 20 AMP duplex receptacles
- Lighting - Two (2) 2x4 or four (4) 2x2 fixtures
- Solid wood or metal door; MTB will supply door hardware
- Acoustical ceiling
- Separate entrance for servicing
- Must meet ADA requirements
- Must pass ATM Lighting requirements; lighting survey will need to be done MTB contractor to determine
- HVAC

POTOMAC STREET



32 N. POTOMAC  
9.24.21  $\frac{1}{4}'' = 1'-0'' \pm$







32 N. POTOMAC ST.



**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

---

**Topic:**

Proclamation: Economic Development Week

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

---

**Topic:**

Certificate of Appreciation: Sarah and Ned Ardinger

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

---

**Topic:**

Proclamation: National Conflict Resolution Day

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**



**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

---

**Topic:**

Proposal for Clara Barton Memorial Adjacent to Cultural Trail near Park Circle - *Clara Barton Memorial Committee and Rodney Tissue, City Engineer*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Proposal\_for\_Clara\_Barton\_Memorial.2021.pdf

**Description**

Proposal for Clara Barton Memorial adjacent Cultural Trail near Park Circle



# CITY OF HAGERSTOWN, MARYLAND

Engineering Department

October 19, 2021

TO: Scott Nicewarner, City Administrator

FROM: Rodney Tissue, City Engineer 

RE: **Proposal for 'Clara Barton Memorial' adjacent Cultural Trail near Park Circle**

---

1. **Background**

In July of 2019, the City Council decided to create green space and remove the former vehicle service station at 319 Summit Avenue. Since then, the Public Art Commission has discussed a possible public art installation on the site. The Cultural Trail's 2016 Master Plan envisioned temporary sculpture or a skatepark at this site.

Recently we were contacted by a group who are proposing a memorial that honors Clara Barton and their proposal is attached. Al Martin, Rachel Nichols, Tom Riford and artist Toby Mendez will be present on Tuesday to present their proposal.

2. **Mayor & Council Action Requested**

Staff is requesting that the Mayor & Council review the attached proposal for a memorial art installation and consider providing City resources including: land "donation", foundation engineering, plaza construction, landscaping and lighting as outlined therein. Staff understands that the City will own and maintain the project once completed.

3. **Discussion**

The Public Art Commission endorsed this project at their October 8<sup>th</sup> meeting.

If the Council endorses the concept, staff would recommend:

- An Agreement be developed between the City, the "Clara Barton Memorial Committee" and the Community Foundation that includes details on the City's donation and responsibilities.
- An 'Art Transfer Agreement' be developed that conveys the art to the City upon its completion.
- Funding for the City's portion of the project would be included in the FY23 capital budget that the Mayor and Council would approve next spring and be available starting in July 2022. We would estimate this at approximately \$60,000.

Staff will be available on Tuesday to review this project with the Mayor & Council.

Attachments: Proposal, Budget, Schedule, PowerPoint

Cc: Eric Deike, Michelle Hepburn, Public Art Commission

THE  
CLARA BARTON MEMORIAL  
COMMITTEE

Rodney Tissue, PE  
City Engineer  
Engineering Department  
1 East Franklin Street  
Hagerstown, MD 21740  
RE: Establishing Clara Barton Memorial Park

October 11, 2021

Dear Rodney,

This is a request to present a plan for the Clara Barton Memorial Park to the Mayor and City Council of Hagerstown to gain their approval. Since our last conversation about this idea, much progress has been made in the planning and development of the proposal of The Clara Barton Memorial Park. We envision a larger-than-life bronze figural grouping of the nurse Clara Barton giving care to a Fallen Soldier and to install this memorial tribute in a setting which will serve to honor Clara Barton and all nurses and first responders. It was here in Washington County not more than 11 miles from the proposed site on the Cultural Trail, where Clara Barton became the first Civil War Nurse to be allowed on the field of battle while the war was ongoing. Her philosophy of immediate response to care, was the difference between life and death for the soldiers, many of whom were taken and cared for in the temporary hospitals throughout the City of Hagerstown. In preparation for fundraising we have established with the Community Foundation of Washington County the Clara Barton Memorial Fund. We also received the endorsement of Senator Elizabeth Dole, who has accepted our invitation to serve as an Honorary Chair on the committee. Lastly, we presented this proposed idea before the Public Arts Commission for their advised recommendation.

**History**

The spark that created an idea for the creation of a Memorial to Clara Barton in Hagerstown came over 30 years ago, originally it was brought up as an idea by a several board members of the local Western Maryland Red Cross in Hagerstown. The significance for the memorial to Clara Barton in Hagerstown our County Seat, is it was here in Washington County where Clara Barton became the first Civil War nurse to be allowed to set foot on a battlefield during the course of a battle. It was here where her philosophy of immediate care and response was first put into action. Executive Director Eric Anderson of the local Red Cross stated, "Clara Barton's preparation at the Battle of Antietam in September 1862, her timely delivery of much needed bandages and medical supplies, and the care she provided to the wounded there, all laid the groundwork for her eventual role in the creation of the American Red Cross. While she founded the Red Cross nearly two decades later and in a different place, the seeds of launching a humanitarian organization of our size and impact were sown right here in Washington County, and have helped save thousands of lives in the years since."

All over Hagerstown they set up temporary hospitals for the same soldiers from Antietam that Clara Barton originally cared for. After the Civil War, Clara Barton founded the American Red Cross in 1881, serving as its first president. Recently in 2017, when the Western Maryland Chapter of the American Red Cross celebrated its centennial, discussions for creating a meaningful memorial to Clara Barton in Hagerstown resumed. There are, a myriad of reasons beyond Clara Barton's breaking the barrier to be on the battlefield during battle and establishment of American Red Cross that pinpoint Hagerstown as



# THE CLARA BARTON MEMORIAL COMMITTEE

an appropriate location for a memorial of national significance. Next year we will honor the 160<sup>th</sup> Anniversary of the Battle of Antietam and we will give tribute to that moment when Clara Barton became the first nurse to provide immediate care during the battle.

## The Memorial Sculpture

We envision a historic bronze sculpture of Clara Barton giving care to a fallen soldier. Clara Barton believed that an immediate response to care for the soldiers was the difference between life and death. Immediate response and preparedness for a crisis is the philosophy that she brought to the American Red Cross, responding in times of war and natural disasters. This memorial is a tribute to that dedication of care. It is a tribute to Clara Barton and all nurses and first responders, who have been on the front lines during war and peace.

The memorial bronze figural grouping will be over life-size and placed on a low pedestal and installed in the center of a small plaza. We believe the establishment of the park, with a sculptural tribute to Barton and the Soldier, will be a springboard to active and ongoing teaching of the contributions of Clara Barton and our first responders and will benefit our City's cultural and economic landscapes.

Towards our goal, we are working with the nationally known Washington County sculptor, Toby Mendez. Among many other national memorials, his work includes the Thurgood Marshall Memorial located in front of the State House in Annapolis, the six Hall of Fame Baltimore Orioles at Camden Yards, The United States Navy Memorial in Washington DC and the Thomas Kennedy Memorial in Hagerstown, Maryland. An enthusiastic supporter of the vision of the Clara Barton Memorial, Mendez has graciously offered as a gesture of his commitment, an in-kind donation to lower the overall cost of the intended bronze memorial.

Still, significant funds must now be raised to make this memorial a reality. We anticipate raising money from private donors, institutional sources and state funds. To accomplish this goal, in discussion with the artist and other potential funders, we are now seeking support from the city in the following ways:

- A meeting with elected officials and you to discuss the project, with the intended participation of Al Martin, Tom Riford, Rachel Nichols and Toby Mendez.
- A City resolution to establish a public park, called the Clara Barton Memorial Park located at 319 Summit Avenue. We will need this to help Senator Paul Corderman and Delegate Brenda Thiam with his efforts on our behalf.
- An understanding to work collaboratively with us to develop an overall plan for the design and construction of the entire park.

Respectfully Submitted,

Al Martin, Committee Chair

THE  
**CLARA BARTON MEMORIAL**  
**COMMITTEE**

*Honorary Chair, Senator Elizabeth Dole*

**Budget**

|                                  |                   |              |
|----------------------------------|-------------------|--------------|
| Artist Design and Sculpting fees | 90,000.00         |              |
| Fabrication                      | 110,000.00        |              |
| Assistance                       | 45,000.00         |              |
| Studio Overhead                  | 50,000.00         |              |
| Enlarging                        | 25,000.00         |              |
| Foundry                          | <u>140,000.00</u> |              |
| Sub total                        | <b>460,000.00</b> | \$460,000.00 |

|                       |                   |                     |
|-----------------------|-------------------|---------------------|
| Site Work             |                   |                     |
| Engineering           | 8,000.00          |                     |
| Site Prep             | 10,000.00         |                     |
| Foundations           | 10,000.00         |                     |
| Pedestal              | 40,000.00         |                     |
| Stone Masonry Install | 30,000.00         |                     |
| Lettering             | 7,000.00          |                     |
| Paving                | 25,000.00         |                     |
| Landscaping           | 10,000.00         |                     |
| Installation          | 10,000.00         |                     |
| Way side Signage      | <u>3,000.00</u>   |                     |
| Sub Total             | <b>153,000.00</b> | \$153,000.00        |
| Total                 |                   | <b>\$613,000.00</b> |

# THE CLARA BARTON MEMORIAL COMMITTEE

Honorary Chair, Senator Elizabeth Dole

## Calendar

| Calendar              | A         | B       | C        | D        | E              | F        | G     | H     | I   | J    | K    | L      | M         | N |
|-----------------------|-----------|---------|----------|----------|----------------|----------|-------|-------|-----|------|------|--------|-----------|---|
|                       | September | October | November | December | January (2022) | February | March | April | May | June | July | August | September |   |
| Sculpture Schedule    |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Phase 1               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Start Up              |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Phase 2               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Engagement Clay       |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Phase 3               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Foundry               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Construction Schedule |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Phase 4               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Site Prep             |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Phase 5               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Stone Ordered         |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Year of State Funding |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Phase 6               |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Installation          |           |         |          |          |                |          |       |       |     |      |      |        |           |   |
| Year of State Funding |           |         |          |          |                |          |       |       |     |      |      |        |           |   |

CONTRIBUTIONS TO  
 COMMUNITY FOUNDATION OF WASHINGTON COUNTY MARYLAND CARE OF THE CLARA BARTON MEMORIAL  
 37 S. POTOMAC STREET, HAGERSTOWN, MD 21740 OR DIRECTLY ON THIER WEBSITE [WWW.CFWCMD.ORG](http://WWW.CFWCMD.ORG)  
 COMMITTEE CHAIR - AL MARTIN [aemartin24@aol.com](mailto:aemartin24@aol.com) 301 991-3468



# THE CLARA BARTON MEMORIAL

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CULTURAL TRAIL  
VIRGINIA AND SUMMIT AVENUES

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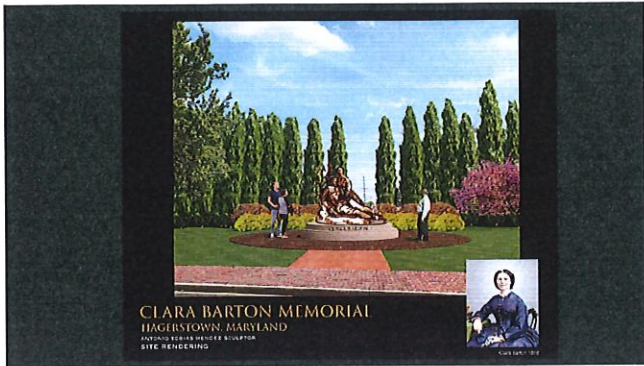
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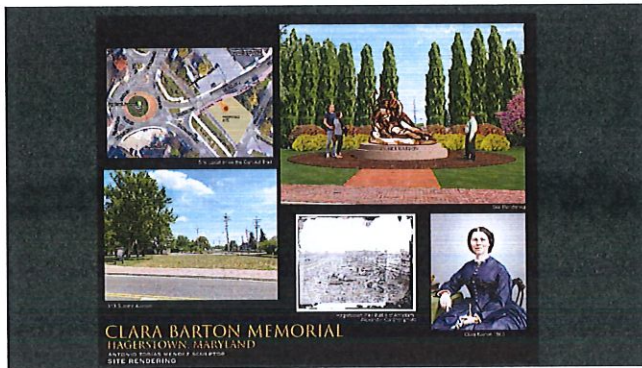
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HAGERSTOWN PIPE

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CLARA BARTON MEMORIAL  
HAGERSTOWN, MARYLAND  
ANTONIO BOITO BENEDE SCULPTOR  
SITE RENDERING



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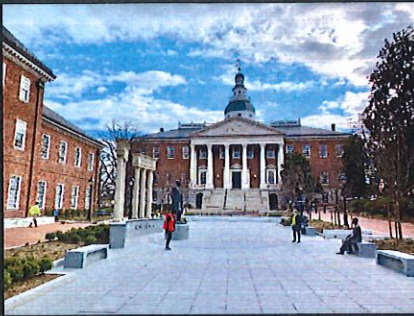
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Thurgood Marshall Memorial, Annapolis, Maryland

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Thurgood Marshall Memorial, Annapolis, Maryland

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Thurgood Marshall Memorial, Annapolis, Maryland

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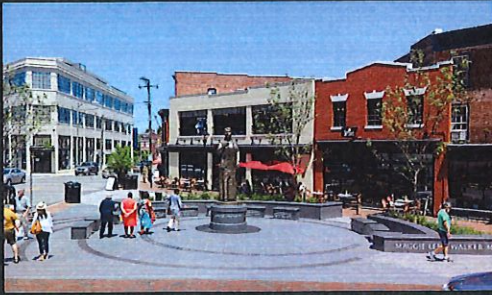
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MAGGIE WALKER MEMORIAL, RICHMOND, VIRGINIA

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Pastors joined hands and prayed at the Maggie Walker Memorial in Richmond on Monday, Aug. 31, 2017. Six hundred pastors signed a statement of unity in a 24-hour period following the events in Charlottesville. They joined to pray and recite the unity statement. JAMES H. WALLACE/TIMES DISPATCH

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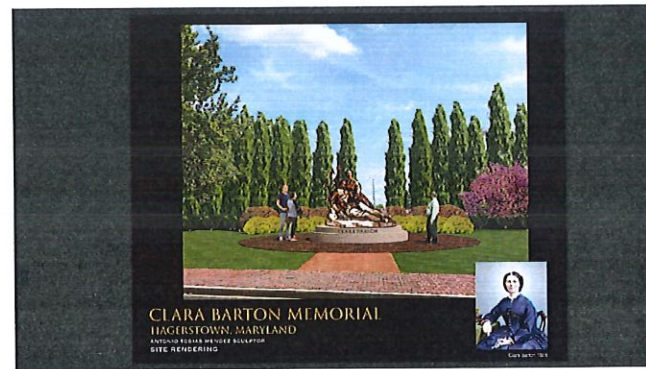
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**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Indoor Sports Facility ~ *Rodney Tissue, City Engineer*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Indoor\_Sports\_Facility.2021.pdf

**Description**

Indoor Sports Facility



# CITY OF HAGERSTOWN, MARYLAND

Engineering Department

October 19, 2021

TO: Scott Nicewarner, City Administrator  
FROM: Rodney Tissue, City Engineer   
RE: **Indoor Sports Facility**

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## 1. Background:

In January when we discussed that the municipal stadium site would no longer be used for professional baseball, the consensus of the majority of City Council was that as a long term re-use of the site be an indoor turf facility. This would be a public/private partnership for removing the existing stadium and constructing an indoor turf facility much like the *Frederick Indoor Sports Center* in Frederick. The extensive *Victus Adisors* study from 2018 showed there is a significant demand for indoor sports.

In April, City Council approved Request for Qualifications (RFQ) to solicit statements of qualifications from developers (or multi-firm project teams) interested in designing, constructing, operating and maintaining an indoor turf facility, that would provide patrons with sports and recreation activities, serve as an economic development driver and enhance the overall quality of life for Hagerstown residents.

In response to the RFQ, we received three proposals and the Selection Committee (consisting of Sheldon Shealer, Michelle Hepburn, Scott Nicewarner and I) reviewed the proposals and interviewed all three development teams. Based on this process, the Committee is prepared to recommend that we enter into a contractual relationship with *Eastern Sports Management* (ESM) to develop the facility.

## 2. Mayor and Council Action Requested:

The Selection Committee is recommending we enter into a long-term contractual relationship with ESM. We will review the proposal at the Work Session. If the Council concurs, we would recommend that we award a phase I contract to ESM for \$70,000 (plus expenses) to complete an updated market analysis, develop concept drawings and a business plan that will enable the City to seek the needed capital funding.

## 3. Discussion:

ESM has a 17 year track record of successfully designing, constructing, operating and maintaining indoor recreational facilities. They have assembled an experienced team of professionals to successfully complete the project.



Some other pertinent information that will be discussed at the Work Session includes:

- The facility will include two turf fields, hard courts, fitness area, food and beverage and other space to support the operations.
- The facility is proposed at the Municipal Stadium site and will utilize as much of the existing parking as possible.
- The construction cost depends on what is actually built but will be in the \$180/SF cost range. Grants would be sought for construction; undoubtedly the City would have a large financial obligation to fund construction that would be re-paid by ESM from operational revenue over 20 years.
- The project will take about 20 months to develop and another 14 months to construct and we are suggesting a phased approach to the project as follows:
  - Phase I: Market Analysis, Conceptual Design and Capital Development
    - 6 Months
    - \$70,000—we are recommending we approve the attached “Consulting Services Agreement” at the Oct 26<sup>th</sup> Regular Session
  - Phase II: Capital Development, Bid Documents and Legal Agreements
    - 5 months
    - \$400,000
  - Phase III: Construction Documents and Permits
    - 9 Months
    - \$350,000
  - Phase IV: Construction and Business Stand-Up
    - 14 Months (Start construction late summer of 2023 and opening Fall 2024)
    - Cost to be determined based on what is actually built but will be at least \$10,000,000 and could be as much as \$20,000,000.
- City would continue to own the land, building ownership after 20 years will need to be determined but will likely be ESM’s. City has the financial obligation to remove the stadium structures (estimated at \$100,000) and address the stormwater issues on site.

Staff will be present at the work session along with John Wack, president of ESM.

Attachments: Consulting Services Agreement for Phase I

cc: Michelle Hepburn, Sheldon Shealer, Jill Thompson, Eric Deike



## CONSULTING SERVICES AGREEMENT

**THIS CONSULTING SERVICES AGREEMENT** (the “*Agreement*”) is made and entered into effective as of October 19, 2021 (the “*Effective Date*”), by and between **Eastern Sports Management, LLC**, a Virginia limited liability company (“*Consultant*”) and **the City of Hagerstown, Maryland**, a political subdivision of the state of Maryland (“*Client*”) with its principal place of business located in Hagerstown, MD.

### RECITALS:

A. Client desires to retain Consultant as an independent contractor to provide consulting services.

B. Consultant desires to provide such services to Client, subject to the terms and conditions set forth in this Agreement.

### AGREEMENT:

**NOW, THEREFORE**, in consideration of the premises and the mutual conditions and promises herein contained, the parties hereto agree as follows:

1. **Consulting Services.** Consultant agrees to provide the services to Client set forth in the statement of work attached hereto as Schedule A (the “*Services*”), incorporated and made a part of this Agreement by reference. Consultant warrants that it shall perform the Services: (a) using personnel of commercially reasonable skill, experience, and qualifications and (b) in a timely, workmanlike, and professional manner.

2. **Term.** The term of this Agreement shall begin on the Effective Date and, unless sooner terminated pursuant to Section 8, shall continue until the completion of the Services.

3. **Fees.** As consideration for the Services, Client will pay Consultant the fees and expense reimbursements (collectively the “*Fee*”) in the amounts and in the manner set forth on Schedule B, which shall be incorporated and made a part of this Agreement by reference. Unless otherwise provided in Schedule B, payment by Client shall be promptly completed upon receipt by Client of an invoice from Consultant, but in no event more than Seven (7) days after receipt of payment from project owner. All late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible by law, calculated daily and compounded monthly. Client must notice in writing any payment dispute to Consultant within ten (10) days of the date of any invoice.



4. **Client Obligations.** Client agrees to: (a) respond promptly to any reasonable requests from Consultant for instructions, information, or approvals required by Consultant to provide the Services; (b) cooperate with Consultant in its performance of the Services and provide access to Client's premises, employees, contractors, and equipment as required to enable Consultant to provide the Services; and (c) take all steps necessary, including obtaining any required licenses or consents, to prevent Client-caused delays in Consultant's provision of the Services.

5. **No Solicitation of Employees.** During the Term and for a period of one (1) year after the termination or expiration of this Agreement, Client shall not directly or indirectly employ or retain any individual who is or was an employee or contractor of Consultant during the Term, or contact, solicit or assist in the solicitation of any such individual for the purpose of employing such individual or obtaining such individual's services for hire, or otherwise causing such individual to leave his or her employment or engagement with Consultant.

6. **Termination.** This Agreement may be terminated by either party at any time and any reason with thirty (30) days' prior written notice. In addition, if either party materially breaches this Agreement, the other party may terminate this Agreement immediately upon written notice. Upon termination, Consultant will be paid for any services rendered as well as any associated expenses incurred through the last day Consultant provides services. In addition, if Client terminates this Agreement prior to completion of Phase 2, Client shall pay Consultant all fees that would have otherwise accrued by such date had this Agreement not been terminated.

7. **Indemnification.** Each party shall defend, indemnify and hold the other party, and its members, managers, officers, directors, agents and employees harmless against any and all claims, damages, or liabilities, including reasonable attorneys' fees and other legal expenses, arising directly or indirectly from any negligent or wrongful acts or omissions of the indemnifying party or the indemnifying party's agents or employees.

8. **Limited Remedy.** Consultant's sole and exclusive liability and Client's sole and exclusive remedy for breach of the warranties set forth in Section 1 shall be for Consultant to use reasonable commercial efforts to promptly cure any such breach; provided, that if Consultant cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, Client may, at its option, terminate this Agreement by written notice to Consultant. CONSULTANT MAKES NO WARRANTIES EXCEPT FOR THOSE PROVIDED IN SECTION 1 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE) WHETHER RELATED TO ANY SERVICES OR GOODS FURNISHED BY CONSULTANT OR OTHERWISE, ARE EXPRESSLY DISCLAIMED.

9. **Limitation of Liability.** IN NO EVENT SHALL CONSULTANT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT CONSULTANT HAS BEEN ADVISED OF THE



POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL CONSULTANT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO CONSULTANT PURSUANT TO THIS AGREEMENT.

10. **Independent Contractors.** Consultant shall act as an independent contractor in performing the Services described in this Agreement. Nothing contained herein shall be deemed to make Consultant the agent, employee, joint venturer, or partner of Client.

11. **Attorney's Fees.** If any action is brought to enforce, or to construe or determine the validity of, any term or provision of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs of the action.

12. **Amendments.** This Agreement may be amended, or any provision of this Agreement may be waived, only in a writing executed by the parties. No course of dealing between or among the parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of either party under this Agreement.

13. **Applicable Law; Venue.** This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to any conflicts of law provisions or principles to the contrary. Any legal proceeding arising out of this Agreement will be brought only in a state court of competent jurisdiction sitting in Washington County, Virginia. All parties agree that venue will lie in those courts and hereby submit themselves to the personal jurisdiction of such courts.

14. **Waiver of Jury Trial.** THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

15. **Waiver.** Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

16. **Survival.** The agreements and covenants in and obligations under Sections 5, 6, 7, 8, 9, 13, 14 and 16 shall survive the termination or expiration of this Agreement.

17. **Binding Agreement.** The rights and obligations of the Client under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Client. Neither party shall be permitted to assign this Agreement or such party's rights, obligations, or duties hereunder to another party without the prior written consent of the non-assigning party, where such consent shall not be unreasonably withheld.

18. **Notices.** All notices required or permitted to be given hereunder shall be in

writing and may be delivered by hand, by electronic transmission in .pdf format or similar format, by nationally recognized private courier, or by tracked U.S. mail return receipt requested. Notices delivered by mail or by hand shall be deemed delivered when actually delivered. Notices given by nationally recognized private courier shall be deemed delivered on the date delivery is promised by the courier. Notices given by electronic transmission shall be deemed given on the first business day following receipt; *provided, however*, that a notice delivered or electronic transmission shall only be effective if such notice is also delivered by hand, deposited in the U.S. mail, postage prepaid, registered or certified mail with return receipt requested, or given by nationally recognized private courier on or before two (2) business days after its delivery by electronic transmission. All notices shall be addressed as set forth on the signature page hereto.

19. **Entire Agreement.** This Agreement, including and together with any exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

20. **Severability.** If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding by a competent court, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the parties.

21. **Descriptive Headings; Interpretation.** The headings and captions used in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

22. **Counterparts.** This Agreement may be executed in counterparts (including by means of facsimile or PDF signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*



**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date first written above.

**CONSULTANT:**

**EASTERN SPORTS MANAGEMENT, LLC,**  
a Virginia limited liability company

By: \_\_\_\_\_  
John Wack, President

Notice Address:  
725 Jackson Street, Suite 207  
Fredericksburg, VA 22401  
E-mail: johnwack@me.com

**CLIENT:**

**City of Hagerstown, MD**

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Notice Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

## **Schedule A**

### **Statement of Work**

- Market Analysis
  - Potential facility participant phone calls and interviews
  - Potential event organizer phone calls and interviews
  - Demographic analysis
  - Competitive analysis
- Conceptual Facility Design
  - Design Charrette with development of Three Options
  - Develop Selected Option
  - Two Client meetings and two team meetings
  - Deliverables
    - Design Narrative
    - Architectural Site Plan
    - Floor Plans
    - One exterior rendering
    - Two interior renderings
- Business Plan Development
  - Meetings with Hagerstown Stakeholders
  - Meetings with Client
  - Pro Forma Development
  - FFE schedules and pricing

## **Schedule B**

### **Fees**

The total consulting fee shall be \$ 70,000.00. Payment of \$20,000 30 days after effective date, \$20,000 60 days after effective date, with the balance paid upon client receipt of deliverables.

Travel expenses for any trips to Hagerstown with mileage at current IRS allowable rate and room and board per diem at \$150.00 per night per consultant team member..

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**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

2021 Hagerstown Ice & Sports Complex Annual Report - *Eric Deike, Director of Public Works, and Paul Sweeney, Hagerstown Ice Amateur Athletic Association (HIAAA) Board Chair*

**Mayor and City Council Action Required:**

**Discussion:**

2021 Hagerstown Ice & Sports Complex Annual Report. See the attached.

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

2021\_Annual\_Report\_Ice\_and\_Sports\_Complex.pdf

**Description**

2021 Hagerstown Ice & Sports Complex Annual Report



## CITY OF HAGERSTOWN, MARYLAND

Public Works Department

(301)739-8577 ext. 178

October 14, 2021

To: Scott Nicewarner, City Administrator

From: Eric B. Deike, Director of Public Works

RE: 2021 Hagerstown Ice & Sports Complex Annual Report

I am requesting time on the October 19, 2021 Work Session to allow members of the Hagerstown Ice Amateur Athletic Association (HIAAA) to present their annual report as required by our Agreement. HIAAA Board Chair, Paul Sweeney, will be in attendance possibly along with others from the board. They will present a PowerPoint presentation to provide usage data, fiscal information, capital improvement information and goals for the upcoming year.

As a reminder to the Mayor and City Council:

- HIAAA has managed the ice rink facility since April 2004.
- The City pays the utility bills at the rink with a cap of \$85,000 per year.
- The HIAAA pays rent in the amount of \$36,000 per year.
- The City pays 75% for certain capital improvements at the rink as stipulated in the Agreement.
- The Agreement with the HIAAA expires June 30, 2024.

In addition to the presentation, the HIAAA will be requesting rent relief from calendar year 2020 in the amount of \$5,700. The group requested rent relief in the amount of \$9,000 for the months of April, May and June 2020. The Council agreed to write off \$3,300 of the amount (an amount equivalent to utility savings) leaving a total of \$5,700 to be paid. This amount remains outstanding.

Attachment: PowerPoint  
R. Tissue letter dated Sept. 3, 2020  
R. Tissue letter dated Nov. 3, 2020

C: Paul Sweeney  
Mark Haddock  
Amy Riley  
Michelle Hepburn

# Annual Review: Hagerstown Ice & Sports Complex

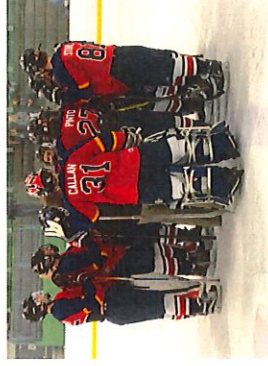
October 19, 2021



**HAGERSTOWN**  
**ICE & SPORTS**  
**COMPLEX**  
@ Fairgrounds Park



# HISC Member Groups



Hagerstown Ice Amateur Athletic Association (HIAAA) manages the rink

## What is the HIAAA?

- ▶ HIAAA is a non-profit, 501(c)(3) organization
- ▶ Consortium of all major user groups
- ▶ Each member-group has a voting member on the HIAAA board
- ▶ Our at-large board members also hold voting rights
- ▶ Group was created in 2014 and formally took over operation of the rink on April 1, 2014 (finished our 7<sup>th</sup> complete Fiscal year)



## Public Skating: Year-to-Year Comparison





## Adult Teams at the HISC

- ▶ **6** teams in upper adult hockey division
- ▶ **10** teams in the middle adult hockey division
- ▶ **2** teams in the lower division
- ▶ **1** all-female travel adult team
- ▶ **1** sled hockey team
- ▶ **225** adult registrations this fall; **89** over the summer

## Amateur / Youth teams at HISC

- ▶ **7** HYHA teams (Hagerstown Youth Hockey)
- ▶ **2** High School Teams (NorthStars, WV Vipers)
- ▶ **4** youth developmental programs
  - ▶ Power Skating
  - ▶ Learn to Play Hockey
  - ▶ Youth Recreational League
  - ▶ Hagerstown Hammerheads in-house teams (4 teams)
- ▶ **200+** youth hockey participants throughout the year

## Figure Skating at the HISC

- ▶ **2** figure skating programs at the rink
  - ▶ Hagerstown Edge Learn to Skate
  - ▶ Hagerstown Edge Figure Skating Club
    - ▶ **NEW** Theater on Ice program this year
- ▶ **431** registrations for Learn to Skate last year (+102 from last year!)



## HIAAA: Opportunities for Success

- ▶ Detailed analysis of separate rink functions continues to be examined by HIAAA board members (ice usage, registrations, concessions, advertising, maintenance)
- ▶ Recommendations made at monthly board meetings
- ▶ HIAAA Board Members chair each subcommittee to ensure a fair workload & input from each user group and volunteers
- ▶ Physical state of ice and boards in very good condition.
  - ▶ Ice was taken out and put back, in 2 weeks this Spring, which allowed for maintenance and rink repairs.

## Current State of HISC and HIAAA

- ▶ All bills (as of September 2021) are current
- ▶ We received small business loans to keep funding payroll through the COVID-19 closure
- ▶ We stayed open and practiced recommended safety protocols during Fall/Winter 2020 and Spring 2021
- ▶ We continue to make monthly payments on our Zamboni, purchased in FY 17-18

*HISC continues to operate in the black!*

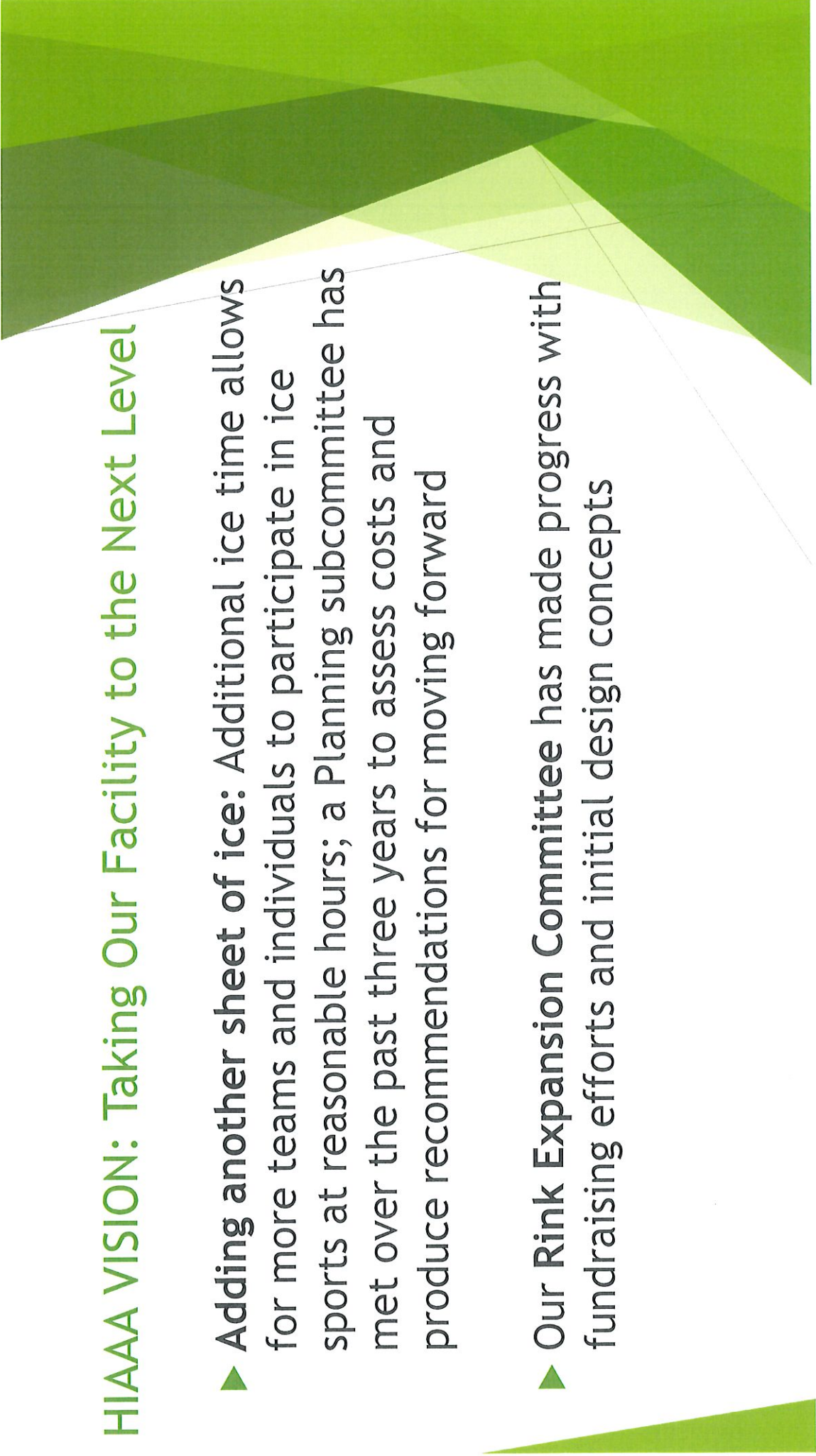


# Future Maintenance & Reinvestments

| Targeted FY: | Task:                                | Estimated Cost: |
|--------------|--------------------------------------|-----------------|
| 2020-21      | Energy efficient ceiling (installed) | \$50,000        |
| 2021-22      | Dehumidifier Replacement             | \$135,000       |

## Looking Ahead: Vision for 2021 - 2022

- ▶ **COVID-19 Awareness:** Continue to operate the rink in a safe environment. Draft strategies for potential closure if we see a surge in MD / WashCo cases.
- ▶ **Travel Youth & Adult Tournaments:** Partnering with local businesses to offer discounts for visitors (restaurants, hotels)
- ▶ **Roller Hockey:** continuing to grow roller hockey in Hagerstown



## HIAAA VISION: Taking Our Facility to the Next Level

- ▶ **Adding another sheet of ice:** Additional ice time allows for more teams and individuals to participate in ice sports at reasonable hours; a Planning subcommittee has met over the past three years to assess costs and produce recommendations for moving forward
- ▶ **Our Rink Expansion Committee** has made progress with fundraising efforts and initial design concepts





## CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

November 3, 2020

Paul Sweeney, Chairman  
Hagerstown Ice Amateur Athletic Association, Inc.  
580 Security Road  
Hagerstown, MD 21742

RE: Hagerstown Ice and Sports Complex  
Rent Relief

Dear Paul:

City Mayor and Council met recently on Tuesday, October 13, 2020. During this meeting, Mayor and Council continued to discuss the impact of the COVID-19 pandemic to the City's Fiscal Year 2021 revenue sources. As a result, a decision has been made to not distribute Agency Contribution funds for Fiscal Year 2021. Therefore, the Ice Rink's request for \$5,700 in rent relief cannot be granted at this time.

Mayor and Council, along with City staff, appreciate all the efforts and valuable contribution provided by your agency to our community. The City recognizes the importance of continued collaboration.

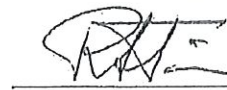
Please forward payment to the City as soon as possible.

Thanks for your understanding during this time of financial constraints.

Sincerely,

CITY OF HAGERSTOWN

  
Michelle Hepburn  
Director of Finance

  
Rodney Tissue  
City Engineer

c: Mark Haddock  
Cathy Beach



## CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

September 3, 2020

Paul Sweeney, Chairman  
Hagerstown Ice Amateur Athletic Association, Inc.  
580 Security Road  
Hagerstown, MD 21742

RE: Hagerstown Ice and Sports Complex  
Rent Relief Due To COVID-19

Dear Paul:

The Mayor & Council discussed your rent relief request at their meeting on Tuesday, September 1, 2020. You are asking for rent relief totaling \$9,000 for April, May, and June 2020 (\$3,000/per month) due to the required closure of the rink per the Governor's orders.

The required closing of the Ice & Sports Complex in April, May & June 2020, resulted in approx. \$3,300 savings in utility costs during this time frame. With this in mind, the Mayor & Council agreed to write off \$3,300 now and will evaluate the remaining \$5,700 rent balance at a later date when they evaluate all the rent relief requests they receive. Until then, you are not required to pay the \$5,700.

If you have any questions, please contact me at 301-739-8577 ext 128 or by E-mail at:  
[rtissue@hagerstownmd.org](mailto:rtissue@hagerstownmd.org)

Sincerely,

CITY OF HAGERSTOWN

Rodney Tissue  
City Engineer

c: Scott Nicewarner  
Mark Haddock  
Michelle Hopburn  
Dan LaValliere  
Cathy Beach

Parks and Recreation Division  
351 North Cleveland Avenue • Hagerstown, MD 21740  
21740-4817  
Ph: 301.739.8577 Ext. 169 • Fax: 301.790.0171

Engineering Division  
1 East Franklin Street • Hagerstown, MD  
Ph: 301.739.8577 Ext. 125



**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Preliminary Agenda Review

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

October\_26\_\_2021\_Preliminary\_Agenda.pdf

**Description**

October 26, 2021  
Preliminary Agenda



**MAYOR AND COUNCIL  
JOINT MEETING WITH THE BOARD OF WASHINGTON COUNTY  
COMMISSIONERS AND  
REGULAR SESSION (23RD VOTING SESSION)  
OCTOBER 26, 2021  
AGENDA**

*“A diverse, business-friendly, and sustainable community with clean, safe and strong neighborhoods.”  
“Providing the most efficient and highest-quality services as the municipal  
location of choice for all customers.”*

**Preliminary Agenda**

\*\*\*\*\*

The agenda and meeting packet is available at [www.hagerstownmd.org/government/agenda](http://www.hagerstownmd.org/government/agenda)

\*\*\*\*\*

**10:00 a.m. Joint Meeting with the Board of Washington County Commissioners**  
*100 West Washington Street, Hagerstown, Maryland*

**7:00 p.m. REGULAR SESSION – Council Chamber, 2<sup>nd</sup> floor, City Hall**

**I. CALL TO ORDER - Mayor Emily Keller**

**II. INVOCATION**

**III. PLEDGE TO THE FLAG**

**IV. ANNOUNCEMENTS**

- A. Rules of Procedure – *Effective December 15, 2020*
- B. Use of cell phones during meetings is restricted.
- C. All correspondence for distribution to Elected Officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.
- D. Meeting Schedule:
  - 1. Tuesday, November 2, 2021 – Work Session at 4:00 p.m.
  - 2. Tuesday, November 9, 2021 – Work Session at 4:00 p.m.
  - 3. Tuesday, November 16, 2021 – Work Session at 4:00 p.m.
  - 4. Tuesday, November 23, 2021 – Regular Session at 7:00 p.m.
  - 5. Tuesday, November 30, 2021 – No Meeting Scheduled

**V. PROCLAMATION**

Complex Regional Pain Syndrome Awareness Month

## VI. CITIZEN COMMENTS

**Citizens are welcome to provide comments in person or by sending an email to [councilcomments@hagerstownmd.org](mailto:councilcomments@hagerstownmd.org) no later than 5:00 p.m. on Tuesday, October 26, 2021.** Include your full name, home street address, and topic of your comments. You may attach a letter to the email, or write your comments in the body of the message. The City Clerk will read your name, address, and provide a summary of the comments. The full copy of the comments will be provided for public viewing as part of the minutes.

## VII. MINUTES

September 14, 2021, September 21, 2021, and September 28, 2021

## IX. CONSENT AGENDA

### A. Information Technology:

1. Annual Support and Maintenance Contract Renewals – Glessner Technologies (Hagerstown, MD) \$ 23,543.00

### B. Public Works:

1. Bulk Road Salt – Cargill, Inc. (North Olmstead, OH) \$ 76.38 per ton

### C. Utilities:

1. Light: Conduit and Associated Materials for Northpoint Development – Wesel Blvd. – Scott Electric (Greensburg, PA) \$ 79,357.60
2. Water: 2022 Ford Escape AWD – Keystone Ford (Chambersburg, PA) \$ 24,700.00
3. Water: 2021 F-550 Chasis and Utility Body – Keystone Ford (Chambersburg, PA) \$ 95,392.00
4. Water: 2022 F-750 Diesel Regular Cab with Dump Bed – Keystone Ford (Chambersburg, PA) \$ 94,646.00
5. Water: Installation of Fiber Optic Transmission Line – RC Willson WTP – Antietam Cable Television (Hagerstown, MD) \$ 56,188.00
6. Wastewater: Truck/Van RCA Camera Unit – Atlantic Machinery (Silver Spring, MD) \$ 425,936.75

## X. UNFINISHED BUSINESS

- ✓ A. Approval of an Ordinance: Amending the City Code, Chapter 140, Land Management Coe (LMC) – Small-Scale Breweries, Wineries, and Distilleries
- ✓ B. Approval of an Ordinance: Authorizing the Purchase of Property Located at 32 N. Potomac Street

## XI. NEW BUSINESS

- A. Introduction of an Ordinance: Sale of a Portion of Property and Purchase Agreement with GB&J's, LLC
- B. Approval of a Resolution: Acceptance of Railway Occupancy Agreement with CSX Transportation, Inc. – Sanitary Sewer Lining along West Washington Street
- C. Approval of a Resolution: Closing Portions of Alley 3-39 and 3-45 to Thru Traffic
- D. Approval of License Agreement - Alexander House Ramp
- E. Approval of Landowner Project Agreement with Western Maryland Resource Conservation and Development Council (WMRC&DC) for Tree Planting
- ✓ F. Approval of Invest Hagerstown Incentive for 53 W. Washington Street
- G. Approval of Open Container Exemption for Augustoberfest Charitable Foundation at Christkindl Markt
- H. Approval of Open Container Exemption for Downtown Hagerstown Halloween Block Party - October 30, 2021
- I. Approval of FY22 Axon Body Camera Payment (5 year contract)

**\*\* Please note all times are approximate and subject to change. Meetings are televised and recorded. \*\***

**XII. CITY ADMINISTRATOR COMMENTS**

**XIII. MAYOR & COUNCIL COMMENTS**

**XIV. ADJOURN**

*✓ Items that have been discussed and reviewed previously or are of a routine nature and, therefore, additional information may not be attached to this agenda.*

**\*\* Please note all times are approximate and subject to change. Meetings are televised and recorded. \*\***

**City Hall • Council Chamber • 1 East Franklin Street • Hagerstown, MD 21740  
301.739.8577, Ext. 113 • Telephone for the Hearing Impaired 301.797.6617**

# **REQUIRED MOTION MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND**

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## **Topic:**

Invest Hagerstown City Center Redevelopment Grant Application: 53 West Washington Street (Updegraff Building) ~ *Chris Siemerling, Economic Development Specialist*

## **Mayor and City Council Action Required:**

## **Discussion:**

Staff will attend the October 19, 2021 Work Session of the Mayor and City Council to review the following Invest Hagerstown City Center Redevelopment Grant Application.

The Review Committee believes the project meets the eligibility requirements of the program for approval. The following is a summary of the application.

Invest Hagerstown Application Summary:

- Applicant: Blackthorn Capital Partners LP
- Property: 53 W. Washington Street (Updegraff Building)
- Requested Grant amount: \$250,000 City Center Redevelopment Grant
- Estimated total project costs: \$4,091,587
- Expected Start Date: 04/01/2022
- Expected Completion Date: 10/01/2022
- Review Committee Recommended Completion Deadline: 05/01/2023
- Project Description: Full build out and renovation of vacant second, third, and fourth floors for creation of 7 residential units per floor, full renovation of the first floor's commercial space for tenant ready build out, and upgrades to the building's Façade.
- Number of new jobs within 2 years of project completion: 20
- Number of jobs retained as a result of the project: 0 – Property is currently vacant

The project was approved for the Partners in Economic Progress (PEP) Property Renovation Program, a \$7,500 Invest Hagerstown Façade Grant, and was recommended by the Review Committee for a \$250,000 Invest Hagerstown City Center Redevelopment Grant for a \$4,091,587 Mixed-Used Building Project to create 15 fully renovated one-bedroom and 6 two-bedroom residential units. The project is also currently undergoing the process to receive Maryland Historic Tax Credits for the property.

## **Financial Impact:**

## **Recommendation:**

## **Motion:**



**Action Dates:**

**ATTACHMENTS:**

**File Name**

101921\_MCC\_Memo\_53\_W.\_Washington.pdf

**Description**

Invest Hagerstown Grant  
Application: 53 West  
Washington Street  
(Updegraff Building)



## CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

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TO: Scott Nicewarner, City Administrator

FROM: Chris Siemerling, Economic Development Specialist

DATE: October 13, 2021

RE: Invest Hagerstown City Center Redevelopment Grant Application: 53 West Washington Street (Updegraff Building)

---

Staff will attend the October 19, 2021 Work Session of the Mayor and City Council to review the following Invest Hagerstown City Center Redevelopment Grant Application.

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### Attachments:

Draft Motion  
Invest Hagerstown City Center Redevelopment Grant Program  
Application Supporting Documents

c: Review Committee

---

**REQUIRED MOTION**  
**MAYOR & CITY COUNCIL**  
**HAGERSTOWN, MARYLAND**

**DATE:** 10/26/2021

**TOPIC:** **Approval of Invest Hagerstown: City Center Redevelopment Grant  
Application for 53 W. Washington Street – Blackthorn Capital Partners LP**

|                   |              |
|-------------------|--------------|
| Charter Amendment | ___          |
| Code Amendment    | ___          |
| Ordinance         | ___          |
| Resolution        | ___          |
| Other             | <u>  X  </u> |

**MOTION:** I hereby move for the Mayor and City Council to approve the attached Invest Hagerstown City Center Redevelopment Grant application for the renovation project at 53 W. Washington Street with estimated total projects costs of \$4,091,587. Staff are authorized to issue a Letter of Commitment to Blackthorn Capital Partners LP for a grant in the amount of \$250,000 with a project completion deadline of May 1<sup>st</sup>, 2023.

No funds will be dispersed until staff have verified that all work in the development plan is completed to the City's satisfaction and the total project cost expenditure requirements have been met. Funding for this grant will come from the Invest Hagerstown line item in the Economic Redevelopment Fund.

DATE OF PASSAGE: 10/26/2021



## Community & Economic Development

Advancing the Economy, Image and Quality of Life

### INVEST HAGERSTOWN

#### CITY CENTER & CITY-WIDE Redevelopment Grant Program Application

##### Property Information

Property Address: 53 West Washington Street, Hagerstown, MD 21740

Check One: ☒ City Center Grant ☐ City Wide Grant  
One: ☐ Commercial Building ☒ Mixed-Use Building

##### Applicant Information

###### Property Owner

Company (legal ownership of property): Blackthorn Capital Partners LP (Contract Purchaser)

Contact and Title: Tony Brown, Chief Executive Officer

Phone Number: 703-928-9352

Email Address: [mtjmhbrown@gmail.com](mailto:mtjmhbrown@gmail.com)

Address of Business: 9909 Deerfield Pond Drive, Great Falls, VA 22066

Business Phone Number: 703-928-9352 Business Website: N/A

##### Project Information

Is this project utilizing the Opportunity Zone? ☒ Yes ☐ No

Click [HERE](#) to look up an address on the Opportunity Zone map.

If yes, the following criteria for Qualified Opportunity Zone (QOZ) property is required:

1. Was the property purchased by a QOZ Fund or QOZ business after December 31, 2017? ☒  
Yes ☐ No
2. Comes into original use with the QOF or QOZ Business or is substantially improved? ☒ Yes  
☐ No
3. Substantial improvement is 100% of the value of the assets, excluding land value for real estate? ☒ Yes ☐ No

Time frame for project completion (excluding tenant fit-out): One Year

14 N. Potomac Street, Suite 200A | Hagerstown, MD 21740 Tel: 301.739.8577 Ext. 111 | Fax: 301.739.3117  
Email: [dcled@hagerstownmd.org](mailto:dcled@hagerstownmd.org) [www.hagerstownmd.org](http://www.hagerstownmd.org)

Expected Start Date: Q1 2022

Expected Completion Date: Q4 2022

*Note: Any schedule beyond two years shall require Mayor and City Council approval.*

Do tenant spaces have Use and Occupancy Permits yet? ☐ Yes ☒ No

Are new residential units proposed? ☒ Yes ☐ No

If yes, provide number of units and square footage calculations for each unit: 21 units – see Exhibit A

---

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How many new jobs will be created within 2 years of the project completion? Approximately 20 new jobs

How many jobs will be retained as a result of this project? None – property has been vacant

How long has the property been 100% vacant? Since November 2020

If partially vacant: 75% vacant for decades

Describe the investment impact and the aesthetic impact on the immediate commercial area/neighborhood: See Exhibit C

A financing plan is a required attachment. Describe the financial feasibility of the proposed funding sources, and describe the development experience of the applicant: See Exhibit D

Provide any additional description of how the proposed project supports the following program goals:

- Inspire and enable significant redevelopment, both city-wide and in the urban core, reusing and repurposing existing vacant and under-utilized properties.
- Create the opportunity for new jobs throughout the City of Hagerstown and Washington County.
- Increase the value of Hagerstown's commercial and mixed use properties.



**Required Attachments:**

- ☒ Description of proposed renovation and construction work.
- ☒ Design plans and occupancy plan.
- ☒ Project budget/construction cost estimates.
- ☒ Construction timeline.
- ☒ Financing plan showing proposed funding sources and indicating any other grants or incentives for the project.

**Grant Request Amount:** \$250,000

**Total Project Cost:** \$4,554,458

*Applicants must comply with all conditions indicated on their application form and in the published Program Guidelines and subsequent information provided in support of this application and eligibility criteria of the program, particularly including receipt of buildings permits for proposed work and implementation of approved development plan and schedule. Any changes to the approved development plan and schedule must be resubmitted for review and approval of the Invest Hagerstown Committee to determine continued eligibility of the project. If a project is disqualified, any financial incentives received to date will be required to be repaid to the City. There may be additional project information requested from the developer at any time during the process.*

If approved, the developer shall be responsible to report the following to the City of Hagerstown Department of Community and Economic Development – [dcled@hagerstownmd.org](mailto:dcled@hagerstownmd.org) :

1. Progress reports every month on status of project milestones and any anticipated changes to the project plans;
2. Reporting to the City, at completion of construction, the square footage per use type of the renovated space (e.g., office, retail, restaurant);

**Applicant Signature:**

*By signing below, I certify that the information above is true and correct, I agree to comply with the program requirements and eligibility as described in the Invest Hagerstown Grant Guidelines, and I understand that if my application is approved, failure to comply will result in termination of the Letter of Commitment.*

*P. Celly Brown*

July 19, 2021

Applicant's Signature

Date

**Return to:**

City of Hagerstown  
Department of Community & Economic Development  
14 N. Potomac, Suite 200A, Hagerstown, MD 21740  
Phone: 301-739-8577 ext 111 Email: [dcled@hagerstownmd.org](mailto:dcled@hagerstownmd.org)

[vs. 06.18.2019]

## **Exhibit A**

### **Estimated Project Milestones**

Completion of Architect's Contract Drawings – December 2021  
Receipt of Historic Tax Credit Approval – December 2021  
Submission of Plans for City Approval – January 2022  
Submission of Plans for Preliminary Contract Bids – January 2022  
Receipt of City Approval – March 2022  
Receipt of Final Contract Bids – March 2022  
Commencement of Improvements – April 2022  
Completion of Improvements – September 2022  
Final Inspections – October 2022  
Certificate of Occupancy – October 2022

**Exhibit B**

**Renovation Plans**

**HISTORIC PRESERVATION CERTIFICATION APPLICATION**  
**PART 2 – DESCRIPTION OF REHABILITATION**

Property name **Updegraff Building**  
Property address **49-53 West Washington Street, Hagerstown, MD** NPS Project Number \_\_\_\_\_

1. **Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
Number items consecutively to describe all work, including building exterior and interior, additions, site work, landscaping, and new construction.

|                 |                                             |                                    |
|-----------------|---------------------------------------------|------------------------------------|
| <b>Number 1</b> | <b>Feature</b> <u>Brick at Front Facade</u> | <b>Date of Feature</b> <u>1882</u> |
|-----------------|---------------------------------------------|------------------------------------|

**Describe existing feature and its condition**

The existing facade facing Washington Street features decorative brick above the second, third and fourth floors. The vast majority of the brick is painted a beige color. It appears to be holding fairly well with the exception of the area around the recessed entry to the stair. It is here that the red clay brick color shows through. The mortar joints appear to be fairly tight and no evidence of settling or structural cracking is obvious.

Photo numbers E-1 to 3, 6, 28, 29, and 30 Drawing numbers N/A

**Describe work and impact on feature**

The existing brick will be wire brushed and repainted the same color using a breathable Exterior Acrylic Latex Paint.

|                 |                                  |                                    |
|-----------------|----------------------------------|------------------------------------|
| <b>Number 2</b> | <b>Feature</b> <u>Storefront</u> | <b>Date of Feature</b> <u>1882</u> |
|-----------------|----------------------------------|------------------------------------|

**Describe existing feature and its condition**

The ground floor storefront features a large decorative central cast iron column, a transom of prismatic glass, double wooden doors, and slender historic storefront framing with plate glass panels. The paint coating on the wood horizontal portions of the wood storefront framing at the bottom of the glazing has eroded away. The wood appears to be salvageable.

Photo numbers E-1, 2, 27, 31 and 32 Drawing numbers N/A

**Describe work and impact on feature**

The storefront will be hand scraped, wood filled, primed and painted the same black color. The black paint applied to the back of the prismatic glass spelling the word BEAD will be carefully removed with peel away paint remover and then all surfaces neutralized according to manufacturer's instructions. The double wood doors will be lightly sanded and then coated with Minwax polyurethane wood finish. The protective panels covering the historic door to the North stair tower will be removed. The glazing in the entry door will be replaced, and panic hardware installed. A key card entry will be mounted on a low post in the recessed entry.



**COMPETITIVE COMMERCIAL CERTIFICATION APPLICATION**  
**PART 2 – DESCRIPTION OF REHABILITATION**

Property name **Updegraff Building**  
Property address **49-53 West Washington Street, Hagerstown, MD**

**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
Number items consecutively to describe all work, including building exterior and interior, additions, site work, landscaping, and new construction.

|                 |                                      |                                    |
|-----------------|--------------------------------------|------------------------------------|
| <b>Number 3</b> | <b>Feature</b> <u>Metal cornices</u> | <b>Date of Feature</b> <u>1882</u> |
|-----------------|--------------------------------------|------------------------------------|

**Describe existing feature and its condition**

The facade features two metal cornice bands. One tops the ground floor openings. The other caps the facade. Both are in fairly good shape with no missing or damaged components.

Photo numbers E-2, 28, 29, 30, 31 Drawing numbers N/A

**Describe work and impact on feature**

The metal components will be wire brushed and repainted with an enamel paint of the same color.

|                 |                                                           |                                    |
|-----------------|-----------------------------------------------------------|------------------------------------|
| <b>Number 4</b> | <b>Feature</b> <u>East facade of existing stair tower</u> | <b>Date of Feature</b> <u>1882</u> |
|-----------------|-----------------------------------------------------------|------------------------------------|

**Describe existing feature and its condition**

The lower three stories of the front 35' stair tower portion of the East facade bears evidence that the adjacent demolished building had been built first. The mortar in the brick joints exudes out of the spaces between the bricks and there are many voids where the masons pushed the brick up against the adjacent wall. These voids present pathways for water to migrate into the wall. The original faded painted signage for Updegraff sits high atop this section of the facade.

Photo numbers E-5, 7 and 34 Drawing numbers A3.1

**Describe work and impact on feature**

Because the coursing does not line up in many places and scrap bricks were used, simply repointing this wall will not work. The portion of the wall below where the roof scar is represented will be stuccoed. The larger holes will be filled with mortar, then a 1/2" scratch coat will be applied. A 1/4" finish coat with an integral color will be applied last. The Updegraff painted sign will be repainted with Keim pigment paints that will take it another 50 or more years.



**COMPETITIVE COMMERCIAL CERTIFICATION APPLICATION**  
**PART 2 – DESCRIPTION OF REHABILITATION**

Property name **Updegraff Building**  
Property address **49-53 West Washington Street, Hagerstown, MD**

**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
Number items consecutively to describe all work, including building exterior and interior, additions, site work, landscaping, and new construction.

|                 |                                         |                                    |
|-----------------|-----------------------------------------|------------------------------------|
| <b>Number 5</b> | <b>Feature</b> <u>East Wall Masonry</u> | <b>Date of Feature</b> <u>1882</u> |
|-----------------|-----------------------------------------|------------------------------------|

**Describe existing feature and its condition**

The areas of the existing east facing wall excluding the stair tower wall are in need of pointing in some places. A few areas between the jack arches and sills are exhibiting structural cracking. In these same locations the brick in the jack arches have lost faces and are in need of replacement. Vines have grown over the facade and a myriad of cut pipes, defunct devices and wires were left protruding from the brick facade. An area of this same facade features stucco or a waterproofing compound where the second floor of the adjacent building once stood. The brick on both the front and back halves of the East wall feature brick in a running bond pattern but the header courses on the brick at the back portion are a contrasting color.

Photo numbers E8 to 13

Drawing numbers N/A

**Describe work and impact on feature**

Vines will be removed. Leftover wires, telephone boxes, condensate pipes and power line supports will be removed and the holes left filled with toothed in matching brick or mortar depending upon the size of the scar. The brick will be spot pointed only where needed with a brick that matches the color, strength and tooling of the original mortar joints. Mortar samples will be analyzed for composition and matched. Sample panels will be made for both the front and rear brick areas and submitted for review.

|                 |                                                         |                              |
|-----------------|---------------------------------------------------------|------------------------------|
| <b>Number 6</b> | <b>Feature</b> <u>North and East Wall Upper Windows</u> | <b>Date of Feature</b> _____ |
|-----------------|---------------------------------------------------------|------------------------------|

**Describe existing feature and its condition**

The upper levels of the front facade feature four over four wood windows. The upper floors of the older front portion and the second floor of the rear portion both feature six over six double hung wood windows. The third and fourth floors of the rear portion feature eight over eight double hung wood windows. Although the windows have been left unpainted in areas none of them appear to require replacement. On the East elevation the sills have been loosely wrapped with metal flashing that is now bent up and warped in many places or corroded away completely. The windows on the front facade and the eight over eights on the east facade have counterweights and pockets to help lift the sash. The six over six on the east facade do not have pockets or weights. The eight over eight windows on the West facade have been replaced with mock windows using 1 x 1 square stock and plexiglass.

Photo numbers E-2, 8 to 13, and 18 to 21

Drawing numbers A3.1

**Describe work and impact on feature**

The windows on the East and North facades will be restored. The sashes will be removed and stripped off site and the tracks will be stripped on site (or lined) to avoid generating lead dust from friction after the apartments are occupied. The six over six windows without counterweights will have spring balances pocketed into the frame to make the sashes safe for use. The mock windows on the third and fourth floors will be replaced with windows that match those extant on the East elevation. Detailed window sections and elevations of the existing and proposed will be provided for review.



**COMPETITIVE COMMERCIAL CERTIFICATION APPLICATION**  
**PART 2 – DESCRIPTION OF REHABILITATION**

Property name **Updegraff Building**  
Property address **49-53 West Washington Street, Hagerstown, MD**

**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
Number items consecutively to describe all work, including building exterior and interior, additions, site work, landscaping, and new construction.

|                 |                                    |                                    |
|-----------------|------------------------------------|------------------------------------|
| <b>Number 7</b> | <b>Feature</b> <u>South Facade</u> | <b>Date of Feature</b> <u>2017</u> |
|-----------------|------------------------------------|------------------------------------|

**Describe existing feature and its condition**

The partial collapse and subsequent demolition of the adjacent building also caused the rear addition of the Updegraff building to partially collapse and be demolished. After the demolition, structural engineering analysis was done and it was determined that the rear wall needed to be infilled with a wall that resisted the lateral and shear forces on the building. The resulting design is a wood frame covered with yellow cement lap siding on the upper floors and cement panels on the ground floor. The engineer has indicated that penetrations could be added back in that would allow windows. The previous Owner installed a Fypon (plastic covered foam) decorative cornice above the ground floor.

Photo numbers E-15, 16 26 Drawing numbers A3.1

**Describe work and impact on feature**

The rear facade will be reconfigured to include two triple-double-hung eight over eight units at the second, third and fourth floors and clerestory windows on the first floor. Aluminum sunshades will be incorporated to block the unwanted hot summer sun and save energy. The Fypon cornice will be removed. The recently added brick course will remain and a cast stone cap will be installed.

|                 |                                       |                                    |
|-----------------|---------------------------------------|------------------------------------|
| <b>Number 8</b> | <b>Feature</b> <u>Existing Stairs</u> | <b>Date of Feature</b> <u>1882</u> |
|-----------------|---------------------------------------|------------------------------------|

**Describe existing feature and its condition**

An existing wooden stair at the Northeast corner connects all floors. The existing masonry walls appear to have been created using salvaged brick as they are different sizes, colors and textures. Some of the individual bricks have paint remnants on them but it does not appear that the entire wall was ever painted. The existing interior handrail consists of a frame wall covered with tongue and groove beaded board and a rectangular 2 x 4 handrail. The handrail/wall assembly is far shorter than the 42" required for guard rail assembly. At the fourth floor the remnants of a hoist remain complete with gears. Another wooden winder stair connects the third and fourth floors and a third winder connects the second and third.

Photo numbers 1-30 to 33, 2-20 to 21, 3-1 to 3 and 38, 4-2, 25 and 41 to 45 Drawing numbers A2.1, A2.2

**Describe work and impact on feature**

A metal pipe handrail will be added to the outer walls of the staircase to meet code. The walls will be hand wire brushed and then a matte finish clear breathable sealer (see attached specifications) will be applied to prevent lead contamination. If the code official does not allow the existing interior railing to remain as is, a pipe handrail will be mounted to the interior of the stair to provide the 42" guardrail height needed. The hoist mechanism on the fourth floor will be maintained and featured. The other two stairs will be removed and replaced in that same area with a stair that connects all floors.



Property name **The Updegraff Building**  
Property address **49-53 West Washington Street, Hagerstown, MD**

**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
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|                 |                                                        |                                   |
|-----------------|--------------------------------------------------------|-----------------------------------|
| <b>Number 9</b> | <b>Feature</b> <u>East Façade Alterations/Addition</u> | <b>Date of Feature</b> <u>N/A</u> |
|-----------------|--------------------------------------------------------|-----------------------------------|

**Describe existing feature and its condition:**

The previous Owners constructed a 44' x 12' foundation for a new elevator and stair tower at the Southeast corner of the building. The design intent at the time was to have this go full height providing vertical circulation to all floors from the addition. The addition would have caused 10 windows to be removed and three others to be converted to doors and would have concealed over 25% of the East facade. The new Owner intends to obtain a brewery tenant that has large brew tanks that need more than a standard wood floor for support. Further North on the east facade a large pair of doors with casement windows above on the ground floor was likely used for large deliveries between buildings when the two buildings were connected. It was severely modified recently to reduce the overall door width by 2' causing them not to align with the windows above. The replacement doors are also approximately 15" shorter causing an awkward transom area above.

Photo numbers E-14, E-15

Drawing numbers A3.1

**Describe work and impact on feature**

The design has been modified to reduce the size of the addition and to instead accommodate the brew tanks on top of this new concrete foundation. Only the elevator tower will go full height. The second egress stair will be installed on the interior of the building. The vestibules on each floor will be transparent further reducing the amount of facade concealed by the addition. Only three windows will need to be removed and three converted to doors. A ground floor enclosure will be created for entry to both the restaurant/brewery and apartments. The awkward pair of doors and transom further North on the east facade will be replaced with full height doors that will match the width of the opening above.

|                  |                                              |                                    |
|------------------|----------------------------------------------|------------------------------------|
| <b>Number 10</b> | <b>Feature</b> <u>Pressed Metal Ceilings</u> | <b>Date of Feature</b> <u>1882</u> |
|------------------|----------------------------------------------|------------------------------------|

**Describe existing feature and its condition**

The ceilings of the first floor and the rear portion of the fourth floor are pressed metal. They are in fairly good shape and remarkably intact.

1-1, 1-3, 1-4, 4-32, 4-37

N/A

Photo numbers

Drawing numbers

**Describe work and impact on feature**

The existing metal ceilings will remain and be hand brushed and repainted. The metal ceilings on the first floor need to be coated with No-Burn in order to achieve the 1 hour rating required to separate Assembly from R-2 uses. Just a few of the metal panels on the first floor will be carefully removed and reinstalled to install plumbing.

Property name **The Updegraff Building**  
Property address **49-53 West Washington Street, Hagerstown, MD**

**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
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|                  |                            |                             |
|------------------|----------------------------|-----------------------------|
| Number <b>11</b> | Feature <b>Wood Floors</b> | Date of Feature <b>1882</b> |
|------------------|----------------------------|-----------------------------|

**Describe existing feature and its condition**

The existing wood floors are in good shape. They are true and intact. They vary in width and species. A center section of wood flooring alongside the columns on each of the second floor is raised about an inch and a half. This was presumably for reinforcement of the area frequented by rolling carts.

Photo numbers 1-3, 6,7,18,and 19; 2-1, 2, 5, 19, and 24; 3-10, 36; 4-3, 6, 7, 16, 36, 38

Drawing numbers N/A

**Describe work and impact on feature**

The existing wood floors will be maintained. To a large extent the center raised area on the second floor will become the floor of the corridors. All of the wood floors will be lightly sanded and refinished.

|                  |                                 |                                |
|------------------|---------------------------------|--------------------------------|
| Number <b>12</b> | Feature <b>Sprinkler system</b> | Date of Feature <b>Unknown</b> |
|------------------|---------------------------------|--------------------------------|

**Describe existing feature and its condition**

There is an existing sprinkler system in the building. The main line enters in the crawlspace and then up through the rear portion of the building where it branches into two sections with one for the front and one for the rear.

Photo numbers 2-1, 24, 25; 1-8, 18, and 24

Drawing numbers N/A

**Describe work and impact on feature**

The Owner hopes to reuse as much as possible. All of the system components currently run exposed. Any additions to the system or alterations to accommodate revised partition layouts will also run exposed where there are no dropped ceilings and be painted to match the ceiling.



Property name **The Updegraff Building**  
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**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
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|                  |                                                 |                        |
|------------------|-------------------------------------------------|------------------------|
| <b>Number 13</b> | <b>Feature</b> HVAC/Plumbing/Electrical Systems | <b>Date of Feature</b> |
|------------------|-------------------------------------------------|------------------------|

**Describe existing feature and its condition**

The electrical, plumbing and HVAC system for the existing building is not to code. On the ground floor there is no fresh air supplied and the HVAC system is grossly undersized to handle the volume of space. There are no HVAC systems for the upper floors. The lights on the upper floors are bulbs on hanging cords. At present there is one toilet each on the ground floor, second floor and third floor.

Photo numbers 1-13, 15, 29

Drawing numbers N/A

**Describe work and impact on feature**

All new electrical, plumbing and HVAC systems will be installed. The interior system components for the ground floor will go in the crawlspace. The exterior units will go on top of the elevator tower. The residential units will be heated and cooled with pancake-style split systems. The interior unit will be concealed above the bathroom/kitchen areas in a dropped ceiling with any supply ducts required running exposed in natural galvalume round ductwork. The exterior units will go in small groupings on top the main roof far enough back to not be visible from the street.

|                  |                                               |                              |
|------------------|-----------------------------------------------|------------------------------|
| <b>Number 14</b> | <b>Feature</b> First/Second Floor Light wells | <b>Date of Feature</b> 1882? |
|------------------|-----------------------------------------------|------------------------------|

**Describe existing feature and its condition**

At two locations on the second floor there are light wells with horizontal glazed sashes. Surrounding the openings are low frame barrier walls clad with painted beaded board. On the exterior wall of the second floor adjacent to the light wells are triple 6/6 double hung windows with 6 panel transoms above. The light wells were created to illuminate the ground floor with natural light. They are not rated.

Photo numbers 1-3, 5, and 28; 2-10, 2-11, 2-15, 2-17

Drawing numbers A2.1, A2.2

**Describe work and impact on feature**

The existing framed openings/sashes will remain as they are from below. One hour rated Fireframes translucent flooring system (see attached literature) will be installed above the existing windows. The barrier walls will be removed above.



Property name Property **The Updegraff Building**  
address **49-53 West Washington Street, Hagerstown, MD**

**5. Detailed description of rehabilitation work** Use this page to describe all work or create a comparable format with this information.  
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|                  |                                             |                                      |
|------------------|---------------------------------------------|--------------------------------------|
| <b>Number 15</b> | <b>Feature</b> <b>Walls on Ground Floor</b> | <b>Date of Feature</b> <b>1990's</b> |
|------------------|---------------------------------------------|--------------------------------------|

**Describe existing feature and its condition**

A modern frame construction wall was constructed in the last two decades to create a back wall for the retail store that used to sell beads. Other modern partitions were constructed under the mezzanine.

Photo numbers 1-2,3,8,12,13,21,22 and 23 Drawing numbers A2.1

**Describe work and impact on feature**

The new modern frame walls will be removed.

## **Exhibit C**

### **Investment and Community Impact**

BCP intends to redevelop the Updegraff Building into a mixed-use building that would be comprised of the following components: (1) retail space on the ground floor and (2) 21 apartment units on the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors.

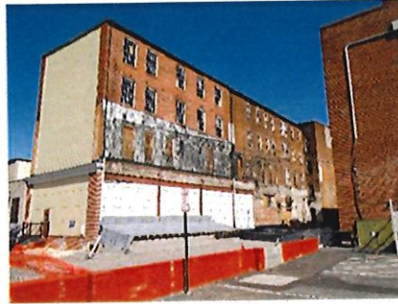
BCP intends to attract retail tenants that would create a destination place for City and County residents. Further, the apartment units are intended to be market rate units of a quality that will attract new residents to the City. Such new residents will hopefully help create a seven-day/seven-night environment downtown facilitating the continued efforts of the City to create a unique atmosphere in its Arts and Entertainment District.

BCP expects that it will incur acquisition and development costs of approximately \$4.6 million. Further, BCP expects that such costs will be financed as follows: (a) first mortgage loan in the amount of approximately \$2.3 million that will be repaid out of the operations of the property, (b) unsecured debt in the amount of approximately \$1.1 million that will be repaid out of local incentives (including the City Center grant) and proceeds from the sale of Maryland historic tax credits and (c) equity provided by opportunity zone investors in the amount of approximately \$1.2 million who will achieve investment returns from Federal historic tax credits and cash flow from operations of the property. BCP has received a "funding commitment" with respect to both the unsecured debt in the amount of approximately \$1.1 million and the equity provided by opportunity zone investors in the amount of approximately \$1.2 million.

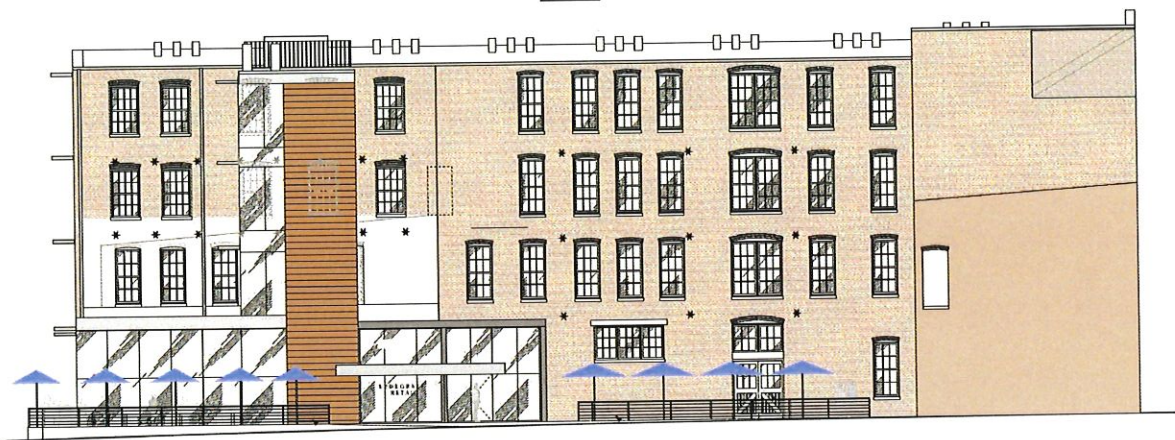
As indicated in the previous paragraph, BCP is applying for the following incentive programs: (1) Federal historic tax credits, (2) Maryland historic tax credits and (3) Hagerstown incentive programs (including the City Center Redevelopment Grant). The receipt of each of these incentives is critical in order to achieve the investment returns required by equity investors. If BCP receives each of these incentives, it believes that the property will be able to generate the minimum 7% return required by equity investors. If it does not receive each of the incentives, BCP does not believe that it will be able to achieve the minimum 7% return.

BCP anticipates the City will receive significant benefits from the proposed development. First, the City and its residents will benefit from the redevelopment of a vacant building in the middle of the new Hatters Square. The "Before" and "After" views are as follows:

**Before**



**After**



Second, BCP believes that the City and the County will receive significant financial benefits from the development. As a result of the approximate \$4.6 million investment by BCP, the City and the County will receive a significant increase in real estate and personal property taxes compared to what they receive with respect to the property today. In addition, the City and the County will receive a significant increase in sales tax generated by the development. These increases will come from the following sources: (1) the new apartment residents will live downtown 24/7 which will result in higher retail purchases from those residents and (2) the retail space will attract additional retail purchases from City and Country residents since it will bring a new experience for those residents.

Finally, the development will bring temporary construction jobs during the development period and will bring permanent retail jobs attributable to the new retail tenants.

**Exhibit D**

**Letter of Commitment**



**COMMITMENT AGREEMENT**

**by and among**

**BLACKTHORN CAPITAL PARTNERS LP**

**and**

**THE INVESTORS SIGNATORY HERETO**

**Dated as of May 4, 2021**

## AGREEMENT

This AGREEMENT, dated as of May 4, 2021 (this "*Agreement*"), is made by and among (i) Blackthorn Capital Partners LP, a Delaware limited partnership ("*BCP*") and (ii) Paul Anthony and Monica Drennan Brown (collectively, the "*Investors*").

## RECITALS

WHEREAS, BCP has entered into a letter of intent to acquire the property located at 53 W. Washington Street, Hagerstown, Maryland 21740 (the "*Property*");

WHEREAS, BCP will assign the right to purchase the Property to a newly formed affiliate (the "*BCP Affiliate*").

WHEREAS, the BCP Affiliate will need to obtain both debt and equity commitments from third-party financial institutions and investors to finance the acquisition and redevelopment of the Property; and

WHEREAS, the Investors have agreed to make the commitments discussed herein (the "*Commitments*") if the BCP Affiliate is unable to obtain the necessary debt and equity commitments on reasonable terms to finance the acquisition and redevelopment of the Property on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements contained herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I. Commitments**

### **Section 1.1    Capital Commitments.**

(a)    Unsecured Loan. Subject to the terms and conditions set forth herein, on the dates such funds are called by the BCP Affiliate, the Investors shall loan up to \$1,100,000 to the BCP Affiliate (the "*Unsecured Loan*") in the event that the BCP Affiliate is unable to obtain a similar commitment from a third-party lender on the terms and subject to the conditions set forth herein. Such Unsecured Loan shall be (1) unsecured and subordinated to any first lien mortgage debt, (2) bear interest at an annual compounded rate of 6%, (3) repaid in whole or in part with the proceeds of the Local Incentives and the HTC Sale and (4) repaid in whole on the third anniversary of each funding in the event that the proceeds of the Local Incentives and the HTC Sale have not previously resulted in the full repayment of the Unsecured Loan.

(b)    Equity Interests. Subject to the terms and conditions set forth herein, on the dates such funds are called by the BCP Affiliate, the Investors shall contribute capital up to \$1,200,000 to the BCP Affiliate in exchange for an interest in the BCP Affiliate (the "*Equity Interests*") in the event that the BCP Affiliate is unable to obtain a similar commitment from third-party investors on the terms and subject to the conditions set forth herein. The Equity Interests shall entitle the Investors to receive the following distributions made by the BCP Affiliate: (i)



100% of the distributions shall be paid by the BCP Affiliate to the Investors until the Investors have achieved a 6% internal rate of return of and on their Equity Interests and (ii) 80% of the remaining distributions paid by the BCP Affiliate shall be paid to the Investors.

(c) Consideration. In consideration for the Commitments, BCP shall cause the BCP Affiliate to issue a profits interest (the "*Profits Interest*") to the Investors (or an assignee chosen by the Investors) at Closing. The Profits Interest shall entitle the Investors to receive 20% of the distributions made by the BCP Affiliate after the other owners of the BCP Affiliate have achieved a 6% internal rate of return of and on their investment. The Profits Interest shall be structured (within the reasonable judgment of BCP) so that it constitutes a "profits interest" for U.S. federal income tax purposes.

**Section 1.2 Closing.** The consummation of the issuance of the Profits Interest (the "*Closing*") shall take place on the date and time (the "*Closing Date*") that the BCP Affiliate acquires the Property.

**Section 1.3 Funding of Commitments.**

(a) Notice and Initial Funding.

(i) At least five Business Days prior to the Closing Date, the BCP Affiliate shall notify (the "*Notice*") the Investors if it has been unable to obtain the necessary debt and equity commitments on reasonable terms to finance the acquisition and redevelopment of the Property on the terms and subject to the conditions set forth herein. Such Notice shall advise the Investors (a) the nature of the funding that the BCP Affiliate shall require from the Investors and (b) the amount of funding that the Investors need to provide at Closing.

(ii) On the Closing Date, the Investors shall provide funding in accordance with the Notice.

(b) Subsequent Fundings. Subject to the terms of this Agreement, on each date additional funds are requested by the BCP Affiliate, the Investors shall pay or cause to be paid to the BCP Affiliate in cash by wire transfer of immediately available funds.

**Section 1.4 Investor Default.**

(a) Each Investor's obligation to fund the Commitments is joint and several and is absolute, unconditional and not subject to any contingencies, and all such payments shall, subject to the terms of this Agreement, be made without offset or reduction for any reason.

(b) In the event that the Investors fail to pay, or cause to be paid, when due, any portion of their Commitments in accordance with Section 1.3, the BCP Affiliate will provide written notice of such failure to the Investors (such notice, an "*Investor Default Notice*").

(c) If such Investors fail to pay or cause to be paid such required payment (the "*Defaulted Amount*") within ten (10) Business Days following the due date therefor (an "*Investor*



*Default*" and, such defaulting Investor, a "*Defaulting Investor*"), then the BCP Affiliate shall have the right, in its sole discretion:

(i) (A) to pursue legal action against such Defaulting Investor to collect the Defaulted Amount and any reasonable and documented out-of-pocket fees and expenses incurred by the BCP Affiliate in connection with such action and/or to seek to obtain specific performance of such Defaulting Investor's obligation to fund the Defaulted Amount, and (B) to the extent any portion of the Defaulted Amount has not been satisfied pursuant to clause (A) above, to withhold the unpaid portion of the Defaulted Amount from distributions that would otherwise be made to the Defaulting Investor or its affiliates; or

(ii) as its sole remedy, cause the amount of the interests in the BCP Affiliate held by such Defaulting Investor to be forfeited by such Defaulting Investor.

(d) Promptly following the forfeiture of any interests in the BCP Affiliate, the BCP Affiliate shall update its books and records to reflect such forfeiture.

(e) The Investors acknowledge that the BCP Affiliate may have no adequate remedy for an Investor Default. Consequently, any rights or amounts forfeited or deducted pursuant to this Section 1.4 or any assumption of rights in respect of allocations or distributions constitute a specified penalty or consequence permitted by applicable Law.

#### **Section 1.5 Deliveries at Closing.**

(a) Deliveries by the Investors. On the Closing Date, the Investors shall execute and deliver to the BCP Affiliate such documents and instruments as may be reasonably necessary to give effect to the transactions contemplated hereby.

(b) Deliveries by the BCP Affiliate. On the Closing Date, the BCP Affiliate shall execute and deliver to the Investors such documents and instruments as may be reasonably necessary to give effect to the transactions contemplated hereby.

### **ARTICLE II.**

#### **Nature of Investment and Related Commitments**

**Section 2.1 Investor Payment Obligations.** In no event shall the Investors be required to make any capital contributions or other payments to the BCP Affiliate, except (a) as set forth in this Agreement or (b) as otherwise mutually agreed by the applicable parties in writing following the date hereof.

**Section 2.2 Information Rights.** Subject to customary confidentiality obligations and restrictions, so long as the Investors hold the Profits Interest, such Investors shall be entitled to receive (i) the annual financial reports of the BCP Affiliate, and (ii) quarterly updates (*i.e.*, a maximum of four (4) updates per fiscal year) with senior management of the BCP Affiliate via teleconference or other means of remote communication (provided that, to the extent practicable, one (1) of such updates may be in person at the offices of the BCP Affiliate) on such



dates as will be mutually agreed by the Investors and the BCP Affiliate. For the avoidance of doubt, during the updates, each participating Investor shall have the right to consult with the senior management of the BCP Affiliate with respect to significant business issues of the BCP Affiliate.

**Section 2.3 Use of Proceeds.** The BCP Affiliate shall use all of the funds provided by the Investors solely:

- (i) to fund the acquisition of the Property; and
- (ii) to pay the expenses to redevelop the Property as a mixed-use commercial property.

### **ARTICLE III. Representations and Warranties of BCP**

BCP represents and warrants to the Investors as of the date hereof that:

#### **Section 3.1 Organization and Authority.**

(a) BCP is an entity duly formed, validly existing and in good standing under the laws of its jurisdiction of organization. BCP has all requisite organizational power and authority, as applicable, to enter into this Agreement and to consummate the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance of this Agreement does not require any consent of any third party or any foreign, federal, state or local court, tribunal, agency, department, commission or office.

**Section 3.2 Compliance with Law.** BCP is in compliance in all material respects with all applicable laws, ordinances, rules or regulations or any applicable orders, arbitral awards, judgments or decrees of any court or with similar effect of any governmental authority or arbitrator (collectively, "*Laws*").

**Section 3.3 Valid and Binding Agreements.** This Agreement has been duly authorized, executed and delivered by BCP and will be the valid and binding obligation of BCP enforceable in accordance with its terms, except as may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general equity principles.

### **ARTICLE IV. Representations and Warranties of the Investors**

Each Investor (severally and jointly) hereby represents and warrants to BCP as of the date hereof that:

**Section 4.1 No Registration.** Each Investor has been advised that (a) the Equity Interests and Profits Interest to be issued pursuant hereto has not been registered under the Securities Act; (b) each Investor may be required to hold the Equity Interests and Profits Interest



for an indefinite period; and (c) it is not anticipated that there will be any public market for the Equity Interests and Profits Interest.

**Section 4.2 Purchase for Investment, Etc.**

(a) Each Investor is acquiring the Equity Interests and Profits Interest for its own account, for investment purposes only and not with a view to, or for resale in connection with, the distribution or other disposition thereof or with any present intention of distributing or reselling any portion thereof.

(b) Each Investor is an "accredited investor" (as such term is defined in Regulation D under the Securities Act) and otherwise has such knowledge and experience in financial and business matters that each Investor is capable of evaluating the merits and risks of its investment hereunder. Each Investor can afford to bear the economic risk of holding its investment hereunder for an indefinite period of time and can afford to suffer the complete loss of its investment hereunder.

**Section 4.3 Available Funds.** Each Investor has or will have the funds available to pay the full amount of the Commitments when required to be so paid pursuant to this Agreement.

**ARTICLE V.  
Miscellaneous Provisions**

**Section 5.1 Costs and Expenses.** Each of the parties hereto agrees to pay the expenses incurred by it in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, including the fees and expenses of counsel to such party.

**Section 5.2 Governing Law; Severability; Waiver of Jury Trial.**

(a) This Agreement, together with any claim or defense arising out of or based upon this Agreement or relating to the subject matter hereof (whether in contract, tort, or otherwise), shall in all respects be governed by, interpreted, and construed in accordance with, and all rights and remedies hereunder shall be governed by, the Laws of the State of Delaware (without regard to any conflict of law provisions that would result in the application of the laws of another jurisdiction). If it is determined by a court of competent jurisdiction that any provision of this Agreement is invalid under applicable Law, such provision shall be ineffective only in such jurisdiction and only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(b) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HERETO WAIVES, AND COVENANTS THAT SUCH PARTY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH THE DEALINGS OF ANY OTHER PARTY HERETO IN CONNECTION WITH ANY OF THE



ABOVE, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE.

(c) Each party hereto may file an original counterpart or a copy of this Section 5.2(b) with any court as written evidence of the consent of parties hereto to the waiver of their rights to trial by jury.

**Section 5.3 Amendment.** No amendment, waiver, change, modification or discharge of any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the party against whom enforcement of any such amendment, waiver, change, modification or discharge is sought.

**Section 5.4 Notices.** All notices, demands and other communications to be given and delivered under or by reason of provisions under this Agreement shall be in writing and shall be deemed to have been given on the date when personally delivered, three (3) Business Days after being mailed by first class mail (postage prepaid and return receipt requested) or transmitted by email (but following confirmation of receipt thereof) (if sent before 5:00 p.m. Eastern Time on a Business Day (and otherwise on the next Business Day)), or on the date after being sent by reputable overnight courier service (charges prepaid), in each case, to the addresses or email addresses set forth below.

If to the Investors:

9909 Deerfield Pond Drive  
Great Falls, Virginia 22066  
Email: mtjmhbrown@gmail.com  
mandtbrown5@gmail.com

If to BCP or the BCP Affiliate:

c/o P. Anthony Brown  
9909 Deerfield Pond Drive  
Great Falls, Virginia 22066  
Email: mtjmhbrown@gmail.com

**Section 5.5 Further Assurances.** Subject to the terms and conditions of this Agreement, each party hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the parties hereto shall from time to time execute and deliver all such further documents and do all acts and things as the other parties hereto may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

**Section 5.6 Complete Agreement; Counterparts.** This Agreement constitutes the entire agreement, and supersede all other agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof and thereof. This

Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

**Section 5.7 Assignment.** This Agreement is not assignable by any of the parties hereto without the written consent of the other parties hereto; provided that, notwithstanding the foregoing, each Investor shall have the right to assign this Agreement or any of its rights or obligations hereunder in compliance with this Agreement.

**Section 5.8 Interpretation.** In this Agreement, unless otherwise specified or where the context otherwise requires:

- (i) The headings in this Agreement are inserted for convenience only and will not be construed as a part of this Agreement or serve as a limitation or expansion on the scope of any term or provision of this Agreement;
- (ii) words importing any gender shall include other genders;
- (iii) words importing the singular only shall include the plural and vice versa;
- (iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation";
- (v) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (vi) references to "Articles" or "Sections" shall be to Articles or Sections of this Agreement;
- (vii) references to any Person include the successors and permitted assigns of such Person;
- (viii) the use of the words "or," "either" and "any" shall not be exclusive;
- (ix) wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict;
- (x) references to "\$" or "dollars" means the lawful currency of the United States of America; and
- (xi) references to any agreement, contract or schedule, unless otherwise stated, are to such agreement, contract or schedule as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

**Section 5.9 Specific Performance.** The parties hereto acknowledge that there would be no adequate remedy at law if any party fails to perform any of its obligations hereunder,



and accordingly agree that each party, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to compel specific performance of the obligations of any other party under this Agreement in accordance with the terms and conditions of this Agreement. Each party hereby waives any requirement for the securing or posting of any bond or other security in connection with such remedy and any argument that an adequate remedy at law is available.

**Section 5.10 Arbitration.** To the fullest extent permitted by law, any dispute, controversy or claim arising out of or relating to this Agreement, including, without limitation, the validity, interpretation, performance, breach, alleged breach, negotiation or termination of this Agreement, shall be settled by binding arbitration to be held in Washington, D.C. before AAA pursuant to the Commercial Arbitration Rules of the American Arbitration Association or its successor ("AAA"). Any such arbitration shall be in front of a panel of three arbitrators comprised of one arbitrator designated by the Investors, one arbitrator designated by the BCP Affiliate and one arbitrator (who shall be the chair of the panel) jointly designated by the Investor's and the BCP Affiliate's respective arbitrators in accordance with the rules of AAA. Notwithstanding anything else to the contrary, any actions or proceedings seeking interim equitable relief or to enforce an arbitration award, may be brought in, and the parties consent to the exclusive jurisdiction of, the Delaware Court of Chancery or, if such court shall not have jurisdiction, any federal court of the United States located in the State of Delaware or, if no such federal court shall have jurisdiction, the Delaware Superior Court, and any appellate court from any appeal thereof (collectively, the "*Designated Forums*") in connection with any such arbitration, or, if no Designated Forum has jurisdiction to provide the remedy sought, any state or federal court in the United States that has such jurisdiction. To the fullest extent permitted by law, the parties hereby waive as a defense that the Designated Forums are an inconvenient forum or that the venue thereof may not be appropriate and, furthermore, agree that venue in the Designated Forum for any such action, suit or proceeding is appropriate. The parties agree that any process or notice of motion or other application to such courts, and any paper in connection with any such arbitration, may be served by personal service or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal. The panel of arbitrators shall be instructed to make its decision in writing within thirty (30) days after the close of the arbitration hearing, however failure to do so shall not affect the validity of the award. To the maximum extent permitted by law, the decision of the panel of arbitrators shall be final and binding and not be subject to appeal. The costs of the arbitration (other than any costs that are specific to a particular party, such as the fees and expenses of counsel), including any AAA administration fee and filing fee, arbitrators' fees, and the costs of the use of facilities during the hearings ("*Arbitration Fees and Costs*"), will initially be borne equally by the Investors and the BCP Affiliate. As part of the arbitrators' written decision or in a subsequent written decision, the arbitrators may award to the prevailing party, if any, its attorneys' fees, costs and expenses reasonably incurred by the prevailing party in connection with the arbitration plus its portion of the Arbitration Fees and Costs. The arbitrators shall have the power to grant temporary, preliminary and permanent relief, including injunctive relief and specific performance, or any other remedy available from a court of competent jurisdiction; provided that the arbitrators shall not award any punitive damages to any party. Each party shall keep confidential: (i) the fact that any arbitration occurred, (ii) any awards awarded in the arbitration, (iii) all materials used, or created for use in, the arbitration by another party or that reflect or incorporate information provided by another party, and (iv) all other documents produced by another party in the arbitration and not otherwise in the public domain, except, with respect to each of the foregoing, to the extent that disclosure may be legally required (including to protect or



pursue a legal right) or to enforce or challenge an arbitration award before a court. If a party is required to disclose such information pursuant to this Agreement or a court order, such party shall promptly notify the other parties and prior to making any such disclosure allow the other parties a reasonable opportunity to seek a protective order or to take any other action it deems appropriate, and the party required to disclose such information shall only disclose as much information as is required. Nothing in this Agreement shall prevent either party from seeking interim equitable relief in support of the arbitration from the Designated Forums, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The parties also acknowledge that any decision by the arbitrators may be enforced in any court of competent jurisdiction.

## **ARTICLE VI. Definitions**

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided in this Agreement):

“AAA” has the meaning set forth in Section 5.10.

“Agreement” has the meaning set forth in the Preamble.

“Arbitration Fees and Costs” has the meaning set forth in Section 5.10.

“BCP” has the meaning set forth in the Preamble.

“BCP Affiliate” has the meaning set forth in the Preamble.

“Business Day” means each day on which the New York Stock Exchange is open for regular trading and on which commercial banks in Washington, D.C. are open for business.

“Closing” has the meaning set forth in Section 1.2.

“Closing Date” has the meaning set forth in Section 1.2.

“Commitments” has the meaning set forth in the Preamble.

“Defaulted Amount” has the meaning set forth in Section 1.4(c).

“Defaulting Investor” has the meaning set forth in Section 1.4(c).

“Designated Forums” has the meaning set forth in Section 5.10.

“Equity Interests” has the meaning set forth in Section 1.4(b).

“HTC Sale” means the sale by the BCP Affiliate of the historic tax credits granted to it by the state of Maryland.

“Investor Default” has the meaning set forth in Section 1.4(c).

"Investor Default Notice" has the meaning set forth in Section 1.4(b).

"Investors" has the meaning set forth in the Preamble.

"Laws" has the meaning set forth in 0.

"Local Incentives" means incentives that are expected to be granted to the BCP Affiliate by Washington County, Maryland and the City of Hagerstown to assist the BCP Affiliate in funding the expenses to redevelop the Property into a mixed-use commercial property.

"Notice" has the meaning set forth in Section 1.4(b)(i).

"Person" means any natural person, partnership, limited liability company, association, corporation, trust or other entity.

"Profits Interest" has the meaning set forth in Section 1.4(b).

"Property" has the meaning set forth in the Preamble.

"Unsecured Loan" has the meaning set forth in Section 1.4(b).

[Signature page follows]

IN WITNESS WHEREOF, the undersigned, in intending to be legally bound hereby, have duly executed this Agreement as of the date set forth above.

**Paul Anthony Brown**

P. A. Brown

**Monica Drennan Brown**

Monica Drennan Brown

**BLACKTHORN CAPITAL PARTNERS LP**

By: Blackthorn Capital Partners GP LLC  
Its: General Partner

By: P. A. Brown  
Paul Anthony Brown, Manager



**Exhibit E**

**Application for Enterprise Zone Certification**



**Maryland Enterprise Zone Property Tax Certification in  
Hagerstown-Washington County Enterprise Zone**

July 29, 2021

Mr. P. Anthony Brown  
Blackthorn Capital Partners, LP  
9909 Deerfield Pond Drive  
Great Falls, VA 22066

**Subject:** Enterprise Zone Certification

**Enterprise Zone Focus Area:** Hagerstown-Washington County, MD Enterprise Zone

Dear Mr. Brown,

Per your application made on July 19, 2021, the following company is certified as an Enterprise Zone Real Property as of July 19, 2021. The certified effective date cannot precede the original date and cannot be prior to the previous July 1.

A copy of your application form is enclosed for your records.

|                                 |                                                                                |
|---------------------------------|--------------------------------------------------------------------------------|
| <b>Company Name:</b>            | Blackthorn Capital Partners, LP                                                |
| <b>Company Mailing:</b>         | c/o Mr. P. Anthony Brown<br>9909 Deerfield Pond Drive<br>Great Falls, VA 22066 |
| <b>Property Address in EZ:</b>  | 53 West Washington Street<br>Hagerstown, MD 21740                              |
| <b>Property Account Number:</b> | 03-065220                                                                      |
| <b>Base Year:</b>               | July 1, 2021                                                                   |
| <b>First Year of Credit:</b>    | July 1, 2022                                                                   |

Enterprise Zone tax credit benefits are dependent upon the State of Maryland appropriating the necessary funds for Enterprise Zone benefits each year as a part of the State budget process. The real property tax credit is dependent upon the assessment cycle and assessed value of the property.



A copy of this letter will be sent to the State Department of Assessments and Taxation, and the Department of Commerce notifying them of your qualification.

The attached Appendix includes important information on the Enterprise Zone program benefits you may be eligible to receive. If you have any questions, please feel free to contact me.

Sincerely,

*Linda Spence*

Linda Spence, Business Specialist and  
Local Enterprise Zone Administrator  
LSpence@WashCo-MD.net  
D: 240-313-2286  
M: 301-302-5230

Enclosures: Application  
SDAT Property Description

cc: Susan Small, Washington County Department of Business Development; [SSmall@WashCo-MD.net](mailto:SSmall@WashCo-MD.net)  
Sara Greaves, Washington County Department of Budget & Finance; [SGreaves@WashCo-MD.net](mailto:SGreaves@WashCo-MD.net)  
Donna Anders, Washington County Department of Budget & Finance; [DAnders@WashCo-MD.net](mailto:DAnders@WashCo-MD.net)  
Todd Hershey, Washington County Treasurer; [THershey@WashCo-MD.net](mailto:THershey@WashCo-MD.net)  
Melissa Adelsberger, State Department of Assessments & Taxation (SDAT);  
[Melissa.Adelsberger@Maryland.gov](mailto:Melissa.Adelsberger@Maryland.gov)  
Zachary Grisard, State Department of Assessments & Taxation; [Zachary.Grisard@Maryland.gov](mailto:Zachary.Grisard@Maryland.gov)  
Christina Trotta, State Department of Assessments & Taxation; [Christina.Trotta1@Maryland.gov](mailto:Christina.Trotta1@Maryland.gov)  
Andy Fish, Maryland Department of Commerce; [Andy.Fish@Maryland.gov](mailto:Andy.Fish@Maryland.gov)  
Abigail McKnight, Maryland Department of Commerce; [Abigail.McKnight@Maryland.gov](mailto:Abigail.McKnight@Maryland.gov)  
Patricia Guiles, Office of the Comptroller of Maryland; [PGuiles@Comp.State.MD.US](mailto:PGuiles@Comp.State.MD.US)  
Lloyd Day, Maryland Department of Labor; [Lloyd.Day@Maryland.gov](mailto:Lloyd.Day@Maryland.gov)  
Jill Thompson, City of Hagerstown Department of Community & Economic Development;  
[JillThompson@HagerstownMD.org](mailto:JillThompson@HagerstownMD.org)





### **Appendix: Enterprise Zone Real Property Tax Credit**

The real property tax credit is a 10-year local property tax credit to the property owner on the "eligible assessment" and subsequent increases to real property taxes resulting from improvements to real property. The amount of the tax credit in each of the first five taxable years is equal to 80%. In years six through ten, the credit decreases 10% annually (70%, 60%, 50%, 40%, and 30%).

While you have met the minimum investment criteria for the Enterprise Zone property tax credit benefits, meeting the minimum requirement does not guarantee that you will receive a real property tax credit. To receive the tax credit, further evaluation will be performed by the Maryland Department of Assessment and Taxation (SDAT) to determine if your property improvements meet the criteria for the credit.

Please note that, if there is any change in the project completion date, you must notify **Linda Spence, Local Enterprise Zone Administrator** immediately in order to alter the effective date, in which affect the reassessment year and the year the property owner starts receiving the EZ property tax credit.

#### ***When and How to Receive the Property Tax Credit***

The real property credits will automatically be applied on the next full-year Property Tax Bill after the property is reassessed. The first full year tax credit should begin with the July 1 bill following the calendar year in which the property being put into service and being reassessed by the Maryland Department of Assessments and Taxation (SDAT). Under the state policy, only improvements that change the assessment value by more than \$100,000 will be picked up in order to reflect the changes. Anything that changes the assessment below \$100,000 will not be reflected until the next regular assessment (properties assessed every 3 years).

#### ***Partial Year Tax Credit***

If you wish to receive the partial year tax credit, you must make a partial year tax credit request in writing to **[EZ Local Administrator]** within 30 days upon the issuance of the partial year property tax bill regulating from the improvements in the property.

#### ***Who Receive the Property Tax Credit***

Please be aware that the owner of the property will be credited the real property abatement on any improvements, even those improvements are made by the Lessee.



**Application for Maryland State Enterprise Zone Certification in the  
Hagerstown-Washington County or Town of Hancock, MD Enterprise Zone**

This application will determine whether your business, property, or developer is eligible for Maryland Enterprise Zone tax credits. If determined to be eligible, you will receive a letter from the Enterprise Zone Administrator indicating which tax credit(s) you are eligible to receive.

Applying For:

Income Tax Credit

☐

Real Property Tax Credit

☒

Personal Property Tax Credit (Applies only to Focus Area Zones) \_\_\_\_\_

**This Section is to be filled by Local Zone Administrators Only**

- To be eligible, an applicant must answer all questions in Sections A and B
- If applying for the "Property" tax credit, please complete Section C
- If applying for the "Employment (Income)" tax credit, please complete Section D
- If the account is located in the Focus Area and you are applying for the "Personal Property" tax credit, please complete Section E

**Section A: Applicant Information**

Name of Business / Developer applying for Enterprise Zone credits:

Blackthorn Capital Partners LP (Contract Purchaser)

Name of Contact Person: Paul Anthony Brown

Title: Chief Executive Officer

Phone: 703-928-9352

Email: mtimhbrown@gmail.com

Mailing Address: 9909 Deerfield Pond Drive, Great Falls, Virginia 22066

**Section B: Enterprise Zone Property Information**

Enterprise Zone Property Address: 53 West Washington Street, Hagerstown, MD

Property Tax Account Number: ~~22-03-018180-702250~~ 03-065220

Property Ownership: Partnership

Lease: \_\_\_\_\_ Own: X

## Section C: Enterprise Zone Property Improvements Information

To be eligible for Enterprise Zone property tax credits, the application must be submitted prior to the project completion date and issuance of User/Occupancy Permits. If the developer or company making property improvements is applying on behalf of the property owner, the property owner must concur with the application by co-signing below. The property tax credits are automatically applied to the property tax bill (i.e., directly awarded to the property owner only). If you are not applying for the property tax credit, this section may be left blank.

Owner of the Real Property: Blackthorn Capital Partners LP (Contract Purchaser)

Mailing address of property owner: 9909 Deerfield Pond Drive, Great Falls, Virginia 22066

Phone: 703-928-9352

Email Address: mtjmhbrown@gmail.com

Project Start Date: Q1 2022

Anticipated Project Completion Date: Q4 2022

Briefly describe capital improvements plans: We will be redeveloping the currently vacant property  
into a mixed use property with retail tenants on the first floors and 21 residential units on the 2<sup>nd</sup>, 3<sup>rd</sup> and  
4<sup>th</sup> floors.

### Type of Construction and Costs

Cost of building(s) & land (acquisition): \$462,871

New Construction: \$ \_\_\_\_\_

Rehabilitation: \$3,800,960

Cost of new machinery & equipment\*: \$290,627

I agree as a condition of certification to provide all data required by the Enterprise Zone Administrator as requested.

Name of Applicant: Paul Anthony Brown Position/Title: Chief Executive Officer

Applicant Signature: P. Cthly Burns Date: July 19, 2021

Name of Property Owner: Paul Anthony Brown Position/Title: Chief Executive Officer

Property Owner Signature: P. Celly Brown Date: July 19, 2021

\*Cost of new machinery & equipment is not a part of real property assessment.

## Real Property Data Search

Search Result for WASHINGTON COUNTY

| <a href="#">View Map</a>                                         | <a href="#">View GroundRent Redemption</a>                                     | <a href="#">View GroundRent Registration</a>                           |
|------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------|
| <b>** DELETED **</b>                                             |                                                                                |                                                                        |
| <b>Special Tax Recapture: None</b>                               |                                                                                |                                                                        |
| <b>Account Identifier:</b>                                       |                                                                                | <b>District - 03 Account Number - 065220</b>                           |
| Owner Information                                                |                                                                                |                                                                        |
| <b>Owner Name:</b>                                               | HAGERSTOWN CITY OF                                                             | <b>Use:</b> COMMERCIAL                                                 |
| <b>Mailing Address:</b>                                          | C/O THE POTOMAC BEAD CO INC<br>14 N POTOMAC STREET<br>HAGERSTOWN MD 21740-0000 | <b>Principal Residence:</b> NO<br><b>Deed Reference:</b> /04522/ 00305 |
| Location & Structure Information                                 |                                                                                |                                                                        |
| <b>Premises Address:</b>                                         | 53 W WASHINGTON ST<br>HAGERSTOWN 21740-0000                                    | <b>Legal Description:</b> 53 W WASHINGTON ST<br>THE POTOMAC BEAD CO    |
| <b>Map:</b> 0306                                                 | <b>Grid:</b> 2250                                                              | <b>Parcel:</b> 20000.22                                                |
| <b>Neighborhood:</b> 20000.22                                    | <b>Subdivision:</b> 0000                                                       | <b>Section:</b>                                                        |
| <b>Block:</b>                                                    | <b>Lot:</b>                                                                    | <b>Assessment Year:</b> 2020                                           |
| <b>Town:</b> HAGERSTOWN                                          | <b>Plat No:</b>                                                                | <b>Plat Ref:</b>                                                       |
| <b>Primary Structure Built</b>                                   | <b>Above Grade Living Area</b>                                                 | <b>Finished Basement Area</b>                                          |
| <b>Property Land Area</b>                                        | <b>County Use</b>                                                              |                                                                        |
| <b>Stories</b>                                                   | <b>Basement</b>                                                                | <b>Type</b>                                                            |
| <b>Exterior</b>                                                  | <b>Quality</b>                                                                 | <b>Full/Half Bath</b>                                                  |
| <b>Garage</b>                                                    | <b>Last Notice of Major Improvements</b>                                       |                                                                        |
| Value Information                                                |                                                                                |                                                                        |
|                                                                  | <b>Base Value</b>                                                              | <b>Value</b>                                                           |
|                                                                  |                                                                                | <b>As of</b>                                                           |
|                                                                  |                                                                                | <b>01/01/2020</b>                                                      |
| <b>Land:</b>                                                     | 63,300                                                                         | 63,300                                                                 |
| <b>Improvements</b>                                              | 104,400                                                                        | 102,900                                                                |
| <b>Total:</b>                                                    | 167,700                                                                        | 166,200                                                                |
| <b>Preferential Land:</b>                                        | 0                                                                              | 0                                                                      |
|                                                                  |                                                                                | <b>Phase-in Assessments</b>                                            |
|                                                                  |                                                                                | <b>As of</b>                                                           |
|                                                                  |                                                                                | <b>07/01/2020</b>                                                      |
|                                                                  |                                                                                | <b>As of</b>                                                           |
|                                                                  |                                                                                | <b>07/01/2021</b>                                                      |
|                                                                  |                                                                                | 166,200                                                                |
|                                                                  |                                                                                | 166,200                                                                |
| Transfer Information                                             |                                                                                |                                                                        |
| <b>Seller:</b> HAGERSTOWN TABLE CORPORATION                      | <b>Date:</b> 04/25/2013                                                        | <b>Price:</b> \$320,000                                                |
| <b>Type:</b> NON-ARMS LENGTH OTHER                               | <b>Deed1:</b> /04522/ 00305                                                    | <b>Deed2:</b>                                                          |
| <b>Seller:</b>                                                   | <b>Date:</b>                                                                   | <b>Price:</b>                                                          |
| <b>Type:</b>                                                     | <b>Deed1:</b>                                                                  | <b>Deed2:</b>                                                          |
| <b>Seller:</b>                                                   | <b>Date:</b>                                                                   | <b>Price:</b>                                                          |
| <b>Type:</b>                                                     | <b>Deed1:</b>                                                                  | <b>Deed2:</b>                                                          |
| Exemption Information                                            |                                                                                |                                                                        |
| <b>Partial Exempt Assessments:</b>                               | <b>Class</b>                                                                   | <b>07/01/2020</b>                                                      |
| <b>County:</b>                                                   | 000                                                                            | 0.00                                                                   |
| <b>State:</b>                                                    | 000                                                                            | 0.00                                                                   |
| <b>Municipal:</b>                                                | 000                                                                            | 0.00 0.00                                                              |
|                                                                  |                                                                                | 0.00 0.00                                                              |
| <b>Special Tax Recapture: None</b>                               |                                                                                |                                                                        |
| Homestead Application Information                                |                                                                                |                                                                        |
| <b>Homestead Application Status:</b> No Application              |                                                                                |                                                                        |
| Homeowners' Tax Credit Application Information                   |                                                                                |                                                                        |
| <b>Homeowners' Tax Credit Application Status:</b> No Application |                                                                                | <b>Date:</b>                                                           |



Exhibit ~~D~~ F

**Financing Plan**

This exhibit includes a description of the anticipated financing sources that BCP will utilize which includes: (a) first mortgage loan in the amount of approximately \$2.3 million that will be repaid out of the operations of the property, (b) unsecured debt in the amount of approximately \$1.1 million that will be repaid out of local incentives (including the City Center grant) and proceeds from the sale of Maryland historic tax credits and (c) equity provided by opportunity zone investors in the amount of approximately \$1.2 million who will achieve investment returns from Federal historic tax credits and cash flow from operations of the property. BCP has received a "funding commitment" with respect to both the unsecured debt in the amount of approximately \$1.1 million and the equity provided by opportunity zone investors in the amount of approximately \$1.2 million.

BCP is an investor in real estate projects, primarily projects located in the new Federal opportunity zones. Accordingly, BCP will high participants that have the necessary experience to make the property a success. For example, BCP has hired Grove & Dall'Olio Architects PLLC to prepare the development plans for the property. GDA's principals have approximately 35 years of experience which includes significant experience with historic properties. Some of the projects undertaken by GDA include the Footer Dye Works property in Cumberland and the Schindel-Rohrer property in Hagerstown.



|                       |                                       |
|-----------------------|---------------------------------------|
| <b>Estimate Name:</b> | <b>Updegraff Building</b>             |
| Building Type:        | Mixed-use, 4 story<br>brick structure |
| Location:             | Hagerstown, MD                        |
| Story Count:          | 4                                     |
| Story Height (L.F.):  | Varied                                |
| Floor Area (S.F.):    | 25,934                                |
| Data Release:         | 2021, Quarter 2                       |
| Cost Per Square Foot: | \$ 157.77                             |
| Building Cost:        | \$ 4,091,587                          |

**Blackthorn**  
Investing in Main Street

|                                                           | % of Sub-total | Cost Per S.F.    | Cost                |
|-----------------------------------------------------------|----------------|------------------|---------------------|
| <b>Substructure</b>                                       | <b>0.06%</b>   | <b>\$ 0.07</b>   | <b>\$ 1,865</b>     |
| <b>Shell</b>                                              | <b>9.14%</b>   | <b>\$ 11.02</b>  | <b>\$ 285,886</b>   |
| Floor Repair                                              |                | \$ 3.19          | \$ 82,847           |
| Exterior Windows and Bricks                               |                | \$ 5.90          | \$ 153,040          |
| Roof Repair                                               |                | \$ 1.93          | \$ 50,000           |
| <b>Interiors</b>                                          | <b>31.88%</b>  | <b>\$ 38.46</b>  | <b>\$ 997,295</b>   |
| Partitions                                                |                | \$ 8.48          | \$ 219,962          |
| Interior Doors                                            |                | \$ 9.46          | \$ 245,316          |
| Fittings                                                  |                | \$ 6.10          | \$ 158,252          |
| Stair Construction                                        |                | \$ 3.47          | \$ 89,990           |
| Wall Finishes                                             |                | \$ 2.05          | \$ 53,171           |
| Floor Finishes                                            |                | \$ 5.02          | \$ 130,139          |
| Ceiling Finishes                                          |                | \$ 3.87          | \$ 100,465          |
| <b>Elevator</b>                                           | <b>9.59%</b>   | <b>\$ 11.57</b>  | <b>\$ 300,000</b>   |
| <b>Services</b>                                           | <b>40.04%</b>  | <b>\$ 48.29</b>  | <b>\$ 1,252,465</b> |
| Plumbing Fixtures                                         |                | \$ 6.35          | \$ 164,609          |
| Domestic Water Distribution                               |                | \$ 7.50          | \$ 194,487          |
| Energy Supply                                             |                | \$ 7.30          | \$ 189,279          |
| Cooling Generating Systems                                |                | \$ 8.34          | \$ 216,242          |
| Sprinklers                                                |                | \$ 2.42          | \$ 62,673           |
| Standpipes                                                |                | \$ 2.36          | \$ 61,076           |
| Electrical Service/Distribution                           |                | \$ 6.35          | \$ 164,668          |
| Lighting and Branch Wiring                                |                | \$ 6.46          | \$ 167,455          |
| Communications and Security                               |                | \$ 1.23          | \$ 31,976           |
| <b>Equipment &amp; Furnishings</b>                        | <b>9.29%</b>   | <b>\$ 11.21</b>  | <b>\$ 290,627</b>   |
| <b>Sub-total</b>                                          | <b>100.00%</b> | <b>\$ 109.05</b> | <b>\$ 3,128,139</b> |
| Contractor Fees (General<br>Conditions, Overhead, Profit) |                | \$ 20.08         | \$ 520,626          |
| Architectural Fees                                        |                | \$ 7.63          | \$ 198,000          |
| Development Fees                                          |                | \$ 4.60          | \$ 119,172          |
| Interest on Construction Loan                             |                | \$ 0.99          | \$ 25,650           |
| Legal Fees                                                |                | \$ 3.86          | \$ 100,000          |
| <b>Total Building Cost</b>                                |                | <b>\$ 146.20</b> | <b>\$ 4,091,587</b> |

*Disclosure: Updegraff Development Cost Estimate is intended to serve as a budget for modeling purposes. It should not be taken as final. The contracts have not been put out to bid.*

Staff received a confirmed loan letter related to the applicant's planned use for covering renovation costs and eligibility requirements. Staff review identifies applicant Paul Brown and Blackthorn Capital LP have sufficient cash resources to complete the project as total account borrowing limits exceed remaining total project costs.

# Blackthorn Capital Partners

## Hagerstown Financing Plan

May 2021



**Blackthorn**  
*Investing in Main Street*



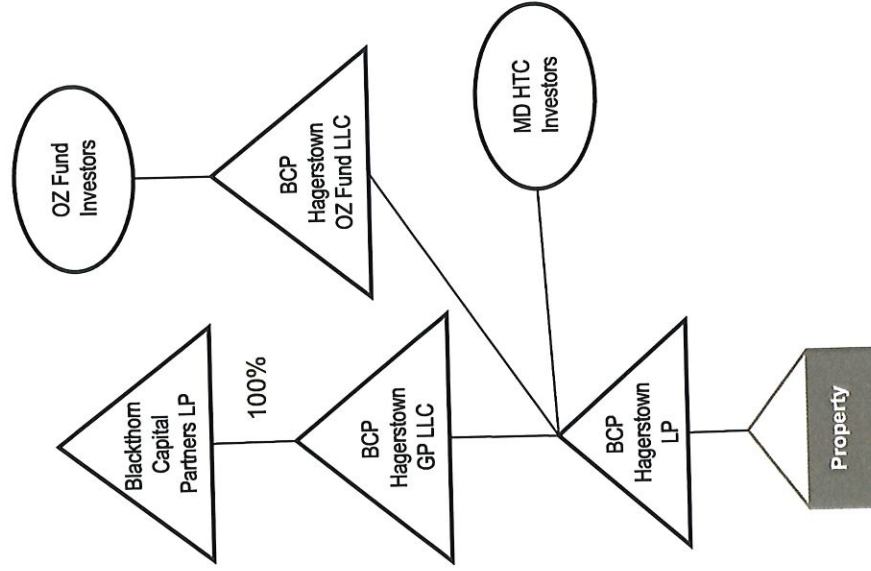
# Anticipated Project Costs

- It is expected that the following costs would be incurred in the purchase and redevelopment of the Updegraff Building

| Description                        | Total<br>Costs | Acquisition<br>Costs | Redevelopment Costs |               |
|------------------------------------|----------------|----------------------|---------------------|---------------|
|                                    |                |                      | Qualified           | Non-Qualified |
| Acquisition Costs                  | 437,871        | 437,871              |                     |               |
| Due Diligence Costs                | 25,000         | 25,000               |                     | 450,000       |
| Renovation Costs                   | 3,358,138      |                      | 2,908,138           | 190,420       |
| Equipment and Furnishings          | 290,627        |                      | 100,207             | 3,437         |
| Interest On Construction Loan      | 25,650         |                      | 22,213              | 26,533        |
| Architect Fees                     | 198,000        |                      | 171,467             | 15,969        |
| Development Fee                    | 119,172        |                      | 103,203             | 13,400        |
| Legal Fees                         | 100,000        |                      | 86,600              |               |
| Total Costs                        | 4,554,458      | 462,871              | 3,391,828           | 699,759       |
| Less: Local Incentives             |                |                      |                     |               |
| City Façade Grant                  | (7,500)        |                      | (7,500)             |               |
| City Center Redevelopment Grant    | (250,000)      |                      | (186,182)           | (63,818)      |
| Total Costs after Local Incentives | 4,296,958      | 462,871              | 3,198,146           | 635,941       |



# Anticipated Organization Structure

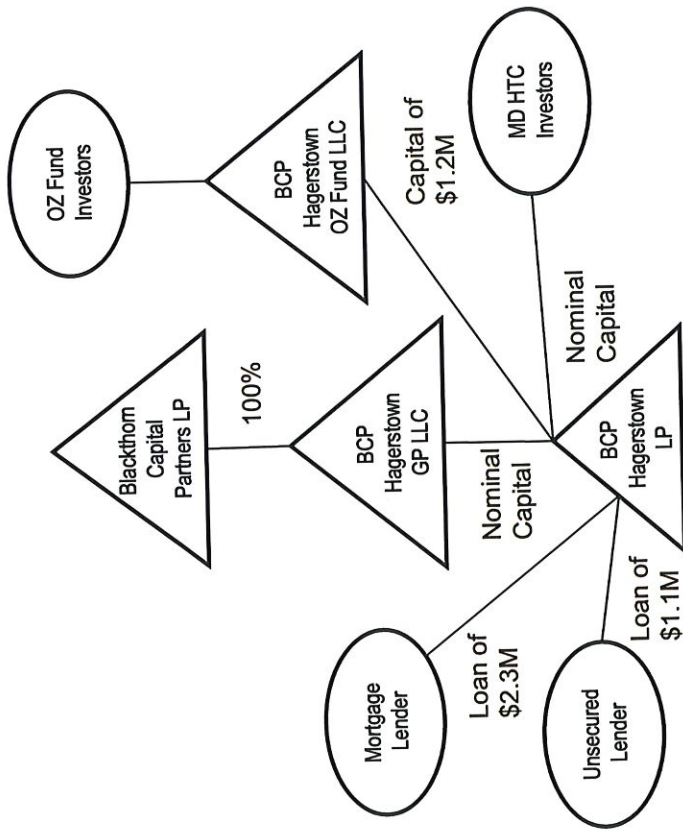


- ▶ General – the Updegraff Building is a historic property with the result that BCP will apply for Federal and Maryland historic tax credit (“HTC”) benefits. Further, BCP will apply for local development incentives. Finally, it is anticipated that the property will qualify for Federal Opportunity Zone (“OZ”) benefits.
- ▶ Debt Funding – It is anticipated that there will be two classes of lenders: (a) long-term property mortgage lender (a financial institution) and (b) short-term unsecured lender (an affiliate of BCP).
- ▶ Investors – It is currently uncertain as to how BCP will structure the admission of the investors. However, it is currently anticipated that there will be two classes of investors: (a) purchasers of the Federal HTCs through an Qualified Opportunity Zone Fund and (b) purchasers of the Maryland HTCs.

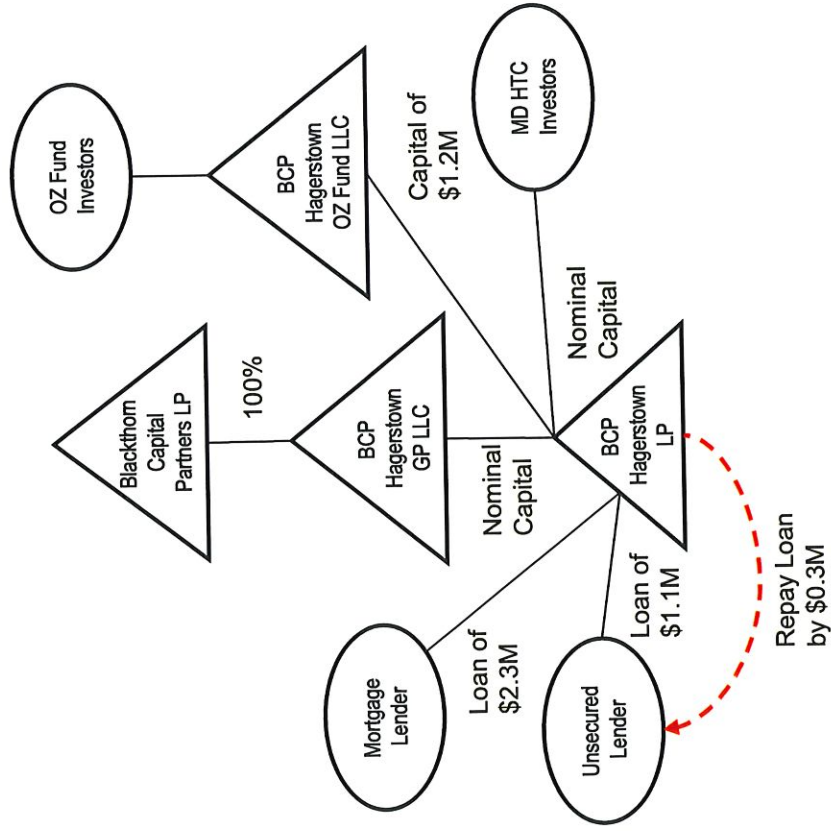
# Funding of Acquisition and Development Costs

- Generally, all incentive programs provide funding at the completion of the redevelopment. Accordingly, it is anticipated that the funding prior to completion of the redevelopment will be accomplished in accordance with the following estimated sources and uses.

|                                           |                  |
|-------------------------------------------|------------------|
| <b>Uses:</b>                              |                  |
| Acquisition Costs                         | 462,871          |
| Qualified Rehabilitation Expenditures     | 3,391,828        |
| Non-Qualified Rehabilitation Expenditures | 699,759          |
| <b>Total Uses</b>                         | <b>4,554,458</b> |
| <b>Sources:</b>                           |                  |
| Mortgage Debt                             | 2,277,229        |
| Unsecured Debt                            | 1,032,069        |
| <b>Total Loans</b>                        | <b>3,309,298</b> |
| General Partner Capital                   | Nominal          |
| OZ Fund Investors                         | 1,245,161        |
| MD HTC Investor Capital                   | Nominal          |
| <b>Total Capital</b>                      | <b>1,245,161</b> |
| <b>Total Sources</b>                      | <b>4,554,458</b> |



## Receipt of Local Incentives



- Upon completion of the redevelopment, it is anticipated that local incentives in the amount of \$257,500 will be paid with such proceeds applied to repay the unsecured debt. Accordingly, the sources and uses are adjusted as shown below.

### Uses:

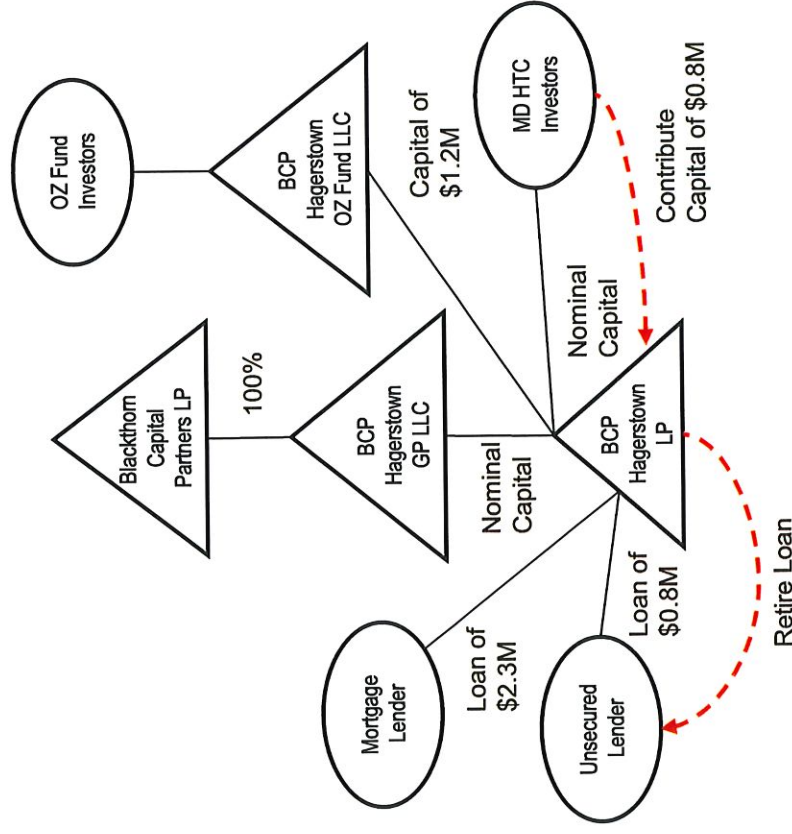
|                                           |                  |
|-------------------------------------------|------------------|
| Acquisition Costs                         | 462,871          |
| Qualified Rehabilitation Expenditures     | 3,391,828        |
| Non-Qualified Rehabilitation Expenditures | 699,759          |
| Less: Local Incentives                    | <u>(257,500)</u> |
| Total Uses                                | <u>4,296,958</u> |

**Sources:**

|                         |           |
|-------------------------|-----------|
| Mortgage Debt           | 2,277,229 |
| Unsecured Debt          | 774,569   |
| Total Loans             | 3,051,798 |
| General Partner Capital | Nominal   |
| OZ Fund Investors       | 1,245,161 |
| MD HTC Investor Capital | Nominal   |
| Total Capital           | 1,245,161 |
| Total Sources           | 4,296,958 |



# Sale of Maryland Historic Tax Credits



- Upon completion of the redevelopment, it is anticipated that the Maryland historic tax credits will be sold for approximately \$770,000 with such proceeds applied to repay the unsecured debt. Accordingly, the sources and uses are adjusted as shown below.

## Uses:

|                                           |                  |
|-------------------------------------------|------------------|
| Acquisition Costs                         | 462,871          |
| Qualified Rehabilitation Expenditures     | 3,391,828        |
| Non-Qualified Rehabilitation Expenditures | 699,759          |
| Less: Local Incentives                    | (257,500)        |
| <b>Total Uses</b>                         | <b>4,296,958</b> |

## Sources:

|                         |                  |
|-------------------------|------------------|
| Mortgage Debt           | 2,277,229        |
| Unsecured Debt          | -                |
| <b>Total Loans</b>      | <b>2,277,229</b> |
| General Partner Capital | Nominal          |
| OZ Fund Investors       | 1,245,161        |
| MD HTC Investor Capital | 774,569          |
| <b>Total Capital</b>    | <b>2,019,729</b> |
| <b>Total Sources</b>    | <b>4,296,958</b> |



### **About Blackthorn Capital Partners**

Blackthorn Capital Partners is a real estate investment firm. We are currently focused on investing in mixed use development properties well located in mid-tier cities. We offer value added development and property services to our clients and investors.

For more information about our organization, please contact:

Blackthorn Capital Partners LP  
c/o P. Anthony Brown  
9909 Deerfield Pond Drive  
Great Falls, Virginia 22066  
mtjimbrown@gmail.com



**UpdeGraff  
Building**  
53 W. Washington  
Hagerstown,  
Maryland

**Blackthorn  
Capital  
Partners LP**

Prepared For Client

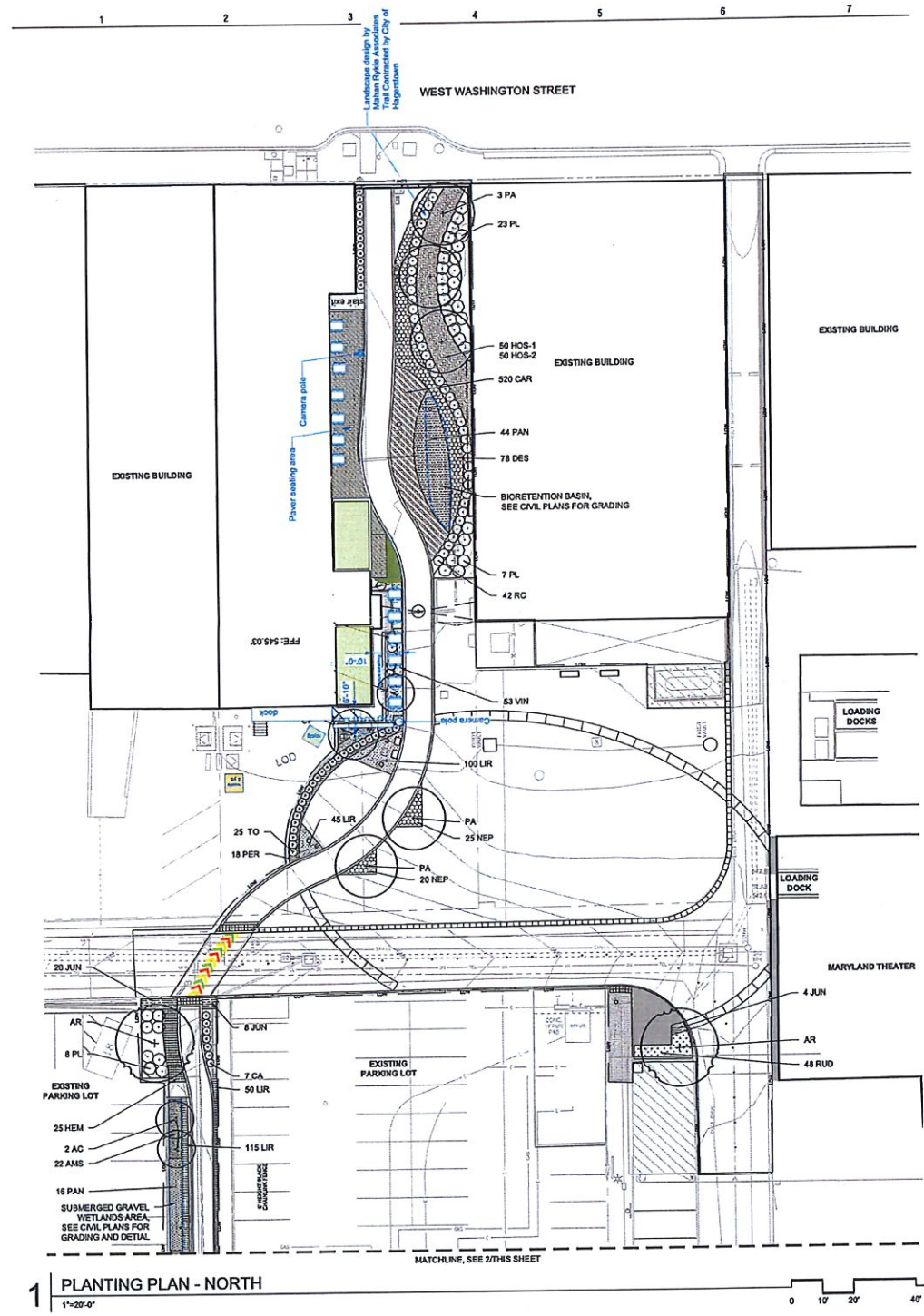


**GDA**  
Geotechnical Design Associates  
10000 W. Washington  
Hagerstown, MD 21740  
Tel: 301.791.1234  
Fax: 301.791.1235  
www.gda.com

**Site Plan**  
(trail/plaza by City of  
Hagerstown)

|                |          |
|----------------|----------|
| Drawn by       | SA/MD/MD |
| Check by       | SA/MD/MD |
| Project Number | 1500     |
| Sheet Number   | 1500     |

**A1.2**



**1 PLANTING PLAN - NORTH**  
1"=20'-0"



**UpdeGraff  
Building**  
53 W. Washington  
Hagerstown,  
Maryland

**Blackthorn  
Capital  
Partners LP**

Standard Engineer



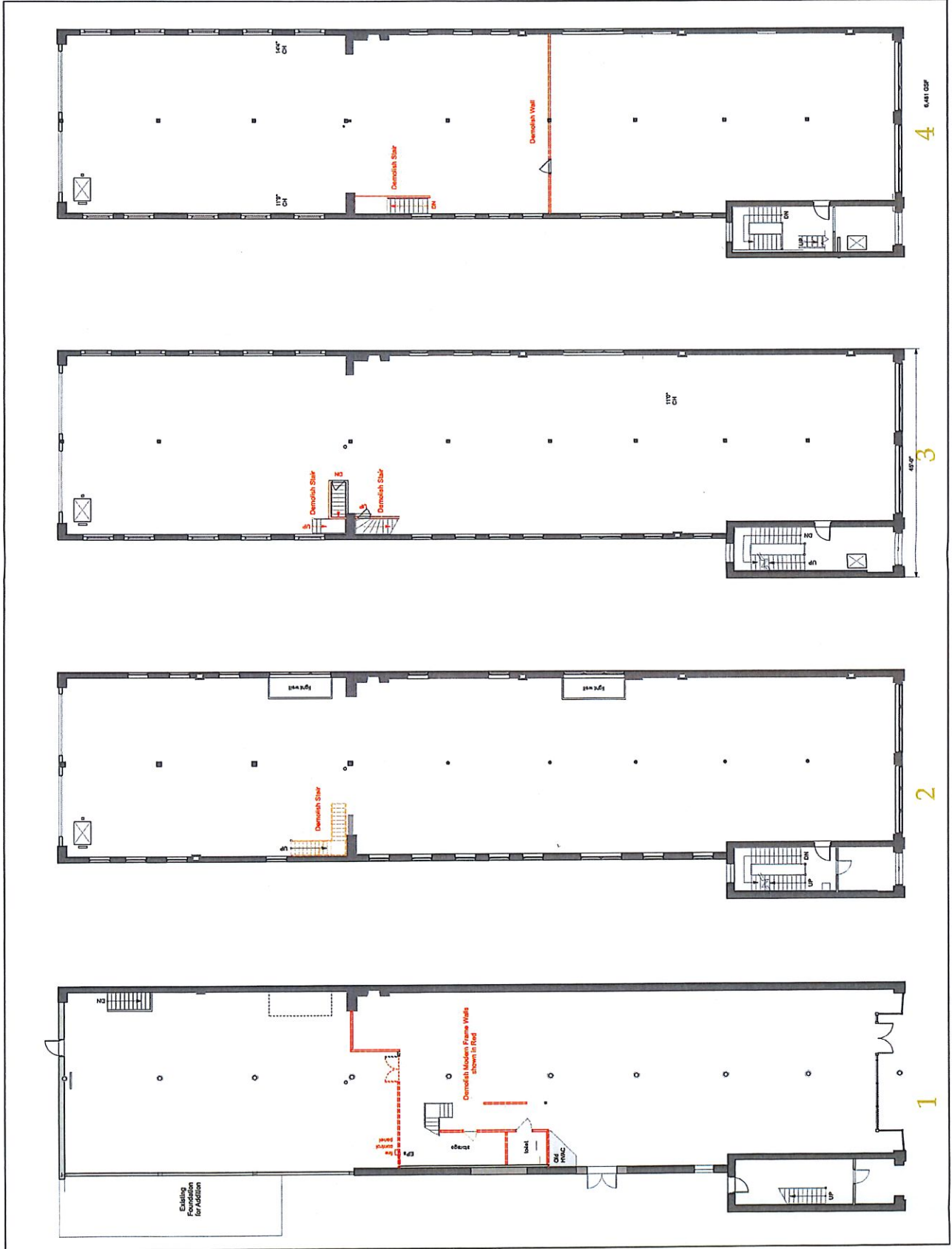
**GDA**  
General Design & Architecture  
1000  
W. WASHINGTON AVE  
HAGERSTOWN, MD 21750  
501.273.2328

|             |                                |
|-------------|--------------------------------|
| Sheet No.   | 1                              |
| Sheet Title | Demolition Plans               |
| Project No. | 1000                           |
| Client      | Blackthorn Capital Partners LP |
| Architect   | GDA                            |
| Engineer    | Standard Engineer              |

**Demolition Plans**

|                |              |
|----------------|--------------|
| Scale          | 1/8" = 1'-0" |
| Block          | As Shown     |
| Project Number | 1000         |
| Sheet Number   | 1            |

**A2.1**





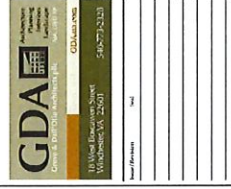


**UpdeGraff**  
**Building**  
53 W. Washington  
Hagerstown,  
Maryland

**Blackthorn  
Capital  
Partners LP**

1 BEDROOM 15  
2 BEDROOM 8

Notes: See Appendix



**Construction  
Floor Plans**

Drawn: 10/13/2021  
Project: UpdeGraff  
Sheet: A2.2

**A2.2**







**UpdeGraff  
Building**  
53 W. Washington  
Hagerstown,  
Maryland

**Blackthorn  
Capital  
Partners LP**

Project Engineer

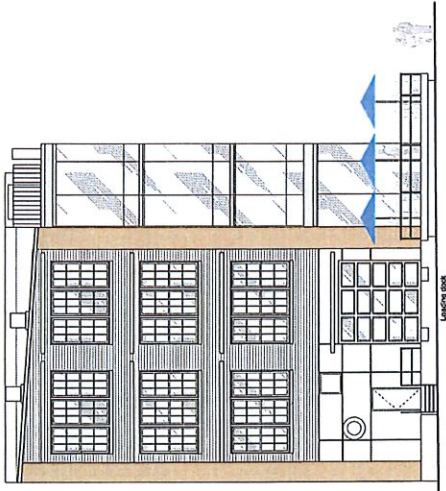


|                                                                     |  |
|---------------------------------------------------------------------|--|
| GDA                                                                 |  |
| 10 West River Street<br>Hagerstown, MD 21740<br>Phone: 410-728-1111 |  |
| Project Name                                                        |  |
| Client                                                              |  |
| Architect                                                           |  |
| Engineer                                                            |  |
| Interior Designer                                                   |  |
| Other                                                               |  |

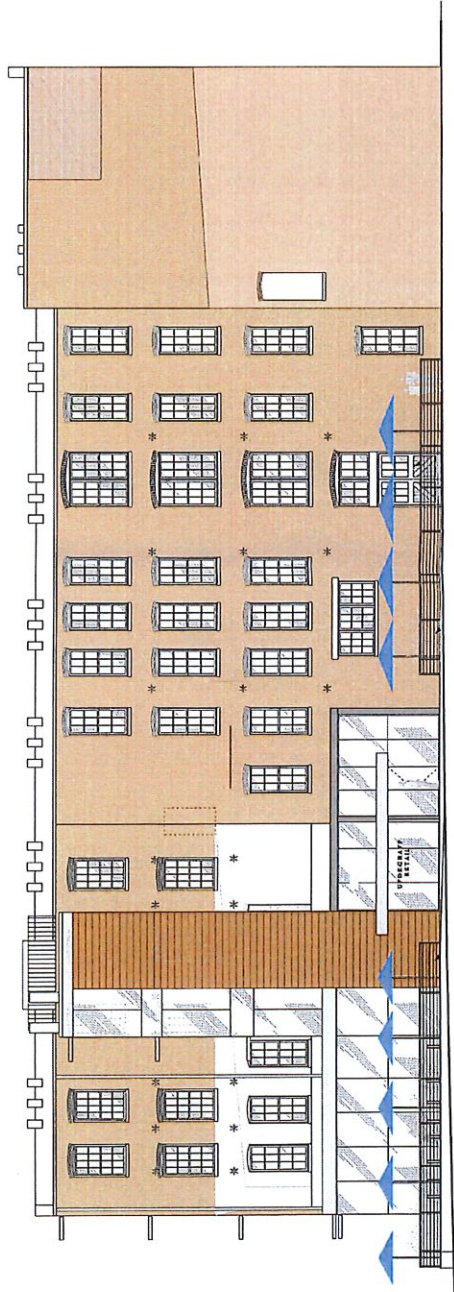
**South & East  
Elevations**

|                |           |
|----------------|-----------|
| Page           | 133/138   |
| Sheet          | Architect |
| Project Number | 1000      |
| Drawing Name   |           |

**A3.1**



1 SOUTH ELEVATION  
Scale 1/8" = 1'-0"



2 EAST ELEVATION  
Scale 1/8" = 1'-0"

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

---

**Topic:**

Substation Property Lease and Purchase Agreements - 548 Eastern Boulevard South - *Nancy Hausrath, Director of Utilities, and Nathan Fridinger, Electric Operations Manager*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

GBJs\_LLC\_Purchase\_Agreement\_Docs\_10262021\_(1).pdf

**Description**

Lease and Purchase  
Agreement GB&J, LLC

**CITY OF HAGERSTOWN**



**DEPARTMENT OF UTILITIES**

425 East Baltimore Street  
Hagerstown, MD 21740-6105

51 West Memorial Blvd  
Hagerstown, MD 21740-6848

October 13, 2021

TO: Scott Nicewarner, City Administrator

FROM: Nancy Hausrath, Director of Utilities  
Nathan Fridinger, Electric Operations Manager

SUBJECT: Substation Property Lease and Purchase Agreements  
548 Eastern Blvd South

-----

Per the direction provided during the January 29, 2021 Work Session regarding the subject matter above, by an Amendment to Comprehensive Settlement Agreement and Mutual Release, the City acquired the Substation Property from Cascades Tissue Group and entered into a Lease Agreement with GB&J's LLC. Under the terms of the Lease Agreement, the parties have agreed to enter into a Purchase Agreement for ultimate sale of 0.75 acres of the 9.4752 acre property in the amount of \$200,000.00 and reimbursement of legal expenses by February 24, 2022.

The City has accepted responsibility of the subdivision process and Frederick Seibert and Associates is developing a plat at the direction of staff. We anticipate a smooth process as we complete these final steps.

Legal Counsel representing both parties have mutually agreed to a Purchase Agreement and are seeking Mayor and City Council approval. The Introductory Ordinance and Purchase Agreement are attached for your review.

Staff will be available during the October 19, 2021 Mayor and City Council Work Session to discuss.

## REQUIRED MOTION

### MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

**DATE:** October 26, 2021

**TOPIC:** INTRODUCTION OF AN ORDINANCE FOR THE SALE OF A PORTION OF THE PROPERTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT BETWEEN THE CITY AND GB&J'S LLC.

|                   |                                     |
|-------------------|-------------------------------------|
| Charter Amendment | <input type="checkbox"/>            |
| Code Amendment    | <input type="checkbox"/>            |
| Ordinance         | <input checked="" type="checkbox"/> |
| Resolution        | <input type="checkbox"/>            |
| Other             | <input type="checkbox"/>            |

**MOTION:** I hereby move for the Introduction of an Ordinance for the sale of a portion of property known as Lot 1 and located on Eastern Boulevard South, Hagerstown, Maryland authorizing the execution and delivery of the attached Purchase Agreement between the City and GB&J's LLC.

DATE OF INTRODUCTION: 10/26/2021  
DATE OF PASSAGE: 11/23/2021  
EFFECTIVE DATE: 12/24/2021



**CITY OF HAGERSTOWN, MARYLAND**

**AN ORDINANCE TO APPROVE THE SALE  
OF A *PORTION* PROPERTY KNOWN AS  
LOT 1 and LOCATED ON EASTERN BOULEVARD SOUTH,  
HAGERSTOWN, MARYLAND  
AND AUTHORIZING EXECUTION AND DELIVERY OF A  
PURCHASE AGREEMENT BETWEEN THE CITY AND GB& J's LLC**

**RECITALS**

WHEREAS, the City of Hagerstown, hereinafter called "the City," is the owner of that certain parcel of real property consisting of 9.4752 acres located in Hagerstown, Washington County, Maryland, and more particularly described as follows:

Lot 1 as shown on the subdivision plat entitled "Final Plat of Subdivision of Municipal Electrical Light Plant Property," dated February 2, 1993, and prepared by Frederick Siebert & Associates, Inc., and recorded among the Land Records of Washington County in Plat Book 3988, and also described in a deed dated December 15, 2006, to the City and recorded among the same said Land Records at Liber 3189, folio 0173 (said parcel is hereafter referred to as "Lot 1");

WHEREAS, the City is presently leasing to GB&J's, LLC, a Maryland limited liability company, a portion of Lot 1, comprising approximately 0.51 acres and upon which an operating electrical substation is located ("the Substation Property.") The parties entered into a written Lease Agreement as to the Substation Property on February 26, 2021, for a period of one (1) year (the "Substation Lease");

WHEREAS, GB&J's desires to purchase the Substation Property, as well as all improvements thereon, and some additional property located between the Substation Property and Eastern Boulevard South (collectively "the Acquired Property"). The Acquired Property is approximately 0.75 acres;

WHEREAS, the Acquired Property to be conveyed to GB&J's in fee simple is shown and described on the drawing dated July 19, 2021 and attached to the Purchase Agreement, which is incorporated herein; and

WHEREAS, in exchange for conveyance of the Acquired Property, GB&J's agrees to (i) pay the City the monetary consideration of TWO HUNDRED THOUSAND DOLLARS and 00/100 CENTS (\$200,000.00); and

WHEREAS, the City has determined that the Acquired Property is no longer needed for a public purpose; and

WHEREAS, the introduction of this Ordinance shall constitute the twenty (20)-day notice of the proposed transfer as required by law; and

WHEREAS, attached hereto and incorporated herein is a Purchase Agreement, for the purchase of the Acquired Property; and

WHEREAS, the Purchase Agreement requires GB & J's to pay the City's attorney's fees incurred in the negotiation, preparation and consummation of this Purchase Agreement and the engineering costs incurred in connection with the subdivision of the Acquired Property; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to enter into said Purchase Agreement.

**NOW THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED** by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.
2. That the Mayor and Council find that the Acquired Property is not needed for any public purpose.
3. That the sale of the Acquired Property pursuant to the terms of the attached Purchase Agreement is hereby approved.
4. That the Mayor be and is hereby authorized to execute and deliver the Purchase Agreement with GB & J's, LLC, a copy of which is attached hereto and incorporated herein by reference.
5. That City Staff be and are hereby authorized to execute and deliver any additional documentation and take any additional steps necessary to effectuate the purpose of this ordinance and satisfy the terms of the aforesaid Purchase Agreement.

**BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT** this ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE  
CITY OF HAGERSTOWN, MARYLAND

\_\_\_\_\_  
Donna K. Spickler,  
City Clerk

\_\_\_\_\_  
Emily N. Keller, Mayor

Date of Introduction: October 26, 2021  
Date of Passage: November 23, 2021  
Effective Date: December 24, 2021

PREPARED BY:  
SALVATORE & MORTON, LLC  
CITY ATTORNEYS



## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2021 (the “**Effective Date**”), by and between the **CITY OF HAGERSTOWN**, a Maryland municipal corporation (the “**City**”) and **GB&J’s, LLC**, a Maryland limited liability company (the “**GB&J’s**”).

### RECITALS

A. The City is the owner of that certain parcel of real property consisting of 9.4752 acres located in Hagerstown, Washington County, Maryland, and more particularly described as follows:

Lot 1 as shown on the subdivision plat entitled “Final Plat of Subdivision of Municipal Electrical Light Plant Property,” dated February 2, 1993, and prepared by Frederick Siebert & Associates, Inc, and recorded among the Land Records of Washington County in Plat Book 3988, and also described in a deed dated December 15, 2006, to the City and recorded among the same said Land Records at Liber 3189, folio 0173 (said parcel is hereafter referred to as “Lot 1”);

B. The City is presently leasing to GB&J’s a portion of Lot 1, comprising approximately 0.51 acres and upon which an operating electrical substation is located (“the Substation Property.”) The parties entered into a written Lease Agreement as to the Substation Property on February 26, 2021, for a period of one (1) year (the “Substation Lease”);

C. GB&J’s desires to purchase the Substation Property, as well as all improvements thereon, and some additional property located between the Substation Property and Eastern Boulevard South (collectively “the Acquired Property”). The Acquired Property is approximately 0.75 acres;

D. The Acquired Property to be conveyed to GB&J’s in fee simple is shown and described on the drawing dated July 19, 2021 and attached hereto and incorporated herein as **Exhibit A**; and

E. In exchange for conveyance of the Acquired Property, GB&J’s agrees to (i) pay the City the monetary consideration provided for herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are made a part hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Incorporation of Recitals and Defined Terms.** GB&J’s and the City agree that the foregoing Recitals are true, complete, and hereby incorporated by reference.

2. **Monetary Consideration.** GB&J’s agrees to purchase and the City agrees to sell the fee simple the Acquired Property for the purchase price of TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) (the “**Monetary Consideration**”).

3. **Closing.** Closing on the transfer of the Acquired Property from the City to GB&J’s (the “**Closing**”) shall occur within FIFTEEN (15) days immediately following satisfaction of the Closing Conditions (defined below). No later than FIVE (5) days prior to Closing, the City shall provide to GB&J’s for review and approval (not to be unreasonably withheld, conditioned or delayed), a draft Special Warranty Deed (the “**Deed**”) for the conveyance of the Acquired Property, which contains special warranty and a covenant of further assurances and which also contains a reservation of rights entitling GB&J’s an easement for the access road from Eastern Boulevard South to the Acquired Property and depicted on Exhibit A.



At Closing, the City shall deliver *inter alia* the final, executed Deed, the form and substance of which shall be mutually agreeable to the City and GB&J's, and GB&J's shall deliver *inter alia* the Monetary Consideration. GB&J's shall be responsible for paying all settlement/closing fees, title search and title insurance costs, and all other costs and expenses related to or arising from Closing. GB&J's also shall promptly reimburse the City for (1) its attorney's fees incurred in the negotiation, preparation and consummation of this Purchase Agreement; and (2) the engineering costs incurred in connection with the subdivision of the Acquired Property. The City shall be responsible for any real property taxes or utility service charges due, but unpaid as of the date of Closing.

**4. Title.** Buyer shall have the right to inspect the status of title to the Property. Promptly after execution hereof, Buyer may obtain at Buyer's expense a title report or title commitment ("**Commitment**") and, at Buyer's election, a UCC lien search for the Property. Buyer may also obtain, at Buyer's sole cost and expense, a current ALTA/ASCM survey of the Property. In the event the Commitment discloses or Buyer becomes aware of any lien on the Property created by City that can be discharged or satisfied by the payment of money ("**Monetary Title Matters**"), City shall discharge or satisfy such Monetary Title Matters on or prior to the Closing Date. If City fails to discharge or satisfy any such Monetary Title Matters as aforesaid, Buyer, at its sole option, and in addition to any other rights and remedies it may have under this Agreement, at law and/or in equity, shall have the right to discharge and satisfy the same from the proceeds of the Purchase Price to be paid to City at closing. Title to the Property shall be subject only to the following matters: (i) the lien of real estate taxes and sewer and water rents not yet due and payable; and (ii) such matters appearing on the Commitment to which Buyer shall fail to object (collectively, the "**Permitted Exceptions**"). Title to the Property shall be insurable, together with such title insurance endorsements as Buyer may reasonably request, at regular rates (including applicable rates for such endorsements) from a title insurance company licensed in the State of Maryland and selected by Buyer. In the event Buyer's review of title to the Property reveals any matters that are unacceptable to Buyer in its sole and absolute discretion (other than Monetary Title Matters which City is required to remedy as aforesaid), Buyer shall notify City thereof within thirty five (35) days after the Effective Date (the "**Objection Notice**"). Within ten (10) days after receipt of the Objection Notice, City shall notify Buyer in writing, whether City shall undertake to cure such unacceptable exception(s). In the event City elects not to cure any unacceptable exception or is unable with the exercise of due diligence to satisfy said objection before the Closing Date, Buyer may, at its option, either (a) accept title subject to the objections raised by Buyer, without an adjustment of the Purchase Price, in which event each of said objections shall be deemed waived for all purposes and considered a Permitted Exception, or (b) terminate this Agreement. If Buyer shall terminate this Agreement, then (i) this Agreement shall be deemed to have terminated as of the date of Buyer's notice without need for any further action by either party, and (ii) neither Buyer nor City shall have any further obligations to one another hereunder, except for those which expressly survive termination of this Agreement.

**5 Representations and Warranties of City.** City hereby makes the following representations to Buyer, all of which are made as of the Effective Date and shall be true and correct in all material respects on and as of the Closing Date.

**5.1 Enforceability: Authorization.** This Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by City pursuant hereto are, or will be when executed and delivered by City, the legal, valid and binding obligations of City and enforceable against City in accordance with its terms. City has obtained all consents necessary for, and possesses full authority and legal right to authorize City's entry into and performance of this Agreement, the documents, affidavits, certificates and other instruments to be executed and delivered by City pursuant hereto and/or the transactions contemplated hereby or thereby. Other than this Agreement and the aforementioned Lease Agreement dated February 26, 2021, there are no other oral or written agreements relating to the use, occupancy or possession of the Acquired Property that would prohibit, interfere or in any way restrict Buyer's use thereof.



5.2 Ownership of the Property. City is the fee simple record and beneficial owner of the Acquired Property. No person or entity has an option, right of first refusal or other similar right to acquire all or any portion of the Acquired Property. City has performed all obligations under and is not in default in complying with the terms and provisions of any covenants, conditions, restrictions, rights-of-way or easements applicable to the Acquired Property.

5.3 No Conflicts. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which City is a party.

5.4 Third Party Consents. All consents required from any governmental authority or third party in connection with the execution and delivery of this Agreement by City or the consummation by City of the transactions contemplated hereby have been made or obtained or shall have been made or obtained by the Closing Date.

5.5 Condemnation, Violation of Laws, Etc. City has not received notice of, and, to City's knowledge, there are no existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Acquired Property, including, without limitation, violations of housing, building, safety, health, environmental, fire or zoning ordinances, codes and regulations of the respective jurisdictions within which the Acquired Property is located or any certificate(s) of occupancy issued for the Acquired Property.

5.6 No Flood Hazard Area. To the best of City's actual knowledge with no duty to investigate, no portion of the Acquired Property is located in an area designated by any governmental entity as a flood hazard area.

5.7 Hazardous Conditions. City makes no representation as to any: (A) claims, complaints, notices, or requests for information received by City with respect to any alleged violation of any Environmental Law with respect to the Acquired Property, or (B) claims, complaints, notices, or requests for information to City regarding potential or alleged liability under any Environmental Law with respect to the Acquired Property.

For purposes of this Agreement, "**Environmental Law**" shall mean: (i) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9601 et seq.) as amended; (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), as amended; (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.) as amended; (v) the Clean Water Act (33 U.S.C. §§ 1251 et seq.) as amended; (vi) the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.) as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.) as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (ix) the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), as amended; (x) any state, county, municipal or local statutes, laws or ordinances similar or analogous to the statutes listed in parts (i) - (ix) of this definition; (xi) any amendments to the statutes, laws or ordinances listed in parts (i) - (x) of this definition, regardless of whether the same are in existence on the date hereof; (xii) any rules, regulations, guidelines, directives, orders or the like adopted pursuant to or to implement the statutes, laws, ordinances and amendments listed in parts (i) - (xi) of this definition; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, guideline, directive, order or the like relating to environmental or other matters covered by the foregoing.

5.8 Bankruptcy Matters. City is not the subject of, nor has City received any written notice of or threat that it has or will become the subject of, any actions or proceedings under the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. ("Bankruptcy Code"), or under any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary and including, without limitation, proceedings to set aside or avoid any transfer of any interest in property or obligations, whether denominated



as a fraudulent conveyance, preferential transfer or otherwise, or to recover the value thereof or to charge, encumber or impose a lien thereon.

5.9     FIRPTA. City is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "**Code**"), and the sale of the Property is not subject to the federal income tax withholding requirements of such section of the Code.

5.10     Mechanic's Liens. There are no claims for labor performed, materials furnished or services rendered in connection with the development, construction, improvement, renovation or repair of the Acquired Property with respect to which liens may or could be filed against the Acquired Property, either pending or threatened.

5.11     Tax Matters. No federal or other taxing authority (each, a "**Taxing Authority**" and collectively, the "**Taxing Authorities**") has asserted in writing any tax deficiency, lien, interest or penalty against City or the Acquired Property that has not been paid, and there is no pending audit or inquiry from any Taxing Authority relating to City or the Acquired Property, and to City's knowledge, no event has occurred and no condition or circumstance exists which presents a material risk that any tax deficiency, lien, interest, penalty or other assessment will be imposed against City or the Acquired Property.

5.12     Re-Zoning. City is not a party to, nor does City have any actual knowledge of, any threatened proceeding for the rezoning of the Acquired Property or any portion thereof, or the taking of any other action by governmental authorities that would have an adverse or material impact on the value of the Acquired Property or use thereof.

5.13     Condemnation. City has not received any written notice advising it of any pending or threatened condemnation or other governmental taking proceedings affecting all or any part of the Acquired Property.

5.14     Litigation. There is no action, suit, inquiry, proceeding or investigation by or before any court or other governmental entity pending or, to the knowledge of the City, overtly threatened against or involving City or the Acquired Property that might reasonably be expected to have a material adverse effect on the City or the Acquired Property, or that questions or challenges the validity of this Agreement or any action taken or to be taken by City pursuant to this Agreement.

5.15     As-Is Sale. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, IT IS UNDERSTOOD AND AGREED THAT CITY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY PERSONAL PROPERTY THEREIN, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES AND AGREES THAT UPON SETTLEMENT CITY SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY 'AS IS, WHERE IS, WITH ALL FAULTS', EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS CONTRACT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND CITY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS CONTRACT. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS."

**6      Closing Conditions.**

**6.1      Subdivision.** A subdivision plat (the "**Subdivision Plat**") for the Acquired Property to be transferred in fee simple shall have received final approval from all applicable State, County and City agencies and be in recordable form at or immediately prior to Closing. The City shall be responsible for preparing and securing all approvals of the Subdivision Plat, and GB&J's shall cooperate to the extent necessary to effect the Subdivision.

**6.2      City Representations and Warranties.** The representations and warranties of the City contained in Section 5 hereof shall be true and correct in all material respects as of the Closing Date, except to the extent that the Buyer has waived any such representations and warranties in writing.

**6.3      Title.** Title to the Acquired Property shall be in such condition as required under Section 4 of this Agreement.

**7      Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees. This Agreement shall also be deemed to run with the land.

**8      Notice.** Notices and other communications required or permitted to be given hereunder shall be deemed to have been duly given if in writing and delivered by recognized overnight delivery service, or by fax (with a hard copy to be sent promptly thereafter by overnight delivery), as follows:

**To GB&J's**

GB&J's, LLC  
Attn: Greg Rochlin, Manager  
850 Kenilworth Drive  
Towson, Maryland 21203

With a copy to:  
Bill Palmer  
188 Success Drive, Suite 100  
McConnellsburg, PA 17233

Timothy J. Pursel, Esquire  
Pursel & Drinkard, LLC  
11265 Dovedale Court  
Marriottsville, MD 21104

**To the City**

Nathan Fridinger,  
City of Hagerstown  
Light Department  
425 East Baltimore Street  
Hagerstown, Maryland 21740



With a copy to:  
Jason Morton  
Salvatore & Morton, LLC  
83 West Washington Street, Suite 100  
Hagerstown, Maryland 21740

Donna K. Spickler  
City of Hagerstown  
City Clerk  
1 East Franklin Street  
Hagerstown, Maryland 21740

**9** **Governing Law.** Regardless of its place of execution, this Agreement shall be governed by the laws of the State of Maryland as to interpretation, construction, and performance, and without regard to its conflicts of law principles.

**10** **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, there being no other terms, oral or written, except as herein expressed.

**11** **Counterparts.** This Agreement (i) may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument; (ii) may be executed by copies of physically signed documents exchanged via email attachment in PDF format or equivalent.

**12** **Exhibits Incorporated.** Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

**13** **Amendments.** This Agreement may be amended, changed or modified only by written amendment executed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless in writing signed by the party charged.

**14** **Further Agreements.** GB&J's and the City shall at any time and from time to time after Closing, upon request of the other, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, conveyances and assurances as may reasonably be required for the better conveying, transferring, assuring and confirming the terms and conditions contemplated herein.

**15** **Time of the Essence.** Time shall be of the essence of this Agreement.

**16** **Survival.** The obligations, agreements and covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable after the Closing or other *de jure* termination of this Agreement, the parties specifically acknowledging that the Closing and the execution and recordation of deeds contemplated herein shall not terminate the obligations of the parties that are intended and by their terms survive the Closing. The representations and warranties of the City contained in Section 5 hereof shall survive the Closing for the applicable statute of limitations.

**17** **Severability.** If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.



18      **Waiver.** Neither party's waiver of the other's breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition in this Agreement.

19      **Assignment.** This Agreement may not be assigned by either party without the express written consent of each party. However, GB&J's shall have the right to assign this Agreement without the consent of the City to (1) any entity resulting from a merger or consolidation with GB&J's or any organization purchasing substantially all of GB&J's's assets, (2) any entity succeeding to substantially all the business and assets of GB&J's, (3) any entity controlling, controlled by or under common control with GB&J's, or (4) any entity resulting from the reorganization of GB&J's outside of bankruptcy organization.

20      **Headings.** Headings are intended only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Agreement.

**[Signatures contained on following page]**

**IN WITNESS WHEREOF**, the GB&J's and the City have executed this Agreement as of the date set forth above.

ATTEST:

**CITY OF HAGERSTOWN**

\_\_\_\_\_  
Donna K. Spickler, City Clerk

By: \_\_\_\_\_  
Emily N. Keller, Mayor

STATE OF MARYLAND, COUNTY OF WASHINGTON, to wit:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_ 2021, before me, the Subscriber, Notary Public in and for the State and County aforesaid, personally appeared Emily N. Keller, Mayor, and she acknowledged the foregoing instrument to be her act and deed on behalf of the City of Hagerstown and she did further certify that she is duly authorized to make this acknowledgement on its behalf and that she is duly authorized to execute this Purchase Agreement on its behalf.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

ATTEST:

**GB&J's, LLC**

\_\_\_\_\_

\_\_\_\_\_  
Name: Greg Rochlin  
Title: Manager

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_ 2021, before me, the Subscriber, Notary Public in and for the State and County aforesaid, Greg Rochlin personally appeared and acknowledged the foregoing instrument to be his act and deed and he did further certify that he is the Manager of GB&J's, LLC, and is duly authorized to execute this Purchase Agreement on its behalf.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



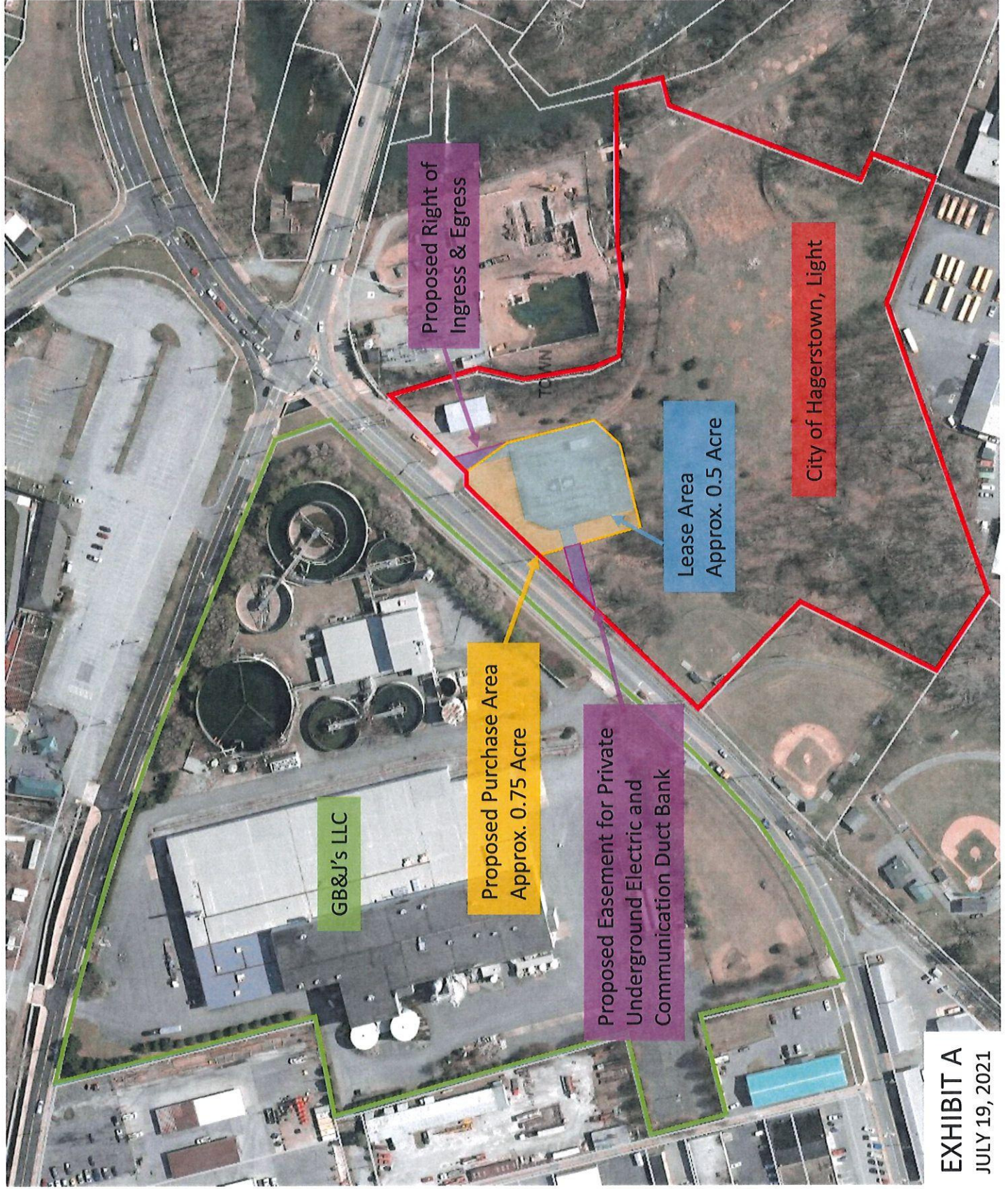


EXHIBIT A  
JULY 19, 2021